



USAID
FROM THE AMERICAN PEOPLE

ADS Chapter 312

Eligibility of Commodities

Revision Date: 08/27/2009
Responsible Office: M/OAA/P
File Name: 312_082709

**Major Functional Series 300: Acquisition and Assistance
ADS Chapter 312 - Eligibility of Commodities**

Table of Contents

<u>312.1</u>	<u>Authority</u>	<u>3</u>
<u>312.2</u>	<u>Objective</u>	<u>3</u>
<u>312.3</u>	<u>Responsibility</u>	<u>3</u>
<u>312.4</u>	<u>DEFINITIONS</u>	<u>4</u>
<u>312.5</u>	<u>POLICY</u>	<u>4</u>
<u>312.5.1</u>	<u>"AID COMMODITY ELIGIBILITY LISTING"</u>	<u>4</u>
<u>312.5.1a</u>	<u>COMMODITY IMPORT PROGRAMS</u>	<u>4</u>
<u>E312.5.1a</u>	<u>Commodity Import Programs</u>	<u>5</u>
<u>312.5.1b</u>	<u>OTHER ACTIVITIES</u>	<u>5</u>
<u>312.5.2</u>	<u>PRIOR APPROVAL OF COMMODITY TRANSACTIONS</u>	<u>5</u>
<u>E312.5.2</u>	<u>Prior Approval of Commodity Transactions</u>	<u>5</u>
<u>312.5.3</u>	<u>RESTRICTED COMMODITIES</u>	<u>6</u>
<u>E312.5.3a</u>	<u>Agricultural Commodities</u>	<u>7</u>
<u>312.5.3b</u>	<u>MOTOR VEHICLES</u>	<u>8</u>
<u>E312.5.3b</u>	<u>Motor Vehicles</u>	<u>9</u>
<u>312.5.3d</u>	<u>CONTRACEPTIVES</u>	<u>12</u>
<u>E312.5.3d</u>	<u>Contraceptives</u>	<u>13</u>
<u>312.5.3e</u>	<u>PESTICIDES</u>	<u>14</u>
<u>E312.5.3e</u>	<u>Pesticides</u>	<u>14</u>
<u>312.5.3f</u>	<u>USED EQUIPMENT</u>	<u>15</u>
<u>312.5.3g</u>	<u>FERTILIZER</u>	<u>16</u>
<u>312.5.4</u>	<u>INELIGIBLE COMMODITIES</u>	<u>16</u>
<u>312.5.4a</u>	<u>MILITARY EQUIPMENT</u>	<u>16</u>
<u>312.5.4b</u>	<u>SURVEILLANCE EQUIPMENT</u>	<u>17</u>
<u>312.5.4c</u>	<u>COMMODITIES AND SERVICES FOR SUPPORT OF POLICE AND OTHER LAW ENFORCEMENT ACTIVITIES</u>	<u>17</u>
<u>312.5.4d</u>	<u>ABORTION EQUIPMENT AND SERVICES</u>	<u>17</u>
<u>312.5.4e</u>	<u>LUXURY GOODS</u>	<u>18</u>
<u>312.5.4f</u>	<u>GAMBLING EQUIPMENT</u>	<u>18</u>

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

<u>312.5.4g</u>	<u>WEATHER MODIFICATION EQUIPMENT</u>	<u>18</u>
<u>312.5.5</u>	<u>ELIGIBILITY OF COMMODITIES DETERMINED BY INELIGIBILITY OF THE CARRIER</u>	<u>18</u>
<u>312.5.5a</u>	<u>EFFECTS OF CARRIER INELIGIBILITY</u>	<u>18</u>
<u>312.5.5b</u>	<u>WAIVERS</u>	<u>19</u>
<u>312.5.6</u>	<u>ELIGIBILITY OF COMMODITIES DETERMINED BY INELIGIBILITY OF MARINE INSURANCE</u>	<u>19</u>
<u>312.7</u>	<u>Mandatory Reference</u>	<u>19</u>

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

**Major Functional Series 300: Acquisition and Assistance
ADS Chapter 312 - Eligibility of Commodities**

312.1 Authority

1. [Foreign Assistance Act of 1961, as amended, \(FAA\) Sections 102, 104\(f\), 604, 606\(c\), 607, 636\(i\) and 660.](#)
2. [Section 525 of the Foreign Assistance and Related Program Appropriations Act, 1982.](#)
3. [22 CFR 216](#)

