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# ADS Chapter 314

## Eligibility of Delivery Services

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ADS 314 – Eligibility of Delivery Services**

*This chapter has been reformatted, edited, and office symbols and definitions have been updated.*

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\* An asterisk indicates that the adjacent material is new or substantively revised.

## ADS 314 – Eligibility of Delivery Services

### 314.1 OVERVIEW

Effective Date: 05/03/2000

This chapter specifies the policy directives and required procedures overning transportation and delivery services related to the shipment of USAID-financed goods. Marine insurance, which is considered a delivery service, is covered in ADS 322. (See [ADS 322](#))

### 314.2 PRIMARY RESPONSIBILITIES

Effective Date: 03/05/2007

- a. **Regional Bureaus** are responsible for ensuring that assistance instruments reflect USAID's policies on the financing of delivery services.
- b. **Regional Bureau Assistant Administrators** decide when and to what extent USAID may finance U.S. flag differential with funds available to the Bureau.
- c. **The Bureau for Management, Office of Acquisition and Assistance, Transportation Division (M/OAA/T)** is responsible for administering, developing, and monitoring the policies, procedures, regulations, and statutes governing the transportation of commodities.

### 314.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES

Effective Date: 03/05/2007

#### 314.3.1 Ocean Shipment of Goods

Effective Date: 05/03/2000

USAID must follow the ocean transportation policies set forth in 22 CFR 228.21 regarding eligibility of ocean transportation service providers. The following policies and procedures are applicable only to ocean shipment of goods. (See [22 CFR 228.21](#))

M/OAA/T authorizes waivers, determines when ocean carriers are unavailable, approves charters, interprets the policies, and generally coordinates commodity transportation activities for USAID with respect to delivery services.

#### 314.3.1.1 Waiver Requirements

Effective Date: 03/05/2007

USAID must follow the policies set forth in 22 CFR 228.55 and 228.56 when waiving ocean transportation eligibility requirements. Officials in the field who have authority to waive source requirements of commodities also have a limited amount of authority to waive the flag eligibility requirements of 22 CFR 228.21. (See [ADS 103](#) for applicable redelegations) They may waive only for shipment of commodities for which they, or

someone acting in that position, approved a commodity source waiver. ([See 22 CFR 228.55, 228.56, and 228.21](#))

USAID Missions must send a copy of each field-approved transportation waiver to M/OAA/T.

### **314.3.1.2 Freight Differential**

Effective Date: 03/05/2007

Section 640(c) of the FAA authorizes the use of grant funds to pay host countries for all or part of the differential between generally higher freight costs for U.S. flag vessels and lower cost, foreign flag vessels. USAID does not receive additional appropriations for this purpose; thus, the cognizant Regional Assistant Administrator must decide when and to what extent USAID may finance U.S. flag differential with funds available to the Bureau.

The following procedures must be followed in order to pay freight differential:

- a. When the responsible Assistant Administrator decides to use funds to compensate recipients for all or part of the differential between freight costs for U.S. and foreign flag vessels, the geographic Bureau must ensure that adequate funds are available and reserved for that purpose;
- b. The Department of Transportation, Maritime Administration (MARAD), determines a fair and reasonable differential between the proposed U.S. flag rate and the foreign flag rate. M/OAA/T submits the request for differential determination to MARAD; and
- c. If U.S.-owned, excess local currency is available, M/OAA/T determines if the carrier will accept the part of its payment corresponding to the differential in such currency.

### **314.3.1.3 Despatch, Demurrage And Detention**

Effective Date: 05/03/2000

It is USAID policy that the host country or the supplier must refund to USAID all despatch earned at the port of unloading on cost, insurance, and freight (CIF) and cost and freight (CFR) shipments. When USAID finances the transportation costs for free on board (FOB) or free alongside (FAS) shipments, despatch earned at either the port of loading or unloading must be refunded to the extent that despatch exceeds demurrage incurred on the same voyage. Demurrage and detention costs are otherwise ineligible for USAID financing.

**314.3.1.4 Dead Freight**

Effective Date: 05/03/2000

USAID may not finance the costs of dead freight. Dead freight is claimed by a vessel operator for booked or chartered space unoccupied or for cargo weight short-shipped, according to the terms of the charter.

