

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1493

[RIN 0551-AA30]

Commodity Credit Corporation Supplier Credit Guarantee Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule with request for comment.

SUMMARY: The Commodity Credit Corporation (CCC) proposes to establish as a new subpart D of 7 CFR Part 1493, the Supplier Credit Guarantee Program (SCGP), as a variant of the Export Credit Guarantee Program (GSM-102), which is provided for under subpart B of 7 CFR Part 1493. The SCGP is designed to assist exporters of U.S. agricultural commodities who wish to provide relatively short term (up to 180 days) credits to their importers. Under SCGP, CCC will guarantee payment of such credits by the importer, and the exporter may assign such guarantees to an eligible U.S. financial institution.

The SCGP is designed to offer certain advantages to U.S. exporters and importers that are not available under standard GSM-102 terms. Specifically, under SCGP there will be no requirement of a foreign bank letter of credit to ensure payment of the export transaction. Instead, CCC will ensure payment of the obligation of the importer due the U.S. exporter. The importer will benefit by avoiding the cost of opening a bank letter of credit. In addition, there will be fewer delays associated with opening a letter of credit. Finally, because the importer, rather than a foreign bank, will be the borrower, the importer will enjoy the full benefit of the credit terms guaranteed by CCC.

While offering these advantages, SCGP poses corresponding financial risks to the CCC. To provide an incentive to U.S. exporters and their assignees to evaluate carefully the

credit-worthiness of individual importers, CCC expects to announce lower levels of coverage for principal and/or interest under SCGP than under normal GSM-102 terms. Additionally, guarantee fees charged to exporters will likely be higher than GSM-102 fees for comparable credit periods.

Aside from these changes, CCC proposes to operate SCGP in essentially the same fashion as GSM-102, and under nearly identical regulatory provisions (except where conforming changes are required in light of unique SCGP features). Exporters who have established eligibility to participate in GSM-102 will automatically be eligible to participate in SCGP.

DATES: Comments on this proposed rule must be received by September 18, 1995 to be assured of consideration.

ADDRESSES: Comments must be submitted in writing to L. T. McElvain, Director, CCC Operations Division, Foreign Agricultural Service, U.S. Department of Agriculture (USDA), Ag Box 1035, Washington, DC 20250-1035; FAX (202) 720-2949. All comments received will be available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: L. T. McElvain, Director, CCC Operations Division, at the address stated above. Telephone (202) 720-6211. The USDA prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs and marital or familial status. Persons with disabilities who require alternative means for communication of program information (braille, large print, audiotape, etc.) should contact the USDA Office of Communications at (202) 820-5881 (voice) or (202) 720-7808 (TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed 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.

Executive Order 12372

This program is 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).

Paperwork Reduction Act

The paperwork requirements which are imposed by the current regulations found at 7 CFR Part 1493 were approved by the OMB under the Paperwork Reduction Act of 1980. The OMB assigned number for those requirements is OMB No. 0551-0004. The public reporting burden for collections made under this new subpart D is estimated to average 0.18 hours per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This proposed rule has been submitted for review. It is expected that OMB will assign it a control number for the purposes of the Paperwork Reduction Act. Send comments regarding this burden estimate or any other aspects of this collection, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRA, Room 404-W, Washington D.C. 20250; and to the OMB, Paperwork Reduction Project, Washington, D.C. 20503.

Executive Order 12778

This proposed rule has been reviewed under the Executive Order 12778, Civil Justice Reform. The proposed rule would have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The rule would not have retroactive effect. The proposed rule requires that certain administrative remedies be exhausted before suit may be filed.

The USDA is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome and are easy for the public to understand, use or comply with. In short, the Department

is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations.

Preliminary Economic Impact Analysis

The Preliminary Economic Impact Analysis of the options considered in developing this proposed rule and the potential impact of the Supplier Credit Guarantee Program (SCGP) is available upon request from Mary T. Chambliss, Deputy Administrator, Export Credits, FAS/USDA, Ag Box 1030, Washington, DC 20250-1030; phone (202) 720-6301; fax (202) 720-0727. The analysis can be summarized as follows: USDA administers two active export credit guarantee programs: the Export Credit Guarantee Program (GSM-102) offering credit guarantees for up to 3 years, and the Intermediate Export Credit Guarantee Program (GSM-103) offering credit guarantees from 3-10 years. In the past two to three years, use of GSM-102/103 has been considerably below budgeted program levels. This has led CCC to consider new programs that could supplement the GSM-102/103 programs.