312.2 Objective

1. To assure that the resources made available by USAID in the form of commodities make a positive contribution to development.
2. To assure that USAID programs are implemented in full accord with the Foreign Assistance Act, other pertinent laws, and relevant U.S. policies.
3. To assure that only safe and efficacious pharmaceutical products are financed, that they are manufactured in accordance with accepted quality standards, that prices paid for them are appropriate, and that in all respects, USAID's financing of pharmaceutical procurements is carried out in a manner sensitive to the special public and Congressional interests in this important commodity.
4. To provide for economical procurement of contraceptive products.
5. **This Chapter covers the policies on the eligibility of commodities for financing with program funds. It does not deal with programmatic determinations of commodity eligibility. The policy on motor vehicles also applies to Operating Expense funds.**

312.3 Responsibility

1. Bureau Assistant Administrators

Assure that all programs for which they are responsible are implemented in accordance with this Chapter.

2. Principal USAID Officers at Post and Strategic Objective Teams

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

Assure that all programs for which they are responsible are implemented in accordance with this Chapter.

3. Bureau for Management, Office of Procurement, Policy Division (M/OP/P)

Develops and interprets USAID commodity eligibility criteria.

4. Bureau for Global Programs, Center for Population, Health, and Nutrition, Office of Population (G/PHN/POP)

Administers consolidated contracts for contraceptive product requirements.

312.4 DEFINITIONS (See [ADS GLOSSARY](#))

COMMODITY
MOTOR VEHICLES
ORIGIN
PARITY
PESTICIDE
PHARMACEUTICAL

312.5 POLICY

The statements contained within this ADS chapter are the official Agency policies and corresponding essential procedures.

312.5.1 "AID COMMODITY ELIGIBILITY LISTING"

The "[USAID Commodity Eligibility Listing](#)" indicates USAID's current position on the eligibility or ineligibility of commodities for USAID financing

312.5.1a COMMODITY IMPORT PROGRAMS

Under Commodity Import Programs (CIPs), the entire "USAID Commodity Eligibility Listing," or a portion thereof, may be authorized for financing. Commodities which are normally ineligible are not eligible for financing unless specifically authorized in writing by USAID. USAID reserves the right, upon the review of a supplier's [Application for Approval of Commodity Eligibility \(AID Form 11\)](#), to decline to finance any commodity when in USAID's judgment such financing would adversely affect USAID's program objectives or the foreign policy objectives of the United States.

E312.5.1a Commodity Import Programs

A commodity which is designated as ineligible in the "USAID Commodity Eligibility Listing" shall only be financed after it has been approved in writing by:

- 1) The Bureau Assistant Administrator who has program responsibility;
- 2) The principal USAID officer at post, in consultation with a Commodity Management Officer or a Regional Legal Advisor; or
- 3) If eligibility is based on a requirement in sections E312.5.3 - E312.5.5, the official designated in the applicable section.

For transactions under CIPs, a copy of the approval of an otherwise ineligible commodity must be sent to the Office of Procurement, Commodity Division, as soon as possible so as to assure approval of the [AID Form 11, Application for Approval of Commodity Eligibility](#).

312.5.1b OTHER ACTIVITIES

For other than CIPs, USAID decides what commodities are authorized for financing based on the needs of the activity. Commodities, which are ineligible under the USAID Commodity Eligibility Listing, may be financed if included in the activity approval document. If an ineligible commodity that was not included in the activity approval document is needed for satisfactory completion of the activity, USAID shall finance it only after it has been approved in writing by USAID.

312.5.2 PRIOR APPROVAL OF COMMODITY TRANSACTIONS

Under CIPs, USAID shall not authorize payment to a supplier or effect payment to a cooperating country grantee until it has approved the commodities the supplier is furnishing as being eligible and suitable for financing.

