ADS Chapter 315

Cargo Preference

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ADS 315 – Cargo Preference

Table of Contents

315.1 OVERVIEW 3

315.2 PRIMARY RESPONSIBILITIES 3

315.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES 4

315.3.1 Use of U.S. Flag Vessels 4

315.3.2 Exceptions 4

315.3.3 Quantitative Unit Rule 5

315.3.4 Determinations of Non-Availability 5
315.3.4.1 Dry Cargo Liners 5
315.3.4.2 Chartered Vessels 6
315.3.4.3 Blanket Determinations of Non-Availability 6

315.3.5 Impracticability 7

315.4 MANDATORY REFERENCES 7

315.4.1 External Mandatory References 7

315.4.2 Internal Mandatory References 7

315.4.3 Mandatory Forms 8

315.5 ADDITIONAL HELP 8

315.5.1 Optional Forms 8

315.6 DEFINITIONS 8

ADS 315 – Cargo Preference

315.1 OVERVIEW

Effective Date: 08/27/2002

The objective of this ADS chapter is to ensure that USAID-financed ocean shipments of commodities comply with the requirements of the **Cargo Preference Act** and the regulations issued by the Maritime Administration of the U.S. Department of Transportation.

315.2 PRIMARY RESPONSIBILITIES

Effective Date:10/31/2006

a. The **Bureau for Management, Office of Acquisition and Assistance, Transportation Division (M/OAA/T)** is responsible for the following:

(1) Ensuring that U.S. flag vessels' participation in moving USAID-financed commodities and Pub.L. 480, Title II and Title III commodities, complies with the requirements of the Cargo Preference Act and applicable Maritime Administration rules;

(2) Assisting other USAID Bureaus/Offices and Missions in interpreting the Cargo Preference Act, as administered by USAID.

b. The **Strategic Objective Team** is responsible for the following:

(1) Incorporating cargo preference requirements into agreements with the cooperating countries and into the implementing documents; and

(2) Transmitting policy, essential procedures, and performance statistics to cooperating countries and Missions.

c. **Missions** are responsible for the following:

(1) Advising cooperating country governments and USAID contractors and recipients as to the applicable provisions of this chapter; and

(2) Assisting cooperating country governments and USAID contractors and recipients in remedying noted deficiencies in compliance.

d. The **cooperating country governments and USAID contractors and recipients**are responsiblefor ensuring that USAID-financed commodities are shipped aboard ocean vessels in accordance with cargo preference provisions incorporated in their financing agreements with USAID.

315.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES

315.3.1 Use of U.S. Flag Vessels

Effective Date:10/31/2006

Tonnage: At least 50 percent of the gross tonnage of all USAID-financed commodities transported on ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers) must be transported on privately-owned, U.S. flag, commercial vessels, to the extent that such vessels are available at fair and reasonable rates.

Revenue: At least 50 percent of the gross freight revenue generated by all shipments of USAID-financed commodities transported on ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers) must be paid to or for the benefit of privately-owned, U.S. flag liners, to the extent that such vessels are available at fair and reasonable rates.

M/OAA/T must monitor the performance of cooperating country governments and USAID contractors and recipients in meeting cargo preference requirements. M/OAA/T maintains statistics for cargo preference performance and prepares reports as necessary. If M/OAA/T determines that their compliance with the tonnage and revenue requirements over the life of an agreement is in doubt, it may require the cooperating country governments and USAID contractors and recipients to make all shipments by U.S. flag vessels for a specific period until compliance is reasonably ensured. M/OAA/T must furnish written determinations to the USAID Bureau responsible for the agreement. The Bureau must then initiate action to invoke USAID's rights under the agreement clause that specifies the Cargo Preference requirementsto institute the modified requirement.

M/OAA/T reviews individual country and USAID contractor and recipient performance for compliance with the statutory requirements and policies in this chapter. M/OAA/T also prepares statements to geographic Bureaus and Missions to advise them of deficient country performance and of possible corrective measures.

