

(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

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
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

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
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

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
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

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
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 com-

panies 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 of 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-specific 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 [now Committee on Oversight and Accountability] 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 circumstances 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 con-

tent 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 America 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 [now Committee on Oversight and Accountability], 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 re-

port 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 INTERNAL 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 [now Committee on Oversight and Accountability], 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 speci-

fied 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 accountable 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 re-

view 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.

EX. ORD. NO. 14104. FEDERAL RESEARCH AND DEVELOPMENT IN SUPPORT OF DOMESTIC MANUFACTURING AND UNITED STATES JOBS

Ex. Ord. No. 14104, July 28, 2023, 88 F.R. 51203, 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. The United States maintains an unparalleled innovation ecosystem with world-class universities, Federal laboratories, research centers, and technology incubators, supported in part by Federal investment. Our world is healthier, smarter, more connected, and more sustainable because of Federal taxpayers' investment in discovery and innovation that has supported the commercialization of new products and services.

My Administration has prioritized support for our unique innovation ecosystem by reinvesting across sectors in research and development (R&D), demonstrations, education, and the necessary infrastructure to accelerate the transition of discoveries quickly from the lab to the marketplace.

This investment is designed to produce cutting-edge technologies that support the competitiveness, domestic manufacturing capacity, and well-being of the United States economy; United States workers; our communities; and our national security. Ensuring the commercialization of federally funded inventions by United States manufacturers—while maintaining intellectual property rights—will build on the successful legacy of the United States in spurring economic growth and enhancing United States competitiveness through R&D. It will also further our joint R&D work with partners and allies to strengthen the resilience of global critical supply chains and secure America's leadership in delivering a net-zero emissions economy by no later than 2050.

Therefore, it is the policy of my Administration that when new technologies and products are developed with support from the United States Government, they will be manufactured in the United States whenever feasible and consistent with applicable law.

SEC. 2. Coordination and Consultation. (a) The Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, and the Director of the Office of Science and Technology Policy (OSTP) shall coordinate the executive branch actions necessary to implement this order through the interagency process identified in National Security Memorandum 2 of February 4, 2021 (Renewing the National Security Council System).

(b) In implementing this order, the heads of executive departments and agencies (agencies) shall, as appropriate and consistent with applicable law, consult outside stakeholders—such as those in industry; academia, including Historically Black Colleges and Universities, Tribal Colleges and Universities, and other Minority Serving Institutions; non-governmental organizations; communities; labor unions; and State, local, Tribal, and territorial governments—in order to implement the policy identified in section 1 of this order.

SEC. 3. Strengthening Domestic Manufacturing. (a) The Secretary of Defense, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Health and Human Services, the Secretary of Transportation, the Secretary of Energy, the Secretary of Homeland Security, the Director of the National Science Foundation, and the Administrator of the National Aeronautics and Space Administration should consider domestic manufacturing in Federal R&D funding agreement solicitations, as appropriate and consistent with applicable law. These agency heads shall also consider how their respective agencies' R&D funding agreements support broader domestic manufacturing objectives, including the development of production facilities and capabilities broadly supportive of United States manufacturing, as appropriate and consistent with applicable law.

(b) The Director of OSTP, working through the National Science and Technology Council (NSTC) and in coordination with the Director of the Office of Management and Budget's Made in America Office (Made in America Director) and the heads of agencies identified in subsection (a) of this section, shall seek to add "domestic manufacturing" to future interagency technology R&D roadmaps, as appropriate. The Director of OSTP shall endeavor to standardize the format of domestic manufacturing considerations in technology R&D roadmaps to ensure that industry, the research community, and agencies create the conditions for new technologies to be produced in the United States once they are commercialized.

