

(2) A product that—

(A) evolved from a product described in paragraph (1) through advances in technology or performance; and

(B) is not yet available in the commercial marketplace but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Federal Government solicitation.

(3) A product that would satisfy the criteria in paragraph (1) or (2) were it not for—

(A) modifications of a type customarily available in the commercial marketplace; or

(B) minor modifications made to meet Federal Government requirements.

(4) Any combination of products meeting the requirements of paragraph (1), (2), or (3) that are of a type customarily combined and sold in combination to the general public.

(5) A product, or combination of products, referred to in paragraphs (1) through (4), even though the product, or combination of products, is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor.

(6) A nondevelopmental item if the procuring agency determines, in accordance with conditions in the Federal Acquisition Regulation, that—

(A) the product was developed exclusively at private expense; and

(B) has been sold in substantial quantities, on a competitive basis, to multiple State and local governments or to multiple foreign governments.

(Added Pub. L. 115-232, div. A, title VIII, § 836(a)(1), Aug. 13, 2018, 132 Stat. 1859.)

#### Editorial Notes

##### PRIOR PROVISIONS

A prior section 103, Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3679; Pub. L. 115-91, div. A, title VIII, § 847(a), Dec. 12, 2017, 131 Stat. 1487, defined term “commercial item”, prior to repeal by Pub. L. 115-232, div. A, title VIII, § 836(a)(1), Aug. 13, 2018, 132 Stat. 1859, effective Jan. 1, 2020. See Effective Date note below.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective, and repeal of former section 103 effective, on Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115-232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

#### § 103a. Commercial service

In this subtitle, the term “commercial service” means any of the following:

(1) Installation services, maintenance services, repair services, training services, and other services if—

(A) those services are procured for support of a commercial product, regardless of whether the services are provided by the same source or at the same time as the commercial product; and

(B) the source of the services provides similar services contemporaneously to the general public under terms and conditions

similar to those offered to the Federal Government;

(2) Services of a type offered and sold competitively, in substantial quantities, in the commercial marketplace—

(A) based on established catalog or market prices;

(B) for specific tasks performed or specific outcomes to be achieved; and

(C) under standard commercial terms and conditions.

(3) A service described in paragraph (1) or (2), even though the service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor.

(Added Pub. L. 115-232, div. A, title VIII, § 836(a)(1), Aug. 13, 2018, 132 Stat. 1860.)

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Section effective Jan. 1, 2020, subject to a savings provision, see section 836(h) of Pub. L. 115-232, set out as an Effective Date of 2018 Amendment; Savings Provision note under section 453b of Title 6, Domestic Security.

#### § 104. Commercially available off-the-shelf item

In this subtitle, the term “commercially available off-the-shelf item”—

(1) means an item that—

(A) is a commercial product (as described in section 103(1) of this title);

(B) is sold in substantial quantities in the commercial marketplace; and

(C) is offered to the Federal Government, without modification, in the same form in which it is sold in the commercial marketplace; but

(2) does not include bulk cargo, as defined in section 40102(4) of title 46, such as agricultural products and petroleum products.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3679; Pub. L. 115-232, div. A, title VIII, § 836(a)(2)(B), Aug. 13, 2018, 132 Stat. 1860; Pub. L. 116-283, div. A, title X, § 1081(d)(4)(A), Jan. 1, 2021, 134 Stat. 3874.)

#### HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
104 .....	41:431(c).	Pub. L. 93-400, § 35(c), as added Pub. L. 104-106, title XLII, § 4203(a), Feb. 10, 1996, 110 Stat. 655.

In paragraph (2), the words “section 40102(4) of title 46” are substituted for “section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702)” because of section 18(c) of Public Law 109-304 (46 U.S.C. note prec. 101).

#### Editorial Notes

##### AMENDMENTS

2021—Par. (1)(A). Pub. L. 116-283, § 1081(d)(4)(A), made technical correction to directory language of Pub. L. 115-232, § 836(a)(2)(B). See 2018 Amendment note below.

2018—Par. (1)(A). Pub. L. 115-232, as amended by Pub. L. 116-283, § 1081(d)(4)(A), substituted “commercial product” for “commercial item”.