

following: Albania, Andorra, Angola, Armenia, Austria, Australia, Azerbaijan, Bahamas, Bahrain, Belgium, Bosnia and Herzegovina, Bulgaria, Belarus, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Gabon, Georgia, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Italy, Japan, Kazakhstan, Kuwait, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia,\* Malta, Moldova, Monaco, Mongolia, Montenegro\*, Netherlands, New Zealand, Norway, People's Republic of China, Poland, Portugal, Qatar, Romania, Russia, San Marino, Saudi Arabia, Serbia\*, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Taiwan\*, Tajikistan, Turkmenistan, Ukraine, United Arab Emirates, United Kingdom, Uzbekistan, and Vatican City.

[61 FR 53616, Oct. 15, 1996; 61 FR 54849, Oct. 22, 1996, as amended at 68 FR 23892, May 6, 2003]

### Subpart B—Conditions Governing Source and Nationality of Commodity Procurement Transactions for USAID Financing

#### § 228.10 Purpose.

Sections 228.11 through 228.14 set forth the rules governing the eligible source of commodities and nationality of commodity suppliers for USAID financing. These rules may be waived in accordance with the provisions in subpart F of this part.

#### § 228.11 Source and origin of commodities.

(a) The source and origin of a commodity as defined in § 228.01 shall be a country or countries authorized in the implementing document by name or by reference to a USAID geographic code.

(b) Any component from a foreign policy restricted country makes the commodity ineligible for USAID financing.

(c) When the commodity being purchased is a kit (e.g., scientific instruments, tools, or medical supplies pack-

aged as a single unit), the kit will be considered a produced commodity.

(d) When spare parts for vehicles or equipment are purchased, each separate shipment will be considered a produced commodity, rather than each individual spare or replacement part. The parts must be packed in and shipped from an eligible country.

(e) *Systems determination.* When a system consisting of more than one produced commodity is procured as a single separately priced item, USAID may determine that the system itself shall be considered a produced commodity. When a determination is made to treat a system as a produced commodity, component commodities which originate from other than an authorized source country may be shipped directly to, and the system assembled in, the cooperating country, unless USAID specifically determines that assembly and shipment take place in an authorized source country. Transportation costs must still meet the requirements in subpart C of this part in order for them to be eligible for USAID financing. USAID, or the importer in the case of a Commodity Import Program, shall inform the supplier of any system determination.

(f) In order to be eligible for USAID financing, when items are considered produced commodities under paragraphs (c), (d), or (e) of this section, the total cost (to the system supplier) of the commodities making up the kit, spare parts, or system which were manufactured in countries not included in the authorized geographic code may not exceed 50 percent of the lowest price (not including ocean transportation and marine insurance) at which the supplier makes the final product available for export sale.

[61 FR 53616, Oct. 15, 1996; 62 FR 314, Jan. 3, 1997, as amended at 63 FR 38751, July 20, 1998]

#### § 228.12 Long-term leases.

Any commodity obtained under a long-term lease agreement is subject to the source and origin requirements of this subpart B. For purposes of this subpart B, a long-term lease is defined as a single lease of more than 180 days, or repetitive or intermittent leases under a single activity or program within a one-year period totalling more

\* Has the status of a "Geopolitical Entity", rather than as independent country.

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than 180 days, for the same type of commodity.

### **§ 228.13 Special source rules requiring procurement from the United States.**

(a) Agricultural commodities and products thereof must be procured in the United States if the domestic price is less than parity, unless the commodity cannot reasonably be procured in the United States in fulfillment of the objectives of a particular assistance program under which such commodity procurement is to be financed. (22 U.S.C. 2354)

(b) Motor vehicles must be manufactured in the United States to be eligible for USAID financing. Also, any vehicle to be financed by USAID under a long-term lease or where the sale is to be guaranteed by USAID must be manufactured in the United States. (22 U.S.C. 2396) For purposes of this section, motor vehicles are defined as self-propelled vehicles with passenger carriage capacity, such as highway trucks, passenger cars and buses, motorcycles, scooters, motorized bicycles and utility vehicles. Excluded from this definition are industrial vehicles for materials handling and earthmoving, such as lift trucks, tractors, graders, scrapers, off-the-highway trucks (such as off-road dump trucks) and other vehicles that are not designed for travel at normal road speeds (40 kilometers per hour and above).

(c) Pharmaceutical products must be manufactured in the United States in order to be eligible for USAID financing. USAID shall not finance any pharmaceutical product manufactured outside the United States if the manufacture of such product in the United States would involve the use of, or be covered by, a valid patent of the United States unless such manufacture is expressly authorized by the owner of such patent. (22 U.S.C. 2356)

[61 FR 53616, Oct. 15, 1996; 62 FR 314, Jan. 3, 1997, as amended at 63 FR 72181, Dec. 31, 1998]

### **§ 228.14 Nationality of suppliers of commodities.**

(a) The rules on nationality of suppliers of commodities relate only to the suppliers, and not to the commodities they supply. The nationality of

the supplier is an additional eligibility criterion to the rules on source, origin and componentry.

(b) A supplier providing commodities must fit one of the following categories for the transaction to be eligible for USAID financing:

(1) An individual who is a citizen or a lawfully admitted permanent resident of a country or area included in the authorized geographic source code, except as provided in paragraph (c) of this section;

(2) A corporation or partnership organized under the laws of a country or area included in the authorized geographic source code and with a place of business in such country;

(3) A controlled foreign corporation (within the meaning of section 957 *et seq.* of the Internal Revenue Code) as attested by current information on file with the Internal Revenue Service of the United States (on IRS Form 959, 2952, 3646, or on substitute or successor forms) submitted by shareholders of the corporation; or

(4) A joint venture or unincorporated association consisting entirely of individuals, corporations, or partnerships which are eligible under either paragraph (b) (1), (2) or (3) of this section.

(c) Citizens of any country or area, or firms or organizations located in, organized under the laws of, or owned in any part by citizens or organizations of any country or area not included in Geographic Code 935 are ineligible for financing by USAID as suppliers of commodities. Limited exceptions to this rule are:

(1) Individuals lawfully admitted for permanent residence in the United States are eligible, as individuals or owners, regardless of their citizenship; and

(2) The USAID Procurement Executive may authorize the eligibility of organizations having minimal ownership by citizens or organizations of non-Geographic Code 935 countries.

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