Docket Nos. OR87-1-000, OR87-2-000, OR87-3-000, OR87-4-000, OR87-5-020 and OR87-8-020, Oxy Pipeline, Inc.
Docket No. OR87-6-000, Cxy Offshore Systems Inc.
Docket No. OR-85-2-000, Samedan Pipe Line Corporation. Order on jurisdiction under Interstate Commerce Act over oil pipelines on the outer Continental Shelf.

II. Producer Matters

PF-1
Docket No. CP73-184-006, Colorado Interstate Gas Company, Division of Colorado Interstate Gas Company
Docket No. CI73-485-005, CIG Exploration, Inc. Order on rehearing.

III. Pipeline Certificate Matters

PC-1
Docket No. CP89-692-001, Amerada Hess Corporation
Docket No. CP90-804-000, Alabama-Tennessee Natural Gas Company and Sun Operating Limited Partnership
Docket No. CP90-215-000, Amoco Production Company
Docket No. CP90-504-000, ARCO Oil and Gas Company, Inc.
Docket No. CP89-1753-000, Arkla Energy Resources
Docket No. CP88-202-001, Columbia Gas Transmission Company
Docket No. CP88-244-000, El Paso Natural Gas Company
Docket No. CI89-421-000, Enron Oil & Gas Company
Docket No. CP89-2158-000, Forest Oil Corporation
Docket Nos. CP90-1083-000 and CP90-1084-000, Leapartners, L. P. & El Paso Natural Gas Company
Docket No. CP90-1311-000, Marathon Oil Company
Docket No. CP89-2035-000, Meridian Oil Gathering, Inc.
Docket No. CP89-1514-000, Mitco Pipeline Company
Docket Nos. CP88-428-000 and 001, NRM Operating Company, L.P., *et al.*
Docket No. CP89-1001-000, Ringwood Gathering Company
Docket No. CI89-191-001, Shell Gas Pipeline Company
Docket Nos. CI89-420-000 and CP89-921-000, Shell Offshores, Inc. and Trunkline Gas Company
Docket Nos. CP89-468-000 and CP89-483-000, Shell Western E&P, Inc. and El Paso Natural Gas Company
Docket No. CP89-1883-000, Tennessee Gas Pipeline Company
Docket No. CP88-212-000, West Texas Gathering Company
Docket Nos. CP89-1718- and CP89-1722-000, Western Gas Processors and El Paso Natural Gas Company. Declaratory order concerning gathering, order on rehearing and order on abandonment.

PC-2
Docket No. CP89-637-000, ANR Pipeline Company
Docket Nos. CP89-635-000 and 001, Columbia Gas Transmission Corporation
Docket Nos. CP89-661-000 and 001, Algonquin Gas Transmission Company. Order on applications for certificates.

PC-3
Docket Nos. RP89-50-000, 002, 005, CP64-249-000, 001, CP65-284-000, 001, CP65-393-006, 007, CP68-179-006, 012, 013, 015, 017, CP74-192-009, 011, 012, 013, CP86-704-000, 001, 002, 003, 004, CP89-555-000, 003, CP89-556-000, 003, G-9262-004, 005, G-18615-000 and 001, Florida Gas Transmission Company. Order on settlements.

PC-4
Docket Nos. CP89-1841-000, CP89-1538-000, CP83-218-000, Northern Natural Gas Company, Division of Enron Corporation
Docket No. CP90-418-000, Natural Gas Pipeline
Docket No. CP83-183-000, ANR Pipeline Company of America. Order on applications for certificate.

Lois D. Cashell,

Secretary.

[FR Doc. 90-13581 Filed 6-7-90; 3:25 pm]

BILLING CODE 6717-01-M

COMMITEE ON EMPLOYEE BENEFITS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 9:00 a.m., Friday, June 15, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED: Proposed establishment of a third investment fund for the Thrift Plan for employees of the Federal Reserve System.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204.

Dated: June 7, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-13597 Filed 6-7-90; 3:47 pm]

BILLING CODE 6210-01-M

COMMITTEE ON EMPLOYEE BENEFITS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 9:30 a.m., Friday, June 15, 1990, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. The Committee's agenda will consist of matters relating to: (a) The general administrative policies and procedures of the Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenance of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations of each of such Plans; (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans.

Specific items include: Office of Employee Benefits (A) operations review issues and (B) salary administration.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: June 7, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-13598 Filed 6-7-90; 3:47 pm]

BILLING CODE 6210-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:53 p.m. on Tuesday, June 5, 1990, the Board of Directors of the Resolution Trust Corporation met in closed session to consider (1) matters relating to the resolution of certain failed thrift institutions, and (2) recommendations regarding retention of thrift branches acquired by banks in emergency acquisitions.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: June 6, 1990.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Executive Secretary.

[FR Doc. 90-13559 Filed 6-7-90; 1:38 pm]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 55, No. 112
Monday, June 11, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3749-3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

Correction

In rule document 90-6918 beginning on page 11188 in the issue of March 27, 1990, make the following corrections:

1. On page 11188, in the third column, under "**II. Disposition of Petition**", in the second complete paragraph, the second line should read "listed and listed constituents of concern are not".

2. On the same page, in the same paragraph, in the seventh line "analysis" should read "analyses".

3. On page 11190, in the third column, in the third complete paragraph, in the last line "today" should read "today's".

4. On page 11191, in the second column, in the first paragraph, the eighth line should read "method blanks. Because field and method blanks are, respectively, used to".

5. On page 11192, in the first column, under "**III. Limited Effect on Final Exclusion**", in the eleventh line "Since the petitioner's" should read "Since a petitioner's".

6. On the same page, in the same paragraph, in the penultimate line "waste" should read "wastes".

7. On the same page, in the second column, under "**V. Regulatory Impact**" in the seventh line "economic" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 452

[Docket No. 89N-0058]

Human and Veterinary Drugs; Editorial Amendments

Correction

In rule document 90-6284 beginning on page 11575, in the issue of Thursday, March 29, 1990, make the following correction:

§ 452.910 [Corrected]

On page 11584, in the third column, in amendatory instruction 164, in the third line, "(a)(3)(ii)" should read "(a)(4)(ii)".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 626, 636, 638, 675, 676, 677, 678, 679, 680, 684, 685, 688, and 689

RIN 1205-AA54

Redesignation and Revision of Regulations for Job Corps Program Under Title IV-B; and Removal of Comprehensive Employment and Training Act Regulations

Correction

In rule document 90-7737 beginning on page 12992 in the issue of Friday, April 6, 1990, make the following corrections:

1. On page 12992, in the second column, in the second full paragraph, in the 11th line "responsive" should read "responsible".

2. On page 12993, in the heading of paragraph "h", "Disadvantages" should read "Disadvantaged".

3. On page 12995, under "**Paperwork Reduction**", in the second paragraph, in the tenth line "Office of " should read "Officer for".

§ 626.3 and Part 638 [Corrected]

4. On page 12996, in § 626.3 and in the table of contents for Part 638, in the first and third columns § 638.403, respectively, "Selective service" should read "Selective Service".

§ 638.403 [Corrected]

5. On page 13001, in § 638.403, in the heading "Selective service" should read "Selective Service".

§ 638.538 [Corrected]

6. On page 13005, in the first column, "§ 636.538" should read "§ 638.538".

BILLING CODE 1505-01-D

SMALL BUSINESS ADMINISTRATION

Region II Advisory Council Meeting

Correction

In notice document 90-10853 appearing on page 19415 in the issue of Wednesday, May 9, 1990, in the first column, in the second line from the bottom of the page, "June 30, 1990" should read "June 20, 1990,".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19, 197, and 251

[T.D. ATF-297; Re: Notice No. 625]

RIN 1512-AA05

Tax Credit for Wine or Flavor Content of Distilled Spirits Products

Correction

In rule document 90-9804 beginning on page 18058 in the issue of Monday, April 30, 1990, make the following corrections:

§ 19.26 [Corrected]

1. On page 18062, in the first column, in § 19.26(a), in the second line, "of" should read "or".

2. On the same page, in the same column, in § 19.26(b), in the next to last line, "wines" should read "wine".

§ 19.770 [Corrected]

3. On page 18065, in the first column, in § 19.770(a)(6)(iv), in the second line, "of" should read "or".

§ 197.5 [Corrected]

4. On the same page, in the third column, in § 197.5, in the first line, "next" should read "net".

§ 251.77 [Corrected]

5. On page 18071, in the second column, in § 251.77(d), in the last line, "to" should read "not".

BILLING CODE 1505-01-D

federal register

Monday
June 11, 1990

Part II

International Development Cooperation Agency

Agency for International Development

22 CFR Part 211

Transfer of Food Commodities for Use in Disaster Relief, Economic Development and Other Assistance; Final Rule

INTERNATIONAL DEVELOPMENT CORPORATION AGENCY

Agency for International Development

22 CFR Part 211

[A.I.D. Reg. 11]

Transfer of Food Commodities for Use in Disaster Relief, Economic Development and Other Assistance

AGENCY: Agency for International Development (A.I.D.), IDCA.

ACTION: Final rule.

SUMMARY: This final rule amends A.I.D. Regulation 11 at 22 CFR part 211, Transfer of Food Commodities for Use in Disaster Relief and Economic Development, and Other Assistance to conform the Regulation to changes made in applicable legislation (See Appendix I for relevant provisions of title II of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480), by Public Law 96–53, August 14, 1979; the Food Security Act of 1985, Public Law 99–196, dated December 23, 1985; Public Law 100–202 (Continuing Appropriations), December 22, 1987) and to make other necessary modifications set forth below.

The following are some of the more significant changes: (1) Cooperatives may be cooperating sponsors; (2) a program operational plan, the elements of which are described in Appendix II, must be furnished and implemented; (3) although each cooperating sponsor shall be represented by a person resident in the country of distribution or other nearby country approved by A.I.D./W, it is not necessary that this person be a U.S. citizen; (4) cooperating sponsors may sell or "monetize" commodities and use currencies generated from any partial or full sale or barter of commodities to transport, store, distribute or otherwise enhance the effectiveness of the use of the commodities or implement certain kinds of approved development activities; (5) reports must be provided regarding the receipt and disbursement of funds from sale of commodities or food containers, recipient contributions and other program income for authorized purposes; (6) with A.I.D. approval monetized proceeds may be used to finance repair or rehabilitation of an existing structure owned or managed by a church or organization engaged in religious activity to the extent necessary to avoid spoilage or loss of donated commodities provided the structure is not used in whole or in part for any sectarian purpose while commodities are stored in it; (7) A.I.D., rather than USDA, now is responsible for booking Public Law 480, Title II government-to-government cargo; (8) the responsibilities of cooperating sponsors are clarified with respect to monetization and trilateral exchange programs and the proper use of monetization proceeds and program income; (9) cooperating sponsors may elect not to file a claim if the loss is less than $500 and such action is not detrimental to the program, and cooperating sponsors may retain $150 of any amount collected on an individual claim; (10) reasonable efforts to pursue a claim against responsible third parties are defined; and (11) U.S. Government cost principles under OMB Circular A–122 as amended are applied to the use of monetized proceeds and program income except that a recipient agency may use not to exceed $500 per year of voluntary contributions for institutional, community, social or other humanitarian programs.

EFFECTIVE DATE: June 11, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Jessie C. Vogler, Office of Food for Peace, Bureau of Food for Peace and Voluntary Assistance, Agency for International Development, Washington, DC 20523. Telephone: (703) 875–4706.

FOR ADDITIONAL INFORMATION CONTACT: Ms. Donna Rosa, Chief, Project Coordination Division, Office of Food for Peace, Bureau of Food for Peace and Voluntary Assistance, Agency for International Development, Washington, DC 20523. Telephone: (703) 875–4706.

SUPPLEMENTARY INFORMATION: Under provisions of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480), A.I.D. is authorized to provide agricultural commodities to foreign governments, U.S. and foreign voluntary agencies, cooperatives or intergovernmental organizations to meet famine or other urgent or extraordinary relief requirements, to combat malnutrition, and to promote economic and community development. A.I.D. Regulation 11, 22 CFR Part 211—Transfer of Food Commodities for Use in Disaster Relief and Economic Development, and Other Assistance, contains the regulations prescribing the terms and conditions governing the transfer of U.S. agricultural commodities pursuant to Title II of Public Law 480.

The text of the proposed rules of A.I.D. Regulation 11 was published in the **Federal Register** on pages 51044 through 51060, December 19, 1988. The original 60-day commenting period ended February 17, 1989, but was extended in response to a request from cooperating sponsors to enable them to comment further on the proposed Regulation.

The text of this final Rule has been reviewed under A.I.D.'s required procedures. It has been determined that these program provisions will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since A.I.D. is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice. 5 U.S.C. 553 does not apply to this final rule since the subject matter of the rule involves foreign affairs functions of the United States and a matter relating to grants.

Specific Comments

Commentators considered the administrative requirements of the proposed rule to be unnecessarily restrictive and requiring additional clarification, particularly § 211.3, dealing with cooperating sponsor program agreements, § 211.5 concerning use of funds and program operational plans, and § 211.9 regarding inland claims. Some organizations elaborated on their concerns in meetings with Agency officials.

All comments received were carefully considered, and changes and clarifications were made where appropriate to address the concerns submitted.

It is very important, however, to implement effective standards and systems of accountability for United States resources in order to ensure that they are safeguarded and used for the purposes provided and to maintain public confidence in government assistance programs. In recent years, monetization has become increasingly significant, and it is necessary to make adjustments to accommodate the delivery of assistance by means of local currency as well as by food distribution. In general, the Regulation has been revised to improve understanding and mutual agreement about the responsibilities of the government, cooperating sponsors and other organizations participating in the Title II program. For these reasons, requirements have been clarified or added regarding approved operational plans, the authorized use of monetized proceeds and program income, utilizing the allowable cost principles of OMB

Circular A–122, and the responsibility to pursue claims for losses of food or local currency.

The principal changes in the Regulation are as follows:

1. The statutory excerpts in Appendix I have been revised to conform them to changes in Public Law 480.

2. Section 211.2—Definitions. This section has been revised for clarification and to include additional Title II programming terms.

3. Section 211.3(c) Recipient Agency Agreements, has been added to require the cooperating sponsor to execute this written agreement with recipient agencies prior to transfer of commodities, monetized proceeds, or program income. This written agreement must describe the purposes for which the commodities or funds may be used and the responsibilities of the recipient agency and the cooperating sponsor for distribution or implementation of the approved program. The recipient agency agreement shall incorporate by reference or otherwise terms and conditions set forth in this part (A.I.D. Regulation 11), and Section 211.3(d) has been added which outlines steps necessary to commence a program.

4. Section 211.4(d) has been revised to reflect the transfer from USDA to A.I.D. of the responsibility for booking Public Law 480, Title II government-to-government cargo.

5. Section 211.5(a) contains the requirement for an approved operational plan which will form the basis for program agreements, but the detailed description of the elements of the operational plan have been placed as Appendix II to this part (A.I.D. Regulation 11). Section 211.5(b) has been revised to allow cooperating sponsors to be represented by a person who is not a citizen of the United States in the country of distribution or other nearby country, approved by A.I.D./W, who is appointed by and responsible to the cooperating sponsor for distribution of commodities or use of monetized proceeds or program income in accordance with the provisions of this Regulation.

6. Section 211.5(c) "Internal Reviews" has been revised to clarify the cooperating sponsor's responsibility for conducting Internal Reviews and requires that a systematic method be used to assure timely resolutions of findings and recommendations.

7. Section 211.5(i) "Use of Funds" has been revised to require that monetized proceeds and program income be used in accordance with the cost principles of OMB Circular No. A–122, "Cost Principles for Nonprofit Organizations." Program income includes recipient contributions received by the cooperating sponsor or recipient agencies, funds raised by the sale of containers, and revenue from other program activity, except that a recipient agency may use not to exceed $500 per year of voluntary contributions for institutional, community or social development or other humanitarian purposes without regard to the operational plan or OMB Circular A–122. Funds may be used to repair church owned structures to avoid spoilage or loss of commodities (Section 211.5(i)(2).

8. Section 211.5(j) is a new item which requires an annual report on the generation and use of monetized proceeds and program income. Sections 211.5 (o) and (p) are new sections concerning monetization programs and trilateral exchange activities.

9. Section 211.7(b) has been revised to clarify the cooperating sponsor's responsibility with respect to duty, taxes and consular invoices.

10. Section 211.7(e) has been revised to clarify the limitations on reimbursement of repackaging costs.

11. Section 211.9(c)(l)(v) is a new subparagraph concerning contracting by CCC for the survey of cargo on shipments furnished under Transfer Authorizations. Section 211.9(c)(2), "Claims against Ocean Carriers," has been revised to reflect that the responsibility for booking all Public Law 480, Title II Government-to-Government cargoes has been transferred from USDA to A.I.D.; Section 211.9(e)(3) is revised to clarify that individual inland claims should not be artificially subdivided. Also, cooperating sponsors may elect not to file a claim if the loss is less than $500 and such action is not detrimental to the program; and cooperating sponsors may retain $150 of any amount collected on an individual claim. Section 211.9(e) (3) and (4) have been added to clarify cooperating sponsors' responsibilities concerning inland claims. In § 211.9(g) "Handling Claims Proceeds," the following has been added, "With respect to monetized proceeds and program income, amounts recovered shall be deposited into the special interest bearing account established for the monetized proceeds and may be used for purposes of the approved program."

12. Section 211.10(a) has been revised to add the following: The last two sentences to read, "Such records shall be retained for a period of three years from the close of the U.S. fiscal year to which they pertain or longer upon request by A.I.D. for cause such as in the case of litigation of a claim or audit concerning such periods. The cooperating sponsor shall transfer to A.I.D. any records, or copies thereof, requested by A.I.D."

13. Other grammatical or minor revisions have been made for clarification purposes.

Because of the substantial revisions, the final A.I.D. Regulation 11, as revised, is printed below in its entirety.

22 CFR part 211 is revised to read as follows:

PART 211—TRANSFER OF FOOD COMMODITIES FOR FOOD USE IN DISASTER RELIEF, ECONOMIC DEVELOPMENT, AND OTHER ASSISTANCE

Sec.

211.1 General purpose and scope; legislation.
211.2 Definitions.
211.3 Cooperating sponsor agreements.
211.4 Availability of commodities; shipment.
211.5 Obligations of cooperating sponsor.
211.6 Processing, repackaging, and labeling commodities.
211.7 Arrangements for entry and handling in foreign country.
211.8 Disposition of commodities unfit for authorized use.
211.9 Liability for loss, damage or improper distribution of commodities.
211.10 Records and reporting requirements of cooperating sponsor.
211.11 Termination of program.
211.12 Waiver and amendment authority.

Appendix I—Legislation

Appendix II—Operational Plan

Authority: Secs. 105, 201, 202, 203, and 207, Agricultural Trade Development and Assistance Act of 1954, as amended, 7 U.S.C. 1705, 1721, 1722, 1723, and 1726a; 68 Stat. 454, as amended.

§ 211.1 General purpose and scope; legislation.

(a) (1) *Terms and conditions.* This part 211, also known as A.I.D. Regulation 11, prescribes the terms and conditions governing the transfer of agricultural commodities to foreign governments; to private or public agencies, including nonprofit voluntary agencies, cooperatives; and to intergovernmental organizations (except the World Food Program (WFP) and other Agencies of the United Nations) pursuant to title II of the Agricultural Trade Development and Assistance Act of 1954, as amended (Public Law 480, 83rd Congress, as amended. (For United Nations Agencies, and the World Food Program (WFP), see A.I.D. Handbook 9).

(2) *Organization.* This Regulation starts by defining terms used in this Regulation, and goes on to provide information on Title II programs, and the rules under which they are conducted.

(b) *Legislation.* See Appendix I to the Regulation. The legislation implemented by the Regulation in this Part (as of the date of issuance of this Part) includes Sections of the Agricultural Trade Development Assistance Act of 1954, as amended (Public Law 480) as follows: Sections 2(3), 201, 202, 203, 204, 206, 207, 208, 401, 402, and 404.

§ 211.2 Definitions.

(a) *A.I.D.* means the Agency for International Development or any successor agency, including, when applicable, each USAID. "USAID" means an office of A.I.D. located in a foreign country. "A.I.D./W" means the office of A.I.D. located in Washington, D.C.

(b) *Annual Estimate of Requirements (AER)* (Form A.I.D. 1550–3, Exhibit E, A.I.D. Handbook 9) is a statistical update of the Operational Plan which is signed by the cooperating sponsor requesting commodities under Title II estimating the quantities required.

(c) *CCC* means the Commodity Credit Corporation, a corporate agency and instrumentality of the United States within the U.S. Department of Agriculture.