E312.5.2 Prior Approval of Commodity Transactions

Every supplier under CIPs must provide USAID with a certified description of the commodities being supplied. [Form AID 11](#) is the document used in implementing the requirement. Eligibility and suitability of commodities

are defined as including the following elements:

- a) The commodity is authorized for financing by the applicable assistance agreement;
- b) The commodity is unused;
- c) The source of the commodity satisfies the authorized source requirements under the assistance agreement;
- d) The supplier is eligible for USAID financing;
- e) From a preliminary scanning, it appears that the price charged is not inconsistent with USAID's price requirements; and
- f) **See Mandatory Reference, [22 CFR 201 \(AID Regulation 1\), sections 201.11\(k\) and 201.52\(a\)\(8\)](#) for further details.**

312.5.3 RESTRICTED COMMODITIES

Special restrictions apply to USAID-financed purchases of agricultural commodities, motor vehicles, pharmaceuticals, contraceptive products, pesticides, used equipment and fertilizer. The restrictions are set out in 312.5.3a through E312.5.3g.

***312.5.3a AGRICULTURAL COMMODITIES**

The following policies apply to agricultural commodities.

1) Approval of Commodities - All proposed USAID-financed procurements of the following agricultural commodities must be referred to USAID/W, Bureau for Management, Office of Procurement, Commodity Management Division (M/OP/COM) for prior approval: wheat, rice, corn, soybeans, sorghum, flour, meal, beans, peas, cotton, vegetable oils, and animal oils and fats.

(See [General Notice Delegations of M/OAA Authorities under ADS 310 Source Origin and ADS 312 Eligibility of Commodities.](#))

2) Non-U.S. Commodities - Whenever offshore (non-U.S.) procurement of agricultural commodities or products thereof is contemplated, USAID/W must determine the parity position of the commodity. When the prices of such products in the United States are below parity, USAID will not finance the offshore procurement, except in limited circumstances.

E312.5.3a Agricultural Commodities

The following essential procedures must be followed when dealing with agricultural commodities.

- 1) Approval of Commodities - USAID/W shall consider the cooperating country's request for agricultural commodities during the negotiation stage of an assistance program, or anytime thereafter. The review of the request shall include an examination of the following supply and marketing conditions.
 - a. The eligibility and availability of the commodity under an existing [P.L. 480](#) financing agreement with the recipient country, or the possibility of a new agreement. P.L. 480 financing, if available, is the preferred means of supply, except that USAID shall consider financing additional quantities of the commodity if the P.L. 480 amount is deemed inadequate and there are no other reasons for excluding the commodity from the USAID grant;
 - b. The projected near-term (6-month) and long-term (12-month) U.S. availability and price range of the commodity; and
 - c. The availability of other donor financing and projected export availability of the commodity from such other source.

Under assistance other than CIPs, the cognizant Bureau Assistant Administrator is authorized to approve the purchase of restricted agricultural commodities in consultation with the Office of Procurement and the Office of Food for Peace (BHR/FFP). The Bureau Assistant Administrators are authorized to redelegate this authority. Under CIPs, the Office of Procurement may approve such purchases, in consultation with the appropriate Bureau and the Office of Food for Peace.

- 2) Non-U.S. Commodities
 - a. The restriction concerning parity price applies to agricultural commodity products (e.g., rolled oats and soybean meal) as long as they have not been processed to such an extent that they can no longer be described as a product of the original agricultural commodities.

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

b. A commodity's parity position is determined by the Office of Procurement in consultation with the U.S. Department of Agriculture

c. USAID may finance a non-U.S. agricultural commodity or product thereof even though the domestic price is less than parity when the commodity to be financed could not 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. Thus, when development projects do not contain a potential for financing of agricultural commodities exported from the United States, such as a project involving the purchase of local agricultural commodities for cooperative marketing, USAID may authorize non-U.S. procurement.

d. The authority to determine whether non-U.S. agricultural commodities shall be financed is made by the Bureau Assistant Administrator who has program responsibility, in consultation with the Office of Procurement and the Office of the General Counsel, Assistant General Counsel for Contract and Commodity Management (GC/CCM).

e. Waiver of the policy on parity may be authorized only in accordance with [Section 614\(a\) of the Foreign Assistance Act](#). A determination made pursuant to E312.5.3a section 2, para. c. does not require a waiver under Section 614(a); however, a geographic source waiver, in accordance with [Subpart F of 22 CFR 228](#) shall be required if purchased from a country not eligible under the agreement.

312.5.3b MOTOR VEHICLES

The following policies apply to motor vehicles.

- 1) Passenger Cars - Under CIPs, USAID shall not finance cars principally intended to carry passengers. (See E312.5.3b, para. 1) for exceptions.) Under other types of assistance, USAID will finance the procurement of passenger cars that are necessary for a particular results package.**

2) Source/Origin - Motor vehicles must be manufactured in the United States to be eligible for USAID financing unless a waiver is authorized in accordance with E312.5.3b para. 2) and [Subpart F of 22 CFR 228 \(AID Regulation 28\)](#). 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.

