

Department of State

§ 201.65

or bonded warehouse, USAID will finance no more than the lower of the following:

(i) The maximum price described in § 201.63(f)(1), or

(ii) The maximum price described in § 201.63(f)(1)(i), plus any transportation costs into the free port or bonded warehouse which meet the requirements of § 201.13(b)(1)(i)(D), and any transportation costs out of the free port or bonded warehouse on a vessel flying the flag of a country included in the authorized geographic code.

(2) When a shipment is f.o.b. or f.a.s. a free port or bonded warehouse, USAID will finance no more than the lower of the following:

(i) The maximum price described in § 201.63(f)(2), or

(ii) The maximum price described in § 201.63(f)(1)(i), plus any transportation costs into the free port or bonded warehouse which meet the requirements of § 201.13(b)(1)(i)(D).

(d) *Determination of prevailing prices.* In the determination of any prevailing market price of any commodity or any prevailing price or maximum eligible freight rate for a commodity related service, relevant published and unpublished price information will be considered.

§ 201.65 Commissions, discounts and other payments, credits, benefits and allowances.

(a) *General.* This section sets forth the rules which govern the eligibility of commissions, discounts and certain other payments, credits, benefits and allowances for USAID-financing.

(b) *Commissions to sales agents.* Unless otherwise provided in the implementing document, a commission paid, or to be paid, to a bona fide agent of the supplier is eligible for financing under this part, if such agent either has made a direct and substantial contribution toward securing the purchase contract for the supplier or is engaged on a continuing basis in securing similar contracts for the supplier. Such commissions are eligible to the extent they comply with § 201.65(f).

(c) *Commissions and other payments, credits, benefits or allowances to importers, purchasing agents and others.* Unless otherwise authorized by USAID, no

commission or other payment, credit, benefit or allowance of any kind shall be paid, made, or given, or agreed to be paid, made or given, in connection with any sale subject to this part by the supplier or its agent:

(1) To or for the benefit of the importer;

(2) To or for the benefit of a purchasing agent or other agent or representative of an importer, even though such agent or representative may also have an agreement with a supplier to represent the supplier; or

(3) To any third party in connection with a sale by the supplier to its dealer, distributor, or established agent in the cooperating country.

(d) *Trade discounts.* To arrive at the net amount eligible for USAID-financing, all trade discounts, whether in the form of payments, credits, or allowances, to which the importer is entitled shall be deducted from the gross amount of the supplier's invoice submitted under § 201.52(a)(2)(i)(D).

(e) *Commissions and other payments or benefits attributable to USAID-financing.* Every commission or other payment, credit, benefit, or allowance of any kind paid, made or given, or agreed to be paid, made or given, in connection with the sale of commodities financed under this part to any person described in § 201.65(c) (1), (2) or (3) shall be presumed conclusively to have been paid from USAID funds and shall thereby be subject to the requirements of this part 201.

(f) *Maximum commission.* A commission shall not exceed the lesser of the amount which the supplier customarily pays in connection with similar transactions or the amount which is customary in the trade.

(g) *Reporting.* All commissions and other payments, credits, benefits or allowances of any kind paid, made or given, or agreed to be paid, made or given, by the supplier in connection with USAID-financed sales of commodities and commodity-related services shall be fully reported on the Invoice-and-Contract Abstract of the Supplier's Certificate required under § 201.52(a)(6). Any such amounts not reported shall be ineligible for USAID-financing.

(h) *Brokerage commission.* In connection with ocean freight services,

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USAID will finance a brokerage commission only if:

(1) Such commission does not exceed 2½ percent of the ocean freight charge (exclusive of deadfreight, demurrage and detention);

(2) Such commission is payable to an individual resident in a country included in the authorized source code; a non-resident citizen of a country included in the authorized source code; or a corporation or partnership organized under the laws of a country included in the authorized source code; and

(3) The names of all persons receiving such commissions appear on the face of the charter party.

(i) *Address commissions.* An address commission to or for the benefit of a charterer shall be deemed a discount on the stated freight rate or freight charge which the supplier of transportation services shall deduct from the cost of transportation financed by USAID. If the supplier of the commodity is the charterer, it shall refund to USAID any address commission received by it. If the supplier of the commodity is not the charterer, the borrower/grantee shall be responsible for making a refund to USAID of any such commissions received by the charterer.

§ 201.66 Side payments.

Any payment which an importer makes to a supplier, whether or not indicated on the supplier's invoice and whether or not financed by USAID, in connection with an USAID-financed transaction, shall be disclosed by the supplier on the Supplier's Certificate and shall be considered as part of the actual purchase price in applying the rules of this subpart G.

§ 201.67 Maximum freight charges.

(a) *Ocean freight rates*—(1) *Similar shipments.* *Similar shipments* means shipments which are similar with respect to type of commodity, commodity rate classification, quantity, vessel flag category (U.S.-or foreign-flag), choice of ports, and other pertinent factors. In determining whether shipments are similar, no effect shall be given to the identity of the shipper or the circumstance that the shipment is or is

not financed by the Government of the United States.

(2) *Maximum charter rates.* (i) USAID will not finance ocean freight under any charter which has not been submitted to and received prior approval by USAID/W. USAID will not approve a charter if the freight rate exceeds:

(A) The rate prevailing for similar shipments; or

(B) The lowest rate charged by the vessel for similar shipments on the same voyage.

(ii) In determining the rate prevailing for similar shipments, recognized sources of charter market rate information will be consulted and, if necessary, will be supplemented by other information which contributes to a realistic determination of the prevailing charter rate.

(3) *Effect of USAID approval of a charter.* USAID prior approval of a charter shall be confirmed by USAID in writing and shall then be final except in cases where the freight rate exceeds the lowest rate charged by the vessel for similar shipments on the same voyage or where USAID's prior approval is based on false or misleading representations made to USAID by the charterer or vessel owner(s).

(4) *Maximum liner rates.* USAID will not finance ocean freight for a cargo liner shipment at a rate which exceeds the lowest of the following:

(i) The conference contract rate or the conference noncontract rate, whichever is lower;

(ii) The rate named in any tariff or other rate listing for the same destination and commodities on file at the Federal Maritime Commission; or

(iii) The lowest rate charged by the VOCC for similar shipments on the same voyage.

(5) *Despatch.* (i) The borrower/grantee, or the supplier with respect to despatch earned by the supplier, shall be responsible for refunding to USAID all despatch earned:

(A) At the port of unloading on c.i.f. or c. & f. shipments, or

(B) At the port of loading or unloading on f.o.b. or f.a.s. shipments, to the extent that despatch exceeds demurrage incurred on the same voyage.