(d) (1) Cooperating sponsor means an entity, within or without the United States, governmental or not, such as the foreign government, the American Red Cross, the intergovernmental organization, the U.S. nonprofit voluntary agency or the cooperative registered with and approved by A.I.D., which enters into an agreement with the U.S. Government for the use of agricultural commodities or funds (including local currencies), and which is directly responsible under the agreement for administration and implementation of the agreement, including reporting on programs involving the use of the commodities or funds made available to meet the requirements of eligible recipients. The term includes foreign nonprofit voluntary agencies registered with and approved by the A.I.D., which may be utilized to provide assistance following a determination of unavailability of a U.S. registered nonprofit voluntary agency to provide the assistance.

(2) *Governmental cooperating sponsor* means a cooperating sponsor which is a foreign government.

(3) *Nongovernmental cooperating sponsor* means a cooperating sponsor which is a nonprofit voluntary agency, a cooperative, the American Red Cross, or other private or public agency. An intergovernmental organization is also treated as a nongovernmental cooperating sponsor in this part (A.I.D. Regulation 11) unless the text or context indicates otherwise.

(4) Note: Governmental cooperating sponsors are treated here as a group separate from other cooperating sponsors since their circumstances are different in such matters as, e.g., rules governing shipping and in certain other aspects of agreements.

(e) *Diplomatic Posts* means the offices of the Department of State located in foreign countries, and may include Embassies, Legations, and Consular offices.

(f) *Disaster relief organizations* means organizations which are authorized by A.I.D./W, USAID, or by a Diplomatic Post to assist disaster victims.

(g) *Disaster victims* means persons who, because of flood, drought, fire, earthquake, other natural or man-made disasters, or extraordinary relief requirements, are in need of food, feed, or fiber assistance.

(h) *Duty free* means exempt from all customs duties, toll charges, taxes or governmental impositions levied on the act of importation.

(i) *Free alongside ship* (f.a.s.) includes all costs of transportation and delivery of the goods to the dock. "Free on board" (f.o.b.) includes costs for delivering the goods and loading them aboard the carrier at a specific location. Bulk shipments are normally loaded f.o.b.; all other shipments, f.a.s., and title there transferred.

(j) (1) *Food for Peace Program Agreement* constitutes the agreement between the cooperating sponsor(s) and the U.S. Government. The Food for Peace Program Agreement may be specific, listing the kinds and quantities of commodities to be supplied, program objectives, criteria for eligibility of recipients, plan for distribution of commodities, and other specific program provisions in addition to the provisions set forth in this Regulation; or it will state that the cooperating sponsor will comply with this part and such other terms and conditions as set forth in other A.I.D. programming documents.

(2) *Host Country Food for Peace Program Agreement* means an agreement between the cooperating sponsor and the foreign government of each cooperating country which incorporates by reference or otherwise the terms and conditions set forth within this Part (A.I.D. Regulation 11).

(3) *Recipient Agency Agreements* means a written agreement between the cooperating sponsor and the recipient agency prior to the transfer to a recipient agency of commodities, monetized proceeds, or other program income for distribution or implementation of an approved program.

(k) *General Average* means the proportional sharing of a loss or extraordinary expense incurred to protect the whole cargo.

(l) *Institutions* means nonpenal, public or nonprofit private establishments that operate for charitable or welfare purposes where needy persons reside and receive meals including, but not limited to, homes for the aged, mentally and physically handicapped, refugee camps, and leprosy asylums.

(m) *Intergovernmental organizations* means agencies sponsored and supported by the United Nations or by two or more nations, one of which is the United States of America.

(n) *Maternal-child feeding, primary school and other child feeding programs:*

(1) Maternal and preschool feeding programs means programs conducted for women of childbearing age, with emphasis on pregnant and lactating women; for mothers with preschool children; and for children below the usual enrollment age for the primary grade at public schools.

(2) School feeding programs means programs conducted for the benefit of children enrolled in primary schools.

(3) Other child feeding programs means programs designed to reach needy children of preschool or primary school age, in child care centers, orphanages, institutions, nurseries, kindergartens and similar activities.

(o) *Nonprofit* means that the residue of income over operating expenses accruing in any activity, project, or program is used solely for the operation of such activity, project, or program.

(p) *Operational Plan* is a plan submitted by the cooperating sponsor or potential cooperating sponsor describing the proposed use of commodity and/or monetized proceeds of sale thereof and/or program income.

(q) *Primary school* means a public or nonprofit facility, or an activity within such facility, which has as its primary purpose the education of children at education levels which are generally comparable to those of elementary schools in the United States.

(r) *Monetized* proceeds means funds generated from the sale of commodities donated by the U.S. in approved monetization programs. Monetized proceeds should be deposited in a special interest bearing account for control and monitoring.

(s) *Program income* means gross income earned by the cooperating sponsor or recipient agencies from activities supported under the approved program during the program period, including, but not limited to, interest

earned on deposits of monetized proceeds, revenue from income generating activities, funds accruing from the sale of containers and nominal voluntary contributions by recipients made on the basis of ability to pay. (With respect to nominal voluntary contributions, no one will be denied food because of inability to pay.)

(t) *Recipient agencies* means schools, institutions, welfare agencies, disaster relief organizations, and public or private agencies whose food distribution functions or project activities are sponsored-by the cooperating sponsor and which receive for distribution to eligible recipients commodities or monetized proceeds or program income for approved project activities. A cooperating sponsor may be a recipient agency.

(u) *Recipients* means persons who are in need of food assistance or the benefit of monetized proceeds or program income because of their economic or nutritional condition or who are otherwise eligible to receive commodities for their own use or other assistance in accordance with the terms and conditions of the Food for Peace Program Agreement.

(v) *Registered nonprofit voluntary agency* means a nonprofit voluntary agency or cooperative registered with, and approved by A.I.D. The term includes foreign as well as U.S. registered nonprofit voluntary agencies. Under Public Law 480, section 202(a), a foreign registered nonprofit voluntary agency may be utilized if no U.S. registered nonprofit voluntary agency is available. As to registration, See 22 CFR Part 203, A.I.D. Regulation 3, "Registration of Agencies for Voluntary Foreign Aid."

(w) *Refugees* means persons who fled or were forced to leave their country of nationality or residence and are living in a country other than that of which they hold or have held citizenship, or in a part of their country of nationality or residence other than that which they normally consider their residence, and become eligible recipients.

(x) *Transfer Authorization* or "TA" means the document signed by the cooperating sponsor and A.I.D. which describes commodities and the program in which they will be used. The TA incorporates A.I.D. Regulation 11, and authorizes CCC to ship the commodities.

(y) *USDA* means the U.S. Department of Agriculture.

(z) *Voluntary Agency* means the American Red Cross and any U.S. or foreign voluntary nonprofit agency or cooperative registered with, and approved by, A.I.D.

(aa) "Welfare agencies" means public or nonprofit private agencies that provide care, including food assistance, to needy persons who are not residents of institutions.

§ 211.3 Cooperating sponsor agreements.

(a) *Food for Peace Program Agreement.* The cooperating sponsor shall enter into a written agreement with A.I.D. by signing a Food for Peace Program Agreement which shall incorporate by reference or otherwise the terms and conditions set forth in this part (A.I.D. Regulation 11).

(b) Host country Food for Peace Program Agreement. Voluntary agencies, including cooperatives, or intergovernmental organizations shall, in addition to the Food for Peace Program Agreement, enter into a separate written Food for Peace Agreement with the foreign government of each cooperating country. This agreement shall incorporate by reference or otherwise the terms and conditions set forth in this part (A.I.D. Regulation 11). Provided, however, that where such written agreement is not appropriate or feasible, the USAID or Diplomatic Post shall assure A.I.D./W, in writing, that the program can be effectively implemented in compliance with this part without such an agreement.

(c) *Recipient Agency Agreements.* Prior to the transfer of commodities, monetized proceeds, or program income to a recipient agency for distribution or implementation of an approved program, the cooperating sponsor shall execute a written agreement with such agency which shall describe the approved uses of commodities, monetized proceeds and program income; provide that the recipient agency shall pay to the cooperating sponsor the value of any commodities, monetized proceeds or program income which are used for purposes not permitted under the Food for Peace Program Agreement, the approved operational plan or this Regulation or which are lost, damaged or misused as a result of the recipient agency's failure to exercise reasonable care with respect to such commodities, monetized proceeds or program income; and incorporate by reference or otherwise the terms and conditions set forth in this part (A.I.D. Regulation 11) including those relating to implementation of the approved operational plan, the use of funds, recordkeeping, reporting, inspection and audit. The operational plan may indicate, however, those transfers of commodities, monetized proceeds or program income as to which the cooperating sponsor and A.I.D. agree that a Recipient Agency Agreement would not be appropriate or feasible because of the nature of the recipient agency selected by the cooperating sponsor or the amount of commodities, monetized proceeds or program income that may be transferred to the recipient agency. In any case, the cooperating sponsor shall remain responsible for such commodities, monetized proceeds and program income in accordance with the terms of this part (A.I.D. Regulation 11) and the Food for Peace Program Agreement. The cooperating sponsor shall provide the USAID or Diplomatic Post a copy of each executed Recipient Agency Agreement.

(d) *Program procedure*—(1) *Requests for programs.* A program may be requested by any cooperating sponsor, including nonprofit voluntary agencies, cooperatives, foreign governments, and international organizations.

(2) *Format for approval of programs.* There are two basic patterns of decision typically employed in granting approval to a request for Title II assistance:

(i) *Format for approving regular programs.* The cooperating sponsor submits to A.I.D. an operational plan or multi-year operational plan (see Appendix II), describing the program proposed. The operational plan provides the basic information for preparation or amendment of a Food for Peace Program Agreement (see definition), between the cooperating sponsor and A.I.D. (these Agreements will include by reference this Regulation 11). Also, there will be submitted to A.I.D. an Annual Estimate of Requirements or A.E.R. along with the operational plan (see definition), estimating the quantities of commodities required for each program proposed. Upon approval by the Working Group of the Food Aid Subcommittee, A.I.D./W's signature on the A.E.R. completes this decision process.

(ii) Format for Approving Individual Programs. The other basic pattern of decision making on these programs results in a Transfer Authorization ("TA"; see definition). The TA is used for all government-to-government programs, and for nongovernmental cooperating sponsor programs which do not fit within the Program Agreement/AER framework. The TA will include by reference Regulation 11.

(iii) *Timing of decision.* Under Public Law 480, section 208(a), within 45 days of its submission to A.I.D./W, a decision must be made on a proposal submitted by a nonprofit voluntary agency or cooperative, concurred in by the appropriate U.S. Government field mission. The decision shall detail the reasons for approval or denial, and if

denied, conditions to be met for approval.

§ 211.4 Availability of commodities; shipment.

(a) Shipment, distribution and use of commodities. Commodities shall be available for shipment, distribution and use in accordance with the provisions of the Food for Peace Program Agreement or Transfer Authorization and this part.

(b) *Transfer of title and delivery.* (1) Unless the Food for Peace Program Agreement or Transfer Authorization provides otherwise, title to the commodity shall pass to the cooperating sponsor at the time and place designated by CCC. This will generally be either f.o.b. or f.a.s. vessel at the U.S. port or at another point in the U.S. at the time and place at which the ocean carrier takes possession of the cargo.

(2) Nongovernmental cooperating sponsors shall make the necessary arrangements to accept commodities at the points of delivery designated by CCC.

(c) *Processing, handling, transportation and other costs.* (1) The United States will pay processing, handling, transportation, and other incidental costs incurred in making commodities available to cooperating sponsors f.o.b. or f.a.s. vessel at U.S. ports, or free at inland destinations in the U.S., at the time and place at which the ocean carrier takes possession of the cargo, except as otherwise provided in this paragraph (c).

(2) Nongovernmental cooperating sponsors shall reimburse the United States for expenses incurred at their request and for their accommodation which are in excess of those which the United States would have otherwise incurred in making delivery

(i) at the lowest combination inland and ocean transportation costs to the United States as determined by the United States or

(ii) in sizes and types of packages announced as available.

(3) All costs and expenses incurred subsequent to the transfer of title in the U.S. to cooperating sponsors except as otherwise provided herein shall be borne by them. Upon the determination that it is in the interests of the program to do so, the United States may pay or make reimbursement for: ocean transportation costs from U.S. ports to the designated ports of entry aboard; or to designated points of entry abroad in the case

(i) of landlocked countries, (ii) where ports cannot be used effectively because of natural or other disturbances,

(iii) where carriers to a specific country are unavailable,

(iv) where a substantial savings in cost or time can be effected by the utilization of points of entry other than ports; or

(v) in the case of commodities for urgent and extraordinary relief requirements, including prepositioned commodities, transportation costs from designated points of entry or ports of entry abroad to storage and distribution centers and associated storage and distribution costs.

(d) *Transportation authorization.* A transfer authorization will be issued to cover the ocean freight paid directly by the United States. When A.I.D. contracts for ocean carriage, disbursement to the carriers shall be made by A.I.D. upon presentation of Standard Form 1034 and three copies of 1034A (Public Voucher for purchases and services other than personal), together with three copies of the related on-board ocean bill of lading, one copy of which must contain the following certification signed by an authorized representative of the steamship company:

> I certify that this document is a true and correct copy of the original on-board ocean bill of lading under which the goods herein described were located on the above-named vessel and that the original and all other copies thereof have been clearly marked as not to be certified for billing.
>
> (Name of steamship co.)
> By (Authorized representative)

Such voucher should be submitted to: Transportation Division, Office of Procurement, Agency for International Development, Washington, DC 20523. Except for duty, taxes and other costs exempted in § 211.7 (a) and (b) of this part, cooperating sponsors booking their own vessels will be reimbursed as provided in A.I.D. Regulation 2 (part 202 of this chapter) for ocean freight authorized by the United States upon presentation to A.I.D./W of proof of payment to the ocean carrier. A.I.D. will only reimburse voluntary agencies or cooperatives up to a maximum of 2-1/2 percent commission paid to their freight forwarders as a result of booking Public Law 480, Title II cargo. Proof of commissions paid must be submitted with requests for reimbursement.

(e) *Shipping instructions.*—(1) *Shipments booked by A.I.D.* Requests for shipment of commodities shall originate with the cooperating sponsor and shall be submitted to USAID or Diplomatic Post for clearance and transmittal to A.I.D./W. Arbitration clauses should not be included in any booking contracts for cargoes supplied by CCC. A.I.D./W shall, through cables, or letters to USAID or Diplomatic Post, provide cooperating sponsors (and where applicable voluntary agency headquarters) with names of vessels, expected times of arrival (ETAs), and other pertinent information on shipments booked by A.I.D. At the time of exportation of commodities, the freight forwarder representing A.I.D. shall send applicable ocean bills of lading by airmail, or by the fastest means available, to USDA, to the USAID or Diplomatic Post (and where applicable to the USAID Controller, voluntary agency headquarters, and voluntary agency field representative), and to the consignee in sufficient time to advise of the arrival of the shipment.

(2) Shipments booked by nongovernmental cooperating sponsor. Requests for shipment of commodities shall originate with the cooperating sponsor and shall be cleared by the USAID or Diplomatic Post before transmittal to the cooperating sponsor's headquarters for concurrence and issuance. The USAID or Diplomatic Post shall promptly clear such requests for shipment of commodities or, if there is reason for delay or disapproval, advise the cooperating sponsor and A.I.D./W within seven (7) days of receipt of requests for shipment. After the cooperating sponsor headquarters concurs in the request and issues the order, the original will be sent promptly to A.I.D./W-Office of Food for Peace which forwards it to USDA/ASCS for procurement action with a copy to the USAID or Diplomatic Post. Headquarters of cooperating sponsors which book their own shipments shall provide their representatives and the USAID or Diplomatic Post with the names of vessels, ETAs and other pertinent-information on shipments booked. At the time of exportation of commodities, applicable ocean bills of lading shall be sent airmail or by the fastest means available by the freight forwarder representing the cooperating sponsor, to USDA, the USAID or Diplomatic Post (and where applicable to the USAID Controller and the voluntary agency representative) and to the consignee in the country of destination in sufficient time to advise of the arrival of the shipment. However, voluntary agencies will also forward cable advice of actual exportation to their program directors in countries within the Caribbean area which are supplied by vessels having a rapid and short run from U.S. port to destination.

(f) *Tolerances.* Delivery by the United States to the cooperating sponsor at point of transfer of title within a tolerance of 5 percent (2 percent in the case of quantities over 10,000 metric tons) plus or minus, of the quantity

ordered for shipment shall be regarded as completion of delivery. There shall be no tolerance with respect to the ocean carrier's responsibility to deliver the entire cargo shipped and the United States assumes no obligation for failure by an ocean carrier to complete delivery to port of discharge.

§ 211.5 Obligations of cooperating sponsor.

(a) *Operational plans.* Each cooperating sponsor shall submit to the USAID or Diplomatic Post for their approval, upon which it is submitted to A.I.D./W, Office of Food for Peace for approval, within such times and on the forms prescribed by A.I.D./W, a description of the programs it is sponsoring or proposes to sponsor. This operational plan will include program purposes and goals; criteria for measuring program effectiveness; a description of the activities for which commodities, monetized proceeds, or program income will be provided or used; and other specific provisions in addition to those set forth in this Regulation. Further, this description will include information from which it may be determined that the distribution of commodities in the recipient country will not result in a substantial disincentive to domestic production and that adequate storage facilities are available in the recipient country at the time of exportation of the commodity to prevent spoilage or waste of the commodity. For preparation of the operational plan, see Appendix II to this Regulation. Unless A.I.D. otherwise agrees in writing, a cooperating sponsor should not deviate from the operational plan and other program documents approved by A.I.D., except that within the limits of the total amount of commodities authorized for the program and the monetized proceeds and program income generated for the program the cooperating sponsor may increase or decrease by 10 percent the amount of commodities, monetized proceeds or program income allocated to approved components of the operational plan without prior written approval of A.I.D. Such adjustments must be identified specifically in the annual report submitted by a cooperating sponsor under § 211.10(b) of the Regulation.

(b) *Program supervision.* Cooperating sponsors shall provide adequate supervisory personnel for the efficient operation of the program, including personnel to plan, organize, implement, control, and evaluate programs involving distribution of commodities or use of monetized proceeds and program income, and to make internal reviews including warehouse inspections, physical inventories, and end-use checks of food or funds, and review of books and records maintained by recipient agencies that receive monetized proceeds and/or program income. Maximum use of volunteer personnel shall be encouraged, and cooperating sponsors shall be represented by a person resident in the country of distribution or other nearby country approved by A.I.D./W, who is appointed by and responsible to the cooperating sponsor for distribution of commodities or use of monetized proceeds or program income in accordance with the provisions of this Regulation.

(c) *Internal reviews.*—(1) *By nongovernmental cooperating sponsors.* These cooperating sponsors shall perform or arrange to have performed internal reviews on a schedule mutually agreed to, in writing, between the USAID or Diplomatic Post and the cooperating sponsor. These internal reviews should be scheduled on a reasonable frequency, on a continuing basis or at intervals agreed to by the USAID or Diplomatic Post, usually annually, but not less frequently than every two years. Such reviews shall be made by individuals who are sufficiently independent of those who authorize the distribution of Title II commodities, to produce unbiased opinions, conclusions or judgments. These reviews are to ascertain the effectiveness of management systems and procedures to meet the terms and conditions of this Regulation and the program agreement. The internal review will represent a complete review of the Title II program(s) and the system used should contain a systematic method to assure timely and appropriate resolutions of review findings and recommendations. Copies of these internal reviews must be promptly submitted to the USAID Mission or Diplomatic Post and A.I.D./W-FVA/FFP/PCD as required in § 211.10(b)(4).

(2) *By other cooperating sponsors.* In the case of programs administered by cooperating governments and by intergovernmental organizations, responsibility for conducting internal review examinations shall be determined by AID/W on a case-by-case basis. For records and reporting requirements see 211.10.

(d) *Commodity requirements; Annual Estimate of Requirements (AER).* Each cooperating sponsor shall submit to the USAID or Diplomatic Post, within such times and on the AER form prescribed by A.I.D./W, estimates of requirements showing the quantities of commodities required for each program proposed. Requirements shall be summarized for all programs in the country on a form prescribed by A.I.D./W.

(e) *Determination of eligibility of recipients.* Cooperating sponsors shall be responsible for determining that the recipients and recipient agencies to whom they distribute commodities are eligible in accordance with the terms and conditions of the Food for Peace Program Agreement and this Regulation. Cooperating sponsors shall impose upon recipient agencies responsibility for determining that the recipients to whom they distribute commodities or provide assistance with monetized proceeds or program income are eligible. Commodities shall be distributed free of charge except as provided in paragraph (i) of this section or § 211.5(o), below, or as otherwise authorized by A.I.D./W, but in no case will recipients be excluded from receiving commodities because of inability to make a contribution to the cooperating sponsor for any purpose.