315.3.2 Exceptions

Effective Date: 08/27/2002

The policies in this chapter do not apply to the following situations:

a. Ocean transportation between foreign countries of commodities purchased with foreign currencies, or the transfer of fresh fruits and fresh-fruit products, as provided in **Section 603 of the Foreign Assistance Act of 1961, as amended (FAA)**;

b. Grants to American Schools and Hospitals Abroad (ASHA) or grants to Public International Organizations (PIO), except in the exceptional instances when USAID's procurement policies have been made applicable to these types of grants;

c. Supplies donated by non-U.S. Government donors to the American Red Cross or to private voluntary organizations (PVOs) registered with USAID. These policies do not apply to supplies purchased by such PVOs with non-U.S. Government funds, even if the transportation of these supplies is financed by USAID, pursuant to Section 123 of the FAA;

d. Property provided on an advance-of-funds or reimbursement basis under a determination made in accordance with Section 607(a) of the FAA;

e. Cash transfer agreements; and

f. Contractor-owned mobilization equipment, provided it was owned by the contractor prior to contract award and is shipped to the host country and imported duty free for use on USAID-funded projects with the intent of re-export upon completion of contract performance.

315.3.3 Quantitative Unit Rule

Effective Date:10/31/2006

When cargo is contracted on a quantitative basis that may move in full shipload lots, U.S. flag vessels must be fixed for at least 50 percent of the quantitative unit if they are available at fair and reasonable rates, before fixtures may be made on non-U.S. flag vessels.

M/OAA/T will withhold approval of the fixture of foreign flag vessel(s) for any portion of a quantitative unit of cargo until such time as U.S. flag vessel(s) which are available at fair and reasonable rates are fixed for at least 50 percent of the tonnage of the quantitative unit, or in the case of Pub.L. 480 commodities, 75 percent.

315.3.4 Determinations of Non-Availability

Effective Date:10/31/2006

The **Cargo Preference Act** requires the use of U.S. flag vessels only to the extent that they are available, and available at fair and reasonable rates. USAID reserves the right to determine whether a U.S.flag vessel is available for any particular shipment of a USAID-financed commodity. Determinations of non-availability are not applicable to Pub. L. 480 shipments. M/OAA/T determines non-availability of U.S. flag vessels.

315.3.4.1 Dry Cargo Liners

Effective Date: 10/31/2006

A liner's tariff rate, if filed with and accepted by the Federal Maritime Commission, will normally be considered by USAID to be a fair and reasonable rate. A determination of liner non-availability relieves the cooperating country or USAID contractor or recipient of the requirement to use U.S. flag vessels for the tonnage included in the determination.

M/OAA/T may determine that U.S. dry cargo liners are unavailable if the following criteria are met:

a. U.S. flag liner vessels do not offer service from point of shipment to the destination country;

b. U.S. flag vessels can provide liner service for commodities that cannot be containerized only by trans-shipment, and vessels under flag registry of countries to be authorized by the waiver provide liner service without trans-shipment;

c. U.S. flag vessels are not available, and cargo is ready and available for shipment, provided it is reasonably evident that delaying shipment until U.S. flag vessels become available would increase costs or significantly delay receipt of the cargo;

d. U.S. flag vessels, which are otherwise available, are found unsuitable because of loading, carriage, or unloading requirements, or are unsuitable for the available port handling facilities;

e. U.S. flag vessels do not provide liner service from the port of loading stated in the procurement's port of export delivery terms, provided the port is named in a manner consistent with normal trade practices and provided that the cargo cannot be delivered to another port served by U.S. flag vessels at no greater cost; or

f. The rates charged by available U.S. flag vessels are determined to be higher than fair and reasonable rates.

315.3.4.2 Chartered Vessels

Effective Date:10/31/2006

M/OAA/T must evaluate, in consultation with the Maritime Administration, the availability, suitability, and responsiveness of U.S. flag vessels and evaluate whether the offered rates are fair and reasonable prior to approving any charters for the transport of cargoes**.** M/OAA/T's determination that U.S. flag vessels are not available reduces the cooperating country or USAID contractor or recipient's required use of U.S. flag vessels by the tonnageincluded in the determination.

315.3.4.3 Blanket Determinations of Non-Availability

Effective Date:10/31/2006

M/OAA/T may authorize omitting U.S. flag vessel shipping requirements from an agreement when it finds that it is impracticable for the cooperating countryand USAID contractor or recipient to comply because of non-availability of suitable U.S. flag vessels to deliver the commodities to be financed by the agreement**.** Such a blanket determination of non-availability makes it unnecessary to issue determinations for individual shipments**.** Blanket determinations must be made for limited periods of time, geographic scope**,** and service.

