

113TH CONGRESS }
2d Session

SENATE

{ REPORT
113-236

ALL-AMERICAN FLAG ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1214

TO REQUIRE THE PURCHASE OF DOMESTICALLY MADE FLAGS OF
THE UNITED STATES OF AMERICA FOR USE BY THE FEDERAL
GOVERNMENT



JULY 31, 2014.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

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JULY 31, 2014.—Ordered to be printed

Mr. CARPER, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 1214]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1214), to require the purchase of domestically made flags of the United States of America for use by the Federal Government, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

The All-American Flag Act (S. 1214) requires that flags of the United States of America purchased for use by the federal government be 100 percent made and manufactured in the United States, from articles, materials or supplies 100 percent of which are grown, produced, or manufactured in the United States. The bill allows for waivers of this requirement in case of “unreasonable costs or delays” or adverse affects on a United States company. It also requires that the Act be applied in a manner consistent with U.S. obligations under international agreements.

II. BACKGROUND AND THE NEED FOR LEGISLATION

Currently, flag purchases by federal agencies are generally subject to the Buy American Act¹ and the regulations implementing that Act, which generally provide that the cost of components mined, produced, or manufactured in the United States must exceed 50% of the cost of all components.² The Buy American Act regulations contain a number of exceptions to that rule. For example, the regulations permit the purchase of foreign products when the costs of domestic ones are unreasonable, and the rule does not apply to certain purchases (e.g., small-value purchases and purchases of goods that will be used outside the United States).³

Purchases by the Department of Defense of certain products, including fabrics, are subject to additional source restrictions under a law originally passed in 1941 and known as the Berry Amendment.⁴ Items covered by the Berry Amendment must be 100% domestic in origin.⁵ Like the Buy American Act, the Berry Amendment allows for a number of exceptions to the general rule, including when a satisfactory quality and sufficient quantity of an item cannot be procured when needed at United States market prices.⁶

The All-American Flag Act would provide a new, simple government-wide rule for United States of America flags so that this symbol, when used by the federal government, would be authentically American. Specifically, the bill would require that United States of America flags acquired for use by the federal government be 100 percent manufactured in the United States. Additionally, the articles, materials, or supplies contained in the flags must be 100 percent grown, produced, or manufactured in the United States.

The bill would allow for a limited waiver of the 100 percent rule if the head of an agency determines, on a case-by-case basis, that the application of the rule would cause unreasonable costs or delays, or if application of the rule would adversely affect a United States company.

The bill also provides that the rule will be applied in a manner consistent with United States obligations under international agreements. This will ensure that the United States upholds commitments in specific trade agreements that relate to the treatment of products of U.S. trading partners.⁷

III. LEGISLATIVE HISTORY

Senator Brown introduced S. 1214, the All-American Flag Act, on June 24, 2013. Senators Rockefeller and Collins cosponsored the bill. The bill was referred to the Senate Committee on Homeland Security and Governmental Affairs. The Committee considered the bill at a business meeting on June 25, 2014.

¹ 41 U.S.C. §§ 8301–8305.

² 48 C.F.R. § 25.003.

³ 48 C.F.R. § 25.103 and 48 C.F.R. § 25.202.

⁴ 10 U.S.C. § 2533a.

⁵ Fabrics are covered items under the Berry Amendment under 10 U.S.C. 2533a(b)(C) and therefore the Department of Defense has applied the Berry Amendment to fabric used in flags. Also, a provision of the Consolidated Appropriations Act, 2014 provides that Department of Defense purchases of U.S. flags with funds provided by the Act must comply with the Berry Amendment. (Section 8123, P.L. 113–76.)

⁶ 10 U.S.C. § 2533a(c) and 48 C.F.R. § 225.7002–2(b).

⁷ The Trade Agreements Act (19 U.S.C. 2501 et. seq.) also allows for waivers of the Buy American Act to ensure consistency of procurements with international trade obligations. See 48 C.F.R. § 25.402.

The committee ordered the bill reported favorably by voice vote on June 25, 2014. Senators present for the vote were Senators Carper, Levin, McCaskill, Tester, Heitkamp, Coburn, McCain, Johnson, and Portman.

IV. SECTION-BY-SECTION ANALYSIS

Section 1: Short title

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

Section 2: Requirement for purchase of domestically made U.S. flags for use by Federal Government

Subsection 2(a): In general

This subsection requires that only U.S. flags that are 100 percent manufactured in the United States, from articles, materials, or supplies 100 percent of which are grown, produced, or manufactured in the U.S., may be acquired for use by the Federal Government.

Subsection 2(b): Waiver

This subsection sets out a waiver for the requirement to purchase 100 percent American-made U.S. flags as set forth in subsection (a). Subsection 2(b)(1) authorizes the head of an executive agency to waive the requirement in the case that the application of the limitation would cause unreasonable costs or delays to be incurred, and subsection 2(b)(2) authorizes the head of an executive agency to waive the requirement in the case that application of the limitation would adversely affect a United States company.

Subsection 2(c): Amendment of Federal Acquisition Regulation

This subsection requires the Federal Acquisition Regulatory Council to amend the Federal Acquisition Regulation to implement this section within 180 days of enactment of this Act.

Subsection 2(d): Definitions

This subsection defines the term “executive agency” as having the meaning given that term in section 133 of title 41, United States Code, which includes the major departments of the executive branch, the military departments, other government agencies (other than the United States Postal Service or the Postal Regulatory Commission) and wholly owned government corporations; and the term “Federal Acquisition Regulation” as having the meaning given the term in section 106 of title 41, United States Code, which refers to the government-wide body of procurement regulations that are issued and maintained jointly by the Administrator of the General Services Administration, the Secretary of Defense, the Administrator of the National Aeronautics and Space Administration.

Section 3: Effective date

This section requires that purchases of flags made on or after 180 days after enactment of this Act comply with the Act.

Section 4: Consistency with international trade agreements

This section requires that this Act be applied in a manner consistent with United States obligations under international agreements.

V. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

JULY 9, 2014.

Hon. TOM CARPER,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1214, 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,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 1214—All-American Flag Act

CBO estimates that enacting S. 1214 would have no significant effect on the federal budget. The legislation would amend federal law to require that all American flags acquired by the federal government be manufactured in the United States from materials grown, produced, or manufactured in the United States. The legislation also would provide exceptions from this requirement if complying with it would adversely affect a U.S. company or result in unreasonable costs or delay in acquiring flags.

Based on information from the General Services Administration and affected vendors, CBO expects that implementing this bill would have no significant effect on the federal budget because of the bill's broad exemptions and because the federal government already acquires some flags from manufacturers that meet the requirements of the legislation. Enacting S. 1214 also could affect direct spending by agencies not funded through annual appropriations, such as the Tennessee Valley Authority and the Bonneville Power Administration; therefore, pay-as-you-go procedures apply. CBO estimates, however, that any net increase in spending by those agencies would not be significant. Enacting S. 1214 would not affect revenues.

S. 1214 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

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

VI. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact that would be incurred in carrying out this legislation and determined that the bill will have no regulatory effect within the meaning of the rules.

The Committee agrees with the Congressional Budget Office that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments, or private entities. The legislation contains no other regulatory impact.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

Because this legislation would not repeal or amend any provision of current law, it would make no changes in existing law within the meaning of clauses (a) and (b) of paragraph 12 of rule XXVI of the Standing Rules of the Senate.

