

CHANGE REQUEST COVER SHEET

Change Request Number: 13-46

Date Received: 2/12/2013

Title: Trade Agreements Guidance Update

Name: Tim Eckert

Phone: (202) 267-7527

Policy OR Guidance: Guidance

Section/Text Location Affected: T3.6.4A.7

Summary of Change: Update to listing of trade- related acts and North American Free Trade Act (NAFTA) thresholds

Reason for Change: Administrative update to ensure currency with statutes

Development, Review, and/or Concurrence: Procurement Legal and Acquisition Policy Division

Target Audience: Contracting workforce and program offices

Potential Links within FAST for the Change: None

Briefing Planned: No

ASAG Responsibilities: None

Potential Links within FAST for the Change: None

Links for New/Modified Forms (or) Documents (LINK 1) [null](#)

Links for New/Modified Forms (or) Documents (LINK 2) [null](#)

Links for New/Modified Forms (or) Documents (LINK 3) [null](#)

SECTIONS EDITED:

Procurement Guidance:

T3.6.4 Foreign Acquisition

Foreign Acquisition

Section 7 : Trade Agreements [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

SECTIONS EDITED:

Section 7 : Trade Agreements

Old Content: Procurement Guidance:

T3.6.4 Foreign Acquisition

Foreign Acquisition

Section 7 : Trade Agreements

a. FAA acquisitions are subject to the following trade-related acts:

(1) The NAFTA Implementation Act (Pub. L. 103-182, 107 Stat. 2057) which involves offers of Canadian or Mexican end products; and

(2) The Agreement on Civil Aircraft (19 U.S.C. 2513) which involves aircraft and related supplies from countries participating in the Agreement.

b. FAA acquisitions are *not* subject to the following trade-related acts:

TITLE	REFERENCE
United States-Bahrain Free Trade Agreement	H.R. 4340
The Caribbean Basin Trade Initiative (CBTI) under the Caribbean Basin Economic Recovery Act (Note: Except for Panama)	19 U.S.C. 2701
The Dominican Republic-Central America-United States Free Trade Agreement Implementation Act	P.L. 109-53
The least developed country designation made by the U.S. Trade Representative, pursuant to the Trade Agreements Act	19 U.S.C. 2511(b)(4)
United States- Australia Free Trade Agreement Implementation Act	P.L. 108-286
United States-Chile Free Trade Agreement Implementation Act	P.L. 108-77
United States-Israel Free Trade Implementation Act	19 U.S.C. 2112
United States-Morocco Free Trade Agreement Implementation Act	P.L. 108-302
United States-Singapore Free Trade Agreement Implementation Act	P.L. 108-78

c. North American Free Trade Agreement.

(1) As required by the NAFTA Implementation Act, the CO will evaluate offers of the following NAFTA country end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program as follows:

(a) NAFTA country construction materials under construction contracts with an estimated acquisition value equal to or exceeding \$9,110,318.

(b) Canadian end products under supply contracts with an estimated value equal to or exceeding \$25,000 and Mexican end products under supply contracts with an estimated value equal to or exceeding \$70,079.

(c) Canadian and Mexican end products under service contracts with an estimated value equal to or exceeding \$70,079.

(2) To determine whether NAFTA applies to the acquisition of products by lease, rental, or lease-purchase contract (including lease-to-ownership, or lease-with-option-to purchase), the CO should calculate the estimated acquisition value as follows:

(a) If a fixed-term contract of 12 months or less is contemplated, use the total estimated value of the acquisition.

(b) If a fixed-term contract of more than 12 months is contemplated, use the total estimated value of the acquisition plus the estimated residual value of the leased equipment at the conclusion of the contemplated term of the contract.

(c) If an indefinite-term contract is contemplated, use the estimated monthly payment multiplied by 48.

(d) If there is any doubt as to the contemplated term of the contract, use the estimated monthly payment multiplied by 48.

(e) If a contemplated acquisition includes an option clause, when calculating the threshold for application of NAFTA provisions include the value of all options.

d. *Civil Aircraft and Related Articles.* The Buy American Act does not apply to acquiring civil aircraft and related articles of countries or instrumentalities that are parties to the Agreement on Civil Aircraft pursuant to a waiver from the U.S. Trade Representative, on February 19, 1980 (45 FR 12349, February 25, 1980). The current list of countries and instrumentalities that are parties to the agreement are on the U.S. Trade Representative website. For the purpose of this waiver, an article is a product of a country or instrumentality when:

(1) It is wholly the growth, product, or manufacture of that country or instrumentality; or

(2) In the case of an article that consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

e. This section "Trade Agreements" does not apply to:

(1) Purchases below an applicable dollar threshold cited in a trade agreement;

(2) Purchases under small or small disadvantaged business programs;

(3) Purchases indispensable for national security or for national defense purposes, subject to policies established by the U.S. Trade Representative.

