Federal Register notifying the public that the Agency has made such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency in accordance with 40 U.S.C. 486(c) and Executive Order 12352, dated March 17, 1982. USIA is requesting approval for a three-year extension of an information collection entitled "Information Collection in Support of USIA Acquisition Process". Estimated burden hours per response is 240 hours. Respondents will be required to respond only one time.

DATES: Comments are due on or before November 18, 1994.

COPIES: Copies of the Request for Clearance (SF-83), supporting statement, transmittal letter and other documents submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Debbie Knox, United States Information Agency, M/ADD, 301 Fourth Street SW., Washington, DC. 20547, telephone (202) 619-5503; and OMB review: Mr. Jefferson Hill, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC. 20503, Telephone (202) 395-3176.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116-0185) is estimated to average 240 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the United States Information Agency, M/ADD, 301 Fourth Street SW., Washington, DC. 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC. 20503.

Title: Information Collection in Support of USIA Acquisition Process.

Form Number: None.

Abstract: Information collection from the public is necessary to evaluate bids and responses from potential suppliers for supplies, services and hardware for the purpose of making awards in conformance with rules and regulations governing procurement by Federal Government departments and agencies.

Proposed Frequency of Responses:

No. of Respondents—965

Recordkeeping Hours—0

Total Annual Burden—231,600

Dated: October 12, 1994.

Rose Royal,

Federal Register Liaison.

[FR Doc. 94-25792 Filed 10-18-94; 8:45 am]

BILLING CODE 8230-01-M

Culturally Significant Objects Imported for Exhibition; Determination

Notice in hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 F.R. 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "From the Ocean of Painting: A Survey of India's Popular Painting Traditions from 1589 A.D. to the Present" (See list),[1] imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at The University of Iowa Museum of Art from on or about October 29, 1994 to on or about December 18, 1994; The Smart Museum from on or about January 19, 1995 to on or about March 12, 1995; Santa Barbara Museum from on or about June 10, 1995 to on or about August 13, 1995 is in the national interest. Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: October 14, 1994.

Les Jin,

General Counsel.

[FR Doc. 94-25880 Filed 10-18-94; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mrs. Carol Epstein, Assistant General Counsel, at 619-6981, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register

Vol. 59, No. 201

Wednesday, October 19, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, October 24, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 14, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-25974 Filed 10-17-94; 12:04 pm]

BILLING CODE 6210-01-P

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Operations and Regulations Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Operations and Regulations Committee will meet on October 27-28, 1994. The meeting will commence at 10:00 a.m. on October 27, 1994, and at 9:00 a.m. on October 28, 1994.

PLACE: The Marriott at Metro Center, 775 12th Street, NW., Salaon "A", Washington, DC (202) 737-2200.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda.
2. Approval of Minutes of September 30, 1994 Meeting.
3. President's Report.
4. Consider and Act on Proposed Committee Meeting Schedule for Calendar Year 1995.
5. Consider and Act on Proposed Changes to Part 1607 of the Corporation's Regulations.
6. Consider and Act on Proposed Changes to Part 1602 of the Corporation's Regulations.
7. Consider and Act on Proposed Changes to Part 1610 of the Corporation's Regulations.
8. Consider and Act on Proposed Changes to Part 1609 of the Corporation's Regulations.
9. Consider and Act on Proposed Changes to Part 1604 of the Corporation's Regulations.
10. Public Comment.
11. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie, (202) 336-8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336-8800.

Date issued: October 17, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94-26089 Filed 10-17-94; 3:36 pm]

BILLING CODE 7050-01-M

POSTAL RATE COMMISSION

TIME AND DATE: 10:00 a.m. and 2:00 p.m. on October 24, 25, 26, November, 7, 8, 9. 10:00 a.m. on November 1, 3, 14, 15, 16, 17, 18, 21, 22, 1994.

PLACE: Conference Room, 1333 H Street, NW, Suite 300, Washington, DC 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED: To discuss and decide issues in Docket No. R94-1, *Postal Rate and Fee Changes, 1994.*

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Suite 300, 1333 H Street, NW, Washington, DC 20268-0001, Telephone (202) 789-6840.

Charles L. Clapp,

Secretary.

[FR Doc. 94-26091 Filed 10-17-94; 3:46 pm]

BILLING CODE 7710-FW-P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

TIME AND DATE: October 25, 1994, 1:00 pm-2:30 pm.

PLACE: Department of Agriculture, Room 107, North Building, 14th and Independence Avenues, SW., 20250.

STATUS: The meeting will be open to the public.

SUMMARY: The Board of Directors of the Corporation for National and Community Service will meet on October 25, 1994 to discuss the delegation of authority, formation and assignments of subcommittees, status of the strategic plan, status of the evaluation plan Fiscal Year 1995 priorities for AmeriCorp*USA future board meetings' schedule, and other business. The meeting will be open to the public up to the seating capacity of the room.

FOR FURTHER INFORMATION CONTACT: Mrs. Rhonda Taylor, Associate Director of Special Projects and Initiatives at 1100 Vermont Ave, NW., Washington, DC 20525: (202) 606-5000 ext. 282 or (202) 606-5256 (TTD) prior to October 23, 1994.

Dated: October 17, 1994.

Terry Russell,

General Counsel, Corporation for National and Community Service.

[FR Doc. 94-26074 Filed 10-17-94; 5:08 pm]

BILLING CODE 6050-28-M

Corrections

Federal Register
Vol. 59, No. 201
Wednesday, October 19, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 676

[Docket No. 940845-4245; I.D. 081794A]
RIN 0648-AG98

Limited Access Managment of Federal Fisheries In and Off of Alaska

Correction

In proposed rule document 94-24136 beginning on page 49637 in the issue of Thursday, September 29, 1994, make the following correction:

§ 676.24 [Corrected]

On page 49639, in the third column, in § 676.24 (i)(3), in the third line of the formula, the first minus sign should read "x".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2551-MI; 2579-IN]

Indiana Michigan Power Co; Public Scoping Meetings

Correction

In notice document 94-21462 beginning on page 44977 in the issue of Wednesday, August 31, 1994 the docket number should read as set forth above.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-5075-6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Amendment

Correction

In rule document 94-23114 beginning on page 47813, in the issue of Monday, September 19, 1994, make the following correction:

Table 1 of Appendix IX to Part 261 [Corrected]

On page 47814, in Table 1 of Appendix IX of part 261, under the heading "Waste description", in the second line, "[insert date of publication]" should read "September 19, 1994."

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 488 and 489

Office of Inspector General

42 CFR Part 1003

[BPD-393-IFC]
RIN 0938-AC58

Medicare Program; Participation in CHAMPUS and CHAMPVA, Hospital Admissions for Veterans, Discharge Rights Notice, and Hospital Responsibility for Emergency Care

Correction

In rule document 94-14926 beginning on page 32086, in the issue of Wednesday, June 22, 1994, in the first column, the CFR part headings should read as set forth above.

BILLING CODE 1505-01-D

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Loan Interest Rates

Correction

In rule document 94-18658 beginning on page 39423 in the issue of Wednesday, August 3, 1993 make the following correction:

On page 39424, in the third column, in the Authority citation, in the first line "12 U.S.C 7152(5)" should read "12 U.S.C. 1752(5)".

BILLING CODE 1505-01-D

THE PRESIDENT
PANAMA CANAL COMMISSION

35 CFR Part 135

RIN 3207-AA23

Tolls for Use of Canal and Rules for Measurement of Vessels

Correction

In rule document 94-20534 beginning on page 43254 in the issue of Monday August 22, 1994, make the following correction:

§ 135.42 [Corrected]

On page 43265, in the third column, in § 135.42, in paragraph (a)(2)(i), the formula should read "UDV={0.91 x [(LOA x MB) x (D-SLD)]} + (SLDISP/ 1.025)"

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. PS-126; Notice 2]
RIN 3137-AB71

Passage of Instrumented Internal Inspection Devices

Correction

In proposed rule document 94-24080 beginning on page 49896 in the issue of Friday, September 30, 1994, make the following correction:

On page 49897, in the second column, in the last paragraph, in the sixth line, "(insert date of publication of the NPRM)" should read "(September 30, 1994)."

BILLING CODE 1505-01-D

federal register

Wednesday
October 19, 1994

Part II

Department of Agriculture

Commodity Credit Corporation

7 CFR Part 1493

Export Credit Guarantee Program and the Intermediate Export Credit Guarantee Program; Final Rule

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1493

[RIN 0551–AA30]

CCC Export Credit Guarantee Program (GSM–102) and CCC Intermediate Export Credit Guarantee Program (GSM–103)

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Commodity Credit Corporation (CCC) is issuing this final rule which revises the regulations for the Export Credit Guarantee Program (GSM–102) and the Intermediate Export Credit Guarantee Program (GSM–103). In addition to making changes intended to improve and update the current regulations, this final rule also incorporates material required by the Agricultural Trade Act of 1978, as amended by Section 1531 of the Food, Agriculture, Conservation, and Trade Act of 1990 (the 1990 Act).

EFFECTIVE DATE: The provisions of this final rule are effective November 18, 1994.

FOR FURTHER INFORMATION CONTACT: L.T. McElvain, Director, CCC Operations Division, USDA, FAS, Ag Box 1035, Washington, DC., 20250–1035, telephone (202) 720–6211.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866 and has been determined to be "not significant" as a regulatory action. For this action, the Office of Management and Budget has waived its review process in accordance with Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of rulemaking with respect to the subject matter of this rule.

Paperwork Reduction Act

The paperwork requirements which would be imposed by this final rule were described in the interim final rule and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. The Office of Management and Budget assigned number for those requirements is OMB No. 0551–0004. The public reporting burden for these collections is estimated to average 10.3 minutes per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection, including any suggestions for reducing burden, to Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington DC. 20250–7600; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0551–0004), Washington, DC. 20503.

Executive Order 12372

These programs are not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Background

In the **Federal Register** of June 6, 1991 (56 FR 25993), the Commodity Credit Corporation (CCC) issued an interim rule to revise the regulations for the CCC Export Credit Guarantee Program (GSM–102) and the CCC Intermediate Export Credit Guarantee Program (GSM–103) administered by FAS, 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, and in addition to, these program regulations. The interim rule incorporated or withdrew all previously outstanding operational requirements announced by FAS/USDA through Notices to Participants. The interim rule also incorporated requirements established by the 1990 Act. Finally, the interim rule clarified several provisions previously contained in 7 CFR Part 1493 to promote more efficient administration of the GSM–102 and GSM–103 programs. The deadline for comments on the interim rule was August 5, 1991. Comments were received from five U.S. exporters (one exporter submitted two separate responses), three producer associations, two U.S. financial institutions, one U.S. export trade association, and one U.S. Government agency. These thirteen parties made approximately 66 separate and significant comments regarding either the interim rule or the policy issues and the impact of policies involved in administering the GSM–102 and GSM–103 programs.

General Comments

One commenter disagreed with CCC's statement that it has been determined that this rule will not result in "significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets." This respondent shared that while the interim rule contained some improvements, some of the changes would restrict the competitiveness of, and be detrimental to, the sale of U.S. goods. The commenter argued that the interim rule was an overreaction resulting from the Iraqi default on GSM–102/103 guaranteed obligations. The commenter acknowledged that the U.S. Government must monitor the programs to prevent abuse but contended that, in general, free market conditions should prevail. While CCC agrees that the GSM–102/103 programs should avoid unduly restricting normal commercial practices, the Department has been mandated by Congress to implement measures to guard against program abuse. It is the Department's intention to adopt necessary program safeguards while still enhancing the ability of U.S. exporters to compete in foreign markets.

Four commenters supported and commended the USDA's efforts to catalogue and codify many of the operational features of the programs, to assure that the regulations are being met, and to create more accountability within the programs.

Four other commenters felt that the intention of the interim rule to "* * * simplify material, enhance clarity, eliminate duplication and facilitate their use * * *" has not been met. These commenters stated that the interim rule is complicated, unclear at some points, and unnecessarily duplicative. The commenter argued and that, more than ever, the regulations contain burdensome regulatory features which could constrain the programs' effectiveness.

One commenter felt that the interests of program simplification have been abandoned and that undue burdens are being placed on participants to protect the programs from a few perceived manipulations. This commenter suggested that the program is not "user friendly" when administrators focus only on protecting the programs from all risk, or on shifting all risk to the exporter or buyer. Another respondent felt that the lack of USDA guidance on pertinent issues is not only frustrating, but may have also compromised the strengths of the U.S. agricultural system.

CCC agrees that the interim rule contains regulatory features that place additional burdens on program participants, such as added certification statements, requirements to maintain arrival documentation, and longer retention time on transaction records. Although such requirements may compare unfavorably with the simplicity of the prior regulations, these requirements are mandated by the 1990 Act. On the other hand, CCC has also made changes that consolidate program requirements. For example, policy and additional program requirements previously contained in a number of Notices to Participants were incorporated into the interim rule.

Five commenters felt that the revised regulations are a response to criticism of the GSM–102/103 programs and pressure on program administration brought on by prior audits and investigations by the General Accounting Office and USDA's Office of the Inspector General. Another commenter stated that since auditors do not create exports for the U.S. economy and have no responsibility for market development there is a need to re-establish teamwork between FAS and the export community to resolve key issues. One commenter felt the intent of the 1990 Farm Bill was to streamline program procedures, but, in actuality, the programs are more bureaucratic than ever. This same commenter felt that the USDA has forgotten that the GSM–102/103 programs are commercial programs, that the programs must reflect commercial realities, and that recent studies and audits have not focused on the commercial and competitive viability of the GSM–102/103.

CCC acknowledges these concerns. In addressing audit and investigation reports on its commercial export programs, CCC has attempted to put in perspective the relatively low incidence of program violations in the programs. However, given that many of the requirements of the interim rule aimed at preventing program abuses were mandated by the 1990 Act, CCC cannot concur that the primary legislative intent was to "streamline procedures."

Three respondents recommended that the interim rule be revised to allow financial institutions to use the commercial banking practice of securitization as a financing technique for CCC-guaranteed credits. Securitization would involve the packaging of such credits by a U.S. financial institution for sale to third parties as U.S.-government guaranteed securities. It is asserted that securitization would expand sources, and perhaps reduce the cost, of financing for CCC-guaranteed credits. However, respondents point out that certain program regulations and CCC policies now make securitization infeasible. For example, regulations require that the guarantee holder who has experienced a default and filed a claim with CCC must turn all recoveries "from any source whatsoever" over to CCC for pro rata sharing (§ 1493.130(b)(1)). This provision is intended to ensure that the U.S. party financing the transaction always remains at risk for the portion of the credit and interest not guaranteed by CCC. Generally, this policy is seen as incompatible with the issuance of 100% U.S. Government-guaranteed securities since any collateral put up by the foreign borrower to cover the portion not guaranteed by CCC could be subject to pro-rata sharing with CCC.

