OCCASIONAL PAPER No. 1 of 2021

Tenders and Bid'N in US Federal Procurement Markets:

Foreign Suppliers and Sub-Contractors playing a Game of Snakes and Ladders?

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February 2021

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INDEX

Annexures

Tenders and Bid'N in US Federal Procurement Markets:

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Sandeep Verma[1]

I. Introduction

One day before President Biden took his Oath of Office as 46th President of the United States—when President Trump was technically still the (45th) POTUS—the USG issued an *executive order* to regulate cloud, software and remote computing services—specifically targeted at *Infrastructure as a Service* (IaaS) products—titled the **Executive Order on Taking Additional Steps to Address the National Emergency with Respect to Significant Malicious Cyber-Enabled Activities**.[2] In another regulatory development on the same day, the **Federal Acquisition Regulation (FAR) Council** issued a **final rule** making significant changes to its long-standing **"Buy American"** framework for federal procurement.[3] The timing of these changes, including amendments made to the American "Bible" for Federal Public Procurement—the FAR—couldn't have been entirely *apolitical*, especially since the FAR Council essentially formalised **President' Trump's own 2019 executive order**[4] *while he was still in office with less than a day-to-go*. In fact, the "political weight" of 19th January EO *bundled with* the new FAR rule may have even forced the new (46th) President's hand into issuing his "own" executive order on the 25th of January this year[5], within three days of his New Administration, if perhaps only to showcase as to who was more "American" than the other, especially when two senate seats were still up for grabs. The full title of the new President's EO—**Executive Order on Ensuring the Future Is Made in All of America by All of America's Workers** perhaps says it all.

As if these three rapid-fire changes were not enough, just two days later on the 27th of January, came yet another policy change impacting US's federal public procurement landscape in the form of another **Executive Order on Tackling the Climate Crisis at Home and Abroad**, aligning the management of federal procurement and real property, public lands and waters, and financial programs to

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[1] © *HCM RIPA, February 2021.* The author is an IAS officer and presently works as Director General, HCM RIPA, Jaipur. This law and policy brief is primarily intended as background reading material for a forthcoming training session on public procurement for mid-career IAS officers at LBSNAA, Mussoorie; and also for use of DPIIT, MoC and MoF in GoI. Views expressed are purely personal and academic; and do not reflect the official views or position of the Governments of India/ Rajasthan.

[2] *A Final Trump EO Would Regulate Cloud, Software and Remote Computing Services*, Wiley (21 January 2021), *available online* https://www.wiley.law/alert-A-Final-Trump-EO-Would-Regulate-Cloud-Software-and-Remote-Computing-Services.

[3] *Significant Changes To Long-Standing Buy American Act Rules*, Wiley (19 January 2021), *available online* https://www.wiley.law/alert-Significant-Changes-To-Long-Standing-Buy-American-Act-Rules.

[4] *Latest Executive Order Proposes Major Changes to Buy American Rules*; Wiley (17 July 2019), *available online* https://www.wiley.law/alert-Latest-Executive-Order-Proposes-Major-Changes-to-Buy-American-Rules.

[5] *President Biden Directs More changes to Buy American Rules*, Wiley (26 January 2021), *available online* https://www.wiley.law/alert-President-Biden-Directs-More-Changes-to-Buy-American-Rules.

support climate action.[6] This 2nd EO of the New Administration includes a **Federal Clean Electricity and Vehicle Procurement Strategy** which will directly influence agency procurements by facilitating procurement of clean and zero-emission vehicles for federal, state and local government fleets.

II. Assessing the Impact of New Procurement Roadblocks to Foreign Bidder Participation in the US

Combined effects of these "New Year" regulations may not be very happy for foreign stakeholders, given their impact on not just federal procurement of goods and services traditionally undertaken by the USG, but also their expansion (seemingly in conflict with its GATT/ GATS commitments) to a number of private industry operations worldwide. For instance, the 19th January EO on IaaS imposes new KYC requirements on major technology companies and expands USG's ability to monitor users of various IT services[7]: a move that could significantly impact a number of Indian (and non-Indian alike) IT companies currently providing cloud computing services both domestically and abroad, as also potentially affect both confidentially and reliability/ uninterruptiblilty of cloud-based public services offered by foreign governments because of this expanded (over)reach. While implementation of 19th January EO stands temporary paused as part of general instructions issued on 20th of January by the Biden Administration—its "Regulatory Freeze Pending Review"[8]—the IaaS EO is only "down", but clearly "not out".

The *Future-Is-Made-In-All-Of-America EO* of the New Administration is also highly sweeping in nature, and extends to *procurement of services* by the federal government, in sharp contrast with "Buy American" traditionally having been restricted to *procurement of goods.* It also includes within its ambit *non-federal* (state/ private) procurement if assisted by federal grants—way beyond the usual "government procurement" protection offered by the WTO GATT/ GATS frameworks ; and even covers products offered to the general public on federal property, once again, way beyond applicable GATS/ GATT provisions.[9] This last element is curious indeed, as it could potentially cover *all* products offered to the general public on *all* federal property—maybe even *GSA-leased property* such as the Trump Hotel in Washington

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[6] *Biden Administration Issues Sweeping Climate Change EO with Potential Effects for Contractors*, Wiley (29 January 2021), *available online* https://www.wiley.law/alert-Biden-Administration-Issues-Sweeping-Climate-Change-EO-with-Potential-Effects-for-Contractors.

[7] Wiley, *supra* n.2. The (Trump) White House EO is *available online* at https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-taking-additional-steps-address-national-emergency-respect-significant-malicious-cyber-enabled-activities/.

[8] The "Regulatory Freeze" Memorandum issued by the New Administration is *available online* on The White House Website at https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/regulatory-freeze-pending-review/.

[9] Wiley, *supra* n.5. The White House EO is *available online* at https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/25/executive-order-on-ensuring-the-future-is-made-in-all-of-america-by-all-of-americas-workers/.

DC[10], leading one to ponder if Japanese Sushi and French Champagne would need to be struck off from its menu ASAP.

The *Climate Change EO* is equally sweeping in its application; and extends beyond traditional providers of goods and services to include industries such as communications, transportation and health care—once again impacting the ability of, and the costs incurred by, foreign providers of these traditionally "private2private" services.[11] As for 19th January rule issued by the FAR Council early this year, it formalised a number of sweeping changes to federal procurement in the United States[12]: domestic content requirements now stand firmly increased from 50% to 55% that an end product must contain in order to qualify as a "domestic end-product": a seemingly small 5% increase in standing requirements for US-origin components by cost—rules that have been in place for more than 60 years—but one that potentially and disproportionately disrupts participation of a large number of small foreign suppliers operating at the edges of the 50%-55% boundary. Implications of this new rule for foreign sub-contractors are even more adverse in the construction sector, since it increases domestic content requirements for iron and steel to a whopping 95% US content at the bare minimum! In addition, the new rule also increases price preferences enjoyed by bidders offering domestic end-products, from a 6% price advantage to a *seemingly-impossible-to-surmount* 20% price advantage for other-than US small businesses, and from 12% to 30% for US small businesses.

III. Conclusions & Recommendations

Continuing the policy rationale behind differential taxation of foreign-origin supplies introduced some years back[13], the latest regulatory arsenal with the USG, while clearly a part of its economic revival strategy during COVID-times, is one that foreign bidders and sub-contractors will now have to just grin and bear it. This new ecosystem potentially affects India in a number of ways, ranging from possible increase in compliance costs for the Indian Industry and reduced access to private business marketplaces (as in the case of IT services), to serious roadblocks for Indian stakeholders vis-à-vis their participation in USG contracts, both federal and non-federal, primarily as sub-contractors supplying some part of the finished product, work or service.

At a time when the Government of India is keenly pursuing all public policy options for enabling Indian Industry to overcome severe economic after-effects of

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[10] For a better understanding of landlord-lessee interplay of contractual relationships; see, e.g., Schooner, S. and Gordon, D. (2016), *GSA's Trump Hotel Lease Debacle*, Government Executive, *available online* https://www.govexec.com/management/2016/11/gsas-trump-hotel-lease-debacle/133424/.
[11] Wiley, *supra* n.6. The White House EO is *available online* at https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/.
[12] Wiley, *supra* n.3. The Final Rule published in the Federal Register is *available online* at https://www.federalregister.gov/documents/2021/01/19/2021-00710/federal-acquisition-regulation-maximizing-use-of-american-made-goods-products-and-materials.
[13] *See, e.g.,* Verma, S. (2013), *Too Big for the Recycle Bin*, SSRN, *available online* https://ssrn.com/abstract=2251199.

COVID-19, India's enigmatic PM has rightly made an invocation to India's eternal entrepreneurial spirits to arise and resurrect themselves. It may therefore be the right time for the Indian Industry to reinvigorate its engagement with counterparts in the US—both private buyers as well as prime government contractors—and to bring forth all probable implications and possible solutions to the table to the three relevant problem-solvers in GoI—the DPIIT, the Ministry of Commerce and the Ministry of Finance. International marketplaces—both private and public—have become highly sensitive to margins and regulatory movements during *Coronatimes*; and all stakeholders in India will certainly need to coordinate their efforts for minimising any adverse fallout of new USG framework. They may perhaps even need to forcefully negotiate full or partial waivers as permitted under the new system in place, including accessing dispute resolution mechanisms of the WTO for GATT/ GATS compliance wherever necessary, so as to maximally reduce industry's cost of compliance and maintain its competitive edge affected by these acts of men, just as successfully as it is battling out acts (and wraths?) of God Herself.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2021–0051, Sequence No. 1]

Federal Acquisition Regulation; Federal Acquisition Circular 2021–04; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rule.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2021–04. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC.

DATES: For effective dates see the separate documents, which follow.

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 or *zenaida.delgado@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2021–04, FAR Case 2019–016.

RULES LISTED IN FAC 2021–04

Subject	FAR case
Maximizing Use of American-Made Goods, Products and Materials	2019–016

ADDRESSES: The FAC, including the SECG, is available via the internet at *https://www.regulations.gov.*

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments by this FAR rule, refer to the specific item numbers and subjects set forth in the documents following this summary. FAC 2021–04 amends the FAR as follows:

Maximizing Use of American-Made Goods, Products, and Materials (FAR Case 2019–016)

This final rule strengthens domestic preferences under the Buy American statute by making adjustments to the required percentage of domestic content and the existing percentages for the price evaluation preferences in an effort to decrease the amount of foreign-sourced content in a U.S. manufactured product to promote economic and national security, help stimulate economic growth, and create jobs. The price evaluation preferences increase from 6 percent to 20 percent for large business and from 12 percent to 30 percent for small business; for DoD procurements there is no change to the DoD 50 percent amount. The domestic content requirement for iron and steel increases from 50 percent to 95 percent; for other end products and construction materials, the domestic content requirement increases from 50 percent to 55 percent. Foreign iron and steel is iron or steel products that are not produced in the United States. The rule implements E.O. 13881, Maximizing Use of American-Made Goods, Products, and Materials. This final rule will not have a significant economic impact on a substantial number of small entities.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2021–04 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2021–04 is effective January 19, 2021.

John M. Tenaglia,

Principal Director, Defense Pricing and Contracting, Department of Defense.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

William G. Roets, II,

Acting Assistant Administrator, Office of Procurement, National Aeronautics and Space Administration.

[FR Doc. 2021–00708 Filed 1–15–21; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 25, and 52

[FAC 2021–04; FAR Case 2019–016; Docket No. FAR–2019–0016, Sequence No. 1]

RIN 9000–AN99

Federal Acquisition Regulation: Maximizing Use of American-Made Goods, Products, and Materials

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement an Executive order (E.O.) addressing domestic preferences in Government procurement.

DATES: *Effective:* January 21, 2021.

Applicability: The changes in this rule apply to solicitations issued on or after February 22, 2021 and resultant contracts.

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 or *zenaida.delgado@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2021–04, FAR Case 2019–016.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule at 85 FR 56558 on September 14, 2020, to implement E.O. 13881, Maximizing Use of American-Made Goods, Products, and Materials (84 FR 34257, July 18, 2019). In order to implement the E.O., this final rule changes FAR clauses implementing the Buy American statute by increasing the—

1. Domestic content requirements; and
2. Price preference for domestic products.

Increased Domestic Content Requirements

Under E.O. 13881, and this final rule, in order to meet the definition of ''domestic construction material'' or ''domestic end product,'' the cost of

foreign iron and steel for iron and steel products must be less than 5 percent of the cost of all components in the product. For everything else, the domestic content requirement increases from 50 percent to more than 55 percent of the cost of all components. E.O. 13881 creates a new separate higher standard for iron and steel products. This distinction has existed for many years in domestic preference requirements governing certain Federal grant programs, such as the Federal Transit Administration's Buy America regulations applicable to grantees. Also, DoD procurements are affected by the increased domestic content requirements of E.O. 13881; the changes will be implemented in the Defense Federal Acquisition Regulation Supplement (DFARS) through DFARS Case 2019–D045, Maximizing Use of American-Made Goods.

Increased Price Preference for Domestic Offers

The Buy American statute does not prohibit the purchase of foreign end products or use of foreign construction material. Instead, it encourages the use of domestic end products and construction material by imposing a price preference for domestic end products and construction material. E.O. 13881 and this final rule increase the price preference from 6 percent to 20 percent for large businesses, and from 12 percent to 30 percent for small businesses. The E.O. does not impact the price preference for end products for DoD procurements, which is 50 percent for both large and small businesses, because the DoD percentage exceeds the requirements of the E.O.

Thirty-five respondents submitted comments on the proposed rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

This final rule makes the following significant changes from the proposed rule:

• *Definitions.* At FAR 25.003, the definitions of ''domestic construction material,'' ''domestic end product,'' and ''predominantly of iron or steel or a combination of both'' are revised; and a definition of ''foreign iron and steel'' is added.

○ The definitions of ''domestic construction material'' and ''domestic end product'' now specify that the cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of all foreign iron or steel components excluding commercially available off-the-shelf (COTS) fasteners. The definition specifies that the iron or steel components of unknown origin are treated as foreign. Also, the definition explains that if the construction material contains multiple components, the cost of all the materials used in the construction material is calculated in accordance with the definition of ''cost of components'' in FAR 25.003.

○ A definition of ''foreign iron and steel'' which includes language explaining ''produced in the United States'' is added to clarify the term as it is used in the revised definitions of ''domestic construction material'' and ''domestic end product''.

○ The definition of ''predominantly of iron or steel or a combination of both'' now clarifies what is meant by the phrase ''the cost of iron and steel.''

○ Conforming changes are made at FAR 25.101(a)(2)(ii) and 25.201(b)(2)(ii), as well as to FAR clauses 52.225–1, Buy American—Supplies; 52.225–3, Buy American—Free Trade Agreements—Israeli Trade Act; 52.225–9, Buy American—Construction Materials; and 52.225–11, Buy American—Construction Materials Under Trade Agreement.