The program options considered were a Serial Guarantee Program under which CCC would issue a guarantee to a U.S. exporter covering payment by the foreign buyer for each of a series of "back to back" export deliveries in small unit volumes of fairly homogeneous commodities; a Short Term Insurance Program which would permit CCC to issue insurance policies directly to U.S. banks (and to exporters offering supplier credits) to cover credits extended to foreign buyers of U.S. agricultural commodities and products; and a SCGP which would be a variant of the GSM-102 program to assist exporters of U.S. agricultural commodities who wish to provide relatively short term (up to 180 days) credits to the importer.

Of the three options considered, the SCGP was determined to be the program that was most likely to satisfactorily address the problems that were causing under utilization of the GSM-102/103 programs. At the same time, the SCGP could be operated within the existing program level for the CCC export credit guarantee programs. A letter of credit would not be required from the foreign bank, allowing the importer to directly enjoy the benefits of credit terms extended by the exporter and guaranteed by CCC. Finally, it appeared that the most attractive features of the other options could be either built into existing GSM-102/103 regulations, or into the SCGP option.

Subsidy of \$3.5 million for the SCGP was derived using costing and risk assessment methodologies and models similar to those used to develop cost estimates for the GSM-102/103 programs. However, as the program evolves, risk assessment techniques and perhaps models that appropriately capture economic and other defining characteristics of this program are likely to be developed for use in gauging future program costs. Benefits derived from implementing the SCGP would equal the costs of the program even if additionality of the SCGP were only slightly higher than one and one-half percent.

The SCGP will be implemented in early FY 1996 and will be administered under regulations published in the Federal Register and by Program Announcements and Notices to Participants issued by CCC. It will be implemented under the general administrative responsibility of the General Sales Manager (GSM), FAS, USDA. The review and payment of claims for loss will be administered by the Office of the Controller, CCC.

Request for Public Comment

Comments are requested with respect to this proposed rule and such comments shall be considered in developing the final rule.

Background

A. Interchangeability of SCGP and GSM-102 program.

The SCGP and GSM-102 program will be considered interchangeable mechanisms for advancing the purposes set forth in 7 CFR Part 1493, subpart A. Country allocations of credit guarantee availabilities for the two programs will be decided jointly, under the same overall country exposure limits, with the objective of achieving the best mix of the two types of guarantees.

B. Description and advantages of SCGP.

SCGP will offer certain advantages to U.S. exporters and importers that are not available under standard GSM-102 terms. Most importantly, exporters will be able to apply to CCC for guarantees of repayment of credits they extend to importers without the requirement that the importer cause to be opened, by an eligible foreign bank, a letter of credit. Under SCGP, CCC will guarantee payment of the importer (importer obligation) to the exporter. The importer will benefit by avoiding the cost of opening a bank letter of credit. In addition, there will be fewer delays associated with opening a letter of credit. Finally, because the importer, rather than a foreign bank, will be the

borrower, the importer will enjoy the full benefit of the credit terms guaranteed by CCC.

C. How certain SCGP provisions differ from GSM-102.

While offering the above advantages, SCGP poses corresponding financial risks to the CCC. By taking importer risk, rather than foreign bank risk under standard GSM-102 terms, CCC recognizes that a higher rate of default in payments to exporters or their assignees could occur. Accordingly, the following SCGP features are modifications of GSM-102 program features.

(1) *Importer obligation.* The definition of importer obligation is found at § 1493.410(n). The importer obligation must be in the form of a fixed rate or a floating rate promissory note which conforms with the provisions set forth in § 1493.470. The promissory note(s) must provide for payment in U.S. dollars, on a specified date, and must be made in favor of the exporter by the importer. In order to assure consistency, the promissory note(s) contains mandatory provisions. However, CCC gives program participants the choice of certain additional provisions which may be incorporated, without written consent of CCC, into the promissory note(s). No other form of importer obligation may be used.

