

USAID has decided to include commercial organizations as recipients and subrecipients covered by this rule and not to include foreign or international organizations. The definitions have been revised to reflect this.

The Circular states in _____.22(c) that advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer. Because USAID frequently issues agency letters of credit for advances, a USAID letter of credit is also referenced in 226.22.

In Section 226.23(b), USAID has determined that unrecovered indirect costs may be included as part of cost sharing without additional approval from USAID.

Section 226.24(d) is amended to reflect USAID's policy determination that commercial organizations may not use the additive formula for program income.

In Section 226.24(f), USAID provides that costs incident to the generation of program income may be deducted from gross income when they are in keeping with the applicable cost principles.

II. 22 CFR Part 226 includes the following additions and changes to A-110 that have been submitted for OMB review and approval as deviations:

Section 226.22(g) is revised to provide that it does not apply to funds earned in foreign currency.

Section 226.22(i) is revised to state that separate depository accounts may be required by the terms of an award where specifically required under USAID's guidance covering endowment funds.

Section 226.22(l) is revised to provide that interest earned shall be remitted to USAID, not HHS, and that USAID may authorize recipients to retain all interest earned in accordance with USAID's statutory authority.

Sections 226.32 and 226.34 are revised to allow for USAID to vest title in an entity other than the recipient (e.g., so that the recipient country government may take title when the award is funded under a bilateral project agreement between USAID and a developing country).

Section 226.44(b) is expanded to provide that certain procurement information be sent to the USAID Office of Small Disadvantaged Business Utilization in accordance with established USAID practice and Section 602 of the Foreign Assistance Act of 1961, as amended.

Section 226.61 is expanded to incorporate USAID's existing authority to suspend or terminate an award where continuation would be in violation of applicable law or otherwise not be in

the national interest of the United States.

Subpart G contains additional procurement eligibility requirements based on USAID's statutory and regulatory requirements. The coverage on eligibility of goods and services, local cost financing, air transportation, and ocean shipment is currently reserved.

III. Editorial changes designed to help clarify the provisions for USAID recipients and program/agreement officers include the following:

Section 226.2 adds definitions of "Agreement Officer" and "USAID."

Section 226.15 includes USAID's existing implementation of the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205).

Subpart E contains additional requirements for awards to commercial (for-profit) organizations.

Subpart F contains coverage of USAID's process for disputes with recipients.

Appendix A contract provisions have been altered to indicate applicability to activities conducted in or outside the United States. Also in Appendix A, the provision on the Byrd Anti-Lobbying Amendment corrects the applicability of the provision which was inadvertently misstated in the Circular. The provision applies to awards exceeding \$100,000 rather than awards of \$100,000 or more.

Waiver of Proposed Rulemaking

It is the practice of USAID to offer interested parties the opportunity to comment on proposed regulations. However, USAID has determined that further public comment on the common rule portion is unnecessary because the substance of the rule received public comment when published by OMB. Given the mandatory nature of the bulk of the text, USAID has determined that issuance of a Notice of Proposed Rulemaking for the modifications would be impractical, unnecessary and contrary to the public interest since the changes are relatively few and most reflect existing policies and practices. Public comments on USAID-specific implementation of this interim final rule are welcome.

Executive Order 12866

USAID has determined that this is not a significant rule in accordance with E.O. 12866.

Regulatory Flexibility Act

This is a mandatory, Government-wide uniform rule. The limited USAID-specific provisions in the rule have been reviewed in accordance with the

requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. Chapter 6). USAID has determined that these portions of the rule would not have a significant economic impact on a substantial number of small entities and, therefore, a Regulatory Flexibility Analysis is not required.

The information collection requirements contained in this rule have been previously cleared by OMB.

List of Subjects in 22 CFR Part 226

Accounting, Administrative practice and procedures, Grant programs, Grant administration, Reporting and recordkeeping requirements.

Accordingly, Part 226 of Title 22 of the Code of Federal Regulations is added, consisting of Subparts A through G and Appendix A, to read as follows:

PART 226—ADMINISTRATION OF ASSISTANCE AWARDS TO U.S. NON-GOVERNMENTAL ORGANIZATIONS

Subpart A—General

Sec.

- 226.1 Purpose and applicability.
- 226.2 Definitions.
- 226.3 Effect on other issuances.
- 226.4 Deviations.
- 226.5 Subawards.

Subpart B—Pre-Award Requirements

- 226.10 Purpose.
- 226.11 Pre-award policies.
- 226.12 Forms for applying for Federal assistance.
- 226.13 Debarment and suspension.
- 226.14 Special award conditions.
- 226.15 Metric system of measurement.
- 226.16 Resource Conservation and Recovery Act.
- 226.17 Certifications and representations.

Subpart C—Post-Award Requirements

Financial and Program Management

- 226.20 Purpose of financial and program management.
- 226.21 Standards for financial management systems.
- 226.22 Payment.
- 226.23 Cost sharing or matching.
- 226.24 Program income.
- 226.25 Revision of budget and program plans.
- 226.26 Non-Federal audits.
- 226.27 Allowable costs.
- 226.28 Period of availability of funds.

Property Standards

- 226.30 Purpose of property standards.
- 226.31 Insurance coverage.
- 226.32 Real property.
- 226.33 Federally-owned and exempt property.
- 226.34 Equipment.
- 226.35 Supplies and other expendable equipment.
- 226.36 Intangible property.
- 226.37 Property trust relationship.