

**§ 1487.7 How are agreements formalized?**

Following the approval of a proposal, the CCC will enter into a written agreement with the organization that submitted the proposal. This program agreement will incorporate the proposal as approved by the FAS, include a maximum dollar amount that may be reimbursed (the funding level), and identify terms and conditions under which the CCC will reimburse certain costs of the project. Program agreements also will outline any specific responsibilities of the participant, including, but not limited to, the timely and effective implementation of program activities and the submission of a written report(s), on no less than an annual basis, which evaluates the TASC project using the performance measures presented in the approved proposal.

[68 FR 42564, July 18, 2003]

**§ 1487.8 How are payments made?**

(a) *Reimbursement.* (1) Following the implementation of a project for which the CCC has agreed to provide funding, a participant may submit claims for reimbursement of eligible expenses to the extent that the CCC has agreed to pay such expenses. Any changes to approved activities must be approved in writing by the FAS before any reimbursable expenses associated with the change can be incurred. A participant will be reimbursed after the CCC reviews the claim and determines that it is complete.

(2) All claims for reimbursement must be received no later than 90 calendar days following the expiration or termination date of the program agreement. For program agreements which extend beyond twelve months, all claims for reimbursement must be received no later than 90 calendar days following the next anniversary of the effective date of the agreement.

(3) Participants shall maintain complete records of all program expenditures, identified by TASC agreement number, program year, country or region, activity number and cost category. Such records shall be accompanied by original documentation which supports the expenditure and

shall be made available to the FAS upon request.

(4) Participants shall maintain all records and documents relating to TASC projects, including the original documentation which supports reimbursement claims, for a period of 3 calendar years following the expiration or termination date of the program agreement. Such records and documents will be subject to verification by FAS and shall be made available upon request to authorized officials of the U.S. Government. FAS may deny a claim for reimbursement if the claim is not supported by acceptable documentation.

(5) In the event that a reimbursement claim is overpaid or is disallowed after payment already has been made, the participant shall return the overpayment amount or the disallowed amount to the CCC within 30 days after realizing the overpayment or receiving notification of the overpayment or disallowed amount.

(b) *Advances.* Participants may request advances of funds, not to exceed 85 percent of the funding approved in any given program year. All advanced funds must be either fully expended or the balance returned by check made payable to the CCC no later than the 90th calendar day following the date of disbursement of the advance to the participant. Upon the expenditure of advance funds, participants must submit reimbursement claims to offset the advance charged to them.

(c) *Interest.* Participants shall deposit and maintain advanced funds in insured, interest-bearing accounts. Interest earned on outstanding advances must be returned by check made payable to the CCC at the time the advance is either fully expended or itself returned.

[68 FR 42564, July 18, 2003, as amended at 74 FR 22090, May 12, 2009]

**PART 1488—FINANCING OF SALES OF AGRICULTURAL COMMODITIES****Subpart A—Financing of Export Sales of Agricultural Commodities from Private Stocks Under CCC Export Credit Sales Program (GSM-5)**

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Sec.

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AUTHORITY: Sec. 5(f), 62 Stat. 1072 (15 U.S.C. 714c) and sec. 4(a), 80 Stat. 1538, as amended by sec. 101, 92 Stat. 1685 (7 U.S.C. 1707a(a)).

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

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

**GENERAL**

**§ 1488.1 General statement.**

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

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

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

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

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

**§ 1488.2 Definition of terms.**

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

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

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

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

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Export Programs, Office of the General Sales Manager.

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

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

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

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

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

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

a mechanism to establish the price has been agreed upon.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### FINANCING EXPORT SALES

#### § 1488.3 General.

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

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

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

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

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

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

#### § 1488.4 Submission of requests for sale registrations.

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

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

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

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

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

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

(2) The country of destination.

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

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

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

(6) The financing period.

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

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

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

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

(11) Any additional information as determined by CCC.

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

#### § 1488.5 Acceptance of sale registrations.

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

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the Assistant Sales Manager may approve the registration of the sale. If approved, the exporter will be notified in writing of the financing agreement number which will constitute notice that the sale is registered and eligible for financing.

(b) [Reserved]

(c) CCC reserves the right to reject any and all requests for sale registration.

(d) The registration of a sale shall create a financing agreement between the exporter and CCC which shall consist of the exporter's request for a sale registration, CCC's acceptance of the sale registration, the applicable terms and conditions of this subpart, including amendments and supplemental announcements hereunder which are in effect on the date of approval.