(2) *Coverage.* To provide an incentive to U.S. exporters and their assignees to evaluate carefully the credit risk posed by individual importer, CCC expects to announce lower levels of coverage for principal and/or interest under SCGP than are available under current GSM-102 terms. The amount of coverage is not specified in the proposed regulations because CCC wishes to retain the ability to adjust coverage as necessary, given its experience in operating the program. At present, CCC is considering inaugurating the program with maximum principal coverage of 50 percent of port value, and no interest coverage. For illustrative purposes only, Appendix A to § 1493.530 uses 60 percent coverage to compute CCC's obligations under a hypothetical payment guarantee which provides for interest coverage as well. Comments are especially invited on the matter of coverage levels in the SCGP.

(3) *Guarantee fee.* Guarantee fees charged to exporters will likely be higher than GSM-102 fees for comparable credit periods. One approach being considered by CCC is charging a uniform fee (irrespective of the eligible country in which the importer is located and irrespective of the length of the credit period) in the

mid-point of the range of insurance premiums for good risk countries charged by Eximbank in its short-term, single-buyer insurance program. Currently, this would be a fee of approximately 95 cents per \$100 of guarantee coverage. Fees cannot exceed \$1.00 per \$100 of guarantee coverage, in accordance with section 211(b)(1)(B) of the Agricultural Trade Act of 1978 (7 U.S.C. 5641(b)(1)(B)). Comments are especially invited on the matter of the guarantee fee level in the SCGP.

(4) *Length of credit period.* SCGP guarantees would be available for credit periods not to exceed 180 days.

(5) *Application.* Although CCC does not intend to routinely conduct independent evaluations of the creditworthiness of individual importers, it proposes to reserve the right to require exporters, in the process of applying for an SCGP guarantee, to provide additional information at the exporter's disposal concerning the importer. It is expected that this requirement, if imposed, would be primarily with respect to previous transactions with importers whose obligations CCC has not previously guaranteed.

(6) *Ineligible exporter.* This provision has been added as paragraph (c) of § 1493.430, Application for payment guarantee. It is intended to prevent a situation in which CCC would receive a claim for a loss from an exporter which directly or indirectly owns or controls, or is owned or controlled, by the importer which is responsible for the default.

D. Other provisions.

Aside from the changes outlined above, CCC proposes to operate SCGP in essentially the same fashion as GSM-102, and under identical regulatory provisions (except where conforming changes are required in light of unique SCGP features). Although SCGP and GSM-102 will be used interchangeably as discussed in A above, separate program announcements and notices could be issued by CCC for the two programs.

Among the key features of GSM-102 that will also be applicable to SCGP are:

(a) Information required to be submitted by the exporter to establish eligibility (exporters which have already established eligibility to participate in GSM-102 would automatically be eligible to participate in SCGP) [§ 1493.420];

(b) The requirement that the exporter have a firm export sale before submitting an application to CCC [§ 1493.430(a)];

(c) The requirement that the exporter make a number of certifications,

including that the commodity or product to be exported meets the definition of United States agricultural commodity [§ 1493.410(x)];

(d) Ineligibility of certain exports, including those with a date of export prior to the date of the exporter's application to CCC for a payment guarantee [§ 1493.450(f)];

(e) Non-refundability of guarantee fees paid by the exporter [§ 1493.460(d)];

(f) Time limits for the submission of evidence of export reports [§ 1493.480(b)];

(g) The requirement to report to CCC any discounts or allowances provided to the importer [§ 1493.430(a)(11) and § 1493.480(a)(8)], and to certify, both at time of application and submission of evidence of export reports, that no corrupt payments or extra sales and services or other items extraneous to the transaction were provided [§ 1493.440(b) and § 1493.490(d)];

(h) The requirement that the exporter retain documentation of proof of entry of the eligible commodity into the eligible country [§ 1493.500(b)];

(i) The requirement that the exporter and the exporter's assignee pay immediately to CCC any monies for a defaulted payment recovered from any source whatsoever [§ 1493.530(b)]; and

(j) The liability of the exporter to CCC for fraud or any material breach of any contractual obligation, certification, or warranty [§ 1493.530(d)].

