

§ 212.11

material or copies thereof, regardless of physical form or characteristics, made in or received by USAID (including its missions or offices abroad), and preserved as evidence of its organization, functions, policies, decisions, procedures, operations, or other activities. The term does not include copies of the records of other U.S. Government agencies, foreign governments, international organizations, or non-governmental entities which do not evidence organization, functions, policies, decisions, procedures, operations, or activities of USAID.

Subpart B—Publication in the Federal Register

§ 212.11 Materials to be published.

(a) USAID separately states and currently publishes in the FEDERAL REGISTER for the information and guidance of the public:

(1) Descriptions of its central and field organization and the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions;

(2) Statements of the general course and method by which its functions are channelled and determined, including the nature and requirements for all formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by USAID; and

(5) Every amendment, revision or repeal of the material listed in this section.

(b) USAID Public Notice No. 1 and the USAID Regulations published in chapter II of Title 22 and in subtitle A, Chapter 7 of Title 41 of the Code of Federal Regulations implement the provisions of this section.

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§ 212.12 Effect of nonpublication.

The materials referenced in § 212.11 shall not be binding upon or otherwise adversely affect a person unless either

(a) The materials were in fact published in the FEDERAL REGISTER or

(b) The person otherwise had actual and timely notice of the content of such materials.

§ 212.13 Incorporation by reference.

For purposes of this subpart B, USAID matters which are reasonably available to the class of persons affected thereby are deemed to be published in the FEDERAL REGISTER when they have been incorporated by reference therein with the approval of the Director of the Federal Register.

Subpart C—Availability of Information for Public Inspection and Copying

§ 212.21 Public records.

In accordance with this subpart, USAID makes the following information and materials available for public inspection and copying:

(a) All final opinions (including concurring and dissenting opinions), and all orders made in the adjudication of the cases;

(b) those statements of policy and interpretations which have been adopted by the Agency and are not published in the FEDERAL REGISTER; and

(c) Administrative staff manuals and instructions to staff that affect any member of the public.

§ 212.22 Protection of personal privacy.

To the extent required to prevent a clearly unwarranted invasion of personal privacy, USAID may delete identifying details when USAID makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. USAID will, in each such case, explain in writing the justification for the deletion.

§ 212.23 Current index.

USAID maintains and makes available for public inspection and copying a current index providing identifying information for the public as to any

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matter which has been issued, adopted, or promulgated after July 4, 1967, and which is required by § 212.21 to be made available or published. Publication of an index is deemed both unnecessary and impractical. However, copies of the index are available, upon request, for a fee based on the direct cost of duplication.

§ 212.24 Effect of noncompliance.

No final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects any member of the public will be relied upon, used, or cited as precedent by USAID against any private party unless it has been indexed and either made available or published as provided by this subpart, or unless that private party shall have actual and timely notice of the terms thereof.

§ 212.25 Procedures for obtaining materials under this subpart.

(a) The materials required to be made available for public inspection and copying in accordance with this subpart are available to members of the public at USAID's Public Reading Room, Room 1113, 1621 North Kent Street, Rosslyn, Virginia 22209, which is open from 9 a.m. to 5 p.m., Monday through Fridays, except on holidays. All such materials are available in electronic form (disks) only; to a reasonable degree, assistance will be provided in use of necessary equipment.

(b) Requests for materials which are available under this subpart should follow the procedures under § 212.33(a) of this part.

(c) The direct costs of any necessary duplication will be charged in accordance with the fee schedule set forth in § 212.35.

(d) USAID Missions and offices in countries abroad are not responsible for the maintenance of the index and materials available under this subpart. However, insofar as they do have these materials, they will make them available to citizens of the United States who are present in their respective countries upon application made either or in person in writing to the USAID Director, or other principal USAID officer, c/o American Embassy in the applicable country.

Subpart D—Access to Agency Records

§ 212.31 Availability of agency records.

Upon receiving a request which reasonably describes a USAID record, and which is made in accordance with the provisions of this subpart, USAID will make such records, except the following, promptly available to the requesting party:

(a) Matters published in the FEDERAL REGISTER pursuant to subpart B;

(b) Matters made available to the public pursuant to subpart C; and

(c) Matters exempt from disclosure pursuant to § 212.41 or § 241.42 of this part.

§ 212.32 Identification of records.

The request for a record by a member of the public must contain a reasonably specific description of the particular record sought so that a USAID officer who is familiar with the subject matter of the request may be able to locate the record with a reasonable amount of effort. A description that includes as much information as possible, such as the subject matter, format, approximate date and, where pertinent, the name of the country or person involved, will facilitate the search for the requested record.

§ 212.33 Procedure for making requests.

(a) Requests for records, other than records available at the Public Reading Room identified in § 212.24(a), may be made by a member of the public in writing only to the Chief, Customer Outreach and Oversight Staff, Room 1113, SA-16, Agency for International Development, Department of State, 320 21st Street, N.W., Washington, D.C. 20523-1608. The request and the envelope must be plainly marked "FOIA Request." Requests may be made orally, that is, in person, only for records and materials available at the Public Reading Room.

(b) Requests for records may be made directly to a USAID mission or office abroad only by a citizen of the United States who is present in that country and must be by written application to the USAID Director (or other principal USAID officer), care of the American