

§ 8106. Regulations

Government-wide regulations governing actions under this chapter shall be issued pursuant to division B of subtitle I of this title.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3830.)

HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|---------------------------|--|
| 8106 | 41:705. | Pub. L. 100-690, title V, § 5156, Nov. 18, 1988, 102 Stat. 4308. |

The words “Not later than 90 days after November 18, 1988, the” are omitted as obsolete.

CHAPTER 83—BUY AMERICAN

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§ 8301. Definitions

In this chapter:

(1) **PUBLIC BUILDING, PUBLIC USE, AND PUBLIC WORK.**—The terms “public building”, “public use”, and “public work” mean a public building of, use by, and a public work of, the Federal Government, the District of Columbia, Puerto Rico, American Samoa, and the Virgin Islands.

(2) **UNITED STATES.**—The term “United States” includes any place subject to the jurisdiction of the United States.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3830.)

HISTORICAL AND REVISION NOTES

| <i>Revised Section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|---------------------------|--|
| 8301 | 41:10c. | Mar. 3, 1933, ch. 212, title III, § 1, 47 Stat. 1520; Pub. L. 86-70, § 43, June 25, 1959, 73 Stat. 151; Pub. L. 86-624, § 28, July 12, 1960, 74 Stat. 419; Pub. L. 100-418, title VII, § 7005(a), Aug. 23, 1988, 102 Stat. 1552. |

In paragraph (1), the words “the Philippine Islands” are omitted because of Proclamation No. 2695 (22 U.S.C. 1394 note). The words “the Canal Zone” are omitted because of the Panama Canal Treaty of 1977.

In paragraph (2), the words “when used in a geographical sense” are omitted as unnecessary.

IMPLEMENTATION OF BUY AMERICAN ACT WITH RESPECT TO CERTAIN WATER RESOURCE PROJECTS

Pub. L. 100-371, title V, § 508, July 19, 1988, 102 Stat. 875, provided that:

“(a) **GENERAL RULE.**—For purposes of title III of the Act of March 3, 1933 (47 Stat. 1520; [former] 41 U.S.C. 10a-10c) [see 41 U.S.C. 8301 et seq.], commonly known as the Buy American Act, a cofferdam or any other temporary structure to be constructed by the Secretary of the Army, acting through the Chief of Engineers, shall be treated in the same manner as a permanent dam constructed by the Secretary of the Army.

“(b) **APPLICABILITY.**—Subsection (a) shall only apply to contracts entered into after the date of the enactment of this Act [July 19, 1988].”

§ 8302. American materials required for public use

(a) **IN GENERAL.**—

(1) **ALLOWABLE MATERIALS.**—Only unmanufactured articles, materials, and supplies that have been mined or produced in the United States, and only manufactured articles, materials, and supplies that have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States, shall be acquired for public use unless the head of the department or independent establishment concerned determines their acquisition to be inconsistent with the public interest or their cost to be unreasonable.

(2) **EXCEPTIONS.**—This section does not apply—

(A) to articles, materials, or supplies for use outside the United States;

(B) if articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality; and

(C) to manufactured articles, materials, or supplies procured under any contract with an award value that is not more than the micro-purchase threshold under section 1902 of this title.

(b) **REPORTS.**—

(1) **IN GENERAL.**—Not later than 180 days after the end of each of fiscal years 2009 through 2011, the head of each Federal agency shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives a report on the amount of the acquisitions made by the agency in that fiscal year of articles, materials, or supplies purchased from entities that manufacture the articles, materials, or supplies outside of the United States.

(2) **CONTENTS OF REPORT.**—The report required by paragraph (1) shall separately include, for the fiscal year covered by the report—

(A) the dollar value of any articles, materials, or supplies that were manufactured outside the United States;

(B) an itemized list of all waivers granted with respect to the articles, materials, or supplies under this chapter, and a citation to the treaty, international agreement, or other law under which each waiver was granted;

(C) if any articles, materials, or supplies were acquired from entities that manufacture articles, materials, or supplies outside the United States, the specific exception under this section that was used to purchase the articles, materials, or supplies; and

(D) a summary of—

(i) the total procurement funds expended on articles, materials, and supplies manufactured inside the United States; and

(ii) the total procurement funds expended on articles, materials, and supplies manufactured outside the United States.

(3) **PUBLIC AVAILABILITY.**—The head of each Federal agency submitting a report under

paragraph (1) shall make the report publicly available to the maximum extent practicable.

