

with the definition of “agency board” in section 7101 of the revised title.

In subsection (f)(1), the words “under consideration” are substituted for “at issue” to avoid potential confusion with the words “issue described in paragraph (2)”.

§ 7108. Payment of claims

(a) JUDGMENTS.—Any judgment against the Federal Government on a claim under this chapter shall be paid promptly in accordance with the procedures provided by section 1304 of title 31.

(b) MONETARY AWARDS.—Any monetary award to a contractor by an agency board shall be paid promptly in accordance with the procedures contained in subsection (a).

(c) REIMBURSEMENT.—Payments made pursuant to subsections (a) and (b) shall be reimbursed to the fund provided by section 1304 of title 31 by the agency whose appropriations were used for the contract out of available amounts or by obtaining additional appropriations for purposes of reimbursement.

(d) TENNESSEE VALLEY AUTHORITY.—

(1) JUDGMENTS.—Notwithstanding subsections (a) to (c), any judgment against the Tennessee Valley Authority on a claim under this chapter shall be paid promptly in accordance with section 9(b) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831h(b)).

(2) MONETARY AWARDS.—Notwithstanding subsections (a) to (c), any monetary award to a contractor by the board of contract appeals of the Tennessee Valley Authority shall be paid in accordance with section 9(b) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831h(b)).

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3825.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
7108	41:612.	Pub. L. 95-563, § 13, Nov. 1, 1978, 92 Stat. 2389; Pub. L. 104-106, div. D, title XLIII, § 4322(b)(7), Feb. 10, 1996, 110 Stat. 677.

§ 7109. Interest

(a) PERIOD.—

(1) IN GENERAL.—Interest on an amount found due a contractor on a claim shall be paid to the contractor for the period beginning with the date the contracting officer receives the contractor's claim, pursuant to section 7103(a) of this title, until the date of payment of the claim.

(2) DEFECTIVE CERTIFICATION.—On a claim for which the certification under section 7103(b)(1) of this title is found to be defective, any interest due under this section shall be paid for the period beginning with the date the contracting officer initially receives the contractor's claim until the date of payment of the claim.

(b) RATE.—Interest shall accrue and be paid at a rate which the Secretary of the Treasury shall specify as applicable for each successive 6-month period. The rate shall be determined by the Secretary of the Treasury taking into consideration current private commercial rates of interest for new loans maturing in approximately 5 years.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3825.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
7109(a)(1)	41:611 (1st sentence).	Pub. L. 95-563, § 12, Nov. 1, 1978, 92 Stat. 2389.
7109(a)(2)	41:611 note.	Pub. L. 102-572, title IX, § 907(a)(3), Oct. 29, 1992, 106 Stat. 4518.
7109(b)	41:611 (last sentence).	

In subsection (a)(2), the words “on or after the date of the enactment of this Act”, “the later of”, and “or the date of the enactment of this Act” are omitted as obsolete.

Subsection (b) is substituted for “The interest provided for in this section shall be paid at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41 (85 Stat. 97) for the Renegotiation Board” to eliminate obsolete language and to codify the criteria under which the interest rate is computed. Section 2(a)(3) of the Act of July 1, 1971 (Pub. L. 92-41, 85 Stat. 97), amended section 105(b)(2) of the Renegotiation Act of 1951 (Mar. 23, 1951, ch. 15, 65 Stat. 13) by adding provisions substantially similar to those enacted here. However, the Renegotiation Act of 1951 (Mar. 23, 1951, ch. 15, 65 Stat. 7) was omitted from the Code pursuant to section 102(c)(1) of the Act (65 Stat. 8), amended several times, the last being Public Law 94-185 (89 Stat. 1061), which provided that most provisions of that Act do not apply to receipts and accruals attributable to contract performance after September 30, 1976, and in view of the termination of the Renegotiation Board and the transfer of property and records of the Board to the Administrator of the General Services Administration on March 31, 1979, pursuant to Public Law 95-431 (92 Stat. 1043). Although the Renegotiation Board is no longer in existence, Federal agencies, including the General Services Administration, are required to use interest rates that are computed under the criteria set out in this subsection. See 31:3902(a) and the website of the Bureau of the Public Debt, available at <http://www.publicdebt.treas.gov/opd/opdprmt2.htm>. For an example of publication of rates under the criteria enacted here, see Federal Register, volume 67, number 247, page 78566, December 24, 2002.

Subtitle IV—Miscellaneous

Chapter	Sec.
81. Drug-Free Workplace	8101
83. Buy American	8301
85. Committee for Purchase From People Who Are Blind or Severely Disabled	8501
87. Kickbacks	8701

CHAPTER 81—DRUG-FREE WORKPLACE

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8101.	Definitions and construction.
8102.	Drug-free workplace requirements for Federal contractors.
8103.	Drug-free workplace requirements for Federal grant recipients.
8104.	Employee sanctions and remedies.
8105.	Waiver.
8106.	Regulations.

§ 8101. Definitions and construction

(a) DEFINITIONS.—In this chapter:

(1) CONTRACTOR.—The term “contractor” means the department, division, or other unit of a person responsible for the performance under the contract.

(2) CONTROLLED SUBSTANCE.—The term “controlled substance” means a controlled sub-

stance in schedules I through V of section 202 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 812).

(3) **CONVICTION.**—The term “conviction” means a finding of guilt (including a plea of nolo contendere), an imposition of sentence, or both, by a judicial body charged with the responsibility to determine violations of Federal or State criminal drug statutes.

(4) **CRIMINAL DRUG STATUTE.**—The term “criminal drug statute” means a criminal statute involving manufacture, distribution, dispensation, use, or possession of a controlled substance.

(5) **DRUG-FREE WORKPLACE.**—The term “drug-free workplace” means a site of an entity—

(A) for the performance of work done in connection with a specific contract or grant described in section 8102 or 8103 of this title; and

(B) at which employees of the entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of the Anti-Drug Abuse Act of 1988 (Public Law 100-690, 102 Stat. 4181).

(6) **EMPLOYEE.**—The term “employee” means the employee of a contractor or grantee directly engaged in the performance of work pursuant to the contract or grant described in section 8102 or 8103 of this title.

(7) **FEDERAL AGENCY.**—The term “Federal agency” means an agency as defined in section 552(f) of title 5.

(8) **GRANTEE.**—The term “grantee” means the department, division, or other unit of a person responsible for the performance under the grant.

(b) **CONSTRUCTION.**—This chapter does not require law enforcement agencies to comply with this chapter if the head of the agency determines it would be inappropriate in connection with the agency’s undercover operations.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3826.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8101(a)(1)	41:706(7).	Pub. L. 100-690, title V, §§5157, 5158, Nov. 18, 1988, 102 Stat. 4308.
8101(a)(2)	41:706(3).	
8101(a)(3)	41:706(4).	
8101(a)(4)	41:706(5).	
8101(a)(5)	41:706(1).	
8101(a)(6)	41:706(2).	
8101(a)(7)	41:706(8).	
8101(a)(8)	41:706(6).	
8101(b)	41:707.	

§ 8102. Drug-free workplace requirements for Federal contractors

(a) **IN GENERAL.**—

(1) **PERSONS OTHER THAN INDIVIDUALS.**—A person other than an individual shall not be considered a responsible source (as defined in section 113 of this title) for the purposes of being awarded a contract for the procurement of any property or services of a value greater than the simplified acquisition threshold (as defined in section 134 of this title) by a Federal

agency, other than a contract for the procurement of commercial products or commercial services (as defined in sections 103 and 103a, respectively, of this title), unless the person agrees to provide a drug-free workplace by—

(A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person’s workplace and specifying the actions that will be taken against employees for violations of the prohibition;

(B) establishing a drug-free awareness program to inform employees about—

(i) the dangers of drug abuse in the workplace;

(ii) the person’s policy of maintaining a drug-free workplace;

(iii) available drug counseling, rehabilitation, and employee assistance programs; and

(iv) the penalties that may be imposed on employees for drug abuse violations;

(C) making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by subparagraph (A);

(D) notifying the employee in the statement required by subparagraph (A) that as a condition of employment on the contract the employee will—

(i) abide by the terms of the statement; and

(ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after the conviction;

(E) notifying the contracting agency within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of a conviction;

(F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is convicted, as required by section 8104 of this title; and

(G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A) to (F).

(2) **INDIVIDUALS.**—A Federal agency shall not make a contract with an individual unless the individual agrees not to engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the contract.

(b) **SUSPENSION, TERMINATION, OR DEBARMENT OF CONTRACTOR.**—

(1) **GROUND FOR SUSPENSION, TERMINATION, OR DEBARMENT.**—Payment under a contract awarded by a Federal agency may be suspended and the contract may be terminated, and the contractor or individual who made the contract with the agency may be suspended or debarred in accordance with the requirements of this section, if the head of the agency determines that—

(A) the contractor is violating, or has violated, the requirements of subparagraph (A), (B), (C), (D), (E), or (F) of subsection (a)(1); or

(B) the number of employees of the contractor who have been convicted of violations of criminal drug statutes for violations occurring in the workplace indicates that the contractor has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a).

(2) CONDUCT OF SUSPENSION, TERMINATION, AND DEBARMENT PROCEEDINGS.—A contracting officer who determines in writing that cause for suspension of payments, termination, or suspension or debarment exists shall initiate an appropriate action, to be conducted by the agency concerned in accordance with the Federal Acquisition Regulation and applicable agency procedures. The Federal Acquisition Regulation shall be revised to include rules for conducting suspension and debarment proceedings under this subsection, including rules providing notice, opportunity to respond in writing or in person, and other procedures as may be necessary to provide a full and fair proceeding to a contractor or individual.

(3) EFFECT OF DEBARMENT.—A contractor or individual debarred by a final decision under this subsection is ineligible for award of a contract by a Federal agency, and for participation in a future procurement by a Federal agency, for a period specified in the decision, not to exceed 5 years.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3827; Pub. L. 115-232, div. A, title VIII, § 836(b)(20), Aug. 13, 2018, 132 Stat. 1864.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8102	41:701.	Pub. L. 100-690, title V, § 5152, Nov. 18, 1988, 102 Stat. 4304; Pub. L. 103-355, title IV, § 4104(d), title VIII, § 8301(f), Oct. 13, 1994, 108 Stat. 3342, 3397; Pub. L. 104-106, div. D, title XLIII, §§ 4301(a)(3), 4321(i)(13), Feb. 10, 1996, 110 Stat. 656, 677.

Editorial Notes

AMENDMENTS

2018—Subsec. (a)(1). Pub. L. 115-232 substituted “commercial products or commercial services (as defined in sections 103 and 103a, respectively, of this title)” for “commercial items (as defined in section 103 of this title)” in introductory provisions.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 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.

§ 8103. Drug-free workplace requirements for Federal grant recipients

(a) IN GENERAL.—

(1) PERSONS OTHER THAN INDIVIDUALS.—A person other than an individual shall not receive a grant from a Federal agency unless the person agrees to provide a drug-free workplace by—

(A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the grantee’s workplace and specifying the actions that will be taken against employees for violations of the prohibition;

(B) establishing a drug-free awareness program to inform employees about—

(i) the dangers of drug abuse in the workplace;

(ii) the grantee’s policy of maintaining a drug-free workplace;

(iii) available drug counseling, rehabilitation, and employee assistance programs; and

(iv) the penalties that may be imposed on employees for drug abuse violations;

(C) making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by subparagraph (A);

(D) notifying the employee in the statement required by subparagraph (A) that as a condition of employment in the grant the employee will—

(i) abide by the terms of the statement; and

(ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after the conviction;

(E) notifying the granting agency within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of a conviction;

(F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is convicted, as required by section 8104 of this title; and

(G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A) to (F).

(2) INDIVIDUALS.—A Federal agency shall not make a grant to an individual unless the individual agrees not to engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in conducting an activity with the grant.

(b) SUSPENSION, TERMINATION, OR DEBARMENT OF GRANTEE.—

(1) GROUNDS FOR SUSPENSION, TERMINATION, OR DEBARMENT.—Payment under a grant awarded by a Federal agency may be suspended and the grant may be terminated, and the grantee may be suspended or debarred, in accordance with the requirements of this section, if the head of the agency or the official designee of the head of the agency determines in writing that—

(A) the grantee is violating, or has violated, the requirements of subparagraph (A), (B), (C), (D), (E), (F), or (G) of subsection (a)(1); or

(B) the number of employees of the grantee who have been convicted of violations of criminal drug statutes for violations occurring in the workplace indicates that the

grantee has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a)(1).

(2) **CONDUCT OF SUSPENSION, TERMINATION, AND DEBARMENT PROCEEDINGS.**—A suspension of payments, termination, or suspension or debarment proceeding subject to this subsection shall be conducted in accordance with applicable law, including Executive Order 12549 or any superseding executive order and any regulations prescribed to implement the law or executive order.

(3) **EFFECT OF DEBARMENT.**—A grantee debarred by a final decision under this subsection is ineligible for award of a grant by a Federal agency, and for participation in a future grant by a Federal agency, for a period specified in the decision, not to exceed 5 years.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3828.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8103	41:702.	Pub. L. 100-690, title V, § 5153, Nov. 18, 1988, 102 Stat. 4306; Pub. L. 105-85, div. A, title VIII, § 809, Nov. 18, 1997, 111 Stat. 1838.

§ 8104. Employee sanctions and remedies

Within 30 days after receiving notice from an employee of a conviction pursuant to section 8102(a)(1)(D)(ii) or 8103(a)(1)(D)(ii) of this title, a contractor or grantee shall—

(1) take appropriate personnel action against the employee, up to and including termination; or

(2) require the employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for those purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3830.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8104	41:703.	Pub. L. 100-690, title V, § 5154, Nov. 18, 1988, 102 Stat. 4307.

§ 8105. Waiver

(a) **IN GENERAL.**—The head of an agency may waive a suspension of payments, termination of the contract or grant, or suspension or debarment of a contractor or grantee under this chapter with respect to a particular contract or grant if—

(1) in the case of a contract, the head of the agency determines under section 8102(b)(1) of this title, after a final determination is issued under section 8102(b)(1), that suspension of payments, termination of the contract, suspension or debarment of the contractor, or refusal to permit a person to be treated as a responsible source for a contract would severely disrupt the operation of the agency to the detriment of the Federal Government or the general public; or

(2) in the case of a grant, the head of the agency determines that suspension of payments, termination of the grant, or suspension or debarment of the grantee would not be in the public interest.

(b) **WAIVER AUTHORITY MAY NOT BE DELEGATED.**—The authority of the head of an agency under this section to waive a suspension, termination, or debarment shall not be delegated.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3830.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8105	41:704.	Pub. L. 100-690, title V, § 5155, Nov. 18, 1988, 102 Stat. 4307.

§ 8106. Regulations

Government-wide regulations governing actions under this chapter shall be issued pursuant to division B of subtitle I of this title.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3830.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8106	41:705.	Pub. L. 100-690, title V, § 5156, Nov. 18, 1988, 102 Stat. 4308.

The words “Not later than 90 days after November 18, 1988, the” are omitted as obsolete.

CHAPTER 83—BUY AMERICAN

Sec. 8301.	Definitions.
8302.	American materials required for public use.
8303.	Contracts for public works.
8304.	Waiver rescission.
8305.	Annual report.

§ 8301. Definitions

In this chapter:

(1) **PUBLIC BUILDING, PUBLIC USE, AND PUBLIC WORK.**—The terms “public building”, “public use”, and “public work” mean a public building of, use by, and a public work of, the Federal Government, the District of Columbia, Puerto Rico, American Samoa, and the Virgin Islands.

(2) **UNITED STATES.**—The term “United States” includes any place subject to the jurisdiction of the United States.

(3) **FEDERAL AGENCY.**—The term “Federal agency” has the meaning given the term “executive agency” in section 133 of this title.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3830; Pub. L. 117-58, div. G, title IX, § 70922(d), Nov. 15, 2021, 135 Stat. 1304.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8301	41:10c.	Mar. 3, 1933, ch. 212, title III, § 1, 47 Stat. 1520; Pub. L. 86-70, § 43, June 25, 1959, 73 Stat. 151; Pub. L. 86-624, § 28, July 12, 1960, 74 Stat. 419; Pub. L. 100-418, title VII, § 7005(a), Aug. 23, 1988, 102 Stat. 1552.

In paragraph (1), the words “the Philippine Islands” are omitted because of Proclamation No. 2695 (22 U.S.C. 1394 note). The words “the Canal Zone” are omitted because of the Panama Canal Treaty of 1977.

