

Editorial Notes

REFERENCES IN TEXT

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

AMENDMENTS

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

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

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

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

§ 8303. Contracts for public works

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

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

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

(b) EXCEPTIONS.—

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

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

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

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

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

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

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

(c) SPECIAL RULES.—

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

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

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

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

HISTORICAL AND REVISION NOTES

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

HISTORICAL AND REVISION NOTES—CONTINUED

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

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

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

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

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

Editorial Notes**AMENDMENTS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 8304. Waiver rescission

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

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

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

HISTORICAL AND REVISION NOTES

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

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

Statutory Notes and Related Subsidiaries

SIMILAR PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 8305. Annual report

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

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

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

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

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

HISTORICAL AND REVISION NOTES

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