E312.5.3b Motor Vehicles

The following essential procedures must be followed when dealing with motor vehicles.

1) Passenger Cars

a. Under CIPs, USAID shall not finance passenger cars. Even the least expensive cars are luxury items in less developed countries and thus, not suitable for USAID financing. In those exceptional cases where the financing of passenger cars under CIPs is deemed warranted by the Mission, prior approval of the proposed procurement must be obtained from USAID/W Bureau for Management, Office of Procurement (M/OP). In such cases if USAID/W does grant approval, procurement of only the most economical cars for the intended purpose are permitted. (USAID shall not finance the cost of automobile radios, air conditioning and other generally nonessential appointments in the absence of a strong justification of why they are needed.)

b. Under other types of assistance, USAID may finance the procurement of passenger cars that are necessary for a results package and are not otherwise available. In such cases, passenger cars may include air conditioning and/or radios (installed as original equipment or after market), provided the requesting office justifies the need in the activity file. Factors, which should be considered in justifying air conditioning, include the climate in which the vehicle will operate, the capabilities for servicing air conditioning equipment, and the need for austerity and economy in implementation.

2) Source/Origin

a. The requirement for purchase or long-term lease of U.S. manufactured vehicles may be waived when special circumstances exist. Special circumstances which may merit waiving the

requirement are: inability of U.S. manufacturers to provide a particular type of needed vehicle; present or projected lack of adequate service facilities and supply of spare parts for U.S. manufactured vehicles; or an emergency requirement for vehicles for which non-USAID funds are not available and which can be met in time only by purchase of non-U.S. manufactured vehicles.

b. When a waiver is necessary, preference must be given to procurement of vehicles which are assembled in the cooperating country or a Code 941 country using a substantial number of parts and subassemblies manufactured in the United States.

c. Waiver authority is in accordance with the provisions of [Chapter 310](#).

312.5.3c PHARMACEUTICALS

The following policies apply to pharmaceuticals.

1) Approval Requirement - To be eligible for USAID financing, all pharmaceutical and biological products, including oral rehydration salts, must comply with the U.S. Food and Drug Administration (or other controlling U.S. authority) regulations governing United States interstate shipment of such products unless the M/OP/COM approves the procurement of the product prior to financing. The following types of pharmaceuticals and biological products, which do not meet this requirement, must be approved by M/OP/COM prior to financing:

***See [General Notice Delegations of M/OAA Authorities under ADS 310 Source Origin and ADS 312 Eligibility of Commodities](#).**

a. Prescription pharmaceuticals which are not FDA-approved products;

b. Nonprescription pharmaceuticals which are not FDA-approved products or covered by a final over-the-counter drug monograph; and

c. Biological products which are not FDA-approved products from an FDA-approved establishment.

2) Source/Origin Requirement - The source and origin of

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

USAID-financed pharmaceuticals is limited to the United States.
(See E312.5.3c, para. 2 for exceptions)

- 3) Patent Infringement - The procurement of pharmaceuticals outside the United States that infringe on U.S. patents is prohibited.
- 4) Generic Description - All pharmaceuticals must be generically described in the solicitation document unless they are being purchased for resale under a CIP. Under CIPs, when the procurement is undertaken by public or private sector entities purchasing for resale, where brand name acceptance is an important factor, brand name procurement is allowable.
- 5) Price Rules - CIPS - In addition to the applicable price rules in [22 CFR 201, Subpart G \(AID Regulation 1\)](#), bulk pharmaceuticals are subject, at the pre-financing stage, to the special price rules found in Part II-D of the "[USAID Commodity Eligibility Listing](#)".

E312.5.3c Pharmaceuticals

The following essential procedures must be followed when dealing with pharmaceuticals.

- 1) Approval Requirement - Submissions of proposed pharmaceutical procurements for approval by M/OP/COM must include the generic name, dosage form, strength or concentration, unit package size, the intended therapeutic use, name of the manufacturer, and any other relevant factors bearing upon a specific application.
- 2) Source/Origin Requirement

Exceptions to the general rule that USAID-financed pharmaceuticals must be of U.S. source and origin shall be made in accordance with the requirements in [22 CFR Part 228, Subpart F \(AID Regulation 28\)](#), after clearance by the Office of Procurement (M/OP/COM). However, if the USAID Geographic Code 941 is the authorized source for procurement under the assistance agreement, an exception from the U.S. source requirement to permit a specific pharmaceutical procurement from a code 941 country requires only the approval of the Office of Procurement (M/OP/COM).