List of Subjects in 7 CFR Part 1493

Administrative practice and procedures, Agriculture, Agricultural commodities, Credits, Exports, Guarantees, Reporting and recordkeeping requirements.

PART 1493—[AMENDED]

Accordingly, part 1493 of title 7 is amended by adding and reserving a subpart C and adding subpart D reading as follows:

Subpart D—CCC Supplier Credit Guarantee Program

Sec.	
1493.400	General statement.
1493.410	Definition of terms.
1493.420	Information required for program participation.
1493.430	Application for a payment guarantee.
1493.440	Certification requirements for a payment guarantee.
1493.450	Payment guarantee.
1493.460	Guarantee rates and fees.
1493.470	Importer obligation.
1493.480	Evidence of export.
1493.490	Certification requirements for evidence of export.
1493.500	Proof of entry.
1493.510	Notice of default and claims for loss.

1493.520 Payment for loss.

1493.530 Recovery of losses.

1493.540 Miscellaneous provisions.

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

Subpart D—CCC Supplier Credit Guarantee Program

§ 1493.400 General statement.

(a) *Overview.* (1) This subpart contains the regulations governing the operations of the Supplier Credit Guarantee Program (SCGP). The restrictions and criteria set forth at subpart A for the Commodity Credit Corporation (CCC) Export Credit Guarantee Program (GSM-102) and the Intermediate Credit Guarantee Program (GSM-103) will apply to this subpart. The SCGP was developed to expand U.S. agricultural exports by making available payment guarantees to encourage U.S. exporters to extend financing on credit terms not to exceed 180 days to importers of U.S. agricultural commodities.

(2) The SCGP operates in cases where credit is necessary to increase or maintain U.S. exports to a foreign market and where private U.S. exporters would be unwilling to provide financing without CCC's guarantee. The program is operated in a manner intended not to interfere with markets for cash sales. The program is 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 this program is the SCGP payment guarantee (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, where applicable, interest due from, but not paid by, the importer incurring the obligation 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 government, financing and incurs a substantial portion of the risk of default by the importer. CCC assumes this risk, in order to be able to operate the program for the purposes specified in § 1493.2.

(b) *Credit facility mechanism.* (1) For the purpose of the SCGP, 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 under an unconditional and irrevocable importer obligation to a U.S. exporter payable in U.S. dollars, as further described in § 1493.470.

(2) The exporter may assign the right to proceeds under the importer 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 importer obligation.

(3) The SCGP payment guarantee is 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 importer under the importer's obligation.

(c) *Program administration.* The SCGP will be administered pursuant to subpart A and this subpart and any Program Announcements and Notices to Participants issued by CCC pursuant to, and not inconsistent with, this subpart. This program is 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 § 1493.410(c), "Contacts P/R").

(d) *Country allocations and program announcements.* From time to time, CCC will issue a Program Announcement to announce a SCGP 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 importers 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 "undesigned" 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 "undesigned" portion of the total country allocation may then be designated for a specific commodity. Program Announcements that include an "unallocated" or "undesigned" dollar amount will contain further information on the "unallocated" or "undesigned" portion of the country allocation.

§ 1493.410 Definition of terms.

Terms set forth in this subpart and in CCC Program Announcements, Notices to Participants, and any other CCC-originated documents pertaining to the SCGP 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 SCGP. 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 § 1493.420.

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

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

(l) *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.

(m) *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.

(n) *Importer obligation.* A promissory note or notes that conforms with the provisions of § 1493.470.

(o) *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).

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

(q) *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.

(r) *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 the regulations in this subpart 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 the regulations in this subpart, before the exporter's application for such payment guarantee is approved.

(s) *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 an importer under the importer obligation.

(t) *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.

(u) *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.

(v) *SCGP.* The Supplier Credit Guarantee Program described by this subpart.

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

(x) *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).

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

§ 1493.420 Information required for program participation.

Before CCC will accept an application for a payment guarantee under the SCGP, the applicant must qualify for participation in this program. 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 program.

