

BRIEFING ROOM

Executive Order on Ensuring the Future Is Made in All of America by All of America's Workers

JANUARY 25, 2021 • PRESIDENTIAL ACTIONS

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), 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, 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), 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), 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, the Federal Acquisition Regulatory Council (FAR Council) shall consider proposing for notice and public comment amendments to the applicable provisions in the Federal Acquisition Regulation (FAR), title 48, Code of Federal Regulations, consistent with applicable law, that would:

- (i) replace the “component test” in Part 25 of the FAR that is used to identify domestic end products and domestic construction materials with a test under which domestic content is measured by the value that is added to the product through U.S.-based production or U.S. job-supporting economic activity;
- (ii) increase the numerical threshold for domestic content requirements for end products and construction materials; and
- (iii) increase the price preferences for domestic end products and domestic construction materials.

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

Sec. 9. Updates to the List of Nonavailable Articles. Before the FAR Council proposes any amendment to the FAR to update the list of domestically nonavailable articles at section 25.104(a) of the FAR, the Director of OMB, through the Administrator of the Office of

Federal Procurement Policy (OFPP), shall review the amendment in consultation with the Secretary of Commerce and the Made in America Director, paying particular attention to economic analyses of relevant markets and available market research, to determine whether there is a reasonable basis to conclude that the article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. The Director of OMB, through the Administrator of OFPP, shall make these findings available to the FAR Council for consideration.

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

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

- (a) the agency's implementation of, and compliance with, Made in America Laws;
- (b) the agency's ongoing use of any longstanding or nationwide waivers of any Made in America Laws, with a written description of the consistency of such waivers with the policy set forth in section 1 of this order; and
- (c) recommendations for how to further effectuate the policy set forth in section 1 of this order.

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

- (a) the agency's ongoing implementation of, and compliance with, Made in America Laws;
- (b) the agency's analysis of goods, products, materials, and services not subject to Made in America Laws or where requirements of the Made in America Laws have been waived;
- (c) the agency's analysis of spending as a result of waivers issued pursuant to 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), section 5 of Executive Order 13858 of January 31, 2019 (Strengthening Buy-American Preferences for Infrastructure Projects), and Executive Order 13975 of January 14, 2021 (Encouraging Buy American Policies for the United States Postal Service), are hereby revoked.

(b) Executive Order 10582 of December 17, 1954 (Prescribing Uniform Procedures for Certain Determinations Under the Buy-America Act), and Executive Order 13881 of July 15, 2019 (Maximizing Use of American-Made Goods, Products, and Materials), 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.

JOSEPH R. BIDEN JR.

THE WHITE HOUSE,

January 25, 2021.

