

# **DOE Guidance on Nation-of-Origin Vehicle Manufacturer Procurement Requirements under 42 U.S.C. § 6374(a)(3)(G)**

May 2020

## **Introduction**

The Federal government is subject to manufacturer nation-of-origin requirements in its procurement of vehicles. First, section 6374 of title 42 of the U.S. Code requires that the maximum number practicable of the vehicles acquired annually for use by the Federal government must be alternative fueled vehicles. See 42 U.S.C. § 6374(a)(1). Among other requirements, these motor vehicles must be manufactured in the United States or Canada, except to the extent inconsistent with certain multilateral trade agreements. The Buy American Act of 1933, as amended, also requires the Federal government to prefer American-made products in its purchases. See 41 U.S.C. §§ 8301-8305; 49 C.F.R. part 661.

## **Analysis**

Government agencies should consult their legal counsel to ensure compliance with the nation-of-origin manufacturing Federal vehicle requirements of 42 U.S.C. § 6374(a)(3)(G), keeping in mind the following guidance and that GSA is the primary source of vehicle acquisition for Federal agencies. When determining whether a proposed Federal vehicle acquisition is “manufactured in the United States” for purposes of compliance with this section, government agencies should undertake the same analysis of determining whether a proposed vehicle acquisition is manufactured in the United States for purposes of the Buy American Act. It is thus the position of the Federal Energy Management Program that a government agency’s analysis of whether a motor vehicle is “manufactured in the United States” for purposes of compliance with 42 U.S.C. § 6374(a)(3)(G) is the same as the analysis of the domestic end product requirements under the Buy American Act. Government agencies also should undertake an equivalent analysis in determining whether a motor vehicle is manufactured in Canada for purposes of compliance with 42 U.S.C. § 6374(a)(3)(G). Accordingly, the manufacturer nation-of-origin analysis under section 6374(a)(3)(G) is complementary and consistent with the manufacturer nation-of-origin analysis under the Buy American Act, and government agencies should seek the assistance of their own legal counsel in determining whether a vehicle is manufactured in the United States or Canada in accordance with both statutes.

With some exceptions, Federal agencies should note that executive agencies are required “to submit to GSA for procurement its orders for purchase in the United States of all new passenger motor vehicles, trucks or truck tractors, trailers van type, and firetrucks and firefighting trailers.” (41 CFR § 101-26.501-1). In addition, the Trade Agreements Act of 1979 (19 U.S.C. § 2501, et seq.) provides the President with the authority to waive the Buy American Act and certain other discriminatory provisions for eligible products from countries that have signed an international trade agreement with the United States, or that meet certain other criteria (known as “designated countries”).