

CLIENT ALERT

Biden Day Four - Executive Order (EO) to Strengthen Buy American Policies

Jan.25.2021

President Biden signed an Executive Order (EO) today to strengthen Buy American policies and practices across the federal government, his first major action to follow-up on a campaign promise to ensure the future is “Made in All of America.” While placing a Buy American approach at the center of his economic agenda, the impact of today’s order rests largely on its implementation by agencies, including potentially significant proposals on what products qualify as domestic end products and greater scrutiny of the use of waivers to Made in America Laws. The EO appears to sidestep, at least for now, broader questions on how the Administration’s goal to increase federal purchasing of domestic products will interact with U.S. trade commitments and the goal to deepen cooperation with U.S. partners and allies. A statement notes only that the Administration is committed to working with partners and allies to “modernize international trade rules” related to government procurement.

Key elements of the Executive Order on Ensuring the Future Is Made in All of America by All of America’s Workers include:

- Requests that the Federal Acquisition Regulatory Council (FAR Council) consider proposing for notice and public comment amendments within 180 days amendments to:
 - Replace the existing “component test” for domestic end products and construction materials with a test based on the value that is added to the product through U.S.-based production or U.S. job-supporting economic activity. Depending on how it is devised, such a policy change could potentially have far reaching ramifications for what qualifies as domestic end products.
 - Increase the numerical threshold for domestic content requirements and the price preferences for end products and construction materials. It is unclear how such a proposal would interact with a final rule issued by the FAR Council on January 19 that would do just that.
- Requests that the FAR Council review existing constraints on the extension of the requirements in Made in America Laws to information technology (IT) that is a commercial item and develop recommendations for lifting these constraints. Such recommendations could potentially seek to curtail the current flexibility that agencies have in procuring IT products.
- Creates a new “Made in America Office” in the Office of Management and Budget (OMB). This new Office would provide centralized scrutiny over agency proposals to use waivers to Made in America Laws. The EO would seek to establish a website to make public proposed waivers and whether they have been granted. Agencies also would be required to report to the office within 180 days and biannually thereafter on their implementation of Made in America Laws.
- Asks agencies to assess whether a foreign product may benefit from a cost advantage due to dumped steel, iron, or manufactured goods or the use of injuriously subsidized steel, iron, or manufactured goods before granting a waiver in the public interest.

- Asks agencies to work with the Hollings Manufacturing Extension Partnership to scout for 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.
- Establishes a process between OMB and the Commerce Department to review any amendment from the FAR Council to update the list of domestically nonavailable articles.

Fact Sheet: January 25 Executive Order – President Biden to Sign Executive Order Strengthening Buy American Provisions, Ensuring Future of America is Made in America by All of America’s Workers

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