(a) *Submission of documentation.* In order to qualify for participation in the SCGP, 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 export sale contemplated by the applicant under this subpart;

(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 is qualified under subpart B, § 1493.30 is qualified under this section to submit applications for a SCGP payment guarantee, and the information provided by the exporter pursuant to § 1493.30 will be deemed to also have been provided under this section. Each application must include the statement required by § 1493.430(a)(17) incorporating the certifications of § 1493.440, including the certification in § 1493.440(e) that the information previously provided pursuant to § 1493.420 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 SCGP 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.

§ 1493.430 Application for a 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 the exporter chooses, 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) The term length for the credit being extended and the intervals between principal payments for each shipment to be made under the export sale;

(15) 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;

(16) Other information as specified in Program Announcements and Notices to Participants, as applicable; and

(17) The exporter's statement, "ALL SECTION 1493.440 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 § 1493.440.

(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 § 1493.450(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.

(c) *Ineligible exporter.* An exporter will be ineligible to obtain a payment guarantee if such exporter:

(1) Directly or indirectly owns or controls the importer;

(2) Is directly or indirectly owned or controlled by the importer; or

(3) Is directly or indirectly owned or controlled by a person(s) or entity(ies) which also owns or controls the importer.

§ 1493.440 Certification requirements for a payment guarantee.

By providing the statement in § 1493.430(a)(17), 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 § 1493.430(a)(17), 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 § 1493.410(x);

(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 § 1493.420 has not changed, the exporter still meets all of the qualification requirements of § 1493.420, 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 SCGP 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.

§ 1493.450 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 importer fails to

pay under the importer obligation. Payment by CCC will be in U.S. dollars.

(b) *Period of guarantee coverage.* The payment guarantee will apply to a credit period not exceeding 180 days beginning either on the date(s) of export(s) or from 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 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 guarantee coverage under this subpart, 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 § 1493.410(x). 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.)

§ 1493.460 Guarantee rates and fees.

(a) *Guarantee fee rates.* The current payment guarantee fee rate(s) will be available by Program Announcement.

(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.

§ 1493.470 Importer obligation.

A promissory note(s) must evidence the unconditional obligation of the importer to pay the exporter. All payment terms shall be consistent with the credit terms of the applicable payment guarantee. Each promissory note(s) shall be a fixed rate note or a floating rate note as set forth in paragraphs (a) or (b) of this section. The promissory note(s) must contain the provisions set forth in paragraphs (a) or (b) of this section and may include, without prior written consent of CCC one or more of the provisions set forth in paragraph (d) of this section. No other form of promissory note may be used. Program participants should also note the additional instructions set forth in paragraph (c) of this section.

(a) *Fixed Rate Note.*

Name of Maker _____

PROMISSORY NOTE

U.S. \$_____, 199—
FOR VALUE RECEIVED, [*Name and address of Importer*] ("Maker") by this promissory note ("Note") hereby unconditionally promises to pay to the order of [*Name and address of exporter*] ("Lender"), or its successor(s) or assign(s), at [*Name and address of U.S. financial institution*] the principal sum of [*amount in words*] U.S. dollars (\$_____) as hereinafter provided [if interest is payable add: and to pay interest on the principal balance hereof from time to time outstanding, as hereinafter provided at the rate of percent (____%) per annum].

Interest shall be calculated for actual time elapsed from (date). Interest shall be based on a (360 or 365 day year). Principal and interest shall be paid as follows:

Date	\$ principal due	Interest due, if any
_____	_____	_____
_____	_____	_____

All principal and interest payable under this Note are payable in lawful money of the United States of America in immediately available funds without deduction for or on account of any present or future taxes, duties, or other charges levied or imposed on this Note or the proceeds or holder hereof by the Government of [*Country of Maker*] or any political subdivision or taxing authority thereof.

The Maker hereby waives diligence, presentment, demand, protest and notice of protest, demand and dishonor, and nonpayment of this Note.

No delay or omission on the part of the holder here in exercising any right hereunder shall operate as a waiver of such right or of any other right under this Note, nor shall any waiver on one occasion be construed as a bar to or waiver of any such right on any future occasion. No waiver shall be effective unless in writing and signed by the holder.

