

ALL-AMERICAN FLAG ACT

NOVEMBER 27, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GOWDY, from the Committee on Oversight and Government Reform, submitted the following

R E P O R T

[To accompany H.R. 3121]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 3121) to require the purchase of domestically made flags of the United States of America for use by the Federal Government, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “All-American Flag Act”.

SEC. 2. REQUIREMENT FOR AGENCIES TO BUY DOMESTICALLY MADE UNITED STATES FLAGS.

(a) REQUIREMENT FOR AGENCIES TO BUY DOMESTICALLY MADE UNITED STATES FLAGS.—

(1) IN GENERAL.—Chapter 63 of title 41, United States Code, is amended by adding at the end the following new section:

“§ 6310. Requirement for agencies to buy domestically made United States flags

“(a) REQUIREMENT.—Except as provided in subsections (b) through (d), funds appropriated or otherwise available to an agency may not be used for the procurement of any flag of the United States, unless such flag has been 100 percent manufactured in the United States from articles, materials, or supplies that have been grown or 100 percent produced or manufactured in the United States.

“(b) AVAILABILITY EXCEPTION.—Subsection (a) does not apply to the extent that the head of the agency concerned determines that satisfactory quality and sufficient quantity of a flag described in such subsection cannot be procured as and when needed at United States market prices.

“(c) EXCEPTION FOR CERTAIN PROCUREMENTS.—Subsection (a) does not apply to the following:

“(1) Procurements by vessels in foreign waters.

“(2) Procurements for resale purposes in any military commissary, military exchange, gift shop, or nonappropriated fund instrumentality operated by an agency.

“(3) Procurements for amounts less than the simplified acquisition threshold.

“(d) PRESIDENTIAL WAIVER.—

“(1) IN GENERAL.—The President may waive the requirement in subsection (a) if the President determines a waiver is necessary to comply with any trade agreement to which the United States is a party.

“(2) NOTICE OF WAIVER.—Not later than 30 days after granting a waiver under paragraph (1), the President shall publish a notice of the waiver in the Federal Register.

“(e) DEFINITIONS.—In this section:

“(1) AGENCY.—The term ‘agency’ has the meaning given the term ‘executive agency’ in section 102 of title 40.

“(2) SIMPLIFIED ACQUISITION THRESHOLD.—The term ‘simplified acquisition threshold’ has the meaning given that term in section 134.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“6310. Requirement for agencies to buy domestically made United States flags.”.

(b) APPLICABILITY.—Section 6310 of title 41, United States Code, as added by subsection (a)(1), shall apply with respect to any contract entered into on or after the date that is 180 days after the date of the enactment of this Act.

SUMMARY AND PURPOSE OF LEGISLATION

H.R. 3121, the All-American Flag Act, requires all executive agencies to buy American flags made entirely in the United States from materials grown, produced, or manufactured entirely in the United States. The bill contains a number of exceptions to this general requirement and a waiver provision if needed to comply with U.S. trade agreements.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 3121 is a product of thorough examination of the Buy American Act. Currently, flag purchases by civilian executive agencies are generally subject to the Buy American Act and the regulations implementing that Act, which generally provide the cost of components mined, produced, or manufactured in the United States must

exceed 50 percent of the cost of all components.¹ However, purchases by the Department of Defense of certain products, including fabrics, are subject to additional restrictions contained in law, commonly known as the Berry Amendment.² Items covered by the Berry Amendment must be made from materials that are 100 percent domestic in origin. The Department of Defense considers flags to be covered by the Berry Amendment.³

The All-American Flag Act provides a general, uniform rule requiring all executive agencies to acquire U.S. flags that are 100 percent American made. Specifically, the bill requires that U.S. flags acquired by executive agencies be manufactured in the United States from materials that are 100 percent grown, produced, or manufactured in the United States.

The bill allows for an exception to the 100 percent rule in cases where flags of satisfactory quality and complying with the requirements of the bill cannot be procured in sufficient quantities at U.S. market prices. Finally, the bill provides authority for the President to waive the 100 percent requirement if needed to comply with any trade agreement to which the United States is a party.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the previous section.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goal or objective of this bill is to require the purchase of domestically made flags of the United States of America for use by the Federal Government.

LEGISLATIVE HISTORY

On June 29, 2017, Representative Cheri Bustos (D-IL) introduced H.R. 3121, the All-American Flag Act, with 34 co-sponsors. H.R. 3121 was referred to the Committee on Oversight and Government Reform. The Committee considered H.R. 3121 at a business meeting on November 2, 2017, and ordered the bill favorably reported to the House, as amended, by voice vote.

In the 114th Congress, Representative Bustos introduced H.R. 916, a similar bill to H.R. 3121, on February 12, 2015, with 88 co-sponsors. H.R. 916 was referred to the Committee on Oversight and Government Reform.