(f) *No discrimination.* Cooperating sponsors shall distribute commodities to and conduct operations (with food or generated funds) only with eligible recipient agencies and eligible recipients without regard to nationality, race, color, sex, or religious or political beliefs, and shall impose similar conditions upon recipient agencies.

(g) *Public recognition.* To the maximum extent practicable, and with the cooperation of the host government, adequate public recognition shall be given in the press, by radio, and other media that the commodities or assistance have been furnished by the people of the United States. At distribution and feeding centers the cooperating sponsor shall, to the extent feasible, display banners, posters, or similar media which shall contain information similar to that prescribed for containers in paragraph (h)(1) of this section. Recipients' individual identification cards shall, insofar as practicable, be imprinted to contain such information.

(h) *Containers.*—(1) *Markings.* Unless otherwise specified in the Food for Peace Program Agreement, when commodities are packaged for shipment from the United States, bags and other containers shall be marked with the CCC contract number or other identification, the A.I.D. emblem and the following information stated in English:

(i) Name of commodity.

(ii) Furnished by the people of the United States of America.

(iii) Not to be sold or exchanged (where applicable).

(2) *Disposal of containers.* Cooperating sponsors may dispose of containers, other than containers provided by carriers, in which commodities are received in countries having approved Title II programs, by sale or exchange, or may distribute the containers free of charge to eligible food or fiber recipients for their personal use. If the containers are to be used commercially, the cooperating sponsor must arrange for the removal or obliteration of, or cross out, the U.S. Government markings from the containers prior to such use.

(i) *Use of funds.* In addition to funds accruing to cooperating sponsors from the sale of containers, funds may also be available from nominal contributions made in maternal, preschool, school and other child feeding programs where voluntary contributions by the recipients will be encouraged on the basis of ability to pay. Funds from these or from monetized proceeds or program income may be used by a nongovernmental cooperating sponsor

(1) to transport, store, distribute and otherwise enhance the effectiveness of the use of donated commodities and products thereof, including construction or improvement of storage facilities or warehouses, handling, insect and rodent control, payment of indigenous or third-country personnel employed by cooperating sponsor or recipient agencies in support of approved programs and

(2) to implement income generating, community development, health, nutrition, cooperative development, agricultural programs and other developmental activities agreed upon by A.I.D. and the cooperating sponsor. Monetized proceeds and program income may be used by the cooperating sponsor and recipient agencies only for the purposes described in the operational plan, or otherwise approved by A.I.D., in writing, and only for such costs as would be allowable under Circular A–122 as amended, "Cost Principles for Nonprofit Organizations" published in the **Federal Register** July 8, 1980, FR 46022–46034, and at 46 FR 17185, March 17, 1981 by the Office of Management and Budget ("OMB"), available at the Office of Administration, OMB Publications Unit, Room G–236, New Executive Office Building, Washington, DC 20503, except that a recipient agency may use not to exceed $500 per year of voluntary contributions for institutional, community or social development or other humanitarian purposes without regard to the operational plan or OMB Circular A–122. (Governmental Cooperating sponsors shall use monetized proceeds and program income in accordance with section 206 of Public Law 480 where applicable as described in the TA with respect to such programs.)

The cooperating sponsor shall use commercially reasonable practices in construction activities and in purchasing goods and services using monetized proceeds or program income, shall maintain a code of standards of conduct regarding conflicts of interest, carry out procurement transactions in a manner to provide open and free competition to the maximum extent practicable, and maintain and make available to A.I.D. in accordance with § 211.10 below, records and documents regarding the procurement of goods and services with monetized proceeds and program income. Cooperating sponsors shall follow their own requirements relating to bid guarantees, performance bonds and payment bonds when program income or monetized proceeds are used to finance construction or the improvement of facilities, but shall consult with the USAID Mission or Diplomatic Post regarding such requirements when the estimated cost of such construction or improvements exceeds $100,000. Title to real and personal property shall be vested in the cooperating sponsor, except as provided in the operational plan or as A.I.D. may otherwise agree in writing, subject to the requirements of § 211.11 upon termination of the program. Monetized proceeds and program income may not be used to acquire, construct, alter or upgrade land, buildings or other real property improvements which are used in whole or in part for sectarian purposes or which are owned or managed by a church or other organization engaged exclusively in religious activity. Notwithstanding the preceding sentence, monetized proceeds or program income may be used to finance repair or rehabilitation of an existing structure owned or managed by a church or organization engaged exclusively in religious activity to the extent necessary to avoid spoilage or loss of donated commodities, provided that the structure is not used in whole or in part for any sectarian purpose while donated commodities are stored in it, and the use of monetized proceeds or program income to finance construction of such a structure may be approved in the operational plan or by the USAID or Diplomatic Post if the structure is needed and will be used for the storage of donated commodities for a sufficient period of time to warrant the expenditure of monetized proceeds or program income and the structure will not be used for any sectarian purpose during this period.

(j) *Report on funds.* The cooperating sponsor (headquarters, if there is more than one office) shall annually provide A.I.D./W–Office of Food for Peace (FFP) a report on the receipt and disbursement of all monetized proceeds and program income by cooperating sponsors and recipient agencies. This report should include the source of the funds, by country, and how the funds were used. This annual report should be submitted to A.I.D./W–FFP by December 31 of each calendar year for the fiscal year ending September 30 of that calendar year.

(k) *No displacement of sales.* Except in the case of emergency or disaster situations, the donation of commodities furnished for these programs shall not result in increased availability for export by the recipient country of the same or like commodities and shall not interfere with or displace sales in the recipient country which might otherwise take place. A country may be exempt from this proviso if circumstances warrant. Missions should seek A.I.D./W guidance on this matter.

(l) *Commodities borrowed or exchanged for programs.* After the date of the program approval by A.I.D./W, but before arrival at the distribution point of the commodities authorized, the cooperating sponsor may, with prior approval of the USAID or Diplomatic Post, borrow the same or similar commodities from local sources to meet program requirements provided that:

(1) Such of the commodities borrowed as are used in accordance with the terms of the applicable Food for Peace Program Agreement will be replaced with commodities authorized herein on an equivalent value basis at the time and place that the exchange takes place as determined by mutual agreement between the cooperating sponsor and the USAID or Diplomatic Post, except that at the request of the cooperating sponsor, the USAID or Diplomatic Post may determine that such replacement may be made on some other justifiable basis;

(2) Packaged commodities which are borrowed shall be appropriately identified insofar as practicable in the language of the country of distribution as having been furnished by the people of the United States; and

(3) Suitable publicity shall be given to the exchange of commodities as provided in paragraph (g) of this section and containers for borrowed commodities shall be marked to the extent practicable in accordance with § 211.6(c).

(m) *Commodity transfer between programs.* After the date of program approval by A.I.D./W, but before distribution of the commodities authorized herein by the recipient agency, the USAID or Diplomatic Post, (or the cooperating sponsor with prior approval of the USAID or Diplomatic Post) may transfer commodities between approved Title II programs to meet emergency disaster requirements or to improve efficiency of operation; for example, to meet temporary shortages due to delays in ocean transportation, or provide for rapid distribution of stocks in danger of deterioration. Transfers may also be made to disaster organizations for use in meeting exceptional circumstances. Commodity transfers shall be made at no cost to the U.S. Government and with the concurrence of the cooperating sponsor or disaster organization concerned. A USAID or Diplomatic Post with funds available may, however, provide funds to pay the costs of transfers to meet extraordinary relief requirements, in which case A.I.D./W shall be advised promptly of the details of the transfer. Commodities transferred as described above shall not be replaced by the U.S. Government unless A.I.D./W authorizes such replacement.

(n) *Disposal of excessive stock of commodities.* If commodities are on hand which cannot be utilized in accordance with the applicable Food for Peace Program Agreement, the cooperating sponsor shall promptly advise the USAID or Diplomatic Post of the quantities, location, and condition of such commodities, and where possible shall propose an alternate use of the excess stocks; the USAID or Diplomatic Post shall determine the most appropriate use of the excess stocks, and with prior A.I.D./W concurrence, shall issue instructions for disposition. Transportation costs and other charges attributable to transferring commodities from one program to another within the country shall be the responsibility of the cooperating sponsor, except that in case of disaster or emergency, A.I.D./W may authorize the use of disaster or emergency funds to pay for the costs of such transfers. (As to unfit commodity disposal, see § 211.8.)

(o) *Monetization programs.* For programs in which the sale of commodities is authorized by A.I.D., Paragraphs (e) and (f) of this section are not applicable to the extent they prohibit or restrict the sale or distribution to end users of the commodities approved for monetization, and §§ 211.5(h) and 211.6(c) are not applicable to the extent they require the marking or labeling of the containers of such commodities. Cooperating sponsors do not need to monitor, manage, report on or account for the distribution or use of commodities after title to the commodities has passed to buyers or other third parties pursuant to a sale under a monetization program and all sales proceeds have been fully deposited in the special interest bearing account established by the cooperating sponsor for monetized proceeds. However, the sales proceeds and the uses thereof must be monitored, managed, reported and accounted for as provided in this Regulation, with special reference to §§ 211.5(i), 211.5(j), and 211.10. It is not mandatory that commodities approved for monetization be imported and sold free of all duties and taxes, but nongovernmental cooperating sponsors may negotiate agreements with the host government permitting the tax-free import and sale of such commodities. Even where the cooperating sponsor negotiates tax-exempt status, the prices at which the cooperating sponsor sells the commodities to the purchaser should reflect prices that would be obtained in a commercial transaction, i.e., the prices would include the cost of duties and taxes. Thus, the amounts normally paid for duties and taxes would accrue for the benefit of the cooperating sponsor's approved program. Cooperating sponsors should refer to the "Monetization Field Manual" for more comprehensive guidance on setting the sales price. A copy of the Monetization Manual may be obtained from A.I.D./W–FVA/PPM, Washington, DC 20523.

(p) *Trilateral exchange programs.* The restrictions in this Regulation regarding the distribution, use or labeling of commodities shall not apply to commodities furnished by the CCC in exchange for other commodities obtained from third parties ("exchanged commodities") to be distributed in a recipient country under a trilateral exchange program. Except as the U.S. Government and the cooperating sponsor may otherwise agree in writing, title to the exchanged commodities will pass to the cooperating sponsor upon delivery to and acceptance by the cooperating sponsor at the point of delivery specified in the program documents. After title passes to the cooperating sponsor the exchanged commodities shall be deemed "commodities" covered by this Regulation with respect to all post-delivery obligations of the cooperating sponsor contained in this Regulation, including obligations regarding labeling, distribution, monitoring, reporting, accounting and use of commodities. In the event of difficulty in satisfying the labeling requirement the cooperating sponsor will consult with the USAID or Diplomatic Post for guidance.

§ 211.6 Processing, repackaging, and labeling commodities.

(a) *Commercial Processing and repackaging.* Cooperating sponsors or their designees may arrange for processing commodities into different end products and for packaging or repackaging commodities prior to distribution. When commercial facilities are used for processing, packaging or repackaging, cooperating sponsors or their designees shall enter into written agreements for such services. Except in the case of commodities or containers provided to foreign governments for sale, as under section 206 of Public Law 480, the agreements must have the prior approval of the USAID or Diplomatic Post in the country of distribution. Except as A.I.D./W otherwise agrees, the executed agreements shall provide as a minimum that:

(1) No part of the commodities delivered to the processing, packaging, or repackaging company shall be used to defray processing, packaging, repackaging, or other costs, except as provided in paragraph (a)(2) of this section, immediately below.

(2) When the milling of grain is authorized in the cooperating country, the U.S. will not pay any part of the processing costs, directly or indirectly, except that with the prior approval of A.I.D./W, the value of the offal may be used to offset such part of the processing costs as it may cover.

(3) The party providing such services shall:

(i) Fully account to the cooperating sponsor for all commodities delivered to the processor's possession and shall maintain adequate records and submit periodic reports pertaining to the performance of the agreement;

(ii) Be liable for the value of all commodities not accounted for as provided in § 211.9(g);

(iii) Return or dispose of the containers in which the commodity is received from the cooperating sponsor according to instructions from the cooperating sponsor; and

(iv) Plainly label carton, sacks, or other containers containing the end product in accordance with paragraph (c) of this section.

(b) *Use of cooperating sponsor facilities.* When cooperating sponsors utilize their own facilities to process, package, or repackage commodities into different end products, and when such

products are distributed for consumption off the premises of the cooperating sponsor, the cooperating sponsor shall plainly label the containers as provided in paragraph (c) of this section, and banners, posters, or similar media which shall contain information similar to that prescribed in paragraph (c) of this section, shall be displayed at the distribution center. Recipients' individual identification cards shall to the maximum extent practicable be imprinted to contain such information.

(c) *Labeling.* If prior to distribution the cooperating sponsor arranges for packaging or repackaging donated commodities, the cartons, sacks, or other containers in which the commodities are packed shall be plainly labeled wit:h the A.I.D. emblem, and insofar as practicable, with the following information in the language of the country in which the commodities are to be distributed:

(1) Name of commodity;

(2) Furnished by the people of the United States of America; and

(3) Not to be sold or exchanged (where applicable). Emblems or other identification of nongovernmental cooperating sponsors may also be added.

(d) *Where commodity containers are not used.* When the usual practice in a country is not to enclose the end product in a container, wrapper, sack, etc., the cooperating sponsor shall, to the extent practicable, display banners, posters, or other media, and imprint on individual recipient identification cards information similar to that prescribed in paragraph (c) of this section.

§ 211.7 Arrangements for entry and handling in foreign country.

(a) *Costs at discharge ports.* Except as otherwise agreed upon by A.I.D./W and provided in the applicable shipping contract or in paragraphs (d) and (e) of this section, the cooperating sponsor shall be responsible for all costs, other than those assessed by the delivering carrier either in accordance with its applicable tariff for delivery to the discharge port, or in accordance with the applicable charter or booking contract. The cooperating sponsor shall be responsible for all costs for

(1) Distributing the commodity as provided in the Food for Peace Program Agreement to end users;

(2) For demurrage, detention, and overtime; and

(3) For obtaining independent discharge survey reports as provided in § 211.9.

The cooperating sponsor shall also be responsible for wharfage, taxes, dues, and port charges assessed and collected by local authorities from the consignee, and for lighterage (when not a custom of the port), and lightening costs when assessed as a charge separate from the freight rate.

(b) *Duty, taxes, and consular invoices.* Except for commodities which are to be monetized (sold) under an approved operational plan (See § 211.5(o)), commodities shall be admitted duty free and exempt from all taxes. Consular invoices shall not be required unless specific provision is made in the Food for Peace Program Agreement. If required, they shall be issued without cost to the cooperating sponsor or to the Government of the United States. The cooperating sponsor shall be responsible for ensuring prompt entry and transit in the foreign country(ies) and for obtaining all necessary import permits, licenses or other appropriate approvals for entry and transit, including phytosanitary, health and inspection certificates.

(c) *Storage facilities and transportation in foreign countries.* In addition, the cooperating sponsors shall provide, to the USAID or Diplomatic Post, assurance that all necessary arrangements for receiving the commodities have been made, and shall assume full responsibility for storage and maintenance of the commodities from time of delivery at port of entry abroad or, when authorized, at other designated points of entry abroad agreed upon between the cooperating sponsor and A.I.D. Before recommending approval of a program to A.I.D./W, the USAID or Diplomatic Post shall obtain, from the cooperating sponsor, assurance that provision has been made for internal transportation, and for storage and handling which are adequate by local commercial standards. The cooperating sponsor shall be responsible for the maintenance of the commodities in such manner as to assure distribution of the commodities in good condition to recipient agencies or eligible recipients.

(d) Inland transportation in intermediate countries. In the case of landlocked countries, transportation in the intermediate country to a designated inland point of entry in the recipient country shall be arranged by the cooperating sponsor unless otherwise provided in the Food for Peace Program Agreement or other program document. Nongovernmental cooperating sponsors shall handle claims arising from loss or damage in the intermediate country, in accordance with § 211.9(e). Other cooperating sponsors shall assign any rights that they may have to any claims that arise in the intermediate country to the USAID or Diplomatic Post which shall pursue and shall retain the proceeds of such claims.

(e) *Authorization for reimbursement of costs.* If, because of packaging damage, it is determined by a nongovernmental cooperating sponsor that commodities must be repackaged to ensure that the commodities arrive at the distribution point in a wholesome condition, the nongovernmental cooperating sponsor may incur expenses for such repackaging up to $500 and such costs will be reimbursed to the nongovernmental cooperating sponsor by CCC. If costs will exceed $500, the authority to repackage and incur the costs must be approved by the USAID or Diplomatic Post in advance of repackaging unless such prior approval is specifically waived, in writing, by the USAID or Diplomatic Post. For losses in transit, the $500 limitation shall apply to all commodities which are shipped on the same voyage of the same vessel to the same port destination, irrespective of the kinds of commodities shipped or the number of different bills of lading issued by the carrier. For other losses, the $500 limitation shall apply to each loss situation, e.g., if 700 bags are damaged in a warehouse due to an earthquake, the $500 limitation applies to the total cost of repackaging the 700 bags. Shipments may not be artificially divided in order to avoid the limitation of $500 or for obtaining prior approval to incur repackaging costs.

(f) *Method of Reimburement*—(1) Repackaging required because of damage occurring prior to or during discharge from the ocean carrier. Costs of such reconstitution or repackaging should be included, as a separate item, in claims filed against the ocean carrier (see § 211.9(c)). Full reimbursement of such costs up to $500 will be made by CCC, KCCO upon receipt of invoices or other documents to support such costs. For amounts expended in excess of $500, reimbursement will be made upon receipt of supporting invoices or other documents establishing the costs of repackaging and showing the prior approval of the USAID or Diplomatic Post to incur the costs (unless approval waived, see § 211.7(e)).

(2) Repackaging required because of damage caused after discharge of the cargo from the ocean carrier. Costs of such repackaging will be reimbursed to the agency or organization by CCC (USDA–ASCS Fiscal Division, 14th & Independence Avenue, Washington, DC 20250) upon receipt of documentation as set forth in section 211.7(e).

§ 211.8 Disposition of commodities unfit for authorized use.

(a) *Prior to delivery to cooperating sponsor at discharge port or point of entry.* If the commodity is damaged prior to delivery to the cooperating sponsor (other than a nongovernmental cooperating sponsor, which shall arrange for such inspection) at discharge port or point of entry overseas, the USAID or Diplomatic Post shall immediately arrange for inspection by a public health official or other competent authority. If the commodity is determined to be unfit for human consumption, the USAID or Diplomatic Post shall dispose of it in accordance with the priority set forth in paragraph (b) of this section, below. Expenses incidental to the handling and disposition of the damaged commodity shall be paid by the USAID or Diplomatic Post from the sales proceeds, from CCC Account No. 20FT401 or from special Title II, Public Law 480 Agricultural Commodity Account. The net proceeds of sales shall be deposited with the U.S. Disbursing Officer American Embassy, for the credit of CCC Account No. 20FT401.

(b) *After delivery to cooperating sponsor.* If after arrival in a foreign country it appears that the commodity, or any part thereof, may be unfit for the use authorized in the Food for Peace Program Agreement, the cooperating sponsor shall immediately arrange for inspection of the commodity by a public health official or other competent authority approved by the USAID or Diplomatic Post. If no competent local authority is available, the USAID or Diplomatic Post may determine whether the commodities are unfit for human consumption, and if so may direct disposal in accordance with paragraphs (b) (1) through (4) of this section. The cooperating sponsor shall arrange for the recovery for authorized use of that part designated during the inspection as suitable for program use. If, after inspection, the commodity (or any part thereof) is determined to be unfit for authorized use the cooperating sponsor shall notify the USAID or Diplomatic Post of the circumstances pertaining to the loss or damage as prescribed in § 211.9(f). With the concurrence of the USAID or the Diplomatic Post, the commodity determined to be unfit for authorized use shall be disposed of in the following order of priority:

(1) By transfer to an approved Food for Peace program for use as livestock feed. A.I.D./W shall be advised promptly of any such transfer so that shipments from the United States to the livestock feeding program can be reduced by an equivalent amount;

(2) Sale for the most appropriate use, i.e., animal feed, fertilizer, or industrial use, at the highest obtainable price. When the commodity is sold, all U.S. Government markings shall be obliterated, removed or crossed out;

(3) By donation to a governmental or charitable organization for use as animal feed or for other nonfood use; and

(4) If the commodity is unfit for any use or if disposal in accordance with paragraph (b) (1), (2), or (3) of this section, is not possible, the commodity shall be destroyed under the observation of a representative of the USAID or Diplomatic Post, if practicable, in such manner as to prevent its use for any purpose. Expenses incidental to the handling and disposition of the damaged commodity shall be paid by the cooperating sponsor unless it is determined by the USAID or Diplomatic Post that the damage could not have been prevented by the proper exercise of the cooperating sponsor's responsibility under the terms of the Food for Peace Program Agreement. Actual expenses incurred, including third party costs, in effecting any sale may be deducted from the sales proceeds and, except for monetization programs, the net proceeds shall be deposited with the U.S. Disbursing Officer, American Embassy, with instructions to credit the deposit to CCC Account No. 20FT401. In monetization programs, net proceeds shall be deposited in the special account used for funds for the approved program. The cooperating sponsor shall promptly furnish the USAID or Diplomatic Post a written report of all circumstances relating to the loss and damage. The report or supplemental report shall include a certification by a public health official or other competent authority of the exact quantity of the damaged commodity disposed of because it was determined to be unfit for human consumption.