• *COTS fasteners.* Revisions have been made throughout the FAR to clarify that the domestic content test does not apply to COTS fasteners. These revisions are made at FAR 25.001, 25.003, 25.101, 25.201, as well as in FAR clauses 52.225–1, Buy American-Supplies; 52.225–3, Buy American—Free Trade Agreements—Israeli Trade Act, and its alternates; 52.225–9, Buy American—Construction Materials; and 52.225–11, Buy American—Construction Materials Under Trade Agreement, and its alternate.

B. Analysis of Public Comments

1. Strong Support for the Rule

Comment: Most of the respondents strongly supported the proposed rule. One respondent noted positive factors regarding this rule as follows:

• Improves America's position from an economic standpoint.

• Helps increase jobs.

• Improves relationships with companies within our country.

• Interests other countries to do more trades and business with companies that have American-made products, goods, and materials.

• Improves our national image.

Response: Noted.

2. Domestic Content Test for COTS Items

2a. Remove the COTS Waiver for All Construction Materials

Comment: A few respondents stated that the rule should restore the domestic content test for all COTS construction material, not just for COTS construction iron and steel products. The respondents pointed out that there are instances where ''nonferrous'' construction materials compete with iron and steel products and in these instances, the rule provides an advantage to foreign nonferrous producers when they compete with U.S. producers of iron and steel products by not applying the domestic content test to the ''nonferrous'' construction material.

Response: This FAR change is required to implement E.O. 13881.

2b. Remove the COTS Waiver for Fasteners

Comment: Many respondents (using an essentially identical form letter) urged the Councils to remove the waiver of the domestic content test of the Buy American statute for the acquisition of COTS fasteners. These respondents stated that not doing so would not provide U.S. fastener manufacturers the same protection being offered to manufacturers of other iron and steel products.

Response: The Councils determined that requiring offerors to keep track of the origin of all fasteners could have a significant negative impact by creating an administrative burden on offerors that would outweigh any benefit to the American iron and steel industrial base. However, a clarification is made in FAR 25.001 to exclude only COTS fasteners.

2c. No Changes to Current COTS Waiver

Comment: A few respondents stated that the COTS waiver should remain as is and not subject iron and steel products to the additional rigor of the domestic content test. These respondents commented that contractors for COTS items have built their supply chains to comply with the existing COTS waiver and changing this paradigm will impede projects around the country, adversely impact these contractors, be administratively burdensome for them, and increase compliance costs that will eventually be borne by the Government. One of the

respondents stated that waiving some COTS items, but not others, would create a dissimilar application of the domestic content rule that is not in the public interest and should not be implemented in the FAR.

Response: As explained in the proposed rule, roll-back of the COTS waiver is necessary to give full effect to the E.O. 13881 requirement.

3. Definitions

Comment: One respondent stated that it was not clear why the longstanding practice of using cost of ''components'' has been replaced with ''content'' when determining whether an end product is a steel end product and the implications of this change. The respondent recommended defining the word ''content'' and providing examples of application of this new standard.

Response: The Councils note that the domestic content test is not applied to determine whether an item is wholly or predominantly of iron or steel or a combination of both, but to determine whether such a product is foreign or domestic. As explained in paragraph II.B.2.i of the proposed rule preamble, the term ''component test'' was replaced with ''domestic content test'' because of the wording of the E.O. regarding iron and steel. Per FAR 25.001(c)(1), this domestic content test is one of the two-part test elements used by the Buy American statute to define a ''domestic construction material'' or ''domestic end product.'' Regarding iron and steel end products, the E.O. states that the materials shall be considered to be of foreign origin if ''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.'' ''All the products used'' in an item would be the common meaning of ''content.'' The Councils do not consider it necessary to define ''content''.

However, the Councils added the explanation that the cost of all the materials used in a product is to be calculated consistent with the definition of ''cost of components'' at FAR 25.003, if the product contains multiple components. The Councils also specified that the cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners, both in the definitions of ''domestic construction material,'' and ''domestic end product.''

To determine whether a product that is wholly or predominantly of iron or steel or a combination of both is foreign or domestic, it is necessary to determine the following:

(i) Does the product consist wholly or ''predominantly of iron or steel or a combination of both'' (as defined in FAR 25.003)?

(ii) Is any of the iron or steel content not produced in the United States?

(iii) Is the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product, and a good faith estimate of the cost of all foreign iron or steel components (excluding COTS fasteners), less than 5 percent of the cost of all the components used in the end product (or construction material)? If the product contains multiple components, the cost is to be calculated consistent with the definition of ''cost of components'' at FAR 25.003.

See the following examples:

- *A steel beam.* For purposes of this example, this steel beam consists wholly of steel. The cost of all material in the beam, excluding final manufacture, overhead costs, and profit, is $50. If the steel beam is rolled from steel bloom, then the steel beam probably contains either all domestic steel, or all foreign steel. However, if the beam is welded or riveted from separate steel plates, then it is conceivable that some of the steel plates could have been formed from steel not produced in the United States. If the cost of the foreign steel plates used to make the beam equals or exceeds $2.50 (*i.e.,* 5 percent of the cost of all the components used in the product), then the entire beam is a foreign construction material.
- *A steel safe.* The steel safe may include other components such as a combination lock, a dehumidifier, or drawers. The safe costs $1,000 and the cost of all components in the safe is $500. If the cost of the steel plates or other steel mill products (excluding COTS fasteners) utilized in the manufacture of the safe exceeds $250 (*i.e.,* 50 percent of the total cost of all the components as defined in FAR 25.003), then the safe consists predominantly of steel. If the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the safe and a good faith estimate of the cost of all foreign iron or steel components (excluding COTS fasteners) is less than $25 (*i.e.,* 5 percent of the cost of all the components used in the product), then the safe is a domestic end product.
- *A refrigerator.* The refrigerator consists of many components and materials. The exterior cabinet and door and the inner cabinet of this refrigerator are steel. The refrigerator also includes insulation, cooling system, refrigerant, and fixtures. The refrigerator costs $2,000 and the cost of all components in the refrigerator is $1,000. If the cost of the steel plates or other steel mill products (excluding COTS fasteners) utilized in the manufacture of the refrigerator does not exceed $500 (*i.e.,* 50 percent of the total cost of all the components as defined in FAR 25.003), then the refrigerator does not consist predominantly of steel.

Comment: One respondent recommended clarifying the meaning of ''metallurgical processes'' and providing a list of representative metallurgical functions such as smelting, melting, pouring, rolling, casting, and other similar processes. The respondent based the recommendation on their interpretation of the existing guidance and the proposed rule, suggesting that raw steel and iron material for a steel end product may enter the United States and after undergoing all manufacturing processes for its intended final use, it would then be considered ''produced in the U.S.'' both for purposes of being a domestic component (if it is a component in an end product) or a domestic end product itself (if solely from one foreign material). The respondent's interpretation also suggested that if ''the steel came with any foreign manufacturing outside the original metallurgical process, the item would be considered foreign, even if all subsequent manufacturing occurred in the U.S.'' One respondent suggested defining ''manufactured in the United States'' under the Buy American statute's two-part test using a more stringent standard where all steelmaking processes, including the melting and pouring of the steel (*i.e.,* the actual steelmaking), occur in the United States. Other respondents requested the rule provide a clear, explicit definition of ''foreign iron and steel'' to prevent any adverse or unintended consequences.

Response: The exception relating to metallurgical processes involving refinement of steel additives does not apply to any of the metallurgical processes involved in the making of the steel itself. Steel is defined in FAR 25.003 as an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements. These other elements (*e.g.,* manganese, silicon, copper, aluminum, chromium, cobalt, molybdenum, nickel, niobium, titanium, tungsten, vanadium) are termed steel additives, and as such,

are added to the steel alloy to create steel with different properties (*e.g.,* stainless steel). Therefore, whatever metallurgical processes are used to separate and concentrate and reduce the ore to metal, then refine to increase the grade or purity of a steel additive (such as titanium or tungsten) can occur anywhere, prior to adding these other metals to produce the steel alloy in the United States. As stated in the proposed rule, in order to be domestic, all manufacturing processes of the iron or steel (other than the additives) must take place in the United States. In the final rule, language is added from the definition of ''produced in the United States'' from E.O. 13788, Buy American and Hire American (82 FR 18837) to better explain how the iron or steel is considered domestic. For clarity, the final rule moves the explanation of what it means to produce iron or steel in the United States from the definition of ''domestic construction material'' and ''domestic end product'' to a new, separate definition in FAR 25.003 for the term ''foreign iron and steel.'' The definition of ''foreign iron and steel'' is based on the existing description of ''iron or steel components'' at FAR 25.602–1(a)(1)(ii), consistent with the intent articulated in the proposed rule.

Comment: One respondent recommended that ''good faith'' be further defined to include a subjective and objective standard for a ''reasonable business person without legal knowledge or training''.

Response: The term ''good faith'' is used in many instances in the FAR and other agency regulations. The Councils concluded that ''a good faith estimate'' should be sufficient; and that adding the suggested language will not make the standard any clearer.

Comment: One respondent stated that requiring nothing more than a ''good faith assurance'' to calculate the cost of foreign components could lead to abuse or fraud in calculating the cost of foreign components, which would undermine the purpose of E.O. 13881. The respondent commented that because the origin of the iron and steel products should be readily discernible, the final rule should require suppliers to track the domestic content in iron and steel products and subject this accounting to periodic audit. Another respondent submitted a similar comment.

Response: The Councils agree that the origin of the iron and steel components should be readily discernible. As such, the final rule has been revised to clarify that contractors are to make a ''good faith estimate'' only for the cost of all foreign iron or steel components, other than the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product. It is highly likely that current procedures will yield the needed information for the offeror to make the required determinations in this rule. The cost of the iron and steel items are included in invoices and already used to determine whether an end product or construction material is foreign.

Comment: A few respondents stated that defining ''predominantly of iron or steel'' based on cost of the components, as opposed to weight, volume, and cost, opens a loophole that will allow manufacturers and contractors to evade the domestic content requirements through creative accounting practices.

Response: The Councils reiterate that basing the predominance on cost, rather than weight or volume, is consistent with the requirement of the E.O. that the ''cost'' of foreign iron and steel be limited to less than 5 percent of the ''cost'' of all components. Therefore, the final rule remains unchanged regarding the basis for determining whether an item is predominantly of iron or steel.

Comment: One respondent stated that the proposed rule's definition of ''fasteners'' was overly broad and by exempting fasteners from the domestic content requirements, the rule creates an opportunity for abuse of this ''loophole.'' The respondent requested the definition of ''fasteners'' be modified to reflect the qualifiers the Councils provided in the proposed rule, *i.e.,* that the fasteners being exempted were those that were ''small'' or ''inexpensive.''

Response: The Councils have clarified the text in the final rule to state that the fasteners being exempted from the domestic content requirement are those that are COTS items.

Comment: One respondent stated that requiring iron and steel products to contain 95 percent domestic content is too onerous and burdensome on manufacturers. The respondent commented that the 95 percent requirement should be reduced or phased in over time. Alternatively, the respondent also suggested that in determining whether a predominantly of iron or steel product is domestic, manufacturers should be allowed to use the cost of non-iron and non-steel components of the item; this way, manufacturers can mitigate the 95 percent requirement, while still incentivizing domestic purchase of non-steel components. Another respondent had a similar comment, pointing out that the Environmental Protection Agency allows for 5 percent of the total ''project'' cost to be foreign iron and steel products instead of 5 percent of the total cost of the individual product.

Response: This FAR change is required to implement E.O. 13881, which increased the domestic content requirement for iron and steel end products to 95 percent. However, the Councils note that the proposed rule presented the requirement as whether 5 percent of the cost of all the components was foreign iron or steel, not whether 5 percent of the cost of only the iron or steel components were foreign iron or steel; thereby, giving credit to the non-iron and non-steel components of the end item as requested by the respondent.

Comment: One respondent stated their interpretation that the proposed rule encompassed steel subcomponents, not just steel components. Due to lack of visibility into the cost of these steel subcomponents by manufacturers, the respondent requested the rule consider exempting the cost of subcomponents from the calculations. Another respondent had a similar comment, pointing out that the Federal Transit Administration's policy explicitly exempts subcomponents from country-of-origin consideration, including iron and steel components.

Response: The Councils confirm that the intent of the proposed rule was to include the cost of subcomponents in the domestic content calculations. However, the Councils did not add ''subcomponents'' in the FAR text because the definition of ''components'' at FAR 25.003 is written broadly enough to already cover subcomponents. In acknowledging the difficulty contractors may have to know, definitively, the cost of all subcomponents in iron or steel items, the Councils clarify in the final rule that contractors are to make a ''good faith estimate'' of the cost of all foreign iron or steel components, other than the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product.

4. Outside the Scope of This Rule

Comment: Two respondents provided comments regarding marketing their specific businesses, and two respondents provided comments of a political nature.

Response: These comments did not address the rule and, as such, are outside the scope of this rule.

Comment: One respondent recommended that if no domestic offers are received on an acquisition conducted using full and open competition, then the procurement officer should confirm with at least two

other manufacturers within the same NAICS code their non-interest in the procurement.

Response: The Councils concluded the recommendation would add a significant burden on contracting officers, and is not necessary for implementation of the E.O.

Comment: One respondent recommended defining ''manufactured'' and adopting a clear non-shift approach to the items specified in the procurement document for all purchases (aside from systems).

Response: This recommendation is not necessary for implementation of the E.O. The Councils note that definitions of ''manufacture'' have been considered in the past and rejected. Although the FAR does not define ''manufacture,'' it does define ''place of manufacture,'' at FAR 52.225–18, as ''the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government.''

Comment: One respondent recommended removing the Buy American statute's exception for ''Goods for Use Outside the United States'' and using an evaluation factor instead.

Response: The exception for articles, materials, or supplies for use outside the United States is included in the Buy American statute (41 U.S.C. 8302(a)(2)(A) and 8303(b)(1)(A)).

The Balance of Payments Program provided a preference for U.S. products and services for overseas use, and its restrictions were similar to the restrictions of the Buy American statute, which apply only within the United States. Purchases of supplies for use outside the United States, and construction materials for construction contracts performed outside the United States, were covered by the Balance of Payments Program in FAR subpart 25.3, as a matter of policy, until it was removed in 2002. Only a few civilian agencies make purchases for use outside the United States. Furthermore, even fewer civilian agencies award construction contracts that are performed outside the United States. The Balance of Payments Program applied to purchases valued at more than the simplified acquisition threshold and had little impact for civilian agency acquisitions of supplies in excess of the Trade Agreements Act threshold, because the civilian agencies do not apply the Balance of Payments Program when the Trade Agreements Act applies. Therefore, because there was no statutory requirement for the Balance of Payments Program, and because elimination of this Program for civilian agencies would reduce administrative burdens on both the Government and the public, without significant impact on the Government's international balance of payments, the Balance of Payments Program was eliminated for civilian agencies. The rationale for elimination of this Program for civilian agencies has not changed. Note that DoD has retained the Balance of Payments Program for acquisitions of supplies for use outside the United States or construction projects to be performed overseas.

