

**Subpart C—Conditions Governing the Eligibility of Commodity-Related Services for USAID Financing**

**§ 228.20 Purpose.**

Sections 228.21 through 228.25 set forth the rules governing the eligibility of commodity-related services, both delivery services and incidental services, for USAID financing. These rules may be waived in accordance with the provisions in subpart F of this part. Waivers granted pursuant to subpart F for individual shipments requiring ocean transportation which are not based on a determination of non-availability shall not reduce the requirement that the applicable percentage of USAID cargoes be transported on U.S.-flag vessels pursuant to the Cargo Preference Act of 1954, Section 901(b)(1) of the Merchant Marine Act of 1936, as amended, 46 U.S.C. 1241(b). The rules on delivery services apply whether or not USAID is also financing the commodities being transported. In order to be identified and eligible as incidental services, such services must be connected with a USAID-financed commodity procurement.

**§ 228.21 Ocean transportation.**

(a) The Cargo Preference Act of 1954, Section 901(b)(1) of the Merchant Marine Act of 1936, as amended, 46 U.S.C. 1241(b)(1), is applicable to ocean shipment of goods subject to this part. USAID's policy on implementation of the Cargo Preference Act is in USAID's Automated Directives System, Chapter 315.

(b) In addition to cargo preference requirements, ocean shipments of USAID-financed goods must meet the requirements in paragraph (c) of this section in order for the freight cost to be eligible for USAID financing.

(c) The eligibility of ocean transportation services is determined by the flag registry of the vessel.

(1) When the authorized source for procurement is Geographic Code 000 (U.S.A.), USAID will finance ocean transportation only on U.S. flag vessels.

(2) When the authorized source for procurement is Geographic Code 941

(selected Free World), USAID will finance ocean transportation on vessels under flag registry of any country in Code 935.

(3) When commodities whose eligibility is restricted to Geographic Code 000 are purchased under agreements which authorize Geographic Code 941 for the procurement of all other commodities, USAID will finance the ocean transportation in accordance with paragraph (c)(2) of this section.

(4) USAID will finance costs incurred on vessels under flag registry of any Geographic Code 935 country if the costs are part of the total cost on a through bill of lading that is paid to a carrier for initial carriage on a vessel which is eligible in accordance with paragraphs (c)(1), (2) or (3) of this section; provided that for shipments originating on a U.S. flag vessel with transshipment to a non-U.S. flag vessel, the supplier must obtain a determination that direct serve on a U.S. flag vessel is not available from USAID's Office of Procurement, Transportation Division, 1300 Pennsylvania Avenue NW., Washington, DC 20523-7900.

[61 FR 53616, Oct. 15, 1996, as amended at 63 FR 38751, July 20, 1998]

**§ 228.22 Air transportation.**

(a) The eligibility of air transportation is determined by the flag registry of the aircraft. The term "U.S. flag air carrier" means one of a class of air carriers holding a certificate under Section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371) authorizing operations between the United States or its territories and one or more foreign countries.

(b) For air transport financed under USAID grants, there is a U.S. Government statute that requires the use of U.S. flag air carriers for all international air travel and transportation, unless such service is not available. When U.S. flag air carriers are not available, any Geographic Code 935 flag air carrier may be used.

(c) Different requirements may be authorized in the implementing document if the transaction is financed under a USAID loan.

(d) The Comptroller General's memorandum (B-138942), dated March 31, 1981, entitled "Revised Guidelines for

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Implementation of the Fly America Act”, established criteria for determining when U.S. flag air carriers are unavailable. See 48 CFR 47.403-1, or USAID Optional Standard Provision on “Air Travel and Transportation” for grants and cooperative agreements.

(e) While the Comptroller General’s memorandum does not establish specific criteria for determining when freight service is unavailable, it is USAID’s policy that such service is not available when the following criteria are met:

(1) When no U.S. flag air carrier provides scheduled air freight service from the airport serving the shipment’s point of origin and a non-U.S. flag carrier does;

(2) When the U.S. flag air carrier(s) serving the shipment’s point of origin decline to issue a through air waybill for transportation at the shipment’s final destination airport;

(3) When use of a U.S.-flag air carrier would result in delivery to final destination at least seven days later than delivery by means of a non-U.S. carrier;

(4) When the total weight of the consignment exceeds the maximum weight per shipment which the U.S. flag air carrier will accept and transport as a single shipment and a non-U.S. flag air carrier will accept and transport the entire consignment as a single shipment;

(5) When the dimensions (length, width, or height) of one or more of the items of a consignment exceed the limitations of the U.S. flag aircraft’s cargo door opening, but do not exceed the acceptable dimensions for shipment on an available non-U.S. flag scheduled air carrier.

[61 FR 53616, Oct. 15, 1996; 62 FR 314, Jan. 3, 1997]

**§ 228.23 Eligibility of marine insurance.**

The eligibility of marine insurance is determined by the country in which it is “placed”. Insurance is “placed” in a country if payment of the insurance premium is made to, and the insurance policy is issued by, an insurance company office located in that country. Eligible countries for placement are governed by the authorized geographic

code. However, if Geographic Code 941 is authorized, the cooperating country is also eligible to provide such services, unless the implementing document specified otherwise based on the following:

(a) If a cooperating country discriminates against marine insurance companies authorized to do business in any State of the United States, then all USAID-financed goods for that country must be insured in the United States against marine risk. The term “authorized to do business in any State of the United States” means that foreign-owned insurance companies licensed to do business in the United States (by any State) are treated the same as comparable U.S.-owned companies.

(b) The prima facie test of discrimination is that a cooperating country takes actions which hinder private importers in USAID-financed transactions from making cost, insurance and freight (C.I.F.) or cost and insurance (C.&I.) contracts with United States commodity suppliers, or which hinder importers in instructing such suppliers to place marine insurance with companies authorized to do business in the United States.

(c) When discrimination is found to exist and the cooperating country fails to correct the discriminatory practice, USAID requires that all commodities procured with USAID funds be insured in the United States against marine loss. The decision of any cooperating country to insure all public sector procurements locally with a government-owned insurance agency is not considered discrimination.

**§ 228.24 Other delivery services.**

No source or nationality rules apply to other delivery services, such as export packing, loading, commodity inspection services, and services of a freight forwarder. Such services are eligible in connection with a commodity which is financed by USAID.

**§ 228.25 Incidental services.**

Source and nationality rules do not apply to suppliers of incidental services specified in a purchase contract relating to equipment. However, citizens or firms of any country not included in