§ 211.9 Liability for loss, damage or improper distribution of commodities.

Note: Where the instructions in this § 211.9 state that the cooperating sponsor should contact USDA or CCC, contact office is: Kansas City ASCS Commodity Office (KCCO), P.O. Box 419205, Kansas City, Missouri 64141–6205. For section 211.9 (a) and (b) contact: KCCO, Chief, Processed Commodities Division. For section 211.9(c) contact: KCCO, Chief, Claims and Collections Division, Kansas City, Missouri 64141–6105.

(a) *Fault of cooperating sponsor prior to loading on ocean vessel.* If a nongovernmental cooperating sponsor books cargo for ocean transportation and is unable to have a vessel at the U.S. port of export for loading in accordance with the agreed shipping schedule, the nongovernmental cooperating sponsor shall immediately notify the USDA. The USDA will determine whether the commodity shall be (1) Moved to another available outlet; (2) Stored at the port for delivery to the nongovernmental cooperating sponsor when a vessel is available for loading; or (3) Disposed of as the USDA may deem proper.

When additional expenses are incurred by CCC as a result of a failure of the nongovernmental cooperating sponsor, or their agent, to meet the agreed shipping schedule, or to make necessary arrangements to accept commodities at the points of delivery designated by CCC, and it is determined by CCC that the expenses were incurred because of the fault or negligence of the nongovernmental cooperating sponsor, the cooperating sponsor shall reimburse CCC for such expenses or take such action as directed by CCC.

(b) Fault of others prior to loading on ocean vessel. Upon the happening of any event creating any rights against a warehouseman, carrier, or other person for the loss of or damage to a commodity occurring between the time title is transferred to a nongovernmental cooperating sponsor and the time the commodity is loaded on board vessel at designated port of export, the nongovernmental cooperating sponsor shall immediately notify CCC and promptly assign to CCC any rights to claims which may accrue to it as a result of such loss or damage and shall promptly forward to CCC all documents pertaining thereto. CCC shall have the right to initiate and prosecute, and retain the proceeds of all claims for such loss or damage.

(c) *Ocean carrier loss and damage.—(1) Survey and outturn reports.* (i) Cooperating sponsors shall arrange for an independent cargo surveyor to attend the discharge of the cargo and to count or weigh the cargo and examine its condition, unless the USAID or Diplomatic Post determines that such examination is not feasible, or if CCC has made other provision for such examinations and reports. The surveyor shall prepare a report of its findings showing the quantity and condition of the commodities discharged. The report shall also show the probable cause of any damage noted, and set forth the time and place when the examination was made. If practicable, the examination of the cargo shall be conducted jointly by the surveyor, the

consignee, and the ocean carrier, and the survey report shall be signed by all parties. Customs receipts, port authority reports, shortlanding certificates, cargo boat notes, stevedore's tallies, etc., where applicable, shall be obtained and furnished with the report of the surveyor. The cooperating sponsor shall obtain a certification by a public health official or similar competent authority as to

(A) the condition of the commodity in any case where a damaged commodity appears to be unfit for its intended use; and

(B) a certificate of disposition in the event the commodity is determined to be unfit for its intended use. Such certificates shall be obtained as soon as possible after discharge of the cargo. In any case where the cooperating sponsor can provide a narrative chronology or other commentary to assist in the adjudication of ocean transportation claims, such information should be forwarded as described below. Cooperating sponsors shall prepare such a statement in any case where the loss is estimated to be in excess of $5,000. All documentation shall be in English or supported by an English translation and shall be forwarded as set forth in paragraph (c)(1) (iii) and (iv) of this section. Such cost of an English translation shall be incorporated into the survey fee. The cooperating sponsor may, at its option, also engage the independent surveyor to supervise clearance and delivery of the cargo from customs or port areas to the cooperating sponsor or its agent and to issue delivery survey reports thereon.

(ii) In the event of cargo loss and damage, the cooperating sponsor shall provide the names and addresses of individuals who were present at the time of discharge and during survey and who can verify the quantity lost or damaged. In the case of bulk grain shipments, the cooperating sponsor shall obtain the services of an independent surveyor to—

(A) Observe discharge of the cargo;

(B) Report on discharging method. Remarks should be included on scale type, calibrations, and any other factor which may affect the accuracy of scale weights. If scales are not used, the reason should be stated and the method of weight determination fully described;

(C) Provide information as to whether cargo was discharged in accordance with port customs;

(D) Provide actual or estimated (if scales not used) quantity of cargo lost during discharge and specify how such losses occurred;

(E) obtain copies of port and/or ship records including scale weights, where applicable, to show quantity discharged;

(F) Verify that upon conclusion of discharge, cargo holds are empty. If any cargo is damaged, USDA requires information as to quantity, type and cause;

(G) When cargo is bagged and stacked by vessel interests, surveyor should also furnish daily tally totals and any other pertinent information relative to the bagging of the bulk cargo; and

(H) Provide immediate notification to cooperating sponsor if additional services are necessary to protect cargo interests or if surveyor has reason to believe that the correct quantity was not discharged. The cooperating sponsor, in the case of damage to bulk grain shipments, shall obtain and provide the same documentation regarding quality of cargo as set forth in § 211.8(a) of this Regulation and paragraph (c)(1)(i) of this section. In the case of shipments arriving in container vans, cooperating sponsors shall require the independent surveyor to list the container van numbers and seal numbers shown on the container vans, and indicate whether the seals were intact at the time the container vans were opened, and whether the container vans were in any way damaged. To the extent possible, the independent surveyor should observe discharge of container vans from the vessel to ascertain whether any damage to the container van occurred and arrange for surveYing the contents of any damaged container vans as they are opened.

(iii) Cooperating Sponsors shall send copies to USDA of all reports and documents pertaining to the discharge of commodities. For those surveys arranged by CCC, the cooperating sponsors may obtain a copy of the report from the local USAID Food for Peace Officer.

(iv) CCC will reimburse a nongovernmental cooperating sponsor for the costs incurred by it in obtaining the services of an independent surveyor to conduct examinations of the cargo and render the report set forth above. Reimbursement by CCC will be made upon receipt by CCC of the survey report and the surveyor's invoice or other documents that establish the survey cost. However, CCC will not reimburse a nongovernmental cooperating sponsor for the costs of only a delivery survey, in the absence of a discharge survey, or for any other survey not taken contemporaneously with the discharge of the vessel, unless such deviation from the documentation requirements of paragraph (c)(1) of this section is justified to the satisfaction of CCC.

(v) CCC will normally contract for the survey of cargo on shipments furnished under Transfer Authorizations. Survey contracts will normally be let on a competitive bid basis. However, if a USAID or Diplomatic Post desires that CCC limit its consideration to only certain selected surveyors, the USAID or Diplomatic Post shall furnish A.I.D./W a list of eligible surveyors for forwarding to CCC. Surveyors may be omitted from the list, for instance, based on foreign relations considerations, conflicts of interest, and/or lack of demonstrated capability to properly carry out surveying responsibilities as set forth in the requirements of CCC. Upon receipt of written justification for removal of a particular survey firm, CCC will consider removal of such firm and advise the USAID via A.I.D./W of the final determination. A.I.D./W will furnish CCC's surveying requirements to a USAID or Diplomatic Post upon request. If CCC is unable to find a surveyor at a port to which a shipment has been consigned, CCC may request A.I.D./W to contact the USAID or Diplomatic Post to arrange for a survey. The surveyor's bill for such services shall be submitted to the USAID or Diplomatic Post for review. After the billing has been approved, the USAID or Diplomatic Post may either pay the bill or forward the bill to A.I.D./W for transmittal to CCC for payment. If the USAID or Diplomatic Post pays the bill, A.I.D./W shall be advised of the amount paid and CCC will reimburse the USAID or Diplomatic Post.

(2) *Claims against ocean carriers.* (i) Whether or not title to the commodities has been transferred from CCC to the cooperating sponsor, if A.I.D. or its agents or representatives contracted for the ocean transportation, CCC shall have the right to initiate and prosecute, and retain the proceeds of, all claims against ocean carriers for cargo loss and damage arising out of shipments of commodities transferred or delivered by CCC hereunder.

(ii)(A) Unless otherwise provided in the Food for Peace Program Agreement or other program document, nongovernmental cooperating sponsors shall file notice of any cargo loss and damage with the ocean carrier immediately upon discovery of any such loss and damage and shall promptly initiate claims against the ocean carrier for cargo loss and damage and shall take all necessary action to obtain restitution for losses within any applicable periods of limitations and shall transmit to CCC copies of all such claims. However, the nongovernmental cooperating sponsor need not file a claim when the cargo loss is not in excess of $25, or in any case when the

loss is in excess of $25, but not in excess of $100 and it is determined by the nongovernmental cooperating sponsor that the cost of filing and collecting the claim will exceed the amount of the claim. The nongovernmental cooperating sponsor shall transmit to CCC copies of all claims filed with the ocean carriers for cargo loss and damage, as well as information and/or documentation on shipments when no claim is to be filed. When General Average (see definition) has been declared, no action will be taken by the nongovernmental cooperating sponsor to file or collect claims for loss or damage to commodities. (See paragraph (c)(2)(iii) of this section.)

(B) Determination of value. The value of commodities misused, lost or damaged, shall be determined on the basis of the domestic market price at the time and place the misuse, loss or damage occurred, or, in case it is not feasible to obtain or determine such market price, the f.o.b. or f.a.s. commercial export price of the commodity at the time and place of export, plus ocean freight charges and other costs incurred by the Government of the United States in making delivery to the cooperating sponsor. When the value is determined on a cost basis, the nongovernmental cooperating sponsors may add to the value any provable costs they have incurred prior to delivery by the ocean carrier. In preparing the claim statement, thse costs shall be clearly segregated from costs incurred by the Government of the United States. With respect to claims other than ocean carrier loss and/or damage claims, at the request of the cooperating sponsor or upon the recommendation of the USAID or Diplomatic Post, A.I.D./W may determine that such value may be determined on some other justifiable basis. When replacement is made, the value of commodities misused, lost or damaged, shall be their value at the time and place the misuse, loss, or damage occurred and the value of the replacement commodities shall be their value at the time and place replacement is made.

(C) Amounts collected by nongovernmental cooperating sponsors on claims against ocean carriers not in excess of $100 may be retained by the nongovernmental cooperating sponsor. On claims involving loss or damage having a value in excess of $100 nongovernmental cooperating sponsors may retain from collections received by them, the larger of

(*1*) the amount of $100 plus 10 percent of the difference between $100 and the total amount collected on the claim, up to a maximum of $350, or

(*2*) actual administrative expenses incurred in collection of the claim; provided retention of such expenses is approved by CCC.

Collection costs shall not be deemed to include attorneys fees, fees of collection agencies, and the like. In no event will collection costs in excess of the amount collected on the claim be paid by CCC. The nongovernmental cooperating sponsors may also retain from claim recoveries remaining after allowable deductions for administrative expenses of collection, the amount of any special charges, such as handling, packing, and insurance costs, which the nongovernmental cooperating sponsor has incurred on the lost or damaged commodity and which are included in the claims and paid by the liable party.

(D) The nongovernmental cooperating sponsor may redetermine claims on the basis of additional documentation or information, not considered when the claims were originally filed when such documentation or information clearly changes the ocean carrier's liability. Approval of such changes by CCC is not required regardless of amount. However, copies of redetermined claims and supporting documentation or information shall be furnished to CCC.

(E) The nongovernmental cooperating sponsor may negotiate compromise settlements of claims regardless of the amount thereof, except that proposed compromise settlements of claims having a value in excess of $5,000 shall not be accepted until such action has been approved in writing, by CCC. When a claim is compromised, the nongovernmental cooperating sponsor may retain from the amount collected, the amounts authorized in (c)(2)(ii)(c) of this section, above, and in addition, an amount representing such percentage of the special charges described in (c)(2)(ii)(c) of this section as the compromised amount is to the full amount of the claim. When a claim is not in excess of $600, the nongovernmental cooperating sponsor may terminate collection activity on the claim according to the standards set forth in 4 CFR 104.3 (1984). Approval of such termination by CCC is not required but the nongovernmental cooperating sponsor shall notify CCC when collection activity on a claim is terminated.

(F) All amounts collected in excess of the amounts authorized herein to be retained shall be remitted to CCC. For the purpose of determining the amount to be retained by the nongovernmental cooperating sponsor from the proceeds of claims filed against ocean carriers, the word "claim" shall refer to the loss and damage to commodities which are shipped on the same voyage of the same vessel to the same port destination, irrespective of the kinds of commodities shipped or the number of different bills of lading issued by the carrier. If a nongovernmental cooperating sponsor is unable to effect collection of a claim or negotiate an acceptable compromise settlement within the applicable period of limitation or any extension thereof granted in writing by the liable party or parties, the rights of the nongovernmental cooperating sponsor to the claim shall be assigned to CCC in sufficient time to permit the filing of legal action prior to the expiration of the period of limitation or any extension thereof. Nongovernmental cooperating sponsors shall promptly assign their claim rights to CCC upon request. In the event CCC effects collection or other settlement of the claim after the rights of the nongovernmental cooperating sponsor to the claim have been assigned CCC, CCC shall, except as shown below, pay to the nongovernmental cooperating sponsor the amount the agency or organization would have been entitled to retain had they collected the same amount. However, the additional 10 percent on amounts collected in excess of $100 will be payable only if CCC determines that reasonable efforts were made to collect the claim prior to the assignment, or if payment is deemed to be commensurate with the extra efforts exerted in further documenting claims. Further, if CCC determines that the documentation requirements of section 211.9(c)(1), above, have not been fulfilled and the lack of such documentation has not been justified to the satisfaction of CCC, CCC reserves the right to deny payment of all allowances to the nongovernmental cooperating sponsor.

(G) When nongovernmental cooperating sponsors fail to file claims, or permit claims to become time-barred, or fail to provide for the right of CCC to assert such claims, as provided in this § 211.9, and it is determined by CCC that such failure was due to the fault or negligence of the nongovernmental cooperating sponsor, the agency or organization shall be liable to the United States for the cost and freight (C&F) value of the commodities lost to the program.

(iii) If a cargo loss has been incurred on a nongovernmental cooperating sponsor shipment, and general average has been declared, the nongovernmental cooperating sponsor shall furnish to the Chief, Claims and Collections Division, Kansas City Commodity Office, P.O. Box 419205, Kansas City, Mo. 64141–

0205, with a duplicate copy to A.I.D./W–PDC/FFP/POD, Washington, DC 20523—

(A) Copies of booking confirmations and the applicable on-board bill(s) of lading,

(B) The related outturn or survey report(s),

(C) Evidence showing the amount of ocean transportation charges paid to the carrier(s), and

(D) An assignment to CCC of the cooperating sponsor's right to the claim(s) for such loss.

(d) *Fault of cooperating sponsor in country of distribution.* If a commodity, monetized proceeds or program income is used for a purpose not permitted under the Food for Peace Program Agreement, under the approved operational plan and other program documents or under this Regulation, or if the cooperating sponsor improperly distributes a commodity, or causes loss or damage to a commodity or monetized proceeds or program income through any act or omission or fails to provide proper storage, care, and handling, the cooperating sponsor shall pay to the United States the value of the commodities, proceeds or program income, lost, damaged, or misused (or may, with prior USAID or Diplomatic Post approval, replace such commodities with similar commodities of equal value), unless it is determined by A.I.D. that such improper distribution or use, or such loss or damage, could not have been prevented by proper exercise of the cooperating sponsor's responsibility under the terms of the agreement. Normal commercial practices in the country of distribution shall be considered in determining whether there was a proper exercise of the cooperating sponsor's responsibility. Payment by the cooperating sponsor shall be made in accordance with paragraph (g) of this section.

(e) *Fault of others in country of distribution and in intermediate country.* (1) In addition to survey and/or outturn reports to determine ocean carrier loss and damage, the cooperating sponsor shall, in the case of landlocked countries, arrange for an independent survey at the point of entry into the recipient country and to make a report as set forth in paragraph (c)(1) of this section. CCC will reimburse the cooperating sponsor for the costs of a survey as set forth in paragraph (c)(1)(iv) of this section.

(2) Upon the happening of any event creating any rights against a warehouseman, carrier or other person for the loss of, damage to, or misuse of any commodity or for the loss or misuse of monetized proceeds or program income, the cooperating sponsor shall make every reasonable effort to pursue collection of claims against the liable party or parties for the value of the commodity lost, damaged, or misused or the value of the monetized proceeds or program income and furnish a copy of the claim and related documents to the USAID or Diplomatic Post. Cooperating sponsors who fail to file or pursue such claims shall be liable to A.I.D. for the value of the commodities or monetized proceeds or program income lost, damaged, or misused: Provided, however, that the cooperating sponsor may elect not to file a claim if the loss is less than $500 and such action is not detrimental to the program. Cooperating sponsors may retain $150 of any amount collected on an individual claim. In addition, cooperating sponsors may, with the written approval of the USAID or Diplomatic Post, retain either special costs such as reasonable legal fees that they have incurred in the collection of a claim, or pay such legal fees with monetized proceeds or program income. Any proposed settlement for less than the full amount of the claim must be approved by the USAID or Diplomatic Post prior to acceptance. When the cooperating sponsor has exhausted all reasonable attempts to collect a claim, it shall request the USAID or Diplomatic Post to provide further instructions.

(3) Calculation of the amount of a claim against others. A claim is the right a cooperating sponsor has against a third party as a result of an event for which the third party is responsible that caused the loss, damage or misuse of commodities, monetized proceeds or program income. The amount of the claim is based on the value of the commodities, monetized proceeds or program income lost, damaged or misused as a result of the event. An individual claim may not be broken down artificially to enlarge the amount the cooperating sponsor may retain as an administrative allowance on collection of the claim. For example, if a cooperating sponsor executes a contract with a carrier to transport commodities from points A to B, and losses occur during transport, the cooperating sponsor has one claim against the carrier, and the amount of the claim will be based on the total value of the commodities lost even though some of the loss might have occurred on each of several trucks or by subcontractors used by the carrier to satisfy its contract responsibility to transport the commodities.

(4) Reasonable attempts to collect the claim shall not be less than the follow-up of initial billings with three progressively stronger demands at not more than 30-day intervals. If these efforts fail to elicit a satisfactory response, legal action in the judicial system of the cooperating country should be pursued unless

(i) liability of the third party is not provable,

(ii) the cost of pursuing the claim would exceed the amount of the claim,

(iii) the third party would not have enough assets to satisfy the claim after a judicial decision favorable to the cooperating sponsor,

(iv) maintaining legal action in the country's judicial system would seriously impair the cooperating sponsor's ability to conduct an effective program in the country, or

(v) it is inappropriate for reasons relating to the judiciary or judicial system of the country.

A cooperating sponsor's decision not to take legal action, and reasons therefore, must be submitted in writing to the USAID or Diplomatic Post for review and approval, and the USAID or Diplomatic Post may require the cooperating sponsor to obtain and submit the opinion of competent legal counsel to support its decision. A cooperating sponsor also may request approval to terminate legal action after it has commenced if it is apparent that any of the exceptions described above becomes applicable or if it is otherwise appropriate to terminate legal action prior to judgment. In each instance the USAID or Diplomatic Post must provide the cooperating sponsor a written explanation of its decision. If the USAID or Diplomatic Post approves a cooperating sponsor's decision not to take further action on the claim for reasons described in paragraph (e)(4)(iv) or (v) of this section, the cooperating sponsor shall assign the claim to A.I.D. and shall provide to A.I.D. all documentation relating to the claim.

(5) As an alternative to legal action in the judicial system of the country with regard to claims against a public entity of the government of the cooperating country, the cooperating sponsor and the cooperating country may agree to settle disputed claims by an appropriate administrative procedure and/or arbitration. This alternative may be established in the Individual Country Food for Peace Program Agreement required under § 211.3(b), or by a separate formal understanding, and must be submitted to the USAID Mission or Diplomatic Post for review and approval. Resolution of disputed claims by any administrative procedure or arbitration agreed to by the cooperating sponsor and the cooperating country should be final and binding on the parties. If it is necessary for the USAID or Diplomatic Post to take an

assignment of a claim or claims from a cooperating sponsor, the USAID or Diplomatic Post shall consult with A.I.D./W regarding the appropriate action to take on the assigned claim or claims, unless standing guidance is in effect.