(e) The financing agreement may contain such terms and conditions, not inconsistent with GSM-5, as are deemed necessary in the interest of CCC.

(f) An exporter shall promptly notify the Assistant Sales Manager when he is unable to fulfill his obligations under any sale registered with CCC.

[42 FR 10999, Feb. 25, 1977, as amended by Amdt. 6, 43 FR 29933, July 12, 1978]

### § 1488.6 Amendments to financing agreement.

The financing agreement may be amended provided such amendment is in conformity with GSM-5 at the time of amendment and is determined to be in the interest of CCC. Amendments may include extension of the period for delivery or the period for export, and change in the interest rate. After the commodity has been delivered, CCC will consider requests to increase the amount of the sale registration value for any quantity within the tolerance in the sales contract and for carrying charges provided such requests relate to the same sale as originally registered with CCC.

### § 1488.7 Expiration of period(s) for delivery and/or export.

(a) Unless delivery by the exporter to the importer is made within such period as may be provided in the financing agreement or any amendment thereof, or under paragraph (b) of this

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section, the financing agreement will no longer be valid.

(b) If the Assistant Sales Manager determines that delay in delivery was due solely to causes without the fault or negligence of the exporter, the period for delivery may be extended by CCC by the period of such delay.

(c) If delivery is made before export under the terms of the financing agreement, failure to export within the period specified therefor in the financing agreement shall constitute a breach of the financing agreement. In such case, if full payment under the bank obligation or account receivable has not been received, the account receivable and the bank obligation shall, at the option of the Assistant Sales Manager, become immediately due and payable, and liquidated damages shall be payable in accordance with § 1488.11.

### DOCUMENTS REQUIRED FOR FINANCING

### § 1488.8 Documents required after delivery.

(a) CCC will purchase an exporter's account receivable only if the Treasurer, Commodity Credit Corporation, United States Department of Agriculture, Washington, DC 20250, receives the documents specified in paragraphs (b) through (e) of this section and any documentation and certifications required by any supplements to these regulations within forty-five days, or any extension thereof by the Treasurer or Assistant Treasurer, CCC, after date of delivery of commodities exported or to be exported under the financing agreement.

(b) The exporter shall submit a "Combined Application for Disbursement, Assignment of Account Receivable and Certification" which shall include:

(1) A written application for disbursement, showing the financing agreement number and the port value of the commodity delivered.

(2) An assignment of the account receivable arising from the export sale, in form and substance acceptable to CCC.

(3) The exporter's certification (i) that he has entered into a contract to sell an eligible commodity; (ii) of the

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date of sale, the grade, quality, quantity, agreed upon price for the commodity and payment terms and interest in accordance with the financing agreement; (iii) that he has in his files documents evidencing the export sale contract and the obligation of the importer to him for the financed portion of the export sale and will retain and furnish them to CCC on demand until 3 years after the end of the financing period; (iv) that agricultural commodities of the grade, quality, and quantity called for in the exporter's sale as registered with CCC have been delivered to the foreign importer; and (v) that he knows of no defenses to the account receivable assigned to CCC.

(c) A copy of the sales invoice to the foreign importer, or, if the commodity has been sold through an intervening purchaser, a copy of the exporter's sales invoice to the intervening purchaser and of the intervening purchaser's sales invoice to the foreign importer.

(d) A copy of the document evidencing export provided for in §1488.9 and, if the consignee is other than the foreign importer named in the financing agreement, such additional information as CCC may request to show that export was made in accordance with the instructions of, or the export sale contract with, the foreign importer. If delivery is before export in a warehouse acceptable to CCC, the warehouse receipt or other documents acceptable to CCC evidencing delivery of the commodity to the importer or his agent. If delivery is before export in a container or a lash or seabee barge at a U.S. inland or coastal point, for export shipment under a through bill of lading, one copy of the through bill of lading with an onboard (truck, rail car, or lash or seabee barge) endorsement, dated and signed or initialed on behalf of the export carrier. The through bill of lading must be certified by the exporter as being a true copy and must show the quantity, the date, and place of loading the commodity on a truck, or rail car, or lash or seabee barge, the name of the originating carrier, the destination of the commodity, and the name of both the exporter and the importer.