(4) Research and development contracts;

(5) Purchases of items for resale;

(6) Purchases from Federal Prison Industries, Inc. and nonprofit agencies employing people who are blind or severely disabled.

New Content: Procurement Guidance:

T3.6.4 Foreign Acquisition

Foreign Acquisition

Section 7 : Trade Agreements

a. FAA acquisitions are subject to the following trade-related acts:

(1) The NAFTA Implementation Act (Pub. L. 103-182, 107 Stat. 2057) which involves offers of Canadian or Mexican end products; and

(2) The Agreement on Civil Aircraft (19 U.S.C. 2513) which involves aircraft and related supplies from countries participating in the Agreement.

b. FAA acquisitions are *not* subject to the following trade-related acts:

TITLE	REFERENCE
United States-Bahrain Free Trade Agreement Implementation Act	P.L. 109-169
The Caribbean Basin Trade Initiative (CBTI) under the Caribbean Basin Economic Recovery Act (Note: Except for Panama)	19 U.S.C. 2701
The Dominican Republic-Central America-United States Free Trade Agreement Implementation Act	P.L. 109-53

The least developed country designation made by the U.S. Trade Representative, pursuant to the Trade Agreements Act	19 U.S.C. 2511(b)(4)
United States- Australia Free Trade Agreement Implementation Act	P.L. 108-286
United States-Chile Free Trade Agreement Implementation Act	P.L. 108-77
United States-Colombia Trade Promotion Agreement Implementation Act	P.L. 112-42
United States-Israel Free Trade Area Implementation Act	19 U.S.C. 2112
United States-Korea Free Trade Agreement Implementation Act	P.L. 112-41
United States-Morocco Free Trade Agreement Implementation Act	P.L. 108-302
United States – Oman Free Trade Agreement Implementation Act	P.L. 109-283
United States-Panama Trade Promotion Agreement Implementation Act	P.L. 112-43
United States-Peru Trade Promotion Agreement Implementation Act	P.L. 110-138
United States-Singapore Free Trade Agreement Implementation Act	P.L. 108-78

c. North American Free Trade Agreement.

(1) As required by the NAFTA Implementation Act, the CO will evaluate offers of the following NAFTA country end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program as follows:

(a) NAFTA country construction materials under construction contracts with an estimated acquisition value equal to or exceeding \$10,074,262.

(b) Canadian end products under supply contracts with an estimated value equal to or exceeding \$25,000 and Mexican end products under supply contracts with an estimated value equal to or exceeding \$77,494.

(c) Canadian and Mexican end products under service contracts with an estimated value equal to or exceeding \$77,494.

(2) To determine whether NAFTA applies to the acquisition of products by lease, rental, or lease-purchase contract (including lease-to-ownership, or lease-with-option-to purchase), the CO should calculate the estimated acquisition value as follows:

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(d) If there is any doubt as to the contemplated term of the contract, use the estimated monthly payment multiplied by 48.

(e) If a contemplated acquisition includes an option clause, when calculating the threshold for application of NAFTA provisions include the value of all options.

d. *Civil Aircraft and Related Articles.* The Buy American Act does not apply to acquiring civil aircraft and related articles of countries or instrumentalities that are parties to the Agreement on Civil Aircraft pursuant to a waiver from the U.S. Trade Representative, on February 19, 1980 (45 FR 12349, February 25, 1980). The current list of countries and instrumentalities that are parties to the agreement are on the U.S. Trade Representative website. For the purpose of this waiver, an article is a product of a country or instrumentality when:

(1) It is wholly the growth, product, or manufacture of that country or instrumentality; or

(2) In the case of an article that consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

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(4) Research and development contracts;

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(6) Purchases from Federal Prison Industries, Inc. and nonprofit agencies employing people who are blind or severely disabled.

Red Line Content: Procurement Guidance:

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TITLE	REFERENCE
United States-Bahrain Free Trade Agreement <i>Implementation Act</i>	<u>HP.R.L. 4340109-169</u>
The Caribbean Basin Trade Initiative (CBTI) under the Caribbean Basin Economic Recovery Act (Note: Except for Panama)	19 U.S.C. 2701
The Dominican Republic-Central America-United States Free Trade Agreement Implementation Act	P.L. 109-53
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United States-Panama Trade Promotion	P.L. 112-43

Agreement Implementation Act	
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c. North American Free Trade Agreement.

(1) As required by the NAFTA Implementation Act, the CO will evaluate offers of the following NAFTA country end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program as follows:

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