(f) *Reporting losses to the USAID or Diplomatic Post.* (1) The cooperating sponsor shall promptly notify the USAID or Diplomatic Post, in writing, of the circumstances pertaining to any loss, damage, or misuse of commodities valued at $500 or more occurring within the country of distribution or intermediate country. The report shall be made as soon as the cooperating sponsor has adequately investigated the circumstances, but in no event more than ninety (90) days from the date the loss become known to the cooperating sponsor. The report shall include information regarding who had possession of the commodities and who might be responsible for the loss, damage or misuse; the kind and quantities of commodities; size and type of containers; the time and place of misuse, loss or damage, the current location of the commodity; and the Food for Peace Program Agreement number, the CCC contract numbers, if known, or if unknown, other identifying numbers printed on the commodity containers; the action taken by the cooperating sponsor with respect to recovery or disposal; and the estimated value of the commodity. If any of the above information is not available, the cooperating sponsor shall explain why it is not. Similar information should also be reported regarding any loss or misuse of monetized proceeds or program income.

(2) The cooperating sponsor shall report quarterly to USAID or Diplomatic Post any loss, damage or misuse of commodities valued at less than $500, provided that the cooperating sponsor shall inform the USAID or Diplomatic Post if it has reason to believe there is a pattern or trend in the loss, damage, or misuse of such commodities and submit a report on the basis described in paragraph (f)(1) of this section, together with such other information as the cooperating sponsor has available to it. The USAID or Diplomatic Post may require additional information about any commodities lost, damaged or misused if it believes such information is necessary in order to maintain the integrity of the program.

(3) If any commodity, monetized proceeds or program income is lost or misused under circumstances which give a cooperating sponsor reason to believe that the loss or misuse has occurred as a result of criminal activity, the cooperating sponsor shall promptly report these circumstances to the A.I.D. Inspector General through A.I.D./W, USAID or Diplomatic Post, and subsequently to the appropriate authorities of the cooperating country unless instructed not to do so by A.I.D. The cooperating sponsor also shall cooperate fully with any subsequent investigation by the Inspector General and/or authorities of the cooperating country.

(g) *Handling claims proceeds.* Claims against ocean carriers shall be collected in U.S. dollars (or in the currency in which freight is paid, or a pro rata share of each) and shall be remitted (less amounts authorized to be retained) by nongovernmental cooperating sponsors to CCC. Claims against nongovernmental cooperating sponsors shall be paid to CCC or A.I.D./W in U.S. dollars. With respect to commodities lost, damaged or misused: amounts paid by other cooperating sponsors and third parties in the country of distribution shall be deposited with the U.S. Disbursing Officer, American Embassy, preferably in U.S. dollars with instructions to credit the deposit to CCC Account No. 12X4336, or in local currency at the official exchange rate applicable to dollar imports at the time of deposit with instructions to credit the deposit to Treasury sales account 20FT401. With respect to monetized proceeds and program income, amounts recovered should be deposited into the special interest bearing account established for the monetized proceeds and may be used for purposes of the approved program.

(h) *General Average.* CCC shall

(1) Be responsible for settling General Average and marine salvage claims;

(2) Retain the authority to make or authorize any disposition of commodities which have not commenced ocean transit or of which the ocean transit is interrupted, and receive and retain any monetary proceeds resulting from such disposition;

(3) In the event of a declaration of general average, initiate and prosecute, and retain all proceeds of, cargo loss and damage claims against ocean carriers; and

(4) Receive and retain any allowance in General Average. CCC will pay any General Average or marine salvage claims determined to be due.

§ 211.10 Records and reporting requirements of cooperating sponsor.

(a) *Records.* Cooperating sponsors shall maintain records and documents in a manner which will accurately reflect all transactions pertaining to the receipt, storage, distribution, sale, inspection and use of commodities and pertaining to receipt and disbursement of any monetized proceeds and program income and the operation of the program and records described § 211.5(i). Such records shall be retained for a period of 3 years from the close of the U.S. fiscal year to which they pertain, or longer, upon request by A.I.D. for cause, such as in the case of litigation of a claim or an audit concerning such records. The cooperating sponsor shall transfer to A.I.D. any records, or copies thereof, requested by A.I.D.

(b) *Reports.* Cooperating sponsors shall submit reports to the USAID or Diplomatic Post and to A.I.D./W, not less than annually, relating to progress and problems in the implementation of the program, and inspection or evaluation reports as required by A.I.D./W or as agreed upon between the USAID or Diplomatic Post and the cooperating sponsor and approved by A.I.D./W. The following is a list of the principal types of reports that are to be submitted:

(1) Periodic summary reports showing receipt, distribution, and inventory of commodities and proposed schedules of shipments or call forwards.

(2) In the case of Title II sales monetization agreements, e.g. in accordance with Public Law 480, section 206 or section 207, the cooperating sponsor, whether governmental or nongovernmental, is directly responsible for reporting on programs involving the use of funds for purposes specified in the agreement. See § 211.5(j).

(3) Reports relating to progress and problems in the implementation of the program, and inspection reports, as may be required from time to time by A.I.D./W or as may be agreed upon between the USAID or Diplomatic Post and the cooperating sponsor and approved by A.I.D./W.

(4) Reports of all comprehensive internal reviews prepared in accordance with § 211.5(c), shall be submitted to the USAID or Diplomatic Post for review as soon as completed and in sufficient detail to enable the USAID or Diplomatic Post to assess and to make recommendations as to the ability of the cooperating sponsors to effectively plan, manage, control and evaluate the Food for Peace programs under their administration.

(5) Emergency Programs. At the time that an emergency program under Public Law 480, Title II is initiated, whether on a governmental or nongovernmental basis, the USAID or Diplomatic Post should

(i) Make a determination regarding the ability of the cooperating sponsor to perform the record-keeping required by this § 211.10, and

(ii) in those instances in which those specific record-keeping requirements cannot be followed, due to emergency circumstances, specify exactly which essential information will be recorded in order to account fully for Title II commodities and monetized proceeds.

(6) Reports accounting for the generation and use of program income.

(c) *Inspection and audit.* Cooperating sponsors shall cooperate with and give reasonable assistance to U.S. Government representatives to enable them at any reasonable time to examine activities and records of the cooperating sponsor, recipient agencies, processors, or others, pertaining to the receipt, storage, distribution, processing, repackaging, sale and use of commodities by recipients; to inspect commodities in storage, or the facilities used in the handling or storage of commodities; to inspect and audit books and records, including financial books and records and reports pertaining to storage, transportation, processing, repackaging, distribution, sale and use of commodities and pertaining to the deposit and use of any monetized proceeds and program income; to review the overall effectiveness of the program as it relates to the objectives set forth in the Food for Peace Program Agreement; and to examine or audit the procedure and methods used in carrying out the requirements of this Regulation. Inspections and audits of Title II emergency programs will take into account the circumstances under which such programs are carried out.

§ 211.11 Termination of program.

(a) *Termination or Suspension by A.I.D.* All or any part of the assistance provided under the program, including commodities in transit, may be terminated or suspended by A.I.D. at its discretion if the cooperating sponsor fails to comply with the provisions of the Food for Peace Program Agreement, or of this Regulation, or if it is determined by A.I.D. that the continuation of such assistance is no longer necessary or desirable. Under such circumstances title to commodities which have been transferred to the cooperating sponsor, or monetized proceeds, program income and real or personal property procured with monetized proceeds or program income shall at the written request of the USAID or Diplomatic Post, or A.I.D./W, be transferred to the U.S. Government by the cooperating sponsor. Any then excess commodities on hand at the time the program is terminated shall be disposed of in accordance with § 211.5(l and m) or as otherwise instructed by the USAID or Diplomatic Post. If it is determined that any commodity authorized to be supplied under the Food for Peace Program Agreement is no longer available for Food for Peace programs, such authorization shall terminate with respect to any commodities which, as of the date of such determination have not been delivered f.o.b. or f.a.s. vessel, provided that every effort will be made to give adequate advance notice to protect cooperating sponsors against unnecessarily booking vessels.

(b) *Other.* Upon expiration of the approved program under circumstances other than those described in paragraph (a) of this section, the cooperating sponsor shall deposit with the U.S. Disbursing Officer, American Embassy, with instructions to credit the deposit to CCC Account No. 20FT401, any remaining monetized proceeds or program income, or the cooperating sponsor shall obtain A.I.D.'s approval for the use of such monetized proceeds or program income, or real or personal property procured with such proceeds or income, for purposes consistent with those authorized for support from A.I.D.

§ 211.12 Waiver and amendment authority.

The Assistant Administrator for Food for Peace and Voluntary Assistance, A.I.D., may waive, withdraw, or amend, at any time, any or all of the provisions of this part 211 (Regulation 11) if such provision is not statutory and it is determined to be in the best interest of the U.S. Government to do so. Any cooperating sponsor which has failed to comply with the provisions of this part or any instructions or procedures issued in connection herewith, or any agreements entered into pursuant hereto may at the discretion of A.I.D. be suspended or disqualified from further participation in any distribution program. Reinstatement may be made at the option of A.I.D. Disqualification shall not prevent A.I.D. from taking other action through other available means when considered necessary.

Appendix I—Legislation

The Agricultural Trade Development and Assistance Act of 1954, as amended (Public Law 480) implemented by the Regulation in this part (as of the date of issuance of this part) includes legislation pertaining to Public Law 480, Title II activities as follows:[1]

Title II Legislation

(1) Section 2(3) of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides that in furnishing food aid, the President shall—

"relate United States assistance to efforts by aid-receiving countries to increase their own agricultural production, with emphasis on development of small, family farm agriculture, and improve their facilities for transportation, storage, and distribution of food commodities."

(2) Section 201 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

"(a) The President is authorized to determine requirements and furnish agricultural commodities on behalf of the people of the United States of America, to meet famine or other urgent or extraordinary relief requirements; to combat malnutrition, especially in children; to promote economic and community development in friendly developing areas, and for needy persons and nonprofit school lunch and preschool feeding programs outside the United States. The Commodity Credit Corporation shall make available to the President such agricultural commodities determined to be available under section 401 as he may request.

(b) The minimum quantity of agricultural commodities distributed under this title for each of the fiscal years ending September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, shall be 1,900,000 metric tons, of which not less than 1,425,000 metric tons for nonemergency programs shall be distributed through nonprofit voluntary agencies, cooperatives, and the World Food Program; unless the President determines and reports to the Congress, together with his reasons, that such quantity cannot be used effectively to carry out the purposes of this title.

(c)(1) Except as provided in paragraph (2), in distributing agricultural commodities under this title, the President shall—

(A) Consider—

(i) The nutritional assistance to recipients and benefits to the United States that would result from distributing such commodities in the form of processed and protein-fortified products, including processed milk, plant protein products, and fruit, nut, and vegetable products;

(ii) The nutritional needs of the proposed recipients of the commodities;

(iii) The cost effectiveness of providing such commodities, for purposes of selecting commodities for distribution under nonemergency programs; and

(iv) The purposes of this title; and

(B) ensure that at least 75 percent of the quantity of agricultural commodities required to be distributed each fiscal year under subsection (b) for nonemergency programs be in the form of processed or fortified products or bagged commodities.

(2) The President may waive the requirement under paragraph (1)(B) or make available a smaller percentage of fortified or processed food than required under paragraph (1)(B) during any fiscal year in which the President determines that the requirements of the programs established

[1] Each statutory reference is copied verbatim.

under this title will not be best served by the distribution of fortified or processed food in the amounts required under paragraph (1)(B)."

(3) Section 202 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

"(a) The President may furnish commodities for the purposes set forth in section 201 through such friendly governments and such agencies, private or public, including intergovernmental organizations such as the World Food Program and other multilateral organizations in such manner and upon such terms and conditions as he deems appropriate. Such commodities may be furnished for direct distribution, sale, barter, or other appropriate disposition in carrying out the purposes set forth in section 201. The President shall, to the extent practicable, utilize nonprofit voluntary agencies or cooperatives registered with, and approved by the Agency for International Development. If no United States nonprofit voluntary agency registered with and approved by the Agency for International Development is available, the President may utilize a foreign nonprofit voluntary agency which is registered with and approved by the Agency for International Development. Insofar as practicable, all commodities furnished hereunder shall be clearly identified by appropriate markings on each package or container in the language of the locality where they are distributed as being furnished by the people of the United States of America. Except in the case of emergency, the President shall take reasonable precaution to assure that commodities furnished hereunder will not displace or interfere with sales which might otherwise be made.

(b)(1) Assistance to needy persons under this title shall be directed, insofar as practicable, toward community and other self-help activities designed to alleviate the causes of need for such assistance.

(2) In order to assure that food commodities made available under this title are used effectively and in the areas of greatest need, entities through which such commodities are distributed shall be encouraged to work with indigenous institutions and employ indigenous workers, to the extent feasible, to assess nutritional and other needs of beneficiary groups, help these groups design and carry out mutually acceptable projects, recommend ways of making food assistance available that are most appropriate for each local setting, supervise food distribution, and regularly evaluate the effectiveness of each project.

(3) In distributing food commodities under this title, priority shall be given, to the extent feasible, to those who are suffering from malnutrition by using means such as (A) giving priority within food programs for preschool children to malnourished children, and (B) giving priority to poorest regions of countries.

(4) In the case of commodities distributed under this title by nonprofit voluntary agencies, consideration shall be given to nutritional and development objectives as established by those agencies in light of their assessment of the needs of the people assisted.

(c)(1) In agreements with nonprofit voluntary agencies and cooperatives for nonemergency assistance under this title, the President is encouraged, if requested by the nonprofit voluntary agency or cooperative, to approve multiyear agreements to make agricultural commodities available for distribution by that agency or cooperative. Such agreement shall be subject to the availability each fiscal year of the necessary appropriations and agricultural commodities.

(2) Paragraph (1) does not apply to an agreement which the President determines should be limited to a single year because of the past performance of the nonprofit voluntary agency or cooperative or because the agreement involves a new program of assistance.

(3) In carrying out a multiyear agreement pursuant to this subsection, a nonprofit voluntary agency or cooperative shall not be required to obtain annual approval from the United States Government in order to continue its assistance program pursuant to the agreement, unless exceptional and unforeseen circumstances have occurred which the President determines require such approval."

(4) Section 203 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

"The Commodity Credit Corporation may, in addition to the cost of acquisition, pay with respect to commodities made available under this title costs for packaging, enrichment, preservation, and fortification; processing, transportation, handling, and other incidental costs up to the time of their delivery free on board vessels in United States ports; ocean freight charges from United States ports to designated ports of entry abroad; transportation from United States ports to designated points of entry abroad in the case (1) of landlocked countries, (2) where ports cannot be used effectively because of natural or other disturbances, (3) where carriers to a specific country are unavailable, or (4) where a substantial savings in costs or time can be effected by the utilization of points of entry other than ports; in the case of commodities for urgent and extraordinary relief requirements, including pre-positioned commodities, transportation costs from designated points of entry or ports of entry abroad to storage and distribution sites and associated storage and distribution costs; and charges for general average contributions arising out of the ocean transport of commodities transferred pursuant thereto."

(5) Section 204 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

"Programs of assistance shall not be undertaken under this title during any fiscal year which call for an appropriation of more than $1,000,000,000 to reimburse the Commodity Credit Corporation for all costs incurred in connection with such mprograms (including the Corporation's investment in commodities made available) plus any amount by which programs of assistance undertaken under this title in the preceding fiscal year have called or will call for appropriations to reimburse the Commodity Credit Corporation in amounts less than were authorized for such purpose during such preceding year. The President may waive the limitation in the preceding sentence if the President determines that such waiver is necessary to undertake programs of assistance to meet urgent humanitarian needs. In addition to other funds available for such purposes under any other act, funds made available under this title may be used in an amount not exceeding $7,500,000 annually to purchase foreign currencies accruing under title I of this Act in order to meet costs (except the personnel and administrative costs of cooperating sponsors, distributing agencies, and recipient agencies, and the costs of construction or maintenance of any church owned or operated edifice or any other edifices to be used for sectarian purposes) designed to assure that commodities made available under this title are used to carry out effectively the purposes for which such commodities are made available or to promote community and other self-help activities designed to alleviate the causes of the need for such assistance: Provided, however, that such funds shall be used only to supplement and not substitute for funds normally available for such purposes from other non-United States Government sources."

(6) Section 206 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

"(a) Except to meet famine or other urgent or extraordinary relief requirements, or for nonemergency programs conducted by nonprofit voluntary agencies or cooperatives, no assistance under this title shall be provided under an agreement permitting generation of foreign currency proceeds unless—

(1) The country receiving the assistance is undertaking self-help measures in accordance with Section 109 of this Act,

(2) The specific uses to which the foreign currencies are to be put are set forth in a written agreement between the United States and the recipient country, and

(3) Such agreement provides that the currencies will be used for

(A) Alleviating the causes of the need for the assistance in accordance with the purposes and policies specified in section 103 of the Foreign Assistance Act of 1961

(B) Programs and projects to increase the effectiveness of food distribution and increase the availability of food commodities provided under this title to the neediest individuals in recipient countries. The President shall include information on currencies used in accordance with this section in the reports required under section 408 of this Act and section 657 of the Foreign Assistance Act of 1961, or

(C) Health programs and projects, including immunization of children.

(b) Not later than February 15, 1989, and annually thereafter, the President shall report to Congress on sales and barter, and use of foreign currency proceeds, under this section and section 207 during the preceding fiscal year. Such report shall include information on—

(1) The quantity of commodities furnished for such sale or barter;

(2) The amount of funds (including dollar equivalents for foreign currencies) and value of services generated from such sales and barter in the preceding fiscal year;

(3) How such funds and services were used;

(4) The amount of foreign currency proceeds that were used under agreements under this section and section 207 in the preceding fiscal year, and the percentage of the quantity of all commodities and products furnished under this section and section 207 in such fiscal year such use represented;

(5) The President's best estimate of the amount of foreign currency proceeds that will be used, under agreements under this section and section 207, in the then current fiscal year and the next following fiscal year (if all requests for such use are agreed to), and the percentage that such estimated use represents of the quantity of all commodities and products that the President estimates will be furnished under this section and section 207 in each such fiscal year;

(6) the effectiveness of such sales, barter, and use during the preceding fiscal year in facilitating the distribution of commodities and products under this section and section 207;

(7) The extent to which such sales, barter, or uses—

(A) Displace or interfere with commercial sales of United States agricultural commodities and products that otherwise would be made;

(B) Affect usual marketings of the United States;

(C) Disrupt world prices of agricultural commodities or normal patterns of trade with friendly countries; or

(D) Discourage local production and marketing of agricultural commodities in the countries in which commodities and products are distributed under this title; and

(8) The President's recommendations, if any, for changes to improve the conduct of sales, barter, or use activities under this section and section 207."

(7) Section 207 of the Agricultural Trade Development and Assistance Act of 1954, as amended provides as follows:

"(a) A nonprofit voluntary agency or cooperative requesting a nonemergency food assistance agreement under this title shall include in such request a description of the intended uses of any foreign currency proceeds that would be generated with the commodities provided under the agreement.

(b) Such agreements shall provide, in the aggregate for each fiscal year, for the use of foreign currency proceeds under this subsection in an amount that is not less than 10 percent of the aggregate value of the commodities distributed under nonemergency programs under this title for such fiscal year.

(c) Foreign currencies generated from any partial or full sales or barter of commodities by a nonprofit voluntary agency or cooperative shall be used (1) to transport, store, distribute, and otherwise enhance the effectiveness of the use of commodities and the products thereof donated under this title; and (2) to implement income generating, community development, health, nutrition, cooperative development, agricultural programs, and other developmental activities."

(8) Section 208 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

"(a) Response.—If a proposal to make agricultural commodities available under this title is submitted by a nonprofit voluntary agency or cooperative with the concurrence of the appropriate United States Government field mission or if a proposal to make agricultural commodities available to a nonprofit voluntary agency or cooperative is submitted by the United States Government field mission, a decision on the proposal shall be provided within 45 days after receipt by the Agency for International Development office in Washington, DC. The response shall detail the reasons for approval or denial of the proposal. If the proposal is denied, the response shall specify the conditions that would need to be met for the proposal to be approved.

(b) Notice and Comment.—Not later than 30 days before the issuance of a final guideline to carry out this title, the President shall (1) provide notice of the proposed guideline to nonprofit voluntary agencies and cooperatives that participate in programs under this title, and other interested persons, that the proposed guideline is available for review and comment; (2) make the proposed guideline available, on request, to the agencies, cooperatives and others; and (3) take any comments received into consideration before the issuance of the final guideline.

(c) Deadline for Submission of Commodity Orders.—Not later than 15 days after receipt of a call forward from a field mission for commodities or products that meets the requirements of this title, the order for the purchase or the supply, from inventory, of such commodities or products shall be transmitted to the Commodity Credit Corporation.