5. Oppose the Rule

Comment: Some respondents urged the Councils not to increase the iron and steel content requirements beyond their current levels because of the limited availability of U.S. sources for components, which will result in increased costs and a decrease in competition. Some of these respondents also stated that Buying American should be an incentive, not a requirement.

Response: This FAR change implements the content requirements established in E.O. 13881.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This final rule does not add any new provisions or clauses, nor change the applicability of existing provisions or clauses, to contracts at or below the SAT and contracts for the acquisition of commercial items, including COTS items.

However, this rule applies the domestic content test of the Buy American statute, as implemented by E.O. 13881, to COTS items that consist wholly or predominantly of iron or steel (excluding COTS fasteners). In accordance with 41 U.S.C. 1907, since 2008, the domestic content test of the Buy American statute has been waived for COTS items, in part due to the complexity and cost of keeping track of components in a world of global sourcing where the Government is not a market driver. But absent restoration of the domestic content test, the E.O. 13881 requirement regarding iron and steel construction material would have very little effect. As such, the Administrator for Federal Procurement Policy has determined that it would not be in the best interest of the Federal Government to exempt iron and steel products (excluding COTS fasteners) that are COTS items from the applicability of the content test for foreign iron and steel under the Buy American statute.

The domestic content waiver for COTS items would continue to apply to COTS iron and steel fasteners, such as nuts, bolts, pins, rivets, nails, clips, and screws, which are generally so small, inexpensive, and comingled that trying to keep track of the origin of all fasteners would create an administrative burden on offerors that would outweigh any benefit to the American iron and steel industrial base.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action and, therefore, was not subject to the review of the Office of Information and Regulatory Affairs under section 6(b) of E.O. 12866. This rule is not a major rule under 5 U.S.C. 804.

V. Expected Impact of the Final Rule

The FAR clauses implementing the Buy American statute apply to a narrow set of procurements. Also, because the FAR Council is leaving the COTS items exception in place for most COTS items, the heightened domestic content requirements will not be applicable to those procurements.

With this rule's implementation, domestic industries supplying domestic end products are likely to benefit from a competitive advantage. Based on the E.O., it is unclear if the pool of qualified suppliers would be reduced, resulting in less competition (and a possible increase in prices that the Government will pay to procure these products).

At least three arguments point to the possibility that any increased burden, on contractors in particular, could be small if not *de minimis:* (1) Familiarization costs should be low; (2) some, if not many, contractors may already be able to meet the more stringent threshold; and (3) costs incurred by contractors that adjust their supply chains so that their end products qualify as domestic will enjoy a larger price preference that should help to offset these costs over time. Each of these arguments is explained below.

First, DoD, GSA, and NASA do not anticipate significant costs from contractors' familiarization with this

rule given the history of rulemaking and E.O.s in this area. The basic mechanics of the Buy American statute (*e.g.,* definitions, how and when the price preference is used to favor domestic end products, certifications required of offerors to demonstrate end products are domestic) remain unchanged and continue to reflect processes that are decades old.

Second, some, if not many, contractors may already be able to comply with the lower foreign content requirement needed to meet the definition of ''domestic end product'' under E.O. 13881 and this rule. Laws such as the SECURE Technology Act, Public Law 115–390, which requires a series of actions to strengthen the Federal infrastructure for managing supply chain risks, are placing a significantly increased emphasis on Federal agencies and Federal Government contractors to identify and reduce risk in their supply chains. One way to reduce supply chain risk is to increase domestic sourcing of content. In addition, in the context of iron and steel, many existing laws already require more stringent content. For example, the Recovery Act required that all construction material for a project for the construction, alteration, maintenance, or repair of a public building or a public work in the United States, consisting wholly or predominantly of iron or steel, had to be produced in the United States when using Recovery Act funds, to the extent consistent with trade agreements (see FAR 25.602–1, implementing section 1605 of the Recovery Act). In addition, Federal contractors who also work on subawards funded under Federal grants may, in some cases, find that the steel, iron, and manufactured goods used in the project be produced in the United States, as is the case for certain funding administrated by the Federal Transit Administration for public transportation projects (see 49 U.S.C. 5323(j)). Accordingly, it is possible that the Federal market for iron and steel has already done significant retooling and could meet the requirements of E.O. 13881 with minor additional effort.

Third, it is anticipated that some contractors' products and construction materials may not meet the definitions of ''domestic construction material,'' and ''domestic end product'' unless the contractors take steps to adjust their supply chains to increase the domestic content. Contractors that make a business decision not to modify their supply chains will still be able to propose in response to Federal contract solicitations but will no longer enjoy a price preference. Contractors that sell to civilian agencies and retool their supply sources to meet the more stringent threshold will have a more generous price preference applied to their products. These stronger preferences, which are designed as an incentive to encourage more domestic sourcing, may help to offset costs of meeting the new standards.

This rule has the potential to slightly increase the estimated percentage of foreign offers. It can only impact products that are made in the United States as follows: Iron or steel products where the cost of foreign iron and steel is 5 percent or more of the cost of all components in the product; or other products, other than COTS items, that have a content of 45 to 50 percent foreign components. Offerors of such products have an option to increase the domestic content and continue to offer domestic products, in which case they may benefit from the increased preference for domestic products, or they may continue to offer the same product, which will now be evaluated as foreign. The Councils do not have any data on how many currently domestic products would fall into this category. Nor do the Councils have any knowledge as to which option an offeror of such products would select since this is a business decision for each offeror to make. Regarding the increased price preference for domestic offers, the Councils note that robust competition among vendors offering domestic products will decrease the extent to which the Government could pay an additional 20 to 30 percent for domestic products above and beyond the cost of otherwise equivalent foreign products.

Therefore, based on public comments received, DoD, GSA, and NASA have concluded that the initial assessment is correct that the cost impact of this rule is not significant, and any impact is predominantly positive.

VI. Executive Order 13771

This rule is not subject to E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, because this rule has a *de minimis* impact on the public (see section V. of this preamble).

VII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule strengthens domestic preferences under the Buy American statute by making adjustments to the required percentage of domestic content and the existing percentages for the price evaluation preferences in an effort to decrease the amount of foreign-sourced content in a U.S. manufactured product to promote economic and national security, help stimulate economic growth, and create jobs. The objective of this rule is to implement E.O. 13881, Maximizing Use of American-Made Goods, Products, and Materials (84 FR 34257, July 18, 2019).

There were no significant issues raised by the public comments in response to the initial regulatory flexibility analysis.

DoD, GSA, and NASA examined data from the Federal Procurement Data System for fiscal years (FY) 2017, 2018, and 2019, for new awards with a foreign place of performance for construction valued over the micro-purchase threshold and awards for supplies to unique small businesses. This rule will apply to only the 8 percent of foreign construction awards that were made to small businesses, and only 14 percent of foreign supply awards were made to small businesses.

Buy american statute	FY 2017	FY 2018	FY 2019	Median
	SB/total	SB/total	SB/total	SB (%)
Construction	18/217 = 8%	13/223 = 6%	15/199 = 8%	8
Supplies	153/1,200 = 13%	164/1,161 = 14%	164/1,048 = 16%	14

This rule is covered under the existing information collection requirements associated with the Buy American statute. The rule will strengthen domestic preferences under the Buy American statute and provide small businesses the opportunity and incentive to deliver U.S. manufactured products from domestic suppliers. It is expected that this rule will benefit U.S. small business manufacturers, including those of iron or steel.

There are no available alternatives to the rule to accomplish the desired objective of the statute.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory

Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under the Office of Management and Budget Control Number 9000–0024, Buy American, Trade Agreements, and Duty-Free Entry.

List of Subjects in 48 CFR Parts 12, 25, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 12, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 12, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend section 12.505 by revising paragraph (a) to read as follows:

12.505 Applicability of certain laws to contracts for the acquisition of COTS items.

* * * * *

(a)(1) The portion of 41 U.S.C. 8302, American Materials Required for Public Use, paragraph (a)(1) that reads ''substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States,'' Buy American—Supplies, domestic content test, except as provided in 25.101(a)(2)(ii) (see 52.225–1 and 52.225–3).

(2) The portion of 41 U.S.C. 8303, Contracts for Public Works, paragraph (a)(2) that reads ''substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States,'' Buy American—Construction Materials, domestic content test, except as provided in 25.201(b)(2)(ii)(see 52.225–9 and 52.225–11).

* * * * *

PART 25—FOREIGN ACQUISITION

■ 3. Amend section 25.001 by revising paragraph (c)(1) to read as follows:

25.001 General.

* * * * *

(c) * * *

(1) The Buy American statute uses a two-part test to define a ''domestic end product'' or ''domestic construction material'' (manufactured in the United States and a domestic content test). The domestic content test has been waived for acquisition of commercially available off-the-shelf (COTS) items, except a product that consists wholly or predominantly of iron or steel or a combination of both (excluding COTS fasteners) (see 25.101(a) and 25.201(b)).

* * * * *

■ 4. Amend section 25.003 by—

■ a. Revising the definitions ''Domestic construction material'' and ''Domestic end product''; and

■ b. Adding in alphabetical order the definitions ''Fastener'', ''Foreign iron and steel'', ''Predominantly of iron or steel or a combination of both'', and ''Steel''.

The revisions and additions read as follows:

25.003 Definitions.

* * * * *

Domestic construction material means—

(1) For use in subparts other than 25.6—

(i) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(A) An unmanufactured construction material mined or produced in the United States; or

(B) A construction material manufactured in the United States, if—

(*1*) The cost of the components mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(*2*) The construction material is a commercially available off-the-shelf (COTS) item; or

(ii) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all the components used in such construction material. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the construction material and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of ''cost of components'' in this section; or

(2) For use in subpart 25.6, see the definition in 25.601.

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States;

(ii) An end product manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all the components used in the end product. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the end product and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the definition of ''cost of components'' in this section.

* * * * *

Fastener means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

* * * * *

Foreign iron and steel means iron or steel products not produced in the United States. Produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

■ 5. Amend section 25.100 by—
■ a. Removing from the end of paragraph (a)(2) ''and'';
■ b. Redesignating paragraph (a)(3) as paragraph (a)(4);
■ c. Adding a new paragraph (a)(3); and
■ d. Revising the newly redesignated paragraph (a)(4).

The addition and revision read as follows:

25.100 Scope of subpart.

(a) * * *

(3) Executive Order 13881, July 15, 2019; and

(4) Waiver of the domestic content test of the Buy American statute for acquisition of commercially available off-the-shelf (COTS) items in accordance with 41 U.S.C. 1907, but see 25.101(a)(2)(ii).

* * * * *

■ 6. Amend section 25.101 by—
■ a. Removing from paragraph (a) introductory text ''statute uses'' and adding ''statute and E.O. 13881 use'' in its place;
■ b. Revising paragraph (a)(2);
■ c. Removing from paragraph (b) ''component test'' and adding ''domestic content test'' in its place; and
■ d. Removing from paragraph (c) ''Subpart 25.5'' and adding ''subpart 25.5'' in its place.

The revision reads as follows:

25.101 General.

(a) * * *

(2)(i) Except for an end product that consists wholly or predominantly of iron or steel or a combination of both, the cost of domestic components must exceed 55 percent of the cost of all the components. In accordance with 41 U.S.C. 1907, this domestic content test of the Buy American statute has been waived for acquisitions of COTS items (see 12.505(a)) (but see paragraph (a)(2)(ii) of this section).

(ii) For an end product that consists wholly or predominantly of iron or steel or a combination of both, the cost of foreign iron and steel must constitute less than 5 percent of the cost of all the components used in the end product (see the definition of ''foreign iron and steel'' at 25.003). The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the end product and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. This domestic content test of the Buy American statute has not been waived for acquisitions of COTS items in this category, except for COTS fasteners.

* * * * *

25.105 [Amended]

■ 7. Amend section 25.105 by—
■ a. Removing from paragraph (b)(1) ''6 percent'' and adding ''20 percent'' in its place; and
■ b. Removing from paragraph (b)(2) ''12 percent'' and ''Subpart 19.5'' and adding ''30 percent'' and ''subpart 19.5'' in their places, respectively.

■ 8. Amend section 25.200 by—
■ a. Removing from the end of paragraph (a)(2) ''and'';
■ b. Redesignating paragraph (a)(3) as paragraph (a)(4);
■ c. Adding a new paragraph (a)(3); and
■ d. Revising the newly redesignated paragraph (a)(4).

The addition and revision read as follows:

25.200 Scope of subpart.

(a) * * *

(3) Executive Order 13881, July 15, 2019; and

(4) Waiver of the domestic content test of the Buy American statute for acquisitions of commercially available off-the-shelf (COTS) items in accordance with 41 U.S.C. 1907, but see 25.201(b)(2)(ii).

* * * * *

■ 9. Revise section 25.201 to read as follows:

25.201 Policy.

(a) Except as provided in 25.202, use only domestic construction materials in construction contracts performed in the United States.

(b) The Buy American statute restricts the purchase of construction materials that are not domestic construction materials. For manufactured construction materials, the Buy American statute and E.O. 13881 use a two-part test to define domestic construction materials.

(1) The article must be manufactured in the United States; and

(2)(i) Except for construction material that consists wholly or predominantly of iron or steel or a combination of both, the cost of domestic components must exceed 55 percent of the cost of all the components. In accordance with 41 U.S.C. 1907, this domestic content test of the Buy American statute has been waived for acquisitions of COTS items (see 12.505(a)).

(ii) For construction material that consists wholly or predominantly of iron or steel or a combination of both, the cost of foreign iron and steel must constitute less than 5 percent of the cost of all the components used in such construction material (see the definition of ''foreign iron and steel'' at 25.003). The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the construction material and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. This domestic content test of the Buy American statute has not been waived for acquisitions of COTS items in this category, except for COTS fasteners.

25.204 [Amended]

■ 10. Amend section 25.204 in paragraph (b) by removing ''6 percent'' and adding ''20 percent'' in its place.

■ 11. Amend section 25.504–1 by—
■ a. Revising the table in paragraph (a)(1);
■ b. Removing from paragraph (a)(2) ''12 percent'' and ''$11,200'' and adding ''30 percent'' and ''$13,000'' in their places, respectively; and
■ c. Removing from paragraph (b)(2) ''12 percent'' and ''$11,424'' and adding ''30 percent'' and ''$13,260'' in their places, respectively.

The revision reads as follows:

25.504–1 Buy American statute.

(a)(1) * * *

Offer A	$16,000	Domestic end product, small business.

Offer B	$15,700	Domestic end product, small business.
Offer C	$10,000	U.S.-made end product (not domestic), small business.