In paragraph (2), the words “when used in a geographical sense” are omitted as unnecessary.

Editorial Notes

AMENDMENTS

2021—Par. (3). Pub. L. 117–58 added par. (3).

Statutory Notes and Related Subsidiaries

BUILD AMERICA, BUY AMERICA

Pub. L. 117–58, div. G, title IX, Nov. 15, 2021, 135 Stat. 1294, as amended by Pub. L. 117–167, div. B, title II, § 10254, Aug. 9, 2022, 136 Stat. 1502, provided that:

“Subtitle A—Build America, Buy America

“SEC. 70901. SHORT TITLE.

“This subtitle may be cited as the ‘Build America, Buy America Act’.

“PART I—BUY AMERICA SOURCING REQUIREMENTS

“SEC. 70911. FINDINGS.

“Congress finds that—

“(1) the United States must make significant investments to install, upgrade, or replace the public works infrastructure of the United States;

“(2) with respect to investments in the infrastructure of the United States, taxpayers expect that their public works infrastructure will be produced in the United States by American workers;

“(3) United States taxpayer dollars invested in public infrastructure should not be used to reward companies that have moved their operations, investment dollars, and jobs to foreign countries or foreign factories, particularly those that do not share or openly flout the commitments of the United States to environmental, worker, and workplace safety protections;

“(4) in procuring materials for public works projects, entities using taxpayer-financed Federal assistance should give a commonsense procurement preference for the materials and products produced by companies and workers in the United States in accordance with the high ideals embodied in the environmental, worker, workplace safety, and other regulatory requirements of the United States;

“(5) common construction materials used in public works infrastructure projects, including steel, iron, manufactured products, non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, and drywall are not adequately covered by a domestic content procurement preference, thus limiting the impact of taxpayer purchases to enhance supply chains in the United States;

“(6) the benefits of domestic content procurement preferences extend beyond economics;

“(7) by incentivizing domestic manufacturing, domestic content procurement preferences reinvest tax dollars in companies and processes using the highest labor and environmental standards in the world;

“(8) strong domestic content procurement preference policies act to prevent shifts in production to countries that rely on production practices that are significantly less energy efficient and far more polluting than those in the United States;

“(9) for over 75 years, Buy America and other domestic content procurement preference laws have been part of the United States procurement policy, ensuring that the United States can build and rebuild the infrastructure of the United States with high-quality American-made materials;

“(10) before the date of enactment of this Act [Nov. 15, 2021], a domestic content procurement preference

requirement may not apply, may apply only to a narrow scope of products and materials, or may be limited by waiver with respect to many infrastructure programs, which necessitates a review of such programs, including programs for roads, highways, and bridges, public transportation, dams, ports, harbors, and other maritime facilities, intercity passenger and freight railroads, freight and intermodal facilities, airports, water systems, including drinking water and wastewater systems, electrical transmission facilities and systems, utilities, broadband infrastructure, and buildings and real property;

“(11) Buy America laws create demand for domestically produced goods, helping to sustain and grow domestic manufacturing and the millions of jobs domestic manufacturing supports throughout product supply chains;

“(12) as of the date of enactment of this Act, domestic content procurement preference policies apply to all Federal Government procurement and to various Federal-aid infrastructure programs;

“(13) a robust domestic manufacturing sector is a vital component of the national security of the United States;

“(14) as more manufacturing operations of the United States have moved offshore, the strength and readiness of the defense industrial base of the United States has been diminished; and

“(15) domestic content procurement preference laws—

“(A) are fully consistent with the international obligations of the United States; and

“(B) together with the government procurements to which the laws apply, are important levers for ensuring that United States manufacturers can access the government procurement markets of the trading partners of the United States.

“SEC. 70912. DEFINITIONS.

“In this part:

“(1) DEFICIENT PROGRAM.—The term ‘deficient program’ means a program identified by the head of a Federal agency under section 70913(c).

“(2) DOMESTIC CONTENT PROCUREMENT PREFERENCE.—The term ‘domestic content procurement preference’ means a requirement that no amounts made available through a program for Federal financial assistance may be obligated for a project unless—

“(A) all iron and steel used in the project are produced in the United States;

“(B) the manufactured products used in the project are produced in the United States; or

“(C) the construction materials used in the project are produced in the United States.

“(3) FEDERAL AGENCY.—The term ‘Federal agency’ means any authority of the United States that is an ‘agency’ (as defined in section 3502 of title 44, United States Code), other than an independent regulatory agency (as defined in that section).

“(4) FEDERAL FINANCIAL ASSISTANCE.—

“(A) IN GENERAL.—The term ‘Federal financial assistance’ has the meaning given the term in section 200.1 of title 2, Code of Federal Regulations (or successor regulations).

“(B) INCLUSION.—The term ‘Federal financial assistance’ includes all expenditures by a Federal agency to a non-Federal entity for an infrastructure project, except that it does not include expenditures for assistance authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170a, 5170b, 5170c, 5172, 5174, or 5192) relating to a major disaster or emergency declared by the President under section 401 or 501, respectively, of such Act (42 U.S.C. 5170, 5191) or pre and post disaster or emergency response expenditures.

“(5) INFRASTRUCTURE.—The term ‘infrastructure’ includes, at a minimum, the structures, facilities, and equipment for, in the United States—

“(A) roads, highways, and bridges;

“(B) public transportation;
 “(C) dams, ports, harbors, and other maritime facilities;
 “(D) intercity passenger and freight railroads;
 “(E) freight and intermodal facilities;
 “(F) airports;
 “(G) water systems, including drinking water and wastewater systems;
 “(H) electrical transmission facilities and systems;
 “(I) utilities;
 “(J) broadband infrastructure; and
 “(K) buildings and real property.
 “(6) PRODUCED IN THE UNITED STATES.—The term ‘produced in the United States’ means—
 “(A) in the case of iron or steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
 “(B) in the case of manufactured products, that—
 “(i) the manufactured product was manufactured in the United States; and
 “(ii) the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
 “(C) in the case of construction materials, that all manufacturing processes for the construction material occurred in the United States.
 “(7) PROJECT.—The term ‘project’ means the construction, alteration, maintenance, or repair of infrastructure in the United States.
 “SEC. 70913. IDENTIFICATION OF DEFICIENT PROGRAMS.
 “(a) IN GENERAL.—Not later than 60 days after the date of enactment of this Act [Nov. 15, 2021], the head of each Federal agency shall—
 “(1) submit to the Office of Management and Budget and to Congress, including a separate notice to each appropriate congressional committee, a report that identifies each Federal financial assistance program for infrastructure administered by the Federal agency; and
 “(2) publish in the Federal Register the report under paragraph (1).
 “(b) REQUIREMENTS.—In the report under subsection (a), the head of each Federal agency shall, for each Federal financial assistance program—
 “(1) identify all domestic content procurement preferences applicable to the Federal financial assistance;
 “(2) assess the applicability of the domestic content procurement preference requirements, including—
 “(A) section 313 of title 23, United States Code;
 “(B) section 5323(j) of title 49, United States Code;
 “(C) section 22905(a) of title 49, United States Code;
 “(D) section 50101 of title 49, United States Code;
 “(E) section 603 [sic; probably should be “section 608”] of the Federal Water Pollution Control Act (33 U.S.C. 1388);
 “(F) section 1452(a)(4) of the Safe Drinking Water Act (42 U.S.C. 300j-12(a)(4));
 “(G) section 5035 of the Water Infrastructure Finance and Innovation Act of 2014 (33 U.S.C. 3914);
 “(H) any domestic content procurement preference included in an appropriations Act; and
 “(I) any other domestic content procurement preference in Federal law (including regulations);
 “(3) provide details on any applicable domestic content procurement preference requirement, including the purpose, scope, applicability, and any exceptions and waivers issued under the requirement; and
 “(4) include a description of the type of infrastructure projects that receive funding under the program, including information relating to—

“(A) the number of entities that are participating in the program;
 “(B) the amount of Federal funds that are made available for the program for each fiscal year; and
 “(C) any other information the head of the Federal agency determines to be relevant.
 “(c) LIST OF DEFICIENT PROGRAMS.—In the report under subsection (a), the head of each Federal agency shall include a list of Federal financial assistance programs for infrastructure identified under that subsection for which a domestic content procurement preference requirement—
 “(1) does not apply in a manner consistent with section 70914; or
 “(2) is subject to a waiver of general applicability not limited to the use of specific products for use in a specific project.
 “SEC. 70914. APPLICATION OF BUY AMERICA PREFERENCE.
 “(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Nov. 15, 2021], the head of each Federal agency shall ensure that none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.
 “(b) WAIVER.—The head of a Federal agency that applies a domestic content procurement preference under this section may waive the application of that preference in any case in which the head of the Federal agency finds that—
 “(1) applying the domestic content procurement preference would be inconsistent with the public interest;
 “(2) types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
 “(3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.
 “(c) WRITTEN JUSTIFICATION.—Before issuing a waiver under subsection (b), the head of the Federal agency shall—
 “(1) make publicly available in an easily accessible location on a website designated by the Office of Management and Budget and on the website of the Federal agency a detailed written explanation for the proposed determination to issue the waiver; and
 “(2) provide a period of not less than 15 days for public comment on the proposed waiver.
 “(d) REVIEW OF WAIVERS OF GENERAL APPLICABILITY.—
 “(1) IN GENERAL.—An existing general applicability waiver or a general applicability waiver issued under subsection (b) shall be reviewed every 5 years after the date on which the waiver is issued.
 “(2) REVIEW.—In conducting a review of a general applicability waiver, the head of a Federal agency shall—
 “(A) publish in the Federal Register a notice that—
 “(i) describes the justification for a general applicability waiver; and
 “(ii) requests public comments for a period of not less than 30 days on the continued need for a general applicability waiver; and
 “(B) publish in the Federal Register a determination on whether to continue or discontinue the general applicability waiver, taking into account the comments received in response to the notice published under subparagraph (A).
 “(3) LIMITATION ON THE REVIEW OF EXISTING WAIVERS OF GENERAL APPLICABILITY.—For a period of 5 years beginning on the date of enactment of this Act, paragraphs (1) and (2) shall not apply to any product-spe-

cific general applicability waiver that was issued more than 180 days before the date of enactment of this Act.

“(e) **CONSISTENCY WITH INTERNATIONAL AGREEMENTS.**—This section shall be applied in a manner consistent with United States obligations under international agreements.

“**SEC. 70915. OMB GUIDANCE AND STANDARDS.**

“(a) **GUIDANCE.**—The Director of the Office of Management and Budget shall—

“(1) issue guidance to the head of each Federal agency—

“(A) to assist in identifying deficient programs under section 70913(c); and

“(B) to assist in applying new domestic content procurement preferences under section 70914; and

“(2) if necessary, amend subtitle A of title 2, Code of Federal Regulations (or successor regulations), to ensure that domestic content procurement preference requirements required by this part or other Federal law are imposed through the terms and conditions of awards of Federal financial assistance.

“(b) **STANDARDS FOR CONSTRUCTION MATERIALS.**—

“(1) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act [Nov. 15, 2021], the Director of the Office of Management and Budget shall issue standards that define the term ‘all manufacturing processes’ in the case of construction materials.

“(2) **CONSIDERATIONS.**—In issuing standards under paragraph (1), the Director shall—

“(A) ensure that the standards require that each manufacturing process required for the manufacture of the construction material and the inputs of the construction material occurs in the United States; and

“(B) take into consideration and seek to maximize the direct and indirect jobs benefited or created in the production of the construction material.

“**SEC. 70916. TECHNICAL ASSISTANCE PARTNERSHIP AND CONSULTATION SUPPORTING DEPARTMENT OF TRANSPORTATION BUY AMERICA REQUIREMENTS.**

“(a) **DEFINITIONS.**—In this section:

“(1) **BUY AMERICA LAW.**—The term ‘Buy America law’ means—

“(A) section 313 of title 23, United States Code;

“(B) section 5323(j) of title 49, United States Code;

“(C) section 22905(a) of title 49, United States Code;

“(D) section 50101 of title 49, United States Code; and

“(E) any other domestic content procurement preference for an infrastructure project under the jurisdiction of the Secretary.

“(2) **SECRETARY.**—The term ‘Secretary’ means the Secretary of Transportation.

“(b) **TECHNICAL ASSISTANCE PARTNERSHIP.**—Not later than 90 days after the date of the enactment of this Act [Nov. 15, 2021], the Secretary shall enter into a technical assistance partnership with the Secretary of Commerce, acting through the Director of the National Institute of Standards and Technology—

“(1) to ensure the development of a domestic supply base to support intermodal transportation in the United States, such as intercity high speed rail transportation, public transportation systems, highway construction or reconstruction, airport improvement projects, and other infrastructure projects under the jurisdiction of the Secretary;

“(2) to ensure compliance with Buy America laws that apply to a project that receives assistance from the Federal Highway Administration, the Federal Transit Administration, the Federal Railroad Administration, the Federal Aviation Administration, or another office or modal administration of the Secretary of Transportation;

“(3) to encourage technologies developed with the support of and resources from the Secretary to be

transitioned into commercial market and applications; and

“(4) to establish procedures for consultation under subsection (c).

“(c) **CONSULTATION.**—Before granting a written waiver under a Buy America law, the Secretary shall consult with the Director of the Hollings Manufacturing Extension Partnership regarding whether there is a domestic entity that could provide the iron, steel, manufactured product, or construction material that is the subject of the proposed waiver.

“(d) **ANNUAL REPORT.**—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Secretary shall submit to the Committee on Commerce, Science, and Transportation, the Committee on Banking, Housing, and Urban Affairs, the Committee on Environment and Public Works, and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Transportation and Infrastructure and the Committee on Oversight and Reform of the House of Representatives a report that includes—

“(1) a detailed description of the consultation procedures developed under subsection (b)(4);

“(2) a detailed description of each waiver requested under a Buy America law in the preceding year that was subject to consultation under subsection (c), and the results of the consultation;

“(3) a detailed description of each waiver granted under a Buy America law in the preceding year, including the type of waiver and the reasoning for granting the waiver; and

“(4) an update on challenges and gaps in the domestic supply base identified in carrying out subsection (b)(1), including a list of actions and policy changes the Secretary recommends be taken to address those challenges and gaps.

“**SEC. 70917. APPLICATION.**

“(a) **IN GENERAL.**—This part shall apply to a Federal financial assistance program for infrastructure only to the extent that a domestic content procurement preference as described in section 70914 does not already apply to iron, steel, manufactured products, and construction materials.

“(b) **SAVINGS PROVISION.**—Nothing in this part affects a domestic content procurement preference for a Federal financial assistance program for infrastructure that is in effect and that meets the requirements of section 70914.

“(c) **LIMITATION WITH RESPECT TO AGGREGATES.**—In this part—

“(1) the term ‘construction materials’ shall not include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives; and

“(2) the standards developed under section 70915(b)(1) shall not include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives as inputs of the construction material.

“PART II—MAKE IT IN AMERICA

“**SEC. 70921. REGULATIONS RELATING TO BUY AMERICAN ACT.**

“(a) **IN GENERAL.**—Not later than 1 year after the date of the enactment of this Act [Nov. 15, 2021], the Director of the Office of Management and Budget (‘Director’), acting through the Administrator for Federal Procurement Policy and, in consultation with the Federal Acquisition Regulatory Council, shall promulgate final regulations or other policy or management guidance, as appropriate, to standardize and simplify how Federal agencies comply with, report on, and enforce the Buy American Act [this chapter]. The regulations or other policy or management guidance shall include, at a minimum, the following:

“(1) Guidelines for Federal agencies to determine, for the purposes of applying sections 8302(a) and 8303(b)(3) of title 41, United States Code, the cir-

cumstances under which the acquisition of articles, materials, or supplies mined, produced, or manufactured in the United States is inconsistent with the public interest.

“(2) Guidelines to ensure Federal agencies base determinations of non-availability on appropriate considerations, including anticipated project delays and lack of substitutable articles, materials, and supplies mined, produced, or manufactured in the United States, when making determinations of non-availability under section 8302(a)(1) of title 41, United States Code.

“(3)(A) Uniform procedures for each Federal agency to make publicly available, in an easily identifiable location on the website of the agency, and within the following time periods, the following information:

“(i) A written description of the circumstances in which the head of the agency may waive the requirements of the Buy American Act.

“(ii) Each waiver made by the head of the agency within 30 days after making such waiver, including a justification with sufficient detail to explain the basis for the waiver.

