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Source and Nationality

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Items that we will cover today:

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The procurement of commodities and services under implementing instruments using Federal program funds under the Foreign Assistance Act (FAA).



Scope and Application. This section was revised to add **six exempted categories** of procurements:

1. GSA supply contracts
2. Donated funds received under USAID's gift authority
3. Cost share or program income as defined in 22 CFR 226.24
4. USAID Tile II food programs, including monetization proceeds thereunder
5. Procurements with funds other than FAA funds
6. Procurements with non-program funds (such as OE) made available under the FAA for any purpose other than assistance



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Geographic Codes

Code 937 is the **new default principal geographic code** for procurements. It includes the **U.S., recipient country, and developing countries** (but not *advanced developing countries*).

Code 935 is **any area or country excluding prohibited sources**.

Code 110 is the **Newly Independent States** (not so new anymore).

Default is **Code 937**. Waivers will only be needed if **Code 935** is needed.



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Definitions of Source and Nationality

S/O/N is now S/N. O has been deleted. Also, S and N have been simplified and strengthened.

Source means the country from which a commodity is shipped from or where you are if it's already there.

Nationality refers to the place of legal organization, ownership, citizenship, or lawful permanent residence of suppliers of commodities and services.

In some cases, determining nationality might be a little tricky, but RLA and ROP will work with you on this when questions arise.



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Source

- Prohibition against recipients and contractors engaging vendors to circumvent the **source** provisions by ordering commodities otherwise “not available” in countries in the designated principal geographic code at the time of sale.
- If a commodity is available locally, its in Code 937.



Nationality of Organizational Suppliers of Commodities and Services.

The nationality requirements for **organizations** has been simplified to require the organization:

- (1) be incorporated or legally organized under the laws of a country in Code 937 (or other principal geographic code designated in the implementing instrument), **and**
- (2) must be operating as a “going concern” (functioning business entity for the foreseeable future) in a country in Code 937, etc., **and either**
 - (1) be managed by a governing body, the majority of whom are citizens or lawful permanent residents (or equivalent status to live and work on a continuing basis) of countries in code 937, etc.; **or**
 - (2) employ citizens or lawful permanent residents of a country in Code 937, etc., in more than half its permanent full-time positions and more than half of its principal management positions.



Nationality of Individual Suppliers of Commodities and Services.

A supplier of services or commodities must be a citizen of or permanent legal resident a country in your authorized Geographic Code.

Employees and Individuals under contracts or subcontracts for services. **Nationality** requirements do not apply to the employees of contractors, or individuals providing technical or professional services to recipients or contractors.



Waiver procedures have been clarified and streamlined.

- All **waivers** are to **Code 935**.
- Clarifies that case-by-case **waivers** can be approved **by commodity- or service-type or category** to obviate the need for repeat or serial waivers for the same category of commodity or service.
- Individual transaction not exceeding \$25,000 [previously \$5,000] does not require a **waiver**. This does not include transactions for agricultural products, motor vehicles or pharmaceuticals.



Construction: Raises the amount from \$5 million to **\$10 million** for which **foreign-owned local firms** will be eligible for a construction procurement

Foreign Government-controlled organizations: Previously, any government ownership of a commercial firm prohibited it from receiving financing from USG. Now the test is “control.”

Also, ministries or agencies, including those at the regional and local levels, and public educational institutions, health care providers, and other government technical entities not formed primarily for commercial or business purposes, are eligible as suppliers of commodities and services.



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Motor vehicles must still be manufactured in the U.S. (not Canada or Mexico) to be eligible for USAID financing, **even those vehicles** financed by USAID under a **long-term lease** or where the sale is to be guaranteed by USAID.

BUT: Financing transportation or driver services from an individual or commercial entity and not directly financing the purchase or lease of a **vehicle** is subject to the nationality of suppliers requirement, not the restrictions on motor vehicle requirements.



Certain agricultural commodities must be procured in the U.S. - see ADS 312.

Pharmaceuticals with a valid U.S. Patent must be purchased from a valid U.S. Patent holder or with the U.S. Patent holder's express authorization.

- In addition, USAID shall not finance non-contraceptive pharmaceuticals without prior written approval as provided ADS 312.
- Contraceptives may be financed in accordance with the procedures in ADS 312.



All new awards made after **February 6, 2012**, are subject to this new rule and must include the new clause/provision, and Code 937, in the award

Existing awards in effect on 2/6/12 containing Code 000 or 941 with more than 4 months remaining will have to be modified to reflect Code 937 by March 31, 2012

For contracts, see AAPD 12-03 (February 2, 2012)

* Several dates/ deadlines for modifications/incorporation depending on procurement stage



Revoked:

- local procurement waiver approved November 24, 2010
- TCN/CCN consultant waiver approved September 8, 2011

Not revoked:

- Vehicle S/N waiver approved on August 8, 2011
- The pharmaceutical and contraceptive S/N waiver approved February 11, 2011
- Public International Organization S/N waiver approved March 7, 2011
- Expedited Procedures Packages and Mission/Bureau-authorized waivers authorizing Geographic Code 935.

These lists may not be exhaustive. Check with RLA and ROP.



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Questions?