* * * * *

■ 12. Amend section 25.504–2 by revising the table to read as follows:

25.504–2 WTO GPA/Caribbean Basin Trade Initiative/FTAs.

* * * * *

Offer A	$304,000	U.S.-made end product (not domestic).
Offer B	$303,000	U.S.-made end product (domestic), small business.
Offer C	$300,000	Eligible product.
Offer D	$295,000	Noneligible product (not U.S.-made).

* * * * *

■ 13. Amend section 25.504–3 by—

■ a. Revising the entry ''Offer B'' in the table in paragraph (a);

■ b. Revising the entry ''Offer B'' in the table in paragraph (b); and

■ c. Revising entries ''Offer B'' and ''Offer C'' in the table in paragraph (c).

The revisions read as follows:

25.504–3 FTA/Israeli Trade Act.

(a) * * *

*	*	* * *
Offer B	$100,000	Eligible product.

* * * * *

(b) * * *

*	*	* * *
Offer B	$103,000	Noneligible product.

* * * * *

(c) * * *

*	*	* * *
Offer B	$103,000	Eligible product.
Offer C	100,000	Noneligible product.

* * * * *

■ 14. Amend section 25.504–4 by—

■ a. In paragraph (a)—

■ i. Revising the table;

■ ii. In STEP 1, Items 3 and 5, removing ''6 percent'' and adding ''20 percent'' in their places, respectively; and

■ iii. Revising STEP 2 and 3.

■ b. Revising paragraph (b).

The revisions read as follows:

25.504–4 Group award basis.

(a) * * *

Item	Offers		
	A	B	C
1	DO = $55,000	EL = $56,000	NEL = $50,000
2	NEL = 13,000	EL = 10,000	EL = 13,000
3	NEL = 11,500	DO = 12,000	DO = 10,000
4	NEL = 24,000	EL = 28,000	NEL = 22,000
5	DO = 18,000	NEL = 10,000	DO = 14,000
Total	121,500	116,000	109,000

* * * * *

STEP 2: Evaluate Offer C against the tentative award pattern for Offers A and B:

Item	Offers		
	Low offer	Tentative award pattern from A and B	C
1	A	DO = $55,000	*NEL = $60,000
2	B	EL = 10,000	EL = 13,000
3	B	DO = 12,000	DO = 10,000
4	A	NEL = 24,000	NEL = 22,000
5	B	*NEL = 12,000	DO = 14,000
Total		113,000	119,000

* Offer + 20 percent.

On a line item basis, apply a factor to any noneligible offer if the other offer for that line item is domestic.

For Item 1, apply a factor to Offer C because Offer A is domestic and the acquisition was not covered by the WTO GPA. The evaluated price of Offer C, Item 1, becomes $60,000 ($50,000 plus 20 percent). Apply a factor to Offer B, Item 5, because it is a noneligible product and Offer C is domestic. The evaluated price of Offer B is $12,000 ($10,000 plus 20 percent). Evaluate the remaining items without applying a factor.

STEP 3: The tentative unrestricted award pattern from Offers A and B is lower than the evaluated price of Offer C. Award the combination of Offers A and B. Note that if Offer C had not specified all-or-none award, award would be made on Offer C for line items 3 and 4, totaling an award of $32,000.

(b) *Example 2.*

Item	Offers		
	A	B	C
1	DO = $50,000	EL = $50,500	NEL = $50,000

Item	Offers		
	A	B	C
2	NEL = 10,300	NEL = 10,000	EL = 10,200
3	EL = 20,400	EL = 21,000	NEL = 20,200
4	DO = 10,500	DO = 10,300	DO = 10,400
Total	91,200	91,800	90,800

Problem: The solicitation specifies award on a group basis. Assume the Buy American statute applies and the acquisition cannot be set aside for small business concerns. All offerors are large businesses.

Analysis: (see 25.503(c))

STEP 1: Determine which of the offers are domestic (see 25.503(c)(1)):

	Domestic (percent)	Determination
A	$50,000 (Offer A1) + $10,500 (Offer A4) = $60,500 $60,500/$91,200 (Offer A Total) = 66.3%	Domestic.
B	$10,300 (Offer B4)/$91,800 (Offer B Total) $ = 11.2%	Foreign.
C	$10,400 (Offer C4)/$90,800 (Offer C Total) = 11.5%	Foreign.

STEP 2: Determine whether foreign offers are eligible or noneligible offers (see 25.503(c)(2)):

	Domestic + eligible (percent)	Determination
A	N/A (Both Domestic)	Domestic.
B	$50,500 (Offer B1) + $21,000 (Offer B3) + $10,300 (Offer B4) = $81,800 $81,800/$91,800 (Offer B Total) = 89.1%	Eligible.
C	$10,200 (Offer C2) + $10,400 (Offer C4) = $20,600 $20,600/$90,800 (Offer C Total) = 22.7%	Noneligible.

STEP 3: Determine whether to apply an evaluation factor (see 25.503(c)(3)). The low offer (Offer C) is a foreign offer. There is no eligible offer lower than the domestic offer. Therefore, apply the factor to the low offer. Addition of the 20 percent factor (use 30 percent if Offer A is a small business) to Offer C yields an evaluated price of $108,960 ($90,800 + 20 percent). Award on Offer A (see 25.502(c)(4)(ii)). Note that, if Offer A were greater than Offer B, an evaluation factor would not be applied, and award would be on Offer C (see 25.502(c)(3)).

25.601 [Amended]

■ 15. Amend section 25.601 by removing the definition ''Steel''.

25.604 [Amended]

■ 16. Amend section 25.604 in paragraph (c)(2) by removing ''6 percent'' and adding ''20 percent'' in its place.

25.605 [Amended]

■ 17. Amend section 25.605 by—
■ a. Removing from paragraph (a)(2) ''6 percent'' and adding ''20 percent'' in its place; and
■ b. Removing from paragraph (a)(3) ''.06'' and adding ''.20'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 18. Amend section 52.212–3 by—
■ a. Revising the date of the provision; and
■ b. Revising paragraphs (f)(1), (g)(1)(i), the first sentence of (g)(1)(ii), and (g)(1)(iii) introductory text.

The revisions read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (Jan 2021)

* * * * *

(f) * * *

(1)(i) The Offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product.

(ii) The Offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

(iii) The terms ''domestic end product,'' ''end product,'' ''foreign end product,'' and ''United States'' are defined in the clause of this solicitation entitled ''Buy American-Supplies.''

* * * * *

(g)(1) * * *

(i)(A) The Offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (iii) of this provision, is a domestic end product.

(B) The terms ''Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product,'' ''domestic end product,'' ''end product,'' ''foreign end product,'' ''Free Trade Agreement country,'' ''Free Trade Agreement country end product,'' ''Israeli end product,'' and ''United States'' are defined in the clause of this solicitation entitled ''Buy American—Free Trade Agreements—Israeli Trade Act.''

(ii) The Offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled ''Buy American—Free Trade Agreements—Israeli Trade Act.''

* * * * *

(iii) The Offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled ''Buy American—Free Trade Agreements—Israeli Trade Act.'' The Offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

* * * * *

■ 19. Amend section 52.212–5 by—

■ a. Revising the date of the clause; and
■ b. Removing from paragraphs (b)(48) and (b)(49)(i) through (iv) ''(MAY 2014)'' and adding ''(JAN 2021)'' in their places, respectively.

The revision reads as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (Jan 2021)

* * * * *

■ 20. Amend section 52.213–4 by—
■ a. Revising the date of the clause; and
■ b. Removing from paragraph (b)(1)(xvii) introductory text ''(MAY 2014)'' and adding ''(JAN 2021)'' in its place.

The revision reads as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (Jan 2021)

* * * * *

■ 21. Amend section 52.225–1 by—
■ a. Revising the date of the clause;
■ b. In paragraph (a):
■ i. Removing from paragraph (1)(i) in the definition ''Commercially available off-the-shelf (COTS) item'' ''FAR'' and adding ''Federal Acquisition Regulation (FAR)'' in its place;
■ ii. Revising the definition ''*Domestic end product*'';
■ iii. Adding in alphabetical order the definitions ''*Fastener*'' ''*Foreign iron and steel*'' ''*Predominantly of iron or steel or a combination of both*'' and ''*Steel*''; and
■ c. Revising paragraph (b).

The revisions and additions read as follows:

52.225–1 Buy American—Supplies.

* * * * *

Buy American—Supplies (Jan 2021)

(a) * * *

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States;

(ii) An end product manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all the components used in the end product. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the end product and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the definition of ''cost of components''.

* * * * *

Fastener means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

* * * * *

Foreign iron and steel means iron or steel products not produced in the United States. Produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

(b) 41 U.S.C. chapter 83, Buy American, provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with 41 U.S.C. 1907, the domestic content test of the Buy American statute is waived for an end product that is a COTS item (see 12.505(a)(1)), except that for an end product that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the end product, excluding COTS fasteners.

* * * * *

■ 22. Amend section 52.225–2 by—
■ a. Revising the date of the provision and paragraphs (a) and (b);
■ b. Removing from paragraph (c) ''Part'' and adding ''part'' in its place.

The revisions read as follows:

52.225–2 Buy American Certificate.

* * * * *

Buy American Certificate (Jan 2021)

(a)(1) The Offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product.

(2) The Offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

(3) The terms ''domestic end product,'' ''end product,'' and ''foreign end product'' are defined in the clause of this solicitation entitled ''Buy American—Supplies.''

(b) Foreign End Products:

Line item No.	Country of origin

[*List as necessary.*]

* * * * *

■ 23. Amend section 52.225–3 by—
■ a. Revising the date of the clause;
■ b. In paragraph (a):
■ i. Removing from paragraph (1)(i) in the definition ''Commercially available off-the-shelf (COTS) item'' ''FAR'' and adding ''Federal Acquisition Regulation (FAR)'' in its place;
■ ii. Revising the definition ''*Domestic end product*''; and
■ iii. Adding in alphabetical order the definitions ''*Fastener*'' ''*Foreign iron and* steel'' ''*Predominantly of iron or steel or a combination of both*'' and ''*Steel*'';
■ c. Revising the second sentence of paragraph (c);
■ d. Revising the date in the introductory text and the second sentence of paragraph (c) of Alternate I;
■ e. Revising the date in the introductory text and the second sentence of paragraph (c) of Alternate II and adding a period to the end of paragraph (c); and
■ f. Revising the date in the introductory text and the second sentence of paragraph (c) of Alternate III.

The revisions and additions read as follows:

52.225–3 Buy American—Free Trade Agreements—Israeli Trade Act.

* * * * *

Buy American—Free Trade Agreements—Israeli Trade Act (Jan 2021)

(a) * * *

Domestic end product means—

(1) For an end product that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured end product mined or produced in the United States;

(ii) An end product manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Components of unknown origin are treated as foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or

(B) The end product is a COTS item; or

(2) For an end product that consists wholly or predominantly of iron or steel or a combination of both, an end product manufactured in the United States, if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all the components used in the end product. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the end product and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the end product contains multiple components, the cost of all the materials used in such end product is calculated in accordance with the definition of ''cost of components''.

* * * * *

Fastener means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

* * * * *

Foreign iron and steel means iron or steel products not produced in the United States. Produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

(c) * * * In accordance with 41 U.S.C. 1907, the domestic content test of the Buy American statute is waived for an end product that is a COTS item (see 12.505(a)(1)), except that for an end product that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the end product, excluding COTS fasteners. * * *

Alternate I (Jan 2021) * * *

(c) * * * In accordance with 41 U.S.C. 1907, the domestic content test of the Buy American statute is waived for an end product that is a COTS item (see 12.505(a)(1)), except that for an end product that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the end product, excluding COTS fasteners. * * *

Alternate II (Jan 2021) * * *

(c) * * * In accordance with 41 U.S.C. 1907, the domestic content test of the Buy American statute is waived for an end product that is a COTS item (see 12.505(a)(1)), except that for an end product that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the end product, excluding COTS fasteners. * * *

Alternate III (Jan 2021) * * *

(c) * * * In accordance with 41 U.S.C. 1907, the domestic content test of the Buy American statute is waived for an end product that is a COTS item (see 12.505(a)(1)), except that for an end product that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the end product, excluding COTS fasteners. * * *

■ 24. Amend section 52.225–4 by—

■ a. Revising the date of the provision;

■ b. Revising paragraph (a);

■ c. In paragraph (b) introductory text removing ''offeror'' and adding ''Offeror'' in its place;

■ d. Revising the first and second sentences of paragraph (c);

■ e. Removing from paragraph (d) ''Part'' and adding ''part'' in its place;

■ f. In Alternate I by—

■ i. Revising the date of the Alternate; and

■ ii. Removing from paragraph (b) introductory text ''offeror'' and adding ''Offeror'' in its place;

■ g. In Alternate II by—

■ i. Revising the date of the Alternate; and

■ ii. Removing from paragraph (b) introductory text ''offeror'' and adding ''Offeror'' in its place; and

■ h. In Alternate III by—

■ i. Revising the date of the Alternate; and

■ ii. Removing from paragraph (b) introductory text ''offeror'' and adding ''Offeror'' in its place, and removing from the second paragraph of (b) ''Products (Other'' and adding ''Products (other'' in its place.

The revisions read as follows:

52.225–4 Buy American—Free Trade Agreements—Israeli Trade Act Certificate.

* * * * *

Buy American—Free Trade Agreements—Israeli Trade Act Certificate (Jan 2021)

(a)(1) The Offeror certifies that each end product, except those listed in paragraph (b) or (c) of this provision, is a domestic end product.

(2) The terms ''Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product,'' ''domestic end product,'' ''end product,'' ''foreign end product,'' ''Free Trade Agreement country,'' ''Free Trade Agreement country end product,'' ''Israeli end product,'' and ''United States'' are defined in the clause of this solicitation entitled ''Buy American—Free Trade Agreements—Israeli Trade Act.''

* * * * *

(c) The Offeror shall list those supplies that are foreign end products (other than those listed in paragraph (b) of this provision) as defined in the clause of this solicitation entitled ''Buy American—Free Trade Agreements—Israeli Trade Act.'' The Offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

* * * * *

Alternate I (Jan 2021) * * *

Alternate II (Jan 2021) * * *

Alternate III (Jan 2021) * * *

■ 25. Amend section 52.225–9 by—

■ a. Revising the date of the clause;

■ b. In paragraph (a):

■ i. Removing from paragraph (1)(i) in the definition ''Commercially available off-the-shelf (COTS) item'' ''FAR'' and adding ''Federal Acquisition Regulation (FAR)'' in its place;

■ ii. Revising the definition ''*Domestic construction material*''; and

■ iii. Adding in alphabetical order the definitions ''*Fastener*'' ''*Foreign iron and steel*'' ''*Predominantly of iron or steel or a combination of both*'' and ''*Steel*'';

■ c. Revising paragraph (b)(1);

■ d. Removing from paragraph (b)(3)(i) ''6 percent'' and adding ''20 percent'' in its place; and

■ e. Revising paragraph (d).