Similarly, U.S. banks point out that the unwillingness of CCC to pre-approve export and other documents that must be submitted to support a claim on CCC in the event of default makes it impossible to issue high grade securities based on CCC-guaranteed credits. Without pre-approval, such securities could not be marketed with absolute assurance that claims on CCC for defaults on the underlying credits would be found in good order and honored.

CCC has considered these and other proposals for securitization of CCC-guaranteed credits. However, CCC remains of the view that, although the degree of risk-sharing may be adapted to meet program objectives, requiring risk-sharing with the holder of the guarantee (normally a U.S. bank) is an essential feature of the GSM–102/103 programs. It forces the private sector to engage in risk assessment relating to individual transactions, and thereby supplements the risk assessment done by CCC prior to announcing export credit guarantee programs for specific countries. Removing this requirement would also reduce the incentive banks now have to press for recovery of late payments from foreign banks rather than claiming immediately on CCC. CCC does not have the resources that would be required to pre-approve documents and to effectively manage the increase in claims and follow-up recovery efforts that would go hand-in-hand with changing the specified provisions of the GSM–102/103 regulations to facilitate securitization. For these reasons, CCC is not prepared at this time to propose program changes to facilitate securitization of its credit guarantees.

Two comments were received regarding republishing the rule. One respondent suggested that the USDA republish the regulations on a routine basis, requesting public comments, to insure that improvements in the programs may be continually advocated and effected. Another commenter suggested a redraft of areas of greatest controversy and republication with request for comments. CCC agrees that the GSM–102/103 program regulations are important and should be reviewed periodically. It is CCC's policy to do this. However, publication of an additional interim rule at this time would further delay implementation of a final rule which is needed to establish a basic permanent framework for the programs.

One commenter felt that the delays in the administrative process increase exporter risks and costs and inhibit the programs' effectiveness. This respondent recommended that the regulations include absolute deadlines governing the USDA's performance of administrative functions. CCC recognizes that administrative delays in processing applications and issuing guarantees may result in additional costs and risks to exporters, and CCC is, therefore, committed to expediting existing administrative procedures. However, it is not feasible to establish absolute time-frames for actions because many administrative delays may be due to the failure of participants to provide all required information, or are the unavoidable consequence of increased program activity during specific time periods.

One respondent recommended that a special trade advisory committee be established to address controversial provisions of program regulations. The commenter called on the Agricultural Policy Advisory Committee (APAC) and the Agricultural Technical Advisory Committee (ATAC) to devote attention to these programs. CCC disagrees that a special trade advisory committee is warranted. Considerable debate was aired when Congress developed the 1990 Act which mandated changes to the GSM–102/103 programs. The Department also has considerable experience in administering credit and credit guarantee programs, and has a continuing dialogue with private sector program participants on administrative and other program policies. CCC believes that the rulemaking process should remain the primary vehicle for obtaining views of interested parties. This process gives an equal opportunity to all parties, is part of the public record, and is required by law. The APAC and ATAC could consider GSM–102/103 issues if their members so choose.

A commenter suggested that solutions to some of the problems are simply to modify the regulations, but other problems require a comprehensive policy review by USDA policy officials. Another commenter supported a special credit facility separate from the regular GSM–102/103 programs for the former Republics of the Soviet Union. These comments, by their own admission, address concerns outside the content of the program regulations and therefore, are not considered in this final rule.

Section by Section Analysis of Subpart A and B

The numbering system of the final rule differs somewhat from that of the interim rule. Some sections were added, some were deleted. For the purposes of this discussion, the numbering system of the final rule will be used, except where otherwise indicated. In addition to changes resulting from comments from interested parties, some additional changes in language have been incorporated into the final rule for the purpose of clarification of specific provisions. These changes are minor and not of a substantive nature.

Subpart A: Restrictions and Criteria for Export Credit Guarantee Programs

Section 1493.1 General Statement

No public comment received on this section. No changes have been made in this section of the final rule.

Section 1493.2 Purposes of Program

One commenter felt that the purposes of the program are accurately conceived, well-prioritized and complete, and should serve as the key criteria to guide CCC in both the drafting of the final rule and the operation of the GSM–102/103 programs. No changes have been made in this section of the final rule.

Section 1493.3 Restrictions on Programs and Cargo Preference Statement

One commenter praised the USDA for its stand on this issue. No changes have been made in this section of the final rule.

Section 1493.4 Criteria for Country Allocations

One commenter felt that, because of problems which previously impeded the timely provision of the credits to the republics of the former Soviet Union, USDA needs to elaborate its "creditworthiness" criteria and should consider revising current restrictions and limits on credit that make it difficult for many debt-burdened countries to participate in the program. CCC notes that the 1990 Act prohibits export credit guarantees from being used "for foreign aid, foreign policy, or debt rescheduling purposes" and instructs that CCC "shall not make credit guarantees available in connection with sales of agricultural commodities to any country that the Secretary determines cannot adequately service the debt associated with such sale." Under this legislative mandate, CCC believes that the criteria of § 1493.4 cannot be changed in ways to meet the objective suggested by the commenter.

Section 1493.5 Criteria for Agricultural Commodity Allocations

No public comment received on this section. No changes have been made in this section of the final rule.

Section 1493.6 Additional Required Determinations for GSM–103

No public comment received on this section. No changes have been made in this section of the final rule.

Subpart B: CCC Export Credit Guarantee Program (GSM–102) and CCC Intermediate Export Credit Guarantee Program (GSM–103) Operations

Section 1493.10 General Statement

No public comment received on this section. No substantive changes have been made in this section of the final rule.

Section 1493.20 Definition of Terms

Eight respondents commented on § 1493.20(f), Discounts and Allowances. All comments, in one way or another, recommended changes to this section to permit discounts and allowances that are consistent with customary commercial trade practices. The commenters suggested specifically excluding from the definition of discounts and allowances:

(1) Cash payments, under the terms of the export sales contract, made by the exporter to the financing institution which reduce the amount financed and are notified to CCC as amendments to port value or export value as appropriate;

(2) Credits against the sales price, under the terms of the export sales contract, which reduce the amount of CCC coverage and are notified to CCC as amendments to the port value and exported value, as appropriate;

(3) Cash payments by the exporter to third parties for demurrage, detention and overage insurance premiums; and

(4) Adjustments for destination weights in cotton sales.

The payments or credits described in comments (1) and (2) above, are discounts or allowances to the importer; however, if properly reported to CCC and the amount of CCC's coverage consequently reduced, no program violation is involved. CCC has, therefore, determined not to include these suggested exemptions in 1493.20(f). Items (3) and (4) are addressed below.

One commenter recommended that the definition of discounts and allowances should be revised to delete reference to demurrage and detention settlements. The commenter stated that demurrage and detention settlements are normal costs which may be incurred in an export sales transaction. When settlement funds are paid to an importer, the importer is only acting as an intermediary in making these payments to a third party, i.e., the shipping line. Thus the financial transaction between exporter and importer is unaffected. Similarly, payments of over-age insurance premiums to underwriters because of an exporter's inability to otherwise charter a vessel of required specifications should not be considered a discount or allowance to the importer. CCC concurs with these comments and has therefore, deleted reference to demurrage and detention in the definition of discounts and allowances in this final rule.

Two respondents felt that there is a contradiction in the USDA's interpretation of § 1493.20(f). When a weight increase occurs at destination, CCC makes no provision for amending the exported value to increase coverage. However, when destination weights decrease, any adjustment by the exporter in favor of the importer is considered by CCC as a discount or allowance and CCC requires that the value of the guarantee be correspondingly reduced. The respondents argue that there should be consistent treatment in both cases, and that as long as there is coverage available from the country line, adjustments to exported value should be made for both weight increases or decreases. CCC disagrees. To guard against potential program abuse, CCC has instituted a system to price review all transactions for which GSM–102/103 guarantees are sought. The purpose of the price review is to insure that the sales price of the transaction being guaranteed falls within a reasonable and acceptable price range given market conditions in existence at the time of the sale. CCC's price review compares the particular price with representative prices at a U.S. export position, and is, therefore, based upon U.S. export weight and grade determinations.

Thus, determining the port value and guaranteed value of the transaction, and CCC's contingent liablility under the guarantee, on the basis of destination weights and grades would undermine the effectiveness of and could potentially invalidate, the price review process. CCC recognizes that, in certain markets, the use of destination weights and grades is a normal commercial term of contract and, therefore, will issue guarantees in connection with such transactions to facilitate the export trade. However, since CCC is not able to conduct price reviews on the basis of destination weights and grades (because the determination of destination weights and grades necessarily occurs only after the commodities have arrived at the port of destination and, therefore, long after the application for GSM–102/103 coverage has been approved), exporters will have to bear the varied risks involved with contracting on that basis. Those risks include the possibility that a decrease in weight or grade between export and destination will result in an adjustment or settlement in favor of the importer; or that an increase will result in an adjustment or settlement in favor of the exporter. In the former case, the adjustment in favor of the importer would qualify as a "discount or allowance" within the meaning of § 1493.20, requiring the exporter to report the occurence so that the guarantee can be amended to reflect a downward adjustment in CCC's liability made because to do so could invalidate the price review determination upon which the approval of the guarantee was initially made.

Two respondents felt that, in the case of cotton, a special exception should be made because of (1) the sensitivity of cotton to fluctuations in atmospheric conditions resulting in gains or losses in weight; and (2) the long standing practice of marketing cotton on the basis of landed weights and quality. Changing this practice, to comply with regulations, will deny the cotton exporters the flexibility to market cotton efficiently.

CCC has determined not to make an exception for destination weights for cotton. At this time there is insufficient evidence available to CCC that the interim rule has caused any significant problems. As previously noted, when reported properly to CCC, payment of allowances for destination weights is not a program violation.

Two commenters requested further clarification of what CCC considers discounts and allowances. Specifically, they ask whether the definition encompasses carrying charges and normal customer service such as visits to the customer (to inspect the product, observe its use in the market, etc.), technical assistance, and replacement of faulty or defective products? The regulation's definition of discounts and allowances includes "a promise to provide additional goods, services or benefits in the future." Thus, CCC considers an exporter's contractual obligation to provide technical assistance, or trade servicing, to be, by definition, a discount or allowance to the commodity price on which CCC price review is based (unless, at the time of price review, the exporter justifies to CCC how such service or assistance is incorporated into the price, and the price is thus approved by CCC). However, if an exporter does routine servicing of accounts and customer visits, without any contractual obligation to do so, no discount or allowance is provided under the definition. CCC has determined not to further modify the definition of discounts and allowances because there is an infinite variety of circumstances under which exporters could provide a wide range of services to importers. Exporters are obliged to report instances that may be discounts and allowances, and CCC will make a determination on a case-by-case basis.

One respondent suggested that: (1) the definition be changed to allow for normal customer services, and (2) the last phrase be changed to establish a minimum threshold of 2.5 percent of sales value for defining quality, weight and certain other settlements as discounts or allowances. CCC has determined it is inappropriate to set such a minimum threshold because it could permit circumvention of the price review process.

A comment was received regarding the definition of Eligible Interest in § 1493.20(g). The commenter felt that the phrase "the maximum interest rate stated in the payment guarantee, when determined or adjusted by CCC will not exceed the average investment rate of the most recent Treasury 52-week bill auction in effect at that time" seems to imply that CCC is able to adjust the guaranteed interest rate after the payment guarantee is issued. The respondent requested clarification.

CCC's maximum liability for interest coverage is indicated in the payment guarantee or any amendments thereof. CCC can issue payment guarantees at either a fixed rate of interest or at an adjustable rate of interest. In the case of a fixed interest rate, the rate of CCC's interest coverage is determined as of the date of application for that payment guarantee and is indicated on the face of the payment guarantee. This maximum eligible interest rate coverage will not change.

On adjustable rate coverage payment guarantees, the method or formula for determining the eligible interest rate coverage is established for specific time periods. The operative phrase in the definition is "when determined or adjusted by CCC." For example, currently on GSM–103 payment guarantees which allow for an adjustment in CCC's eligible interest coverage, the determination of maximum interest coverage is made on the date of export and adjusted only on the due dates for principal.

One commenter suggested that CCC adopt, at the option of the lender, a variable rate of interest coverage. CCC allows the assignee U.S. financial institution to provide credit to the foreign bank on the basis of a variable rate of interest. However, under the interim rule and prior regulations, CCC states in the Program Announcement for the applicable country whether its guarantee coverage will be offered with a fixed or adjustable rate of interest coverage. CCC has determined that if interest rate coverage were determined at the option of the lender, CCC would not be able to adequately control its risk exposure. Therefore, it has been determined not to make the suggested change.

Five respondents commented on the definition of § 1493.20(h)(1)(ii), Exported Value, where CCC's payment guarantee coverage is on the basis of FAS or FOB value on transactions sold on a CFR or CIF basis. All commenters expressed concern that under this requirement the FAS or FOB coverage will be reduced should the actual freight and/or insurance increase from what was anticipated at the time of the exporter's application for a payment guarantee. The commenters noted that the exporter may thus find a portion of the sale amount is uncollectable under the letter of credit because the financing institution will only pay the exporter the amount recoverable under the payment guarantee, plus the bank's proportion of shared risk. Other concerns raised were that this requirement is impractical and will cause problems for all parties because: (1) the actual amount of coverage may not be established until long after the sale has been made; (2) the values stated in the letter of credit and the import licenses will not reflect the value in final payment guarantee; and (3) the values in the final payment schedule will not reflect the values in the payment guarantee nor will they reflect the agreement between the buyers and sellers at the time the contract was made. Commenters stated that the requirement will reduce use of the programs because exporters may stop selling CFR and instead offer only on a

FOB basis. U.S. exporters could also be hurt if buyers, who previously purchased on a CFR basis, choose to charter ships for themselves.