(e) A bank obligation or obligations in accordance with §1488.7(c), §1488.10, §1488.12 and paragraph (i) of this section, naming CCC as beneficiary, in form and substance acceptable to CCC, covering the amount of the application for disbursement, citing the financing agreement number; and providing for the payment of interest in accordance with §1488.14.

(f) On receipt of the documents described in paragraphs (b) through (e) of this section and any documentation and certifications required by any supplements to these regulations, the Treasurer, CCC will pay promptly to the exporter the amount of the account receivable or the dollar amount of sales registered in accordance with §1488.5, whichever is the lesser.

(g) If an acceptable application for disbursement and the supporting documents described in paragraphs (b) through (e) of this section have not been received by CCC within 45 days from the date of the delivery, or any extension thereof by the Treasurer or Assistant Treasurer, CCC, the financing agreement shall be void.

(h) [Reserved]

(i) If for any reason a draft drawn under a foreign bank obligation is dishonored or if the issuing bank is insolvent, in bankruptcy, in receivership, or in liquidation, or has made an assignment for the benefit of creditors, or for any other reason discontinues or suspends payments to depositors or creditors, or otherwise ceases to operate on an unrestricted basis, any balance due on the account receivable assured by the obligation issued by such bank shall, at the option of CCC, become immediately due and payable. CCC may permit the substitution of another acceptable foreign bank obligation covering such balance due if confirmed in accordance with §1488.12.

[42 FR 10999, Feb. 25, 1977, as amended at 42 FR 27569, May 31, 1977; Amdt. 5, 43 FR 25992, June 16, 1978]

### § 1488.9 Evidence of export.

(a) If the commodity is exported by rail or truck, the exporter shall furnish to the Treasurer, CCC, one copy of the bill of lading covering the commodity exported, certified by the exporter as

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being a true copy, and an authenticated landing certificate or similar document issued by an official of the government of the country to which the commodity is exported, showing the quantity, the gross landed weight of the commodity, the place and date of entry, and the name and address of both the exporter and the importer.

(b) If the commodity is exported by ocean carrier, the exporter shall furnish to the Treasurer, CCC, one non-negotiable copy or photo copy or other type of copy of either (1) an on-board ocean bill of lading or (2) an ocean bill of lading with an onboard endorsement, dated and signed or initialed on behalf of the carrier. The bill of lading must be certified by the exporter as being a true copy and must show the quantity, the date and place of loading the commodity, the name of the vessel, the destination of the commodity and the name and address of both the exporter and the importer.

(c) If the commodity is exported by aircraft, the exporter shall furnish to the Treasurer, CCC, one non-negotiable copy of an airway bill, dated and signed or initialed on behalf of the carrier. The airway bill must be certified by the exporter as being a true copy and must show the date and place of loading the commodity, the name of the airline, the destination of the commodity, and the name and address of both the exporter and the importer.

(d) If the exporter is unable to supply documentary evidence of export as specified in this section, he shall submit such other documentary evidence as may be acceptable to CCC.

(e) For commodities transshipped through Canada via the Great Lakes or the St. Lawrence River, the exporter shall certify that the commodity transshipped was produced in the United States.

**§ 1488.9a Evidence of export for commodities delivered before export.**

For commodities delivered before export under a financing agreement for which the financial period is 12 months or less, the exporter shall furnish a certification to the Treasurer, CCC, within 60 days from the date of delivery or such extension of time as may be granted by the Treasurer or Assistant

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Treasurer, CCC, certifying that the commodities have been exported. The certification must include the name of the ocean carrier, the date the commodities were loaded aboard the ocean carrier and the financing agreement number.

[Amdt. 5, 43 FR 25992, June 16, 1978]

**DOCUMENTS REQUIRED AFTER FINANCING**

**§ 1488.10 Evidence of entry into country of destination.**

(a) Commodities exported under a financing agreement must enter the destination country specified in the financing agreement.

(b) For a financing agreement under which the financing period is in excess of 12 months, within 90 days, or such extension of time as may be granted in writing by the Assistant Sales Manager, following shipment from the United States of any agricultural commodity exported under the financing agreement, the exporter shall furnish to the office specified in § 1488.22, documentary evidence verifying entry of the commodity into the country of destination specified in the financing agreement. The documentary evidence must:

(1) Identify the agricultural commodity (or permit identification through supplementary documents also furnished) as that exported under the financing agreement,

(2) State the quantity and date of entry of the commodity into the destination country, and

(3) Be signed by (i) a customs official of the destination country, or (ii) the importer, or (iii) a representative of an independent superintending or controlling firm.

