

§ 1493.130

7 CFR Ch. XIV (1-1-11 Edition)

and §1493.90, 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 §1493.110.

§ 1493.130 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 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 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 GSM-102 or GSM-103 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 A to §1493.130—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 GSM-102 or GSM-103. 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 §1493.50(b) and §1493.90(d) or the failure of an exporter to comply with the provisions of §1493.100 or §1493.140(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

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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 foreign bank and/or the importer.

APPENDIX A TO §1493.130—ILLUSTRATION OF PRO RATA ALLOCATION OF RECOVERIES

The following example illustrates CCC's policy, as set forth in §1493.130(c), regarding pro rata sharing of recoveries made for claims filed under the GSM-102 and GSM-103 programs. A typical case might be as follows:

1. The U.S. bank enters into a \$300,000 three-year credit arrangement with the foreign bank calling for equal annual payments of principal and annual payments of interest at a rate of 10 percent per annum and a penalty interest rate of 12 percent per annum on overdue amounts until the overdue amount is paid.

2. The foreign bank fails to make the final principal payment of \$100,000 and an interest payment of \$10,000, both due on January 31.

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

4. CCC's guarantee states that CCC's maximum liability is limited to 98 percent of the principal amount due (\$98,000) and interest at a rate of 8 percent per annum (basis 365 days) on 98 percent of the principal (\$7,840).

5. CCC pays the claim on February 22.

6. The latest bond equivalent rate of the 52-week Treasury bill auction average which has been published by the Department of Treasury in effect on the date of nonpayment (January 31) is 9 percent. The latest investment rate of the 91-day Treasury Bill auction average which has been published by the Department of Treasury in effect on the date of nonpayment by CCC (February 11) is 7 percent.

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— (98% × \$100,000).	\$98,000.00
(b)	Interest coverage— (8% × \$98,000).	\$7,840.00
.....		<hr/>
		\$105,840.00
(c)	Late interest due from CCC (7% per annum for 11 days × \$105,840).	\$223.28
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(d)

Amount paid by CCC on February 22.	\$106,063.28
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2. Foreign Bank's Obligation under the Letter of Credit or the Related Obligation:

(a)	Principal due January 31.	\$100,000.00
.....	Interest due January 31 (10% × \$100,000).	\$10,000.00
.....	Amount owed by for- eign bank as of Jan- uary 31.	<hr/>
		\$110,000.00
(b)	Penalty interest due (12% per annum for 22 days × \$100,000).	\$795.62
(c)	Amount owed by for- eign bank as of Feb- ruary 22.	<hr/>
		\$110,795.62

3. Amount of Foreign Bank's Obligation Not Covered by CCC's Payment Guarantee: \$4,668.55

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 foreign bank 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 foreign bank is \$110,000, CCC would be entitled to 95.75 percent (\$106,063.07 divided by \$110,765.62) and the holder of the payment guarantee would be entitled to 4.21 percent (\$4,668.55 divided by \$110,795.62) 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, §1493.130(b) would apply.

§ 1493.140 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