The arguments made by the commenters are compelling. CCC's intent in framing the provision of the interim rule was not to expose exporters, importers or assignees to unmanageable risks. CCC has determined to revise § 1493.20(h)(1)(ii) and § 1493.80(a)(7) to return to the practice of using the exporter's valuation of freight and insurance costs at time of application for a payment guarantee as the basis for determining exported commodity value under the payment guarantee. CCC recognizes that this change may be viewed as exposing CCC to an added measure of liability in cases where actual freight costs turn out to be lower than estimated in the exporter's application. However, CCC notes that its price review procedure confirms that both the overall CFR or CIF price and the implied FOB or FAS commodity price are within acceptable ranges at the time of application. This ensures against exporters deliberately under-estimating freight cost at the time of application in order to finance indirectly a significant portion of freight costs in the commodity financing.

One commenter suggested that in § 1493.20(k), Foreign Bank Letter of Credit, the reference to International Chamber of Commerce (ICC), Uniform Customs and Practice for Documentary Credits, Publication No. 400 be replaced with "latest revision" to avoid the need for an amendment of the rule when the ICC updates this publication. CCC agrees to this technical change and has revised § 1493.20(k) to reflect the suggestion and the fact that ICC Publication No. 400 has been revised and issued as ICC Publication No. 500. We have also included the use of the copyright symbol, ©, to reflect the proprietary interest of the ICC in this publication.

Although no public comment was received regarding the definition of "Incoterms" found at § 1493.20(q), CCC has updated the final rule to reflect the current International Chamber of Commerce's abbreviation for the term "Cost and Freight". Accordingly, CCC uses the abbreviation "CFR," makes such correction to § 1493.20(q), and further acknowledges the alternative abbreviations, "C&F" and "CNF", because of their continued common commercial use. Additional language is also added to this definition to indicate CCC's position that contractual obligations are incurred by the use of these terms by program participants. Additionally, we have again included the use of the copyright symbol, ©, to reflect the ICC's proprietary interest.

One commenter suggested that the phrase in § 1493.20(s), Late Interest, " * * * beginning on the first day after which the claim for loss is found in good order by CCC * * * " be changed to " * * * beginning on the first day after receipt of a claim which CCC has determined to be in good order * * * " in order to be consistent with § 1493.120(c), Late Interest Payment. CCC has determined that the definition of "Late interest" contained in § 1493.20(s) be revised as suggested to avoid inconsistency.

Concerning § 1493.20(v)(3), Port Value, one commenter felt that when CCC announces CFR or CIF coverage, the cost of bulk destination bagging should be covered by the credit guarantee, provided that the total cost of ocean freight for bulk shipment plus all costs of bagging at the destination does not exceed the comparable cost of ocean freight for bagged cargo. CCC does consider that packaging materials for bulk commodities may be an integral part of the commodity sale. Hence, on a bulk commodity sale which includes destination bagging, CCC would permit the costs of bags, needles and twine exported from the U.S. with the commodity to be included in the payment guarantee. Further, CCC will issue payment guarantees on CFR or CIF sales with destination bagging, if all costs of the bagging at destination are deducted as provided in § 1493.20(h)(3) and § 1493.20(v)(3). However, CCC disagrees that CCC should cover the costs of foreign labor involved in destination bagging in its payment guarantee.

A comment regarding § 1493.20(x), Related Obligation, suggested that since draft(s) are not always used, the wording of the last sentence should be amended to read: "The U.S. financial institution is entitled to such payments because it has financed the obligation arising under the letter of credit." CCC agrees and has revised the language of § 1493.20(x) accordingly.

Section 1493.30 Information Required for Program Participation

One comment was received regarding the applicant's financial responsibility. The commenter was concerned that small European companies opening offices in the U.S. in order to take advantage of USDA agricultural programs can and will make corrupt payments or grant after sales services because their maximum exposure is limited to a small office and minimal assets. In its experience with participants under the GSM–102/103 programs, CCC finds no grounds for this concern. Of those few instances of corrupt payments or after sales services that have been identified in CCC guaranteed transactions (principally in connection with past sales to Iraq), such program violations have been no more prevalent in transactions entered into by the U.S. offices of small European-based companies.

This same commenter suggested that the determination of financial responsibility should be predicated on an applicant having a minimum net worth of $5 million, or of an amount relative to GSM business done, such as 10% of estimated annual business. It is CCC's view that setting minimum net worth requirements would unreasonably and unfairly exclude virtually all small export companies currently participating in the programs. Small exporters play a significant role, especially in relation to certain countries and certain commodities, and often where frequent small deliveries are desired by foreign buyers.

In general, CCC's experience with the financial responsibility requirement introduced in the interim rule has been unsatisfactory. The requirement appears to have little or no value in protecting CCC from financial exposure due to program violations by an exporter. Nor has this requirement enhanced CCC's ability to recapture financial losses by pursuing exporters for monetary judgments in the event of a program violation. CCC's potential financial liability in issuing a payment guarantee is the risk of default from the foreign bank issuing the letter of credit. The rates of transaction nonperformance and of program violations have been very low. CCC takes any program violation seriously and pursues administrative actions against exporters shown to have violated the program or other applicable U.S. laws. However, demonstrating a minimum level of financial assets, or meeting other financial tests, does not materially enhance CCC's ability to recover losses. Such tests are unreliable and quickly outdated. Therefore, CCC has decided to delete all references to financial responsibility from § 1493.30 and from § 1493.30(d)(1).

CCC has revised the scope of the certification statement required by § 1493.30(a)(6). This section has required applicants to certify that "the applicant; any owner, in whole or in part; or any employee is not currently debarred or suspended from contracting with or participating in programs administered by any U.S. Government Agency." CCC has determined that this certification requirement should be eased in recognition that large companies, especially publicly-traded ones with many shareholders, cannot make the certification with absolute knowledge of its truth. Section 1493.30(a)(6) now requires the following certification: "I certify, to the best of my knowledge and belief, that neither [name of applicant] nor any of its principals has been debarred, suspended, or proposed for debarment from contracting with or participating in programs administered by any U.S. Government agency. ("Principals," for the purpose of this certification, means officers; directors; owners of five percent of or more stock; partners; and persons having primary management or supervisory responsibility within a business entity (e.g., general manager, plant manager, head of a subsidiary division, or business segment, and similar positions)). I further agree that, should any such debarment, suspension, or notice of proposed debarment occur in the future, [name of applicant] will immediately notify CCC."

In keeping with the above change in certification, § 1493.30(d), Ineligibility for Program Participation, has been revised to delete subparagraph (4) which made ineligible any applicant employing any individual who is debarred or suspended. This change recognizes that some applicants will not be in a position to determine whether or not a single employee is debarred or suspended.

Section 1493.40 Application for Payment Guarantee

Three respondents commented on the description and value of discounts and allowances, § 1493.40(a)(10). The commenters suggested that this requirement is impractical because most discounts and allowances are not known until the date of export and many times are not quantifiable until the goods have been discharged. One commenter felt that if the intention of this requirement is to uncover any attempt to obtain coverage, through prior agreement, for an amount greater than the value of the commodity transaction, a better approach would be to prohibit any discounts or allowances which are not due to contingencies or acts which are not known at the time of sale. One commenter suggested that this requirement be deleted.

CCC has determined that to protect the integrity of the program and to limit CCC's contingent liability in the event of a default, the definition of discounts and allowances contained in § 1493.20(f) and the required reporting thereof under § 1493.40(a)(10) and § 1493.80(a)(8) is necessary and appropriate. Discounts or allowances that are unknown by the exporter at the time of application for a payment guarantee, of course, cannot be reported to CCC at the time of application. However, some discounts and allowances may be provided for in the sales contract. These discounts and allowances should be reported by the exporter at time of application. If known discounts or allowances are not reported to CCC at the time of application, CCC cannot adequately price review the transaction.

When a conditional or contingent discount or allowance is provided for under the terms of the export sales contract, it should be noted in the application, but not deducted from the port value unless agreed by CCC. This is because the exporter may not know, at the time, whether the condition(s) will arise and the discount or allowance will be paid. The exporter should report the value of the discount or allowance, if it has been paid, at the time of filing the evidence of export report. If a payment of a discount or allowance occurs after the submission of an evidence of export report, the exporter must report the value of the discount or allowance in an amended evidence of export report, and should notify the U.S. assignee, if any (see previous discussion of this point concerning the definition of "discounts and allowance," § 1493.20(f)). In the event of a claim under the payment guarantee, CCC may hold an exporter liable for value of the unreported discounts and allowances.

Section 1493.40(a)(14) has been revised in this final rule for the purpose of clarity. Applicants often were unable to report the address of the foreign bank issuing the letter of credit. The language of this subsection has been changed to now state "the address or location" of the foreign bank. CCC has determined this change will still provide sufficient information to identify the foreign bank issuing the letter of credit.

Section 1493.40(a)(15) has been revised in this final rule to delete the requirement to include the estimated principal payment due dates and amounts due. CCC is able to make this calculation using other information reported under this subsection.

Section 1493.40(a)(16) has been revised in this final rule to add the number of the Export Enhancement Program, Dairy Export Incentive Program, Sunflowerseed Oil Assistance Program or Cottonseed Oil Assistance Program Agreement assigned by USDA, as applicable. This added information is not a burdensome requirement for the exporter and assists CCC in tracking concurrent use of credit and subsidy programs.

One comment was received regarding USDA's price review process established under § 1493.40(b). The commenter questioned how USDA can properly determine a fair market price. The respondent felt that U.S. companies will lose the incentive to be innovative and aggressive in creating markets for their products if the USDA controls prices. This commenter felt that while high prices may indicate kickbacks or other improprieties and warrant a complete investigation, the practice of price review should be used as a tool to monitor the program, and should not constitute "price approval." The commenter recommended that the practice of price review should be eliminated from the regulations. CCC disagrees. The price review procedure under the GSM–102/103 programs is not a "price approval" mechanism. Although CCC does have the right to reject applications for a payment guarantee that, in CCC's opinion, do not reflect market parameters, in practice, when a sales price raises questions, the exporter is given the opportunity to explain the factors relating to the price. Often, after receiving such information, CCC has been able to approve the application. CCC's intention is not to control the price that an exporter may negotiate with an importer. However, CCC does have an obligation to review those sales prices which appear excessively high or low because they may be linked to possible program violations, such as kickbacks, extra sales services or the inclusion of lower value foreign content in the shipment. Therefore, the current practice of price review for GSM–102/103 program applications will continue.

Section 1493.50 Certification Requirements for Obtaining Payment Guarantees

One commenter questioned whether CCC considered normal customer service, e.g., visits to the customer to inspect the product, to observe its use in the market, to provide technical assistance, or to replace faulty or defective products to be extra sales services under § 1493.50(b). The respondent requested that CCC clarify and give examples or guidelines of what is considered to be extra sales services. CCC cautions exporters that any extension of extra sales services provided to an importer that can be directly linked to a GSM–102 or GSM–103 payment guarantee may be construed as a discount or allowance which, although permissible, must be reported and deducted from the value of the guarantee. On the other hand, an extra sales service not linked to the basic commercial intent of the transaction (i.e., that is extraneous to the transaction) is prohibited. The instance, type, nature, and the extent of linkage to the sales transaction must be examined on a case-by-case basis. As previously discussed in relation to comments received concerning the definition of "Discounts and Allowances," § 1493.20(f), CCC will review the specific circumstances when they are reported. Therefore, CCC has determined not to provide specific examples of extra sales services—extraneous and otherwise—in the regulations.

Two respondents made comments regarding § 1493.50(a), which requires the exporter to certify that the agricultural commodity or product exported under the payment guarantee is a U.S. agricultural commodity or product as defined by § 1493.20(z). While both commenters fundamentally agree with the U.S. origin requirement, they felt that because of the changes in the U.S. market environment, particularly the U.S.-Canada Free Trade Agreement, a rigid interpretation of the U.S. origin requirement will interfere with the normal operation of the U.S. grain marketing system. The commenters suggested that an alternative to the U.S. origin requirement might be a "transit billing" system similar to the Agricultural Stabilization and Conservation Service's current policy for all commodity purchases, except dairy products. Under transit billing, in the commenter's opinion, domestic origin requirements should be satisfied if a grain handling facility containing commingled domestic and foreign origin commodities, has quantities of domestic origin commodities equal to or greater than the quantity called for in the contract.

CCC has reviewed the "transit billing" system and has determined that such a system will not meet the statutory requirements of the 1990 Act because the definition of a U.S. agricultural commodity contained in Section 102(7) of the Act requires that an agricultural commodity exported under the GSM-102/103 programs be "entirely produced in the United States." Transit billing would permit unlimited commingling of U.S. and imported grains with rules that would maximize the likelihood that a warehouseman would always have a sufficient theoretical U.S.-origin stock position to be able to fill export orders for U.S. grain. It would be a formula accounting system which would be unrelated to the actual identity of the grain being handled. Therefore, it has been determined that transit billing would not meet the statutory requirement.

Another alternative proposed by one of the commenters is for CCC to allow foreign agricultural components to be exported but to provide no guarantee coverage on the value of any such components. The commenter proposed this option in reference to bulk grains, an agricultural commodity, not a product of an agricultural commodity. As previously noted, Section 102(7) of the Agricultural Trade Act of 1978, as amended by the 1990 Act does not, in CCC's view, permit any foreign content to be included in the U.S. agricultural commodity exported under the GSM-102/103 programs.

Section 1493.60 Payment Guarantee

One respondent asked if under § 1493.60(b), Period of Guarantee Coverage, the language "the payment guarantee will apply to the period beginning either on the date(s) of export(s) or on the date when interest begins to accrue, whichever is earlier," implies that CCC will guarantee credits on which interest accrues prior to disbursement of funds to the U.S. exporter. The answer is yes. CCC will provide a payment guarantee that includes interest coverage which begins before the date of export from the U.S. in circumstances where the exporter has sold the commodity at an U.S. interior point of loading of the export carrier (e.g., railcar or truck for export to Mexico). However, interest coverage begins no earlier than the date interest begins to accrue under the guaranteed credit. This date could be earlier than the date of disbursement of funds to the U.S. exporter if this was provided for in the foreign bank's letter of credit or related obligation.

Comments were received suggesting changes in § 1493.60(e), Reserve Coverage for Loading Tolerances. Three respondents believed the purpose of this provision is to allow the exporter to pay the guarantee fee only on the actual amount of the coverage required, and recommended that the section be changed to allow the exporter to apply for a payment guarantee (and pay the guarantee fee) based on any quantity, within the sales contract specifications, reserving coverage up to the maximum contract tolerance. One of the commentors also felt that, as a result of the requirement in the interim rule, exporters would pay excessive fees for coverage not used and credit availability would be encumbered without product exported. CCC agrees with these comments and has revised the language of § 1493.60(e) to permit exporters to apply for guarantee coverage, and pay the guarantee fee, on the basis of any quantity within the upper and lower tolerance and to reserve coverage up to the upper tolerance. After export, when coverage has been reserved, the exporter will be permitted to amend the payment guarantee and pay an additional fee based upon the difference between the original payment guarantee quantity and the actual quantity exported.

