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Subpart A—Financing of Export Sales of Agricultural Commodities From Private Stocks Under CCC Export Credit Sales Program (GSM-5)

SOURCE: 42 FR 10999, Feb. 25, 1977, unless otherwise noted.

GENERAL

§ 1488.1 General statement.

(a) Except as otherwise provided in this paragraph (a), the regulations and the supplements thereto contained in this subpart A supersede the regulations and supplements revised April

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1975, and set forth the terms and conditions governing the CCC Export Credit Sales Program (GSM-5). The maximum financing period shall be three years. The regulations and supplements as revised in April 1971 and April 1975, shall remain in effect for all transactions under financing approvals issued thereunder.

(b) Subject to the terms and conditions set forth in this subpart A, CCC will purchase for cash, after delivery, the exporter's account receivable arising from the export sale.

(c) The provisions of Pub. L. 83-664 are not applicable to shipments under this program.

(d) The regulations contained in this subpart A may be supplemented by such additional terms and conditions, applicable to specified agricultural commodities, and, to the extent that they may be in conflict or inconsistent with any other provisions of this subpart A, such additional terms and conditions shall prevail.

§ 1488.2 Definition of terms.

As used in this subpart A and in the forms and documents related thereto, the following terms shall have the meanings assigned to them in this section:

(a) *Account receivable* means the contractual obligation of the foreign importer to the exporter for the port value of the commodity delivered for which the exporter is extending credit to the importer. The account receivable shall be evidenced by documents, in form and substance satisfactory to CCC, establishing the contractual obligation between the U.S. exporter and the foreign importer. The account receivable shall provide for (1) payment of principal and interest in U.S. dollars in the United States, (2) interest in accordance with § 1488.14, and (3) acceleration of payment thereunder in accordance with these regulations.

(b) *Agency or branch bank* means an agency or branch of a foreign bank, supervised by New York State banking authorities or the banking authorities of any other State providing similar supervision, and approved by the Controller, CCC.

(c) *Assistant Sales Manager* means the Assistant Sales Manager, Commercial

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(d) *Bank obligation* means an obligation, acceptable to CCC, of a U.S. bank, a foreign bank, an agency or branch bank, to pay to CCC in U.S. dollars the amount of the account receivable, plus interest in accordance with §1488.14. The bank obligation shall be in the form of an irrevocable letter of credit issued by a U.S. bank or a branch bank, or confirmed or advised by a U.S. bank or any agency or branch bank in accordance with §1488.12. The bank obligation shall provide for payment under the terms and conditions of the financing agreement and shall be payable not later than the date of expiration of the financing period or of the bank obligation, whichever occurs first, if payment is not received from other sources.

(e) *CCC* means the Commodity Credit Corporation, U.S. Department of Agriculture.

(f) *Carrying charges* means storage, insurance, and interest charges involved in the cost of storing the commodity before delivery as provided for in the sales contract, and other incidental costs as may be approved by the Assistant Sales Manager.

(g) *Commercial risk* means risk of loss due to any cause other than specified as noncommercial risk in paragraph (u) of this section.

(h) *Date of delivery* means the on-board date of the ocean bill of lading, or the date of an airway bill, or, if exported by rail or truck, the date of entry shown on an authenticated landing certificate or similar document issued by an official of the government of the importing country. If delivery is before export, the date of delivery means (1) the date(s) of the warehouse receipt(s), or other evidence acceptable to CCC, covering the commodity in a warehouse acceptable to CCC, or (2) the onboard carrier (truck, rail car or lash or seabee barge) date of a through bill of lading covering commodities in a container or a lash or seabee barge at a U.S. inland or coastal point.

(i) *Date of sale* means the earliest date the exporter has knowledge that a contractual obligation exists with the foreign buyer under which a firm dollar and cent price has been established or

a mechanism to establish the price has been agreed upon.