“(B) The procedures established under this paragraph shall ensure that the head of an agency, in consultation with the head of the Made in America Office established under section 70923(a), may limit the publication of classified information, trade secrets, or other information that could damage the United States.

“(4) Guidelines for Federal agencies to ensure that a project is not disaggregated for purposes of avoiding the applicability of the requirements under the Buy American Act.

“(5) An increase to the price preferences for domestic end products and domestic construction materials.

“(6) Amending the definitions of ‘domestic end product’ and ‘domestic construction material’ to ensure that iron and steel products are, to the greatest extent possible, made with domestic components.

“(b) GUIDELINES RELATING TO WAIVERS.—

“(1) INCONSISTENCY WITH PUBLIC INTEREST.—

“(A) IN GENERAL.—With respect to the guidelines developed under subsection (a)(1), the Administrator shall seek to minimize waivers related to contract awards that—

“(i) result in a decrease in employment in the United States, including employment among entities that manufacture the articles, materials, or supplies; or

“(ii) result in awarding a contract that would decrease domestic employment.

“(B) COVERED EMPLOYMENT.—For purposes of subparagraph (A), employment refers to positions directly involved in the manufacture of articles, materials, or supplies, and does not include positions related to management, research and development, or engineering and design.

“(2) ASSESSMENT ON USE OF DUMPED OR SUBSIDIZED FOREIGN PRODUCTS.—

“(A) IN GENERAL.—To the extent otherwise permitted by law, before granting a waiver in the public interest to the guidelines developed under subsection (a)(1) with respect to a product sourced from a foreign country, a Federal agency shall assess whether a significant portion of the cost advantage of the product is the result of the use of dumped steel, iron, or manufactured goods or the use of injuriously subsidized steel, iron, or manufactured goods.

“(B) CONSULTATION.—The Federal agency conducting the assessment under subparagraph (A) shall consult with the International Trade Administration in making the assessment if the agency considers such consultation to be helpful.

“(C) USE OF FINDINGS.—The Federal agency conducting the assessment under subparagraph (A) shall integrate any findings from the assessment into its waiver determination.

“(c) SENSE OF CONGRESS ON INCREASING DOMESTIC CONTENT REQUIREMENTS.—It is the sense of Congress that the Federal Acquisition Regulatory Council should amend the Federal Acquisition Regulation to increase the domestic content requirements for domestic end products and domestic construction material to 75 percent, or, in the event of no qualifying offers, 60 percent.

“(d) DEFINITION OF END PRODUCT MANUFACTURED IN THE UNITED STATES.—Not later than 1 year after the date of the enactment of this Act [Nov. 15, 2021], the Federal Acquisition Regulatory Council shall amend part 25 of the Federal Acquisition Regulation to provide a definition for ‘end product manufactured in the United States,’ including guidelines to ensure that manufacturing processes involved in production of the end product occur domestically.

“SEC. 70922. AMENDMENTS RELATING TO BUY AMERICAN ACT.

“(a) SPECIAL RULES RELATING TO AMERICAN MATERIALS REQUIRED FOR PUBLIC USE.—[Amended section 8302 of this title.]

“(b) PRODUCTION OF IRON AND STEEL FOR PURPOSES OF CONTRACTS FOR PUBLIC WORKS.—[Amended section 8303 of this title.]

“(c) ANNUAL REPORT.—[Amended section 8302 of this title.]

“(d) DEFINITION.—[Amended this section.]

“(e) CONFORMING AMENDMENTS.—[Amended sections 8302 and 8303 of this title.]

“(f) EXCLUSION FROM INFLATION ADJUSTMENT OF ACQUISITION-RELATED DOLLAR THRESHOLDS.—[Amended section 1908 of this title.]

“SEC. 70923. MADE IN AMERICA OFFICE.

“(a) ESTABLISHMENT.—The Director of the Office of Management and Budget shall establish within the Office of Management and Budget an office to be known as the ‘Made in America Office’. The head of the office shall be appointed by the Director of the Office of Management and Budget (in this section referred to as the ‘Made in America Director’).

“(b) DUTIES.—The Made in America Director shall have the following duties:

“(1) Maximize and enforce compliance with domestic preference statutes.

“(2) Develop and implement procedures to review waiver requests or inapplicability requests related to domestic preference statutes.

“(3) Prepare the reports required under subsections (c) and (e).

“(4) Ensure that Federal contracting personnel, financial assistance personnel, and non-Federal recipients are regularly trained on obligations under the Buy American Act [this chapter] and other agency-specific domestic preference statutes.

“(5) Conduct the review of reciprocal defense agreements required under subsection (d).

“(6) Ensure that Federal agencies, Federal financial assistance recipients, and the Hollings Manufacturing Extension Partnership partner with each other to promote compliance with domestic preference statutes.

“(7) Support executive branch efforts to develop and sustain a domestic supply base to meet Federal procurement requirements.

“(c) OFFICE OF MANAGEMENT AND BUDGET REPORT.—Not later than 1 year after the date of the enactment of this Act [Nov. 15, 2021], the Director of the Office of Management and Budget, working through the Made in America Director, shall report to the relevant congressional committees on the extent to which, in each of the three fiscal years prior to the date of enactment of this Act, articles, materials, or supplies acquired by the Federal Government were mined, produced, or manufactured outside the United States. Such report shall include for each Federal agency the following:

“(1) A summary of total procurement funds expended on articles, materials, and supplies mined, produced, or manufactured—

- “(A) inside the United States;
- “(B) outside the United States; and
- “(C) outside the United States—

“(i) under each category of waiver under the Buy American Act;

“(ii) under each category of exception under such chapter; and

“(iii) for each country that mined, produced, or manufactured such articles, materials, and supplies.

“(2) For each fiscal year covered by the report—

“(A) the dollar value of any articles, materials, or supplies that were mined, produced, or manufactured outside the United States, in the aggregate and by country;

“(B) an itemized list of all waivers made under the Buy American Act with respect to articles, materials, or supplies, where available, and the country where such articles, materials, or supplies were mined, produced, or manufactured;

“(C) if any articles, materials, or supplies were acquired from entities that mine, produce, or manufacture such articles, materials, or supplies outside the United States due to an exception (that is not the micro-purchase threshold exception described under section 8302(a)(2)(C) of title 41, United States Code), the specific exception that was used to purchase such articles, materials, or supplies; and

“(D) if any articles, materials, or supplies were acquired from entities that mine, produce, or manufacture such articles, materials, or supplies outside the United States pursuant to a reciprocal defense procurement memorandum of understanding (as described in section 8304 of title 41, United States Code), or a trade agreement or least developed country designation described in subpart 25.400 of the Federal Acquisition Regulation, a citation to such memorandum of understanding, trade agreement, or designation.

“(3) A description of the methods used by each Federal agency to calculate the percentage domestic content of articles, materials, and supplies mined, produced, or manufactured in the United States.

“(d) REVIEW OF RECIPROCAL DEFENSE AGREEMENTS.—

“(1) REVIEW OF PROCESS.—Not later than 180 days after the date of the enactment of this Act, the Made in America Director shall review the Department of Defense’s use of reciprocal defense agreements to determine if domestic entities have equal and proportional access and report the findings of the review to the Director of the Office of Management and Budget, the Secretary of Defense, and the Secretary of State.

“(2) REVIEW OF RECIPROCAL PROCUREMENT MEMORANDA OF UNDERSTANDING.—The Made in America Director shall review reciprocal procurement memoranda of understanding entered into after the date of the enactment of this Act between the Department of Defense and its counterparts in foreign governments to assess whether domestic entities will have equal and proportional access under the memoranda of understanding and report the findings of the review to the Director of the Office of Management and Budget, the Secretary of Defense, and the Secretary of State.

“(e) REPORT ON USE OF MADE IN AMERICA LAWS.—The Made in America Director shall submit to the relevant congressional committees a summary of each report on the use of Made in America Laws received by the Made in America Director pursuant to section 11 of Executive Order 14005, dated January 25, 2021 (relating to ensuring the future is made in all of America by all of America’s workers) [set out below] not later than 90 days after the date of the enactment of this Act or receipt of the reports required under section 11 of such Executive Order, whichever is later.

“(f) DOMESTIC PREFERENCE STATUTE DEFINED.—In this section, the term ‘domestic preference statute’ means any of the following:

“(1) the Buy American Act;

“(2) a Buy American law (as that term is defined in section 70916(a));

“(3) the Berry Amendment [10 U.S.C. 4862];

“(4) section 604 of the American Recovery and Reinvestment Act of 2009 (6 U.S.C. 453b) (commonly referred to as the ‘Kissell amendment’);

“(5) section 4863 of title 10 (commonly referred to as the ‘specialty metals clause’);

“(6) laws requiring domestic preference for maritime transport, including the Merchant Marine Act, 1920 (Public Law 66-261), commonly known as the ‘Jones Act’ [act June 5, 1920, ch. 250, see Tables for classification and Disposition Table preceding section 101 of Title 46, Shipping]; and

“(7) any other law, regulation, rule, or executive order relating to Federal financial assistance awards or Federal procurement, that requires, or provides a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, construction material, and manufactured goods offered in the United States.

“SEC. 70924. HOLLINGS MANUFACTURING EXTENSION PARTNERSHIP ACTIVITIES.

“(a) USE OF HOLLINGS MANUFACTURING EXTENSION PARTNERSHIP TO REFER NEW BUSINESSES TO CONTRACTING OPPORTUNITIES.—The head of each Federal agency shall work with the Director of the Hollings Manufacturing Extension Partnership, as necessary, to ensure businesses participating in this Partnership are aware of their contracting opportunities.

“(b) AUTOMATIC ENROLLMENT IN GSA ADVANTAGE.—The Administrator of the General Services Administration and the Secretary of Commerce, acting through the Under Secretary of Commerce for Standards and Technology, shall jointly ensure that businesses that participate in the Hollings Manufacturing Extension Partnership, and so desire, are automatically enrolled in General Services Administration Advantage.

“SEC. 70925. UNITED STATES OBLIGATIONS UNDER INTERNATIONAL AGREEMENTS.

“‘This part, and the amendments made by this part, shall be applied in a manner consistent with United States obligations under international agreements.

“SEC. 70926. DEFINITIONS.

“‘In this part:

“(1) BERRY AMENDMENT.—The term ‘Berry Amendment’ means section 4862 of title 10, United States Code.

“(2) BUY AMERICAN ACT.—The term ‘Buy American Act’ means chapter 83 of title 41, United States Code.

“(3) FEDERAL AGENCY.—The term ‘Federal agency’ has the meaning given the term ‘executive agency’ in section 133 of title 41, United States Code.

“(4) RELEVANT CONGRESSIONAL COMMITTEES.—The term ‘relevant congressional committees’ means—

“(A) the Committee on Homeland Security and Governmental Affairs, the Committee on Commerce, Science, and Transportation, the Committee on Environment and Public Works, the Committee on Banking, Housing, and Urban Affairs, and the Committee on Armed Services of the Senate; and

“(B) the Committee on Oversight and Reform, the Committee on Armed Services, and the Committee on Transportation and Infrastructure of the House of Representatives.

“(5) WAIVER.—The term ‘waiver’, with respect to the acquisition of an article, material, or supply for public use, means the inapplicability of chapter 83 of title 41, United States Code, to the acquisition by reason of any of the following determinations under section 8302(a)(1) or 8303(b) of such title:

“(A) A determination by the head of the Federal agency concerned that the acquisition is inconsistent with the public interest.

“(B) A determination by the head of the Federal agency concerned that the cost of the acquisition is unreasonable.

“(C) A determination by the head of the Federal agency concerned that the article, material, or supply is not mined, produced, or manufactured in the

United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

“SEC. 70927. PROSPECTIVE AMENDMENTS TO INTERNAL CROSS-REFERENCES.

“(a) SPECIALTY METALS CLAUSE REFERENCE.—Section 70923(f)(5) is amended by striking ‘section 2533b’ and inserting ‘section 4863’.

“(b) BERRY AMENDMENT REFERENCE.—Section 70926(1) is amended by striking ‘section 2533a’ and inserting ‘section 4862’.

“(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 2022.

“Subtitle B—BuyAmerican.gov

“SEC. 70931. SHORT TITLE.

“This subtitle may be cited as the ‘BuyAmerican.gov Act of 2021’.

“SEC. 70932. DEFINITIONS.

“In this subtitle:

“(1) BUY AMERICAN LAW.—The term ‘Buy American law’ means any law, regulation, Executive order, or rule relating to Federal contracts, grants, or financial assistance that requires or provides a preference for the purchase or use of goods, products, or materials mined, produced, or manufactured in the United States, including—

“(A) chapter 83 of title 41, United States Code (commonly referred to as the ‘Buy American Act’);

“(B) section 5323(j) of title 49, United States Code;

“(C) section 313 of title 23, United States Code;

“(D) section 50101 of title 49, United States Code;

“(E) section 24405 of title 49, United States Code;

“(F) section 608 of the Federal Water Pollution Control Act (33 U.S.C. 1388);

“(G) section 1452(a)(4) of the Safe Drinking Water Act (42 U.S.C. 300j-12(a)(4));

“(H) section 5035 of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 3914);

“(I) section 4862 of title 10, United States Code (commonly referred to as the ‘Berry Amendment’); and

“(J) section 4863 of title 10, United States Code.

“(2) EXECUTIVE AGENCY.—The term ‘executive agency’ has the meaning given the term ‘agency’ in paragraph (1) of section 3502 of title 44, United States Code, except that it does not include an independent regulatory agency, as that term is defined in paragraph (5) of such section.

“(3) BUY AMERICAN WAIVER.—The term ‘Buy American waiver’ refers to an exception to or waiver of any Buy American law, or the terms and conditions used by an agency in granting an exception to or waiver from Buy American laws.

“SEC. 70933. SENSE OF CONGRESS ON BUYING AMERICAN.

“It is the sense of Congress that—

“(1) every executive agency should maximize, through terms and conditions of Federal financial assistance awards and Federal procurements, the use of goods, products, and materials produced in the United States and contracts for outsourced government service contracts to be performed by United States nationals;

“(2) every executive agency should scrupulously monitor, enforce, and comply with Buy American laws, to the extent they apply, and minimize the use of waivers; and

“(3) every executive agency should use available data to routinely audit its compliance with Buy American laws.

“SEC. 70934. ASSESSMENT OF IMPACT OF FREE TRADE AGREEMENTS.

“Not later than 150 days after the date of the enactment of this Act [Nov. 15, 2021], the Secretary of Commerce, the United States Trade Representative, and the Director of the Office of Management and Budget shall assess the impacts in a publicly available report of all

United States free trade agreements, the World Trade Organization Agreement on Government Procurement, and Federal permitting processes on the operation of Buy American laws, including their impacts on the implementation of domestic procurement preferences.

“SEC. 70935. JUDICIOUS USE OF WAIVERS.

“(a) IN GENERAL.—To the extent permitted by law, a Buy American waiver that is determined by an agency head or other relevant official to be in the public interest shall be construed to ensure the maximum utilization of goods, products, and materials produced in the United States.

“(b) PUBLIC INTEREST WAIVER DETERMINATIONS.—To the extent permitted by law, determination of public interest waivers shall be made by the head of the agency with the authority over the Federal financial assistance award or Federal procurement under consideration.

“SEC. 70936. ESTABLISHMENT OF BUYAMERICAN.GOV WEBSITE.

“(a) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Nov. 15, 2021], the Administrator of General Services shall establish an Internet website with the address BuyAmerican.gov that will be publicly available and free to access. The website shall include information on all waivers of and exceptions to Buy American laws since the date of the enactment of this Act that have been requested, are under consideration, or have been granted by executive agencies and be designed to enable manufacturers and other interested parties to easily identify waivers. The website shall also include the results of routine audits to determine data errors and Buy American law violations after the award of a contract. The website shall provide publicly available contact information for the relevant contracting agencies.

“(b) UTILIZATION OF EXISTING WEBSITE.—The requirements of subsection (a) may be met by utilizing an existing website, provided that the address of that website is BuyAmerican.gov.

“SEC. 70937. WAIVER TRANSPARENCY AND STREAMLINING FOR CONTRACTS.

“(a) COLLECTION OF INFORMATION.—The Administrator of General Services, in consultation with the heads of relevant agencies, shall develop a mechanism to collect information on requests to invoke a Buy American waiver for a Federal contract, utilizing existing reporting requirements whenever possible, for purposes of providing early notice of possible waivers via the website established under section 70936.

