

under one of these programs should be included, as applicable;

(16) Other information as requested by CCC or 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 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 pay-

ment guarantee is a U.S. agricultural commodity as defined by §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.

[61 FR 33831, July 1, 1996, as amended at 62 FR 24561, May 6, 1997]

**§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, unless CCC determines with respect to

the particular transaction and claim that the guaranteed portion of the port value exceeded the prevailing U.S. market value for the same, or same type of agricultural commodity or product. In making this determination, CCC will adjust the prevailing U.S. market value for estimated freight and/or insurance costs if the export sale was made on a CFR or CIF basis. 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 for an amendment to the payment guarantee, and by paying the additional amount of fee applicable. If such amendment to the payment guarantee is not filed with CCC by the exporter within 30 days after the date of the last export against the sales contract, CCC may determine not to reserve the coverage originally set aside for the exporter.

(f) *Ineligible exports.* Commodities with a date of export prior to the date of receipt by CCC of the exporter's telephonic or written application for a payment guarantee, or with a date of export made after the final date for export shown on the payment guarantee or any amendments thereof, are ineligible for 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 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 program: Export Enhancement Program, Dairy Export Incentive Program, Sunflowerseed Oil Assistance Program, or Cottonseed Oil Assistance Program; and

(10) The exporter's statement, "ALL SECTION 1493.480 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 § 1493.480.

(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, as amended (7 U.S.C. 5712) for exports of wheat and wheat flour, feed grains, oilseeds, cotton, and other agricultural commodities and products thereof.