(j) *Delivery* means the delivery required by the export sale contract to transfer to the importer full or conditional title to the agricultural commodity. Delivery before export may be (1) in a warehouse in the United States acceptable to CCC by issuance or transfer of the warehouse receipt to the importer, or (2) f.a.s. or f.o.b. U.S. inland or coastal loading point, if the commodity is loaded in a container on a truck or rail car, or in a lash or seabee barge for shipment to a point of export under a through bill of lading. Delivery at point of export shall be f.a.s. or f.o.b. export carrier at U.S. ports, at U.S. airports, at U.S. border points of exit or, if transshipped through Canada, at ports on the Great Lakes or the St. Lawrence River.

(k) *Eligible commodities* means agricultural commodities, including eligible cotton, produced in the United States and designated as eligible for export under CCC's Export Credit Sales Program in a USDA announcement. Commodities which have been purchased from CCC are eligible for export as private stocks. Exports of commodities pursuant to any CCC barter contract, Pub. L. 480 or AID agreement, or direct loan by the Export-Import Bank are not eligible for financing under this program. Commodities delivered prior to CCC receiving the sale registration request in accordance with §1488.4 are not eligible for financing under this program unless such financing is determined by the Vice President, CCC, or the Assistant Sales Manager, to be in the interest of CCC.

(l) *Eligible cotton* means Upland and Extra Long staple cotton grown in the United States: *Provided, however,* That reginned or repacked cotton, as defined in regulations of the U.S. Department of Agriculture under the U.S. Cotton Standards Act (7 CFR 28.40), by-products of cotton such as cotton mill waste, mottes, and linters, and any cotton that contains any by-products of cotton are not eligible for export financing hereunder. CCC's determination as to the eligibility of cotton shall be final.

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(m) *Eligible destination* means the country which is named in the financing agreement and which meets the licensing requirements of the U.S. Department of Commerce.

(n) *Eligible exporter* or *exporter* means a person (1) who is engaged in the business of buying or selling commodities and for this purpose maintains a bona fide business office in the United States, its territories or possessions, and has someone on whom service of judicial process may be had within the United States, (2) who is financially responsible, and (3) who is not suspended or debarred from contracting with or participating in any program financed by CCC on the date of issuance of the financing approval.

(o) *OGSM* means the Office of the General Sales Manager, U.S. Department of Agriculture.

(p) *Financing agreement* means the exporter's request for a sale registration as approved by the Assistant Sales Manager, including the terms and conditions of the regulations in effect on the date of approval.

(q) *Financing period* means the number of months over which repayment is to be made. Such period shall start on the date of delivery or the weighted average delivery date of the commodities to be exported under the financing agreement, and shall expire on the expiration of the bank obligation or the specified period over which repayment is to be made, whichever occurs first.

(r) *Foreign bank* means a bank which is not a U.S. bank or an agency or branch bank, and includes a foreign branch of a U.S. bank.

(s) *Foreign importer* or *importer* means the foreign buyer who purchases the commodities to be exported under a financing agreement and executes the documents evidencing the account receivable assigned to CCC.

(t) *GSM-5* means the regulations contained in this subpart A, and supplements thereto, setting forth the terms and conditions governing the CCC Export Credit Sales Program.

(u) *Noncommercial risk* means risk of loss due to (1) inability of the foreign bank through no fault of its own to convert foreign currency to dollars, or (2) non-delivery into the eligible destination of the commodity covered by a

financing agreement through no fault of the foreign bank or importer or exporter because of the cancellation by the government of the eligible destination of previously issued valid authority to import such shipment into the eligible destination or because of the imposition of any law or of any order, decree, or regulation having the force of law, which prevents the import of such shipment into the eligible destination, or (3) inability of the foreign bank to make payment due to war, hostilities, civil war, rebellion, revolution, insurrection, civil commotion, or other like disturbance occurring in the eligible destination, expropriation, or confiscation, or other like action by the government of the eligible destination country, or (4) failure of the foreign bank to make payment for any reason if it is an instrumentality of or is wholly owned by the foreign government.