(9) Section 401 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

"(a) After consulting with other agencies of the Government affected and within policies laid down by the President for implementing this Act, and after taking into account productive capacity, domestic requirements, farm and consumer price levels, commercial exports and adequate carry-over, the Secretary of Agriculture shall determine the agricultural commodities and quantities thereof available for disposition under this Act, and the commodities and quantities thereof which may be included in the negotiations with each country. No commodity shall be available for disposition under this Act if such disposition would reduce the domestic supply of such commodity below that needed to meet domestic requirements, adequate carry-over, and anticipated exports for dollars as determined by the Secretary of Agriculture at the time of exportation of such commodity, unless the Secretary of Agriculture determines that some part of the supply thereof should be used to carry out urgent humanitarian purposes of this Act.

(b) No agricultural commodity may be financed or otherwise made available under the authority of this Act except upon determination by the Secretary of Agriculture that (1) adequate storage facilities are available in the recipient country at the time of exportation of the commodity to prevent the spoilage or waste of the commodity, and (2) the distribution of the commodity in the recipient country will not result in a substantial disincentive to or interference with domestic production or marketing in that country."

(10) Section 402 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides, in part as follows:

"The term "agricultural commodity" as used in this Act shall include any agricultural commodity produced in the United States (including fish, without regard to whether such fish are harvested in aquaculture operations) or product thereof produced in the United States: Provided, however, That the term "agricultural commodity" shall not include alcoholic beverages, and for the purposes of title II of this Act, tobacco or products thereof."

(11) Section 404 of the Agricultural Trade Development and Assistance Act of 1954, as amended, provides as follows:

"(a) The programs of assistance conducted under this Act, and the types and quantities of agricultural commodities to be made available, shall be directed in the national interest toward the attainment of humanitarian and developmental objectives as well as the development and expansion of United States and recipient country agricultural comodity markets. To the maximum extent possible, either the commodities themselves shall be used to improve the economic and nutritional status of the poor through effective and sustainable programs, or any proceeds generated from the sales of agricultural commodities shall be used to promote policies and programs that benefit the poor.

(b) Country assessments shall be carried out whenever necessary in order to determine the types and quantities of agricultural commodities needed, the conditions under which commodities should be provided and distributed, the relationship between United States food assistance and other development resources, the development plans of that country, the most suitable timing for commodity deliveries, the rate at which food assistance levels can be effectively used to meet nutritional and developmental needs, and the country's potential as a new or expanded market for both United States agricultural commodities and recipient country foodstuffs.

(12) Section 405 of the Agricultural Trade and Development Assistance Act of 1954, as amended, provides as follows:

"The authority and funds provided by this Act shall be utilized in a manner that will assist friendly countries that are determined to help themselves toward a greater degree of self-reliance in providing enough food to meet the needs of their people and in resolving their problems relative to population growth."

Appendix II—Operational Plan

A. General Outline of Operational Plans for Title II Activities

In addition to any other requirement of law or regulation, the operational plan will

include information outlined below to the extent it is applicable to the specific activity.

1. Program Goals

Describe program goals and criteria for measuring progress toward reaching the goals. Each program should be designed to achieve measurable objectives within a specified period of time.

2. Program Description

a. Describe the characteristics, extent and severity of problems that the program will address.

b. Provide a clear concise statement of specific objectives for each program and of criteria for measuring progress towards reaching the objectives. If there are several objectives, indicate priorities.

c. Describe the target population by program, including economic/nutrition-related characteristics, sufficiently to permit a determination of recipient eligibility for Title II commodities. Describe the educational and employment characteristics of the target group, if relevant to program objectives; the rationale for selection of the target group, the rationale for the selection of the geographical areas where programs will be carried out; the calculation of coverage and the percent of total target population reached.

d. Describe the intervention including:

(1) Ration composition. A description of rations, rationale for size and composition, assessment of effectiveness (dilution, sharing, acceptance).

(2) Complementary program components and inputs. Identify existing or potential complementary program components, i.e., education, growth monitoring, training, etc., that are necessary to achieve program impact, including determination of financial costs and sources of funding.

(3) Monetization of commodities. Describe to whom the food will be sold; the sales price (which shall not be less than the value of the food commodities f.a.s. or f.o.b.), and arrangements for deposit of the monetization proceeds in a special (segregated), interest bearing account, pending use of the proceeds plus interest for the program.

(4) Intervention strategy. Describe how the food, monetization proceeds, program income and other program components will address the problems. Indicate the recipient agencies to which commodities, monetized proceeds or program income will be transferred, and identify those recipient agencies which will not be required to execute Recipient Agency Agreements; and provide a brief explanation of the reasons.

(5) Linkages with other development activities, such as health or agricultural extension services. Describe specific areas of collaboration relative to program purposes.

(6) Monitoring and Evaluation. Include a description of the evaluation plan, including information to be collected for purposes of assessing program operations and impact. Describe the monitoring system for collection, analysis and utilization of information. Include a schedule for carrying out the evaluation as well as a plan for conducting internal reviews (Regulation 11, § 211.5(c)).

(7) The Operational Plan should cover enough time for a program to become fully operational and to permit evaluation of its effectiveness, including specific measurement of progress in achieving the stated program goals. Normally this will be a multi-year time frame, such as three to five years. Plans for and considerations involved in phasing-out U.S.G. support, and any phasing-over to non-U.S.G. support, should be discussed.

3. Program Funding

Details of host government, cooperating sponsor and other non-USG support for the proposed program, with specific budgetary information on how these funds are to be used (e.g. complementary inputs, transport, administration). Where relevant, discussion of arrangements which will be made covering voluntary contributions.

4. Publicity

Statement as to how the requirements for public recognition, container markings, and use of funds set forth in Regulation 11, Sections 211.5(g), (h) and (i) and in 211.6 (a) and (b), will be met.

5. Logistics

A logistics plan that demonstrates the adequacy and availability in recipient country of port facilities, transportation and storage facilities to handle the flow of commodities to recipients to prevent spoilage or waste. A further affirmation must be made at the time of exportation of the commodity from the United States.

6. Disincentives

Sufficient information concerning the plan of distribution and the target group of recipients so that a determination can be made as to whether the proposed food distribution would result in substantial disincentive to domestic food production.

7. Accountability

Description of the method to be used to supervise, monitor, and account for the distribution or sale of commodities and the use of monetized proceeds and program income.

8. Import Duty

Information to show approval of foreign government to import the donated commodities duty free.

9. Voluntary Agency Regular Programs

An Operational Plan is required for all regular, i.e. non-emergency, Title II nongovernmental cooperating sponsor programs as part of their program submission, along with the Annual Estimate of Requirements (AER), to the USAID or Diplomatic Post and A.I.D./W. When new multi-year operational plans are required, they should be prepared and submitted in advance of the year in which they are to begin, in order to permit adequate time for substantive review and approval. In any event, nongovernmental cooperating sponsor operational plans should be submitted to A.I.D./W no later than the Mission Action Plan covering the following fiscal year's program. Once an operational plan has been approved, only an updating will be required on an annual basis, unless there has been a significant change from the approved plan's program directives, methodology, design or magnitudes. Updates should be submitted each year for review with the AERs.

B. Operational Plans for Emergency Programs

The response to emergency situations using Title II resources does not usually permit the same degree of detail and certainty of analysis that is expected in planning Title II non-emergency programs. However, operational plans are required for all nongovernmental cooperating sponsors' emergency programs, along with the AER. An operational plan for an emergency program must cover the same basic elements, set forth above, as for a nonemergency program. Thus, all of the above basic issues set forth in the operational plan format must be addressed when proposing Title II emergency programs as well as regular nonemergency programs.

C. USAID/Diplomatic Post Responsibilities

A USAID or Diplomatic Post is expected to comment on the substance and adequacy of a nongovernmental cooperating sponsor's operational plans when submitted to A.I.D./W along with a program request, and to address the plan's relationship to and consistency with the Mission's Country Development Strategy Statement.

D. Required Approval for Program Change

Cooperating sponsors agree not to deviate from the program as described in the operational plan and other program documents approved by A.I.D., without the prior written approval of A.I.D.

E. Emergency Assistance Program Requests

Any cooperating sponsor (governmental or nongovernmental) may initiate an emergency assistance proposal under Public Law 480, Title II. Requests are received by a USAID or Diplomatic Post and reviewed and approved before forwarding to A.I.D./W with appropriate recommendations.

a. Nongovernmental emergency program requests can be cabled by the USAID or Diplomatic Post for A.I.D./W review based on information provided and using procedures established for regular programs per Regulation 11, § 211.5(a): AER and Operational Plan.

b. A foreign government or international organization (other than World Food Program) emergency request normally requires more Mission involvement in program design and management. However, as in the case of nongovernmental programs, the approval will be based on a cabled program summary based on the program plan outlined in (2) above. On approval, A.I.D./W will prepare a Transfer Authorization (TA) to be signed by the recipient government specifying terms of the program and reporting requirements. Additional guidance in preparing government-to-government or international organizations emergency requests is in Chapter 9 and Exhibit A of A.I.D. Handbook 9. The TA serves as (1) the Food for Peace Agreement between the U.S. Government and the cooperating sponsor, (2) the project authorization document, and (3) the authority for the CCC to ship commodities. (Under Public Law 480, section 208(c), not later than 15 days after receipt of a

call forward from a field mission for commodities, the order shall be transmitted to the CCC.]

14. Local Currency Programs (Public Law 480, Title II Sections 204, 206, and 207)

Detailed guidance for preparing, approving, implementing and administering these programs, see chapters 6, 7, and 11 of A.I.D. Handbook 9.

Dated: May 31, 1990.

Philip L. Christenson,

Assistant Administrator, Agency for International Development.

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federal register

Monday
June 11, 1990

Part III

Environmental Protection Agency

40 CFR Part 80

Volatility Regulations for Gasoline and Alcohol Blends Sold in Calendar Years 1992 and Beyond; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS-FRL-3776-4]

Volatility Regulations for Gasoline and Alcohol Blends Sold in Calendar Years 1992 and Beyond

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking.

SUMMARY: Today's action promulgates Phase II of a two-phase nationwide reduction in summertime commercial gasoline volatility. Depending on the state and the month, gasoline Reid Vapor Pressure (RVP) may not exceed 9.0 pounds per square inch (psi) or 7.8 psi beginning in May of 1992.

This action will add significantly to the reduction in emissions of volatile organic compounds (VOC) achieved by Phase I of the program, implemented in 1989. These gasoline-related emissions are currently a major contributor to the nation's serious ground-level ozone problem which is responsible for harm to human health and to the public welfare. The full benefits of this program will begin immediately upon implementation in 1992.

To achieve these benefits, the RVP control program promulgated here sets gasoline RVP standards that are more stringent than those in the Phase I program implemented in 1989. In addition, EPA has improved the system by which states are assigned a standard for each summer month, combining a better understanding of climate factors with measures to simplify enforcement and compliance. The overall enforcement mechanism and regulations for sampling, testing, and liability remain unchanged from the Phase I program.

These regulations also make permanent the temporary 1.0 psi RVP allowance provided in the Phase I program for gasoline containing 9 to 10 percent ethanol; no RVP allowance is available for methanol blends.

EFFECTIVE DATE: This regulation becomes effective on July 11, 1990.

ADDRESSES: Materials relevant to this rulemaking have been placed in Docket No. A-85-21 by EPA. Public Docket No. A-84-07, established in support of EPA's assessment of air pollution regulatory strategies for the gasoline marketing industry, also contains considerable background information and has been incorporated into A-85-21. The dockets are located at: Air Docket Section (LE-130), U.S. Environmental Protection Agency, First Floor, Waterside Mall, room M-1500, 401 M Street SW., Washington, DC 20460 (Telephone: 202/382-7548), and may be inspected between 8:30 a.m. and noon and 1:30 p.m. and 3:30 p.m. Monday through Friday. EPA may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Tad Wysor, Standards Development and Support Branch, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668-4332.

SUPPLEMENTARY INFORMATION:

I. Introduction

The action promulgated today completes the regulatory action EPA proposed in 1987 to reduce summertime gasoline volatility in two phases (52 FR 31274, August 19, 1987). Each phase represents a very significant step in EPA's overall policy of reducing ozone levels in urban areas.

As described in this preamble, EPA believes that the environmental benefits of this program are significantly larger than any other existing or planned ozone-control program. In addition, the full benefits to areas experiencing high ozone levels are realized immediately upon implementation (1989 for Phase I and 1992 for this Phase II program). The result should be marked reductions in urban ozone levels. Yet, relative to the large reductions, the costs to the nation are very reasonable, especially when compared to other potential control measures.

This preamble reviews the background of this rulemaking and the need for ozone control and then provides a description of today's phase II action. Also included in the preamble are summaries of major comments and EPA's responses, as well as a summary of the results of our final analyses of environmental and economic impacts and how these compare to other ozone control programs. A key aspect of the final analyses described here is the process EPA has followed in establishing summertime RVP standards by month for each of the 48 contiguous states, and how these standards relate to different RVP levels states may desire.

Except where noted, complete detailed analyses of issues raised during the rulemaking are found in the Final Regulatory Impact Analysis and Summary and Analysis of Comments: Phase II Gasoline Volatility Control Program. This document (hereafter, "Phase II Final RIA") is available in Docket A-85-21 (see "Addresses," above); a limited number of individual copies may also be available through Tad Wysor (see "For Other Information," above).

II. Background

As mentioned earlier, this is the second phase of a two-phase program proposed in a 1987 Notice of Proposed Rulemaking, or NPRM (52 FR 31274, August 19, 1987). EPA proposed Phase I of the program to achieve VOC reductions available immediately, and Phase II to achieve further reductions available with the installation of new refining capacity.

Since the proposal, several related events have occurred. On October 27-29, 1987, EPA held a public hearing on the proposed volatility program (and also on a related refueling emission control proposal) and heard testimony from about 40 parties. The Agency accepted written comments until February 11, 1988 and received a large number and wide diversity of comments.

Certain concerns about industry design trends for evaporative and refueling control systems prompted EPA to hold a public workshop to highlight those concerns and to discuss potential modifications to EPA's test procedures which would resolve these concerns. EPA has now proposed vehicle-related evaporative emissions requirements in a separate rulemaking (55 FR 1914, January 19, 1990).

EPA promulgated the final rule for Phase I last year (54 FR 11868, March 22, 1989). Certain corrections were made in a subsequent notice (54 FR 27016, June 27, 1989). In addition, EPA held a public workshop on April 28, 1989 to answer questions which had been raised related to implementation and enforcement of the Phase I program. (An updated question and answer document is available in Docket A-85-21, Document No. IV-A-10.) EPA later revised the Phase I program slightly by changing the August RVP standard for northern New Mexico (54 FR 33218, August 14, 1989).

In related actions, EPA approved in early 1989 requests by several Northeastern states (Massachusetts, Connecticut, Rhode Island, New Jersey, and New York) to enforce more stringent volatility control programs beginning in the summer of 1989 (54 FR 19173, May 4, 1989; 54 FR 23650, June 2, 1989; 52 FR 25572, June 16, 1989; and 54 FR 26030, June 21, 1989). In addition, EPA has also proposed approval for a more stringent volatility control program for the Dallas-Fort Worth (Texas) Consolidated Metropolitan Statistical Area, to begin in the summer of 1990 (54 FR 18005, April 30, 1990). Finally, in

response to requests from various parties in Texas which were supported by the Governor in a letter to EPA, EPA may propose to change the Phase I RVP standard for all of eastern Texas from 9.5 to 9.0 RVP, the current standard in western Texas.

III. Environmental Need for Control

In the volatility NPRM, EPA described the human health impact of exposure to high ozone concentrations and the widespread nature of nonattainment of the current National Ambient Air Quality Standard (NAAQS) for ozone. We also reviewed the evidence of ozone's effect on forests, crops, and materials (52 FR 31275).

EPA's conclusions were that elevated levels of ozone are damaging to the public health and welfare, that levels commonly reached are high enough to cause such damage, and that occurrence of these high levels is widespread. Comments challenging these conclusions provided little new data or analysis to contradict what we believe to be a strong technical basis for control. In addition, VOC is also a precursor to formation of particulate matter, which can result in negative health effects, soiling and reduced visibility. Further, VOC can itself directly harm human health, cause odors, and reduce visibility.

Since the time of the proposal, EPA's concern about ozone exposure has not diminished. Preliminary data for the record rainy year of 1989 shows that exceedance of the ozone standard was comparable to the relatively low-ozone experience of 1986; however, exceedance was more widespread in the 1986–1988 period (the most recent period for which final data are available) than during any earlier period. This experience, as well as the VOC and particulate matter effects mentioned above, reinforces the need for EPA and states to pursue as much VOC reduction as reasonably possible, particularly during the summer months when ozone is most commonly a problem. Current debate on Clean Air Act revisions indicate broad agreement that a high priority be placed on VOC control. The gasoline volatility controls promulgated today are consistent with these goals.

IV. Description of Today's Action

A. Gasoline RVP Control Provisions

This second and final stage of EPA's proposed RVP control program is very similar in most respects to the existing Phase I program. New lower standards are established for each of the 48 contiguous states for each of the months of May through September.

In order for the program to achieve necessary reductions during ozone problem months, an improved analysis concludes that the beginning and end dates of the program need not change from Phase I. Except for retail stations and other end-users (i.e., wholesale purchaser-consumers), enforcement begins on May 1 and continues through September 15. Enforcement is delayed until June 1 at the beginning of the control season for end-users to prevent outlets with slower turnover from needing advance supplies of RVP controlled gasoline from suppliers over which they often have little control.

The liability, sampling, and testing provisions of the Phase I regulation are unchanged. However, EPA expects to issue a separate Notice of Proposed Rulemaking which will propose adopting of different or additional RVP testing methods and equipment. These changes will be proposed to be implemented in 1991, and if implemented they also will remain in effect for the Phase II.

EPA is implementing the proposed volatility levels of 9.0 or 7.8 RVP, depending on the state and the month. These numerical levels represent proportional reductions from pre-control RVP levels and updated analysis has reinforced the appropriateness of these levels (see chapter 2 of the Final RIA). The system EPA has established for setting the state-by-state and month-by-month standards, however, differs somewhat from the proposed system and that in the Phase I final rule.

One option EPA considered in establishing which states should be designated which of the three RVP standards was an analytical, climate-based approach. In the proposal, EPA relied on the historic voluntary classification system established by the American Society for Testing and Materials (ASTM) to select which areas should get lower RVP fuel due to higher temperatures and elevations. The goal of this approach was to achieve equivalent per-vehicle emissions in all areas of the country during each month of the program. EPA has maintained that goal but has performed a detailed new analysis of variation in climate from state to state and month to month which supersedes the ASTM system for our purposes. In general, EPA noted actual climatic conditions (temperature and elevation) at each ozone monitor nationwide on high-ozone days. An RVP level was then established for each state-month which would result in vehicle emissions on such days equivalent to vehicle emissions in certain midwestern and northeastern states when 9.0 RVP fuel is used (Class "C" states in the Phase I program). Thus, EPA analytically derived a pattern of standards which account for the effects of higher temperatures and elevations that occur in some areas of the country and for temperature variations from month to month. The detailed results of the climate-based analysis are contained in Tables 2–2 and 2–3 in chapter 2 of the Final RIA.

One characteristic of such a climate-based approach is that standards would vary significantly from state to state and month to month. This kind of variation makes enforcement of RVP standards more difficult at the refinery and pipeline level because there can be less certainty about where and when the gasoline will ultimately be used. According to the gasoline marketing industry, assuring compliance has also been more difficult during the Phase I program for the same reason (e.g., distributors which serve areas which now have different RVP requirements).

EPA has developed a final set of RVP standards which incorporates aspects of the climate-based approach yet reduces the occurrence of month-to-month and state-to-state variations. The goal was to develop a simpler option which would not sacrifice environmental benefit. In the resulting system of standards, all states will receive 9.0 RVP gasoline during May. In addition, all states will have an unchanging standard from June through September 15. Thus, many states will have a single standard of 9.0 RVP throughout the control season while the remainder will change no more than once after the beginning of the control season. In addition, states are generally in geographic proximity to other states with identical standards.

By comparison, in the Phase I program standards in 6 states change once and in 14 states change twice after the beginning of the season. Similarly in a pure climate-based approach, standards in 2 states would change once, in 19 states would change twice, in 1 state would change three times, and in one state would change four times after the beginning of the season.