“(b) WAIVER TRANSPARENCY AND STREAMLINING.—

“(1) REQUIREMENT.—Prior to granting a request to waive a Buy American law, the head of an executive agency shall submit a request to invoke a Buy American waiver to the Administrator of General Services, and the Administrator of General Services shall make the request available on or through the public website established under section 70936 for public comment for not less than 15 days.

“(2) EXCEPTION.—The requirement under paragraph (1) does not apply to a request for a Buy American waiver to satisfy an urgent contracting need in an unforeseen and exigent circumstance.

“(c) INFORMATION AVAILABLE TO THE EXECUTIVE AGENCY CONCERNING THE REQUEST.—

“(1) REQUIREMENT.—No Buy American waiver for purposes of awarding a contract may be granted if, in contravention of subsection (b)—

“(A) information about the waiver was not made available on the website under section 70936; or

“(B) no opportunity for public comment concerning the request was granted.

“(2) SCOPE.—Information made available to the public concerning the request included on the website described in section 70936 shall properly and adequately document and justify the statutory basis cited for the requested waiver. Such information shall include—

“(A) a detailed justification for the use of goods, products, or materials mined, produced, or manufactured outside the United States;

“(B) for requests citing unreasonable cost as the statutory basis of the waiver, a comparison of the cost of the domestic product to the cost of the foreign product or a comparison of the overall cost of the project with domestic products to the overall cost of the project with foreign-origin products or services, pursuant to the requirements of the applicable Buy American law, except that publicly available cost comparison data may be provided in lieu of proprietary pricing information;

“(C) for requests citing the public interest as the statutory basis for the waiver, a detailed written statement, which shall include all appropriate factors, such as potential obligations under international agreements, justifying why the requested waiver is in the public interest; and

“(D) a certification that the procurement official or assistance recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.

“(d) NONAVAILABILITY WAIVERS.—

“(1) IN GENERAL.—Except as provided under paragraph (2), for a request citing nonavailability as the statutory basis for a Buy American waiver, an executive agency shall provide an explanation of the procurement official’s efforts to procure a product from a domestic source and the reasons why a domestic product was not available from a domestic source. Those explanations shall be made available on BuyAmerican.gov prior to the issuance of the waiver, and the agency shall consider public comments regarding the availability of the product before making a final determination.

“(2) EXCEPTION.—An explanation under paragraph (1) is not required for a product the nonavailability of which is established by law or regulation.

“SEC. 70938. COMPTROLLER GENERAL REPORT.

“Not later than two years after the date of the enactment of this Act [Nov. 15, 2021], the Comptroller General of the United States shall submit to Congress a report describing the implementation of this subtitle, including recommendations for any legislation to improve the collection and reporting of information regarding waivers of and exceptions to Buy American laws.

“SEC. 70939. RULES OF CONSTRUCTION.

“(a) DISCLOSURE REQUIREMENTS.—Nothing in this subtitle shall be construed as preempting, superseding, or otherwise affecting the application of any disclosure requirement or requirements otherwise provided by law or regulation.

“(b) ESTABLISHMENT OF SUCCESSOR INFORMATION SYSTEMS.—Nothing in this subtitle shall be construed as preventing or otherwise limiting the ability of the Administrator of General Services to move the data required to be included on the website established under subsection (a) to a successor information system. Any such information system shall include a reference to BuyAmerican.gov.

“SEC. 70940. CONSISTENCY WITH INTERNATIONAL AGREEMENTS.

“This subtitle shall be applied in a manner consistent with United States obligations under international agreements.

“SEC. 70941. PROSPECTIVE AMENDMENTS TO INTERNATIONAL CROSS-REFERENCES.

“(a) IN GENERAL.—Section 70932(1) is amended—

“(1) in subparagraph (I), by striking ‘section 2533a’ and inserting ‘section 4862’; and

“(2) in subparagraph (J), by striking ‘section 2533b’ and inserting ‘section 4863’.

“(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on January 1, 2022.

“Subtitle C—Make PPE in America

“SEC. 70951. SHORT TITLE.

“This subtitle may be cited as the ‘Make PPE in America Act’.

“SEC. 70952. FINDINGS.

“Congress makes the following findings:

“(1) The COVID-19 pandemic has exposed the vulnerability of the United States supply chains for, and lack of domestic production of, personal protective equipment (PPE).

“(2) The United States requires a robust, secure, and wholly domestic PPE supply chain to safeguard public health and national security.

“(3) Issuing a strategy that provides the government’s anticipated needs over the next three years will enable suppliers to assess what changes, if any, are needed in their manufacturing capacity to meet expected demands.

“(4) In order to foster a domestic PPE supply chain, United States industry needs a strong and consistent demand signal from the Federal Government providing the necessary certainty to expand production capacity investment in the United States.

“(5) In order to effectively incentivize investment in the United States and the re-shoring of manufacturing, long-term contracts must be no shorter than three years in duration.

“(6) To accomplish this aim, the United States should seek to ensure compliance with its international obligations, such as its commitments under the World Trade Organization’s Agreement on Government Procurement and its free trade agreements, including by invoking any relevant exceptions to those agreements, especially those related to national security and public health.

“(7) The United States needs a long-term investment strategy for the domestic production of PPE items critical to the United States national response to a public health crisis, including the COVID-19 pandemic.

“SEC. 70953. REQUIREMENT OF LONG-TERM CONTRACTS FOR DOMESTICALLY MANUFACTURED PERSONAL PROTECTIVE EQUIPMENT.

“(a) DEFINITIONS.—In this section:

“(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means—

“(A) the Committee on Homeland Security and Governmental Affairs, the Committee on Health, Education, Labor, and Pensions, the Committee on Finance, and the Committee on Veterans’ Affairs of the Senate; and

“(B) the Committee on Homeland Security, the Committee on Oversight and Reform, the Committee on Energy and Commerce, the Committee on Ways and Means, and the Committee on Veterans’ Affairs of the House of Representatives.

“(2) COVERED SECRETARY.—The term ‘covered Secretary’ means the Secretary of Homeland Security, the Secretary of Health and Human Services, and the Secretary of Veterans Affairs.

“(3) PERSONAL PROTECTIVE EQUIPMENT.—The term ‘personal protective equipment’ means surgical masks, respirator masks and powered air purifying respirators and required filters, face shields and protective eyewear, gloves, disposable and reusable surgical and isolation gowns, head and foot coverings, and other gear or clothing used to protect an individual from the transmission of disease.

“(4) UNITED STATES.—The term ‘United States’ means the 50 States, the District of Columbia, and the possessions of the United States.

“(b) CONTRACT REQUIREMENTS FOR DOMESTIC PRODUCTION.—Beginning 90 days after the date of the enactment of this Act [Nov. 15, 2021], in order to ensure the sustainment and expansion of personal protective equipment manufacturing in the United States and meet the needs of the current pandemic response, any contract for the procurement of personal protective

equipment entered into by a covered Secretary, or a covered Secretary's designee, shall—

“(1) be issued for a duration of at least 2 years, plus all option periods necessary, to incentivize investment in the production of personal protective equipment and the materials and components thereof in the United States; and

“(2) be for personal protective equipment, including the materials and components thereof, that is grown, reprocessed, reused, or produced in the United States.

“(c) ALTERNATIVES TO DOMESTIC PRODUCTION.—The requirement under subsection (b) shall not apply to an item of personal protective equipment, or component or material thereof if, after maximizing to the extent feasible sources consistent with subsection (b), the covered Secretary—

“(1) maximizes sources for personal protective equipment that is assembled outside the United States containing only materials and components that are grown, reprocessed, reused, or produced in the United States; and

“(2) certifies every 120 days that it is necessary to procure personal protective equipment under alternative procedures to respond to the immediate needs of a public health emergency.

“(d) AVAILABILITY EXCEPTION.—

“(1) IN GENERAL.—Subsections (b) and (c) shall not apply to an item of personal protective equipment, or component or material thereof—

“(A) that is, or that includes, a material listed in section 25.104 of the Federal Acquisition Regulation as one for which a non-availability determination has been made; or

“(B) as to which the covered Secretary determines that a sufficient quantity of a satisfactory quality that is grown, reprocessed, reused, or produced in the United States cannot be procured as, and when, needed at United States market prices.

“(2) CERTIFICATION REQUIREMENT.—The covered Secretary shall certify every 120 days that the exception under paragraph (1) is necessary to meet the immediate needs of a public health emergency.

“(e) REPORT.—

“(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Director of the Office of Management and Budget, in consultation with the covered Secretaries, shall submit to the chairs and ranking members of the appropriate congressional committees a report on the procurement of personal protective equipment.

“(2) ELEMENTS.—The report required under paragraph (1) shall include the following elements:

“(A) The United States long-term domestic procurement strategy for PPE produced in the United States, including strategies to incentivize investment in and maintain United States supply chains for all PPE sufficient to meet the needs of the United States during a public health emergency.

“(B) An estimate of long-term demand quantities for all PPE items procured by the United States.

“(C) Recommendations for congressional action required to implement the United States Government's procurement strategy.

“(D) A determination whether all notifications, amendments, and other necessary actions have been completed to bring the United States existing international obligations into conformity with the statutory requirements of this subtitle.

“(f) AUTHORIZATION OF TRANSFER OF EQUIPMENT.—

“(1) IN GENERAL.—A covered Secretary may transfer to the Strategic National Stockpile established under section 319F-2 of the Public Health Service Act (42 U.S.C. 247d-6b) any excess personal protective equipment acquired under a contract executed pursuant to subsection (b).

“(2) TRANSFER OF EQUIPMENT DURING A PUBLIC HEALTH EMERGENCY.—

“(A) AMENDMENT.—[Enacted section 321r of Title 6, Domestic Security.]

“(3) STRATEGIC NATIONAL STOCKPILE.—[Amended section 247d-6b of Title 42, The Public Health and Welfare.]

“(g) COMPLIANCE WITH INTERNATIONAL AGREEMENTS.—The President or the President's designee shall take all necessary steps, including invoking the rights of the United States under Article III of the World Trade Organization's Agreement on Government Procurement and the relevant exceptions of other relevant agreements to which the United States is a party, to ensure that the international obligations of the United States are consistent with the provisions of this subtitle.”

IMPLEMENTATION OF BUY AMERICAN ACT WITH RESPECT TO CERTAIN WATER RESOURCE PROJECTS

Pub. L. 100-371, title V, §508, July 19, 1988, 102 Stat. 875, provided that:

“(a) GENERAL RULE.—For purposes of title III of the Act of March 3, 1933 (47 Stat. 1520; [former] 41 U.S.C. 10a-10c) [see 41 U.S.C. 8301 et seq.], commonly known as the Buy American Act, a cofferdam or any other temporary structure to be constructed by the Secretary of the Army, acting through the Chief of Engineers, shall be treated in the same manner as a permanent dam constructed by the Secretary of the Army.

“(b) APPLICABILITY.—Subsection (a) shall only apply to contracts entered into after the date of the enactment of this Act [July 19, 1988].”

Executive Documents

EXECUTIVE ORDER NO. 13788

Ex. Ord. No. 13788, Apr. 18, 2017, 82 F.R. 18837, as amended by Ex. Ord. No. 13858, §5, Jan. 31, 2019, 84 F.R. 2040, which related to Buy American and entry into the United States of workers from abroad, was revoked by Ex. Ord. No. 14005, §14(a), Jan. 25, 2021, 86 F.R. 7478, set out below.

EX. ORD. NO. 13858. STRENGTHENING BUY-AMERICAN PREFERENCES FOR INFRASTRUCTURE PROJECTS

Ex. Ord. No. 13858, Jan. 31, 2019, 84 F.R. 2039, as amended by Ex. Ord. No. 14005, §14(a), Jan. 25, 2021, 86 F.R. 7478, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to strengthen Buy-American principles in Federal financial assistance programs, it is hereby ordered as follows:

SECTION 1. *Policy.* As expressed in Executive Order 13788 of April 18, 2017 (Buy American and Hire American) [formerly set out above], it is the policy of the executive branch to maximize, consistent with law, the use of goods, products, and materials produced in the United States, in Federal procurements and through the terms and conditions of Federal financial assistance awards.

SEC. 2. *Definitions.* As used in this order:

(a) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(b) “Federal financial assistance” shall have the meaning and shall be interpreted consistent with the definition provided by the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, found at section 200.40 of title 2, Code of Federal Regulations.

(c) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(d) “Infrastructure project” means a project to develop public or private physical assets that are designed to provide or support services to the general public in the following sectors: surface transportation, including roadways, bridges, railroads, and transit; aviation; ports, including navigational channels; water resources projects; energy production, generation, and

storage, including from fossil-fuels, renewable, nuclear, and hydroelectric sources; electricity transmission; gas, oil, and propane storage and transmission; electric, oil, natural gas, and propane distribution systems; broadband internet; pipelines; stormwater and sewer infrastructure; drinking water infrastructure; cybersecurity; and any other sector designated through a notice published in the Federal Register by the Federal Permitting Improvement Steering Council.

(e) “Covered program” means any program for which a focus of the statutory authorities under which it is administered is the award of Federal financial assistance for the alteration, construction, conversion, demolition, extension, improvement, maintenance, reconstruction, rehabilitation, or repair of an infrastructure project in the United States, except that this term shall not include:

(i) programs for which providing a domestic preference is inconsistent with law; or

(ii) programs providing Federal financial assistance that are subject to comparable domestic preferences.

(f) “Domestic Preference” means a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States, including iron and aluminum as well as steel, cement, and other manufactured products.

SEC. 3. *Application of Buy-American Principles to Covered Programs.* (a) Within 90 days of the date of this order [Jan. 31, 2019], the head of each executive department and agency (agency) administering a covered program shall, as appropriate and to the extent consistent with law, encourage recipients of new Federal financial assistance awards pursuant to a covered program to use, to the greatest extent practicable, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in every contract, subcontract, purchase order, or sub-award that is chargeable against such Federal financial assistance award.

(b) The head of each agency administering a covered program shall include in the report required by section 4 of this order a detailed explanation of the strategy, plan, or program developed to satisfy the requirement of subsection (a) of this section.

SEC. 4. *Identification of Opportunities to Maximize the Use of Buy-American Principles.* Within 120 days of the date of this order, the head of each agency administering a covered program shall identify in a report to the President, through the Assistant to the President for Trade and Manufacturing Policy, any tools, techniques, terms, or conditions that have been used or could be used, consistent with law and in furtherance of the policy set forth in section 1 of this order, to maximize the use of iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in contracts, sub-contracts, purchase orders, or sub-awards that are chargeable against Federal financial assistance awards for infrastructure projects. In preparing this report, the agency head shall take care to analyze whether covered programs within the agency head’s jurisdiction would support, through terms and conditions on new Federal financial assistance awards under such covered programs, the imposition of a requirement to use iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in contracts, sub-contracts, purchase orders, or sub-awards that are chargeable against such Federal financial assistance awards.

SEC. 5. [Amended Ex. Ord. No. 13788, set out above; revoked by Ex. Ord. No. 14005, § 14(a), Jan. 25, 2021, 86 F.R. 7478.]

SEC. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof;

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals; or

(iii) existing rights or obligations under international agreements.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

EX. ORD. NO. 13881. MAXIMIZING USE OF AMERICAN-MADE GOODS, PRODUCTS, AND MATERIALS

Ex. Ord. No. 13881, July 15, 2019, 84 F.R. 34257, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to promote the principles underlying the Buy American Act of 1933 (41 U.S.C. 8301–8305), it is hereby ordered as follows:

SECTION 1. *Policy.* (a) As expressed in Executive Order 13788 of April 18, 2017 (Buy American and Hire American) [set out above], and in Executive Order 13858 of January 31, 2019 (Strengthening Buy-American Preferences for Infrastructure Projects) [set out above], it is the policy of the United States to buy American and to maximize, consistent with law, the use of goods, products, and materials produced in the United States. To those ends, my Administration shall enforce the Buy American Act to the greatest extent permitted by law.

(b) In Executive Order 10582 of December 17, 1954 (Prescribing Uniform Procedures for Certain Determinations Under the Buy-American Act) [41 U.S.C. 8303 note], President Eisenhower established that materials shall be, for purposes of the Buy American Act, considered of foreign origin if the cost of the foreign products used in such materials constitutes 50 percent or more of the cost of all the products used in such materials. He also established that, in determining whether the bid or offered price of materials of domestic origin is unreasonable or inconsistent with the public interest, the executive agencies shall either (1) add 6 percent to the total bid or offered price of materials of foreign origin, or (2) add 10 percent to the total bid or offered price of materials of foreign origin less certain specified costs as follows. Where the foreign bid or offer is less than \$25,000, applicable duty is excluded from the calculation. Where the foreign bid or offer is more than \$25,000, both applicable duty, and all costs incurred after arrival in the United States, are excluded from the calculation.

