

Sec.
50105. Fraudulent use of “Made in America” label.

PUB. L. 104-287, §5(89)

This makes a clarifying amendment to 49:50101(a) and (b)(3), 50102, 50104(b)(1), and 50105, as redesignated by clause (88)(D) of this section, because 49:47106(d) was struck by section 108(1) of the Federal Aviation Administration Authorization Act of 1994 (Public Law 103-305, 108 Stat. 1573).

Editorial Notes

AMENDMENTS

1996—Pub. L. 104-287, §5(88)(B), (C), Oct. 11, 1996, 110 Stat. 3398, redesignated chapter 491 of this title as this chapter and items 49101 to 49105 as 50101 to 50105, respectively.

§ 50101. Buying goods produced in the United States

(a) PREFERENCE.—The Secretary of Transportation may obligate an amount that may be appropriated to carry out section 106(k), 44502(a)(2), or 44509, subchapter I of chapter 471 (except section 47127), or chapter 481 (except sections 48102(e), 48106, 48107, and 48110) of this title for a project only if steel and manufactured goods used in the project are produced in the United States.

(b) WAIVER.—The Secretary may waive subsection (a) of this section if the Secretary finds that—

- (1) applying subsection (a) would be inconsistent with the public interest;
- (2) the steel and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality;
- (3) when procuring a facility or equipment under section 44502(a)(2) or 44509, subchapter I of chapter 471 (except section 47127), or chapter 481 (except sections 48102(e), 48106, 48107, and 48110) of this title—
 - (A) the cost of components and subcomponents produced in the United States is more than 60 percent of the cost of all components of the facility or equipment; and
 - (B) final assembly of the facility or equipment has occurred in the United States; or
- (4) including domestic material will increase the cost of the overall project by more than 25 percent.

(c) LABOR COSTS.—In this section, labor costs involved in final assembly are not included in calculating the cost of components.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1298, §49101; renumbered §50101 and amended Pub. L. 104-287, §5(88)(D), (89), Oct. 11, 1996, 110 Stat. 3398.)

HISTORICAL AND REVISION NOTES
PUB. L. 103-272

| Revised Section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|---|
| 49101(a) | 49 App.:2226a(a). | Nov. 5, 1990, Pub. L. 101-508, §9129, 104 Stat. 1388-371. |
| 49101(b) | 49 App.:2226a(b). | |
| 49101(c) | 49 App.:2226a(c). | |

In this chapter, the word “goods” is substituted for “product” and “products” for consistency.

In subsection (a), the words “Notwithstanding any other provision of law” are omitted as surplus. The words “after November 5, 1990” are omitted as obsolete.

In subsection (b), before clause (1), the words “The Secretary may waive” are substituted for “shall not apply” for consistency. In clause (2), the words “steel and goods” are substituted for “materials and products” for consistency. In clause (4), the word “contract” is omitted as surplus.

Editorial Notes

AMENDMENTS

1996—Pub. L. 104-287, §5(88)(D), renumbered section 49101 of this title as this section.

Subsecs. (a), (b)(3). Pub. L. 104-287, §5(89), substituted “section 47127” for “sections 47106(d) and 47127”.

Statutory Notes and Related Subsidiaries

BUY AMERICA REQUIREMENTS

Pub. L. 115-254, div. B, title I, §167, Oct. 5, 2018, 132 Stat. 3227, provided that:

“(a) NOTICE OF WAIVERS.—If the Secretary of Transportation determines that it is necessary to waive the application of section 50101(a) of title 49, United States Code, based on a finding under section 50101(b) of that title, the Secretary, at least 10 days before the date on which the waiver takes effect, shall—

- “(1) make publicly available, in an easily identifiable location on the website of the Department of Transportation, a detailed written justification of the waiver determination; and
- “(2) provide an informal public notice and comment opportunity on the waiver determination.

“(b) ANNUAL REPORT.—For each fiscal year, the Secretary shall submit to the appropriate committees of Congress [Committee on Commerce, Science, and Transportation of the Senate and Committee on Transportation and Infrastructure of the House of Representatives] a report on waivers issued under section 50101 of title 49, United States Code, during the fiscal year.”

USE OF DOMESTIC PRODUCTS

Pub. L. 103-305, title III, §305, Aug. 23, 1994, 108 Stat. 1592, provided that:

“(a) PROHIBITION AGAINST FRAUDULENT USE OF ‘MADE IN AMERICA’ LABELS.—(1) A person shall not intentionally affix a label bearing the inscription of ‘Made in America’, or any inscription with that meaning, to any product sold in or shipped to the United States, if that product is not a domestic product.

“(2) A person who violates paragraph (1) shall not be eligible for any contract for a procurement carried out with amounts authorized under this title [enacting section 47509 of this title, amending sections 44505 and 48102 of this title, and enacting provisions set out as notes under this section and section 40101 of this title], including any subcontract under such a contract pursuant to the debarment, suspension, and ineligibility procedures in subpart 9.4 of chapter 1 of title 48, Code of Federal Regulations, or any successor procedures thereto.

“(b) COMPLIANCE WITH BUY AMERICAN ACT.—(1) Except as provided in paragraph (2), the head of each office within the Federal Aviation Administration that conducts procurements shall ensure that such procurements are conducted in compliance with sections 2 through 4 of the Act of March 3, 1933 ([former] 41 U.S.C. 10a through 10c, popularly known as the ‘Buy American Act’ [see 41 U.S.C. 8301 et seq.]).

“(2) This subsection shall apply only to procurements made for which—

- “(A) amounts are authorized by this title to be made available; and
- “(B) solicitations for bids are issued after the date of the enactment of this Act [Aug. 23, 1994].

