

factors would likely encompass the situation suggested by the comment.

Subcontractors of A.I.D. Freight Agents. One comment argued that subcontractors of freight agents employed by the Agency for International Development (A.I.D.) should be eligible to act as title I shipping agents because section 407(d)(3) of Public Law 480 did not specifically refer to subcontractors; and that to preclude such subcontractors from participating as title I, Public Law 480 shipping agents would be an unwarranted extension of the statute.

The proposed rule specifically precluding subcontractors of freight agents employed by A.I.D. from acting as shipping agents under title I, Public Law 480 is a codification of FAS's prior interpretation of the scope of section 407(d)(3). See 47 FR 53609. This interpretation, concurred in by A.I.D., is reasonable given the subcontractor's active involvement in arranging ocean transportation.

No Competitive Advantage. The proposed rule included a prohibition against shipping agents affording competitive advantage to any particular supplier of commodities or ocean transportation. One comment suggested the rule should prohibit limiting competition among suppliers of commodities or ocean transportation by artificially or unreasonably restricting the quantity purchased or size of vessel which can be offered. Such a specific prohibition is unnecessary because FAS reviews each proposed commodity and freight invitation for bids to eliminate any restrictions that cannot be justified as furthering the purposes of the title I program.

A second comment contended that the proposed rule was too broad and prohibited a prudent business person from maintaining regular contact with others in the business and unduly limited the exchange of information that could benefit an importing country in planning its purchases. The comment further questioned whether FAS could effectively enforce the prohibition.

This comment misinterpreted the proposed rule. The rule does not prohibit a shipping agent from gathering information, such as price trends or crop quality, from trade sources and passing the information to its principal. Nor does it prevent an agent from pursuing normal business contacts. The rule simply highlights an important aspect of the fair and impartial performance of an agent's duties. FAS will request investigations of alleged violations of this regulation; the agent may be suspended or debarred from the program if violations are established.

Independent Contractors. The proposed rule required that an independent contractor hired by a shipping agent to perform functions of a shipping agent must furnish to FAS the same information and documentation as the agent. One comment stated that this rule was too loosely drafted and encompassed certain unintended relationships; *i.e.*, a shipping agent may hire "independent contractors" to perform any of a number of services.

FAS disagrees and has adopted the proposed rule as written because it clearly specifies that the requirement applies only to persons hired by a shipping agent "to perform functions of a shipping agent." This very narrow category of persons should be subject to the same standards as the shipping agent itself to prevent evasion of the regulations.

Payment or Other Benefit. The proposed rule prohibited participants from receiving certain enumerated benefits, such as office space, equipment, and travel expenses, from the agents they selected. This was intended to make it more likely that participants would select agents on merit and to eliminate the possibility that participants might favor larger companies, which could more easily afford to offer these benefits. One comment, submitted by a small firm, objected to this provision because it would prevent a participant from financing trips to the United States by potential buyers, thus stifling an important opportunity for market development. The commentor recommended that the rule permit certain payments, such as reasonable travel expenses directly related to the procurement of commodities.

FAS will not adopt the rule as proposed because improper actions or payments made in connection with the selection of a shipping agent would already be prohibited by the Foreign Corrupt Practices Act. Also, while the efficient operation of the title I, Public Law 480 program would suffer from incompetent agents, FAS cannot conclude that the payment of benefits which are consistent with existing law results in the use of incompetent agents.

CCC will, however, change the current rule by prohibiting "payments, kickbacks, or other illegal benefits" in connection with the agent's selection so that the rule, consistent with other existing laws, clearly encompasses any corrupt financial payment to a country in connection with the agent's selection. This adequately protects CCC's financial interest in the program.

Limitation on Brokerage Payments. The proposed rule would have capped a shipping agent's commission at $\frac{2}{3}$ of the maximum total commission which CCC can finance (2.5% of the value paid for freight) in order to allow for a commission to a shipping broker under the cap. A number of comments from shipping agents stated that such a cap would drive some shipping agent firms out of business; would not reduce freight rates; and would not have any effect on the decision of vessel owners whether to use a ships broker in offering a vessel. Other comments, primarily from ships brokers, urged that FAS change the rule to limit the shipping agent's commission to 1.25% (one-half of the maximum commission which CCC can finance) even if the vessel owner does not use a ships broker in the transaction.

The comments suggest that any reduction in freight rates as a result of a cap on shipping agents' commissions is unlikely. Absent this benefit to the program, FAS does not see any need to change the current regulations because we have not identified any adverse impact on the program from the existing regulation.

Contracts Required. FAS proposed to require that suppliers of ocean transportation furnish, if requested by FAS, copies of relevant lightening, stevedoring and bagging contracts, whether or not CCC financed ocean freight or ocean freight differential in connection with the voyage. Since the final rule no longer contains the limitations on commissions and affiliates that were published in the proposed rule, this requirement will apply only when CCC is financing a portion of the ocean freight. FAS has revised the final rule to clarify that it is the supplier of ocean transportation which must provide these contracts, if requested by CCC. USDA will not delay issuance of the commodity supplier's copy of the Form CCC-106 pending receipts of the contracts. FAS will use this information in monitoring compliance with the supplier reporting requirements contained in § 17.12 of the regulations.

However, CCC will require, as proposed, that, when CCC finances any part of the ocean freight, the participant or its agent must provide copies of liner booking notes to USDA before USDA releases Form CCC-106. This will also continue to be the practice with respect to copies of charter parties.

Non-Reversible Laydays and Despatch. Currently, CCC shares despatch with the participant and laydays are reversible. The proposed rule provided that CCC would share