(c) In collaboration with the Administrator of the Small Business Administration (SBA), the heads of agencies participating in the Small Business Innovation Research and Small Business Technology Transfer programs are encouraged to advance a coordinated interagency approach to innovation and research solicitations with the goals of reducing barriers to program participation, streamlining access to funding opportunities, and encouraging production of new technologies in the United States. The heads of these agencies are further encouraged to collaborate with the SBA to support small businesses transitioning technologies from intramural and extramural labs to commercial markets.

(d) The heads of agencies that have statutory Other Transaction Authority, or that can use other business arrangements authorized by the Congress, are encouraged, when appropriate, to consider using these authorities to purchase or invest in leading-edge technologies to support their production in the United States. If these agencies use these authorities to purchase or invest in the development of new technologies, the terms of these purchases and investments should ensure that the product is substantially manufactured in the United States, as appropriate and consistent with applicable law.

(e) To further support the commercialization and production in the United States of technologies developed, in part, through federally funded R&D, the heads of agencies identified in subsection (a) of this section are encouraged to establish or enhance the technology transfer and commercialization capabilities of their agencies.

SEC. 4. Modernizing Reporting of Invention Utilization. (a) In an effort to streamline reporting requirements for recipients of Federal R&D funding agreements, the heads of agencies identified in section 3(a) of this order should seek to make reporting on the utilization of "subject inventions" (as defined in 35 U.S.C. 201(e)) easier and consistent across the United States Government.

(b) To incentivize domestic manufacturing through the reporting of invention disclosures and the utilization of those inventions, the heads of agencies identified in section 3(a) of this order shall require recipients of Federal R&D funding agreements to track and update the awarding agency on the location in which subject inventions are manufactured.

(c) The heads of agencies identified in section 3(a) of this order should require recipients of Federal R&D funding agreements to report annually to the awarding agency the names of licensees and manufacturing locations of the applicable subject inventions.

(d) Within 60 days of the date of this order [July 28, 2023], the Secretary of Commerce, through the Director of the National Institute of Standards and Technology (NIST) and in consultation with the Office of Management and Budget (OMB), should develop award terms and conditions regarding the reporting requirements in subsections (a) through (c) of this section to be implemented by each awarding agency identified in section 3(a) of this order. Award terms and conditions shall ensure that the reporting of the information specified in subsections (b) and (c) of this section protects business confidential information, consistent with 35 U.S.C. 202(c)(5), while providing increased visibility to tax-

payers on the use of Federal R&D funding in support of domestic manufacturing and job creation.

(e) The Secretary of Commerce, through the Director of NIST and in consultation with the Interagency Working Group for Bayh-Dole, shall consider developing an action plan, including resource requirements, to transition all agencies identified in section 3(a) of this order to the iEdison reporting system to track unclassified subject inventions, patents, and related utilization reports by calendar year 2025. The Secretary of Commerce shall submit the action plan to the Director of OMB within 1 year of the date of this order.

(f) Not later than 120 days after issuance of any final regulations implementing the action plan described in subsection (e) of this section, the heads of agencies identified in section 3(a) of this order shall report to the Director of OMB and the Director of OSTP on steps their respective agencies have taken to transition all unclassified reporting to iEdison by the end of calendar year 2025. These reports may include resource needs and timelines for implementation.

(g) Within 180 days of the date of this order, the Secretary of Commerce, through the Director of NIST and in consultation with the Interagency Working Group for Bayh-Dole, should develop common invention utilization questions (utilization questions), allowing agencies to add agency-specific questions.

(i) The utilization questions should be used by all agencies by May 1, 2024, for subject inventions that a Federal R&D funding agreement recipient has elected to retain title on or after the date of this order.

(ii) The utilization questions should require information on the locations where subject inventions are produced or are used to produce a product.

(iii) The Secretary of Commerce, through the Director of NIST, and the heads of other agencies should aim to minimize the reporting burden on recipients of Federal R&D funding agreements associated with the utilization questions, in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and applicable OMB guidance.