Two comments were received regarding § 1493.60(i), Amendments. One commenter, a financial institution, felt that a request for an amendment of the payment guarantee should not be restricted to the exporter, and that the assignee should also be able to submit a request for an amendment. CCC disagrees. To do so would place CCC in the position of unilaterally agreeing to amend, and possibly breach, a contractual agreement with exporters at the request of a third party.

The second comment received on § 1493.60(i) concerned interpretation of the phrase " * * * any amendment to the payment guarantee may result in an increase of the guarantee fee." The commenter felt if it is the intention of CCC to assess fees for amendments, which are not always within the exporter's control, then this language should be deleted. It is not CCC's intention to assess additional fees for all amendments. In response to the comment, the language of § 1493.60(i) has been clarified to provide the possibility that CCC may charge a fee for a requested amendment when, as a consequence of the request, CCC may incur additional liability.

Section 1493.70 Guarantee Rates and Fees

No public comment was received on this section. No changes have been made in this section of the final rule.

Section 1493.80 Evidence of Export

Several comments were received on this section. A general comment was made regarding the proprietary nature of the information submitted by the exporter. The commenter felt that any information submitted should be deemed confidential and access restricted; neither foreign buyers nor competitors should have access. CCC has not included in the Interim Rule or Final Rule provisions on the protection of participant information because this matter is governed by the Freedom of Information Act (FOIA) and the Privacy Act. Moreover, section 402(a)(3) of the Agricultural Trade Act of 1978, as amended by the 1990 Act (7 U.S.C. 5662(a)(3)) provides that "the personally identifiable information contained in reports under subsection (a) [records of the exporter] may be withheld in accordance with section 552(b)(4) of title 5, United States Code." This section further provides that "any officer or employee of the Department of Agriculture who knowingly discloses confidential information as defined by section 1905 of Title 18, United States Code, shall be subject to section 1905 of Title 18, United States Code. Nothing in this subsection shall be construed to authorize the withholding of information from Congress."

Three respondents requested that § 1493.80(a), Report of Export, be amended to allow 60 days for submitting evidence of export reports for truck or rail export shipments because it is difficult to obtain the required entry certificate into Mexico within the 30–day filing period. CCC recognizes that experience validates this comment. In the past it has often been necessary for the exporter to obtain an amendment to the payment guarantee allowing an extension of the time period for filing the evidence of export report. In a study of this problem, CCC determined that an extension of the filing time limit from 30 days to 60 days for truck and rail exports would decrease the number of this type of amendment request by approximately one-half. Accordingly, in this final rule § 1493.80(a) has been simplified and § 1493.80(b) revised to provide a time limit of 60–days for filing evidence of export reports for truck and rail exports. With this revision, § 1493.80(b) continues to provide for the filing of evidence of export reports for shipments by other types of carriers within a 30 day time limit.

Further, for the sake of simplicity and expediency, CCC has deleted the requirement previously contained in § 1493.80(a)(9) of the interim rule requiring the exporter or its assignee to report a final payment schedule showing the payment dates and the amounts separately for both principal and interest. CCC now has computer capability to calculate this information from the other information submitted in the evidence of export report and the terms of the payment guarantee. The requirement for the payment schedule information has often been a hindrance to the timely filing of complete evidence of export reports because exporters routinely must have their assignee submit this information. It is expected that this change will expedite filings of evidence of export reports.

Two commenters requested clarification regarding § 1493.80(b), Time Limit for Submission of Evidence of Export. This sub-part allows for an extension of the time limit if it is determined to be in the best interests of CCC (but not if payments by the foreign bank are past due under the payment guarantee). The commenters would like to see clarification of CCC's policies once a defaulting foreign bank is again current with its account. It was suggested that a sentence be added stating that CCC will reconsider the payment guarantee status once the foreign bank resumes payments and becomes current in its obligations.

CCC has determined to address this comment by revising the language of § 1493.80(b) to indicate that if the report required by paragraph (a) of § 1493.80 is not received by the time limit specified, the payment guarantee will become null and void, but only if failure to make timely filing resulted, or would be likely to result, in: (1) significant financial harm to CCC; (2) the undermining of an essential regulatory purpose of the program; (3) obstruction of the fair administration of the program; or (4) a threat to the integrity of the program. Section 1493.80(b) will still permit CCC to extend the time limit for filing of evidence of export reports if such extension is determined by the General Sales Manager to be in the best interests of CCC.

Section 1493.90 Certification Requirements for the Evidence of Export

Two respondents commented on § 1493.90(c), which requires the exporter to certify that the exporter or exporter's assignee has, and will retain, documents evidencing the obligation of the foreign bank for five years after the final installment due date. Both commenters said that the exporter can make the certification for themselves, but that they have no legal recourse at their disposal, to require the third parties to comply with this provision. The commenters recommended that the certification be deleted. CCC has considered the comments made and agrees that the certification can be deleted because the exporter or the exporter's assignee is already bound by § 1493.140(e)(1) to retain documentation evidencing the obligation of the foreign bank for a period of five years after the final installment date. This document retention requirement is further strengthened because evidence of the foreign bank related obligation is necessary to submit a claim to CCC under the payment guarantee. Therefore, a certification that such records are being maintained has little practical value. CCC has determined to delete the certification previously found at § 1493.90(c) of the interim rule from this final rule.

Section 1493.100 Proof of Entry

A comment received on § 1493.100(a), Diversion, pointed out that while the exporter may contractually preclude diversion of an FOB shipment, the exporter has no control over the importer's vessel; unless the exporter knowingly abetted the diversion, there should be no implication of potential exporter liability to CCC under such circumstances. Under § 1493.130(d) of the interim rule, "the exporter may be liable to CCC for any amount paid under a payment guarantee when it is determined by CCC that the exporter has engaged in fraud, or has been or is in breach of any contractual obligation, certification or warranty made by the exporter * * *" Further, the exporter's assignee may be held liable to CCC under the same standard. However, § 1493.130(e), Good Faith, provides that a violation by an exporter of the certifications, particularly § 1493.100 (Proof of Entry), will not affect the validity of any payment guarantee with respect to an assignee who had no knowledge of such violation or failure to comply at the time the exporter applied for the payment guarantee or at the time of assignment of the payment guarantee.

CCC recognizes the burden placed on exporters with FOB sales in ensuring compliance with program requirements concerning diversion. However, in view of the legislative mandate imposed on CCC to ensure arrival of program shipments in destination countries (Title IV, Subtitle A, Section 401 of the Agricultural Trade Act of 1978, as amended by the 1990 Act), and in view of the fact that CCC has a contractual relationship only with the exporter, not with the importer, CCC sees no feasible alternative to the present policy of holding exporters responsible for maintaining proof of entry documentation as a means of preventing diversion. This policy makes it in the interest of exporters to make every effort to obtain binding commitments from foreign buyers to provide such documentation on FOB/FAS sales and not to divert shipments. The strength of evidence of such efforts by exporters would undoubtedly be of material interest in any situation where CCC suffered a financial loss on a payment guarantee and found that diversion had taken place.

Two respondents commented on § 1493.100(b), Proof of Entry. One commenter was unsure what is intended by this section. Both commenters felt that the only reliable means of obtaining proof of entry is for the exporter to retain a private surveyor at each location. They felt that this was an unnecessary cost and burden to the exporter and that there is little justification for this requirement. Clarification of the section was requested. In adding the requirement for proof of entry in the interim rule, CCC employed the basic requirements for proof of entry documents that are used for the Export Enhancement Program (EEP). Although a surveyor's report would be an acceptable means of meeting this requirement, CCC disagrees that it is the only reliable means of obtaining proof of entry. Many countries have provided such documentation with respect to the EEP program. Further, in the event that traditional forms of entry documentation are unobtainable, § 1493.100(b) permits CCC to consider other types of documents, which can be deemed acceptable by the GSM. Finally, as stated in the interim rule, the requirement for proof of entry documentation on GSM–102/103 transactions is mandated by the 1990 Act. Therefore, CCC has determined that no further clarification or change is necessary to § 1493.100.

Section 1493.110 Notice of Default and Claims for Loss

One commenter suggested that CCC adopt a "Payment Certificate" concept (currently incorporated in programs of the Export-Import Bank of the United States (Eximbank)) under which one claim is submitted covering the payment of the balance of the guarantee. In follow-up discussions with CCC, the commenter explained the "Payment Certificate" concept as being a mechanism where CCC would pre-approve documents that are normally submitted in the claim procedure and issue a payment certificate which, when submitted at the time of claim, would be evidence that CCC would pay the claim at a certain time interval after receipt of the payment certificate, notice of default, and subrogation agreement. CCC has determined that, at this time, it cannot adopt such a measure because it has insufficient resources to review and pre-approve all documents required for submission when filing a claim. One major difference between Eximbank and CCC export credit guarantee programs is the sheer number of payment guarantees that CCC issues during a program year, over 3,000 payment guarantees annually. Eximbank's guarantees are generally much larger in value and fewer in number. It would not be administratively feasible for CCC to review documentation in advance of issuance of all of its guarantees. CCC will continue to explore the possibility of adapting the "payment certificate" concept to permit, for certain countries or particular foreign banks, a mechanism that would address the "time certain for payment of claims" element necessary to facilitate securitization of CCC payment guarantees.

It should be recognized, however, that under existing CCC policy, only one claim need be filed (in the sense of providing full documentation relating to the transaction). Thereafter, only certified notices of failure to receive scheduled installments, reference to the original claim, and corresponding subrogation agreement need be submitted to CCC. Accordingly, CCC agrees that § 1493.110 should be clarified to reflect this fact and has added a new paragraph § 1493.110(c) to make this policy clearer.

A commenter suggested that the reference to "drafts drawn" in § 1493.110(b)(4)(i)(B)(1), be revised to read "obligations financed," since drafts are not always used as financial obligations. CCC agrees and has adopted this clearer language in the subsection.

One commenter questioned why, under Filing a Claim for Loss, § 1493.110(b)(4)(v), CCC requires a copy of the previously submitted report of export to accompany the claim for loss. CCC requires this in order to accelerate the claims payment process. CCC considers this a reasonable requirement and therefore, has determined that the requirement of § 1493.110(b)(4)(v) remain unchanged.

Section 1493.120 Payment of Loss

One commenter, a financial institution, made a comment pertaining to § 1493.120(a), Determination of CCC's Liability, which states that CCC, upon receipt in "good order" of the information and documents under § 1493.110(b), Filing a Claim for Loss, will determine whether or not a loss has occurred for which CCC is liable. The commenter states that in order for securities to be viewed as "government credit," there can be no risk that the payment under the guarantee would not be made. The commenter also argued that, due to the extensive list of documents and information required and the subjective judgement that such documents and information be in "good order," a risk of non-payment by CCC exists. The recommendation is to require that most documents and information be approved (or alternatively, that the proper forms be pre-agreed by CCC) prior to issuance of the guarantee. This recommendation would eliminate the subjective nature of "good order" and would eliminate the non-payment risk. This issue has already been addressed under General Comments (securitization) and in relation to § 1493.110. Again, although CCC is not now making changes to specifically address this concern, CCC will continue to look at possibilities to adapt mechanisms suitable to CCC programs to facilitate securitization.

Two comments were received on § 1493.120(c), Late Interest Payment. One respondent (a Federal agency) said that the late interest is short-term interest and that the rate factor should be based on the "91-day Treasury bill rate, not to exceed the 52-week bill rate." CCC agrees with the comment that it is more suitable to use a short-term interest instrument for late interest. Accordingly, CCC has changed § 1493.120(c) to provide that late interest is based on the 91-day Treasury bill. Similarly, changes have been made to § 1493.130(b)(1) and (2) to also reflect the use of a short-term interest instrument as the benchmark for "late interest" to be paid both on monies owed to CCC in a recovery, and on monies recovered by CCC and owed to an exporter or an exporter's assignee under pro rata sharing.

The other comment pertained to the securitization of payment guarantees. The commenter suggested that § 1493.120(c) establish CCC's obligation to pay a claim within a specified time period. The commentor stated that this was necessary because a risk of nonpayment or late payment by CCC would be unacceptable to rating agencies reviewing securitization proposals which include CCC payment guarantees. CCC has determined not to adopt this suggested change for reasons previously stated in relation to general comments on the interim rule and specifically on § 1493.20(s) and § 1493.110.

One commenter suggested that § 1493.120(d), Accelerated Payments, be changed to allow payments to be made on an accelerated basis at the option of the lender. CCC's policy is to not pay claims for losses in advance of a default unless it can be determined to be in CCC's best interest to do so. If CCC were to revise § 1493.120(d) to allow an accelerated payment mechanism at the option of the lender, CCC could be required to disburse funds to banks for installment defaults which have not yet occurred. CCC has determined that this obligation would not be in its best interest, and that § 1493.120(d) will not be changed.

One respondent expressed concern that under § 1493.120(e)(1), Action Against the Assignee, failure of the exporter to comply with the requirement to file an amended report of export to reflect post-export adjustments might jeopardize the assignee's claim. CCC acknowledges the legitimacy of the commenter's concerns. Section 1493.120(e) does not specify as to what actions CCC may take against the assignee for the failure of the exporter to file amended evidence of export reports if, for example, later discounts or allowances are granted to the importer by the exporter. Section 1493.120(e) states that " * * * CCC will not hold the assignee responsible or take any action or raise any defense against the assignee for any action, omission or statement by the exporter over which the assignee has no knowledge, provided that: (1) the exporter complies with the reporting requirements under § 1493.80 and § 1493.90; and (2) the exporter or the exporter's assignee furnishes the statements and documents specified in § 1493.110." In a post-export adjustment (i.e., a previously unreported discount or allowance) the assignee would, most probably, have no knowledge of the exporter's action (consideration given to the importer) and omission (not filing a corrected evidence of export report). CCC has clarified § 1493.120(e) to indicate that assignees will not be held liable for failure of the exporter to submit to CCC any corrections or amendments to evidence of export reports.

Section 1493.130 Recovery of Losses

As previously discussed in relation to a comment made regarding § 1493.120(c), CCC has made revisions in this final rule to § 1493.130(b)(1) and (2) to provide that late interest is based on the 91-day Treasury bill rate.