The revisions and additions read as follows:

52.225–9 Buy American—Construction Materials.

* * * * *

Buy American—Construction Materials (Jan 2021)

(a) * * *

Domestic construction material means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all components used in such construction material. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the construction material and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of ''cost of components''.

Fastener means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

* * * * *

Foreign iron and steel means iron or steel products not produced in the United States. Produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

(b) * * * (1) This clause implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the domestic content test of the Buy American statute is waived for construction material that is a COTS item, except that for construction material that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the construction materials, excluding COTS fasteners. (See FAR 12.505(a)(2)). The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

* * * * *

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

Construction material description	Unit of measure	Quantity	Price (dollars) *
Item 1:			
Foreign construction material.			
Domestic construction material.			
Item 2:			
Foreign construction material.			
Domestic construction material.			

[Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued)].*
[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]
[Include other applicable supporting information.]

(End of clause)

■ 26. Amend section 52.225–11 by—

■ a. Revising the date of the clause;

■ b. In paragraph (a):

■ i. Removing from paragraph (1)(i) in the definition ''Commercially available off-the-shelf (COTS) item'' ''FAR'' and adding ''Federal Acquisition Regulation (FAR)'' in its place;

■ ii. Revising the definition ''*Domestic construction material*'';

■ iii. Adding in alphabetical order the definitions ''*Fastener*'' ''*Foreign iron and* steel'' ''*Predominantly of iron or steel or a combination of both*'' and ''*Steel*'';

■ c. Revising paragraph (b)(1);

■ d. Removing from paragraph (b)(4)(i) ''6 percent'' and adding ''20 percent'' in its place;

■ e. Revising paragraph (d);

■ f. In Alternate I—

■ i. Revising the date of the Alternate; and

■ ii. Revising paragraph (b)(1).

The revisions and additions read as follows:

52.225–11 Buy American—Construction Materials Under Trade Agreements.

* * * * *

Buy American—Construction Materials Under Trade Agreements (Jan 2021)

(a) * * *

Domestic construction material means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both—

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all components used in such construction material. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the construction material and a good faith estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the

construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of ''cost of components''.

Fastener means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

* * * * *

Foreign iron and steel means iron or steel products not produced in the United States. Produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

* * * * *

Predominantly of iron or steel or a combination of both means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

Steel means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

* * * * *

(b) * * * (1) This clause implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the domestic content test of the Buy American statute is waived for construction material that is a COTS item, except that for construction material that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the construction material, excluding COTS fasteners. (See FAR 12.505(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American restrictions are waived for designated country construction materials.

* * * * *

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

Construction material description	Unit of measure	Quantity	Price (dollars) *
Item 1:			
Foreign construction material.			
Domestic construction material.			
Item 2:			
Foreign construction material.			
Domestic construction material.			

[Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued)].*
[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]
[Include other applicable supporting information.]

(End of clause)

Alternate I (Jan 2021) * * *

(b) * * * (1) This clause implements 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the domestic content test of the Buy American statute is waived for construction material that is a COTS item, except that for construction material that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the construction material, excluding COTS fasteners. (See FAR 12.505(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and all the Free Trade Agreements except the Bahrain FTA, NAFTA, and the Oman FTA apply to this acquisition. Therefore, the Buy American statute restrictions are waived for designated country construction materials other than Bahrainian, Mexican, or Omani construction materials.

* * * * *

■ 27. Amend section 52.225–21 by—

■ a. Revising the date of the clause;

■ b. In paragraph (a) in the definition ''Steel'' removing ''.02'' and adding ''0.02'' in its place;

■ c. Removing from paragraph (b)(4)(i)(B) ''6 percent'' and adding ''20 percent'' in its place;

■ d. Removing from paragraph (c) heading ''*Section*'' and adding ''*section*'' in its place; and

■ e. In paragraph (d):

■ i. Removing from the first undesignated paragraph following the table ''reponse'' and adding ''response'' in its place; and

■ ii Removing from the second undesignated paragraph following the table ''**Include*'' and adding ''*[*Include*'' in its place.

The revision reads as follows:

52.225–21 Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials.

* * * * *

Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials (Jan 2021)

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■ 28. Amend section 52.225–22 by—

■ a. Revising the date of the provision;

■ b. Removing from paragraph (b) ''offeror'' and adding ''Offeror'' in its place wherever it appears;

■ c. Removing from paragraph (c)(1)(ii) ''6 percent'' and adding ''20 percent'' in its place;

■ d. Removing from paragraph (c)(3) ''offeror'' and adding ''Offeror'' in its place; and

■ e. Removing from paragraphs (d)(1), (2), and (3) introductory text ''offeror'' and adding ''Offeror'' in their places, respectively.

The revision reads as follows:

52.225–22 Notice of Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials.

* * * * *

Notice of Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials (Jan 2021)

* * * * *

■ 29. Amend section 52.225–23 by—

■ a. Revising the date of the clause;

■ b. In paragraph (a), in the definition ''*Steel*'' removing ''.02'' and adding ''0.02'' in its place; and

■ c. Removing from paragraph (b)(4)(i)(B) ''6 percent'' and adding ''20 percent'' in its place.

The revision reads as follows:

52.225–23 Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials Under Trade Agreements.

* * * * *

Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials Under Trade Agreements (Jan 2021)

* * * * *

■ 30. Amend section 52.225–24 by—

■ a. Revising the date of the provision;

■ b. Removing from paragraph (b) ''offeror'' and adding ''Offeror'' in its place wherever it appears;

■ c. Removing from paragraph (c)(1)(ii) ''6 percent'' and adding ''20 percent'' in its place;

■ d. Removing from paragraph (c)(3) ''offeror'' and adding ''Offeror'' in its place; and

■ e. Removing from paragraphs (d)(1), (2), and (3) introductory text ''offeror'' and adding ''Offeror'' in their places, respectively.

The revision reads as follows:

52.225–24 Notice of Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials Under Trade Agreements.

* * * * *

Notice of Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials Under Trade Agreements (Jan 2021)

* * * * *

[FR Doc. 2021–00710 Filed 1–15–21; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2021–0051, Sequence No. 1]

Federal Acquisition Regulation; Federal Acquisition Circular 2021–04; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2021–04, which amends the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding this rule by referring to FAC 2021–04, which precedes this document.

DATES: January 19, 2021.

ADDRESSES: The FAC, including the SECG, is available via the internet at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 or *zenaida.delgado@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2021–04, FAR Case 2019–016. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared.

RULES LISTED IN FAC 2021–04

Subject	FAR case
* Maximizing Use of American-Made Goods, Products and Materials	2019–016

ADDRESSES: The FAC, including the SECG, is available via the internet at *https://www.regulations.gov.*

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR rule, refer to the specific subject set forth in the document following this summary. FAC 2021–04 amends the FAR as follows:

Maximizing Use of American-Made Goods, Products, and Materials (FAR Case 2019–016)

This final rule strengthens domestic preferences under the Buy American statute by making adjustments to the required percentage of domestic content and the existing percentages for the price evaluation preferences in an effort to decrease the amount of foreign-sourced content in a U.S. manufactured product to promote economic and national security, help stimulate economic growth, and create jobs. The price evaluation preferences increase from 6 percent to 20 percent for large business and from 12 percent to 30 percent for small business; for DoD procurements there is no change to the DoD 50 percent amount. The domestic content requirement for iron and steel increases from 50 percent to 95 percent; for other end products and construction materials, the domestic content requirement increases from 50 percent to 55 percent. Foreign iron and steel is iron or steel products that are not produced in the United States. The rule implements E.O. 13881, Maximizing Use of American-Made Goods, Products, and Materials. This final rule will not have a significant economic impact on a substantial number of small entities.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2021–00711 Filed 1–15–21; 8:45 am]

BILLING CODE 6820–EP–P

Presidential Documents

Executive Order 13984 of January 19, 2021

Taking Additional Steps To Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), and section 301 of title 3, United States Code:

I, DONALD J. TRUMP, President of the United States of America, find that additional steps must be taken to deal with the national emergency related to significant malicious cyber-enabled activities declared in Executive Order 13694 of April 1, 2015 (Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities), as amended, to address the use of United States Infrastructure as a Service (IaaS) products by foreign malicious cyber actors. IaaS products provide persons the ability to run software and store data on servers offered for rent or lease without responsibility for the maintenance and operating costs of those servers. Foreign malicious cyber actors aim to harm the United States economy through the theft of intellectual property and sensitive data and to threaten national security by targeting United States critical infrastructure for malicious cyber-enabled activities. Foreign actors use United States IaaS products for a variety of tasks in carrying out malicious cyber-enabled activities, which makes it extremely difficult for United States officials to track and obtain information through legal process before these foreign actors transition to replacement infrastructure and destroy evidence of their prior activities; foreign resellers of United States IaaS products make it easier for foreign actors to access these products and evade detection. This order provides authority to impose record-keeping obligations with respect to foreign transactions. To address these threats, to deter foreign malicious cyber actors' use of United States IaaS products, and to assist in the investigation of transactions involving foreign malicious cyber actors, the United States must ensure that providers offering United States IaaS products verify the identity of persons obtaining an IaaS account (''Account'') for the provision of these products and maintain records of those transactions. In appropriate circumstances, to further protect against malicious cyber-enabled activities, the United States must also limit certain foreign actors' access to United States IaaS products. Further, the United States must encourage more robust cooperation among United States IaaS providers, including by increasing voluntary information sharing, to bolster efforts to thwart the actions of foreign malicious cyber actors.

Accordingly, I hereby order:

Section 1. *Verification of Identity.* Within 180 days of the date of this order, the Secretary of Commerce (Secretary) shall propose for notice and comment regulations that require United States IaaS providers to verify the identity of a foreign person that obtains an Account. These regulations shall, at a minimum:

(a) set forth the minimum standards that United States IaaS providers must adopt to verify the identity of a foreign person in connection with the opening of an Account or the maintenance of an existing Account, including:

(i) the types of documentation and procedures required to verify the identity of any foreign person acting as a lessee or sub-lessee of these products or services;

(ii) records that United States IaaS providers must securely maintain regarding a foreign person that obtains an Account, including information establishing:

(A) the identity of such foreign person and the person's information, including name, national identification number, and address;

(B) means and source of payment (including any associated financial institution and other identifiers such as credit card number, account number, customer identifier, transaction identifiers, or virtual currency wallet or wallet address identifier);

(C) electronic mail address and telephonic contact information, used to verify a foreign person's identity; and

(D) internet Protocol addresses used for access or administration and the date and time of each such access or administrative action, related to ongoing verification of such foreign person's ownership of such an Account; and

(iii) methods for limiting all third-party access to the information described in this subsection, except insofar as such access is otherwise consistent with this order and allowed under applicable law;

(b) take into consideration the type of Account maintained by United States IaaS providers, methods of opening an Account, and types of identifying information available to accomplish the objectives of identifying foreign malicious cyber actors using any such products and avoiding the imposition of an undue burden on such providers; and

(c) permit the Secretary, in accordance with such standards and procedures as the Secretary may delineate and in consultation with the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, and the Director of National Intelligence, to exempt any United States IaaS provider, or any specific type of Account or lessee, from the requirements of any regulation issued pursuant to this section. Such standards and procedures may include a finding by the Secretary that a provider, Account, or lessee complies with security best practices to otherwise deter abuse of IaaS products.

Sec. 2. *Special Measures for Certain Foreign Jurisdictions or Foreign Persons.* (a) Within 180 days of the date of this order, the Secretary shall propose for notice and comment regulations that require United States IaaS providers to take any of the special measures described in subsection (d) of this section if the Secretary, in consultation with the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, the Director of National Intelligence and, as the Secretary deems appropriate, the heads of other executive departments and agencies (agencies), finds:

(i) that reasonable grounds exist for concluding that a foreign jurisdiction has any significant number of foreign persons offering United States IaaS products that are used for malicious cyber-enabled activities or any significant number of foreign persons directly obtaining United States IaaS products for use in malicious cyber-enabled activities, in accordance with subsection (b) of this section; or

(ii) that reasonable grounds exist for concluding that a foreign person has established a pattern of conduct of offering United States IaaS products that are used for malicious cyber-enabled activities or directly obtaining United States IaaS products for use in malicious cyber-enabled activities.

(b) In making findings under subsection (a) of this section on the use of United States IaaS products in malicious cyber-enabled activities, the Secretary shall consider any information the Secretary determines to be relevant, as well as information pertaining to the following factors:

(i) Factors related to a particular foreign jurisdiction, including:

(A) evidence that foreign malicious cyber actors have obtained United States IaaS products from persons offering United States IaaS products in that foreign jurisdiction, including whether such actors obtained such IaaS products through Reseller Accounts;

(B) the extent to which that foreign jurisdiction is a source of malicious cyber-enabled activities; and

(C) Whether the United States has a mutual legal assistance treaty with that foreign jurisdiction, and the experience of United States law enforcement officials and regulatory officials in obtaining information about activities involving United States IaaS products originating in or routed through such foreign jurisdiction; and

(ii) Factors related to a particular foreign person, including:

(A) the extent to which a foreign person uses United States IaaS products to conduct, facilitate, or promote malicious cyber-enabled activities;

(B) the extent to which United States IaaS products offered by a foreign person are used to facilitate or promote malicious cyber-enabled activities;

(C) the extent to which United States IaaS products offered by a foreign person are used for legitimate business purposes in the jurisdiction; and

(D) the extent to which actions short of the imposition of special measures pursuant to subsection (d) of this section are sufficient, with respect to transactions involving the foreign person offering United States IaaS products, to guard against malicious cyber-enabled activities.

(c) In selecting which special measure or measures to take under this section, the Secretary shall consider:

(i) whether the imposition of any special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for United States IaaS providers;

(ii) the extent to which the imposition of any special measure or the timing of the special measure would have a significant adverse effect on legitimate business activities involving the particular foreign jurisdiction or foreign person; and

(iii) the effect of any special measure on United States national security, law enforcement investigations, or foreign policy.

(d) The special measures referred to in subsections (a), (b), and (c) of this section are as follows:

(i) Prohibitions or Conditions on Accounts within Certain Foreign Jurisdictions: The Secretary may prohibit or impose conditions on the opening or maintaining with any United States IaaS provider of an Account, including a Reseller Account, by any foreign person located in a foreign jurisdiction found to have any significant number of foreign persons offering United States IaaS products used for malicious cyber-enabled activities, or by any United States IaaS provider for or on behalf of a foreign person; and

(ii) Prohibitions or Conditions on Certain Foreign Persons: The Secretary may prohibit or impose conditions on the opening or maintaining in the United States of an Account, including a Reseller Account, by any United States IaaS provider for or on behalf of a foreign person, if such an Account involves any such foreign person found to be offering United States IaaS products used in malicious cyber-enabled activities or directly obtaining United States IaaS products for use in malicious cyber-enabled activities.