(c) The policies described in section 1(b) of this order were adopted by the Federal Acquisition Regulatory Council (FAR Council) in the Federal Acquisition Regulation (FAR), title 48, Code of Federal Regulations. The FAR should be reviewed and revised, as appropriate, to most effectively carry out the goals of the Buy American Act and my Administration’s policy of enforcing the Buy American Act to its maximum lawful extent. I therefore direct the members of the FAR Council to consider measures that may better effectuate this policy.

SEC. 2. *Proposed Rules.* (a) Within 180 days of the date of this order [July 15, 2019], the FAR Council shall consider proposing for notice and public comment:

(i) an amendment to the applicable provisions in the FAR that would provide that materials shall be considered to be of foreign origin if:

(A) for iron and steel end products, the cost of foreign iron and steel used in such iron and steel end products constitutes 5 percent or more of the cost of all the products used in such iron and steel end products; or

(B) for all other end products, the cost of the foreign products used in such end products constitutes 45 percent or more of the cost of all the products used in such end products; and

(ii) an amendment to the applicable provisions in the FAR that would provide that the executive agency concerned shall in each instance conduct the reasonableness and public interest determination referred to in

sections 8302 and 8303 of title 41, United States Code, on the basis of the following-described differential formula, subject to the terms thereof: the sum determined by computing 20 percent (for other than small businesses), or 30 percent (for small businesses), of the offer or offered price of materials of foreign origin.

(b) The FAR Council shall consider and evaluate public comments on any regulations proposed pursuant to section 2(a) of this order and shall promptly issue a final rule, if appropriate and consistent with applicable law and the national security interests of the United States. The head of each executive agency shall issue such regulations as may be necessary to ensure that agency procurement practices conform to the provisions of any final rule issued pursuant to this order.

SEC. 3. *Effect on Executive Order 10582.* Executive Order 10582 is superseded to the extent that it is inconsistent with this order. Upon the issuance of a final rule pursuant to section 2 of this order, subsections 2(a) and 2(c) of Executive Order 10582 are revoked.

SEC. 4. *Additional Actions.* Within 180 days of the date of this order, the Secretary of Commerce and the Director of the Office of Management and Budget shall, in consultation with the FAR Council, the Chairman of the Council of Economic Advisers, the Assistant to the President for Economic Policy, and the Assistant to the President for Trade and Manufacturing Policy, submit to the President a report on any other changes to the FAR that the FAR Council should consider in order to better enforce the Buy American Act and to otherwise act consistent with the policy described in section 1 of this order, including whether and when to further decrease, including incrementally, the threshold percentage in subsection 2(a)(i)(B) of this order from the proposed 45 percent to 25 percent. The report shall include recommendations based on the feasibility and desirability of any decreases, including the timing of such decreases.

SEC. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof, including, for example, the authority to utilize non-availability and public interest exceptions as delineated in section 8303 of title 41, United States Code, and 48 CFR 25.103; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

[Ex. Ord. No. 13881, set out above, superseded to the extent it is inconsistent with Ex. Ord. No. 14005, see section 14(b) of Ex. Ord. No. 14005, Jan. 25, 2021, 86 F.R. 7478, set out below.]

EX. ORD. NO. 14005. ENSURING THE FUTURE IS MADE IN ALL OF AMERICA BY ALL OF AMERICA'S WORKERS

Ex. Ord. No. 14005, Jan. 25, 2021, 86 F.R. 7475, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Policy.* It is the policy of my Administration that the United States Government should, consistent with applicable law, use terms and conditions of Federal financial assistance awards and Federal procurements to maximize the use of goods, products, and materials produced in, and services offered in, the United States. The United States Government should, whenever possible, procure goods, products, materials, and services from sources that will help American businesses compete in strategic industries and help America's workers thrive. Additionally, to promote an ac-

countable and transparent procurement policy, each agency should vest waiver issuance authority in senior agency leadership, where appropriate and consistent with applicable law.

SEC. 2. *Definitions.* (a) "Agency" means any authority of the United States that is an "agency" under section 3502(1) of title 44, United States Code, other than those considered to be independent regulatory agencies, as defined in section 3502(5) of title 44, United States Code.

(b) "Made in America Laws" means all statutes, regulations, rules, and Executive Orders relating to Federal financial assistance awards or Federal procurement, including those that refer to "Buy America" or "Buy American," that require, or provide a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, and manufactured goods offered in the United States. Made in America Laws include laws requiring domestic preference for maritime transport, including the Merchant Marine Act of 1920 (Public Law 66-261) [41 Stat. 988], also known as the Jones Act.

(c) "Waiver" means an exception from or waiver of Made in America Laws, or the procedures and conditions used by an agency in granting an exception from or waiver of Made in America Laws.

SEC. 3. *Review of Agency Action Inconsistent with Administration Policy.* (a) The head of each agency shall, as soon as practicable and as appropriate and consistent with applicable law, including the Administrative Procedure Act [see 5 U.S.C. 551 et seq., 701 et seq.], consider suspending, revising, or rescinding those agency actions that are inconsistent with the policy set forth in section 1 of this order.

(b) The head of each agency shall, as soon as practicable and as appropriate and consistent with applicable law, including the Administrative Procedure Act, consider proposing any additional agency actions necessary to enforce the policy set forth in section 1 of this order.

SEC. 4. *Updating and Centralizing the Made in America Waiver Process.* (a) The Director of the Office of Management and Budget (OMB) shall establish within OMB the Made in America Office. The Made in America Office shall be headed by a Director of the Made in America Office (Made in America Director), who shall be appointed by the Director of OMB.

(b) Before an agency grants a waiver, and unless the OMB Director provides otherwise, the agency (granting agency) shall provide the Made in America Director with a description of its proposed waiver and a detailed justification for the use of goods, products, or materials that have not been mined, produced, or manufactured in the United States.

(i) Within 45 days of the date of the appointment of the Made in America Director, and as appropriate thereafter, the Director of OMB, through the Made in America Director, shall:

(1) publish a list of the information that granting agencies shall include when submitting such descriptions of proposed waivers and justifications to the Made in America Director; and

(2) publish a deadline, not to exceed 15 business days, by which the Director of OMB, through the Made in America Director, either will notify the head of the agency that the Director of OMB, through the Made in America Director, has waived each review described in subsection (c) of this section or will notify the head of the agency in writing of the result of the review.

(ii) To the extent permitted by law and consistent with national security and executive branch confidentiality interests, descriptions of proposed waivers and justifications submitted to the Made in America Director by granting agencies shall be made publicly available on the website established pursuant to section 6 of this order.

(c) The Director of OMB, through the Made in America Director, shall review each proposed waiver submitted pursuant to subsection (b) of this section, except where such review has been waived as described in subsection (b)(i)(2) of this section.

(i) If the Director of OMB, through the Made in America Director, determines that issuing the proposed waiver would be consistent with applicable law and the policy set forth in section 1 of this order, the Director of OMB, through the Made in America Director, shall notify the granting agency of that determination in writing.

(ii) If the Director of OMB, through the Made in America Director, determines that issuing the proposed waiver would not be consistent with applicable law or the policy set forth in section 1 of this order, the Director of OMB, through the Made in America Director, shall notify the granting agency of the determination and shall return the proposed waiver to the head of the agency for further consideration, providing the granting agency with a written explanation for the determination.

(1) If the head of the agency disagrees with some or all of the bases for the determination and return, the head of the agency shall so inform the Made in America Director in writing.

(2) To the extent permitted by law, disagreements or conflicts between the Made in America Director and the head of any agency shall be resolved in accordance with procedures that parallel those set forth in section 7 of Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review) [5 U.S.C. 601 note], with respect to the Director of the Office of Information and Regulatory Affairs within OMB.

(d) When a granting agency is obligated by law to act more quickly than the review procedures established in this section allow, the head of the agency shall notify the Made in America Director as soon as possible and, to the extent practicable, comply with the requirements set forth in this section. Nothing in this section shall be construed as displacing agencies' authorities or responsibilities under law.

SEC. 5. Accounting for Sources of Cost Advantage. To the extent permitted by law, before granting a waiver in the public interest, the relevant granting agency shall assess whether a significant portion of the cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured goods or the use of injuriously subsidized steel, iron, or manufactured goods. The granting agency may consult with the International Trade Administration in making this assessment if the granting agency deems such consultation to be helpful. The granting agency shall integrate any findings from the assessment into its waiver determination as appropriate.

SEC. 6. Promoting Transparency in Federal Procurement. (a) The Administrator of General Services shall develop a public website that shall include information on all proposed waivers and whether those waivers have been granted. The website shall be designed to enable manufacturers and other interested parties to easily identify proposed waivers and whether those waivers have been granted. The website shall also provide publicly available contact information for each granting agency.

(b) The Director of OMB, through the Made in America Director, shall promptly report to the Administrator of General Services all proposed waivers, along with the associated descriptions and justifications discussed in section 4(b) of this order, and whether those waivers have been granted. Not later than 5 days after receiving this information, the Administrator of General Services shall, to the extent permitted by law and consistent with national security and executive branch confidentiality interests, make this information available to the public by posting it on the website established under this section.

SEC. 7. Supplier Scouting. To the extent appropriate and consistent with applicable law, agencies shall partner with the Hollings Manufacturing Extension Partnership (MEP), discussed in the Manufacturing Extension Partnership Improvement Act (title V of Public Law 114-329) [see 15 U.S.C. 278k], to conduct supplier scouting in order to identify American companies, including small- and medium-sized companies, that are able to produce goods, products, and materials in the United States that meet Federal procurement needs.

SEC. 8. Promoting Enforcement of the Buy American Act of 1933. (a) Within 180 days of the date of this order [Jan. 25, 2021], the Federal Acquisition Regulatory Council (FAR Council) shall consider proposing for notice and public comment amendments to the applicable provisions in the Federal Acquisition Regulation (FAR), title 48, Code of Federal Regulations, consistent with applicable law, that would:

(i) replace the "component test" in Part 25 of the FAR that is used to identify domestic end products and domestic construction materials with a test under which domestic content is measured by the value that is added to the product through U.S.-based production or U.S. job-supporting economic activity;

(ii) increase the numerical threshold for domestic content requirements for end products and construction materials; and

(iii) increase the price preferences for domestic end products and domestic construction materials.

(b) The FAR Council shall consider and evaluate public comments on any regulations proposed pursuant to subsection (a) of this section and shall promptly issue a final rule, if appropriate and consistent with applicable law and the national security interests of the United States.

SEC. 9. Updates to the List of Nonavailable Articles. Before the FAR Council proposes any amendment to the FAR to update the list of domestically nonavailable articles at section 25.104(a) of the FAR, the Director of OMB, through the Administrator of the Office of Federal Procurement Policy (OFPP), shall review the amendment in consultation with the Secretary of Commerce and the Made in America Director, paying particular attention to economic analyses of relevant markets and available market research, to determine whether there is a reasonable basis to conclude that the article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. The Director of OMB, through the Administrator of OFPP, shall make these findings available to the FAR Council for consideration.

SEC. 10. Report on Information Technology That Is a Commercial Item. The FAR Council shall promptly review existing constraints on the extension of the requirements in Made in America Laws to information technology that is a commercial item and shall develop recommendations for lifting these constraints to further promote the policy set forth in section 1 of this order, as appropriate and consistent with applicable law.

SEC. 11. Report on Use of Made in America Laws. Within 180 days of the date of this order, the head of each agency shall submit to the Made in America Director a report on:

(a) the agency's implementation of, and compliance with, Made in America Laws;

(b) the agency's ongoing use of any longstanding or nationwide waivers of any Made in America Laws, with a written description of the consistency of such waivers with the policy set forth in section 1 of this order; and

(c) recommendations for how to further effectuate the policy set forth in section 1 of this order.

SEC. 12. Bi-Annual Report on Made in America Laws. Bi-annually following the initial submission described in section 11 of this order, the head of each agency shall submit to the Made in America Director a report on:

(a) the agency's ongoing implementation of, and compliance with, Made in America Laws;

(b) the agency's analysis of goods, products, materials, and services not subject to Made in America Laws or where requirements of the Made in America Laws have been waived;

(c) the agency's analysis of spending as a result of waivers issued pursuant to [section 301 of] the Trade Agreements Act of 1979, as amended, 19 U.S.C. 2511, separated by country of origin; and

(d) recommendations for how to further effectuate the policy set forth in section 1 of this order.

SEC. 13. Ensuring Implementation of Administration Policy on Federal Government Property. Within 180 days of

the date of this order, the Administrator of General Services shall submit to the Made in America Director recommendations for ensuring that products offered to the general public on Federal property are procured in accordance with the policy set forth in section 1 of this order.

SEC. 14. *Revocation of Certain Presidential and Regulatory Actions.* (a) Executive Order 13788 of April 18, 2017 (Buy American and Hire American) [formerly set out above], section 5 of Executive Order 13858 of January 31, 2019 (Strengthening Buy-American Preferences for Infrastructure Projects) [set out above], and Executive Order 13975 of January 14, 2021 (Encouraging Buy American Policies for the United States Postal Service) [39 U.S.C. 401 note], are hereby revoked.

(b) Executive Order 10582 of December 17, 1954 (Prescribing Uniform Procedures for Certain Determinations Under the Buy-America Act) [41 U.S.C. 8303 note], and Executive Order 13881 of July 15, 2019 (Maximizing Use of American-Made Goods, Products, and Materials) [set out above], are superseded to the extent that they are inconsistent with this order.

SEC. 15. *Severability.* If any provision of this order, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of its other provisions to any other persons or circumstances shall not be affected thereby.

SEC. 16. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

J.R. BIDEN, JR.

§ 8302. American materials required for public use

(a) IN GENERAL.—

(1) ALLOWABLE MATERIALS.—Only unmanufactured articles, materials, and supplies that have been mined or produced in the United States, and only manufactured articles, materials, and supplies that have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States, shall be acquired for public use unless the head of the Federal agency concerned determines their acquisition to be inconsistent with the public interest, their cost to be unreasonable, or that the articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(2) EXCEPTIONS.—This section does not apply—

(A) to articles, materials, or supplies for use outside the United States;

(B) to any articles, materials, or supplies procured pursuant to a reciprocal defense procurement memorandum of understanding

(as described in section 8304 of this title), or a trade agreement or least developed country designation described in subpart 25.400 of the Federal Acquisition Regulation; and

(C) to manufactured articles, materials, or supplies procured under any contract with an award value that is not more than the micro-purchase threshold under section 1902 of this title.

(b) REPORTS.—

(1) IN GENERAL.—Not later than 180 days after the end of the fiscal year during which the Build America, Buy America Act is enacted, and annually thereafter for 4 years, the Director of the Office of Management and Budget, in consultation with the Administrator of General Services, shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Reform of the House of Representatives a report on the total amount of acquisitions made by Federal agencies in the relevant fiscal year of articles, materials, or supplies acquired from entities that mine, produce, or manufacture the articles, materials, or supplies outside the United States.

(2) EXCEPTION FOR INTELLIGENCE COMMUNITY.—This subsection does not apply to acquisitions made by an agency, or component of an agency, that is an element of the intelligence community as specified in, or designated under, section 3 of the National Security Act of 1947 (50 U.S.C. 3003).

(c) SPECIAL RULES.—The following rules apply in carrying out the provisions of subsection (a):

(1) IRON AND STEEL MANUFACTURED IN THE UNITED STATES.—For purposes of this section, manufactured articles, materials, and supplies of iron and steel are deemed manufactured in the United States only if all manufacturing processes involved in the production of such iron and steel, from the initial melting stage through the application of coatings, occurs in the United States.

(2) LIMITATION ON EXCEPTION FOR COMMERCIALLY AVAILABLE OFF-THE-SHELF ITEMS.—Notwithstanding any law or regulation to the contrary, including section 1907 of this title and the Federal Acquisition Regulation, the requirements of this section apply to all iron and steel articles, materials, and supplies.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3831; Pub. L. 117-58, div. G, title IX, §70922(a), (c), (e)(1), Nov. 15, 2021, 135 Stat. 1303, 1304.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
8302	41:10a.	Mar. 3, 1933, ch. 212, title III, §2, 47 Stat. 1520; Pub. L. 100-418, title VII, §7005(b), Aug. 23, 1988, 102 Stat. 1553; Pub. L. 103-355, title IV, §4301(b), Oct. 13, 1994, 108 Stat. 3347; Pub. L. 110-28 title VIII, §8306, May 25, 2007, 121 Stat. 211.