One comment was received on § 1493.130(b)(1), Receipt of Monies. The commenter suggested eliminating CCC's requirement that all monies received by the lender from any source whatsoever after the payment by CCC of a claim be paid to CCC. CCC has addressed this issue under General Comment regarding securitization proposals. CCC has determined not to make this change.

Two respondents requested changes in the wording of § 1493.130(d), Liabilities to CCC, to take into account that a technical breach by the exporter may be inconsequential, and that the breach may not have been the cause for any payment made by CCC under the payment guarantee. The suggested rewording of this phrase is " * * * 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 in fulfilling an obligation under GSM–102 or GSM–103 and such amounts paid by CCC under the payment guarantee resulted from such fraud or material breach by the exporter." CCC agrees with the comment and this final rule incorporates language in § 1493.130(d) similar to that suggested.

Section 1493.140 Miscellaneous Provisions

Two comments were received regarding the restrictions of § 1493.140(a), Assignment. The commenters felt that financial institutions should be able to place assets they originate into the world capitol markets and that CCC should facilitate this goal by permitting more than one assignment of the payment guarantee. One commenter, a financial institution, suggested that CCC allow the financial institution to extend the credit and assign such credit to a grantor trust or special purpose corporation, such as a Funding Vehicle, established by the financial institution, or let the Funding Vehicle itself take assignment and extend the credit. The same commenter also recommended that the language in § 1493.11(a) of the previous regulations be included in this section. The previous regulation stated that "The assignment shall cover all amounts payable under the payment guarantee not already paid and shall not be made to more than one party, and shall not be subject to further assignment, unless approved in advance by CCC. Any such assignment may be made to one party as agent or trustee for two or more parties participating in the financing." In § 1493.140(a) of the interim rule, CCC deletes the final sentence of the previous § 1493.11(a). However, by deleting this language from the interim rule, CCC did not intend to preclude its consideration of assignments of guarantees to various types of financial institutions. CCC will consider acknowledging assignments that facilitate securitization of guarantees and that are consistent with other program requirments. Therefore, although CCC has not restored the particular sentence in this final rule, § 1493.140(a) has been modified to clarify CCC's policy.

Two respondents requested that § 1493.140(a)(3) be modified so that when CCC determines a financial institution to be ineligible to receive an assignment of a payment guarantee, CCC will notify both the exporter and the financial institution. CCC concurs with this suggestion and has adopted such provision in § 1493.140(a)(3) of this final rule.

A third respondent felt that § 1493.140(a)(3) could create difficulties for financial institutions because the notice of ineligibility would reach them after they had extended credit. The commenter suggested that CCC notify a financial institution of its ineligibility before the institution extends credit under an anticipated CCC guarantee. CCC disagrees. CCC does not have the resources to continually monitor the thousands of U.S. financial institutions which are potentially eligible to receive assignments and to notify those that would be ineligible if they were to be assigned a CCC payment guarantee. Further, § 1493.140(b), Ineligibility of Financial Institutions to Receive an Assignment, explains the conditions under which an assignment to a financial institution would not be acknowledged by CCC. If a U.S. financial institution has reason to believe that it might not be eligible under this section of the regulations, it may contact the Treasurer, CCC to review its situation.

Several commenters suggested that the provisions in § 1493.140(e)(1), Maintenance of Records and Access to Premises, place unreasonable burdens on the parties involved in the transaction. One commenter, a financial institution, was concerned that the blanket requirement of access to records pertaining to transactions conducted outside the program may interfere with bank confidentiality. Although CCC understands this concern, section 402(a)(3) of the Agricultural Trade Act of 1978, as amended by the 1990 Act, provides that officers or employees of the U.S. Department of Agriculture are subject to criminal penalties for knowingly disclosing confidential information.

Another commenter felt that the records pertaining to transactions outside the program should be subject to review only if they are directly related to transactions made under the program, and that the General Sales Manager's opinion should not determine whether the outside transaction(s) pertain to program transactions. This commenter recommended that the regulation apply to outside transactions which "relate directly" rather than that "pertain" to the program transaction. CCC disagrees and has determined that the language of § 1493.140(e)(1) should remain unchanged. On a case-by-case basis, and as determined by the GSM, CCC may need to examine records not directly related to the GSM–102/103 transaction in order to determine whether a program violation has occurred (e.g., inventory records may be examined to determine whether foreign content exists in export shipment under the program).

Two commenters said that they can request agents, intervening purchasers, and related companies to make available documents or information requested by CCC, but cannot guarantee access to third party records, particularly those held by companies or persons located outside the U.S. This is particularly the case with documents which may be generated by agents of the exporter, or by companies with special arrangements with the exporter which are foreign entities. Because access to such records may be critical to CCC's efforts to monitor programs and to ensure their integrity, CCC expects that the exporter will use its contractual and other means of influence to obtain those pertinent records of the outside parties involved. CCC recognizes that exporters may only be able to obtain from such third parties copies of those records that pertain to the GSM–102/103 export transaction in question. The final rule does not require that the exporter retain all records of such third parties, nor those records pertaining to transactions conducted outside the program. Further, the final rule does not require that an agent of the exporter, an intervening purchaser, or parties with a special arrangement with the exporter must make available such records and grant access to their premises. CCC would expect the exporter to be able to provide copies of any and all records relating to the transaction held by these entities if so requested by government officials authorized to conduct program reviews.

Two comments recommended that § 1493.140(g), Submission of Documents by Principal Officers, be expanded to permit an authorized full time employee of the exporter to sign all required submissions. CCC agrees with the comment. On August 7, 1991, CCC issued a Notice to Program Participants which clarified the signatory requirements for submissions to CCC. The policy reflected in this Notice to Participants has been included in § 1493.140(g) of this final rule to permit principal officers or their designees to sign required submissions to CCC. However, the August 7, 1991 Notice is not being superseded because it also applies to other export programs and contains examples of how such authorizations by principals to their designees might be worded.

List of Subjects in 7 CFR Part 1493

Administrative practice and procedures, Agricultural commodities, Credit, Exports, Financing, Guarantees, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Part 1493 is revised to read as follows:

PART 1493—CCC EXPORT CREDIT GUARANTEE PROGRAMS

Subpart A—Restrictions and Criteria for Export Credit Guarantee Programs

Subpart B—CCC Export Credit Guarantee Program (GSM–102) and CCC Intermediate Export Credit Guarantee Program (GSM–103) Operations

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

Subpart A—Restrictions and Criteria for Export Credit Guarantee Programs

§ 1493.1 General statement.

This subpart sets forth the restrictions which apply to the use of credit guarantees under the Commodity Credit Corporation (CCC) Export Credit Guarantee Program (GSM–102) and the Intermediate Credit Guarantee Program (GSM–103) and the criteria considered by CCC in determining the annual allocations of credit guarantees to be made available with respect to each participating country. This subpart also sets forth the criteria considered by CCC in the review and approval of proposed allocation levels for GSM–102 and/or GSM–103 credit guarantees which may be made available in connection with export sales of specific U.S. agricultural commodities to these countries. These restrictions and criteria are interrelated and will be applied and considered together in the process of determining which sales opportunities under GSM–102 or GSM–103 will best meet the purposes of the programs.

§ 1493.2 Purposes of programs.

CCC may use export credit guarantees:

(a) To increase exports of U.S. agricultural commodities;

(b) To compete against foreign agricultural exports;

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

(d) For such other purposes as the Secretary of Agriculture determines appropriate, consistent with the provisions of § 1493.6.

§ 1493.3 Restrictions on programs and cargo preference statement.

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

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

(b) *Cargo preference laws.* The provisions of the cargo preference laws shall not apply to export sales with respect to which credit is guaranteed under these programs.

§ 1493.4 Criteria for country allocations.

The criteria considered by CCC in reviewing proposals for country allocations under the GSM–102 or GSM–103 programs, will include, but not be limited to, the following:

(a) Potential benefits that the extension of export credit 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 of the importing country to adequately service CCC guaranteed debt;

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

(d) Political stability of the importing country as it would affect its ability to adequately service CCC guaranteed debt; and

(e) Current status of debt either owed by the importing country to CCC or to lenders protected by CCC's guarantees.

§ 1493.5 Criteria for agricultural commodity allocations.

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

(a) Potential benefits that the extension of export credit 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 export credit guarantees in assisting the importing country in meeting its particular needs for food and fiber, as may be determined through consultations with private buyers and/or representatives of the government of the importing country;

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

(d) Evaluation of the near and long term potential for sales on a cash basis of the U.S. commodity under consideration.

§ 1493.6 Additional required determinations for GSM–103.

Notwithstanding any other provision under this part, CCC shall not guarantee under the GSM–103 program the repayment of credit made available to finance an export sale unless the Secretary of Agriculture determines that such sale will:

(a) Develop, expand or maintain the importing country as a foreign market, on a long-term basis, for the commercial sale and export of U.S. agricultural commodities, without displacing normal commercial sales;

(b) Improve the capability of the importing country to purchase or use, on a long-term basis, U.S. agricultural commodities; or

(c) Otherwise promote the export of U.S. agricultural commodities.

Subpart B—CCC Export Credit Guarantee Program (GSM–102) and CCC Intermediate Export Credit Guarantee Program (GSM–103) Operations

§ 1493.10 General statement.

(a) *Overview.* (1) This subpart contains the regulations governing the operations of the Export Credit Guarantee Program (GSM–102) and the Intermediate Credit Guarantee Program (GSM–103). The GSM–102 and GSM–103 programs of the Commodity Credit Corporation (CCC) were developed to expand U.S. agricultural exports by making available export credit guarantees to encourage U.S. private sector financing of foreign purchases of U.S. agricultural commodities on credit terms. Under GSM–102, credit guarantees are issued for terms of up to three years. Under GSM–103, credit guarantees are issued for terms of from three to ten years.

(2) The programs operate in cases where credit is necessary to increase or maintain U.S. exports to a foreign market and where private U.S. financial institutions would be unwilling to provide financing without CCC's guarantee. The programs are operated in a manner intended not to interfere with markets for cash sales. The programs are targeted toward those countries where the guarantees are necessary to secure financing of the exports but which have sufficient financial strength so that foreign exchange will be available for scheduled payments. In providing this credit guarantee facility, CCC seeks to expand market opportunities for U.S. agricultural exporters and assist long-term market development for U.S. agricultural commodities.

(3) The credit facility created by these programs is the CCC payment guarantee. The payment guarantee is an agreement by CCC to pay the exporter, or the U.S. financial institution that may take assignment of the exporter's right to proceeds, specified amounts of principal and interest due from, but not paid by, the foreign bank issuing an irrevocable letter of credit in connection with the export sale to which CCC's guarantee coverage pertains. By approving an exporter's application for a payment guarantee, CCC encourages private sector, rather than governmental, financing and incurs a substantial portion of the risk of default by the foreign bank. CCC assumes this risk, in order to be able to operate the programs for the purposes specified in § 1493.2.

(b) *Credit facility mechanism.* Typically, in export sales of U.S. agricultural commodities, payment by the importer is made under an irrevocable letter of credit. For the purpose of the GSM–102 and GSM–103 programs, CCC will consider applications for payment guarantees only in connection with export sales of U.S. agricultural commodities where the payment for the agricultural commodities will be made in one of the two following ways:

(1) An irrevocable foreign bank letter of credit, issued in favor of the exporter, specifically stating the deferred payment terms under which the foreign bank is obligated to make payments in U.S. dollars as such payments become due; or

(2) An irrevocable foreign bank letter of credit, issued in favor of the exporter, that is supported by a related obligation specifically stating the deferred payment terms under which the foreign bank is obligated to make payment to the exporter, or the exporter's assignee, in U.S. dollars as such payments become due. The exporter may assign the right to proceeds under the letter of credit or related obligation to a U.S. bank or other financial institution so that the exporter may realize the proceeds of the sale prior to the deferred payment date(s) as set forth in the irrevocable foreign bank letter of credit or its related obligation. The GSM–102 and GSM–103 programs are designed to protect the exporter or the exporter's assignee against those losses specified in the payment guarantee resulting from defaults, whether for commercial or noncommercial reasons, by the foreign bank obligated under the letter of credit or related obligation.

(c) *Program administration.* The GSM–102 and GSM–103 programs will be administered pursuant to this part and any Program Announcements and Notices to Participants issued by CCC pursuant to, and not inconsistent with, this part. These programs are under the general administrative responsibility of the General Sales Manager (GSM), Foreign Agricultural Service (FAS/USDA). The review and payment of claims for loss will be administered by the Office of the Controller, CCC. Information regarding specific points of contact for the public, including names, addresses, and telephone and facsimile numbers of particular USDA or CCC offices, will be announced by a public press release (see § 1493.20(c), "Contacts P/R").

(d) *Country allocations and program announcements.* From time to time, CCC will issue a Program Announcement to announce a GSM–102 and/or GSM–103 program allocation for a specific country. The Program Announcement for a country allocation will designate specific allocations for U.S. agricultural commodities or products thereof. Exporters may negotiate export sales to buyers in that country for one of the commodities specified in the Program Announcement and seek payment guarantee coverage within the dollar amounts of specified coverage for that commodity. The Program Announcement will contain a requirement that the exporter's sales contract contain a shipping deadline within the applicable program year. The final date for a contractual shipping deadline will be stated in the Program Announcement. Program Announcements may also contain a specified "undesignated" or "unallocated" dollar amount for the purpose that if dollar amounts specified for a specific commodity for a country become fully used, an additional allocation from the "unallocated" or "undesignated" portion of the total country allocation may then be designated for a specific commodity. Program Announcements that include an "allocated" or "undesignated" dollar amount will contain further information on the "unallocated" or "undesignated" portion of the country allocation.

§ 1493.20 Definition of terms.

Terms set forth in this part, in CCC Program Announcements and Notices to Participants, and in any CCC-originated documents pertaining to the GSM–102 and GSM–103 programs will have the following meanings:

(a) *Assignee.* A financial institution in the United States which, for adequate consideration given, has obtained the legal rights to receive the payment of proceeds under the payment guarantee.

(b) *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 of 1948 (15 U.S.C. 714 *et seq.*), and subject to the general supervision and direction of the Secretary of Agriculture.

(c) *Contacts P/R.* A notice issued by FAS/USDA by public press release which contains specific names, addresses, and telephone and facsimile numbers of contacts within FAS/USDA and CCC for use by persons interested in obtaining information concerning the operations of the GSM–102 or GSM–103 program. The Contacts P/R also contains details about where to submit information required to qualify for program participation, to apply for payment guarantees, to request amendments of payment guarantees, to submit evidence of export reports, and to give notices of default and file claims for loss.

