



AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Chapter 7

RIN 0412-AA86

Agency for International Development Acquisition Regulation (AIDAR): Leave and Holidays for U.S. Personal Services Contractors, including Family and Medical Leave

AGENCY: U.S. Agency for International Development.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The U.S. Agency for International Development (USAID) hereby further amends a proposed rule published in the Federal Register on June 21, 2019 regarding amending the AIDAR to revise the General Provision contract clause (hereafter “clause”) 5 entitled “Leave and Holidays (APR 1997)” for U.S. personal services contractors (USPSCs.) This action addresses conforming changes to annual and sick leave, and compensatory time off.

DATES: Submit comments on or before August 20, 2019.

ADDRESSES: Submit comments by any of the following methods:

1. Through the Federal eRulemaking Portal at <http://www.regulations.gov> by following the instructions for submitting comments.
2. By Mail addressed to: U.S. Agency for International Development (USAID), Bureau for Management, Office of Acquisition & Assistance, Policy Division, Attn: Richard E. Spencer, Room 867-E, SA-44, 1300 Pennsylvania Ave. NW, Washington, DC 20523-2052.

FOR FURTHER INFORMATION CONTACT: Richard E. Spencer, Telephone: 202-567-4781 or Email: rspencer@usaid.gov.

SUPPLEMENTARY INFORMATION: On June 21, 2019 (84 FR 29140), USAID proposed amending its acquisition regulations by revising the General Provision contract clause 5 in appendix D of the AIDAR, chapter 7 of title 48 of the Code of Federal Regulations. Those changes included revisions and clarifications for all types of leave for USPSCs, including adding a new provision for family and medical leave. In this supplemental notice of proposed rulemaking, we are clarifying that both earning and use of compensatory time off follows the same policies as apply to USAID direct-hires, and adding language that conforms to unchanged provisions elsewhere in the regulation about prorating annual and sick leave accrual rates for less than full-time work.

A. Instructions.

All comments must be in writing and submitted through one of the methods specified in the “Addresses” section above. USAID encourages all commenters to include the title of the action and RIN for this rulemaking. Please include your name, title, organization, postal address, telephone number, and email address in the text of your comment.

Please note that USAID recommends sending all comments to the Federal eRulemaking Portal.

All comments will be made available at <http://www.regulations.gov> for public review without change, including any personal information provided. We recommend that you do not submit information that you consider confidential business information or any information that is otherwise protected from disclosure by statute.

USAID will only address comments that are relevant and within the scope of this proposed rule.

B. Background.

USAID is seeking comments on this proposed rule to revise AIDAR appendix D as originally published in the *Federal Register* on June 21, 2019, and as described below for this supplemental notice of proposed rulemaking:

1) Annual leave.

This paragraph is clarified to indicate that accrual of annual leave will be prorated for less than full-time work.

2) Sick Leave.

This paragraph is clarified to indicate that accrual of sick leave will be prorated for less than full-time work.

3) Compensatory Time.

A sentence is added to clarify that both earning and use of compensatory time off follow the same policies as apply to USAID direct-hires.

C. Impact assessment.

1) Regulatory Planning and Review. Under E.O. 12866, OIRA has designated the proposed rule “significant” and therefore subject to the requirements of the E.O. and subject to review by the Office of Management and Budget (OMB). OIRA has determined that this Rule is not an “economically significant regulatory action” under Section 3(f)(1) of E.O. 12866. This proposed rule is not a major rule under 5 U.S.C. 804.

The costs and benefit of the revisions described as published in the *Federal Register* on June 21 remain unchanged, and there is no additional impact for the conforming changes proposed by this supplemental notice of proposed rulemaking.

2) Regulatory Flexibility Act. The Director, Bureau for Management, Office of Acquisition and Assistance, acting as the Head of the Agency for purposes of the Federal Acquisition Regulation, certifies that this proposed rule will not impact a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. Therefore, an Initial Regulatory Flexibility Analysis has not been performed.

3) Paperwork Reduction Act. This proposed rule does not establish or modify a collection of information that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

List of Subjects in 48 CFR Chapter 7, Appendix D

Government procurement.

For the reasons discussed in the preamble, 48 CFR chapter 7, as proposed to be amended on June 21, 2019 at 84 FR 29140, is further amended as follows:

TITLE 48 – Federal Acquisition Regulations System

CHAPTER 7— AGENCY FOR INTERNATIONAL DEVELOPMENT

1. The authority citation for appendix D to 48 CFR chapter 7 continues to read as follows:

Authority: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381), as amended;
E.O. 12163, Sept. 29, 1979, 44 FR 56673; and 3 CFR, 1979 Comp., p. 435.

2. Appendix D to chapter 7, is amended by revising paragraphs (a)(2), (b), and (h) of clause 5 in section 12 to read as follows:

Appendix D to Chapter 7—Direct USAID Contracts With a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad

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12. General Provisions for a Contract With a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad

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5. Leave and Holidays

(a) ***

(2) The contractor will accrue annual leave based on the contractor's time in service according to the table of this paragraph (a)(2). The accrual rates are based on a full-time, 40-hour workweek, which will be prorated if the contract provides for a shorter workweek:

Time in Service	Annual Leave (AL) Accrual Rate
0 to 3 years	4 hours of leave for each 2-week period
over 3, and up to 15 years	6 hours of AL for each 2-week period (including 10 hours AL for the final pay period of a calendar year)
over 15 years	8 hours of AL for each 2-week period

(b) *Sick Leave*. The contractor may use sick leave on the same basis and for the same purposes as USAID employees. The contractor will accrue sick leave at a rate not to exceed four (4) hours every two (2) weeks for a maximum of thirteen (13) work-days per year based on a full-time, 40-hour workweek, which will be prorated if the contract provides for a shorter workweek. The contractor may carry over unused sick leave from year to year under the same contract, and to a new follow-on contract for the same work at the same place of performance. The contractor is not authorized to carry over sick leave to a new contract for a different position or at a different location. The contractor will not be compensated for unused sick leave at the completion of this contract.

(h) *Compensatory Time*. USAID may grant compensatory time off only with the written approval of the contracting officer or Mission Director in rare instances when it has been determined absolutely essential and under the policies that apply to USAID direct-hire employees. The contractor may use earned compensatory time off in accordance with policies that apply to USAID direct-hire employees.

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Mark A. Walther

Acting Chief Acquisition Officer

[FR Doc. 2019-17523 Filed: 8/15/2019 8:45 am; Publication Date: 8/16/2019]