

§ 1493.310

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by the shipping company with the on-board 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 emerging market;

(iii) The exporter's sales invoice(s) showing the value and basis of sale (e.g., FOB, CFR, or CIF) or, if services are billed separately, documents that the exporter or its assignee relied upon in extending the credit to the issuing foreign bank;

(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. The instrument must reference the applicable foreign bank letter of credit and the related obligation, if applicable; and

(v) A copy of the evidence of export report(s) previously submitted by the exporter to CCC pursuant to § 1493.280.

(c) *Subsequent claims for defaults on installments.* The exporter or an exporter's assignee need only provide one claim which meets full documentation requirements relating to a covered transaction. For subsequent claims relating to such failures of the foreign bank to make scheduled installments on the same export, the exporter or the exporter's assignee need only submit to CCC a notice of such failure containing the information stated in paragraphs (b) (1), (2), and (3) of this section; an instrument of subrogation as per paragraph (b)(4)(iv) of this section, and the date the original claim was filed with CCC.

§ 1493.310 Payment for loss.

(a) *Determination of CCC's liability.* Upon receipt in good order of the information and documents required under § 1493.300, CCC will determine whether or not a loss has occurred for which CCC is liable under the facility payment guarantee, this subpart, program announcement(s) and notice(s) to participants. If CCC determines that it is liable to the exporter 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 facility 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 facility payment guarantee, plus eligible interest; or

(2) The guaranteed percentage (as indicated in the facility payment guarantee) of the exported value indicated in the evidence of export report (§ 1493.280(a)(7)), 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 claim was 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 latest average investment rate of the most recent Treasury 91-day bill auction as announced by the Department of Treasury as of the due date.

(d) *Accelerated payments.* CCC will pay claims only for losses on amounts not paid as scheduled. CCC will not pay claims for amounts due under an accelerated payment clause in the export sales contract, the foreign bank's letter of credit, or any obligation owed by the foreign bank to the assignee U.S. financial institution which is related to the foreign bank's letter of credit issued in favor of the exporter, unless it is determined to be in the best interest 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 the value of goods or services covered by a facility 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 §1493.270 and §1493.280 excluding post-export adjustments (i.e., corrections of evidence of export reports); and

(2) The exporter or the exporter's assignee furnishes the statements and documents specified in §1493.300.

§ 1493.320 Recovery of losses.

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

(b) *Receipt of monies.* (1) In the event that monies for a defaulted payment are recovered by the exporter or the exporter's assignee from the importer, the foreign bank or any other source whatsoever, such monies shall be immediately paid to the Treasurer, CCC. If such monies are not received by CCC within 15 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 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 facility payment guarantee for which a claim has been paid by CCC, CCC will pay the holder of the facility 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 days from the date of recovery or 15 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 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 facility payment guarantee.

(c) *Allocation of recoveries.* Recoveries made by CCC from the importer or the foreign bank, and recoveries received by CCC from the exporter, the exporter's assignee or any other source whatsoever, will be allocated by CCC to the exporter or the exporter's assignee and to CCC on a pro rata basis determined by their respective interests in such recoveries. The respective interest of each party will be determined on a pro rata basis, based on the combined amount of principal and interest in default. Once CCC has paid out a particular claim under a facility payment guarantee, CCC prorates any collections it receives and shares these collections proportionately with the holder of the guarantee until both CCC and the holder of the guarantee have been reimbursed in full. Appendix to §1493.320 provides an example of the methodology used by CCC in applying this paragraph (c).

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

(e) *Good faith.* The violation by an exporter of the certifications in §1493.270 or the failure of an exporter to comply with the provisions of §1493.290 or §1493.330(e) will not affect the validity