

## “Made in America” Executive Order Calls for Expansion and Increased Oversight of Domestic Sourcing Requirements for Government Contracts

President Biden signed an [executive order](#) (EO) on January 25, 2021, outlining his administration's policy to increase procurement of U.S.-made products by expansion of domestic preferences for American-made goods and components purchased by the federal government.

The EO, which follows President Biden's campaign pledge to strengthen existing rules favoring U.S. manufacturers in federal procurement, requires the Federal Acquisition Regulatory (FAR) Council, among other things, to consider amendments to existing FAR provisions to increase domestic content requirements for end products and construction materials. Significantly, the EO also creates a new entity within the White House Office of Management and Budget (OMB)—the Made in America Office—to oversee agency waivers of Buy American and Buy America requirements, centralizing oversight of such waivers.

Although certain aspects of the EO will require notice-and-comment rulemaking to implement, the EO signals enhanced enforcement of domestic sourcing requirements under existing laws, collectively referred to as "Made in America Laws" by the White House. The EO also may result in increased opportunities for U.S. manufacturers that do business with the federal government.

This update provides an overview of the EO and its potential significance for contractors.

### Highlights of the EO

During the presidential campaign, then-candidate Biden pledged to strengthen existing Made in America rules and promised to invest \$400 billion in American manufacturing.

In its [announcement](#) of the EO, the White House stated that preferences to American firms under federal law "have not always been implemented consistently or effectively" and some requirements have not been substantially updated since 1954. According to the White House, the EO is intended to "reset the U.S. government's longstanding approach to domestic preferences to create an approach that will remain durable for years to come and grow quality, union jobs."

Specifically, the EO contains the following:

- **Policy to Maximize Domestic Sourcing.** The EO outlines the Biden administration's policy that the U.S. government should, consistent with applicable law, "use terms and conditions" of federal financial assistance and procurements to "maximize" the use of goods, products, materials, and services produced or sourced in the United States.
- **Increased Domestic Content Requirements and New Measurement Rules.** Under the existing Buy American Act, at least 50% of the components of a product must come from within the United States to qualify as a domestic good (a standard known as the "component test"). The EO directs the FAR Council, within 180 days of the date of the EO, to consider amending the FAR to formally replace the "component

test" and increase the threshold for domestic content requirements as well as the price preference for domestic content in end products and construction materials. The EO directs the FAR Council to consider replacing the existing "component test" with a test under which domestic content is measured based on "the value that is added to the product through U.S.-based production or U.S. job-supporting economic activity." The EO also instructs the FAR Council to consider regulations to increase the numerical threshold for domestic content requirements for end products and construction materials.

- **Review of Domestic Sourcing Restrictions for Information Technology Commercial Items.** The EO also requires the FAR Council to consider ways to eliminate hurdles to expanding Buy American laws to information technology that qualifies as a commercial item. Specifically, it requires the council to review existing constraints on the extension of Made in America laws to information technology, and develop recommendations for lifting such constraints to promote the president's policy goal of maximizing government purchases from American businesses.
- **New "Made in America" Oversight Function.** The EO calls for the creation of a new entity within the White House OMB, the Made in America Office, that will centralize review of agency waivers of Buy American requirements. It also adds avenues for oversight by the public, including (1) a public website that will post information on all waiver requests and whether those requests have been granted to allow American manufacturers to track and identify the government's needs, and (2) requires agencies to report on their implementation of the EO and make recommendations to further Biden's stated goals.
- **Waivers of Buy American Rules Will Be More Difficult.** Additionally, the EO will require agencies to justify waiving Made in America rules to the Made in America Office, likely making the waiver process more difficult. The EO sets forth procedures for the resolution of disagreements between agencies seeking waivers and the Made in America director.
- **New Oversight Leadership.** The EO also creates a new position, "Director of Made in America," a senior leader in the Made in America Office who will be appointed by the director of the White House OMB and will be in charge of Biden's Made in America policy approach. The director's duties will include overseeing implementation of the EO and creating waiver rules for federal agencies.
- **Scouting of American Companies.** The EO also directs agencies to use the Manufacturing Extension Partnership, a public-private partnership that supports small and medium manufacturers across the country, to engage in "supplier scouting" and help them connect with new domestic suppliers to meet federal procurement needs.

## Takeaways

The EO outlines the Biden administration's policy to strengthen U.S. domestic sourcing requirements, with potentially important implications for U.S. government contractors. However, the impact of the EO will depend upon implementing regulations, which will go through notice-and comment rulemaking.

For American government contractors, the EO signals a potential increase in contracting opportunities with the federal government. Specifically, American businesses can expect:

- More visibility into the waiver process and the opportunity to track waiver requests and grants of waivers. Increased information about these waivers should help businesses understand the government's needs, illuminating new opportunities.
- Potentially fewer agency waiver requests, given the more difficult waiver process, which may result in a net increase in domestic purchasing in federal acquisitions.
- Increased opportunities for U.S. small and medium manufacturers, made possible through the Manufacturing Extension Partnership.
- Contractors with substantial foreign content in their federal products may want to consider domestic sourcing options.

Finally, the existing FAR and Defense Federal Acquisition Regulation Supplement (DFARS) domestic sourcing rules, which are already complex, will require a new analysis by contractors once the implementing regulations are issued.

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