This Note shall be governed by and construed in accordance with the laws of the State of [*Specify a State reasonably related to the transaction*], United States of America.

Name of Maker _____

By: _____
Name: _____

(Print)

Title: _____

(b) *Floating Rate Note.*

Name of Maker _____

PROMISSORY NOTE

U.S. \$_____, 199—
FOR VALUE RECEIVED, [*Name and address of Importer*] ("Maker") by this promissory note ("Note") hereby unconditionally promises to pay to the order of [*Name and address of exporter*] ("Lender"), or its successor(s) or assign(s), at [*Name and address of U.S. financial institution*] the principal sum of [*amount in words*] U.S. dollars (\$_____) in installments as hereinafter provided and to pay interest on the principal balance(s) hereof from time to time outstanding, with interest accruing for actual days elapsed from (date) calculated on the basis of a (360 or 365) day year, at the rate to be determined by (adding) (subtracting) _____ percent (____%) per annum (to) (from) the annual rate of interest [*Specify method or source for calculating rate of interest and adjustment procedure*].

Principal and interest shall be paid as follows:

Principal due date	\$ principal due	Interest due date
_____	_____	_____
_____	_____	_____

All principal and interest payable under this Note are payable in lawful money of the United States of America in immediately available funds without deduction for or on account of any present or future taxes, duties, or other charges levied or imposed on this Note or the proceeds or holder hereof by the Government of [*Country of Maker*] or any political subdivision or taxing authority thereof.

The Maker hereby waives diligence, presentment, demand, protest and notice of protest, demand and dishonor, and nonpayment of this Note.

No delay or omission on the part of the holder here in exercising any right hereunder

shall operate as a waiver of such right or of any other right under this Note, nor shall any waiver on one occasion be construed as a bar to or waiver of any such right on any further occasion. No waiver shall be effective unless in writing and signed by the holder.

This Note shall be governed by and construed in accordance with the laws of the State of [*Specify a State reasonably related to the transaction*], United States of America.

Name of Maker _____

By: _____

Name: _____

(Print)

Title: _____

(c) *Additional instructions.* When preparing the promissory note, program participants should make certain of the following:

(1) In order to ensure that the payment guarantee will cover any defaults, the lender must ensure that the payment schedule is consistent with the credit terms specified in the payment guarantee. For example, the last payment due must be within the actual terms of the guarantee coverage. The coverage expiration date is based on the date of export as defined in § 1493.401(d) or the date when interest begins to accrue, whichever is earlier (§ 1493.450(b));

(2) Personal makers should sign in their personal capacities only. Corporate makers should sign only in their corporate capacities with proper reference to their corporate titles; and

(3) In a floating rate note the method or source for calculating the annual rate of interest and any applicable adjustment procedure is adequately described. An example of an appropriate description of the source would be: "the annual rate of interest announced by (specify U. S. commercial bank) as its prime rate, such rate to be adjusted on each date any change announced by that bank becomes effective."

(d) *Optional provisions.* The following optional provisions may be incorporated into the promissory note:

(1) In the event that any amount of the principal hereof or interest on this Note is not paid when due, the Maker, to the extent permitted by applicable law, shall pay on demand interest on such unpaid amount from the date such amount was due to the date such amount is paid in full at the rate of _____ percent per annum ("late interest"), but in no event to exceed the maximum rate permitted by applicable law;

(2) Each payment hereunder shall be credited first to late interest then due and payable, then to ordinary interest then due and payable, and the

remainder thereof, if any, to the unpaid principal balance of this Note;

(3) The Maker shall have the right, at any time or from time to time, to prepay all or any part of the principal hereof, provided any accrued interest on amount prepaid is also paid, and any such prepayment shall be applied to the remaining principal installments in the inverse order of their maturities;

(4) Upon default in the prompt and full payment of any installment of principal or interest on this Note, the entire outstanding principal amount hereof and interest on the Note to the date of payment shall immediately become due and payable at the option and upon the demand of the holder hereof; and/or,

(5) Maker further agrees to pay all reasonable costs of collection, including reasonable attorneys' fees (inclusive of any appellate or bankruptcy proceedings) in case any payment of principal or interest is not paid by the due date thereof, whether suit be brought or not.