In subsection (a), the words “Notwithstanding any other provision of law” are omitted as unnecessary.

In subsection (b)(1), reference to fiscal years 2007 and 2008 is omitted as obsolete.

Editorial Notes

REFERENCES IN TEXT

The Build America, Buy America Act, referred to in subsec. (b)(1), is Pub. L. 117–58, div. G, title IX, subtitle A, Nov. 15, 2021, 135 Stat. 1294, which is set out in a note under section 8301 of this title. The Act was enacted in fiscal year 2022.

AMENDMENTS

2021—Subsec. (a)(1). Pub. L. 117–58, § 70922(e)(1)(A), substituted “Federal agency” for “department or independent establishment” and “their acquisition to be inconsistent with the public interest, their cost to be unreasonable, or that the articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality” for “their acquisition to be inconsistent with the public interest or their cost to be unreasonable”.

Subsec. (a)(2)(B). Pub. L. 117–58, § 70922(e)(1)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “if articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality; and”.

Subsec. (b). Pub. L. 117–58, § 70922(c), amended subsec. (b) generally. Prior to amendment, subsec. (b) related to submission of reports no later than 180 days after the end of each of fiscal years 2009 through 2011.

Subsec. (c). Pub. L. 117–58, § 70922(a), added subsec. (c).

§ 8303. Contracts for public works

(a) IN GENERAL.—Every contract for the construction, alteration, or repair of any public building or public work in the United States shall contain a provision that in the performance of the work the contractor, subcontractors, material men, or suppliers shall use only—

(1) unmanufactured articles, materials, and supplies that have been mined or produced in the United States; and

(2) manufactured articles, materials, and supplies that have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States.

(b) EXCEPTIONS.—

(1) IN GENERAL.—This section does not apply—

(A) to articles, materials, or supplies for use outside the United States;

(B) to any articles, materials, or supplies procured pursuant to a reciprocal defense procurement memorandum of understanding (as described in section 8304), or a trade agreement or least developed country designation described in subpart 25.400 of the Federal Acquisition Regulation; and

(C) to manufactured articles, materials, or supplies procured under any contract with an award value that is not more than the micro-purchase threshold under section 1902 of this title.

(2) PARTICULAR ARTICLE, MATERIAL, OR SUPPLY.—If the head of the Federal agency making the contract finds that it is impracticable to comply with subsection (a) for a particular

article, material, or supply or that it would unreasonably increase the cost, an exception shall be noted in the specifications for that article, material, or supply and a public record of the findings that justified the exception shall be made.

(3) WAIVER AUTHORITY.—Subsection (a) shall be regarded as requiring the purchase, for public use within the United States, of articles, materials, or supplies manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, unless the head of the Federal agency concerned determines their acquisition to be inconsistent with the public interest, their cost to be unreasonable, or that the articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(c) SPECIAL RULES.—

(1) PRODUCTION OF IRON AND STEEL.—For purposes of this section, manufactured articles, materials, and supplies of iron and steel are deemed manufactured in the United States only if all manufacturing processes involved in the production of such iron and steel, from the initial melting stage through the application of coatings, occurs in the United States.

(2) LIMITATION ON EXCEPTION FOR COMMERCIALLY AVAILABLE OFF-THE-SHELF ITEMS.—Notwithstanding any law or regulation to the contrary, including section 1907 of this title and the Federal Acquisition Regulation, the requirements of this section apply to all iron and steel articles, materials, and supplies used in contracts described in subsection (a).

(d) RESULTS OF FAILURE TO COMPLY.—If the head of a Federal agency that has made a contract containing the provision required by subsection (a) finds that there has been a failure to comply with the provision in the performance of the contract, the head of the Federal agency shall make the findings public. The findings shall include the name of the contractor obligated under the contract. The contractor, and any subcontractor, material man, or supplier associated or affiliated with the contractor, shall not be awarded another contract for the construction, alteration, or repair of any public building or public work for 3 years after the findings are made public.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3832; Pub. L. 117–58, div. G, title IX, § 70922(b), (e)(2), Nov. 15, 2021, 135 Stat. 1303, 1305.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
8303(a)	41:10b(a) (words before “except as provided”).	Mar. 3, 1933, ch. 212, title III, § 3, 47 Stat. 1520; Pub. L. 100–418, title VII, § 7005(c), Aug. 23, 1988, 102 Stat. 1553.
8303(b)(1)	41:10b(a) (“except as provided in section 10a of this title”).	
8303(b)(2)	41:10b(a) (proviso).	

HISTORICAL AND REVISION NOTES—CONTINUED

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8303(b)(3)	41:10d.	Oct. 29, 1949, ch. 787, title VI, §633, 63 Stat. 1024; Pub. L. 100-418, title VII, §7005(d), Aug. 23, 1988, 102 Stat. 1553.
8303(c)	41:10b(b).	

In subsection (a), before paragraph (1), the words “growing out of an appropriation heretofore made or hereafter to be made” are omitted as unnecessary.

Subsection (b)(1) is substituted for “except as provided in section 10a of this title” for clarity.

In subsection (b)(3), the words “In order to clarify the original intent of Congress, hereafter, section 10a of this title” are omitted as unnecessary.

In subsection (c), the words “in the United States or elsewhere” are omitted as unnecessary.

Editorial Notes**AMENDMENTS**

2021—Subsec. (b)(1)(B). Pub. L. 117-58, §70922(e)(2)(A)(ii), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “if articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality; and”.

Subsec. (b)(2). Pub. L. 117-58, §70922(e)(2)(A)(i), substituted “Federal agency” for “department or independent establishment”.

Subsec. (b)(3). Pub. L. 117-58, §70922(e)(2)(A)(i), (iii), in heading, substituted “Waiver authority” for “Inconsistent with public interest” and, in text, substituted “Federal agency” for “department or independent establishment” and “their acquisition to be inconsistent with the public interest, their cost to be unreasonable, or that the articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality” for “their purchase to be inconsistent with the public interest or their cost to be unreasonable”.

Subsec. (c). Pub. L. 117-58, §70922(b)(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 117-58, §70922(b)(1), (e)(2)(B), redesignated subsec. (c) as (d) and substituted “Federal agency” for “department, bureau, agency, or independent establishment” in two places.

Executive Documents**EX. ORD. NO. 10582. UNIFORM PROCEDURES FOR DETERMINATIONS**

Ex. Ord. No. 10582, Dec. 17, 1954, 19 F.R. 8723, as amended by Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617; Ex. Ord. No. 13881, §3, July 15, 2019, 84 F.R. 34258, provided:

SECTION 1. As used in this order, (a) the term “materials” includes articles and supplies, (b) the term “executive agency” includes executive department, independent establishment, and other instrumentality of the executive branch of the Government, and (c) the term “bid or offered price of materials of foreign origin” means the bid or offered price of such materials delivered at the place specified in the invitation to bid including applicable duty and all costs incurred after arrival in the United States.

SEC. 2. (a) For the purposes of this order materials shall be considered to be of foreign origin if the cost of the foreign products used in such materials constitutes

fifty per centum or more of the cost of all the products used in such materials.

(b) For the purposes of the said act of March 3, 1933 [probably means act Mar. 3, 1933, ch. 212, title III, 47 Stat. 1520, see 41 U.S.C. 8301 et seq.], and the other laws referred to in the first paragraph of the preamble of this order, the bid or offered price of materials of domestic origin shall be deemed to be unreasonable, or the purchase of such materials shall be deemed to be inconsistent with the public interest, if the bid or offered price thereof exceeds the sum of the bid or offered price of like materials of foreign origin and a differential computed as provided in subsection (c) of this section.

(c) The executive agency concerned shall in each instance determine the amount of the differential referred to in subsection (b) of this section on the basis of one of the following-described formulas, subject to the terms thereof:

(1) The sum determined by computing six per centum of the bid or offered price of materials of foreign origin.

(2) The sum determined by computing ten per centum of the bid or offered price of materials of foreign origin exclusive of applicable duty and all costs incurred after arrival in the United States: provided that when the bid or offered price of materials of foreign origin amounts to less than \$25,000, the sum shall be determined by computing ten per centum of such price exclusive only of applicable duty.

SEC. 3. Nothing in this order shall affect the authority or responsibility of an executive agency:

(a) To reject any bid or offer for reasons of the national interest not described or referred to in this order; or

(b) To place a fair proportion of the total purchases with small business concerns in accordance with section 302(b) of the Federal Property and Administrative Services Act of 1949, as amended [former 41 U.S.C. 252(b)] [now 41 U.S.C. 3104], [former] section 2(b) of the Armed Services Procurement Act of 1947, as amended, and [former] section 202 of the Small Business Act of 1953; or

(c) To reject a bid or offer to furnish material of foreign origin in any situation in which the domestic supplier offering the lowest price for furnishing the desired materials undertakes to produce substantially all of such materials in areas of substantial unemployment, as determined by the Secretary of Labor in accordance with such appropriate regulations as he may establish and during such period as the President may determine that it is in the national interest to provide to such areas preference in the award of Government contracts: *Provided*, that nothing in this section shall prevent the rejection of a bid or offered price which is excessive; or

(d) To reject any bid or offer for materials of foreign origin if such rejection is necessary to protect essential national-security interests after receiving advice with respect thereto from the President or from the Director [now Administrator] of the Federal Emergency Management Agency. In providing this advice the Director [Administrator] shall be governed by the principle that exceptions under this section shall be made only upon a clear showing that the payment of a greater differential than the procedures of this section generally prescribe is justified by consideration of national security.

SEC. 4. The head of each executive agency shall issue such regulations as may be necessary to insure that procurement practices under his jurisdiction conform to the provisions of this order.

SEC. 5. This order shall apply only to contracts entered into after the date hereof. In any case in which the head of an executive agency proposing to purchase domestic materials determines that a greater differential than that provided in this order between the cost of such materials of domestic origin and materials of foreign origin is not unreasonable or that the purchase of materials of domestic origin is not inconsistent with the public interest, this order shall not apply. A written report of the facts of each case in which such a determination is made shall be submitted to the Presi-

dent through the Director of the Office of Management and Budget by the official making the determination within 30 days thereafter.

[Ex. Ord. No. 10582, set out above, superseded to the extent it is inconsistent with Ex. Ord. No. 14005, see section 14(b) of Ex. Ord. No. 14005, Jan. 25, 2021, 86 F.R. 7478, set out in a note under section 8301 of this title.]

[Ex. Ord. No. 10582, set out above, superseded to the extent that it is inconsistent with Ex. Ord. No. 13881, and section 2(a) and (c) of Ex. Ord. No. 10582 revoked upon issuance of final rule pursuant to section 2 of Ex. Ord. No. 13881, see section 3 of Ex. Ord. No. 13881, July 15, 2019, 84 F.R. 34258, set out in a note under section 8301 of this title.]

§ 8304. Waiver rescission

(a) **TYPE OF AGREEMENT.**—An agreement referred to in subsection (b) is a reciprocal defense procurement memorandum of understanding between the United States and a foreign country pursuant to which the Secretary of Defense has prospectively waived this chapter for certain products in that country.

(b) **DETERMINATION BY SECRETARY OF DEFENSE.**—If the Secretary of Defense, after consultation with the United States Trade Representative, determines that a foreign country that is party to an agreement described in subsection (a) has violated the agreement by discriminating against certain types of products produced in the United States that are covered by the agreement, the Secretary of Defense shall rescind the Secretary's blanket waiver of this chapter with respect to those types of products produced in that country.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3833.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8304(a)	41:10b–2(a)(2), (b).	Pub. L. 103–160, div. A, title VIII, § 849(c), (d), Nov. 30, 1993, 107 Stat. 1725.
8304(b)	41:10b–2(a)(1).	

In subsection (a), the text of 41:10b–2(b) is omitted as unnecessary.

Statutory Notes and Related Subsidiaries

SIMILAR PROVISIONS

Provisions similar to those in this section and section 8305 of this title were contained in the following acts:

Pub. L. 117–328, div. C, title VIII, § 8032, Dec. 29, 2022, 136 Stat. 4593.

Pub. L. 117–103, div. C, title VIII, § 8033, Mar. 15, 2022, 136 Stat. 182.

Pub. L. 116–260, div. C, title VIII, § 8030, Dec. 27, 2020, 134 Stat. 1310.

Pub. L. 116–93, div. A, title VIII, § 8029, Dec. 20, 2019, 133 Stat. 2342.

Pub. L. 115–245, div. A, title VIII, § 8028, Sept. 28, 2018, 132 Stat. 3006.

Pub. L. 115–141, div. C, title VIII, § 8028, Mar. 23, 2018, 132 Stat. 469.

Pub. L. 115–31, div. C, title VIII, § 8029, May 5, 2017, 131 Stat. 253.

Pub. L. 114–113, div. C, title VIII, § 8028, Dec. 18, 2015, 129 Stat. 2357.

Pub. L. 113–235, div. C, title VIII, § 8028, Dec. 16, 2014, 128 Stat. 2258.

Pub. L. 113–76, div. C, title VIII, § 8027, Jan. 17, 2014, 128 Stat. 110.

Pub. L. 113–6, div. C, title VIII, § 8027, Mar. 26, 2013, 127 Stat. 302.

Pub. L. 112–74, div. A, title VIII, § 8027, Dec. 23, 2011, 125 Stat. 811.

Pub. L. 112–10, div. A, title VIII, § 8028, Apr. 15, 2011, 125 Stat. 63.

Pub. L. 111–118, div. A, title VIII, § 8030, Dec. 19, 2009, 123 Stat. 3435.

Pub. L. 110–329, div. C, title VIII, § 8030, Sept. 30, 2008, 122 Stat. 3627.

Pub. L. 110–116, div. A, title VIII, § 8029, Nov. 13, 2007, 121 Stat. 1321.

Pub. L. 109–289, div. A, title VIII, § 8027, Sept. 29, 2006, 120 Stat. 1279.

Pub. L. 109–148, div. A, title VIII, § 8030, Dec. 30, 2005, 119 Stat. 2705.

Pub. L. 108–287, title VIII, § 8032, Aug. 5, 2004, 118 Stat. 977.

Pub. L. 108–87, title VIII, § 8033, Sept. 30, 2003, 117 Stat. 1079.

Pub. L. 107–248, title VIII, § 8033, Oct. 23, 2002, 116 Stat. 1544.

Pub. L. 107–117, div. A, title VIII, § 8036, Jan. 10, 2002, 115 Stat. 2255.

Pub. L. 106–259, title VIII, § 8036, Aug. 9, 2000, 114 Stat. 682.

Pub. L. 106–79, title VIII, § 8038, Oct. 25, 1999, 113 Stat. 1239.

Pub. L. 105–262, title VIII, § 8038, Oct. 17, 1998, 112 Stat. 2305.

Pub. L. 105–56, title VIII, § 8040, Oct. 8, 1997, 111 Stat. 1229.

Pub. L. 104–208, div. A, title I, § 101(b) [title VIII, § 8042], Sept. 30, 1996, 110 Stat. 3009–71, 3009–97.

Pub. L. 104–61, title VIII, § 8051, Dec. 1, 1995, 109 Stat. 662.

Pub. L. 103–335, title VIII, § 8058, Sept. 30, 1994, 108 Stat. 2631.

Pub. L. 103–139, title VIII, § 8069, Nov. 11, 1993, 107 Stat. 1455.

Pub. L. 102–396, title IX, § 9096, Oct. 6, 1992, 106 Stat. 1924, as amended by Pub. L. 103–355, title VII, § 7206(b), Oct. 13, 1994, 108 Stat. 3382.

Pub. L. 102–190, div. A, title VIII, § 833, Dec. 5, 1991, 105 Stat. 1447.

Pub. L. 102–172, title VIII, § 8123, Nov. 26, 1991, 105 Stat. 1205.

Pub. L. 101–189, div. A, title VIII, § 823, Nov. 29, 1989, 103 Stat. 1504.

§ 8305. Annual report

Not later than 60 days after the end of each fiscal year, the Secretary of Defense shall submit to Congress a report on the amount of purchases by the Department of Defense from foreign entities in that fiscal year. The report shall separately indicate the dollar value of items for which this chapter was waived pursuant to—

(1) a reciprocal defense procurement memorandum of understanding described in section 8304(a) of this title;

(2) the Trade Agreements Act of 1979 (19 U.S.C. 2501 et seq.); or

(3) an international agreement to which the United States is a party.

