

## Agency for International Development

## §211.3

in which they will be used. The TA incorporates A.I.D. Regulation 11 and authorizes CCC to ship the commodities.

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

(y) *Welfare agencies* means public or private voluntary organizations that provide care, including food assistance, to needy persons who are not residents of institutions.

### §211.3 Cooperating sponsor agreements; program procedure.

(a) *Food for Peace Program Agreement.* A nongovernmental organization is eligible to be a cooperating sponsor for regular programs under paragraph (d)(2)(i) of this section only after it has entered into a Food For Peace Program Agreement with A.I.D. that incorporates the terms and conditions set forth in Regulation 11.

(b) *Host Country Food for Peace Program Agreement.* Nongovernmental and intergovernmental cooperating sponsors shall, in addition to the Food for Peace Program Agreement, enter into a separate written Host Country Food for Peace Agreement with the foreign government of each country for which title II commodities are transferred to the cooperating sponsor. This agreement shall establish the terms and conditions needed by a nongovernmental cooperating sponsor to conduct a title II program in the country in accordance with the applicable requirements of this part. The cooperating sponsor shall provide USAID or the Diplomatic Post a copy of each executed Host Country Food for Peace Agreement.

Where such written agreement is not appropriate or feasible, USAID or the Diplomatic Post shall assure AID/W, in writing, that the program can be effectively implemented in compliance with this Regulation without such an agreement.

(c) *Recipient Agency Agreement.* 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 with such agency a written agreement which shall:

(1) Describe the approved uses of commodities, monetized proceeds and program income in a manner con-

sistent with the approved Operational Plan or TA;

(2) Require the recipient agency to pay the cooperating sponsor the value of any commodities, monetized proceeds or program income that are used for purposes not permitted under the Recipient Agency Agreement or that 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

(3) Incorporate by reference or otherwise the terms and conditions set forth in this Regulation 11.

The Operational Plan may indicate those transfers of commodities, monetized proceeds or program income for which the cooperating sponsor and A.I.D. agree that a Recipient Agency Agreement would not be appropriate or feasible. In any case, the cooperating sponsor shall remain responsible for such commodities, monetized proceeds and program income in accordance with the terms of this Regulation 11 and the Operational Plan or TA. The cooperating sponsor shall provide USAID or the 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 private voluntary organizations, cooperatives, foreign governments (for emergencies only), and international organizations.

(2) *Approval of programs.* There are two basic patterns of decision typically employed in approving a request for title II assistance:

(i) *Regular programs.* The cooperating sponsor submits to A.I.D. an Operational Plan or multi-year Operational Plan (see appendix I), describing the program proposed. Also, an AER will be submitted to A.I.D. along with the Operational Plan, estimating the quantities of commodities required for each program proposed. AID/W's approval of and signature on the AER completes this decision process.

(ii) *Individual programs.* The other basic pattern of decision making results in a Transfer Authorization. The TA is used for all emergency government-to-government programs, and for

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nongovernmental cooperating sponsor programs which do not fit within the Program Agreement/AER framework. The TA will include by reference Regulation 11.

(3) *Subject to availability.* A.I.D.'s agreement to transfer commodities is subject to the availability of appropriations and agricultural commodities during each United States Government fiscal year to which it applies.

(4) *Timing of decision.* Under Public Law 480, section 207(a), within 45 days of its submission to AID/W, a decision must be made on a proposal submitted by a private voluntary organization or cooperative, concurred in by USAID or the Diplomatic Post. The decision shall detail the reasons for approval or denial, and if denied, conditions to be met for approval. In addition, a USAID or Diplomatic Post must decide whether or not to concur in the proposal within 45 days of receiving it or provide a written explanation to the private voluntary organization or cooperative and AID/W of the reasons USAID or the Diplomatic Post needs more time to consider the proposal.

### §211.4 Availability and shipment of commodities.

(a) *Shipment, distribution and use of commodities.* Commodities shall be available for shipment, distribution and use in accordance with the provisions of the approved Operational Plan and AER, or TA and this Regulation 11.

(b) *Transfer of title and delivery.* (1) Unless the approved Operational Plan or TA provides otherwise, title to the commodity shall pass—

(i) For nongovernmental cooperating sponsors, at the point in the United States at which the ocean carrier or its agents take possession of the cargo (generally f.a.s. or f.o.b. vessel U.S. port); or

(ii) For governmental cooperating sponsors, at the destination port of entry, upon completion of discharge by the ocean carrier (non-landlocked countries), or at the destination point of entry, upon completion of delivery by the inland carrier (landlocked countries).

Except as A.I.D. may otherwise agree in writing, the cooperating sponsor shall retain title to commodities, mon-

etized proceeds, and program income transferred to a recipient agency for distribution or use in accordance with the Operational Plan or TA.

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

(c) *Processing, handling, transportation and other costs.* (1) Except as otherwise provided in the Operational Plan or TA, the United States will pay in accordance with this paragraph (c) processing, handling, transportation, and other incidental costs incurred in making commodities available to cooperating sponsors at U.S. ports or U.S. inland destinations, up to the point at which the ocean carrier takes possession of the cargo.

(2) The United States will finance the transfer of commodities at the lowest combination inland and ocean transportation costs as determined by the United States and in sizes and types of packages announced as applicable. If a nongovernmental cooperating sponsor requests changes to these standards which are made by the United States as an accommodation to the cooperating sponsor and these changes result in costs over those the United States otherwise would have incurred, the cooperating sponsor shall reimburse the United States for these increased costs promptly upon request.

(3) All costs and expenses incurred subsequent to the transfer of title to cooperating sponsors shall be borne by them except as otherwise provided herein. Upon the determination that it is in the interests of the program to do so, the United States may pay or reimburse the following additional costs:

(i) Ocean transportation costs from U.S. ports to the designated ports of entry abroad; or

(ii) Ocean transportation costs from U.S. ports to designated points of entry abroad in the case—

(A) Of landlocked countries,

(B) Where ports cannot be used effectively because of natural or other disturbances,

(C) Where carriers to a specific country are unavailable, or