§ 1493.480 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 any other program if any portion of the export sale was also approved 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; and

(10) The exporter's statement, "ALL SECTION 1493.490 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 § 1493.490.

(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.

§ 1493.490 Certification requirements for evidence of export.

By providing the statement contained in § 1493.480(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 SCGP 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 § 1493.480(a)(10), certifies that:

(a) The agricultural commodity or product exported under a payment guarantee is a United States agricultural commodity or product thereof, as defined in § 1493.410(x);

(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) There is an importer obligation as defined in § 1493.410(n) to cover the exported 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 § 1493.420 has not changed, the exporter still meets all of the qualification requirements of § 1493.420 and the exporter will immediately notify CCC if there is a change of circumstances which would cause it to fail to meet such requirements.

§ 1493.500 Proof of entry.

(a) *Diversions.* The diversion of commodities covered by a 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 SCGP 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 § 1493.510(b)(4)(ii).]

§ 1493.510 Notice of default and claims for loss.

(a) *Notice of default.* If the importer fails to make payment pursuant to the terms of the importer 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 importer (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 importer;
- (4) Due date;
- (5) Total amount of the defaulted payment due, indicating separately the amounts for principal and interest;
- (6) Date of importer's refusal to pay, if applicable; and
- (7) Reason for importer'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 importer 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) The importer obligation;
 - (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 importer obligation; and

(v) A copy of the report(s) of export previously submitted by the exporter to CCC pursuant to § 1493.480(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 importer 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.

§ 1493.520 Payment for loss.

(a) *Determination of CCC's liability.* Upon receipt in good order of the information and documents required under § 1493.510, 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 receipt 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 or the importer obligation 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 § 1493.480 and § 1493.490, 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 § 1493.510.

§ 1493.530 Recovery of losses.

(a) *Notification.* Upon payment of loss to the exporter or the exporter's assignee, CCC will notify the importer 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 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, 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 payment guarantee, CCC pro rates 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 § 1493.530, 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 SCGP. 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 § 1493.440(b) and § 1493.490(d) or the failure of an exporter to comply with the provisions of § 1493.500 or § 1493.540(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 importer.

Appendix A to § 1493.530—Illustration of Pro Rata Allocation of Recoveries

The following example illustrates CCC's policy, as set forth in § 1493.530(c), regarding pro rata sharing of recoveries made for claims filed under the SCGP. A typical case might be as follows:

1. The U.S. exporter enters into a \$200,000, 180-day credit arrangement with the importer calling for two equal payments of principal and two equal payments of interest at a rate of 10 percent per annum and a penalty interest rate of 12 percent per annum (basis 360 days) on overdue amounts until the overdue amount is paid. (Basis for interest calculation may be 360 or 365 days.)

2. The importer fails to make the final principal payment of \$100,000 and an interest payment of \$2,500.00, (10% per annum for 90 days on \$100,000, basis 360 days), both due on January 31.

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

4. CCC's guarantee states that CCC's maximum liability is limited to 60 percent of the principal amount due (\$60,000) and interest at a rate of 8 percent per annum (basis 365 days) on 60 percent of the principal outstanding (\$1,183.56) (8% per

annum for 90 days on \$60,000). (CCC's basis for interest calculation is 365 days.)

5. CCC pays the claim on February 22.

6. The average investment rate of the most recent 91-day Treasury Bill auction average which has been published by the Department of Treasury in effect on the date of nonpayment by CCC (January 31) is 7 percent. (CCC's late interest rate.)