(v) *Port value* means the net amount of the exporter's sales price of the commodity to be exported under the financing agreement, (1) basis f.a.s. or f.o.b. export carrier at U.S. ports, at U.S. border points of exit, at U.S. airports if shipped by air, or, if transshipped through Canada at ports on the Great Lakes, or on the St. Lawrence River, or (2) basis U.S. warehouse for commodities delivered to such warehouse before export, or (3) basis f.a.s. or f.o.b. U.S. inland or coastal loading point for commodities delivered before export under through bill of lading. The port value shall not include ocean freight for a c. & f. sale or ocean freight and marine and war risk insurance for a c.i.f. sale but may include carrying charges as provided for in the sales contract. The net amount of the exporter's sales price means the exporter's contract price for the commodities, on the basis stated above, less any payments made to the exporter and less any discounts, credits, or allowances by the exporter.

(w) *Sale* means a contract to sell on credit U.S. agricultural commodities to be financed under GSM-5.

(x) *United States* means the 50 States, the District of Columbia, and Puerto Rico.

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(y) *U.S. bank* means a bank organized under the laws of the United States, a State, or the District of Columbia.

(z) *USDA announcement* means an announcement published monthly by the U.S. Department of Agriculture (USDA), and which includes the list of eligible commodities and interest rates under GSM-5.

(aa) *Vice President*, *CCC* means the Vice President who is the General Sales Manager, Office of the General Sales Manager.

[42 FR 10999, Feb. 25, 1977, as amended at 42 FR 30833, June 17, 1977; Amdt. 5, 43 FR 25992, June 16, 1978]

FINANCING EXPORT SALES**§ 1488.3 General.**

When considering the extension of CCC credit for the purpose of financing agricultural commodities, CCC will take into account the extent to which CCC credit financing will:

(a) Permit U.S. exporters to meet competition from other countries.

(b) Prevent a decline in U.S. commercial export sales.

(c) Substitute commercial dollar sales for sales made pursuant to Pub. L. 480 or other concessional programs.

(d) Result in a new use of the agricultural commodity in the importing country.

(e) Permit expanded consumption of agricultural commodities in the importing country and thereby increase total commercial sales of agricultural commodities to the importing country.

§ 1488.4 Submission of requests for sale registrations.

(a) An eligible exporter shall submit a request for a sale registration for financing to the office specified in § 1488.22.

(b) Requests for sale registrations shall be in writing. If such a request is made by telephone, it must be confirmed by letter or wire.

(c) The total amount requested to be registered under a sale shall not exceed the sale contract value, including the upward tolerance, if any.

(d) Requests for sale registration shall incorporate by reference all terms and conditions of GSM-5. The following information shall also be in-

cluded in the exporter's request for a sale registration:

(1) The name, class, grade, or quality, as applicable, and quantity of the commodity to be exported.

(2) The country of destination.

(3) The port value of the commodity to be exported and the sale contract tolerance, if applicable.

(4) The date of sale and exporter's sale number.

(5) The date of delivery or the period for delivery and the month in which application for payment will be submitted.

(6) The financing period.

(7) Whether the bank obligation assuring payment of the account receivable will be issued by a U.S. bank, branch bank, or foreign bank. If it will be issued by a foreign bank, its name and address, and the name of the confirming U.S. bank, branch bank, or agency bank (if approved as provided in § 1488.12b), and the percentage of confirmation.

(8) The name and address of the foreign importer.

(9) If delivery of the commodity to be exported is before export in a warehouse, the name and address of the warehouse to which delivery is to be made.

(10) If the commodity will be sold through an intervening purchaser, the name and address of the intervening purchaser, and a statement that the sale of the commodity is or will be conditioned on its resale by the intervening purchaser and that the commodity will be shipped directly to the foreign importer in the destination country specified in paragraph (d)(2) of this section pursuant to a contract in which the foreign importer agrees to pay the U.S. exporter the amount to be financed in accordance with the terms of GSM-5 financing agreement.

(11) Any additional information as determined by CCC.

[42 FR 10999, Feb. 25, 1977, as amended by Amdt. 5, 43 FR 25992, June 16, 1978]

§ 1488.5 Acceptance of sale registrations.

(a) Upon receiving a request for a sale registration complying with the applicable provisions of this subpart,