(e) The Secretary shall not impose requirements for United States IaaS providers to take any of the special measures described in subsection (d) of this section earlier than 180 days following the issuance of final regulations described in section 1 of this order.

Sec. 3. *Recommendations for Cooperative Efforts to Deter the Abuse of United States IaaS Products.* (a) Within 120 days of the date of this order, the Attorney General and the Secretary of Homeland Security, in coordination with the Secretary and, as the Attorney General and the Secretary of Homeland Security deem appropriate, the heads of other agencies, shall engage and solicit feedback from industry on how to increase information sharing and collaboration among IaaS providers and between IaaS providers and the agencies to inform recommendations under subsection (b) of this section.

(b) Within 240 days of the date of this order, the Attorney General and the Secretary of Homeland Security, in coordination with the Secretary, and, as the Attorney General and Secretary of Homeland Security deem appropriate, the heads of other agencies, shall develop and submit to the President a report containing recommendations to encourage:

(i) voluntary information sharing and collaboration, among United States IaaS providers; and

(ii) information sharing between United States IaaS providers and appropriate agencies, including the reporting of incidents, crimes, and other threats to national security, for the purpose of preventing further harm to the United States.

(c) The report and recommendations provided under subsection (b) of this section shall consider existing mechanisms for such sharing and collaboration, including the Cybersecurity Information Sharing Act (6 U.S.C. 1503 *et seq.*), and shall identify any gaps in current law, policy, or procedures. The report shall also include:

(i) information related to the operations of foreign malicious cyber actors, the means by which such actors use IaaS products within the United States, malicious capabilities and tradecraft, and the extent to which persons in the United States are compromised or unwittingly involved in such activity;

(ii) recommendations for liability protections beyond those in existing law that may be needed to encourage United States IaaS providers to share information among each other and with the United States Government; and

(iii) recommendations for facilitating the detection and identification of Accounts and activities that involve foreign malicious cyber actors.

Sec. 4. *Ensuring Sufficient Resources for Implementation.* The Secretary, in consultation with the heads of such agencies as the Secretary deems appropriate, shall identify funding requirements to support the efforts described in this order and incorporate such requirements into its annual budget submissions to the Office of Management and Budget.

Sec. 5. *Definitions.* For the purposes of this order, the following definitions apply:

(a) The term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(b) The term ''foreign jurisdiction'' means any country, subnational territory, or region, other than those subject to the civil or military jurisdiction of the United States, in which any person or group of persons exercises sovereign de facto or de jure authority, including any such country, subnational territory, or region in which a person or group of persons is assuming to exercise governmental authority whether such a person or group of persons has or has not been recognized by the United States;

(c) The term ''foreign person'' means a person that is not a United States person;

(d) The term ''Infrastructure as a Service Account'' or ''Account'' means a formal business relationship established to provide IaaS products to a person in which details of such transactions are recorded.

(e) The term ''Infrastructure as a Service Product'' means any product or service offered to a consumer, including complimentary or ''trial'' offerings,

that provides processing, storage, networks, or other fundamental computing resources, and with which the consumer is able to deploy and run software that is not predefined, including operating systems and applications. The consumer typically does not manage or control most of the underlying hardware but has control over the operating systems, storage, and any deployed applications. The term is inclusive of ''managed'' products or services, in which the provider is responsible for some aspects of system configuration or maintenance, and ''unmanaged'' products or services, in which the provider is only responsible for ensuring that the product is available to the consumer. The term is also inclusive of ''virtualized'' products and services, in which the computing resources of a physical machine are split between virtualized computers accessible over the internet (e.g., ''virtual private servers''), and ''dedicated'' products or services in which the total computing resources of a physical machine are provided to a single person (e.g., ''bare-metal'' servers);

(f) The term ''malicious cyber-enabled activities'' refers to activities, other than those authorized by or in accordance with United States law that seek to compromise or impair the confidentiality, integrity, or availability of computer, information, or communications systems, networks, physical or virtual infrastructure controlled by computers or information systems, or information resident thereon;

(g) The term ''person'' means an individual or entity;

(h) The term ''Reseller Account'' means an Infrastructure as a Service Account established to provide IaaS products to a person who will then offer those products subsequently, in whole or in part, to a third party.

(i) The term ''United States Infrastructure as a Service Product'' means any Infrastructure as a Service Product owned by any United States person or operated within the territory of the United States of America;

(j) The term ''United States Infrastructure as a Service Provider'' means any United States Person that offers any Infrastructure as a Service Product;

(k) The term ''United States person'' means any United States citizen, lawful permanent resident of the United States as defined by the Immigration and Nationality Act, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person located in the United States;

Sec. 6. *Amendment to Reporting Authorizations.* Section (9) of Executive Order 13694, as amended, is further amended to read as follows:

''Sec. 9. The Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and the Secretary of Commerce, is hereby authorized to submit the recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).''

Sec. 7. *General Provisions.* (a) The Secretary, in consultation with the heads of such other agencies as the Secretary deems appropriate, is hereby authorized to take such actions, including the promulgation of rules and regulations, and employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order. The Secretary may redelegate any of these functions to other officers within the Department of Commerce, consistent with applicable law. All departments and agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

(b) Nothing in this order shall be construed to impair or otherwise affect:

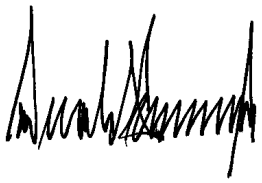
(i) the authority granted by law to an executive department or agency, or the head thereof; or

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

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

(d) Nothing in this order prohibits or otherwise restricts authorized intelligence, military, law enforcement, or other activities in furtherance of national security or public safety activities.

(e) 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.



THE WHITE HOUSE,
January 19, 2021.

[FR Doc. 2021–01714
Filed 1–22–21; 8:45 am]
Billing code 3295–F1–P

Presidential Documents

Executive Order 14005 of January 25, 2021

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

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.

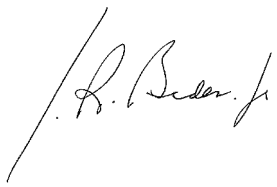
Sec. 16. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(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.



THE WHITE HOUSE,
January 25, 2021.

[FR Doc. 2021–02038
Filed 1–27–21; 11:15 am]
Billing code 3295–F1–P

Presidential Documents

Executive Order 14008 of January 27, 2021

Tackling the Climate Crisis at Home and Abroad

The United States and the world face a profound climate crisis. We have a narrow moment to pursue action at home and abroad in order to avoid the most catastrophic impacts of that crisis and to seize the opportunity that tackling climate change presents. Domestic action must go hand in hand with United States international leadership, aimed at significantly enhancing global action. Together, we must listen to science and meet the moment.

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:

PART I—PUTTING THE CLIMATE CRISIS AT THE CENTER OF UNITED STATES FOREIGN POLICY AND NATIONAL SECURITY

Section 101. *Policy*. United States international engagement to address climate change—which has become a climate crisis—is more necessary and urgent than ever. The scientific community has made clear that the scale and speed of necessary action is greater than previously believed. There is little time left to avoid setting the world on a dangerous, potentially catastrophic, climate trajectory. Responding to the climate crisis will require both significant short-term global reductions in greenhouse gas emissions and net-zero global emissions by mid-century or before.

It is the policy of my Administration that climate considerations shall be an essential element of United States foreign policy and national security. The United States will work with other countries and partners, both bilaterally and multilaterally, to put the world on a sustainable climate pathway. The United States will also move quickly to build resilience, both at home and abroad, against the impacts of climate change that are already manifest and will continue to intensify according to current trajectories.

Sec. 102. *Purpose*. This order builds on and reaffirms actions my Administration has already taken to place the climate crisis at the forefront of this Nation's foreign policy and national security planning, including submitting the United States instrument of acceptance to rejoin the Paris Agreement. In implementing—and building upon—the Paris Agreement's three overarching objectives (a safe global temperature, increased climate resilience, and financial flows aligned with a pathway toward low greenhouse gas emissions and climate-resilient development), the United States will exercise its leadership to promote a significant increase in global climate ambition to meet the climate challenge. In this regard:

(a) I will host an early Leaders' Climate Summit aimed at raising climate ambition and making a positive contribution to the 26th United Nations Climate Change Conference of the Parties (COP26) and beyond.

(b) The United States will reconvene the Major Economies Forum on Energy and Climate, beginning with the Leaders' Climate Summit. In cooperation with the members of that Forum, as well as with other partners as appropriate, the United States will pursue green recovery efforts, initiatives to advance the clean energy transition, sectoral decarbonization, and alignment of financial flows with the objectives of the Paris Agreement, including with respect to coal financing, nature-based solutions, and solutions to other climate-related challenges.

(c) I have created a new Presidentially appointed position, the Special Presidential Envoy for Climate, to elevate the issue of climate change and underscore the commitment my Administration will make toward addressing it.

(d) Recognizing that climate change affects a wide range of subjects, it will be a United States priority to press for enhanced climate ambition and integration of climate considerations across a wide range of international fora, including the Group of Seven (G7), the Group of Twenty (G20), and fora that address clean energy, aviation, shipping, the Arctic, the ocean, sustainable development, migration, and other relevant topics. The Special Presidential Envoy for Climate and others, as appropriate, are encouraged to promote innovative approaches, including international multi-stakeholder initiatives. In addition, my Administration will work in partnership with States, localities, Tribes, territories, and other United States stakeholders to advance United States climate diplomacy.

(e) The United States will immediately begin the process of developing its nationally determined contribution under the Paris Agreement. The process will include analysis and input from relevant executive departments and agencies (agencies), as well as appropriate outreach to domestic stakeholders. The United States will aim to submit its nationally determined contribution in advance of the Leaders' Climate Summit.

(f) The United States will also immediately begin to develop a climate finance plan, making strategic use of multilateral and bilateral channels and institutions, to assist developing countries in implementing ambitious emissions reduction measures, protecting critical ecosystems, building resilience against the impacts of climate change, and promoting the flow of capital toward climate-aligned investments and away from high-carbon investments. The Secretary of State and the Secretary of the Treasury, in coordination with the Special Presidential Envoy for Climate, shall lead a process to develop this plan, with the participation of the Administrator of the United States Agency for International Development (USAID), the Chief Executive Officer of the United States International Development Finance Corporation (DFC), the Chief Executive Officer of the Millennium Challenge Corporation, the Director of the United States Trade and Development Agency, the Director of the Office of Management and Budget, and the head of any other agency providing foreign assistance and development financing, as appropriate. The Secretary of State and the Secretary of the Treasury shall submit the plan to the President, through the Assistant to the President for National Security Affairs and the Assistant to the President for Economic Policy, within 90 days of the date of this order.

(g) The Secretary of the Treasury shall:

(i) ensure that the United States is present and engaged in relevant international fora and institutions that are working on the management of climate-related financial risks;

(ii) develop a strategy for how the voice and vote of the United States can be used in international financial institutions, including the World Bank Group and the International Monetary Fund, to promote financing programs, economic stimulus packages, and debt relief initiatives that are aligned with and support the goals of the Paris Agreement; and

(iii) develop, in collaboration with the Secretary of State, the Administrator of USAID, and the Chief Executive Officer of the DFC, a plan for promoting the protection of the Amazon rainforest and other critical ecosystems that serve as global carbon sinks, including through market-based mechanisms.

(h) The Secretary of State, the Secretary of the Treasury, and the Secretary of Energy shall work together and with the Export-Import Bank of the United States, the Chief Executive Officer of the DFC, and the heads of other agencies and partners, as appropriate, to identify steps through which the United States can promote ending international financing of carbon-

intensive fossil fuel-based energy while simultaneously advancing sustainable development and a green recovery, in consultation with the Assistant to the President for National Security Affairs.

(i) The Secretary of Energy, in cooperation with the Secretary of State and the heads of other agencies, as appropriate, shall identify steps through which the United States can intensify international collaborations to drive innovation and deployment of clean energy technologies, which are critical for climate protection.

(j) The Secretary of State shall prepare, within 60 days of the date of this order, a transmittal package seeking the Senate's advice and consent to ratification of the Kigali Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, regarding the phasedown of the production and consumption of hydrofluorocarbons.

Sec. 103. *Prioritizing Climate in Foreign Policy and National Security*. To ensure that climate change considerations are central to United States foreign policy and national security:

(a) Agencies that engage in extensive international work shall develop, in coordination with the Special Presidential Envoy for Climate, and submit to the President, through the Assistant to the President for National Security Affairs, within 90 days of the date of this order, strategies and implementation plans for integrating climate considerations into their international work, as appropriate and consistent with applicable law. These strategies and plans should include an assessment of:

(i) climate impacts relevant to broad agency strategies in particular countries or regions;

(ii) climate impacts on their agency-managed infrastructure abroad (e.g., embassies, military installations), without prejudice to existing requirements regarding assessment of such infrastructure;

(iii) how the agency intends to manage such impacts or incorporate risk mitigation into its installation master plans; and

(iv) how the agency's international work, including partner engagement, can contribute to addressing the climate crisis.

(b) The Director of National Intelligence shall prepare, within 120 days of the date of this order, a National Intelligence Estimate on the national and economic security impacts of climate change.

(c) The Secretary of Defense, in coordination with the Secretary of Commerce, through the Administrator of the National Oceanic and Atmospheric Administration, the Chair of the Council on Environmental Quality, the Administrator of the Environmental Protection Agency, the Director of National Intelligence, the Director of the Office of Science and Technology Policy, the Administrator of the National Aeronautics and Space Administration, and the heads of other agencies as appropriate, shall develop and submit to the President, within 120 days of the date of this order, an analysis of the security implications of climate change (Climate Risk Analysis) that can be incorporated into modeling, simulation, war-gaming, and other analyses.

(d) The Secretary of Defense and the Chairman of the Joint Chiefs of Staff shall consider the security implications of climate change, including any relevant information from the Climate Risk Analysis described in subsection (c) of this section, in developing the National Defense Strategy, Defense Planning Guidance, Chairman's Risk Assessment, and other relevant strategy, planning, and programming documents and processes. Starting in January 2022, the Secretary of Defense and the Chairman of the Joint Chiefs of Staff shall provide an annual update, through the National Security Council, on the progress made in incorporating the security implications of climate change into these documents and processes.

(e) The Secretary of Homeland Security shall consider the implications of climate change in the Arctic, along our Nation's borders, and to National

Critical Functions, including any relevant information from the Climate Risk Analysis described in subsection (c) of this section, in developing relevant strategy, planning, and programming documents and processes. Starting in January 2022, the Secretary of Homeland Security shall provide an annual update, through the National Security Council, on the progress made in incorporating the homeland security implications of climate change into these documents and processes.