(d) *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.

(e) *Date of sale.* The earliest date on which a contractual obligation exists between the exporter, or an intervening purchaser, if applicable, and the importer under which a firm dollar-and-cent price for the sale of agricultural commodities to the importer has been established or a mechanism to establish such price has been agreed upon.

(f) *Discounts and allowances.* Any consideration provided directly or indirectly, by or on behalf of the exporter or an intervening purchaser, to the importer in connection with a sale of an agricultural commodity, above and beyond the commodity's value, stated on the appropriate FOB, FAS, CFR or CIF basis. Discounts and allowances include, but are not limited to, the provision of additional goods, services or benefits; the promise to provide additional goods, services or benefits in the future; financial rebates; the assumption of any financial or contractual obligations; 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.

(g) *Eligible interest.* The maximum amount of interest, based on the interest rate indicated in CCC's payment guarantee or any amendments to such payment guarantee, which CCC agrees to pay the exporter or the exporter's assignee in the event that CCC pays a claim for loss. The maximum interest rate stated in the payment guarantee, when determined or adjusted by CCC, will not exceed the average investment rate of the most recent Treasury 52-week bill auction in effect at that time.

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

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

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

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

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

(i) *Exporter.* A seller of U.S. agricultural commodities or products thereof that has qualified in accordance with the provisions of § 1493.30.

(j) *FAS/USDA.* The Foreign Agricultural Service, U.S. Department of Agriculture.

(k) *Foreign bank letter of credit.* An irrevocable commercial letter of credit, subject to the current revision of the Uniform Customs and Practices for Documentary Credits (International Chamber of Commerce Publication No. 500, or latest revision), providing for payment in U.S. dollars against stipulated documents and issued in favor of the exporter by a CCC-approved foreign banking institution.

(l) *GSM.* The General Sales Manager, FAS/USDA, acting in his capacity as Vice President, CCC, or his designee.

(m) *GSM–102.* A CCC program, also referred to as the "Export Credit Guarantee Program," under which payment guarantees are approved for a credit period not exceeding 3 years from the date(s) of export or from the date interest begins to accrue, whichever is earlier.

(n) *GSM–103.* A CCC program, also referred to as the "Intermediate Export Credit Guarantee Program," under which payment guarantees are approved for a credit period no less than 3 years but not exceeding 10 years from the date(s) of export or from the date interest begins to accrue, whichever is earlier.

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

(p) *Importer.* A foreign buyer that enters into a contract with an exporter, or with an intervening purchaser, for an export sale of agricultural commodities to be shipped from the U.S. to the foreign buyer.

(q) *Incoterms.* The following customary terms, as defined by the International Chamber of Commerce, Incoterms (current revision):

(1) Free Alongside Ship (FAS),

(2) Free on Board (FOB),

(3) Cost and Freight (CFR, or alternatively, C&F, C and F, or CNF), and

(4) Cost Insurance and Freight (CIF).

(r) *Intervening purchaser.* A party that agrees to purchase U.S. agricultural commodities from an exporter and sell the same agricultural commodities to an importer.

(s) *Late interest.* Interest, in addition to the interest due under the payment guarantee, which CCC agrees to pay in connection with a claim for loss, accruing during the period beginning on the first day after receipt of a claim which CCC has determined to be in good order and ending on the day on which payment is made on such claim for loss.

(t) *Payment guarantee.* An agreement under which CCC, in consideration of a fee paid, and in reliance upon the statements and declarations of the exporter, subject to the terms set forth in the written guarantee, this subpart, and any applicable Program Announcements or Notices to Participants, agrees to pay the exporter or the exporter's assignee in the event of a default by a foreign bank on its payment obligation under the foreign bank letter of credit issued in connection with a guaranteed sale or under the foreign bank's related obligation.

(u) *Notice to participants.* A notice issued by CCC by public press release which serves one or more of the following functions: to remind participants of the requirements of the program; to clarify the program requirements contained in these regulations in a manner which is not inconsistent with the regulations; to instruct exporters to provide additional information in applications for payment guarantees under specific country and/or commodity allocations; and to supplement the provisions of a payment guarantee, in a manner not inconsistent with these regulations, before the exporter's application for such payment guarantee is approved.

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

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

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

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

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

(w) *Program announcement.* An announcement issued by CCC which provides information on specific country and commodity allocations and may identify eligible agricultural commodities and countries, length of credit periods which may be covered, specify dollar limitations for CCC exposure in particular countries, and include other information and requirements.

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

(y) *United States or U.S.* All of the 50 states, the District of Columbia, and the territories and possessions of the United States.

(z) *U.S. agricultural commodity.* (1) With respect to any agricultural commodity other than a product of an agricultural commodity, an agricultural commodity entirely produced in the United States; and

(2) With respect to a product of an agricultural commodity:

(i) A product all of the agricultural components of which are entirely produced in the United States; or

(ii) Any other product the Secretary may designate that contains any agricultural component that is not entirely produced in the United States if:

(A) Such component is an added, de minimis component;

(B) Such component is not commercially produced in the United States; and

(C) There is no acceptable substitute for such component that is commercially produced in the United States (For purposes of this paragraph, 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).

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

§ 1493.30 Information required for program participation.

Before CCC will accept an application for a payment guarantee under either the GSM–102 program or the GSM–103 program, the applicant must qualify for participation in these programs. Based upon the information submitted by the applicant and other publicly available sources, CCC will determine whether the applicant is eligible for participation in the programs.

(a) *Submission of documentation.* In order to qualify for participation in the GSM–102 and GSM–103 programs, an applicant must submit to CCC, at the address specified in the Contacts P/R, the following information:

(1) The address of the applicant's headquarters office and the name and address of an agent in the U.S. for the service of process;

(2) The legal form of doing business of the applicant, e.g., sole proprietorship, partnership, corporation, etc.

(3) The place of incorporation of the applicant, if the applicant is a corporation;

(4) The name and U.S. address of the office(s) of the applicant, and statement indicating whether the applicant is a U.S. domestic corporation, a foreign corporation or another foreign entity. If the applicant has multiple offices, the address included in the information should be that which is pertinent to the particular GSM–102 or GSM–103 export sale contemplated by the applicant;

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

(6) A certification that: "I certify, to the best of my knowledge and belief, that neither [name of applicant] nor any of its principals has been debarred,

suspended, or proposed for debarment from contracting with or participating in programs administered by any U.S. Government agency. ["Principals," for the purpose of this certification, means officers; directors; owners of five percent or more of stock; partners; and persons having primary management or supervisory responsibility within a business entity (e.g., general manager, plant manager, head of a subsidiary division, or business segment, and similar positions).] I further agree that, should any such debarment, suspension, or notice of proposed debarment occur in the future, [name of applicant] will immediately notify CCC."

(b) *Previous qualification.* Any exporter that has previously qualified under this section may submit applications for GSM–102 or GSM–103 payment guarantees. Each application must include the statement required by § 1493.40(a)(18) incorporating the certifications of § 1493.50, including the certification in § 1493.50(e) that the information previously provided pursuant to paragraph (a) of this section has not changed. If the exporter is unable to provide such certification, such exporter must update the information required by paragraph (a) of this section which has changed and certify that the remainder of the information previously provided has not changed.

(c) *Additional submissions.* CCC will promptly notify applicants that have submitted information required by this section whether they have qualified to participate in the program. Any applicant failing to qualify will be given an opportunity to provide additional information for consideration by CCC.

(d) *Ineligibility for program participation.* An applicant may be ineligible to participate in the GSM–102 or GSM–103 programs if:

(1) Such applicant is currently debarred, suspended, or proposed for debarment from contracting with or participating in any program administered by a U.S. Government agency; or

(2) Such applicant is controlled or can be controlled, in whole or in part, by any individuals or entities currently debarred, suspended or proposed for debarment from contracting with or participating in programs administered by any U.S. Government agency.

§ 1493.40 Application for payment guarantee.

(a) A firm export sale must exist before an exporter may submit an application for a payment guarantee. An application for a payment guarantee may be submitted in writing or may be made by telephone, but, if made by telephone, it must be confirmed in writing to the office specified in the Contacts P/R. An application must identify the name and address of the exporter and include the following information:

(1) Name of the destination country.

(2) Name and address of the importer.

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

(4) Date of sale.

(5) Exporter's sale number.

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

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

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

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

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

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

(12) Guaranteed value.

(13) Guarantee fee.

(14) Name and location of the foreign bank issuing the letter of credit.

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

(16) A statement indicating whether any portion of the export sale for which the exporter is applying for a payment guarantee is also being used as the basis for an application for participation in any of the following CCC or USDA export programs: Export Enhancement Program, Dairy Export Incentive Program, Sunflowerseed Oil Assistance Program, or Cottonseed Oil Assistance Program. The number of the Agreement assigned by USDA under one of these programs should be included, as applicable.

(17) Other information as specified in Notices to Participants, as applicable.

(18) The exporter's statement, "All Section 1493.50 Certifications Are Being Made In This Application" which, when included in the application by the exporter, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.50.

(b) An application for a payment guarantee may be approved as submitted, approved with modifications agreed to by the exporter, or rejected by the GSM. In the event that the application is approved, the GSM will cause a payment guarantee to be issued in favor of the exporter. Such payment guarantee will become effective at the time specified in § 1493.60(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.

§ 1493.50 Certification requirements for obtaining payment guarantee.

By providing the statement in § 1493.40(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 or will be met. The exporter will be required to provide further explanation or documentation with regard to applications that do not include this statement. The exporter, in submitting an application for a payment guarantee and providing the statement set forth in § 1493.40(a)(18), certifies that:

(a) The agricultural commodity or product to be exported under the payment guarantee is a United States agricultural commodity or a product thereof, as defined in § 1493.20(z);

(b) There have not been and will not be any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law;

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

(d) No person or selling agency has been employed or retained to solicit or secure the payment guarantee, and that there is no agreement or understanding for a commission, percentage, brokerage, or contingent fee, except in the case of bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the purpose of securing business; and

(e) The information provided pursuant to § 1493.30 has not changed, the exporter still meets all of the qualification requirements of § 1493.30, and the exporter will immediately notify CCC if there is a change of circumstances which would cause it to fail to meet such requirements. If the exporter breaches or violates these certifications with respect to a GSM–102 or GSM–103 payment guarantee, CCC will have the right, notwithstanding any other rights provided under this subpart, to annul guarantee coverage for any commodities not yet exported and/or to proceed against the exporter.

§ 1493.60 Payment guarantee.

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

(b) *Period of guarantee coverage.* The payment guarantee will apply to the period beginning either on the date(s) of export(s) or on the date when interest begins to accrue, whichever is earlier, and will continue during the credit term specified in the payment guarantee or amendments thereto. However, the payment guarantee becomes effective on the date(s) of export(s) of the agricultural commodities or products thereof specified in the exporter's application for a payment guarantee.

(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/or 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 at least on, the amount of the lower loading tolerance of the export sales contract; however, the exporter may also request that CCC reserve additional guarantee coverage to accommodate up to the amount of the upward loading tolerance specified in the export sales contract. If such additional guarantee coverage is available at the time of application and CCC determines to make such reservation, it will so indicate to the exporter. In the event that the exporter ships a quantity greater than the amount on which the guarantee fee was paid (i.e., lower loading tolerance), it may obtain the additional coverage from CCC, up to the amount of the upward loading tolerance, by filing for an amendment to the payment guarantee, and by paying the additional amount of fee applicable. If such amendment to the payment guarantee is not filed with CCC by the exporter within 30 days after the date of the last export against the sales contract, CCC may determine not to reserve the coverage originally set aside for the exporter.

(f) *Ineligible exports.* Commodities with a date of export prior to the date of receipt by CCC of the exporter's telephonic or written application for a payment guarantee, or with a date of export made after the final date for export shown on the payment guarantee or any amendments thereof, are ineligible for GSM–102 or GSM–103 guarantee coverage, except where it is determined by the GSM to be in the best interests of CCC to provide guarantee coverage on such commodities.

(g) *Foreign agricultural component.* CCC may approve payment guarantees under this subpart only in connection with sales of United States agricultural commodities as defined in § 1493.20(z). CCC may not provide guarantee coverage under this subpart on credit extended for the value of any foreign agricultural component.

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

(i) *Amendments.* A request for an amendment of a payment guarantee may be submitted only by the exporter (with the concurrence of the assignee, if any). CCC will consider such a request only if the amendment sought is consistent with this subpart and any applicable Program Announcements and Notices to Participants. Amendments may include, but will not be limited to, a change in the credit period and an extension of time to export. 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. (Technical corrections or corrections of a clerical error which may be submitted by the exporter or the exporter's assignee are not viewed as amendments.)

§ 1493.70 Guarantee rates and fees.

(a) *Guarantee fee rates.* The payment guarantee fee rates will be based upon the length of the payment terms provided for in the export sale contract, the degree of risk that CCC assumes, as determined by CCC, and any other factors which CCC determines appropriate for consideration. A current schedule of the guarantee fee rates charged by CCC under GSM–102 and GSM–103 will be available upon request from the FAS/USDA office specified in the Contacts P/R.

(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 written application, the full amount of the guarantee fee. Applications will not be approved until the guarantee fee has been received by CCC. The exporter's check for the guarantee fee shall be made payable to CCC and mailed or delivered by courier to the office specified in the Contacts P/R.

(d) *Refunds of fee.* Guarantee fees paid in connection with approved applications will ordinarily not be refundable. CCC's approval of the application will be final and refund of the guarantee fee will not be made after approval unless the GSM determines that such refund will be in the best interest of CCC. If the application for a payment guarantee is not approved or is approved only for a part of the guarantee coverage requested, a full or pro rata refund of the fee remittance will be made.

§ 1493.80 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:

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

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

(9) Number of the Agreement assigned by USDA under another program if any portion of the export sale was also approved for participation in the following CCC or USDA export programs: Export Enhancement Program, Dairy Export Incentive Program, Sunflowerseed Oil Assistance Program, or Cottonseed Oil Assistance Program.

(10) The exporter's statement, "All § 1493.90 Certifications Are Being Made In This Evidence Of Export" which, when included in the evidence of export by the exporter, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.90.