(c) When the commodity enters the country of destination in bond, a statement by the importer will be acceptable which:

(1) Identifies the commodity as that exported under the financing agreement,

(2) States the quantity of the commodity entered under bond and date of entry into the destination country, and

(3) Certifies that the commodity will be withdrawn from bonded storage at a later date for consumption in the destination country.



(d) If the evidence of entry is in other than the English language, the exporter shall also provide an English translation thereof.

(e) Failure to furnish, within the time specified, evidence of entry of the commodity into the country of destination shall constitute prima facie evidence of failure to enter or to cause the entry of the commodity into such country as required. In such case, the financing agreement may be terminated by the Assistant Sales Manager, and if full payment under the bank obligation or account receivable has not yet been received, the bank obligation and the account receivable shall at the option of CCC, become due and payable and liquidated damages shall be payable in accordance with §1488.11. The remedy herein provided shall not be exclusive of other rights available to the Federal government if the commodity enters a country other than that specified in the financing agreement.

#### DELIVERY REQUIREMENTS

##### § 1488.11 Liquidated damages.

Failure of the exporter to export or cause to be exported, within the period provided therefor, any agricultural commodity financed, when delivery is made before export under the terms of the financing agreement, or failure of the exporter to enter or cause the entry of, such commodity into the country of destination, shall constitute a breach of the financing agreement which will result in serious and substantial damage to CCC and to its program. Since it will be difficult, if not impossible, to prove the exact amount of such damage, the exporter shall pay to CCC promptly on demand, as reasonable compensation and not as a penalty, liquidated damages in lieu of probable actual damages, as follows:

(a) For each day of delay in exportation after the final date for exportation, when delivery is made before export under the terms of the financing agreement, .15 percent of the amount financed under the financing agreement for the commodity not exported; (b) for failure to export or cause exportation, when delivery is made before export under the terms of the financing agreement, 5 percent of the amount fi-

nanced under the financing agreement for the commodity not exported; (c) for failure, after exportation, to enter or cause the entry of the commodity into the country of destination, at the rate of 5 percent a year of the amount financed under the financing agreement for such commodity from the start of the financing period until payment to CCC of the amount financed; *Provided however,* That the aggregate of all amounts assessed under this §1488.11 with respect to the same commodity shall not exceed 5 percent of the amount financed for such commodity. Liquidated damages shall not be assessed: Under paragraph (a) of this section if the Assistant Sales manager determines that the delay was due to such causes as acts of God or government or public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather; under paragraph (b) of this section if the Assistant Sales Manager determines that failure to export was due to loss, damage, destruction or deterioration of the commodity or act of God or government or public enemy; and under paragraph (c) of this section if the Assistant Sales Manager determines that failure to enter or cause the entry of the commodity into the country of destination was due to loss, damage, destruction or deterioration of the commodity or act of God or government or public enemy.

#### BANK OBLIGATIONS AND REPAYMENT

##### § 1488.12 Coverage of bank obligations.

(a) U.S. banks and branch banks shall be liable without regard to risk (1) for payment of bank obligations issued by them or (2) for payment of bank obligations confirmed by them without regard to risk if a requirement for such confirmation is included in the financing agreement or (3) as provided in paragraphs (c) and (d) of this section.

(b) An obligation issued by a foreign bank must be confirmed and advised, as provided in paragraphs (a), (c), (d), (e), and (f) of this section, by a U.S. bank or a branch bank, or may be confirmed by an agency bank when determined by the President or Vice President, CCC after consultation with the

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Controller, CCC, to be in the interest of CCC.

(c) A U.S. bank must confirm the full amount of an obligation issued by its foreign branch. CCC will hold the U.S. bank liable for payment without regard to risks.

(d) If a branch bank confirms an obligation issued by its home office, or by another branch of its home office, it must confirm the full amount thereof. CCC will hold the branch bank liable for payment without regard to risks.

(e) If CCC accepts an agency bank confirmation of a foreign bank obligation, it must be for the full amount thereof without regard to risks and will be subject to such terms and conditions as may be contained in the financing agreement. CCC will not accept an agency bank confirmation of an obligation issued by its home office, or by a branch of its home office.