315.3.5 Impracticability
Effective Date:10/31/2006

USAID may not waive the statutory requirements of the Cargo Preference Act, but it may find in exceptional circumstances that it is not practicable to include the usual cargo preference requirements in a particular agreement. Such a finding enables USAID to exempt a particular agreement from the cargo preference requirements.The following exemptions require M/OAA/T consultation with General Counsel (GC):

a. The agreement funds are to be made available to intermediate credit institutions for dollar (foreign exchange) procurement, or the funds are for not more than $1 million or 20 percent of the total funding of a multi-laterally funded project, whichever is less;

b. M/OAA/T can determine or reasonably forecast that the current and prospective use of U.S. flag shipping by the cooperating countries within the concerned Bureau's geographic area will enable USAID to comply with its statutory cargo preference requirements for the total of all USAID-financed shipments to countries of this geographic area.

Any other exemptions to the Cargo Preference Act that are based upon impracticability, require approval by the USAID Administrator, in consultation with the Assistant Administrator for Management (AA/M) and the USAID General Counsel (GC).

315.4 MANDATORY REFERENCES
Effective Date: 08/27/2002

315.4.1 External Mandatory References
Effective Date: 08/27/2002

a. **The Cargo Preference Act of 1954, (Pub.L. 83-664),Section 901(b)(1) of the Merchant Marine Act of 1936. [46 USC Appendix. 1241(b)]**

b. **Section 603 of the Foreign Assistance Act of 1961, as amended (FAA)**

c. **Food Security Act of 1985, Pub L. 99-198**

d. **48 CFR Subpart 47.5 (FAR), Ocean Transportation by U.S.-Flag Vessels**

e. **48 CFR Subpart 747.5 (AIDAR), Ocean Transportation by U.S.-Flag Vessels**

315.4.2 Internal Mandatory References
Effective Date:08/27/2002

a. **Mandatory Standard Provision for U.S. Nongovernmental Recipients No. 19., Ocean Shipment of Goods (June 1999)**

b. Required as Applicable Standard Provision for Non U.S. Nongovernmental Recipients No. 4., Ocean Shipment of Goods (June 1999)

315.4.3 Mandatory Forms
Effective Date:08/27/2002

315.5 ADDITIONAL HELP
Effective Date: 08/27/2002

315.5.1 Optional Forms
Effective Date: 08/27/2002

315.6 DEFINITIONS
Effective Date:10/31/2006

The terms and definitions listed below have been incorporated into the ADS Glossary. See the **ADS Glossary** for all ADS terms and definitions.

Cargo Preference
The requirement to use U.S. flag ocean carriers in accordance with the provisions of section 901(b) of the Merchant Marine Act of 1936, as amended.

Dry bulk carrier
A vessel used primarily for the carriage of shipload lots of homogeneous unmarked nonliquid cargoes such as grain, coal, cement, and lumber.

Dry cargo liner
A vessel sailing between specified ports on a regular basis that is used for the carriage of heterogeneous marked cargoes in parcel lots. However, any cargo may be carried in these vessels, including part cargoes of dry bulk items or, when carried in deep tanks, bulk liquids such as petroleum and vegetable oils.

Fixed
Contracted for shipment

Foreignflag vessel
Any vessel of foreign registry, including vessels owned by U.S. citizens, but registered in a nation other than the United States.

Privately owned U.S.flag commercial vessel
A vessel—

(1) Registered and operated under the laws of the United States,
(2) Used in commercial trade of the United States, and
(3) Owned and operated by U.S. citizens, including a vessel under voyage or time charter to the Government, or
(4) A Government-owned vessel under bareboat charter to, and operated by, U.S. citizens.

The term "privately owned U.S.-flag commercial vessel" does not include any vessel which, subsequent to September 21, 1961, was either built outside the United States, rebuilt outside the United States or documented under any foreign registry until such vessel has been documented under the laws of the United States for a period of three years.

Quantitative Unit of Cargo
The total tonnage of a commodity or commodities included in one invitation for bids or other solicitation of offers from ocean carriers for the transportation of cargo which may move in full shipload lots.

Tanker
A vessel used primarily for the carriage of bulk liquid cargoes such as liquid petroleum products, vegetable oils, and molasses.

Trans-shipment
The transfer of goods from one ship to another.

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