(b) *Time limit for submission of evidence of export.* The exporter must provide a written report to the office specified in the Contacts P/R within 60 calendar days if the export was by rail or truck; or 30 calendar days if the export was by any other carrier. The time period for filing a report of export will commence upon each date of export of the commodity covered under a payment guarantee. If the evidence of export report is not received by CCC within the time period for filing, the payment guarantee will become null and void only if and only to the extent that failure to make timely filing resulted, or would be likely to result, in:

(1) Significant financial harm to CCC;

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

(3) Obstruction of the fair administration of the program; or

(4) A threat to the integrity of the program. The time limit for submission of an evidence of export report may be extended if such extension is determined by the GSM to be in the best interests of CCC.

(c) *Export sales reporting.* Exporters may have a mandatory reporting responsibility under Section 602 of the Agricultural Trade Act of 1978 (7 U.S.C. 5712), as amended by Section 1531 of the Food, Agriculture, Conservation, and Trade Act of 1990 for exports of wheat and wheat flour, feed grains, oilseeds, cotton, and other agricultural commodities and products thereof.

§ 1493.90 Certification requirements for the evidence of export.

By providing the statement contained in § 1493.80(a)(10), 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 or will be 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 breaches or violates these certifications with respect to a GSM–102 or GSM–103 payment guarantee, CCC will have the right, notwithstanding any other rights provided under this subpart, to annul guarantee coverage for any commodities not yet exported and/or to proceed against the exporter. The exporter, in submitting the evidence of export and providing the statement set forth in § 1493.80(a)(10), certifies that:

(a) The agricultural commodity or product exported under a payment guarantee is a United States agricultural commodity or a product thereof, as defined in § 1493.20(z);

(b) Agricultural commodities of the grade, quality and quantity called for in the exporter's sales contract with the importer have been exported to the country specified in the payment guarantee;

(c) A letter of credit has been opened in favor of the exporter by the foreign bank shown in the payment guarantee to cover the port value of the commodity exported;

(d) There have not been and will not be any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law; and

(e) The information provided pursuant to § 1493.30 has not changed, the exporter still meets all of the qualification requirements of § 1493.30 and the exporter will immediately notify CCC if there is a change of circumstances which would cause it to fail to meet such requirements.

§ 1493.100 Proof of entry.

(a) *Diversion.* The diversion of commodities covered by a GSM–102 or GSM–103 payment guarantee to a country other than that shown on the payment guarantee is prohibited, unless expressly authorized by the GSM.

(b) *Records of proof of entry.* Exporters must obtain and maintain records of an official or customary commercial nature and grant authorized USDA officials access to such documents or records as may be necessary to demonstrate the arrival of the agricultural commodities exported in connection with the GSM–102 or GSM–103 programs in the country that was the intended country of destination of such commodities. Records demonstrating proof of entry must be in English or be accompanied by a certified or other translation acceptable to CCC. Records acceptable to meet this requirement include an original certification of entry signed by a duly authorized customs or port official of the importing country, by the importer, by an agent or representative of the vessel or shipline which delivered the agricultural commodity to the importing country, or by a private surveyor in the importing country, or other documentation deemed acceptable by the GSM showing:

(1) That the agricultural commodity entered the importing country;

(2) The identification of the export carrier;

(3) The quantity of the agricultural commodity;

(4) The kind, type, grade and/or class of the agricultural commodity; and

(5) The date(s) and place(s) of unloading of the agricultural commodity in the importing country. [Records of proof of entry need not be submitted with a claim for loss, except as may be provided in § 1493.110(b)(4)(ii).]

§ 1493.110 Notice of default and claims for loss.

(a) *Notice of default.* If the foreign bank issuing the letter of credit fails to make payment pursuant to the terms of the foreign bank letter of credit or related obligation, the exporter or the exporter's assignee must submit a notice of default to CCC as soon as possible, but not later than 10 calendar days after the date that payment was due from the foreign bank (the due date). A notice of default must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. If the exporter or the exporter's assignee fails to promptly notify CCC of defaults in accordance with this paragraph, CCC may make the payment guarantee null and void with respect to any payment(s) applicable to such default. This time limit may be extended only under extraordinary circumstances and if such extension is determined by the Controller, CCC, to be in the best interests of CCC. The notice of default must include:

(1) Payment guarantee number;

(2) Name of the country;

(3) Name of the defaulting bank;

(4) Due date;

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

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

(7) Reason for foreign bank's refusal to pay, if known.

(b) *Filing a claim for loss.* A claim for a loss by the exporter or the exporter's assignee will not be paid if it is made later than six months from the due date of the defaulted payment. A claim for loss must be submitted in writing to the Treasurer, CCC, at the address specified in the Contacts P/R. The claim for loss must include the following information and documents:

(1) Payment guarantee number;

(2) A certification that the scheduled payment has not been received;

(3) A certification of the amount of accrued interest in default, the date interest began to accrue, and the interest rate on the foreign bank obligation applicable to the claim;

(4) A copy of each of the following documents, with a cover document containing a signed certification by the exporter or the exporter's assignee that each page of each document is a true and correct copy:

(i) (A) The foreign bank letter of credit securing the export sale; and

(B) If applicable, the document(s) evidencing the related obligation owed by the foreign bank to the assignee financial institution which is related to the foreign bank's letter of credit issued in favor of the exporter. Such related obligation must be demonstrated in one of the following ways:

(1) The related obligation, including a specific promise to pay on deferred payment terms, may be contained in the letter of credit as a special instruction from the issuing bank directly to the U.S. financial institution to refinance the amounts paid by the U.S. financial institution for obligations financed according to the tenor of the letter of credit; or

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

(3) The letter of credit payment obligations may be specifically identified in a separate document(s) setting forth the related obligation, or in a duly executed amendment thereto, as having been financed by the U.S. financial institution pursuant to, and subject to repayment in accordance with the terms of, such related obligation; or

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

(ii) Depending upon the method of shipment, the negotiable ocean carrier or intermodal bill(s) of lading signed by the shipping company with the onboard ocean carrier date for each shipment, the airway bill, or, if shipped by rail or truck, the entry certificate or similar document signed by an official of the importing country;

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

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

(iv) An instrument, in form and substance satisfactory to CCC, subrogating to CCC the respective rights of the exporter and the exporter's assignee, if applicable, to the amount of payment in default under the applicable export sale. The instrument must reference the applicable foreign bank letter of credit and the related obligation, if applicable; and

(v) A copy of the report(s) of export previously submitted by the exporter to CCC pursuant to § 1493.80(a).

(c) *Subsequent claims for defaults on installments.* If the initial claim is found in good order, the exporter or an exporter's assignee need only provide all of the required claims documents with the initial claim relating to a covered transaction. For subsequent claims relating to failure of the foreign bank to make scheduled installments on the same export shipment, the exporter or the exporter's assignee need only submit to CCC a notice of such failure containing the information stated in paragraph (b)(1), (2), and (3) of this section; an instrument of subrogation as per paragraph (b)(4)(iv) of this section, and including the date the original claim was filed with CCC.

§ 1493.120 Payment for loss.

(a) *Determination of CCC's liability.* Upon receipt in good order of the information and documents required under § 1493.110, CCC will determine whether or not a loss has occurred for which CCC is liable under the applicable payment guarantee, this subpart and any applicable supplemental Program Announcements and Notices to Participants. If CCC determines that it is liable to the exporter and/or the exporter's assignee, CCC will pay the exporter or the exporter's assignee in accordance with paragraphs (b) and (c) of this section.

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

(1) The guaranteed value as stated in the payment guarantee, plus eligible interest; or

(2) The guaranteed percentage (as indicated in the payment guarantee) of the exported value indicated in the evidence of export, plus eligible interest.

(c) *Late interest payment.* If a claim is not paid within one day of receipt of a claim which CCC has determined to be in good order, late interest will accrue in favor of the exporter or the exporter's assignee beginning with the first day after the day of reciept of a claim found by CCC to be in good order and continuing until and including the date that payment is made by CCC. Late interest will be paid on the guaranteed amount, as determined by paragraphs (b)(1) and (2) of this section, and will be calculated based on the average investment rate of the most recent Treasury 91-day bill auction as announced by the Department of Treasury as of the due date.

(d) *Accelerated payments.* CCC will pay claims only for losses on amounts not paid as scheduled. CCC will not pay claims for amounts due under an accelerated payment clause in the export sales contract, the foreign bank's letter of credit, or any obligation owed by the foreign bank to the assignee U.S. financial institution which is related to the foreign bank's letter of credit issued in favor of the exporter, unless it is determined to be in the best interests of CCC by the Controller, CCC. Notwithstanding the foregoing, CCC at its option may declare the entire amount of the unpaid balance, plus accrued interest, in default and make payment to the exporter or the exporter's assignee in addition to such other claimed amount as may be due from CCC.

(e) *Action against the assignee.* Notwithstanding any other provision in this subpart to the contrary, with regard to commodities covered by a payment guarantee, CCC will not hold the assignee responsible or take any action or raise any defense against the assignee for any action, omission, or statement by the exporter of which the assignee has no knowledge, provided that:

(1) The exporter complies with the reporting requirements under § 1493.80 and § 1493.90, excluding post-export adjustments (i.e., corrections to evidence of export reports); and

(2) The exporter or the exporter's assignee furnishes the statements and documents specified in § 1493.110.

§ 1493.130 Recovery of losses.

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

(b) *Receipt of monies.* (1) In the event that monies for a defaulted payment are recovered by the exporter or the exporter's assignee from the importer, the foreign bank, or any other source whatsoever, such monies shall be immediately paid to the Treasurer, CCC. If such monies are not received by CCC within 15 business days from the date of recovery by the exporter or the exporter's assignee, the exporter or the exporter's assignee will owe to CCC interest from the date of recovery to the date of receipt by CCC. This interest will be calculated based on the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and will accrue from such date to the date of payment by the exporter or the exporter's assignee to CCC. Such interest will be charged only on CCC's share of the recovery.

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

(c) *Allocation of recoveries.* Recoveries made by CCC from the importer or the foreign bank, and recoveries received by CCC from the exporter, the exporter's assignee, or any other source whatsoever, will be allocated by CCC to the exporter or the exporter's assignee and to CCC on a pro rata basis determined by their respective interests in such recoveries. The respective interest of each party will be determined on a pro rata basis, based on the combined amount of principal and interest in default. Once CCC has paid out a particular claim under a GSM–102 or GSM–103 payment guarantee, CCC prorates any collections it receives and shares these collections proportionately with the holder of the guarantee until both CCC and the holder of the guarantee have been reimbursed in full. Appendix A to § 1493.130—Illustration of Pro Rata Allocation of Recoveries—provides an example of the methodology used by CCC in applying this paragraph (c).

(d) *Liabilities to CCC.* Notwithstanding any other terms of the payment guarantee, the exporter may be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter has engaged in fraud, or has been or is in material breach of any contractual obligation, certification or warranty made by the exporter for the purpose of obtaining the payment guarantee or for fulfilling obligations under GSM–102 or GSM–103. Further, the exporter's assignee may be liable to CCC for any amounts paid by CCC under the payment guarantee when and if it is determined by CCC that the exporter's assignee has engaged in fraud or otherwise violated program requirements.

(e) *Good faith.* The violation by an exporter of the certifications in § 1493.50(b) and § 1493.90(d) or the failure of an exporter to comply with the provisions of § 1493.100 or § 1493.140(e) will not affect the validity of any payment guarantee with respect to an assignee which had no knowledge of such violation or failure to comply at the time such exporter applied for the payment guarantee or at the time of assignment of the payment guarantee.

(f) *Cooperation in recoveries.* Upon payment by CCC of a claim to the exporter or the exporter's assignee, the exporter or the exporter's assignee will cooperate with CCC to effect recoveries from the foreign bank and/or the importer.

Appendix A to § 1493.130—Illustration of Pro Rata Allocation of Recoveries

The following example illustrates CCC's policy, as set forth in § 1493.130(c), regarding pro rata sharing of recoveries made for claims filed under the GSM–102 and GSM–103 programs. A typical case might be as follows:

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

2. The foreign bank fails to make the final principal payment of $100,000 and an interest payment of $10,000, both due on January 31.

3. On February 10, the U.S. bank files a claim in good order with CCC.

4. CCC's guarantee states that CCC's maximum liability is limited to 98 percent of the principal amount due ($98,000) and interest at a rate of 8 percent per annum (basis 365 days) on 98 percent of the principal ($7,840).

5. CCC pays the claim on February 22.

6. The latest bond equivalent rate of the 52-week Treasury bill auction average which has been published by the Department of Treasury in effect on the date of nonpayment (January 31) is 9 percent. The latest investment rate of the 91-day Treasury Bill auction average which has been published by the Department of Treasury in effect on the date of nonpayment by CCC (February 11) is 7 percent.

Computation of Obligations

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

1. CCC's Obligation under the Payment Guarantee:

(a)	Principal coverage—(98% × $100,000)	$98,000.00
(b)	Interest coverage—(8% × $98,000)	$7,840.00
		$105,840.00
(c)	Late interest due from CCC (7% per annum for 11 days × $105,840)	$223.28
(d)	Amount paid by CCC on February 22	$106,063.28

2. Foreign Bank's Obligation under the Letter of Credit or the Related Obligation:

(a)	Principal due January 31	$100,000.00
	Interest due January 31 (10% × $100,000)	$10,000.00
	Amount owed by foreign bank as of January 31	$110,000.00
(b)	Penalty interest due (12% per annum for 22 days × $100,000)	$795.62
(c)	Amount owed by foreign bank as of February 22	$110,795.62

3. Amount of Foreign Bank's Obligation Not Covered by CCC's Payment Guarantee: $4,668.55

Computation of Pro Rata Sharing in Recovery of Losses

In establishing each party's respective interest in any recovery of losses, the total amount due under the foreign bank obligation would be determined as of the date the claim is paid by CCC (February 22). Using the above example in which the amount owed by the foreign bank is $110,000, CCC would be entitled to 95.75 percent ($106,063.07 divided by $110,765.62) and the holder of the payment guarantee would be entitled to 4.21 percent ($4,668.55 divided by $110,795.62) of any recoveries of losses after settlement of the claim. Since in this example, the losses were recovered after the claim has been paid by CCC, § 1493.130(b) would apply.

§ 1493.140 Miscellaneous provisions.

(a) *Assignment.* (1) The exporter may assign the proceeds which are, or may become, payable by CCC under a payment guarantee or the right to such proceeds only to a financial institution in the U.S. The assignment must cover all amounts payable under the payment guarantee not already paid, may not be made to more than one party, and may not, unless approved in advance by CCC, be:

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

(ii) Subject to further assignment.