(f) Except as provided in paragraphs (a), (c), and (d) of this section, if a U.S. bank or a branch bank confirms an obligation issued by a foreign bank, it must confirm at least 10 percent pro rata and must advise the remainder of the foreign bank obligation. The percentage of confirmation shall be the same for both the account receivable and the interest portions of the obligation. For the confirmed amount, except as provided in paragraph (a)(2) of this section, CCC will hold the U.S. bank or branch bank liable for commercial risks but not for non-commercial risks. For the advised amount, CCC will not hold the U.S. bank or branch bank liable for commercial or non-commercial risks. CCC will hold the foreign bank liable without regard to risks for all amounts not recovered from the U.S. or branch bank.

(g) Under special circumstances, on application in writing, the Vice President, CCC, may reduce or waive requirements for 10 percent confirmation by a U.S. or branch bank, but a bank will not be relieved of any obligation it undertakes.

(h) Any bank obligation which provides for a bank acceptance of a time draft by CCC (banker's acceptance) shall not be acceptable to CCC.

(i) CCC will consent to cancellation or reduction of a bank obligation to the extent of any payment it receives

from other sources or amounts otherwise payable under such bank obligation.

(j) Collection of accounts receivable purchased under GSM-5 will be effected through the issuance by CCC of sight drafts against the bank obligations, but this method of collection shall not be exclusive of any other collection procedures or rights available to CCC.

[42 FR 10999, Feb. 25, 1977, as amended at 42 FR 27569, May 31, 1977; 42 FR 30833, June 17, 1977; 43 FR 45551, Oct. 3, 1978; 44 FR 51187, Aug. 31, 1979]

**§ 1488.13 CCC drafts.**

CCC will draw one draft for each payment due under bank obligations. If any portion of a CCC draft is dishonored, the U.S. bank or branch bank shall return the dishonored draft together with its statement of the reason for nonpayment. If a draft which is drawn under a partially confirmed bank obligation is dishonored, CCC will replace the draft with separate drafts for the confirmed and unconfirmed portions at the request of the confirming bank. Such replacement shall not alter the confirming bank's obligation for timely payment to CCC of the confirmed portion of the credit. For confirmed amounts, except as provided in § 1488.12(a), (c) and (d), a U.S. or branch bank may request refund from CCC of the amount paid if it certifies to CCC that it is unable to recover funds from the foreign bank due to a stipulated non-commercial risk which existed on the date payment was made to CCC under the draft. If CCC finds that inability to recover funds was due to such a non-commercial risk, the refund shall be promptly made together with interest at the Federal Reserve Bank of New York discount rate from and including the date payment was originally made to CCC but not include the date of refund by CCC. For unconfirmed amounts, remittance to CCC shall be considered final, and the U.S. bank or branch bank shall not thereafter have recourse to CCC.

[42 FR 10999, Feb. 25, 1977, as amended at 42 FR 27569, May 21, 1977; 42 FR 30833, June 17, 1977]

## Commodity Credit Corporation, USDA

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### § 1488.14 Interest charges.

The account receivable assigned to CCC and the related bank obligation(s) shall bear interest as specified in this section. Rates of interest applicable to financing agreements shall be published in USDA announcement. The interest rate applicable to that portion of an account receivable for which payment is assured by a bank obligation issued or confirmed for all risks according to §1488.12(a)(ii) or pro rata confirmed by a U.S. bank shall be lower than the interest rate applicable for the remainder of the account receivable. The interest rate applicable to that portion of an account receivable the payment of which is assured by a bank obligation issued or pro rata confirmed by a branch bank shall, when determined by the President or Vice President, CCC after consultation with the Controller, CCC, to be in the interest of CCC, be lower than the interest rate applicable for the remainder of the account receivable. The interest rates applicable to accounts receivable the payment of which is assured by an agency bank confirmation may, when determined by the President or Vice President, CCC, after consultation with the Controller, CCC, to be in the interest of CCC, be lower than the interest rate applicable for the remainder of the account receivable. The interest rate applicable will be the rate in effect on the date CCC receives the sale registration request under §1488.4. Interest shall accrue on the account receivable from the date of delivery or the weighted average delivery date of the agricultural commodities delivered under the financing agreement to the date of payment, or to the date of expiration of the financing period, or to the date of expiration of the bank obligation, whichever occurs first, and shall be payable as specified in the financing agreement. Thereafter, interest shall accrue on any unpaid part of both the principal and interest due as of such expiration date.