(4) EXCEPTION FOR INTELLIGENCE COMMUNITY.—This subsection shall not apply to acquisitions made by an agency, or component of an agency, that is an element of the intelligence community as specified in, or designated under, section 3 of the National Security Act of 1947 (50 U.S.C. 401a).

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3831.)

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|--|
| 8302 | 41:10a. | Mar. 3, 1933, ch. 212, title III, § 2, 47 Stat. 1520; Pub. L. 100-418, title VII, § 7005(b), Aug. 23, 1988, 102 Stat. 1553; Pub. L. 103-355, title IV, § 4301(b), Oct. 13, 1994, 108 Stat. 3347; Pub. L. 110-28 title VIII, § 8306, May 25, 2007, 121 Stat. 211. |

In subsection (a), the words “Notwithstanding any other provision of law” are omitted as unnecessary.

In subsection (b)(1), reference to fiscal years 2007 and 2008 is omitted as obsolete.

§ 8303. Contracts for public works

(a) IN GENERAL.—Every contract for the construction, alteration, or repair of any public building or public work in the United States shall contain a provision that in the performance of the work the contractor, subcontractors, material men, or suppliers shall use only—

(1) unmanufactured articles, materials, and supplies that have been mined or produced in the United States; and

(2) manufactured articles, materials, and supplies that have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States.

(b) EXCEPTIONS.—

(1) IN GENERAL.—This section does not apply—

(A) to articles, materials, or supplies for use outside the United States;

(B) if articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality; and

(C) to manufactured articles, materials, or supplies procured under any contract with an award value that is not more than the micro-purchase threshold under section 1902 of this title.

(2) PARTICULAR ARTICLE, MATERIAL, OR SUPPLY.—If the head of the department or independent establishment making the contract finds that it is impracticable to comply with subsection (a) for a particular article, material, or supply or that it would unreasonably increase the cost, an exception shall be noted in the specifications for that article, material, or supply and a public record of the findings that justified the exception shall be made.

(3) INCONSISTENT WITH PUBLIC INTEREST.—Subsection (a) shall be regarded as requiring the purchase, for public use within the United States, of articles, materials, or supplies manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, unless the head of the department or independent establishment concerned determines their purchase to be inconsistent with the public interest or their cost to be unreasonable.

(c) RESULTS OF FAILURE TO COMPLY.—If the head of a department, bureau, agency, or independent establishment that has made a contract containing the provision required by subsection (a) finds that there has been a failure to comply with the provision in the performance of the contract, the head of the department, bureau, agency, or independent establishment shall make the findings public. The findings shall include the name of the contractor obligated under the contract. The contractor, and any subcontractor, material man, or supplier associated or affiliated with the contractor, shall not be awarded another contract for the construction, alteration, or repair of any public building or public work for 3 years after the findings are made public.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3832.)

HISTORICAL AND REVISION NOTES

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--|---|
| 8303(a) | 41:10b(a) (words before “except as provided”). | Mar. 3, 1933, ch. 212, title III, § 3, 47 Stat. 1520; Pub. L. 100-418, title VII, § 7005(c), Aug. 23, 1988, 102 Stat. 1553. |
| 8303(b)(1) | 41:10b(a) (“except as provided in section 10a of this title”). | |
| 8303(b)(2) | 41:10b(a) (proviso). | |
| 8303(b)(3) | 41:10d. | Oct. 29, 1949, ch. 787, title VI, § 633, 63 Stat. 1024; Pub. L. 100-418, title VII, § 7005(d), Aug. 23, 1988, 102 Stat. 1553. |
| 8303(c) | 41:10b(b). | |

In subsection (a), before paragraph (1), the words “growing out of an appropriation heretofore made or hereafter to be made” are omitted as unnecessary.

Subsection (b)(1) is substituted for “except as provided in section 10a of this title” for clarity.

In subsection (b)(3), the words “In order to clarify the original intent of Congress, hereafter, section 10a of this title” are omitted as unnecessary.

In subsection (c), the words “in the United States or elsewhere” are omitted as unnecessary.

EX. ORD. NO. 10582. UNIFORM PROCEDURES FOR DETERMINATIONS

Ex. Ord. No. 10582, Dec. 17, 1954, 19 F.R. 8723, as amended by Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

SECTION 1. As used in this order, (a) the term “materials” includes articles and supplies, (b) the term “executive agency” includes executive department, independent establishment, and other instrumentality of the executive branch of the Government, and (c) the term “bid or offered price of materials of foreign origin” means the bid or offered price of such materials delivered at the place specified in the invitation to bid including applicable duty and all costs incurred after arrival in the United States.

SEC. 2. (a) For the purposes of this order materials shall be considered to be of foreign origin if the cost of