**314.3.2 Air Travel And Transportation**

Effective Date: 05/03/2000

USAID must follow the air transportation policies and procedures set forth in 22 CFR 228.22 regarding eligibility of ocean transportation service providers. (See [22 CFR 228.22](#))

Suppliers, contractors, or grantees who claim payment for use of a non-U.S. flag air carrier must certify, in writing, with the claim for payment that United States flag air carriers were unavailable, and state the reason.

**314.3.2.1 Trans-Shipment**

Effective Date: 05/03/2000

USAID may finance costs incurred on air carriers under the flag registry of any country not listed as foreign policy restricted. (See [22 CFR 228.03](#)) if

- a. Shipment is made on an air waybill issued by a U.S. flag air carrier covering shipment to the final destination,
- b. The costs are part of the total cost paid to the U.S. flag air carrier, and
- c. The first international portion of the flight is on the U.S. flag carrier.

**314.3.3 General Transportation Requirements**

Effective Date: 05/03/2000

The policies and procedures relating to charters, inland transportation, and delivery service charges apply to both ocean and air transport.

**314.3.3.1 Charters**

Effective Date: 03/05/2007

USAID must not finance the cost of any ocean or air charter covering full or part cargo if M/OAA/T has not approved the charter prior to shipment. This includes charter parties, booking notes, and booking agreements when those forms of freight contracts incorporate provisions which are in addition to, or which deviate from, the terms of the carrier's standard bill of lading and tariff. If approval for a charter was not requested prior to shipment, M/OAA/T may determine that retroactive approval is justified in a particular case, such as when it was not known at the time of shipment that the

transaction would be financed by USAID.

Commodities must be made ineligible for USAID financing if shipped under any ocean or air charter which has not received prior approval of M/OAA/T. (**See [ADS 312](#)**)

M/OAA/T determines whether the proposed charter is eligible for USAID financing, the rate is fair and reasonable, and the proposed charter conforms to cargo preference requirements, if applicable. M/OAA/T provides approval of the charter, subject to subsequent receipt of a copy of the charter, signed by both parties. Charterers must submit the following information concerning proposed charters to M/OAA/T in order to obtain approval:

- a. The name of vessel or air carrier,
- b. Flag,
- c. Commodity,
- d. Date of shipment,
- e. Ports of loading/discharge,
- f. Rate, and
- g. Demurrage/despatch provisions.

Suppliers who ship goods via charters must include a copy of the approved charter with the payment documentation submitted to USAID.

### **314.3.3.2 Inland Transportation**

Effective Date: 05/03/2000

USAID may finance inland transportation beyond the point of entry in a cooperating country only when:

- a. Intermodal transportation services covering the carriage of cargo from point of origin to destination are used with a through bill of lading; or
- b. A waiver is authorized on the basis that the policy is clearly inconsistent with the purposes of the program. Among the considerations which may be cited in granting such a waiver are
  - (1) An offset in the host country contribution to the project,
  - (2) Inability of the host country entity to budget for inland freight, and
  - (3) Enhanced security and timeliness of delivery.

**314.3.3.3 Delivery Services Charges**

Effective Date: 05/03/2000

The price charged for delivery services, including ocean freight, must not exceed the prevailing price or the price paid by the supplier under similar circumstances to other customers.

Ocean freight charges may not exceed the established rate on file, if any, at the U.S. Federal Maritime Commission for comparable shipments.

**314.3.4 Voluntary Agencies - Ocean Transportation Costs**

Effective Date: 05/03/2000

USAID has the authority to reimburse the American National Red Cross and registered U.S. private voluntary organizations for ocean transportation costs of goods, which have been donated to the organizations or purchased by them without USAID financing.

- a. Such shipments of donated or non-USAID financed goods which are not required to be on U.S. flag vessels by virtue of cargo preference requirements will be eligible for financing on vessels under flag registry of any country other than the foreign policy restricted countries. **(See [22 CFR 228.03](#) and [ADS 315](#))** (Air shipments are covered by the policies in **314.3.2**)
- b. USAID may reimburse transportation charges to points of entry, rather than ports of entry, when
  - (1) The destination country is landlocked,
  - (2) Ports cannot be used effectively because of natural or other disasters,
  - (3) Carriers to a specific country are unavailable, or
  - (4) A substantial savings in cost or time can be achieved by the utilization of points of entry other than ports.