“(3) The Secretary, before January 1, 1995, shall report to the Congress on procurements covered under this subsection of products that are not domestic products.

“(c) DEFINITIONS.—For the purposes of this section, the term ‘domestic product’ means a product—

“(1) that is manufactured or produced in the United States; and

“(2) at least 50 percent of the cost of the articles, materials, or supplies of which are mined, produced, or manufactured in the United States.”

Similar provisions were contained in the following prior authorization act: Pub. L. 102-581, title III, §305, Oct. 31, 1992, 106 Stat. 4896.

PURCHASE OF AMERICAN MADE EQUIPMENT AND PRODUCTS

Pub. L. 103-305, title III, §306, Aug. 23, 1994, 108 Stat. 1593, provided that:

“(a) SENSE OF CONGRESS.—It is the sense of Congress that any recipient of a grant under this title [enacting section 47509 of this title, amending sections 44505 and 48102 of this title, and enacting provisions set out as notes under this section and section 40101 of this title], or under any amendment made by this title, should purchase, when available and cost-effective, American made equipment and products when expending grant monies.

“(b) NOTICE TO RECIPIENTS OF ASSISTANCE.—In allocating grants under this title, or under any amendment made by this title, the Secretary shall provide to each recipient a notice describing the statement made in subsection (a) by the Congress.”

§ 50102. Restricting contract awards because of discrimination against United States goods or services

A person or enterprise domiciled or operating under the laws of a foreign country may not make a contract or subcontract under section 106(k), 44502(a)(2), or 44509, subchapter I of chapter 471 (except section 47127), or chapter 481 (except sections 48102(e), 48106, 48107, and 48110) of this title or subtitle B of title IX of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508, 104 Stat. 1388-353) if the government of that country unfairly maintains, in government procurement, a significant and persistent pattern of discrimination against United States goods or services that results in identifiable harm to United States businesses, that the President identifies under section 305(g)(1)(A) of the Trade Agreements Act of 1979 (19 U.S.C. 2515(g)(1)(A)).

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1298, §49102; renumbered §50102 and amended Pub. L. 104-287, §5(88)(D), (89), Oct. 11, 1996, 110 Stat. 3398.)

HISTORICAL AND REVISION NOTES
PUB. L. 103-272

Table with 3 columns: Revised Section, Source (U.S. Code), Source (Statutes at Large). Row 1: 49102, 49 App.:2226c., Nov. 5, 1990, Pub. L. 101-508, §9131, 104 Stat. 1388-372; Oct. 31, 1992, Pub. L. 102-581, §118(b), 106 Stat. 4883.

The words “government of that country” are substituted for “that government” for consistency in the revised title and with other titles of the United States Code.

PUB. L. 104-287, §5(89)

This makes a clarifying amendment to 49:50101(a) and (b)(3), 50102, 50104(b)(1), and 50105, as redesignated by clause (88)(D) of this section, because 49:47106(d) was struck by section 108(1) of the Federal Aviation Admin-

istration Authorization Act of 1994 (Public Law 103-305, 108 Stat. 1573).

Editorial Notes

REFERENCES IN TEXT

Subtitle B of title IX of the Omnibus Budget Reconciliation Act of 1990, referred to in text, is subtitle B (§§9101-9131) of title IX of Pub. L. 101-508, Nov. 5, 1990, 104 Stat. 1388-353, as amended, known as the Aviation Safety and Capacity Expansion Act of 1990. Sections 9102 to 9105, 9107 to 9112(b), 9113 to 9115, 9118, 9121 to 9123, 9124 “Sec. 613(c)”, 9125, 9127, and 9129 to 9131 of title IX of Pub. L. 101-508 were repealed by Pub. L. 103-272, §7(b), July 5, 1994, 108 Stat. 1379, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation. For complete classification of this Act to the Code, see Tables. For disposition of sections of former Title 49, see table at the beginning of Title 49.

AMENDMENTS

1996—Pub. L. 104-287, §5(89), substituted “section 47127” for “sections 47106(d) and 47127”.

Pub. L. 104-287, §5(88)(D), renumbered section 49102 of this title as this section.

§ 50103. Contract preference for domestic firms

(a) DEFINITIONS.—In this section—

(1) “domestic firm” means a business entity incorporated, and conducting business, in the United States.

(2) “foreign firm” means a business entity not described in clause (1) of this subsection.

(b) PREFERENCE.—Subject to subsections (c) and (d) of this section, the Administrator of the Federal Aviation Administration may make, with a domestic firm, a contract related to a grant made under section 44511, 44512, or 44513 of this title that, under competitive procedures, would be made with a foreign firm, if—

(1) the Administrator decides, and the Secretary of Commerce and the United States Trade Representative concur, that the public interest requires making the contract with the domestic firm, considering United States international obligations and trade relations;

(2) the difference between the bids submitted by the foreign firm and the domestic firm is not more than 6 percent;

(3) the final product of the domestic firm will be assembled completely in the United States; and

(4) at least 51 percent of the final product of the domestic firm will be produced in the United States.

(c) NONAPPLICATION.—Subsection (b) of this section does not apply if—

(1) compelling national security considerations require that subsection (b) of this section not apply; or

(2) the Trade Representative decides that making the contract would violate the multilateral trade agreements (as defined in section 3501(4) of title 19) or an international agreement to which the United States is a party.

(d) APPLICATION TO CERTAIN GRANTS.—This section applies only to a contract related to a grant made under section 44511, 44512, or 44513 of this title for which—

(1) an amount is authorized by section 48102(a), (b), or (d) of this title to be made