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—(60% \$100,000).	\$60,000.00
(b) Interest coverage—(8% per annum for 90 days on \$60,000, basis 365 days).	\$1,183.56
	\$61,183.56
(c) Late interest due from CCC (7% per annum for 11 days on \$61,183.56, basis 365 days).	\$129.07
(d) Amount paid by CCC on February 22.	\$61,312.63

2. Importer's obligation under the importer obligation:

(a) Principal due January 31	\$100,000.00
Interest due January 31 (10% per annum for 90 days on \$100,000, basis 360 days).	\$ 2,500.00
	\$102,500.00
(b) Penalty interest due (12% per annum for 22 days on \$102,500.00, basis 360 days).	\$751.67
(c) Amount owed by importer as of February 22.	\$103,251.67

3. Amount of importer's obligation not covered by CCC's payment guarantee: \$41,939.04 (\$103,251.67 - \$61,312.63).

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 importer 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 importer is \$103,251.67, CCC would be entitled to 59.38 percent (\$61,312.63 divided by \$103,251.67) and the holder of the payment guarantee would be entitled to 40.62 percent (\$41,939.04 divided by

\$103,251.67) 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, § 1493.530(b) would apply.

§ 1493.540 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;

(2) Owns or controls the entity issuing the importer obligation; or

(3) Is owned or controlled by an entity that owns or controls the entity issuing the importer obligation.

(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) Owns or controls the entity issuing the importer obligation; or

(3) Is owned or controlled by an entity that owns or controls the entity issuing the importer obligation.

(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 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 § 1493.500(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 issued pursuant to this subpart. Applicants for payment guarantees 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 the regulations in this subpart 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 submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980.

Signed this 19th day of May, 1995 at Washington, DC.

Christopher E. Goldthwait,

*General Sales Manager and Vice President,
Commodity Credit Corporation.*

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BILLING CODE 3410-10-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95-CE-17-AD]

Airworthiness Directives; Fairchild Aircraft SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Fairchild Aircraft SA226 and SA227 series airplanes. The proposed action would require replacing the nuts that attach the power control cable to the lever attach point clevis with nuts that have safety wire holes, and safety wiring the power control cable to the lever attach point clevis; and inspecting to assure that the power cable is securely attached to the power control cable bracket, and correcting any attachment problems. Reports of power control cable attaching hardware failure on two of the affected airplanes prompted the proposed action. In one of these instances, the power control cable disconnected from the lever attach point clevis, resulting in engine shutdown. The actions specified by the proposed AD are intended to prevent such power control cable disconnection, which, if not detected and corrected, could result in engine shutdown and subsequent loss of control of the airplane.

DATES: Comments must be received on or before September 15, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95-CE-17-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279-0490; telephone (210) 824-9421; facsimile (210) 820-8609. This information may also be examined at the FAA, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT:

Alma Ramirez-Hodge, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193-0150; telephone (817) 222-5147; facsimile (817) 222-5959.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95-CE-17-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95-CE-17-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received reports of power control cable attaching hardware

failure on two Fairchild Aircraft SA226 and SA227 series airplanes. In one of these incidents, the jam nut came loose and the threaded portion of the ball joint backed completely out of the clevis. This caused the power lever to disconnect from the clevis, which caused one of the engines to shut down.

Fairchild Aircraft has issued Service Bulletin (SB) 226-76-009; SB 227-76-004; and SB CC7-76-001, all Issued: January 6, 1995. These service bulletins specify procedures for accomplishing the following on Fairchild Aircraft SA226 and SA227 series airplanes:

- Replacing the nuts that attach the power control cable to the lever attach point clevis with nuts that have safety wire holes, and safety wiring the power control cable to the lever attach point clevis; and
- Inspecting to assure that the power cable is securely attached to the power control cable bracket, and correcting any attachment problems.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent the power control cable from disconnecting from the lever attach point clevis, which, if not detected and corrected, could result in engine shutdown and subsequent loss of control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop in other Fairchild Aircraft SA226 and SA227 series airplanes of the same type design, the proposed AD would require replacing the nuts that attach the power control cable to the lever attach point clevis with nuts that have safety wire holes, and safety wiring the power control cable to the lever attach point clevis; and inspecting to assure that the power cable is securely attached to the power control cable bracket, and correcting any attachment problems. Accomplishment of the proposed actions would be in accordance with the previously referenced service bulletins, as applicable.

The FAA estimates that 779 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately \$60 an hour. Parts would consist of common hardware and the cost would vary; however, for the purposes of this AD, a figure of \$20 is used. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$202,540. This figure is based on the assumption that no owner/operator of the affected