(Pub. L. 111–350, § 3, Jan. 4, 2011, 124 Stat. 3833.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8305	41:10b–3.	Pub. L. 104–201, div. A, title VIII, § 827, Sept. 23, 1996, 110 Stat. 2611; Pub. L. 105–85, div. A, title VIII, § 846, Nov. 18, 1997, 111 Stat. 1845; Pub. L. 105–261, div. A, title VIII, § 812, Oct. 17, 1998, 112 Stat. 2086.

CHAPTER 85—COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SE- VERELY DISABLED

Sec.	
8501.	Definitions.
8502.	Committee for Purchase From People Who Are Blind or Severely Disabled.
8503.	Duties and powers of the Committee.
8504.	Procurement requirements for the Federal Government.
8505.	Audit.
8506.	Authorization of appropriations.

§ 8501. Definitions

In this chapter:

(1) **BLIND.**—The term “blind” refers to an individual or class of individuals whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees.

(2) **COMMITTEE.**—The term “Committee” means the Committee for Purchase From People Who Are Blind or Severely Disabled established under section 8502 of this title.

(3) **DIRECT LABOR.**—The term “direct labor”—

(A) includes all work required for preparation, processing, and packing of a product, or work directly relating to the performance of a service; but

(B) does not include supervision, administration, inspection, or shipping.

(4) **ENTITY OF THE FEDERAL GOVERNMENT AND FEDERAL GOVERNMENT.**—The terms “entity of the Federal Government” and “Federal Government” include an entity of the legislative or judicial branch, a military department or executive agency (as defined in sections 102 and 105 of title 5, respectively), the United States Postal Service, and a nonappropriated fund instrumentality under the jurisdiction of the Armed Forces.

(5) **OTHER SEVERELY DISABLED.**—The term “other severely disabled” means an individual or class of individuals under a physical or mental disability, other than blindness, which (according to criteria established by the Committee after consultation with appropriate entities of the Federal Government and taking into account the views of non-Federal Government entities representing the disabled) constitutes a substantial handicap to employment and is of a nature that prevents the individual from currently engaging in normal competitive employment.

(6) **QUALIFIED NONPROFIT AGENCY FOR OTHER SEVERELY DISABLED.**—The term “qualified nonprofit agency for other severely disabled” means an agency—

(A)(i) organized under the laws of the United States or a State;

(ii) operated in the interest of severely disabled individuals who are not blind; and

(iii) of which no part of the net income of the agency inures to the benefit of a shareholder or other individual;

(B) that complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(C) that in the production of products and in the provision of services (whether or not the products or services are procured under this chapter) during the fiscal year employs blind or other severely disabled individuals for at least 75 percent of the hours of direct labor required for the production or provision of the products or services.

(7) **QUALIFIED NONPROFIT AGENCY FOR THE BLIND.**—The term “qualified nonprofit agency for the blind” means an agency—

(A)(i) organized under the laws of the United States or a State;

(ii) operated in the interest of blind individuals; and

(iii) of which no part of the net income of the agency inures to the benefit of a shareholder or other individual;

(B) that complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(C) that in the production of products and in the provision of services (whether or not the products or services are procured under this chapter) during the fiscal year employs blind individuals for at least 75 percent of the hours of direct labor required for the production or provision of the products or services.

(8) **SEVERELY DISABLED INDIVIDUAL.**—The term “severely disabled individual” means an individual or class of individuals under a physical or mental disability, other than blindness, which (according to criteria established by the Committee after consultation with appropriate entities of the Federal Government and taking into account the views of non-Federal Government entities representing the disabled) constitutes a substantial handicap to employment and is of a nature that prevents the individual from currently engaging in normal competitive employment.

(9) **STATE.**—The term “State” includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3833.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8501(1)	41:48b(1).	June 25, 1938, ch. 697, §5, 52 Stat. 1196; Pub. L. 92-28, §1, June 23, 1971, 85 Stat. 81; Pub. L. 93-358, §1(3), July 25, 1974, 88 Stat. 393; Pub. L. 94-273, §3(22), Apr. 21, 1976, 90 Stat. 377.
8501(2)	41:46(a) (words in parentheses before par. (1)).	June 25, 1938, ch. 697, §1(a) (words in parentheses before par. (1)), 52 Stat. 1196; Pub. L. 92-28, §1, June 23, 1971, 85 Stat. 77.
8501(3)	41:48b(5).	
8501(4)	41:48b(7).	
8501(5)	41:48b(2).	
8501(6)	41:48b(4).	
8501(7)	41:48b(3).	
8501(8)	41:48b(2).	
8501(9)	41:48b(8).	

In this chapter, the word “disabled” is substituted for “handicapped” for consistency with the name of the Committee. The word “product” is substituted for “commodity” to reflect the current usage of the items produced in the Committee’s program.

In this section, the text of 41:48b(6) is omitted as unnecessary.

In paragraph (9), the words “the Northern Mariana Islands” are substituted for “the Trust Territory of the Pacific Islands” because the Trust Territory of the Pacific Islands terminated. See 48 U.S.C. note prec. 1681. However, section 502(a)(2) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (48 U.S.C. 1801 note) provided that laws in existence on the effective date of section 502 that were applicable to Guam and that were of general application to the several States would apply to the Northern Mariana Islands. The Marshall Islands, Palau, and the Federated States of Micronesia are not included because although they were part of the Trust Territory of the Pacific Islands, they are independent entities and not part of the United States.

Statutory Notes and Related Subsidiaries

CONTRACTING WITH EMPLOYERS OF PERSONS WITH DISABILITIES

Pub. L. 109-364, div. A, title VIII, §856(a), (d), Oct. 17, 2006, 120 Stat. 2347, 2349, provided that:

“(a) INAPPLICABILITY OF CERTAIN LAWS.—

“(1) INAPPLICABILITY OF THE RANDOLPH-SHEPPARD ACT TO CONTRACTS AND SUBCONTRACTS FOR MILITARY DINING FACILITY SUPPORT SERVICES COVERED BY JAVITS-WAGNER-O'DAY ACT.—The Randolph-Sheppard Act (20 U.S.C. 107 et seq.) does not apply to full food services, mess attendant services, or services supporting the operation of a military dining facility that, as of the date of the enactment of this Act [Oct. 17, 2006], were services on the procurement list established under section 2 of the Javits-Wagner-O'Day Act ([former] 41 U.S.C. 47) [now 41 U.S.C. 8503].

“(2) INAPPLICABILITY OF THE JAVITS-WAGNER-O'DAY ACT TO CONTRACTS FOR THE OPERATION OF A MILITARY DINING FACILITY.—(A) The Javits-Wagner-O'Day Act ([former] 41 U.S.C. 46 et seq.) [now 41 U.S.C. 8501 et seq.] does not apply at the prime contract level to any contract entered into by the Department of Defense as of the date of the enactment of this Act with a State licensing agency under the Randolph-Sheppard Act (20 U.S.C. 107 et seq.) for the operation of a military dining facility.

“(B) The Javits-Wagner-O'Day Act [now 41 U.S.C. 8501 et seq.] shall apply to any subcontract entered into by a Department of Defense contractor for full food services, mess attendant services, and other services supporting the operation of a military dining facility.

“(3) REPEAL OF SUPERSEDED LAW.—[Repealed section 853(a), (b) of Pub. L. 108-375, 118 Stat. 2021.]

“(d) DEFINITIONS.—In this section:

“(1) The term ‘State licensing agency’ means any agency designated by the Secretary of Education under section 2(a)(5) of the Randolph-Sheppard Act (20 U.S.C. 107a(a)(5)).

“(2) The term ‘military dining facility’ means a facility owned, operated, leased, or wholly controlled by the Department of Defense and used to provide dining services to members of the Armed Forces, including a cafeteria, military mess hall, military troop dining facility, or any similar dining facility operated for the purpose of providing meals to members of the Armed Forces.”

STATEMENT OF POLICY AND REPORT CONCERNING THE OPERATION AND MANAGEMENT OF CERTAIN MILITARY FACILITIES REGARDING THE BLIND OR SEVERELY DISABLED

Pub. L. 109-163, div. A, title VIII, §848(b), (c), Jan. 6, 2006, 119 Stat. 3395, provided that:

“(b) STATEMENT OF POLICY.—The Secretary of Defense, the Secretary of Education, and the Chairman of the Committee for Purchase From People Who Are Blind or Severely Disabled shall jointly issue a state-

ment of policy related to the implementation of the Randolph-Sheppard Act (20 U.S.C. 107 et seq.) and the Javits-Wagner-O'Day Act ([former] 41 U.S.C. 48 [46 et seq.]) [now 41 U.S.C. 8501 et seq.] within the Department of Defense and the Department of Education. The joint statement of policy shall specifically address the application of those Acts to both operation and management of all or any part of a military mess hall, military troop dining facility, or any similar dining facility operated for the purpose of providing meals to members of the Armed Forces, and shall take into account and address, to the extent practicable, the positions acceptable to persons representing programs implemented under each Act.

“(c) REPORT.—Not later than April 1, 2006, the Secretary of Defense, the Secretary of Education, and the Chairman of the Committee for Purchase From People Who Are Blind or Severely Disabled shall submit to the Committees on Armed Services of the Senate and the House of Representatives, the Committee on Health, Education, Labor and Pensions of the Senate, and the Committee on Education and the Workforce of the House of Representatives a report describing the joint statement of policy issued under subsection (b), with such findings and recommendations as the Secretaries consider appropriate.”

§ 8502. Committee for Purchase From People Who Are Blind or Severely Disabled

(a) ESTABLISHMENT.—There is a Committee for Purchase From People Who Are Blind or Severely Disabled.

(b) COMPOSITION.—The Committee consists of 15 members appointed by the President as follows:

(1) One officer or employee from each of the following, nominated by the head of the department or agency:

- (A) The Department of Agriculture.
- (B) The Department of Defense.
- (C) The Department of the Army.
- (D) The Department of the Navy.
- (E) The Department of the Air Force.
- (F) The Department of Education.
- (G) The Department of Commerce.
- (H) The Department of Veterans Affairs.
- (I) The Department of Justice.
- (J) The Department of Labor.
- (K) The General Services Administration.

(2) One member from individuals who are not officers or employees of the Federal Government and who are conversant with the problems incident to the employment of the blind.

(3) One member from individuals who are not officers or employees of the Federal Government and who are conversant with the problems incident to the employment of other severely disabled individuals.

(4) One member from individuals who are not officers or employees of the Federal Government and who represent blind individuals employed in qualified nonprofit agencies for the blind.

(5) One member from individuals who are not officers or employees of the Federal Government and who represent severely disabled individuals (other than blind individuals) employed in qualified nonprofit agencies for other severely disabled individuals.

(c) TERMS OF OFFICE.—Members appointed under paragraph (2), (3), (4), or (5) of subsection (b) shall be appointed for terms of 5 years and may be reappointed if the member meets the qualifications prescribed by those paragraphs.

(d) CHAIRMAN.—The members of the Committee shall elect one of the members to be Chairman.

(e) VACANCY.—

(1) MANNER IN WHICH FILLED.—A vacancy in the membership of the Committee shall be filled in the manner in which the original appointment was made.

(2) UNFULFILLED TERM.—A member appointed under paragraph (2), (3), (4), or (5) of subsection (b) to fill a vacancy occurring prior to the expiration of the term for which the predecessor was appointed shall be appointed only for the remainder of the term. The member may serve after the expiration of a term until a successor takes office.

(f) PAY AND TRAVEL EXPENSES.—

(1) AMOUNT TO WHICH MEMBERS ARE ENTITLED.—Except as provided in paragraph (2), members of the Committee are entitled to receive the daily equivalent of the maximum annual rate of basic pay payable for level IV of the Executive Schedule for each day (including travel-time) during which they perform services for the Committee. A member is entitled to travel expenses, including a per diem allowance instead of subsistence, as provided under section 5703 of title 5.

(2) OFFICERS OR EMPLOYEES OF THE FEDERAL GOVERNMENT.—Members who are officers or employees of the Federal Government may not receive additional pay because of their service on the Committee.

(g) STAFF.—

(1) APPOINTMENT AND COMPENSATION.—Subject to rules the Committee may adopt and to chapters 33 and 51 and subchapter III of chapter 53 of title 5, the Chairman may appoint and fix the pay of personnel the Committee determines are necessary to assist it in carrying out this chapter.

(2) PERSONNEL FROM OTHER ENTITIES.—On request of the Committee, the head of an entity of the Federal Government may detail, on a reimbursable basis, any personnel of the entity to the Committee to assist it in carrying out this chapter.

(h) OBTAINING OFFICIAL INFORMATION.—The Committee may secure directly from an entity of the Federal Government information necessary to enable it to carry out this chapter. On request of the Chairman, the head of the entity shall furnish the information to the Committee.

(i) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Committee, on a reimbursable basis, administrative support services the Committee requests.

(j) ANNUAL REPORT.—Not later than December 31 of each year, the Committee shall transmit to the President a report that includes the names of the Committee members serving in the prior fiscal year, the dates of Committee meetings in that year, a description of the activities of the Committee under this chapter in that year, and any recommendations for changes in this chapter which the Committee determines are necessary.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3835.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
8502(a), (b)	41:46(a) (less words in parentheses before par. (1)).	June 25, 1938, ch. 697, §1 (less (a) (words in parentheses before par. (1))), 52 Stat. 1196; Pub. L. 92-28, §1, June 23, 1971, 85 Stat. 77; Pub. L. 93-358, §1(1), (2), July 25, 1974, 88 Stat. 392; Pub. L. 94-273, §8(2), Apr. 21, 1976, 90 Stat. 378; Pub. L. 102-54, §13(p), June 13, 1991, 105 Stat. 278; Pub. L. 102-569, title IX, §911(a), Oct. 29, 1992, 106 Stat. 4486; Pub. L. 103-73, title III, §301, Aug. 11, 1993, 107 Stat. 736.
8502(c)	41:46(d)(1), (2), (4).	
8502(d)	41:46(c).	
8502(e)(1)	41:46(b).	
8502(e)(2) (2) ..	41:46(d)(3).	
8502(f)	41:46(e).	
8502(g)	41:46(f).	
8502(h)	41:46(g).	
8502(i)	41:46(h).	
8502(j)	41:46(i).	

In subsection (b)(1)(F), the words “Department of Education” are substituted for “Department of Health and Human Services” in 41:46(a)(1) to correct a mistake in the United States Code. In the amendment to the original provision by section 1 of Public Law 92-28 (85 Stat. 77), an officer or employee of the Department of Health, Education, and Welfare was one of the members appointed to the Committee for Purchase From People Who Are Blind or Severely Disabled, because the Department, through the Rehabilitation Services Administration, had the major governmental function in the field of vocational rehabilitation for the blind and other severely handicapped and administered related vocational rehabilitation programs for individuals with disabilities. See House Report 92-228. Under section 301(a)(4)(A) and (C) and (b)(3) of the Department of Education Organization Act (20:3441(a)(4)(A) and (C) and (b)(3)), the functions and offices of the Department and the functions of the Secretary of Health, Education, and Welfare and the Commissioner of Rehabilitation Services were transferred to the Department or Secretary of Education. Section 509 of the Act (20:3508) redesignated the Department and Secretary of Health, Education, and Welfare as the Department and Secretary of Health and Human Services, respectively, and provided that references to the Department and Secretary of Health, Education, and Welfare were deemed to be references to the Department or Secretary of Health and Human Services except to the extent a reference was to a function of the Department or Secretary of Education. The reference in 41:46(a)(1) was changed to “Department of Health and Human Services” but should have been changed to “Department of Education”. Furthermore, the regulations of the Committee include the Department of Education in the list of members of the Committee. See 41 CFR 51-2.1.

In subsection (c), the text of 41:46(d)(2) and (4) is omitted as obsolete.

In subsection (f)(1), the reference to section 5376 of title 5 is substituted for the reference to grade GS-18 of the General Schedule because of section 529 [title I, §101(c)(1)] of the Treasury, Postal Service and General Government Appropriations Act, 1991 (Public Law 101-509, 104 Stat. 1442, 5 U.S.C. 5376 note). The word “actual” is omitted as unnecessary. The words “A member is entitled to travel expenses, including a per diem allowance instead of subsistence, as provided under section 5703 of title 5” are substituted for 41:46(e)(3) to eliminate unnecessary words. The reference to section 5703 of title 5 is substituted for the reference to section 5703(b) of title 5 because of the amendment to section 5703 by section 4 of the Travel Expense Amendments Act of 1975 (Public Law 94-22, 89 Stat. 85).