***(See [General Notice Delegations of M/OAA Authorities under ADS 310 Source Origin and ADS 312 Eligibility of Commodities.](#))**

- a. Under assistance other than CIPs, a waiver of the U.S. source policy will be considered if:
 1. The pharmaceutical product is essential to the activity;
 2. The product, in the same or substantially equivalent form, is not available from the United States, or the delivered price from the United States would be at least 50 percent more than from another source; and
 3. Information is available to attest to the safety, efficacy and quality of the product, or the product meets the standards of the U.S. Food and Drug Administration or other controlling U.S. authority.
- b. Under CIPs, waiver of the U.S. source policy will be considered if:
 1. The pharmaceutical product is essential;
 2. The product, in the same or substantially equivalent form, is not available from the United States; and
 3. The product meets the standards of the U.S. Food and Drug Administration or other controlling U.S. authority.

3) Patent Infringement - USAID must obtain express authorization of the owner of the patent before it finances a pharmaceutical product manufactured outside the United States which would involve use of, or be covered by, an unexpired patent of the United States which has not previously been held invalid by an unappealed or unappealable judgment or decree of a court of competent jurisdiction. This requirement cannot be waived.

312.5.3d CONTRACEPTIVES

The following policies apply to procurement of contraceptive products.

- 1) Consolidated Contracts - Unless otherwise authorized by the

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

Office of Population, contraceptives and related supplies shall be procured under contracts which are managed by Bureau for Global Programs, Field Support and Research, Center for Population, Health, and Nutrition, Office of Population, (G/PHN/POP). The same specifications shall be used for all USAID-funded program requirements. All condoms provided for HIV/AIDS programs shall also be procured under the centrally managed contraceptive contracts. Products that are currently available under centrally managed contracts are condoms, oral contraceptive pills, IUDs, injectables, sub-dermal implants, and vaginal foaming tablets.

2) Source/Origin and Nationality - Contraceptive products shall meet the requirements for U.S. source, origin and nationality in [22 CFR 228, Subpart B \(AID Regulation 28\)](#) unless a waiver is approved in accordance with [22 CFR Part 228, Subpart F \(AID Regulation 28\)](#).

3) USAID Emblems - USAID emblems are not required for shipments of contraceptives and related supplies to activities operated by USAID recipient organizations. Mission's may also specify in their procurement requests that USAID emblems not be required.

E312.5.3d Contraceptives

The following essential procedures must be followed when dealing with pharmaceuticals.

1) Consolidated Contracts

a. Missions and contractors or recipients whose programs require contraceptive supplies shall provide estimates of needs to G/POP. These estimates may be updated at any time and shall include product needs for up to two future calendar years.

b. The funding required for contraceptive procurements shall normally be provided by Missions through designating and authorizing the use of Operating Year Budget funds by G/POP. In some cases Missions may make previously obligated funds available; in these cases, the obligating agreement shall permit use of the funds in any of the contraceptive contracts designated by G/POP and disbursement by USAID/W.

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

c. G/POP shall aggregate the quantities of each product that is required and shall request the Office of Procurement to secure the needed products and related freight forwarding services through annual contracts.

2) Source/Origin and Nationality - Waiver of this requirement shall be initiated or cleared by G/POP.

312.5.3e PESTICIDES

Pesticides are not eligible for financing unless each specific pesticide and the use of the pesticide has received prior approval from USAID/W in accordance with [22 CFR 216 \(AID Regulation 16\)](#). The procedures may be waived in certain conditions (See **E312.5.3e**).

E312.5.3e Pesticides

Procedures: The procedures set forth in 22 CFR 216 (AID Regulation 16) for the financing of pesticides under project assistance may be waived under emergency conditions. Emergency conditions are deemed to exist when the Administrator of USAID determines, in writing, that:

- 1) A pest outbreak has occurred or is imminent;
- 2) Significant health problems (either human or animal) or significant economic problems will occur without the prompt use of the proposed pesticide; and
- 3) Insufficient time is available before the pesticide must be used to evaluate the proposed use in accordance with the provisions of 22 CFR 216 (AID Regulation 16).