In the 113th Congress, Senator Sherrod Brown (D-OH) introduced S. 1214, a similar bill to H.R. 3121, on June 24, 2013, with Senator John D. Rockefeller, IV (D-WV). S. 1214 was referred to the Senate Committee on Homeland Security and Governmental

¹ 41 U.S.C. §§ 8301–8305; 48 C.F.R. 25.101.

² 10 U.S.C. § 2533a.

³ See, 48 C.F.R. 252.226(1)(b) (implementing appropriations riders requiring that U.S. flags be treated as covered items under the Berry Amendment). See, e.g., Consolidated Appropriations Act, 2016, Pub. L. No. 114–113, div. C, title VIII, § 8110, 129 Stat. 2377 (Dec. 18, 2015).

Affairs. The Committee considered S. 1214 at a business meeting on June 25, 2014, and ordered the bill reported favorably by voice vote. On September 16, 2014, the Senate passed the bill by unanimous consent.

COMMITTEE CONSIDERATION

On November 2, 2017, the Committee met in open session and, with a quorum being present, ordered the bill favorably reported to the House, as amended, by voice vote.

ROLL CALL VOTES

There was one roll call vote during consideration of H.R. 3121:

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
 115TH CONGRESS
 RATIO 24-18
 ROLL CALL

Vote on: H.R. 3121 – Russell ANS

Date: 11-2-17

Republicans	Aye	No	Present	Democrats	Aye	No	Present
MR. GOWDY (SC) <i>(Chairman)</i>				MR. CUMMINGS (MD) <i>(Ranking)</i>	X		
MR. DUNCAN (TN)	X			MRS. MALONEY (NY)	X		
MR. ISSA (CA)				MS. NORTON (DC)			
MR. JORDAN (OH)	X			MR. CLAY (MO)	X		
MR. SANFORD (SC)		X		MR. LYNCH (MA)	X		
MR. AMASH (MI)	X			MR. COOPER (TN)	X		
MR. GOSAR (AZ)	X			MR. CONNOLLY (VA)	X		
MR. DesJARLAIS (TN)				MS. KELLY (IL)	X		
MR. FARENTHOLD (TX)	X			MS. LAWRENCE (MI)	X		
MS. FOXX (NC)	X			MS. WATSON-COLEMAN (NJ)	X		
MR. MASSIE (KY)				MS. PLASKETT (VI)	X		
MR. MEADOWS (NC)	X			MS. DEMINGS (FL)	X		
MR. DeSANTIS (FL)	X			MR. KRISHNAMOORTHY (IL)	X		
MR. ROSS (FL)	X			MR. RASKIN (MD)	X		
MR. WALKER (NC)	X			MR. WELCH (VT)	X		
MR. BLUM (IA)	X			MR. CARTWRIGHT (PA)	X		
MR. HICE (GA)	X			MR. DeSAULNIER (CA)	X		
MR. RUSSELL (OK)	X			MR. GOMEZ (CA)	X		
MR. GROTHMAN (WI)	X						
MR. HURD (TX)	X						
MR. PALMER (AL)	X						
MR. COMER (KY)	X						
MR. MITCHELL (MI)							
MR. GIANFORTE (MT)	X						

Roll Call Totals: Ayes: 35 Nays: 1 Present:

Passed X Failed: _____

EXPLANATION OF AMENDMENTS

On November 2, 2017, the Committee met in open session with a quorum being present. During Committee consideration of the bill, Representative Steve Russell (R-OK), offered an amendment in the nature of a substitute to align the bill with current law as applicable to the Department of Defense. The amendment substituted new exception provisions, consistent with those in the Berry Amendment. Specifically, it provided for an exception to the requirement to purchase 100 percent domestically made flags to the extent that the head of an agency determines that a satisfactory quality and sufficient quantity of flags meeting the requirement cannot be procured as and when needed at U.S. market prices. The amendment further provided that the 100 percent requirement does not apply to procurements by vessels in foreign water, procurements for resale, and procurements for amounts less than the simplified acquisition threshold. The amendment makes permanent the practice of applying the Berry Amendment requirement and exceptions to the purchase of U.S. flags by the Department of Defense, and extends a similar requirement and similar exceptions to all civilian executive agencies. The Russell amendment was adopted by a roll call vote of 35 to 1.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104-1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill to require the purchase of domestically made flags of the United States of America for use by the Federal Government relates only to procurement of flags of the United States. As such, this bill does not relate to employment or access to public services and accommodations.