**314.3.5 Marine Insurance**

Effective Date: 05/03/2000

Eligibility requirements for USAID financing of marine insurance are set forth in 22 CFR 228.23. **(See [22 CFR 228.23](#))**

**314.3.6 Other Delivery Services**

Effective Date: 05/03/2000

USAID must follow the policy set forth in 22 CFR 228.24. (See [22 CFR 228.24](#))

**314.4 MANDATORY REFERENCES**

Effective Date: 05/03/2000

**314.4.1 External Mandatory References**

Effective Date: 05/03/2000

- a. [The Foreign Assistance Act of 1961, as amended \(FAA\)](#)
- b. Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, **49 U.S.C. 1371.**
- c. Section 21 of the International Transportation Competition Act of 1979, **Public Law 96-192**, 94 Stat. 43.
- d. March 31, 1981 Comptroller General's memorandum (B-138942), entitled "**Revised Guidelines for Implementation of the Fly America Act.**"
- e. [22 CFR 228](#), Rules on Source, Origin and Nationality for Commodities and Services Financed by USAID

**314.4.2 Internal Mandatory References**

Effective Date: 05/03/2000

- a. [ADS 103, Delegations of Authority](#)
- b. [ADS 312, Eligibility of Commodities](#)
- c. [ADS 315, Cargo Preference](#)
- d. [ADS 322, Procurement of Insurance](#)

**314.5 ADDITIONAL HELP**

Effective Date: 05/03/2000

**314.6 DEFINITIONS**

Effective Date: 03/05/2007

The terms and definitions listed below have been included into the ADS Glossary. See the [ADS Glossary](#) for all ADS terms and definitions.

**airwaybill**

A document that provides a written description of goods sent with a common carrier by air. (Chapter 314)

**booking note/booking agreement**

A contract for liner shipment, which normally incorporates the provisions of the carrier's standard bill of lading, adding only the cargo and shipment details such as cargo weight, load and discharge ports, rates, etc. The note or agreement may, however, also modify or replace all or some of the bill of lading provisions. (Chapter 314)

**cargopreference**

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. (Chapters 314, 315)

**charter/charterparty**

A contract for the hire of a ship or aircraft or portion thereof, for one or more voyages or flights, or for a period of time. Its clauses include freight rate, dispatch, demurrage brokerage commissions, etc. as well as provisions established by international agreements and, by reference, provisions of law. The charter/charter party usually overrides any provisions of the carrier's bill of lading, although it may provide that the bill of lading shall serve as a receipt for the cargo. (Chapter 314)

**deliveryservices**

Services customarily performed in a commercial export transaction which are necessary to effect a physical transfer of commodities to the cooperating country. Examples of such services are the following: export packing, local drayage in the source country (including waiting time at the dock), ocean and other freight, loading, heavy lift, wharfage, tollage, switching, dumping and trimming, lighterage, insurance, commodity inspection services, and services of a freight forwarder. Delivery services may also include work and materials necessary to meet USAID marking requirements. (Chapter 314)

**despatch**

An incentive payment paid to a carrier for loading and unloading the cargo faster than agreed. Usually negotiated only in charter parties. (Chapter 314)

**demurrage**

The charge for the failure to remove cargo from equipment within the allowed time. Also a charge for failure to load or unload a ship within the allowed time. (Chapter 314)

**detention**

The penalty paid by the charterer for delay of a vessel beyond the contracted terms. (Chapter 314)

**foreign flag vessel**

Any vessel of foreign registry, including vessels owned by U.S. citizens, but registered in a nation other than the United States. (Chapter 314)

**intermodal transportation**

A system of transportation using containers with common handling characteristics, which allows for efficient handling by different types of carriers. For example, a container that can be attached to a truck bed and/or railcar and subsequently be loaded onto a ship for ocean transportation. (Chapter 314)

**liner**

A vessel sailing between specified ports on a regular basis that is used for the carriage of heterogeneous marked cargoes in parcel lots. 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. (Chapter 314, 315)

**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" shall not include any vessel which, subsequent to September 21, 1961, shall have been either built outside the United States, rebuilt outside the United States or documented under any foreign registry until such vessel shall have been documented under the laws of the United States for a period of three years. (Chapters 314, 315)

**U.S.flag air carrier**

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 U.S. or its territories and one or more foreign countries. (Chapter 314)

**U.S. flag vessel**

A U.S. Government-owned vessel or a privately owned U.S. flag (U.S. registered) commercial vessel. (See also the definition of privately owned U.S. flag commercial vessel) (Chapter 314)

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