In subsection (g), the words “its duties and powers” are omitted as surplus.

In subsection (g)(1), the reference to chapter 33 of title 5 is substituted for “the provisions of title 5 gov-

erning appointments in the competitive service” for clarity and for consistency with other titles of the United States Code. The words “relating to classification and General Schedule pay rates” are omitted as unnecessary.

In subsection (j), the words “and to the Congress” are omitted pursuant to section 3003 of the Federal Reports Elimination and Sunset Act of 1995 (31 U.S.C. 1113 note). See, also, page 199 of House Document No. 103-7.

SENATE REVISION AMENDMENT

In subsec. (f)(1), “for level IV of the Executive Schedule” substituted for “under section 5376 of title 5” by S. Amdt. 4726 (111th Cong.). See 156 Cong. Rec. 18683 (2010).

§ 8503. Duties and powers of the Committee

(a) PROCUREMENT LIST.—

(1) MAINTENANCE OF LIST.—The Committee shall maintain and publish in the Federal Register a procurement list. The list shall include the following products and services determined by the Committee to be suitable for the Federal Government to procure pursuant to this chapter:

(A) Products produced by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely disabled.

(B) The services those agencies provide.

(2) CHANGES TO LIST.—The Committee may, by rule made in accordance with the requirements of section 553(b) to (e) of title 5, add to and remove from the procurement list products so produced and services so provided.

(b) FAIR MARKET PRICE.—The Committee shall determine the fair market price of products and services contained on the procurement list that are offered for sale to the Federal Government by a qualified nonprofit agency for the blind or a qualified nonprofit agency for other severely disabled. The Committee from time to time shall revise its price determinations with respect to those products and services in accordance with changing market conditions.

(c) CENTRAL NONPROFIT AGENCY OR AGENCIES.—The Committee shall designate a central nonprofit agency or agencies to facilitate the distribution, by direct allocation, subcontract, or any other means, of orders of the Federal Government for products and services on the procurement list among qualified nonprofit agencies for the blind or qualified nonprofit agencies for other severely disabled.

(d) REGULATIONS.—The Committee—

(1) may prescribe regulations regarding specifications for products and services on the procurement list, the time of their delivery, and other matters as necessary to carry out this chapter; and

(2) shall prescribe regulations providing that when the Federal Government purchases products produced and offered for sale by qualified nonprofit agencies for the blind or qualified nonprofit agencies for other severely disabled, priority shall be given to products produced and offered for sale by qualified nonprofit agencies for the blind.

(e) STUDY AND EVALUATION OF ACTIVITIES.—The Committee shall make a continuing study and evaluation of its activities under this chapter to ensure effective and efficient administra-

tion of this chapter. The Committee on its own or in cooperation with other public or nonprofit private agencies may study—

(1) problems related to the employment of the blind and other severely disabled individuals; and

(2) the development and adaptation of production methods that would enable a greater utilization of the blind and other severely disabled individuals.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3836.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
8503(a)	41:47(a).	June 25, 1938, ch. 697, § 2, 52 Stat. 1196; Pub. L. 92-28, § 1, June 23, 1971, 85 Stat. 79.
8503(b)	41:47(b).	
8503(c)	41:47(c).	
8503(d)	41:47(d).	
8503(e)	41:47(e).	

In subsection (a), the text of 41:47(a)(1) (last sentence) is omitted as obsolete. The words “procurement list” are substituted for “(hereafter in sections 46 to 48c of this title referred to as the ‘procurement list’)” to eliminate unnecessary words.

In subsection (d)(2), the text of 41:47(d)(2)(B) is omitted as obsolete.

§ 8504. Procurement requirements for the Federal Government

(a) IN GENERAL.—An entity of the Federal Government intending to procure a product or service on the procurement list referred to in section 8503 of this title shall procure the product or service from a qualified nonprofit agency for the blind or a qualified nonprofit agency for other severely disabled in accordance with regulations of the Committee and at the price the Committee establishes if the product or service is available within the period required by the entity.

(b) EXCEPTION.—This section does not apply to the procurement of a product that is available from an industry established under chapter 307 of title 18 and that is required under section 4124 of title 18 to be procured from that industry.

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3837.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
8504	41:48.	June 25, 1938, ch. 697, § 3, 52 Stat. 1196; Pub. L. 92-28, § 1, June 23, 1971, 85 Stat. 80.

In subsection (a), the words “referred to in section 8503 of this title” are added for clarity because of the restatement of 41:47(a) in section 8503(a) of the revised title.

In subsection (b), the words “for procurement” are omitted as unnecessary.

§ 8505. Audit

For the purpose of audit and examination, the Comptroller General shall have access to the books, documents, papers, and other records of—

(1) the Committee and of each central nonprofit agency the Committee designates under section 8503(c) of this title; and

(2) qualified nonprofit agencies for the blind and qualified nonprofit agencies for other severely disabled that have sold products or services under this chapter to the extent those books, documents, papers, and other records relate to the activities of the agency in a fiscal year in which a sale was made under this chapter.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3838.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8505	41:48a.	June 25, 1938, ch. 697, §4, 52 Stat. 1196; Pub. L. 92-28, §1, June 23, 1971, 85 Stat. 81.

In this section, before paragraph (1), the words “or any of his duly authorized representatives” are omitted because of 31:711(2). In paragraph (1), the words “central nonprofit” are added for clarity.

§ 8506. Authorization of appropriations

Necessary amounts may be appropriated to the Committee to carry out this chapter.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3838.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8506	41:48c.	June 25, 1938, ch. 697, §6, 52 Stat. 1196; Pub. L. 92-28, §1, June 23, 1971, 85 Stat. 82; Pub. L. 93-76, July 30, 1973, 87 Stat. 176; Pub. L. 93-358, §1(4), July 25, 1974, 88 Stat. 393.

The reference to the fiscal year ending June 30, 1974 is omitted as obsolete.

CHAPTER 87—KICKBACKS

Sec.	
8701.	Definitions.
8702.	Prohibited conduct.
8703.	Contractor responsibilities.
8704.	Inspection authority.
8705.	Administrative offsets.
8706.	Civil actions.
8707.	Criminal penalties.

§ 8701. Definitions

In this chapter:

(1) **CONTRACTING AGENCY.**—The term “contracting agency”, when used with respect to a prime contractor, means a department, agency, or establishment of the Federal Government that enters into a prime contract with a prime contractor.

(2) **KICKBACK.**—The term “kickback” means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided to a prime contractor, prime contractor employee, subcontractor, or subcontractor employee to improperly obtain or reward favorable treatment in connection with a prime contract or a subcontract relating to a prime contract.

(3) **PERSON.**—The term “person” means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

(4) **PRIME CONTRACT.**—The term “prime contract” means a contract or contractual action entered into by the Federal Government to obtain supplies, materials, equipment, or services of any kind.

(5) **PRIME CONTRACTOR.**—The term “prime contractor” means a person that has entered into a prime contract with the Federal Government.

(6) **PRIME CONTRACTOR EMPLOYEE.**—The term “prime contractor employee” means an officer, partner, employee, or agent of a prime contractor.

(7) **SUBCONTRACT.**—The term “subcontract” means a contract or contractual action entered into by a prime contractor or subcontractor to obtain supplies, materials, equipment, or services of any kind under a prime contract.

(8) **SUBCONTRACTOR.**—The term “subcontractor”—

(A) means a person, other than the prime contractor, that offers to furnish or furnishes supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with the prime contract; and

(B) includes a person that offers to furnish or furnishes general supplies to the prime contractor or a higher tier subcontractor.

(9) **SUBCONTRACTOR EMPLOYEE.**—The term “subcontractor employee” means an officer, partner, employee, or agent of a subcontractor.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3838.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8701	41:52.	Mar. 8, 1946, ch. 80, §2, 60 Stat. 37; Pub. L. 86-695, Sept. 2, 1960, 74 Stat. 740; Pub. L. 99-634, §2(a), Nov. 7, 1986, 100 Stat. 3523.

In this section, the text of 41:52(3) is omitted because of the definition of “person” in 1:1.

In paragraph (2), the words “directly or indirectly” are omitted as unnecessary.

SENATE REVISION AMENDMENT

Senate amendment 4726 (111th Cong.) added par. (3) and redesignated former pars. (3) to (8) as (4) to (9), respectively. See 156 Cong. Rec. 18683 (2010).

§ 8702. Prohibited conduct

A person may not—

(1) provide, attempt to provide, or offer to provide a kickback;

(2) solicit, accept, or attempt to accept a kickback; or

(3) include the amount of a kickback prohibited by paragraph (1) or (2) in the contract price—

(A) a subcontractor charges a prime contractor or a higher tier subcontractor; or

(B) a prime contractor charges the Federal Government.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3839.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8702	41:53.	Mar. 8, 1946, ch. 80, § 3, 60 Stat. 37; Pub. L. 86-695, Sept. 2, 1960, 74 Stat. 740; Pub. L. 99-634, § 2(a), Nov. 7, 1986, 100 Stat. 3524.

In paragraph (3), before subparagraph (A), the words “directly or indirectly” are omitted as unnecessary.

§ 8703. Contractor responsibilities

(a) REQUIREMENTS INCLUDED IN CONTRACTS.—Each contracting agency shall include in each prime contract awarded by the agency a requirement that the prime contractor shall—

(1) have in place and follow reasonable procedures designed to prevent and detect violations of section 8702 of this title in its own operations and direct business relationships; and

(2) cooperate fully with a Federal Government agency investigating a violation of section 8702 of this title.

(b) FULL COOPERATION REQUIRED.—Notwithstanding subsection (d), a prime contractor shall cooperate fully with a Federal Government agency investigating a violation of section 8702 of this title.

(c) REPORTING REQUIREMENT.—

(1) IN GENERAL.—A prime contractor or subcontractor that has reasonable grounds to believe that a violation of section 8702 of this title may have occurred shall promptly report the possible violation in writing to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General.

(2) SUPPLYING INFORMATION AS FAVORABLE EVIDENCE.—In an administrative or contractual action to suspend or debar a person who is eligible to enter into contracts with the Federal Government, evidence that the person has supplied information to the Federal Government pursuant to paragraph (1) is favorable evidence of the person’s responsibility for the purposes of Federal procurement laws and regulations.

(d) INAPPLICABILITY TO CERTAIN PRIME CONTRACTS.—Subsection (a) does not apply to a prime contract—

(1) that is not greater than \$100,000; or

(2) for the acquisition of commercial products or commercial services (as defined in sections 103 and 103a, respectively, of this title).

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3839; Pub. L. 115-232, div. A, title VIII, § 836(b)(20), Aug. 13, 2018, 132 Stat. 1864.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8703(a)	41:57(a), (b).	Mar. 8, 1946, ch. 80, § 7, 60 Stat. 37; Pub. L. 86-695, Sept. 2, 1960, 74 Stat. 740; Pub. L. 99-634, § 2(a), Nov. 7, 1986, 100 Stat. 3525; Pub. L. 103-355, title IV, § 4104(a), title VIII, § 8301(c)(1), Oct. 13, 1994, 108 Stat. 3341, 3397; Pub. L. 104-106, div. D, title XLIII, § 4321(g), Feb. 10, 1996, 110 Stat. 675.

HISTORICAL AND REVISION NOTES—CONTINUED

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8703(b)	41:57(e).	
8703(c)	41:57(c).	
8703(d)	41:57(d).	

In subsection (c)(1), the words “Attorney General” are substituted for “Department of Justice” because of 28:503.

Editorial Notes

AMENDMENTS

2018—Subsec. (d)(2). Pub. L. 115-232 substituted “commercial products or commercial services (as defined in sections 103 and 103a, respectively, of this title)” for “commercial items (as defined in section 103 of this title)”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by Pub. L. 115-232 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.

§ 8704. Inspection authority

(a) IN GENERAL.—To ascertain whether there has been a violation of section 8702 of this title with respect to a prime contract, the Comptroller General and the inspector general of the contracting agency, or a representative of the contracting agency designated by the head of the agency if the agency does not have an inspector general, shall have access to and may inspect the facilities and audit the books and records, including electronic data or records, of a prime contractor or subcontractor under a prime contract awarded by the agency.

(b) EXCEPTION.—This section does not apply to a prime contract for the acquisition of commercial products or commercial services (as defined in sections 103 and 103a, respectively, of this title).

(Pub. L. 111-350, § 3, Jan. 4, 2011, 124 Stat. 3839; Pub. L. 115-232, div. A, title VIII, § 836(b)(20), Aug. 13, 2018, 132 Stat. 1864.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8704	41:58.	Mar. 8, 1946, ch. 80, § 8, 60 Stat. 37; Pub. L. 86-695, Sept. 2, 1960, 74 Stat. 740; Pub. L. 99-634, § 2(a), Nov. 7, 1986, 100 Stat. 3525; Pub. L. 103-355, title VIII, § 8301(c)(2), Oct. 13, 1994, 108 Stat. 3397.

In subsection (a), the words “Comptroller General” are substituted for “General Accounting Office” because of 31:702.

Editorial Notes

AMENDMENTS

2018—Subsec. (b). Pub. L. 115-232 substituted “commercial products or commercial services (as defined in sections 103 and 103a, respectively, of this title)” for “commercial items (as defined in section 103 of this title)”.

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 2018 AMENDMENT**

Amendment by Pub. L. 115-232 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.

§ 8705. Administrative offsets

(a) **DEFINITION.**—In this section, the term “contracting officer” has the meaning given that term in chapter 71 of this title.

(b) **OFFSET AUTHORITY.**—A contracting officer of a contracting agency may offset the amount of a kickback provided, accepted, or charged in violation of section 8702 of this title against amounts the Federal Government owes the prime contractor under the prime contract to which the kickback relates.

(c) **DUTIES OF PRIME CONTRACTOR.**—

(1) **WITHHOLDING AND PAYING OVER OR RETAINING AMOUNTS.**—On direction of a contracting officer of a contracting agency with respect to a prime contract, the prime contractor shall withhold from amounts owed to a subcontractor under a subcontract of the prime contract the amount of a kickback which was or may be offset against the prime contractor under subsection (b). The contracting officer may order that amounts withheld—

(A) be paid over to the contracting agency; or

(B) be retained by the prime contractor if the Federal Government has already offset the amount against the prime contractor.

(2) **NOTICE.**—The prime contractor shall notify the contracting officer when an amount is withheld and retained under paragraph (1)(B).

(d) **OFFSET, DIRECTION, OR ORDER IS CLAIM OF FEDERAL GOVERNMENT.**—An offset under subsection (b) or a direction or order of a contracting officer under subsection (c) is a claim by the Federal Government for the purposes of chapter 71 of this title.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3840.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8705(a)	41:56(d).	Mar. 8, 1946, ch. 80, §6, 60 Stat. 37; Pub. L. 86-695, Sept. 2, 1960, 74 Stat. 740; Pub. L. 99-634, §2(a), Nov. 7, 1986, 100 Stat. 3524.
8705(b)	41:56(a).	
8705(c)	41:56(b).	

HISTORICAL AND REVISION NOTES—CONTINUED

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8705(d)	41:56(c).	

§ 8706. Civil actions

(a) **AMOUNT.**—The Federal Government in a civil action may recover from a person—

(1) that knowingly engages in conduct prohibited by section 8702 of this title a civil penalty equal to—

(A) twice the amount of each kickback involved in the violation; and

(B) not more than \$10,000 for each occurrence of prohibited conduct; and

(2) whose employee, subcontractor, or subcontractor employee violates section 8702 of this title by providing, accepting, or charging a kickback a civil penalty equal to the amount of that kickback.

(b) **STATUTE OF LIMITATIONS.**—A civil action under this section must be brought within 6 years after the later of the date on which—

(1) the prohibited conduct establishing the cause of action occurred; or

(2) the Federal Government first knew or should reasonably have known that the prohibited conduct had occurred.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3840.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8706	41:55.	Mar. 8, 1946, ch. 80, §5, 60 Stat. 37; Pub. L. 86-695, Sept. 2, 1960, 74 Stat. 740; Pub. L. 99-634, §2(a), Nov. 7, 1986, 100 Stat. 3524.

§ 8707. Criminal penalties

A person that knowingly and willfully engages in conduct prohibited by section 8702 of this title shall be fined under title 18, imprisoned for not more than 10 years, or both.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3841.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
8707	41:54.	Mar. 8, 1946, ch. 80, §4, 60 Stat. 37; Pub. L. 86-695, Sept. 2, 1960, 74 Stat. 740; Pub. L. 99-634, §2(a), Nov. 7, 1986, 100 Stat. 3524.