Limited Circumstances: In a very limited number of circumstances USAID may authorize procurement of pesticides under CIPs when the Administrator determines that:

- 1) Emergency conditions as defined in 312.5.3e, para. 1, exist;
or
- 2) Compelling circumstances exist such that failure to provide the proposed assistance would seriously impede the attainment of

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

U.S. foreign policy objectives or the objectives of the foreign assistance program. The term "compelling circumstances" refers to only those most serious situations in which no other way exists to provide the pesticide except through the CIP. The decision as to whether such circumstances exist will be based, to the extent practicable, upon consideration of the factors set forth in 22 CFR 216.3(b)(1)(i) (AID Regulation 16) and the history of efficacy and safety governing the past use of pesticides in the recipient country.

Part II-C of the "[USAID Commodity Eligibility Listing](#)", provides additional information on the implementation of USAID policy on financing pesticides.

312.5.3f USED EQUIPMENT

It is USAID policy to finance only unused equipment. However, when the purchase of equipment in other than unused condition can be justified, USAID shall consider requests for authority to procure such equipment. **(See E312.5.3f)** This policy does not apply to the financing of U.S. Government-owned excess property.

E312.5.3f Used Equipment

A request to approve a purchase of used, rebuilt, or reconditioned equipment shall include the following.

- 1) The buyer's assurance that the requirements of the program will be satisfied if the material purchased is used, rebuilt, or reconditioned; that economic considerations justify procurement of used, rebuilt or reconditioned equipment; that the price is reasonable; and if the equipment is used, the justification shall explain why it is not to be rebuilt or reconditioned.
- 2) The buyer's agreement to arrange for the inspection and appraisal of the equipment by an inspector approved by USAID with the understanding that the cost will be eligible for USAID financing only if the equipment is approved for financing.

After receipt of the inspection report, USAID determines whether the inspected equipment conforms with the technical conditions specified by the buyer at a price acceptable to USAID. If USAID agrees to finance the purchase, USAID notifies the buyer in writing that the transaction is eligible for USAID financing subject to compliance with other USAID requirements.

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

Items that are rebuilt or reconditioned shall be permanently marked indicating this is so, and the supplier must convey a warranty to the buyer similar to that extended by manufacturers of similar new equipment. Additional certificates shall be required for rebuilt engines and parts or assemblies for engines and vehicles, and for aircraft engines and aircraft parts and assemblies.

The policy of requiring special authority for the procurement of used equipment is not subject to waiver. Waivers of the special conditions applicable to the financing of used equipment may be granted by the head of the Operating Unit, acting in consultation with the Office of Procurement (M/OP/COM).

*(See [General Notice Delegations of M/OAA Authorities under ADS 310 Source Origin and ADS 312 Eligibility of Commodities.](#))

312.5.3g FERTILIZER

With the exception of local procurement of fertilizer in the cooperating country:

- 1) Procurement of fertilizer is restricted to U.S. sources, unless there are, or are expected to be, significant U.S./offshore price differentials or any adverse impact on domestic availability or price; and
- 2) All contract awards for fertilizer and the related transportation must be approved by the Office of Procurement (M/OP), in consultation with GC/CCM and the appropriate geographic bureau.

312.5.4 INELIGIBLE COMMODITIES

Under USAID policies several types of commodities are generally ineligible for USAID financing. The policies are set forth in 312.5.4a through 312.5.4g.

312.5.4a MILITARY EQUIPMENT

USAID economic assistance funds shall not be used to finance any goods and services when the primary purpose of such assistance is to meet military requirements of the cooperating country. There is no exception to this policy.

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

- 1) Common Use Items - USAID funds can be used to finance common-use items that ultimately end up with the military if at the time of the sales there is no evidence that the items are destined for military use, but were permitted on an economic development or stabilization rationale.
- 2) Special Activities - Commodities that might be considered to be military equipment or supplies can be financed by USAID if they are to be used solely in USAID-approved special activities.

312.5.4b SURVEILLANCE EQUIPMENT

All types of surveillance equipment are ineligible for USAID financing. The ineligible items include equipment such as microphones, transmitters, listening devices, and recording devices of microminiature design, and components thereof. In rare instances, some of these devices will have a non-surveillance use in USAID programs. In such instances, it is the legitimacy of the purpose rather than the specific characteristics of the commodity that determines its eligibility.

