Foreign Agricultural Service, U.S. Department of Agriculture, Room 4549 South Building, 14th and Independence SW., Washington, D.C. 20250–1033. Telephone: (202) 720–3664.

SUPPLEMENTARY INFORMATION: This final rule is issued in conformance with Executive Order 12866. It has been determined to be significant for the purposes of E.O. 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act. The General Sales Manager has certified that this rule will not have a significant economic impact on a substantial number of small entities. Although this rule regulates certain activities of shipping agents in the Department's foreign assistance activities, the limitations imposed should not adversely impact upon the volume of business handled by any particular small business entity. A copy of this final rule has been submitted to the General Counsel, Small Business Administration.

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).

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. The final 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 final rule would not have retroactive effect. The rule does not require that administrative remedies be exhausted before suit may be filed.

Background

The Secretary of Agriculture implements title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480). This function is delegated to the General Sales Manager, Foreign Agricultural Service. On November 12, 1992, the Foreign Agricultural Service (FAS) published a proposed rule (57 FR 53607) to amend the regulations governing the financing of the sale and exportation of agricultural commodities made available under title I, Public Law 480. Corrections to the proposed rule were published November 27, 1992 (57 FR 56406).

Comments suggesting revisions to the proposed rule are discussed below, except those that were outside the scope of the proposed rule or of an editorial nature. FAS has made minor editorial changes and other changes to respond to some of the comments received, and to reflect the redesignation of certain offices within the Department of Agriculture involved in the administration of the title I, Public Law 480 program.

Discussion of Comments

Ocean Transportation-Related Services. The proposed rule would have prohibited a shipping agent from providing expediting services to a vessel owner at discharge ports. FAS proposed this change in order to eliminate the potential for a conflict of interest that might arise if a shipping agent representing a charterer were also to receive a fee from the vessel owner to expedite discharge operations, with the result that the agent might show favoritism to the owner in subsequent freight solicitations.

The comments received stressed that the rule would eliminate a possible source of revenue for shipping agent firms, with greater impact on small businesses, and could thereby reduce the number of shipping agents participating in the title I, Public Law 480 program.

FAS will not adopt this aspect of the proposed rule because any adverse impact upon the operations of the title I, Public Law 480 program from the hypothesized conflict of interest is speculative and, therefore, would not justify the harmful effect on competition and smaller businesses. Because the title I program requires strict competitive bidding procedures in the procurement of freight, there is little potential for favoritism in the vessel selection process.

Affiliates. The proposed rule would have expanded the current definition of ''affiliate'' to include two legal entities that are owned or controlled by the same legal entity. Currently, a firm cannot be a shipping agent during the same fiscal year in which it, or its affiliate, provides ocean transportation-related services. If the definition of affiliate were expanded as proposed, presumably more firms would be subject to this prohibition. The proposal was intended to prevent a participant from selecting a firm as shipping agent because that firm could offer ocean transportation-related services at a discount.

One comment argued that there was no reason to be concerned because an independent but indirectly affiliated company acting as a title I shipping agent could not derive inappropriate benefits from a related entity providing wholly different services with respect to, for example, title III shipments. This comment also recommended CCC return to the practice of determining conflicts of interest on a ''transaction-by-transaction'' basis, an approach followed prior to the Food, Agriculture, Conservation, and Trade Act of 1990. Two comments noted that the proposed expansion of the definition of affiliate would eliminate from competition any multinational freight forwarder, including at least one firm currently active as a shipping agent.

FAS has determined not to expand the affiliate definition in this rule because it may, in fact, hinder operations under other assistance programs. Although it is theoretically possible, for example, that a firm providing inland transportation services overseas could influence selection of its ''affiliated'' shipping agent through the prospect of discounted services, we have no reason to believe this has taken place. Thus, there is no empirical basis to justify expanding the definition of ''affiliates,'' especially where to do so would reduce the number of firms able to provide ocean transportation-related services in other programs, such as titles II and III of Public Law 480, or would reduce the number of firms from which participants may select a shipping agent.

Section 407(c)(4) of Public Law 480 requires that CCC analyze the potential for conflict of interest over the term of a fiscal year, rather than on a transaction-by-transaction basis. Therefore, returning to the transaction-by-transaction basis is not an option available to CCC.

Another comment proposed that FAS expand the definition of affiliate to cover all situations where two legal entities are owned by the same individuals and operate from the same offices using the same employees.

Although FAS is not adopting a rule that would automatically consider two firms in this situation as affiliates, FAS will investigate questionable situations to determine if two firms may legally be considered as one firm or if one firm may be considered as the *alter ego* of an officer or director of another company when applying the existing affiliation rules. We also note that the existing ''affiliate'' definition includes firms with common officers or directors or investments between firms and these