DUPLICATION OF FEDERAL PROGRAMS

In accordance with clause 2(c)(5) of rule XIII no provision of this bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

This bill does not direct the completion of any specific rule makings within the meaning of section 551 of title 5, United States Code.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of Section 5(b) of the appendix to title 5, United States Code.

UNFUNDED MANDATES STATEMENT

Pursuant to section 423 of the Congressional Budget Act of 1974 the Committee has included a letter received from the Congressional Budget Office below.

EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the House of Representatives.

COMMITTEE ESTIMATE

Pursuant to clause 3(d)(2)(B) of rule XIII of the Rules of the House of Representatives, the Committee includes below a cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

NEW BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the House of Representatives, the cost estimate prepared by the Congressional Budget Office and submitted pursuant to section 402 of the Congressional Budget Act of 1974 is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 6, 2017.

Hon. TREY GOWDY,
*Chairman, Committee on Oversight and Government Reform,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3121, the All-American Flag Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 3121—All-American Flag Act

H.R. 3121 would amend federal law to require that all U.S. flags acquired by the federal government be manufactured in the United States from materials grown, produced, or manufactured in the United States. H.R. 3121 also would provide exceptions to the requirement.

Using information from the General Services Administration and flag vendors, CBO expects that enacting H.R. 3121 would not lead to a significant change in the costs of flags acquired by the government because some current vendors already meet the requirements of the bill and because the legislation includes general exemptions from the requirement.

Enacting H.R. 3121 could affect direct spending by agencies that are not funded through annual appropriations; therefore, pay-as-you-go procedures apply. CBO estimates, however, that any net increase in spending by those agencies would be negligible. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 3121 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 3121 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The short title is the “All-American Flag Act.”

Sec. 2. Requirement for agencies to buy domestically made united states flags

Section 2 requires agencies to buy only domestically-made United States flags and adds a new section 6310 at the end of Chapter 63 of title 41, United States Code. The requirements of this bill only apply to contracts entered into on or after 180 days after the date of enactment.

The new section 6310 prohibits agencies from using funds appropriated or otherwise available for the procurement of any flag of the United States, unless the flag has been 100 percent manufactured in the United States from articles, materials, or supplies that have been grown, or 100 percent produced and/or manufactured, in the United States. This requirement does not apply in cases when the head of the agency determines that U.S. flags of satisfactory quality and sufficient quantity that satisfy the requirement described in subsection (a) cannot be procured as and when needed at U.S. market prices. This section also establishes exceptions for procurements by vessels in foreign waters, for procurements for resale purposes, and for procurements for amounts less than the simplified acquisition threshold.

The section further establishes authority for a Presidential waiver. The President may waive the requirement if the President determines that a waiver is necessary to comply with any trade agreement to which the United States is a party. The President is required to publish notice of the waiver in the Federal Register not later than 30 days after granting it.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

TITLE 41, UNITED STATES CODE

* * * * *

SUBTITLE II—OTHER ADVERTISING AND
CONTRACT PROVISIONS

* * * * *

CHAPTER 63—GENERAL CONTRACT PROVISIONS

Sec

6301. Authorization requirement.

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6310. Requirement for agencies to buy domestically made United States flags.

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**§6310. Requirement for agencies to buy domestically made
United States flags**

(a) *REQUIREMENT.*—Except as provided in subsections (b) through (d), funds appropriated or otherwise available to an agency may not be used for the procurement of any flag of the United States, unless such flag has been 100 percent manufactured in the United States from articles, materials, or supplies that have been grown or 100 percent produced or manufactured in the United States.

(b) *AVAILABILITY EXCEPTION.*—Subsection (a) does not apply to the extent that the head of the agency concerned determines that satisfactory quality and sufficient quantity of a flag described in such subsection cannot be procured as and when needed at United States market prices.

(c) *EXCEPTION FOR CERTAIN PROCUREMENTS.*—Subsection (a) does not apply to the following:

(1) Procurements by vessels in foreign waters.

(2) Procurements for resale purposes in any military commissary, military exchange, gift shop, or nonappropriated fund instrumentality operated by an agency.

(3) Procurements for amounts less than the simplified acquisition threshold.

(d) *PRESIDENTIAL WAIVER.*—

(1) *IN GENERAL.*—The President may waive the requirement in subsection (a) if the President determines a waiver is necessary to comply with any trade agreement to which the United States is a party.

(2) *NOTICE OF WAIVER.*—Not later than 30 days after granting a waiver under paragraph (1), the President shall publish a notice of the waiver in the Federal Register.

(e) *DEFINITIONS.*—In this section:

(1) *AGENCY.*—The term “agency” has the meaning given the term “executive agency” in section 102 of title 40.

(2) *SIMPLIFIED ACQUISITION THRESHOLD.*—*The term “simplified acquisition threshold” has the meaning given that term in section 134.*

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