Sec. 104. *Reinstatement*. The Presidential Memorandum of September 21, 2016 (Climate Change and National Security), is hereby reinstated.

PART II—TAKING A GOVERNMENT-WIDE APPROACH TO THE CLIMATE CRISIS

Sec. 201. *Policy*. Even as our Nation emerges from profound public health and economic crises borne of a pandemic, we face a climate crisis that threatens our people and communities, public health and economy, and, starkly, our ability to live on planet Earth. Despite the peril that is already evident, there is promise in the solutions—opportunities to create well-paying union jobs to build a modern and sustainable infrastructure, deliver an equitable, clean energy future, and put the United States on a path to achieve net-zero emissions, economy-wide, by no later than 2050.

We must listen to science—and act. We must strengthen our clean air and water protections. We must hold polluters accountable for their actions. We must deliver environmental justice in communities all across America. The Federal Government must drive assessment, disclosure, and mitigation of climate pollution and climate-related risks in every sector of our economy, marshaling the creativity, courage, and capital necessary to make our Nation resilient in the face of this threat. Together, we must combat the climate crisis with bold, progressive action that combines the full capacity of the Federal Government with efforts from every corner of our Nation, every level of government, and every sector of our economy.

It is the policy of my Administration to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; delivers environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure. Successfully meeting these challenges will require the Federal Government to pursue such a coordinated approach from planning to implementation, coupled with substantive engagement by stakeholders, including State, local, and Tribal governments.

Sec. 202. *White House Office of Domestic Climate Policy*. There is hereby established the White House Office of Domestic Climate Policy (Climate Policy Office) within the Executive Office of the President, which shall coordinate the policy-making process with respect to domestic climate-policy issues; coordinate domestic climate-policy advice to the President; ensure that domestic climate-policy decisions and programs are consistent with the President's stated goals and that those goals are being effectively pursued; and monitor implementation of the President's domestic climate-policy agenda. The Climate Policy Office shall have a staff headed by the Assistant to the President and National Climate Advisor (National Climate Advisor) and shall include the Deputy Assistant to the President and Deputy National Climate Advisor. The Climate Policy Office shall have such staff and other assistance as may be necessary to carry out the provisions of this order, subject to the availability of appropriations, and may work with established or ad hoc committees or interagency groups. All agencies shall cooperate with the Climate Policy Office and provide such information, support, and assistance to the Climate Policy Office as it may request, as appropriate and consistent with applicable law.

Sec. 203. *National Climate Task Force*. There is hereby established a National Climate Task Force (Task Force). The Task Force shall be chaired by the National Climate Advisor.

(a) Membership. The Task Force shall consist of the following additional members:

(i) the Secretary of the Treasury;

(ii) the Secretary of Defense;

(iii) the Attorney General;

(iv) the Secretary of the Interior;

(v) the Secretary of Agriculture;

(vi) the Secretary of Commerce;

(vii) the Secretary of Labor;

(viii) the Secretary of Health and Human Services;

(ix) the Secretary of Housing and Urban Development;

(x) the Secretary of Transportation;

(xi) the Secretary of Energy;

(xii) the Secretary of Homeland Security;

(xiii) the Administrator of General Services;

(xiv) the Chair of the Council on Environmental Quality;

(xv) the Administrator of the Environmental Protection Agency;

(xvi) the Director of the Office of Management and Budget;

(xvii) the Director of the Office of Science and Technology Policy;

(xviii) the Assistant to the President for Domestic Policy;

(xix) the Assistant to the President for National Security Affairs;

(xx) the Assistant to the President for Homeland Security and Counterterrorism; and

(xxi) the Assistant to the President for Economic Policy.

(b) Mission and Work. The Task Force shall facilitate the organization and deployment of a Government-wide approach to combat the climate crisis. This Task Force shall facilitate planning and implementation of key Federal actions to reduce climate pollution; increase resilience to the impacts of climate change; protect public health; conserve our lands, waters, oceans, and biodiversity; deliver environmental justice; and spur well-paying union jobs and economic growth. As necessary and appropriate, members of the Task Force will engage on these matters with State, local, Tribal, and territorial governments; workers and communities; and leaders across the various sectors of our economy.

(c) Prioritizing Actions. To the extent permitted by law, Task Force members shall prioritize action on climate change in their policy-making and budget processes, in their contracting and procurement, and in their engagement with State, local, Tribal, and territorial governments; workers and communities; and leaders across all the sectors of our economy.

USE OF THE FEDERAL GOVERNMENT'S BUYING POWER AND REAL PROPERTY AND ASSET MANAGEMENT

Sec. 204. *Policy*. It is the policy of my Administration to lead the Nation's effort to combat the climate crisis by example—specifically, by aligning the management of Federal procurement and real property, public lands and waters, and financial programs to support robust climate action. By providing an immediate, clear, and stable source of product demand, increased transparency and data, and robust standards for the market, my Administration will help to catalyze private sector investment into, and

accelerate the advancement of America's industrial capacity to supply, domestic clean energy, buildings, vehicles, and other necessary products and materials.

Sec. 205. *Federal Clean Electricity and Vehicle Procurement Strategy*. (a) The Chair of the Council on Environmental Quality, the Administrator of General Services, and the Director of the Office and Management and Budget, in coordination with the Secretary of Commerce, the Secretary of Labor, the Secretary of Energy, and the heads of other relevant agencies, shall assist the National Climate Advisor, through the Task Force established in section 203 of this order, in developing a comprehensive plan to create good jobs and stimulate clean energy industries by revitalizing the Federal Government's sustainability efforts.

(b) The plan shall aim to use, as appropriate and consistent with applicable law, all available procurement authorities to achieve or facilitate:

(i) a carbon pollution-free electricity sector no later than 2035; and

(ii) clean and zero-emission vehicles for Federal, State, local, and Tribal government fleets, including vehicles of the United States Postal Service.

(c) If necessary, the plan shall recommend any additional legislation needed to accomplish these objectives.

(d) The plan shall also aim to ensure that the United States retains the union jobs integral to and involved in running and maintaining clean and zero-emission fleets, while spurring the creation of union jobs in the manufacture of those new vehicles. The plan shall be submitted to the Task Force within 90 days of the date of this order.

Sec. 206. *Procurement Standards*. Consistent with the Executive Order of January 25, 2021, entitled, ''Ensuring the Future Is Made in All of America by All of America's Workers,'' agencies shall adhere to the requirements of the Made in America Laws in making clean energy, energy efficiency, and clean energy procurement decisions. Agencies shall, consistent with applicable law, apply and enforce the Davis-Bacon Act and prevailing wage and benefit requirements. The Secretary of Labor shall take steps to update prevailing wage requirements. The Chair of the Council on Environmental Quality shall consider additional administrative steps and guidance to assist the Federal Acquisition Regulatory Council in developing regulatory amendments to promote increased contractor attention on reduced carbon emission and Federal sustainability.

Sec. 207. *Renewable Energy on Public Lands and in Offshore Waters*. The Secretary of the Interior shall review siting and permitting processes on public lands and in offshore waters to identify to the Task Force steps that can be taken, consistent with applicable law, to increase renewable energy production on those lands and in those waters, with the goal of doubling offshore wind by 2030 while ensuring robust protection for our lands, waters, and biodiversity and creating good jobs. In conducting this review, the Secretary of the Interior shall consult, as appropriate, with the heads of relevant agencies, including the Secretary of Defense, the Secretary of Agriculture, the Secretary of Commerce, through the Administrator of the National Oceanic and Atmospheric Administration, the Secretary of Energy, the Chair of the Council on Environmental Quality, State and Tribal authorities, project developers, and other interested parties. The Secretary of the Interior shall engage with Tribal authorities regarding the development and management of renewable and conventional energy resources on Tribal lands.

Sec. 208. *Oil and Natural Gas Development on Public Lands and in Offshore Waters*. To the extent consistent with applicable law, the Secretary of the Interior shall pause new oil and natural gas leases on public lands or in offshore waters pending completion of a comprehensive review and reconsideration of Federal oil and gas permitting and leasing practices in light of the Secretary of the Interior's broad stewardship responsibilities over the public lands and in offshore waters, including potential climate and

other impacts associated with oil and gas activities on public lands or in offshore waters. The Secretary of the Interior shall complete that review in consultation with the Secretary of Agriculture, the Secretary of Commerce, through the National Oceanic and Atmospheric Administration, and the Secretary of Energy. In conducting this analysis, and to the extent consistent with applicable law, the Secretary of the Interior shall consider whether to adjust royalties associated with coal, oil, and gas resources extracted from public lands and offshore waters, or take other appropriate action, to account for corresponding climate costs.

Sec. 209. *Fossil Fuel Subsidies*. The heads of agencies shall identify for the Director of the Office of Management and Budget and the National Climate Advisor any fossil fuel subsidies provided by their respective agencies, and then take steps to ensure that, to the extent consistent with applicable law, Federal funding is not directly subsidizing fossil fuels. The Director of the Office of Management and Budget shall seek, in coordination with the heads of agencies and the National Climate Advisor, to eliminate fossil fuel subsidies from the budget request for Fiscal Year 2022 and thereafter.

Sec. 210. *Clean Energy in Financial Management*. The heads of agencies shall identify opportunities for Federal funding to spur innovation, commercialization, and deployment of clean energy technologies and infrastructure for the Director of the Office of Management and Budget and the National Climate Advisor, and then take steps to ensure that, to the extent consistent with applicable law, Federal funding is used to spur innovation, commercialization, and deployment of clean energy technologies and infrastructure. The Director of the Office of Management and Budget, in coordination with agency heads and the National Climate Advisor, shall seek to prioritize such investments in the President's budget request for Fiscal Year 2022 and thereafter.

Sec. 211. *Climate Action Plans and Data and Information Products to Improve Adaptation and Increase Resilience*. (a) The head of each agency shall submit a draft action plan to the Task Force and the Federal Chief Sustainability Officer within 120 days of the date of this order that describes steps the agency can take with regard to its facilities and operations to bolster adaptation and increase resilience to the impacts of climate change. Action plans should, among other things, describe the agency's climate vulnerabilities and describe the agency's plan to use the power of procurement to increase the energy and water efficiency of United States Government installations, buildings, and facilities and ensure they are climate-ready. Agencies shall consider the feasibility of using the purchasing power of the Federal Government to drive innovation, and shall seek to increase the Federal Government's resilience against supply chain disruptions. Such disruptions put the Nation's manufacturing sector at risk, as well as consumer access to critical goods and services. Agencies shall make their action plans public, and post them on the agency website, to the extent consistent with applicable law.

(b) Within 30 days of an agency's submission of an action plan, the Federal Chief Sustainability Officer, in coordination with the Director of the Office of Management and Budget, shall review the plan to assess its consistency with the policy set forth in section 204 of this order and the priorities issued by the Office of Management and Budget.

(c) After submitting an initial action plan, the head of each agency shall submit to the Task Force and Federal Chief Sustainability Officer progress reports annually on the status of implementation efforts. Agencies shall make progress reports public and post them on the agency website, to the extent consistent with applicable law. The heads of agencies shall assign their respective agency Chief Sustainability Officer the authority to perform duties relating to implementation of this order within the agency, to the extent consistent with applicable law.

(d) To assist agencies and State, local, Tribal, and territorial governments, communities, and businesses in preparing for and adapting to the impacts of climate change, the Secretary of Commerce, through the Administrator

of the National Oceanic and Atmospheric Administration, the Secretary of Homeland Security, through the Administrator of the Federal Emergency Management Agency, and the Director of the Office of Science and Technology Policy, in coordination with the heads of other agencies, as appropriate, shall provide to the Task Force a report on ways to expand and improve climate forecast capabilities and information products for the public. In addition, the Secretary of the Interior and the Deputy Director for Management of the Office of Management and Budget, in their capacities as the Chair and Vice-Chair of the Federal Geographic Data Committee, shall assess and provide to the Task Force a report on the potential development of a consolidated Federal geographic mapping service that can facilitate public access to climate-related information that will assist Federal, State, local, and Tribal governments in climate planning and resilience activities.

EMPOWERING WORKERS THROUGH REBUILDING OUR INFRASTRUCTURE FOR A SUSTAINABLE ECONOMY

Sec. 212. *Policy*. This Nation needs millions of construction, manufacturing, engineering, and skilled-trades workers to build a new American infrastructure and clean energy economy. These jobs will create opportunities for young people and for older workers shifting to new professions, and for people from all backgrounds and communities. Such jobs will bring opportunity to communities too often left behind—places that have suffered as a result of economic shifts and places that have suffered the most from persistent pollution, including low-income rural and urban communities, communities of color, and Native communities.

Sec. 213. *Sustainable Infrastructure*. (a) The Chair of the Council on Environmental Quality and the Director of the Office of Management and Budget shall take steps, consistent with applicable law, to ensure that Federal infrastructure investment reduces climate pollution, and to require that Federal permitting decisions consider the effects of greenhouse gas emissions and climate change. In addition, they shall review, and report to the National Climate Advisor on, siting and permitting processes, including those in progress under the auspices of the Federal Permitting Improvement Steering Council, and identify steps that can be taken, consistent with applicable law, to accelerate the deployment of clean energy and transmission projects in an environmentally stable manner.

(b) Agency heads conducting infrastructure reviews shall, as appropriate, consult from an early stage with State, local, and Tribal officials involved in permitting or authorizing proposed infrastructure projects to develop efficient timelines for decision-making that are appropriate given the complexities of proposed projects.

EMPOWERING WORKERS BY ADVANCING CONSERVATION, AGRICULTURE, AND REFORESTATION

Sec. 214. *Policy*. It is the policy of my Administration to put a new generation of Americans to work conserving our public lands and waters. The Federal Government must protect America's natural treasures, increase reforestation, improve access to recreation, and increase resilience to wildfires and storms, while creating well-paying union jobs for more Americans, including more opportunities for women and people of color in occupations where they are underrepresented. America's farmers, ranchers, and forest landowners have an important role to play in combating the climate crisis and reducing greenhouse gas emissions, by sequestering carbon in soils, grasses, trees, and other vegetation and sourcing sustainable bioproducts and fuels. Coastal communities have an essential role to play in mitigating climate change and strengthening resilience by protecting and restoring coastal ecosystems, such as wetlands, seagrasses, coral and oyster reefs, and mangrove and kelp forests, to protect vulnerable coastlines, sequester carbon, and support biodiversity and fisheries.

Sec. 215. *Civilian Climate Corps*. In furtherance of the policy set forth in section 214 of this order, the Secretary of the Interior, in collaboration with the Secretary of Agriculture and the heads of other relevant agencies,

shall submit a strategy to the Task Force within 90 days of the date of this order for creating a Civilian Climate Corps Initiative, within existing appropriations, to mobilize the next generation of conservation and resilience workers and maximize the creation of accessible training opportunities and good jobs. The initiative shall aim to conserve and restore public lands and waters, bolster community resilience, increase reforestation, increase carbon sequestration in the agricultural sector, protect biodiversity, improve access to recreation, and address the changing climate.