To ensure control during the month of July (when ozone violations are most numerous), the selection of the June–September standard for each state is generally based on the July result of the climate-based analysis described above (and in the Final RIA), except in 7 states. For 5 states—Nevada, Colorado, New Mexico, Nebraska, and Iowa—the final standard, while reducing RVP from the Phase I program, is one step less stringent than the July "climate based" result (although in no case does the final standard exceed 9.0 RVP). These 5 states currently have no ozone

nonattainment area, EPA nevertheless believes some control is appropriate in these states (as well as in several other states without nonattainment areas) in order to improve the geographic simplicity of the overall program for enforcement and compliance. In addition there is likely to be a reduction in ozone formation (and direct effects of VOC) in these areas which will help maintain attainment into the future as VOC growth occurs.

For the states of Utah and Arizona, the climate based analysis would have indicated that 7.0 RVP would be the appropriate standard. However, EPA is aware that supplying 7.0 RVP fuel to these two states alone may present difficulties due to the limited area and population involved as well as the unique supply characteristics of these two states (Phoenix is largely supplied from California, and Utah refineries are relatively small and also supply surrounding states). EPA believes it is appropriate to assign these two states a standard of 7.8 RVP for June through September 15, especially since, as described in the next section, states can request that a lower standard be substituted.

This overall system of RVP standards is more stringent in some states in some months (particularly June and September) than would be a system based directly on the climate-based analysis. This is true for 10 states in June and 17 states during the two weeks of September when the program is in force. The additional control in some months will be useful to some states in achieving and maintaining attainment; the additional cost at the refinery level should not be significant, to the industry or to consumers, particularly since refiners and distributors have expressed a preference for a program such as this with simpler (and presumably less costly) compliance. (See Sections A.1 (Environmental Impact) and A.2 (Economic Impact) below.) As discussed in the next section, states may initiate a change in a standard if unforseen burdens are created by this program.

As discussed above, the final system of RVP standards also results in standards less stringent than the climate based results in a few states. In addition to the five attainment states listed above, Arizona's standards for May (9.0) and for June-September (7.8) and Utah's standard for June-August (7.8) are less stringent than the climate-based results for those months. Overall, however, the system promulgated today will result in more emission reductions than a pure climate-based approach.

Unlike the Phase I system of RVP standards (and the existing voluntary ASTM system upon which Phase I was based) the Phase II system does not require gasolines of more than one RVP within a state during any month. This further simplifies the program and reduces the likelihood of "border issues" (such as when distributors market in an area with a different RVP standard than that of their supplier).

The Phase II program does not apply to Hawaii, Alaska, or U.S. territories, continuing the approach of the proposal and Phase I. These areas have separate fuel supply networks and no current or expected ozone attainment problems.

Finally, EPA will adopt for the Phase II program a policy of taking enforcement action only when EPA measures the RVP at more than 0.3 psi RVP greater than the applicable standard, provided that the responsible party measured the RVP of the gasoline (using promulgated sampling and testing procedures) at or below the applicable standard. This policy provides an allowance for variability in the RVP test methods. If a more accurate testing procedure is promulgated or if additional information indicates that a lower enforcement tolerance is appropriate, the Agency reserves the right to modify this policy.

1. State Requests for Revised Standards

Because EPA is adopting a system of standards somewhat simplified from the alternative ASTM, Phase I, and climate-based approaches, the Agency expects that most refiners, distributors, and retailers of gasoline will be able to supply and market their fuels efficiently. However, EPA's experience since the implementation of Phase I indicates that is is possible that localized impacts will arise (*e.g.*, unusual difficulty in obtaining complying product, or ozone conditions believed to warrant greater (or reduced) control relative to other areas). The Agency believes, however, that resolving specific localized issues is beyond the scope of this national rulemaking.

Instead, EPA will rely on states to initiate minor changes to the EPA program which they believe will enhance local air quality and/or increase the economic efficiency of the program. Such changes could consist of a different standard for some month or months, or a different standard for some geographic subdivision of the state.

If states desire the EPA program to be adjusted to respond to localized issues, one or two options are available, depending on the nature of the proposed change. For cases where a state desires to increase the stringency of that state's standard, it has two options. First, the existing Clean Air Act includes provisions for states to adopt and enforce a program more stringent than EPA's. Section 211(c)(4) of the current Act provides for states to request such a program as a revision to their State Implementation Plan (SIP) for ozone. EPA can approve such a program if we find the program necessary to achieve the National Ambient Air Quality Standard (NAAQS) for ozone. EPA did this in approving several requests from northeast states in 1989, permitting them to adopt and enforce more stringent RVP control programs (See Section II, "Background," above).

It is also possible that a state may identify the existence of localized impacts for which it may be appropriate to make minor changes in the EPA program to be more or less stringent in some month or months. In such a case, a state may petition the Administrator to amend the applicable standard for that state. As with any new information identifying unintended consequences resulting from a regulation, EPA will need to consider such changes through the rulemaking process. Because of the broad potential effects and diversity of interested parties in matters related to RVP control, a state should make any request to EPA for revised standards through the governor (or the governor's designee). In such a request, EPA would look for documentation of the local economic impact and, in the case of a request for a less stringent standard, for an indication that sufficient alternative programs are available to achieve attainment and maintenance of the ozone NAAQS. EPA will review the state's information and will issue a Federal Register notice proposing to adopt the change and soliciting public comments if the foregoing elements are present.

EPA would consider any comments received before taking final action on the state's petition. The Agency would limit any such a change to one volatility level (*e.g.*, 7.8 to 7.0 or 9.0 RVP. EPA would not relax any standard beyond 9.0 RVP.

B. Alcohol Blend RVP Control Provisions

For alcohol blends, the Phase II program continues the Phase I provisions. (The issues involved are discussed further under Section V.B., "Alcohol Blend RVP Control," below.) For blends of gasoline with about 10 percent ethanol, or gasohol, EPA continues to provide a 1.0 psi RVP allowance so as not to require a special low-RVP blending gasoline. Methanol blends currently must use low-RVP blending gasoline; today's program

makes no change in this policy. No regulatory changes to the Phase I regulations are necessary to continue these policies.

V. Analysis of Economic and Environmental Impacts

EPA's analysis supporting this final rule represents extensive new work, updating and superseding the earlier analyses performed for the proposal and the Phase I final rule. The Phase II Final RIA describes in detail the issues involved, comments received, EPA's responses, and final results. The following sections highlight for gasoline RVP control the key comments and responses and review our final conclusions relating to environmental impact, economic impact, and how these compare to other ozone-control programs. This section also reviews the issues, comments, and response relating to alcohol blend RVP control.

A. Gasoline RVP Control

1. Environmental Impact

The projected environmental impact of Phase II volatility control is based on a new analysis of the effects of RVP control on per-vehicle emissions which, in turn, are translated into the effect on nonattainment area VOC levels. EPA then used the subsequent reduction in VOC levels from RVP controls to project future ozone nonattainment area status. Key comments on the environmental impact analysis contained in the NPRM and EPA responses to them follow.

Commenters challenged several aspects of EPA's analysis of vehicle emissions under the various RVP control scenarios which were analyzed. Most of these comments were focused on the MOBILE3.9 emissions model used in the NPRM and how it was used. The Final RIA which accompanies today's rule contains a more detailed response to these issues; however, most of the comments in effect have been addressed by the release of an updated and improved version of EPA's vehicle emissions model, MOBILE4.0. The MOBILE4.0 model incorporates many of the improvements made in MOBILE3.9 and also includes many new changes. The major changes made in MOBILE4.0 are that estimates of running losses are included, weathering (reduction of RVP over time through evaporation) is directly taken into account for all emissions (evaporative, exhaust, and running losses), and evaporative and exhaust emissions algorithms have been improved based on the experience of more vehicle testing.

MOBILE4.0 is used as the basis of the updated environmental impact analysis performed for this final rule. The model was run for each ozone nonattainment area based on 1986 to 1988 data using city-specific temperature and RVP levels and other city-specific information. Thus, EPA was able to project average per-vehicle emissions in grams per mile for each of the areas analyzed, for each vehicle class, for each scenario examined, and for the base and future projection years. The city-specific emission factors were used as input for the next step, which is to project the effect of RVP controls on total VOC inventories.

The current inventory projection analysis, as detailed in Chapter 3 of the Final RIA and highlighted here, is similar in most ways to the analysis contained in the Draft RIA supporting the proposal. This analysis uses the July RVPs which result from the climate-based state-by-state analysis described in section IV.A. above. As discussed earlier, the final system of standards will be more stringent than the climate-based results for some states in some months, perhaps doubling emission reductions in some states during those months. However, the emission reduction analysis, while very detailed in some respects, is only capable of distinguishing among programs which have different standards in July. Since July RVPs are identical for most states for both the climate based approach and the final system of standards, the emission reduction projections reported here and in Chapter 3 of the Final RIA are essentially valid for either approach.

Except for Arizona and Utah, as discussed above, all states where the final standards are less stringent than the climate-based results are currently in attainment; the final standards are consistently more stringent than the current Phase I standards in all of these states, including Arizona and Utah.

City-specific emissions data are used to develop total VOC emission estimates for each area, including both mobile and stationary sources, for each RVP level analyzed. A few commenters challenged details of the Draft RIA analysis; these comments were generally accommodated by improvements which we were able to make in the emissions inventory modeling methodology. In addition to modeling changes, EPA has updated the stationary source estimates based on more recent information. We also have removed the results for eight Northeast states from the projections (Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York and New Jersey) because these states have either already begun summer RVP control to 9.0 psi (the level which EPA would have promulgated for them with today's rule) or receive such fuel because of the neighboring states' regulations. Therefore, EPA's analysis does not include emission benefits (or costs) for these states. Unlike the NPRM analysis, we now include California in our analysis because the RVP control level contained in today's rule (7.8 psi) goes lower than California's current summer RVP control level (9.0 psi).

To project the effect of RVP control on urban air quality, as expressed in the number of remaining nonattainment areas, EPA compared the city-specific VOC emissions inventories to estimates for each area of the reduction necessary to achieve attainment. The "necessary reductions" estimates are based on a version of the EKMA model and were developed by an EPA contractor to support comparisons among various Clean Air Act bills. Although a few commenters expressed concern about the accuracy of the EKMA model used in the air quality analysis, EPA believes that the use of the EKMA model is useful in estimating aggregate nationwide ozone impacts. (EPA uses emission reductions and not ozone levels as the basis for its regulatory decision making; thus any inaccuracy in the EKMA model has no direct impact on the Agency's policy regarding this final rule.) EPA's air quality analysis in Chapter 3 of the Final RIA addresses also the related issues of the reactivity of various VOC components and the effect of ethanol blends on emissions and air quality.

Last, EPA analyzed the effect of RVP controls on emissions of the cancer-causing gasoline component benzene, and the resulting health effects. Comments on the benzene analysis contained in the Draft RIA did not result in any changes to the analysis. For the Phase II Final RIA, EPA has based the emissions estimates on MOBILE4.0 and incorporated more recent ambient benzene level information into the analysis. Our conclusion remains that the RVP controls promulgated with today's rule will not increase nationwide cancer incidences due to benzene exposure.

On the basis of the analyses described above, EPA believes that the environmental benefit of this program, projected as very significant in the proposal, will in fact be even larger. On a per-vehicle basis, total light-duty vehicle hydrocarbon emissions in 1995 should decrease by approximately 0.77 grams per mile to about 1.96 grams per mile. Based on fleet-wide hydrocarbon reductions, Phase II volatility controls will result in a total non-Northeast VOC

reduction of about 1,315,000 tons per year or 710,000 tons per year in ozone nonattainment areas (these values are presented on an annual equivalent basis for comparison with year round control programs). These reductions represent about 14.4 percent of 1987 non-Northeast nonattainment area mobile source VOC emissions and about 6.7 percent of 1987 non-Northeast nonattainment area VOC emissions from all sources. These results show that the Phase II volatility control program offers greater VOC reductions than any other single program of which EPA currently is aware. Finally, the impact of Phase II volatility controls on urban air quality should be sufficient to bring approximately 32 of the 70 non-Northeast urban ozone nonattainment areas into compliance by 1995. Chapter 3 of the Final RIA contains more detailed results.

EPA also calculated the environmental impact of the current Phase I volatility control program using the updated methodology used for the Phase II analysis. Total non-Northeast emission reductions are projected to be 835,000 tons and non-Northeast nonattainment area emission reductions to be 452,000 tons in 1990 (annual equivalent basis). These reductions represent 4.2 percent of total 1987 non-Northeast nonattainment area emissions. Further details of these results are contained in the final RIA.

2. Economic Impact

The economic impact to society of RVP controls consists of several elements. There are increased costs to the refiners in producing a low-RVP gasoline which are offset by savings to vehicle drivers from the increased energy density of lower RVP gasoline (which results in greater fuel economy) and the recovery of current evaporative emissions. Gasoline RVP controls also have indirect economic impacts on butane sales and purchases and imports of oil and gasoline. In addition, EPA has also considered the potential impacts of volatility controls on vehicle driveability and fuel safety.

EPA has concluded that it will be feasible for the industry to comply with the standards promulgated today during the 1992 summer control period. Although the proposed program anticipated three to four years of available leadtime, EPA now believes that a shorter leadtime is appropriate.

While three or four years would allow most if not all refiners to thoroughly re-optimize their operations, about two years will be sufficient to produce complying product without serious economic impacts. EPA anticipates that for 1992 compliance, some refiners may experience temporary inefficiencies in production while cost-saving equipment is installed. Such situations are unlikely to be widespread, particularly given that a number of refiners have already begun producing gasoline of similar volatility to these standards, either voluntarily or due to state-administered RVP control (including California and the Northeast states) programs. However, all the information available to EPA indicates that a shorter leadtime would not be feasible without substantial economic impacts. Thus, despite the feasibility of supplying limited regional markets prior to 1992, a substantial majority of gasoline will still require significant RVP reductions, particularly in Class 'B' areas; EPA believes that compliance in 1990 or 1991 would not be generally achievable nationwide.

a. *Refinery Costs and Consumer Savings.* The RVP reductions required by this program will increase the refiner's cost of producing gasoline. Refiners will, in turn, pass this increased cost on to consumers. At the same time, consumers will experience two economic benefits which will offset gasoline's retail price increase. One effect, the "fuel economy credit," occurs because lowering RVP requires refiners to substitute components for butane which have greater energy density, allowing the consumer to purchase fewer gallons of gasoline for the same amount of travel. The other effect, the "evaporative recovery credit" is that the portion of purchased gasoline that is not evaporated due to its lower volatility and thus will be available to burn in the engine, again allowing consumers to purchase less gasoline. The following paragraphs further describe EPA's analyses of and results for refinery costs as well as the fuel economy and evaporative recovery savings; Chapter 4 of the Final RIA contains still further detail.

EPA's estimates of refining costs and our assessment of feasibility are derived from extensive computer modeling of how refiners will likely respond to RVP control requirements. The modeling (performed for EPA by Bonner and Moore Management Science, a respected consultant in the refining industry) follows changes in a large number of refinery parameters as gasoline RVP is reduced. The modeling work supporting this Phase II final rule was completed shortly after the original proposal of the program. Several commenters responded in detail to the updated refinery model and its uses.

Oil industry comments on refinery costs generally argued that EPA underestimated the actual likely costs of RVP controls. The specific areas of the model which were challenged included whether the modeling was too simplistic, whether too few months of RVP controlled fuel production was assumed, whether errors were made in the assessment of capital costs, and a number of smaller issues. The American Petroleum Institute (API) went further and had a different consultant perform a refinery modeling analysis parallel to Bonner and Moore's analysis for EPA. Based on their analysis, API also concluded that EPA underestimated the overall refinery costs of the RVP control program.

The final Bonner and Moore modeling runs incorporated improvements EPA had identified, several of which also addressed areas of concern raised in comments on the original proposal. The improvements included an estimate of the effect of reduced gasoline demand because of improved fuel economy with lower RVP fuel, an extended range of modeling to evaluate lower RVPs, and an assessment of the effect of reduced butane prices as butane is used less as a direct gasoline component.

EPA has reassessed its analysis in light of comments received, including API's new modeling. As a result several changes have been made in the way in which EPA applies Bonner and Moore's results. An error in the California modeling was addressed by taking specific California refinery results out of the overall calculation of refinery costs at various levels of control. More recent in-use RVP data was incorporated, clarifying that RVP has generally decreased in recent years, reducing the amount of control necessary to meet the standards. Fuel consumption estimates have been updated and the assumed time of production of controlled fuel has been increased from 5 months to 5½ months. After these changes are made and the model results are compared to API's model (with adjustments made to make them comparable), there is very little difference between the predicted costs. Therefore, EPA continues to use the Bonner and Moore results for this final rule.

As with emission reductions, the costs attributable to this program are based on RVP levels resulting from the climate-based analysis. For some states during some months, the final system of RVP standards will result in control costs that are either greater or less than under a climate-based system (this could amount to an additional cent per gallon in some state-months). This additional level of detail has not been incorporated into the overall cost analysis.

The resulting nationwide non-Northeast cost to refiners of the Phase II RVP regulations in 1995 will be about $464 million per year, or approximately 1.1 cents per gallon of gasoline. However, as discussed earlier, these Phase II costs will be offset by savings to the consumer of around $127 million per year for increased fuel economy and $107 million per year for evaporative emissions recovered through reduced volatility fuel, with a resulting net cost to society of $230 million per year.

As mentioned earlier, the Phase I volatility control results have been calculated again using the updated methodology of the Phase II analysis. The resulting nationwide non-Northeast cost to refiners of Phase I RVP controls in 1990 is about $185 million per year, or approximately 0.5 cents per gallon. However, these Phase I costs will be offset by savings to the consumer of about $45 million per year for increased fuel economy and $74 million per year for recovered evaporative emissions, for a slight net savings to society.

b. *Other Petroleum-Related Impacts.* In addition to the direct costs to the refining industry, RVP controls will also have impacts on the butane market. The potential economic impact of a volatility control program on the natural gas liquids (NGL) industry was the subject of extensive comment from companies that condense liquid butanes and other NGLs from raw natural gas; their trade organization, the Gas Processers Association (GPA); and individuals holding natural gas interests.

The vast majority of comments were based on an assumption that RVP controls would eliminate the use of butanes in the production of gasoline during the summer. Given this premise, they foresaw devastating impacts on the natural gas processing and producing industries.

After reassessing this issue, EPA cannot agree with the basic premise of most comments, *i.e.*, that the high-value use for butane in summertime gasoline will be completely lost, glutting the market with cheap butane that would displace lower-value fuels and petrochemical feedstocks. While we agree that butane will drop somewhat in price, Bonner and Moore's modeling of the refinery and petrochemical industries illustrates that the industry dynamics which are likely to follow RVP control are very different from those suggested in the comments.

Bonner and Moore's results indicate that after a relatively moderate drop in price (about 11 percent or less), refiners would themselves absorb the surplus of butane created by RVP controls. (Although the Phase I program required less RVP control than the Phase II program, it is interesting to note that 1989 spot market prices for butane, as well as for ethane, propane, and pentane, showed no identifiable changes in prevailing trends as a result of the implementation of Phase I RVP controls.) Rather than using the butane directly as a gasoline additive, most refiners will shift their production patterns to reduce butane production within the refinery and emphasize processes which use butane as a feedstock for high-octane, low-volatility gasoline components (such as alkylate). In doing so, it appears that the current market for butane in gasoline production will largely remain intact. Bonner and Moore reached this conclusion despite the fact that their model did not consider the expansion of production of methyl- or ethyl tertiary-butyl ether (MTBE or ETBE). With existing or new isomerization and dehydrogenation capacity, normal butane can be a feedstock for MTBE and potentially for ETBE. The Agency expects the current growth in such capacity to continue and probably increase under a volatility control scenario as more butane becomes available during the summertime months. This added demand for butane should further minimize the impact on butane prices.

Given the 11 percent (or less) price reduction for butane estimated above, we also cannot agree that the deep and broad consequences predicted in the comments will occur (including widespread closing of gas processing and related facilities and the shutting in of natural gas thus not processed for commerce). While EPA does not believe the size of the butane market will change significantly, the Agency does believe there will be a loss of up to 11 percent of butane revenues to gas processors for 5 months of the year. This effect should not be severe both because the decrease in butane prices should be relatively small (as noted above) and because for most companies operating gas processing facilities, butane accounts for only a fraction of their business (*e.g.*, from less than 1 percent to, in exceptional cases, as much as 40 percent of revenues). For a likely maximum loss in revenues of around 11 percent, loss of revenues overall should thus be no more than 5 percent, and typically much less. In the short-term, the largest impact is expected to be on imports of butane, which have been growing in recent years.

If a domestic gas processing facility is so economically marginal as to be threatened by even this small drop in butane prices, EPA believes there would be renegotiation of the nature of the contract between the processor for the natural gas and the producers serviced by the processing facility. Since gas producers need to have the condensate removed in order to market their gas, EPA expects that most producers would prefer to receive a reduced percentage of the gas processing income than to stop production. Only in a case where the producer was unusually dependent on revenues from the processor does it appear that a producer may not renegotiate to keep the processor economically viable. From the perspective of a gas producer, it appears that the normal fluctuations in natural gas price should be much more problematic than the loss of revenues due to this action. The effect is certainly much less severe than the loss of revenues that occurred in 1986, when crude oil prices plummeted and all condensate component prices dropped as much as 50 percent with a strong impact on plant economics but without massive closings.