(2) An original and two copies of the written notice of assignment signed by the parties thereto must be filed by the assignee with the Treasurer, CCC, at the address specified in the Contacts P/R.

(3) Receipt of the notice of assignment will ordinarily be acknowledged to the exporter and its assignee in writing by an officer of CCC. In cases where a financial institution is determined to be ineligible to receive an assignment, in accordance with paragraph (b) of this section, CCC will provide notice thereof, to the financial institution and to the exporter issued the payment guarantee, in lieu of an acknowledgment of assignment.

(4) The name and address of the assignee must be included on the written notice of assignment.

(b) *Ineligibility of financial institutions to receive an assignment.* A financial institution will be ineligible to receive an assignment of proceeds which may become payable under a payment guarantee if, at the time of assignment, such financial institution:

(1) Is not in sound financial condition, as determined by the Treasurer of CCC; or

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

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

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

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

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

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

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

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

(d) *Alternative satisfaction of payment guarantees.* CCC may, with the agreement of the exporter (or if the right to proceeds payable under the payment guarantee has been assigned, with the agreement of the exporter's assignee), 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.

(e) *Maintenance of records and access to premises.* (1) For a period of five years after the date of expiration of the coverage of a payment guarantee, the exporter or the exporter's assignee, as applicable, must maintain and make available all records pertaining to sales and deliveries of and extension of credit for agricultural commodities exported in connection with a GSM–102 or GSM–103 payment guarantee, including those records generated and maintained by agents, intervening purchasers, and related companies involved in special arrangements with the exporter. The Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, must be given full and complete access to the premises of the exporter or the exporter's assignee, as applicable, during regular business hours from the effective date of the payment guarantee until the expiration of such five-year period to inspect, examine, audit, and make copies of the exporter's, exporter's assignee's, agent's, intervening purchaser's or related company's books, records and accounts concerning transactions relating to the payment guarantee, including, but not limited to, financial records and accounts pertaining to sales, inventory, processing, and administrative and incidental costs, both normal and unforeseen. During such period, the exporter or the exporter's assignee may be required to make available to the Secretary of Agriculture or the Comptroller General of the United States, through their authorized representatives, records that pertain to transactions conducted outside the program, if, in the opinion of the GSM, such records would pertain directly to the review of transactions undertaken by the exporter in connection with the payment guarantee.

(2) The exporter must maintain the proof of entry required by § 1493.100(b), and must provide access to such documentation if requested by the Secretary of Agriculture or his authorized representative for the five-year period specified in paragraph (e)(1) of this section.

(f) *Responsibility of program participants.* It is the responsibility of all program participants to review, and fully acquaint themselves with, all regulations, Program Announcements, and Notices to Participants relating to the GSM–102 or GSM–103 program, as applicable. Applicants for payment guarantees under these programs are hereby on notice that they will be bound by any terms contained in applicable Program Announcements or Notices to Participants issued prior to the date of approval of a payment guarantee.

(g) *Submission of documents by principal officers.* All required submissions, including certifications, applications, reports, or requests (i.e., requests for amendments), by exporters or exporters' assignees under this subpart must be signed by a principal or officer of the exporter or exporter's assignee or their authorized designee(s). In cases where the designee is acting on behalf of the principal or the officer, the signature must be accompanied by: wording indicating the delegation of authority or, in the alternative, by a certified copy of the delegation of authority; and the name and title of the authorized person or officer. Further, the exporter or exporter's assignee must ensure that all information/reports required under these regulations are submitted within the required time limits. If requested in writing, CCC will acknowledge receipt of a submission by the exporter or the exporter's assignee. If acknowledgment of receipt is requested, the exporter or exporter's assignee must submit an extra copy of each document and a stamped self-addressed envelope for return by U.S. mail. If courier services are desired for the return receipt, the exporter or exporter's assignee must also submit a self-addressed courier service order which includes the recipient's billing code for such service.

(h) *Officials not to benefit.* No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the 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.

(i) *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.

Signed this 7th day of October, 1994 at Washington, DC.

Christopher E. Goldthwait,
General Sales Manager Commodity Credit Corporation.

[FR Doc. 94–25849 Filed 10–18–94; 8:45 am]

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federal register

Wednesday
October 19, 1994

Part III

Department of Health and Human Services

Public Health Service

National Institutes of Health Clinical Research Loan Repayment Program for Individuals From Disadvantaged Backgrounds; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

RIN 0905–ZA73

National Institutes of Health Clinical Research Loan Repayment Program for Individuals From Disadvantaged Backgrounds

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: Pending approval by the Office of Management and Budget (OMB) under the requirements of the Paperwork Reduction Act of 1980, the National Institutes of Health (NIH) announces the availability of educational loan repayment under the NIH Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds (the Program). The Program, which is authorized by Section 487E of the Public Health Service (PHS) Act (42 U.S.C. 288–5), as added by the National Institutes of Health Revitalization Act of 1993 (Pub. L. 103–43), provides for the repayment of the educational loan debt of health professionals who are from disadvantaged backgrounds, who have substantial debt relative to income, and who agree to conduct clinical research as employees of the NIH. The Program provides for the repayment of up to $20,000 of the principal and interest of the educational loans of such health professionals for each year of obligated service. The purpose of the Program is the recruitment and retention of highly qualified health professionals, who are from disadvantaged backgrounds, to clinical research careers at the NIH. Through this notice, the NIH invites health professionals, who are from disadvantaged backgrounds and interested in engaging in clinical research as NIH employees for at least two years, to apply for participation in the NIH Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds.

DATES: Interested persons may request information about the Program beginning on October 19, 1994.

ADDRESSES: Information regarding the requirements and application procedures for the Program may be obtained by calling or writing: Mr. Marc Horowitz, Director, NIH Loan Repayment Programs, National Institutes of Health, Federal Building, Room 102, 7550 Wisconsin Avenue, Bethesda, Maryland 20892–9905 (800–528–7689).

SUPPLEMENTARY INFORMATION: The National Institutes of Health Revitalization Act of 1993 (Pub. L. 103–43) was enacted on June 10, 1993, adding section 487E of the Public Health Service (PHS) Act (42 U.S.C. 288–5). Section 487E authorizes the Secretary to carry out a program of entering into contracts with appropriately qualified health professionals who are from disadvantaged backgrounds with substantial educational loan debt relative to income. Under such contracts, qualified health professionals agree to conduct clinical research as employees of the NIH for at least two years in consideration of the Federal Government agreeing to repay, for each year of service, not more than $20,000 of the principal and interest of the educational loans of such health professionals. This program is known as the NIH Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds (Clinical Research LRP).

Eligibility Criteria

Specific eligibility criteria with regard to participation in the Clinical Research LRP include the following:

(1) Participants must be United States citizens, nationals, or permanent residents;

(2) Participants must have a M.D., Ph.D., D.O., D.D.S., D.M.D., A.D.N./B.S.N., or equivalent degree;

(3) Participants must come from a disadvantaged background. An individual from a disadvantaged background is one who (a) comes from an environment that inhibited the individual from obtaining the knowledge, skill, and ability required to enroll in and graduate from a health professions school or (b) comes from a family with an annual income below a level based on low-income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in all health professions programs. The Secretary periodically publishes these income levels in the **Federal Register;**

(4) Participants must have qualifying educational debt in excess of 20 percent of their annual NIH salary at their expected date of program eligibility. In the case of U.S. Commissioned Corps officers, their NIH salary includes base pay plus quarters, subsistence, and variable housing allowances. Special and bonus pays, such as board certified, contract, and variable incentive pays, are not considered in the Clinical Research LRP's calculation of salary. For these employed under the Civil Service, salary does not include Physicians Comparability Allowances (PCAs). However, PCA recipients who are accepted into the Clinical Research LRP will have their PCAs reduced by the amount of loan repayments to be received. The expected date of program eligibility is the date by which the following conditions will be met: (a) An applicant agrees to begin clinical research as a NIH employee, and (b) the Secretary is expected to execute the Clinical Research LRP contract;

(5) Participants must be employees of the NIH. The following are NOT considered NIH employees: (a) Intramural Research Training Award (IRTA) recipients, (b) Visiting Fellows, (c) National Research Service Award (NRSA) recipients, (d) Guest Researchers or Special Volunteers, (e) NIH-National Research Council (NRC) Biotechnology Research Associates Program participants, and (f) Intergovernmental Personnel Act (IPA) participants;

(6) Participants may be appointed under a temporary or permanent employment mechanism, so long as their employment in a clinical research assignment has the potential to last a minimum of 2 years;

(7) Individuals with existing service obligations to Federal, State, or other entities will not be considered for the Program unless and until the existing service obligation is discharged or deferred for the length of Program participation;

(8) Applicants will not be excluded from consideration under the Program on the basis of age, race, culture, religion, gender, disability, or other non-merit factors.

Selection Process

Since program participation is contingent upon employment with the NIH, an individual who wishes to apply must obtain a written commitment from an Institute or Center (IC) Personnel Office of the NIH to be employed in a clinical research position. The Director, LRP, provides current deadlines, sources for assistance, and additional details regarding application procedures in an annual Applicant Information Bulletin.

Individuals submit their applications to the Director, LRP, who forwards those qualified to the Clinical Research Loan Repayment Committee (CR–LRC). The CR–LRC reviews, ranks, and approves or disapproves Clinical Research LRP applications. The LRC membership is made up of NIH scientific staff who are nominated by the Deputy Director, Intramural Research, NIH, and appointed by the Director, NIH. The CR–LRC is co-chaired by the Associate Director for Clinical Research, NIH, and the Associate Director for Research on Minority Health, NIH. The CR–LRC reviews and selects applications for approval based upon the following:

(1) The merit of the clinical research assignment; and

(2) The credentials of both applicant and supervisor and other criteria the Secretary deems appropriate.

Clinical research activities are the biomedical and behavioral studies of etiology, epidemiology, prevention, prevention strategies, diagnosis, or treatment of diseases, disorders or conditions, including but not limited to clinical trials.

Funds for repayment will only be awarded to LRC-approved applications. Priority in funding will be given to qualified health professionals who are from disadvantaged backgrounds and who are underrepresented in biomedical/behavioral research including members from minority groups, disabled individuals, and women.

Program Administration and Details

Under the Clinical Research LRP, the NIH will repay a portion of the extant qualified educational loan debt incurred by health professionals to pay for their undergraduate, graduate, and/or health professional school educational expenses. Upon application, individuals must have total qualified educational debt which exceeds 20% of their anticipated annual NIH salary ("debt threshold") on the date of program eligibility.

Only qualified loan amounts in excess of 50 percent of the debt threshold will be considered for repayment ("repayable debt"). The repayable debt of qualified health professionals will be satisfied at the rate of one-half per year, subject to a statutory limit of $20,000 per year, for each year of obligated service. Obligated service requires selected individuals to serve at least 2 years as an NIH employee engaged in clinical research. Following conclusion of the initial two-year contract, participants may apply for renewal contracts to satisfy their remaining repayable debt. These continuation contracts may be submitted and approved on a year-to-year basis, subject to a finding by NIH that the applicant's clinical research accomplishments are acceptable. Funding of contracts is contingent upon appropriation and/or allocation of funds from the U.S. Congress and/or the NIH.

In return for the repayment of their educational loans, participants must agree to (1) engage in clinical research as employees of the NIH for a minimum period of 2 years; (2) make payments to lenders on their own behalf for periods of Leave Without Pay (LWOP); (3) pay monetary damages as required for breach of contract; and (4) satisfy other terms and conditions of the Clinical Research LRP's contract and application procedures.

Applicants must submit a signed contract, prepared by the NIH, agreeing to obligated service at the time they apply for consideration under the Clinical Research LRP. Substantial monetary penalties will be imposed for breach of contract.

The NIH will repay lenders for the principal, interest, and related expenses (such as the required insurance premiums on the unpaid balances of some loans) of qualified Government (Federal, State, local) and commercial educational loans obtained by participants for the following:

(1) Undergraduate, graduate, and health professional school tuition expenses;

(2) Other reasonable educational expenses required by the school(s) attended, including fees, books, supplies, educational equipment and materials, and laboratory expenses; and

(3) Reasonable living expenses, including the cost of room and board, transportation and commuting costs, and other living expenses as determined by the Secretary.

Repayments will be authorized for direct payment to lenders, following receipt of (1) the supervisor's verification of completion of the prior period of obligated service and (2) lender verification of the crediting of prior loan repayments, including the resulting account balances and current account status. The NIH will repay loans in the following order unless significant savings would result from repaying loans in a different priority order:

(1) Health Education Assistance Loans (HEAL);

(2) other loans guaranteed by the Federal Government; and

(3) other qualifying loans.

The following loans are NOT repayable under the Clinical Research LRP:

(1) Loans not obtained from a Government entity or commercial or other chartered lending institution, such as loans from friends and relatives, or other private individuals;

(2) Loans for which contemporaneous documentation is not available; and

(3) Loans, or those portions of loans, obtained for educational or living expenses which exceed a "reasonable" level as determined by a review of the standard school budget or additional contemporaneous documentation for the year in which the loan was made.

In addition, for other programs which provide loans, scholarships, loan repayments, or similar awards in exchange for a future service obligation, the NIH will NOT repay any sums that may result from failure to serve as required or conversion of the obligation to a loan under these programs. This includes, but is not limited to the following:

(1) Physicians Shortage Area Scholarship Program (Federal or State);

(2) National Research Service Award Program;

(3) Public Health Service and National Health Service Corps Scholarship Programs;

(4) Armed Forces (Army, Navy, or Air Force) Health Professions Scholarship Programs; and

(5) Indian Health Service Scholarship Program.

Finally, payments will not be made under the Clinical Research LRP for loans which participants have already repaid, delinquent loans, loans in default, loans not current in their payment schedule, or loans for which promissory notes have been signed after the program eligibility date. During lapses in loan repayments, due either to administrative complications or a break in service, Clinical Research LRP participants are wholly responsible for making payments or other arrangements which maintain loans in a current payment status such that increases in either principal or interest do not occur. Penalties assessed participants as a result of NIH administrative complications may be considered for reimbursement.

Additional Program Information

This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs.

This program is subject to OMB clearance under the requirements of the Paperwork Reduction Act of 1980. A Request for OMB Review and Approval of information collection associated with the program is being prepared by the NIH and will be sent to OMB for review and approval prior to implementation of the Clinical Research LRP.

The Catalog of Federal Domestic Assistance number for the Clinical Research LRP is 93.220.

Dated: September 7, 1994.

Ruth L. Kirschstein,

Deputy Director, NIH.

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