Sec. 216. *Conserving Our Nation's Lands and Waters*. (a) The Secretary of the Interior, in consultation with the Secretary of Agriculture, the Secretary of Commerce, the Chair of the Council on Environmental Quality, and the heads of other relevant agencies, shall submit a report to the Task Force within 90 days of the date of this order recommending steps that the United States should take, working with State, local, Tribal, and territorial governments, agricultural and forest landowners, fishermen, and other key stakeholders, to achieve the goal of conserving at least 30 percent of our lands and waters by 2030.

(i) The Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, through the Administrator of the National Oceanic and Atmospheric Administration, and the Chair of the Council on Environmental Quality shall, as appropriate, solicit input from State, local, Tribal, and territorial officials, agricultural and forest landowners, fishermen, and other key stakeholders in identifying strategies that will encourage broad participation in the goal of conserving 30 percent of our lands and waters by 2030.

(ii) The report shall propose guidelines for determining whether lands and waters qualify for conservation, and it also shall establish mechanisms to measure progress toward the 30-percent goal. The Secretary of the Interior shall subsequently submit annual reports to the Task Force to monitor progress.

(b) The Secretary of Agriculture shall:

(i) initiate efforts in the first 60 days from the date of this order to collect input from Tribes, farmers, ranchers, forest owners, conservation groups, firefighters, and other stakeholders on how to best use Department of Agriculture programs, funding and financing capacities, and other authorities, and how to encourage the voluntary adoption of climate-smart agricultural and forestry practices that decrease wildfire risk fueled by climate change and result in additional, measurable, and verifiable carbon reductions and sequestration and that source sustainable bioproducts and fuels; and

(ii) submit to the Task Force within 90 days of the date of this order a report making recommendations for an agricultural and forestry climate strategy.

(c) The Secretary of Commerce, through the Administrator of the National Oceanic and Atmospheric Administration, shall initiate efforts in the first 60 days from the date of this order to collect input from fishermen, regional ocean councils, fishery management councils, scientists, and other stakeholders on how to make fisheries and protected resources more resilient to climate change, including changes in management and conservation measures, and improvements in science, monitoring, and cooperative research.

EMPOWERING WORKERS THROUGH REVITALIZING ENERGY COMMUNITIES

Sec. 217. *Policy*. It is the policy of my Administration to improve air and water quality and to create well-paying union jobs and more opportunities for women and people of color in hard-hit communities, including rural communities, while reducing methane emissions, oil and brine leaks, and other environmental harms from tens of thousands of former mining and well sites. Mining and power plant workers drove the industrial revolution and the economic growth that followed, and have been essential to the growth of the United States. As the Nation shifts to a clean energy economy,

Federal leadership is essential to foster economic revitalization of and investment in these communities, ensure the creation of good jobs that provide a choice to join a union, and secure the benefits that have been earned by workers.

Such work should include projects that reduce emissions of toxic substances and greenhouse gases from existing and abandoned infrastructure and that prevent environmental damage that harms communities and poses a risk to public health and safety. Plugging leaks in oil and gas wells and reclaiming abandoned mine land can create well-paying union jobs in coal, oil, and gas communities while restoring natural assets, revitalizing recreation economies, and curbing methane emissions. In addition, such work should include efforts to turn properties idled in these communities, such as brownfields, into new hubs for the growth of our economy. Federal agencies should therefore coordinate investments and other efforts to assist coal, oil and gas, and power plant communities, and achieve substantial reductions of methane emissions from the oil and gas sector as quickly as possible.

Sec. 218. *Interagency Working Group on Coal and Power Plant Communities and Economic Revitalization*. There is hereby established an Interagency Working Group on Coal and Power Plant Communities and Economic Revitalization (Interagency Working Group). The National Climate Advisor and the Assistant to the President for Economic Policy shall serve as Co-Chairs of the Interagency Working Group.

(a) Membership. The Interagency Working Group shall consist of the following additional members:

(i) the Secretary of the Treasury;

(ii) the Secretary of the Interior;

(iii) the Secretary of Agriculture;

(iv) the Secretary of Commerce;

(v) the Secretary of Labor;

(vi) the Secretary of Health and Human Services;

(vii) the Secretary of Transportation;

(viii) the Secretary of Energy;

(ix) the Secretary of Education;

(x) the Administrator of the Environmental Protection Agency;

(xi) the Director of the Office of Management and Budget;

(xii) the Assistant to the President for Domestic Policy and Director of the Domestic Policy Council; and

(xiii) the Federal Co-Chair of the Appalachian Regional Commission.

(b) Mission and Work.

(i) The Interagency Working Group shall coordinate the identification and delivery of Federal resources to revitalize the economies of coal, oil and gas, and power plant communities; develop strategies to implement the policy set forth in section 217 of this order and for economic and social recovery; assess opportunities to ensure benefits and protections for coal and power plant workers; and submit reports to the National Climate Advisor and the Assistant to the President for Economic Policy on a regular basis on the progress of the revitalization effort.

(ii) As part of this effort, within 60 days of the date of this order, the Interagency Working Group shall submit a report to the President describing all mechanisms, consistent with applicable law, to prioritize grantmaking, Federal loan programs, technical assistance, financing, procurement, or other existing programs to support and revitalize the economies of coal and power plant communities, and providing recommendations for action consistent with the goals of the Interagency Working Group.

(c) Consultation. Consistent with the objectives set out in this order and in accordance with applicable law, the Interagency Working Group shall seek the views of State, local, and Tribal officials; unions; environmental justice organizations; community groups; and other persons it identifies who may have perspectives on the mission of the Interagency Working Group.

(d) Administration. The Interagency Working Group shall be housed within the Department of Energy. The Chairs shall convene regular meetings of the Interagency Working Group, determine its agenda, and direct its work. The Secretary of Energy, in consultation with the Chairs, shall designate an Executive Director of the Interagency Working Group, who shall coordinate the work of the Interagency Working Group and head any staff assigned to the Interagency Working Group.

(e) Officers. To facilitate the work of the Interagency Working Group, the head of each agency listed in subsection (a) of this section shall assign a designated official within the agency the authority to represent the agency on the Interagency Working Group and perform such other duties relating to the implementation of this order within the agency as the head of the agency deems appropriate.

SECURING ENVIRONMENTAL JUSTICE AND SPURRING ECONOMIC OPPORTUNITY

Sec. 219. *Policy*. To secure an equitable economic future, the United States must ensure that environmental and economic justice are key considerations in how we govern. That means investing and building a clean energy economy that creates well-paying union jobs, turning disadvantaged communities—historically marginalized and overburdened—into healthy, thriving communities, and undertaking robust actions to mitigate climate change while preparing for the impacts of climate change across rural, urban, and Tribal areas. Agencies shall make achieving environmental justice part of their missions by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts. It is therefore the policy of my Administration to secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and underinvestment in housing, transportation, water and wastewater infrastructure, and health care.

Sec. 220. *White House Environmental Justice Interagency Council*. (a) Section 1–102 of Executive Order 12898 of February 11, 1994 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations), is hereby amended to read as follows:

''(a) There is hereby created within the Executive Office of the President a White House Environmental Justice Interagency Council (Interagency Council). The Chair of the Council on Environmental Quality shall serve as Chair of the Interagency Council.

''(b) Membership. The Interagency Council shall consist of the following additional members:

(i) the Secretary of Defense;

(ii) the Attorney General;

(iii) the Secretary of the Interior;

(iv) the Secretary of Agriculture;

(v) the Secretary of Commerce;

(vi) the Secretary of Labor;

(vii) the Secretary of Health and Human Services;

(viii) the Secretary of Housing and Urban Development;

(ix) the Secretary of Transportation;

(x) the Secretary of Energy;

(xi) the Chair of the Council of Economic Advisers;

(xii) the Administrator of the Environmental Protection Agency;

(xiii) the Director of the Office of Management and Budget;

(xiv) the Executive Director of the Federal Permitting Improvement Steering Council;

(xv) the Director of the Office of Science and Technology Policy;

(xvi) the National Climate Advisor;

(xvii) the Assistant to the President for Domestic Policy; and

(xviii) the Assistant to the President for Economic Policy.

''(c) At the direction of the Chair, the Interagency Council may establish subgroups consisting exclusively of Interagency Council members or their designees under this section, as appropriate.

''(d) Mission and Work. The Interagency Council shall develop a strategy to address current and historic environmental injustice by consulting with the White House Environmental Justice Advisory Council and with local environmental justice leaders. The Interagency Council shall also develop clear performance metrics to ensure accountability, and publish an annual public performance scorecard on its implementation.

''(e) Administration. The Office of Administration within the Executive Office of the President shall provide funding and administrative support for the Interagency Council, to the extent permitted by law and within existing appropriations. To the extent permitted by law, including the Economy Act (31 U.S.C. 1535), and subject to the availability of appropriations, the Department of Labor, the Department of Transportation, and the Environmental Protection Agency shall provide administrative support as necessary.

''(f) Meetings and Staff. The Chair shall convene regular meetings of the Council, determine its agenda, and direct its work. The Chair shall designate an Executive Director of the Council, who shall coordinate the work of the Interagency Council and head any staff assigned to the Council.

''(g) Officers. To facilitate the work of the Interagency Council, the head of each agency listed in subsection (b) shall assign a designated official within the agency to be an Environmental Justice Officer, with the authority to represent the agency on the Interagency Council and perform such other duties relating to the implementation of this order within the agency as the head of the agency deems appropriate.''

(b) The Interagency Council shall, within 120 days of the date of this order, submit to the President, through the National Climate Advisor, a set of recommendations for further updating Executive Order 12898.

Sec. 221. *White House Environmental Justice Advisory Council*. There is hereby established, within the Environmental Protection Agency, the White House Environmental Justice Advisory Council (Advisory Council), which shall advise the Interagency Council and the Chair of the Council on Environmental Quality.

(a) Membership. Members shall be appointed by the President, shall be drawn from across the political spectrum, and may include those with knowledge about or experience in environmental justice, climate change, disaster preparedness, racial inequity, or any other area determined by the President to be of value to the Advisory Council.

(b) Mission and Work. The Advisory Council shall be solely advisory. It shall provide recommendations to the White House Environmental Justice Interagency Council established in section 220 of this order on how to increase the Federal Government's efforts to address current and historic environmental injustice, including recommendations for updating Executive Order 12898.

(c) Administration. The Environmental Protection Agency shall provide funding and administrative support for the Advisory Council to the extent permitted by law and within existing appropriations. Members of the Advisory Council shall serve without either compensation or reimbursement of expenses.

(d) Federal Advisory Committee Act. Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.), may apply to the Advisory Council, any functions of the President under the Act, except for those in section 6 of the Act, shall be performed by the Administrator of the Environmental Protection Agency in accordance with the guidelines that have been issued by the Administrator of General Services.

Sec. 222. *Agency Responsibilities*. In furtherance of the policy set forth in section 219:

(a) The Chair of the Council on Environmental Quality shall, within 6 months of the date of this order, create a geospatial Climate and Economic Justice Screening Tool and shall annually publish interactive maps highlighting disadvantaged communities.

(b) The Administrator of the Environmental Protection Agency shall, within existing appropriations and consistent with applicable law:

(i) strengthen enforcement of environmental violations with disproportionate impact on underserved communities through the Office of Enforcement and Compliance Assurance; and

(ii) create a community notification program to monitor and provide real-time data to the public on current environmental pollution, including emissions, criteria pollutants, and toxins, in frontline and fenceline communities—places with the most significant exposure to such pollution.

(c) The Attorney General shall, within existing appropriations and consistent with applicable law:

(i) consider renaming the Environment and Natural Resources Division the Environmental Justice and Natural Resources Division;

(ii) direct that division to coordinate with the Administrator of the Environmental Protection Agency, through the Office of Enforcement and Compliance Assurance, as well as with other client agencies as appropriate, to develop a comprehensive environmental justice enforcement strategy, which shall seek to provide timely remedies for systemic environmental violations and contaminations, and injury to natural resources; and

(iii) ensure comprehensive attention to environmental justice throughout the Department of Justice, including by considering creating an Office of Environmental Justice within the Department to coordinate environmental justice activities among Department of Justice components and United States Attorneys' Offices nationwide.

(d) The Secretary of Health and Human Services shall, consistent with applicable law and within existing appropriations:

(i) establish an Office of Climate Change and Health Equity to address the impact of climate change on the health of the American people; and

(ii) establish an Interagency Working Group to Decrease Risk of Climate Change to Children, the Elderly, People with Disabilities, and the Vulnerable as well as a biennial Health Care System Readiness Advisory Council, both of which shall report their progress and findings regularly to the Task Force.

(e) The Director of the Office of Science and Technology Policy shall, in consultation with the National Climate Advisor, within existing appropriations, and within 100 days of the date of this order, publish a report identifying the climate strategies and technologies that will result in the most air and water quality improvements, which shall be made public to the maximum extent possible and published on the Office's website.

Sec. 223. *Justice40 Initiative*. (a) Within 120 days of the date of this order, the Chair of the Council on Environmental Quality, the Director of the

Office of Management and Budget, and the National Climate Advisor, in consultation with the Advisory Council, shall jointly publish recommendations on how certain Federal investments might be made toward a goal that 40 percent of the overall benefits flow to disadvantaged communities. The recommendations shall focus on investments in the areas of clean energy and energy efficiency; clean transit; affordable and sustainable housing; training and workforce development; the remediation and reduction of legacy pollution; and the development of critical clean water infrastructure. The recommendations shall reflect existing authorities the agencies may possess for achieving the 40-percent goal as well as recommendations on any legislation needed to achieve the 40-percent goal.

(b) In developing the recommendations, the Chair of the Council on Environmental Quality, the Director of the Office of Management and Budget, and the National Climate Advisor shall consult with affected disadvantaged communities.

(c) Within 60 days of the recommendations described in subsection (a) of this section, agency heads shall identify applicable program investment funds based on the recommendations and consider interim investment guidance to relevant program staff, as appropriate and consistent with applicable law.

(d) By February 2022, the Director of the Office of Management and Budget, in coordination with the Chair of the Council on Environmental Quality, the Administrator of the United States Digital Service, and other relevant agency heads, shall, to the extent consistent with applicable law, publish on a public website an annual Environmental Justice Scorecard detailing agency environmental justice performance measures.

PART III—GENERAL PROVISIONS

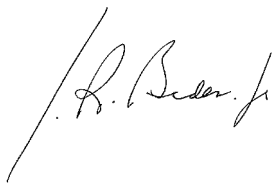
Sec. 301. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(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.



THE WHITE HOUSE,
January 27, 2021.

[FR Doc. 2021–02177
Filed 1–29–21; 8:45 am]
Billing code 3295–F1–P