Another issue on which we disagree with the NGL industry relates to whether butane's high price as a gasoline component is a true reflection of high intrinsic economic value, the reduction of which represents a net economic loss to society. Important in this regard is the fact that on hot summer days the difference between 9 and 11.5 RVP (representing about 5 percent butane) contributes to evaporative emissions and running losses representing roughly 1–2 percent of all gasoline purchased. In other words, under some conditions roughly 20–40 percent of the butane added to gasoline never reaches the engine and is wasted. Even under average conditions, the value of butane to vehicle owners may be less at current RVP levels than that of gasoline, even considering its octane enhancement value. Consumers have little opportunity to know the RVP of the gasoline they buy nor a perception of how much of what they buy is lost to evaporation. Insofar as any significant volatility-related emissions occur, the market cannot place a proper value on this wasted butane and consumers continue to pay a high price for the butane in the gasoline they buy. In this respect, shifting butane away from its apparent "high-value" use in gasoline may not even be a shift in value, since its true value in gasoline is likely not much different than its alternative, apparent "low-value" uses.

In addition to the impact on the butane market, RVP controls will also have an impact on imports of crude oil. Some additional imported crude oil may need to be purchased and processed in

order to replace part of the butane displaced by this Phase II program. However, because much of the butane is currently lost through evaporation anyway, not all of the butane will need to be replaced. EPA does not expect the effect on imported crude to be substantial. For example, the fraction of butane in gasoline that is lost to evaporation before reaching the engine (as described above, this may be substantial on some hot days) need not be replaced. In other words, because less evaporation will occur, gasoline demand will be reduced. The only butane which needs to be replaced is the butane actually used by the engine.

In addition, Bonner and Moore estimate that much (if not all) of the butane displaced from direct use in gasoline will be used in the production of other gasoline components, as described above, again reducing the amount of butane displacement affecting crude oil imports. Further, Bonner and Moore did not account for the likely increase in the production of MTBE and/or ETBE which would also allow butane to indirectly be used in gasoline.

Overall, EPA estimates that any increase in imported crude oil due to this Phase II program will be at most 152,000 barrels per day (or about 3 percent of 1989 imports and about 1 percent of total crude consumption); because of the mitigating effects just described, this will most likely be much lower. The Phase I increase in imported crude was calculated again using the same methodology as the Phase II analysis and is estimated to be at most 50,000 barrels per day.

Finally, as discussed next under "Feasibility of Compliance," this program may result in a short-term increase in imports of finished gasoline.

c. *Feasibility of Compliance.* EPA believes that Phase II RVP reductions required by this program are achievable by the summer of 1992. Refiners have a number of ways available to remove butane, to make up the lost gasoline volume, and to meet the octane requirements.

These approaches include installing additional capacity for fractionation, for alkylation, and/or for MTBE/ETBE production. Some refiners may have difficulty completing all the changes they will ultimately need to re-optimize their operations. Nevertheless, other options will be available if necessary while cost-saving equipment installation is completed. These short-term options include process changes, shifting high-octane gasoline components used in mid-grade and premium unleaded gasolines to the regular unleaded fuel, and/or importing finished gasolines or gasoline components. Thus, despite some possible temporary economic inefficiencies for some refiners, compliance with the second phase of RVP controls appears feasible nationwide in 1992 without significant impact on gasoline supplies.

d. *Driveability and Fuel Safety.* Finally, commenters raised the issues of low and high temperature driveability and fuel safety. They claimed that low RVP gasoline will negatively affect driveability and could lead to explosivity concerns at low enough temperatures (tank vapor concentration normally is too rich to explode). Commenters were especially concerned about cases when lower RVP fuel might be supplied earlier in the spring as the RVP of gasoline stocks is blended down. The concerns about high temperature conditions focused on driveability effects like vapor lock (interruption of liquid fuel flow by "bubbles" of vaporized gasoline) and on potential safety problems like fuel spurting from overpressurized tanks.

EPA has analyzed both of these issues in detail (see Chapter 4 of the final RIA) and believes that to the extent that some vehicles currently respond to high RVP at high temperatures with poor driveability or fuel spurting, this program will improve driveability and safety. At the other extreme of low temperatures and low RVP gasoline, EPA has carefully analyzed this issue by evaluating actual tank vapor conditions both for the Phase II program and for current in-use RVP and temperature conditions during the winter. EPA's analysis concludes that driveability should be no worse (and should usually be better) than currently occurs in the winter using common winter fuels. Regarding fuel safety, the same analysis concludes that it is highly unlikely that tank vapor pressure conditions will occur which are lower than current winter experience. (Recent data and analysis submitted by Phillips 66 has been included in the EPA analysis.) Therefore, EPA does not believe flammability or explosivity concerns due to this program are warranted.

3. Analysis of Alternatives

Several aspects of the overall proposed RVP control program make it a very attractive option compared to other approaches to ozone control. The absolute reductions in VOC available are larger than any other single program now available. The program is feasible, and costs, while significant, will not likely be discernible from typical price fluctuations by most consumers. A gasoline RVP program is further attractive because the costs can be limited to the summer months, when ozone is a problem. Another attractive aspect of RVP control is its immediate, total effect on emissions from all gasoline-powered vehicles of all ages and conditions, as well from gasoline-related stationary sources (*e.g.*, fuel storage facilities).

In addition to considering these factors, EPA has performed analysis of the cost effectiveness of today's RVP control program. EPA has commonly used cost effectiveness (dollars per ton of emissions reduced) as one tool for assessing how alternative approaches to control compare to one another as well as how a control program compares to other related programs (in this case, VOC control programs). EPA presents cost-effectiveness results merely to provide additional comparative information; these results should not be interpreted as establishing a baseline for cost effective standards in any context.

For volatility control, it is most useful to evaluate the incremental cost effectiveness (or the cost effectiveness for the final step of control) rather than the overall cost effectiveness. This is due to the fact that as RVP is reduced, costs increase and emission reductions decrease. Therefore, the cost-effectiveness value for the total RVP reduction of the program could theoretically be favorable while the value for the last increment of control is not. To avoid underestimating this value, EPA used an incremental cost effectiveness calculation in the NPRM and in the Phase I final rule; the Agency will continue to use this approach for this rulemaking.

For Phase II, these incremental cost-effectiveness values have been recalculated using updated cost and emission reduction numbers described above. The cost effectiveness of Phase I was also calculated again using MOBILE4.0 values and updated cost estimates. The methodology for these calculations is essentially the same as that proposed in the NPRM. We again focus on adjusted cost-effectiveness values which allow a valid comparison of this nationwide, seasonal RVP control program with year-round nonattainment area only ozone-control programs. To do this, emission reductions were first expanded to those which would occur if the program were year-round. They

were then adjusted downward to include only nonattainment area reductions. Finally, as a way of acknowledging some value for emission reductions in areas currently in attainment for ozone, EPA has included a very conservative credit of $250 per ton of emissions reduced. EPA has not established $250 per ton over any other value as appropriate for such reductions. In fact, the total benefits of reducing ozone levels (*e.g.*, less damage to crops, materials, and forests), as well as additional direct benefits of reducing VOC and particulate matter (*e.g.*, reduced risk of mortality and morbidity and reduced soiling) are very likely in excess of $250 per ton.

Unlike the NPRM, this analysis was expanded to evaluate the cost-effectiveness of the program in the three individual RVP classes as well as for the entire country.

As described earlier, the emission reduction and cost analyses for this program are based on RVPs resulting from the climate-based analysis, and thus do not incorporate the small additional net reductions and costs attributable to the final system of RVP standards. Since both reductions and costs are slightly larger, cost effectiveness ratios remain essentially the same using either approach.

The overall costs were calculated as the refinery costs of producing the lower volatility fuel minus the two economic credits resulting from the program, as mentioned earlier. (Again, the fuel economy credit results from the increase in fuel economy resulting from the greater energy density of lower volatility gasoline; the fuel recovery credit involves savings due to recovering and burning vapors rather than wasting them through evaporation.)

Table 1 presents the incremental cost-effectiveness results for Phase II for the entire nation and for each volatility class individually. (For completeness, Class 'A' values are also reported based on the climate-based results, although no Class 'A' standards are promulgated in this final rule.) These cost-effectiveness values are substantially lower than those projected in the proposal. This is mainly due to the increased VOC benefits calculated by MOBILE4.0 Since MOBILE4.0 predicts greater emissions there are, therefore, greater potential reductions (*i.e.*, increased evaporative and running loss reductions). This increase in emission reductions also leads to lower overall costs because the larger evaporative recovery credit offsets refinery costs to a greater degree.

If cost effectiveness were to be calculated using emission reductions based on average summer temperatures, instead of the average of temperatures on the days of the ten highest ozone measurements, projected emission reductions would be smaller and the incremental cost effectiveness values larger ($970/ton nationwide, or $710, $1091, and $854/ton for Classes A, B, and C, respectively.)

For completeness, Table 2 presents the cost-effectiveness results for Phase I. These values represent the cost effectiveness of the entire reduction from base RVP levels to Phase I levels, if calculated on an incremental basis, these values would be somewhat higher (though less than the Phase II incremental results.)

TABLE 1.—COSTS, EMISSION REDUCTIONS, AND INCREMENTAL COST-EFFECTIVENESS OF PHASE II RVP CONTROL

	Total costs[1] ($\times 10^6$ $)	Total VOC reductions[2,4] ($\times 10^3$ tons)	Incremental C/E[3] ($/ton)
Nationwide	130.4	1316	700
Class 'A'	−10.6	122	610
Class 'B'	73.9	696	720
Class 'C'	56.8	525	670
Nationwide	130.4	863	970
Class 'A'	−10.6	100	710
Class 'B'	73.9	505	1090
Class 'C'	56.8	284	850

[1] Includes refining cost, fuel economy credit, fuel recovery credit, and attainment area credit.
[2] High-ozone day reduction multiplied by 365.
[3] Note that incremental C/E is calculated from incremental costs and reductions presented in the RIA.
[4] Average summer day reduction multiplied by 365.

TABLE 2.—COSTS, EMISSION REDUCTIONS, AND COST-EFFECTIVENESS OF PHASE I RVP CONTROL

	Total costs[1] ($\times 10^6$ $)	Total VOC[2] reductions ($\times 10^3$ tons)	Total C/E ($/ton)
Nationwide	−6.4	836	−14

[1] Includes refining cost, fuel economy credit, fuel recovery credit, and attainment area credit.
[2] High-ozone day reductions multiplied by 365, for comparison to year-round VOC control programs which include control of non-summer emissions.

B. Alcohol Blend RVP Control

As indicated above, EPA has decided to implement Phase II with provisions that essentially maintain the economic status quo of the ethanol and methanol producing and blending industries—relative to each other and to the rest of the motor fuel industry. This involves a 1.0 psi RVP allowance for ethanol blends (gasohol) and no change in the current requirements that methanol blends meet the applicable gasoline RVP standard.

1. Ethanol Blends

Comments from the ethanol production and blending industries maintained that at least a 1.0 psi RVP allowance is an economic necessity for producing gasohol. They argued that lower RVP gasoline would be necessary to produce gasohol which could meet the gasoline RVP standards, and yet that the refining industry was not likely to make available sufficient lower-RVP product to maintain a significant gasohol market. The refiners reinforced this lack of interest in providing gasohol blendstock in materials they presented to EPA.

The other major area of comment related to the environmental impact of permitting gasohol to be sold at a higher RVP than gasoline. Ultimately, the issue is to what extent ozone levels are affected. Gasohol interests claimed that several phenomena reduce the ozone impact of higher RVP gasohol relative to gasoline of similar higher RVP (*e.g.*, the lesser tendency of ethanol emissions to produce ozone (reactivity) compared to hydrocarbons, and a reduction in carbon monoxide (CO) emissions and thus a reduction in CO's role in ozone production). As detailed in the Final RIA, recent studies have indicated that the ozone impact of gasohol at 1.0 RVP higher than gasoline is less than we earlier believed (i.e., a range of about zero to 1 percent increase in ozone levels based on the analysis referenced in the Final RIA).

EPA has concluded that the potential economic jeopardy to the fuel ethanol industry of requiring the same RVP standards for gasoline and gasohol is real. Commenters provided little evidence as to how the industry could survive such an impact. It is possible that other significant markets for ethanol might develop which would mitigate the impact of the loss of direct ethanol blending. For example, widespread use of the ether ETBE, a low volatility gasoline additive made from ethanol, might provide ethanol producers with a substitute motor fuel market. Similarly, a large-scale program to require the use of oxygenates in some cities might also ensure a market for ethanol. However, at present no such significant alternate markets exist.

While some believe the industry should not exist, it is not appropriate to resolve that issue in the context of this rulemaking. Other agencies and Congress will continue to address related agricultural, trade and energy issues which have led to federal support for the existence of the gasohol industry. EPA would require strong evidence of severe environmental consequences in order to support a policy which might eliminate this industry, evidence which does not currently exist.

This 1.0 psi RVP allowance for gasohol adopted in this final rule thus reflects the moderation in EPA's concern about negative air quality impact as well as a reluctance to threaten the motor fuel ethanol production and blending industries with collapse. Gasohol RVP is not totally unregulated. The 1.0 psi "cap" avoids the potential "loophole" of high-RVP gasoline (which cannot be sold during the summer under these regulations) being blended with gasohol; a 1.0 psi allowance assures that ethanol will usually be blended with gasoline which meets the gasoline standard. EPA will continue to explore the economic and air quality issues relating to gasohol RVP, and we may at some point choose to propose changes in the treatment of gasohol.

2. Methanol Blends

As indicated earlier, methanol blends receive no special treatment with respect to RVP control in this program. Methanol blends have generally been through an EPA waiver process, and in each case the provisions of the waivers have necessitated the use of lower RVP base gasoline so that the blend RVP does not exceed the applicable ASTM RVP specification. (This contrasts with the case of gasohol which prior to the Phase I program was unregulated with respect to RVP.) Because of the new air quality issues which would be raised by introducing an RVP allowance, EPA is not changing existing policy relative to methanol blends in this regulation.

VI. Public Participation

EPA held a public hearing on the proposal in October of 1987. Upon the request of oil industry representatives, the subsequent comment period was extended twice, ultimately until February 11, 1988. During this time, EPA received a large number of comments covering a wide range of issues. Each submittal has been placed in Docket A-85-21 (see "Addresses," above); the Phase II Final RIA summarizes the comments related to the Phase II program and EPA's response to them.

Major comments and responses are also reviewed in the context of the issues discussed earlier in this preamble.

A. Other Alternatives

EPA has considered all alternative evaporative emission control programs presented in the comments that were supported by data and technical analysis. In addition, we received a wide range of suggestions that did not specifically challenge our analysis, that did not offer specific analysis to support the suggestion, or that were aimed at regulatory goals different from EPA's; these we have not attempted to address directly. Because the RVP controls promulgated here are extremely cost-effective and further controls at this time would raise issues of driveability, fuel safety, and refining capacity that are not well understood, we are confident that we have thoroughly considered all feasible options to this Phase II programs.

VII. Paperwork Reduction Act

The information collection requirements contained in the Phase I RVP rule have been approved by the Office of Management and Budget (OMB) under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 et seq., and have been assigned OMB control number 2060-0178. No additional requirements are added in this notice.

VIII. Impact on Small Entities

EPA's evaluation of the effects of the proposed RVP control program on small refiners, performed for the NPRM and summarized in that preamble, remains valid. Our conclusion then and now is that RVP control programs, including this Phase II program, will improve the competitive position of some small refiners (those with catalytic cracking capability), while likely causing a small reduction in revenues (relative to total revenues) for other small refiners.

In the NGL industry, many gas processors are small entities. However, as discussed above under "Economic Impact," we do not expect the loss in revenues to gas processors to be severe under this Phase II RVP control.

Finally, EPA believes that the impacts on other small entities (e.g., small blenders, importers, retailers, etc.) would occur primarily in the form of a slightly higher wholesale gasoline price which would then be passed along in product price increases. Since all wholesale suppliers would increase prices by about the same amount, the competitive environment for small entities purchasing that gasoline should not be affected significantly.

As a result of this analysis, performed under section 605 of the Regulatory Flexibility Act, I certify that the regulations promulgated in this notice will not have a significant impact on a substantial number of small entities.

IX. Administrative Designation and Regulatory Analysis

The Administrator has determined that this action constitutes a major regulation. Accordingly, final analyses on issues pertinent to this action have been completed. Final Regulatory Impact Analysis prepared under Executive Order 12291 contains the summary and responses to comments and the final analysis.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any EPA response to those comments are in the public docket for this rulemaking.

Single copies of the Final RIA may be obtained by contacting: Ms. Jackie McManus, U.S. EPA, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668-4756.

X. Statutory Authority

Authority for the actions promulgated in this notice is granted to EPA by sections 114, 211, and 301 of the Clean Air Act (42 U.S.C. 7414, 7545, and 7601).

List of Subjects in 40 CFR Part 80

Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 31, 1990.

F. Henry Habicht,

Acting Administrator.

For the reasons set forth in the preamble, part 80 of title 40 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 114, 211, and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7414, 7545, and 7601(a).

2. Section 80.27 is amended by designating the table as paragraph (a)(1) and adding a paragraph heading and by adding a new paragraph (a)(2) to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

(a) * * *

(1) Applicable Standards [1] 1989–1991.

* * * * *

[1] Standards are expressed in pounds per square inch (psi).

(2) Applicable Standards [3] 1992 and Subsequent Years.

[3] Standards are expressed in pounds per square inch (psi).

State	May	June	July	August	September
Alabama	9.0	7.8	7.8	7.8	7.8
Arizona	9.0	7.8	7.8	7.8	7.8
Arkansas	9.0	7.8	7.8	7.8	7.8
California	9.0	7.8	7.8	7.8	7.8
Colorado	9.0	7.8	7.8	7.8	7.8
Connecticut	9.0	9.0	9.0	9.0	9.0
Delaware	9.0	9.0	9.0	9.0	9.0
District of Columbia	9.0	7.8	7.8	7.8	7.8
Florida	9.0	7.8	7.8	7.8	7.8
Georgia	9.0	7.8	7.8	7.8	7.8
Idaho	9.0	9.0	9.0	9.0	9.0
Illinois	9.0	9.0	9.0	9.0	9.0
Indiana	9.0	9.0	9.0	9.0	9.0
Iowa	9.0	9.0	9.0	9.0	9.0
Kansas	9.0	7.8	7.8	7.8	7.8
Kentucky	9.0	9.0	9.0	9.0	9.0
Louisiana	9.0	7.8	7.8	7.8	7.8
Maine	9.0	9.0	9.0	9.0	9.0
Maryland	9.0	7.8	7.8	7.8	7.8
Massachusetts	9.0	9.0	9.0	9.0	9.0
Michigan	9.0	9.0	9.0	9.0	9.0
Minnesota	9.0	9.0	9.0	9.0	9.0
Mississippi	9.0	7.8	7.8	7.8	7.8
Missouri	9.0	7.8	7.8	7.8	7.8
Montana	9.0	9.0	9.0	9.0	9.0
Nebraska	9.0	9.0	9.0	9.0	9.0
Nevada	9.0	7.8	7.8	7.8	7.8
New Hampshire	9.0	9.0	9.0	9.0	9.0
New Jersey	9.0	9.0	9.0	9.0	9.0
New Mexico	9.0	7.8	7.8	7.8	7.8
New York	9.0	9.0	9.0	9.0	9.0
North Carolina	9.0	7.8	7.8	7.8	7.8
North Dakota	9.0	9.0	9.0	9.0	9.0
Ohio	9.0	9.0	9.0	9.0	9.0
Oklahoma	9.0	7.8	7.8	7.8	7.8
Oregon	9.0	7.8	7.8	7.8	7.8
Pennsylvania	9.0	9.0	9.0	9.0	9.0
Rhode Island	9.0	9.0	9.0	9.0	9.0
South Carolina	9.0	7.8	7.8	7.8	7.8
South Dakota	9.0	9.0	9.0	9.0	9.0
Tennessee	9.0	7.8	7.8	7.8	7.8
Texas	9.0	7.8	7.8	7.8	7.8
Utah	9.0	7.8	7.8	7.8	7.8
Vermont	9.0	9.0	9.0	9.0	9.0
Virginia	9.0	7.8	7.8	7.8	7.8
Washington	9.0	9.0	9.0	9.0	9.0
West Virginia	9.0	9.0	9.0	9.0	9.0
Wisconsin	9.0	9.0	9.0	9.0	9.0
Wyoming	9.0	9.0	9.0	9.0	9.0

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