(h) Within 2 years after the date of this order and annually thereafter, the heads of agencies identified in section 3(a) of this order shall submit reports to the Made in America Director on the utilization of inventions that were developed through their previous R&D funding agreements and reported after the date of this order, including where products embodying a subject invention or produced through the use of a subject invention were manufactured.

SEC. 5. Securing Critical and Emerging Technologies Through Domestic Manufacturing. (a) Within 90 days of the date of this order, the heads of agencies identified in section 3(a) of this order shall consider whether “exceptional circumstances” exist warranting a determination that a restriction of the right to retain title to any subject invention funded by their respective agencies’ R&D funding agreements will better promote the policy and objectives of the Bayh-Dole Act [35 U.S.C. 200 et seq.], as appropriate and consistent with applicable law, including 35 U.S.C. 202(a). Such consideration shall include evaluation of whether “exceptional circumstances” exist to warrant the extension of the requirement to manufacture “substantially in the United States” to recipients of Federal R&D funding agreements, to non-exclusive licensees of subject inventions, and for use or sale of subject inventions outside the United States, as appropriate and consistent with applicable law, including 35 U.S.C. 202(a). In considering the issuance of such determinations for these purposes, the heads of agencies identified in section 3(a) of this order shall:

(i) consider measures for technologies important to the United States economy and national security, including critical and emerging technologies such as energy storage, quantum information science, artificial intelligence and machine learning, semiconductors and microelectronics, and advanced manufacturing; and

(ii) consider narrowly tailoring terms related to enhanced United States manufacturing while encouraging

technology transfer and commercialization, and allowing small businesses and nonprofit organizations to retain ownership of and commercialize their federally funded subject inventions.

(b) The heads of agencies identified in section 3(a) of this order shall consider whether other measures are needed to promote domestic manufacturing of subject inventions funded by their respective agencies.

SEC. 6. Implementation of this Order. (a) Within 2 years of the date of this order and annually thereafter for 5 years, the heads of agencies identified in section 3(a) of this order shall submit a report on their respective agencies’ implementation of this order to the Director of OMB and the Director of OSTP.

(b) Each report shall include, to the extent possible, a review of this order’s effectiveness in using the R&D funding agreements of the agencies identified in section 3(a) of this order to support domestic manufacturing, United States industrial competitiveness, and job creation.

(c) Each report shall include, to the extent possible, identification of any challenges to implementation of this order or to the effectiveness of this order in accomplishing the policy goals described in section 1 of this order, as well as recommendations to address such challenges.

SEC. 7. Improving the Waiver Process. (a) Under the Bayh-Dole Act, agencies may waive the requirement that certain products embodying the subject invention or produced through the use of the subject invention be “manufactured substantially in the United States” if, as specified in 35 U.S.C. 204, “reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States” or “under the circumstances domestic manufacture is not commercially feasible.”

(b) Every agency should consider developing a process by which the agency may waive the domestic manufacturing requirements for agency-funded technology or technology developed under an agency funding opportunity without a request from a recipient of a Federal R&D funding agreement. As part of its process, an agency should seek concurrence from the Made in America Director to waive the domestic manufacturing requirements, and should set forth specific factors that may support a waiver, including whether the manufacture of the technology outside the United States is in the economic or national security interest of the United States.

(c) The heads of agencies identified in section 3(a) of this order shall ensure that the waiver process for their agency is rigorous, timely, transparent, and consistent, with due regard for all applicable authorities, including Executive Order 14005 of January 25, 2021 (Ensuring the Future Is Made in All of America by All of America’s Workers) [set out above], and the Bayh-Dole Act’s requirement that a waiver be available when reasonable but unsuccessful efforts have been made to license to a company that could substantially manufacture in the United States, or when domestic manufacture is not commercially feasible.