[42 FR 10999, Feb. 25, 1977, as amended at 42 FR 27569, May 31, 1977]

### § 1488.15 Advance payment.

If, before expiration of the financing period, the exporter or the U.S. bank or

the agency or branch bank accepts payment from or on behalf of the foreign importer of any part of the account receivable, it shall be remitted promptly to CCC. Such prepayment shall be applied first to interest on the unpaid balance of the account receivable to the date CCC receives such prepayment and then to the principal.

### § 1488.16 Liability for payment.

If delivery is made within the coverage of the bank obligation(s) submitted in accordance with §1488.8, CCC will look to the obligating bank or banks and the foreign importer, rather than to the exporter or intervening purchaser, for payment of all amounts due at maturity of the account receivable and of the bank obligation(s), but the exporter and the intervening purchaser shall remain liable for any loss arising from breach of any contractual obligation, certification or warranty made by them pursuant to the financing agreement, and the exporter shall remain liable for any amounts not covered by the bank obligation which are owing to CCC, and any remittance or refund required by §1488.15 and §1488.18, together with interest thereon at the rate specified in the documents evidencing the account receivable, as well as for any liquidated damages provided for in §1488.11. The liability of the bank and the importer under their respective obligations shall be several.

## MISCELLANEOUS PROVISIONS

### § 1488.17 Assignment.

The exporter shall not assign any claim or rights or any amounts payable under the financing agreement, in whole or in part, without written approval of the Vice President, CCC, or the Controller, CCC.

### § 1488.18 Covenant against contingent fees.

The exporter warrants that no person or selling agency has been employed or retained to solicit or secure the financing agreement on an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the exporter for the

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purpose of securing business. For breach or violation of this warranty, CCC shall have the right, without limitation on any other rights it may have, to annul the financing agreement without liability to CCC. Should the financing agreement be annulled, CCC will promptly consent to the reduction or cancellation or related bank obligations except for amounts outstanding under a financing agreement. Such amounts shall, on demand, be refunded to CCC by the exporter.

**§ 1488.19 [Reserved]**

**§ 1488.20 Officials not to benefit.**

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the financing agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to the financing agreement if made with a corporation for its general benefit.

**§ 1488.21 Exporter's records and accounts.**

CCC shall have access to and the right to examine any directly pertinent books, documents, papers and records of the exporter involving transactions related to the financed export credit sale until the expiration of three years after the end of the financing period.

**§ 1488.22 Communications.**

(a) Unless otherwise provided, written requests, notifications, or communications by the applicant pertaining to the financing agreement shall be addressed to the Assistant Sales Manager, Commercial Export Programs, Office of the General Sales Manager, U.S. Department of Agriculture, Washington, DC 20250.

(b) [Reserved]

**§ 1488.23 OMB Control Numbers assigned pursuant to the Paperwork Reduction Act.**

The information collection requirements contained in these regulations (7 CFR part 1488) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have

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been assigned OMB Control Number 0551-0021.

[Amdt. 8, 50 FR 13967, Apr. 9, 1985]

**PART 1491—FARM AND RANCH LANDS PROTECTION PROGRAM**

**Subpart A—General Provisions**

Sec.

- 1491.1 Applicability.
- 1491.2 Administration.
- 1491.3 Definitions.
- 1491.4 Program requirements.
- 1491.5 Application procedures.
- 1491.6 Ranking considerations and proposal selection.

**Subpart B—Cooperative Agreements and Conservation Easement Deeds**

- 1491.20 Cooperative agreements.
- 1491.21 Funding.
- 1491.22 Conservation easement deeds.

**Subpart C—General Administration**

- 1491.30 Violations and remedies.
- 1491.31 Appeals.
- 1491.32 Scheme or device.

AUTHORITY: 16 U.S.C. 3838h-3838i.

SOURCE: 74 FR 2818, Jan. 16, 2009, unless otherwise noted.

**Subpart A—General Provisions**

**§ 1491.1 Applicability.**

(a) The regulations in this part set forth requirements, policies, and procedures, for implementation of the Farm and Ranch Lands Protection Program (FRPP) as administered by the Natural Resources Conservation Service (NRCS). FRPP cooperative agreements shall be administered under the regulations in effect at the time the cooperative agreement is signed.

(b) The NRCS Chief may implement FRPP in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

**§ 1491.2 Administration.**

(a) The regulations in this part shall be administered under the general supervision and direction of the NRCS Chief.

(b) NRCS shall—