

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 Governmental Affairs of the Senate and the Committee on Oversight and Reform of the House of Representatives a report on the total amount of acquisitions made by Federal agencies in the relevant fiscal year of articles, materials, or supplies acquired from entities that mine, produce, or manufacture the articles, materials, or supplies outside the United States.

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

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

(1) IRON AND STEEL MANUFACTURED IN THE UNITED STATES.—For purposes of this section, manufactured articles, materials, and supplies of iron and steel are deemed manufactured in

the United States only if all manufacturing processes involved in the production of such iron and steel, from the initial melting stage through the application of coatings, occurs in the United States.

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

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

HISTORICAL AND REVISION NOTES

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

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

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

Editorial Notes

REFERENCES IN TEXT

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

AMENDMENTS

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

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

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

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

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

Committee on Oversight and Reform of House of Representatives changed to Committee on Oversight and Accountability of House of Representatives by House

Resolution No. 5, One Hundred Eighteenth Congress, Jan. 9, 2023.

§ 8303. Contracts for public works

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

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

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

(b) EXCEPTIONS.—

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

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

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

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

(2) PARTICULAR ARTICLE, MATERIAL, OR SUPPLY.—If the head of the Federal agency making the contract finds that it is impracticable to comply with subsection (a) for a particular article, material, or supply or that it would unreasonably increase the cost, an exception shall be noted in the specifications for that article, material, or supply and a public record of the findings that justified the exception shall be made.

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

(c) SPECIAL RULES.—

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