(d) The Secretary of Commerce, through the Director of NIST and in consultation with the Interagency Working Group for Bayh-Dole, the NSTC Lab-to-Market Subcommittee, and the Made in America Director, shall provide guidance to agencies on the factors and considerations that should be weighed in determining whether domestic manufacturing is not commercially feasible. Guidance shall be designed to help applicants understand the factors an agency will consider when evaluating a waiver application, and should ensure that a determination of the commercial feasibility of manufacturing abroad is not based on substandard or unacceptable working conditions. Within 90 days of the date of this order, the Secretary of Commerce, through the Director of NIST, shall make the guidance available for public comment.

(e) Within 90 days of the date of this order, the Secretary of Commerce, through the Director of NIST and

in consultation with the Interagency Working Group for Bayh-Dole, shall develop common waiver application questions for use by all agencies.

(i) The common waiver application questions should include as relevant criteria, as appropriate and consistent with applicable law:

- (A) how the waiver will be used;
- (B) why it is important that the subject invention be brought to market;
- (C) any potential economic and national security impacts of manufacturing the subject invention abroad;
- (D) the benefits that will accrue to domestic manufacturing and United States jobs as a result of the subject invention being brought to market;
- (E) whether the applicant is proposing an exclusive or non-exclusive license; and
- (F) the conditions under which the subject invention would be manufactured abroad, including unionization of workplaces, health and safety standards, labor and wage laws, and environmental impacts.

(ii) Given the need to maintain agency flexibility, the heads of agencies identified in section 3(a) of this order may add questions to the common waiver application questions, but they should do so sparingly and only as needed to accomplish the policy set forth in this order within their respective agencies' existing authorities.

(f) The heads of agencies identified in section 3(a) of this order shall adopt the common waiver application questions, to the extent consistent with applicable law.

(g) The heads of agencies identified in section 3(a) of this order should acknowledge receipt of waiver applications within 10 business days, to the extent practicable. Once an applicant submits a waiver request application, the reviewing agency should seek to finalize its decision, including negotiations with the applicant as needed, as soon as possible.

(h) Within 270 days of the date of this order, the heads of agencies identified in section 3(a) of this order shall establish agency guidelines for negotiating with waiver applicants to retain as much value or benefit to the United States as possible, as appropriate and consistent with applicable law, while considering technical, business, social, environmental, and economic realities. In assessing a waiver's value to the United States economy, the heads of agencies identified in section 3(a) of this order should consider, as appropriate and in addition to any other relevant factors, potential benefits to domestic manufacturing competitiveness, to United States job creation, and to United States economic and national security.

(i) The heads of agencies identified in section 3(a) of this order should consider limiting waivers to applicants that commit to manufacture in locations that maintain a market economy and for specific agreed-upon purposes.

(ii) The heads of agencies identified in section 3(a) of this order should expect waiver applicants to deliver alternative benefits to the United States as part of an agreement to grant the waiver. Consideration of alternative benefits may include direct or indirect investment in domestic plants and equipment, the creation of high-quality domestic jobs, or further domestic development of the subject invention.

(i) Beginning in fiscal year 2024 and on an annual basis thereafter, the heads of agencies identified in section 3(a) of this order shall provide to the Secretary of Commerce, through the Interagency Working Group for Bayh-Dole, a summary of each waiver application received, approved, and rejected. The summary shall include the terms of any approved waiver and the processing time needed to reach a decision.

(i) The Secretary of Commerce, through the Interagency Working Group for Bayh-Dole, shall publish a periodic summary of the waiver applications in aggregate that describes common reasons for waiver requests, processing times by agency, and recommended policy responses to common challenges.

(ii) Agencies shall ensure that the information submitted for publication to the Secretary of Commerce,

through the Interagency Working Group for Bayh-Dole, appropriately protects business confidential and sensitive information provided by waiver applicants as part of their justification for the waiver, consistent with 35 U.S.C. 202(c)(5). However, the names of applicants seeking a waiver and a summary of the benefits the waiver recipients will provide to the United States should be made available to the public, to the extent permitted by law.

SEC. 8. *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 OMB 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 Govern-