312.5.4c COMMODITIES AND SERVICES FOR SUPPORT OF POLICE AND OTHER LAW ENFORCEMENT ACTIVITIES

USAID shall not finance, or authorize under [Section 607 of the Foreign Assistance Act](#), the furnishing of commodities and services for the training, support, administration, or operation of any police or other law enforcement forces or for any program of internal intelligence or surveillance.

USAID may assist cooperating countries in selected, clearly defined law enforcement activities, not involving matters of internal security, in which the United States has a special interest, e.g., programs to control international narcotics traffic.

312.5.4d ABORTION EQUIPMENT AND SERVICES

USAID funds shall not be used:

- 1) To purchase or distribute commodities or equipment for the purpose of inducing abortions as a method of family planning;
- 2) To finance services for the performance of abortions as a method of family planning;

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

- 3) For any biomedical research which relates, in whole or in part, to methods or the performance of abortions or involuntary sterilization as a method of family planning;
- 4) To motivate or coerce any person to practice abortions; **or**
- 5) To lobby for abortions

312.5.4e LUXURY GOODS

No USAID funds shall be used to finance commodities that are considered to be luxury goods unless specifically authorized by the Assistant Administrator of the responsible bureau or the Principal USAID Officer at the field post. Luxury goods include such commodities as alcoholic beverages and equipment for their production and use, equipment and supplies for gambling facilities, certain recreational supplies and equipment, jewelry, stamps, coins, furs, and the more expensive textiles.

312.5.4f GAMBLING EQUIPMENT

USAID must not be connected under any circumstances with the financing of gambling facilities. No USAID funds, investment guarantees, or USAID-controlled local currency shall be used to finance gambling facilities or hotels, casinos, tourist accommodations, or housing which have or plan to install such facilities. Where appropriate, a clear affirmation of this point shall be included in assistance agreements.

312.5.4g WEATHER MODIFICATION EQUIPMENT

USAID funds shall not be used to finance equipment for use in weather modification unless the Administrator determines otherwise.

312.5.5 ELIGIBILITY OF COMMODITIES DETERMINED BY INELIGIBILITY OF THE CARRIER

As set out in 312.5.5a, commodities are ineligible for USAID financing if the transportation carrier is ineligible, or if USAID has not approved the transportation charter.

312.5.5a EFFECTS OF CARRIER INELIGIBILITY

The following policies apply whether or not transportation costs are financed by USAID.

- 1) Commodities shipped by a transportation medium owned, operated, or under the control of any country not included in Geographic Code 935 are ineligible. (Geographic Code 935, "Special Free World," consists of all countries in the Free World including the cooperating country itself.)
- 2) Commodities are ineligible if shipped under an ocean or air charter that has not received prior approval by USAID/W.

312.5.5b WAIVERS

The application of the policy on carrier ineligibility may be waived as follows.

- 1) For Commodity Import Programs (CIPS), a waiver may be authorized by M/OP acting in consultation with General Counsel's Office (GC).
- 2) For other activities, a waiver may be authorized by the Assistant Administrator with program responsibility acting in consultation with GC.

312.5.6 ELIGIBILITY OF COMMODITIES DETERMINED BY INELIGIBILITY OF MARINE INSURANCE

When USAID has found that a cooperating country discriminates against any marine insurance company authorized to do business in any State of the United States and that a cooperating country, contrary to USAID policy ([See ADS 322.5.1](#)), fails to insure all USAID-financed commodities with U.S. insurance companies, then those commodities are ineligible for USAID financing.

This policy may be waived only in accordance with the provisions of [Section 614\(a\) of the Foreign Assistance Act](#), which allows the President to authorize the furnishing of assistance under the Act without regard to the provisions of the Act.

312.7 Mandatory Reference

[22 CFR 201.11\(k\)](#)
[22 CFR 201.52\(a\)\(8\)](#)
[22 CFR 201, Subpart G](#)
[22 CFR 216](#)
[22 CFR 216.3\(b\)\(1\)\(i\)](#)

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

[22 CFR 228, Subpart B](#)
[22 CFR Part 228, Subpart F](#)
[ADS 310](#)
[ADS 322](#)
[USAID Commodity Eligibility Listing](#)

312_082709

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