and address of the assignee of the assured to whom payment has actually been made.

[55 FR 34232, Aug. 22, 1990, as amended at 64 FR 17535, Apr. 12, 1999]

Subpart E—General Provisions Relating to USAID Financing of Commodities and Commodity-Related Services

§ 201.40 Purpose.

This subpart sets forth certain provisions of general application to transactions subject to this part.

§ 201.41 Audit and inspection.

The borrower/grantee shall maintain records adequate to document the arrival and disposition in the cooperating country of all commodities financed by USAID, and to identify the importer (or the first purchaser or transferee if the commodity is imported by the borrower/grantee) for a period of 3 years following the date of payment or reimbursement by USAID or for such other period as USAID and the borrower/grantee agree. In addition, the borrower/grantee or the importer shall, to the extent either exercises control or custody over the commodities, permit USAID or any of its authorized representatives at all reasonable times during the 3-year or other agreed period to inspect the commodities at any point, including the point of use, and to inspect all records and documents pertaining to such commodities.

§ 201.42 Reexport of USAID-financed commodities.

Unless specifically authorized by USAID, commodities imported into a cooperating country under USAID-financing may not be exported in the same or substantially in the same form from the cooperating country. In the event of any unauthorized reexport, the borrower/grantee shall pay promptly to USAID, upon demand, the entire amount reimbursed or such lesser or greater amount as USAID may deem appropriate under the circumstances of the particular transaction. Such an amount shall in no event, however, exceed the greater of either the amount reimbursed or the amount realized from the reexport.

§ 201.43 Diversion clause.

USAID may require that charter parties, bills of lading, or other ocean shipping documents covering USAID-financed commodities contain a clause substantially as follows:

USAID may at any time prior to unloading prescribe a different port of discharge from among the ports covered by the applicable tariff. Diversion charges shall apply in accordance with the tariff or contract of affreightment. Deviation insurance and extra handling costs actually incurred shall be reimbursed.

§ 201.44 Vesting in USAID of title to commodities.

(a) *Vesting upon order of USAID* USAID may direct that title to USAID-financed commodities in transit to a cooperating country shall be vested in USAID if, in the opinion of USAID, such action is necessary to assure compliance with the provisions or purposes of any act of Congress.

(1) *Rights of USAID upon vesting of title*. In accordance with instructions by USAID, the borrower/grantee, supplier, and bank shall transfer such negotiable bills of lading, suppliers' invoices, packing lists, inspection certificates or other designated documents relating to the commodities as are in, or may come into, their possession.

(2) *Diversion of commodities*. USAID may direct the master or operator of a vessel or an inland carrier carrying the commodities to divert them away from the port or other destination specified in the shipping documents and to deliver them at such other destination as USAID may designate.

(b) *Financial responsibility of USAID under vesting order*. (1) USAID will reimburse a supplier who has not already received payment under the purchase contract for all commodities with respect to which USAID has taken title under a vesting order.

(2) USAID will assume the responsibility for any extra costs (including the costs of marine insurance and handling) which are incurred as a result of a diversion. Such costs shall not exceed diversion charges as per tariff (liner

shipments) or contract of affreightment (charters), and shall include only those deviation insurance and extra handling costs which are actually incurred.

(3) USAID shall incur no liability to the borrower/grantee, the importer, or to the approved applicant by reason of any order which vests in USAID title to commodities, or by reason of any request for the diversion of commodities.

§ 201.45 Termination or modification of a loan, grant or implementing document.

(a) *Effect of termination or modification.* (1) Except as provided in paragraph (a)(2) of this section, the availability of USAID funds to finance the procurement of commodities and commodity-related services shall terminate or shall be modified, whenever and to the same extent that the implementing document which relates to such delivery is terminated or modified by operation of provisions contained in the document, or by the exercise of rights otherwise reserved to USAID.

(2) Unless the supplier and USAID agree otherwise, to the extent that the supplier has received an irrevocable letter of credit from a bank under an USAID letter of commitment, the purchase contract shall be affected only to the extent necessary to comply with any vesting order issued by USAID in accordance with § 201.44.

(b) *Responsibilities of parties after termination or modification of USAID-financing.* Upon termination or modification of USAID-financing of commodities or commodity-related services, the supplier, importer and approved applicant shall make such arrangements as are necessary to obtain the cancellation or modification of any letter of credit in favor of the supplier.

§ 201.46 Compensation to supplier if shipment is prohibited.

(a) *Payment to supplier.* USAID shall make appropriate payment to a supplier for the value of USAID-financed commodities available for immediate shipment from the United States if all the following conditions are satisfied:

(1) Shipment is prohibited by order of the U.S. Government and such order has general application to all shipments to the cooperating country.

(2) Payment may not be made by the bank under the terms of the letter of credit or payment instructions.

(3) The supplier is unable to dispose of the commodities without loss.

(4) The supplier tenders to USAID a negotiable warehouse receipt covering the commodities in question and presents to USAID such other documentation required by § 201.52 as may be appropriate under the circumstances.

(b) *Other settlement.* In lieu of accepting title to the commodities, USAID may negotiate with the supplier such other settlement as may be fair and equitable under the circumstances.

§ 201.47 Use of marine insurance loss proceeds.

The borrower/grantee shall pay promptly to USAID a sum equal to the proceeds received by an importer or its assignee in settlement of a marine insurance claim under a marine insurance policy financed pursuant to this part 201, if such proceeds are not expended in the manner provided by § 201.26 within a reasonable period after receipt by the importer.

Subpart F—Payment and Reimbursement

§ 201.50 Purpose.

This subpart describes:

(a) The methods by which USAID will make payment or reimbursement for commodities and commodity related services which have been furnished;

(b) The documentation required to be submitted to USAID for the purpose of obtaining such payment or reimbursement; and

(c) The terminal date for presentation of documents which USAID requires as a condition for payment or reimbursement.

§ 201.51 Methods of financing.

Under procurements subject to this part 201, the following methods of financing may be employed by USAID In each case, the method of financing shall be consistent with provisions in the pertinent implementing documents.