

1 **DIVISION D—HOMELAND**
 2 **SECURITY PROVISIONS**

3 **SEC. 4001. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This division may be cited as the
 5 “Securing America’s Future Act”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
 7 this division is as follows:

DIVISION D—HOMELAND SECURITY PROVISIONS

Sec. 4001. Short title; table of contents.

TITLE I—ENSURING DOMESTIC MANUFACTURING CAPABILITIES

Subtitle A—Build America, Buy America

Sec. 4101. Short title.

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- Sec. 4136. Establishment of BuyAmerican.gov website.
- Sec. 4137. Waiver Transparency and Streamlining for contracts.
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- Sec. 4152. Findings.
- Sec. 4153. Requirement of long-term contracts for domestically manufactured personal protective equipment.

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- Sec. 4202. Purpose.
- Sec. 4203. Definitions.
- Sec. 4204. Principles and policies for use of artificial intelligence in Government.
- Sec. 4205. Agency inventories and artificial intelligence use cases.
- Sec. 4206. Rapid pilot, deployment and scale of applied artificial intelligence capabilities to demonstrate modernization activities related to use cases.
- Sec. 4207. Enabling entrepreneurs and agency missions.

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- Sec. 4251. Declaration of a significant incident.

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- Sec. 4352. Definitions.
- Sec. 4353. Rotational cyber workforce positions.
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- Sec. 4355. Reporting by GAO.
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TITLE IV—OTHER MATTERS

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- Sec. 4401. Short title.
- Sec. 4402. Definitions.
- Sec. 4403. Prohibition on procurement of covered unmanned aircraft systems from covered foreign entities.
- Sec. 4404. Prohibition on operation of covered unmanned aircraft systems from covered foreign entities.

- Sec. 4405. Prohibition on use of Federal funds for purchases and operation of covered unmanned aircraft systems from covered foreign entities.
- Sec. 4406. Prohibition on use of Government-issued Purchase Cards to purchase covered unmanned aircraft systems from covered foreign entities.
- Sec. 4407. Management of existing inventories of covered unmanned aircraft systems from covered foreign entities.
- Sec. 4408. Comptroller General report.
- Sec. 4409. Government-wide policy for procurement of unmanned aircraft systems.
- Sec. 4410. Study.
- Sec. 4411. Sunset.

Subtitle B—No TikTok on Government Devices

- Sec. 4431. Short title.
- Sec. 4432. Prohibition on the use of TikTok.

Subtitle C—National Risk Management

- Sec. 4461. National risk management cycle.

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1 **TITLE I—ENSURING DOMESTIC**
2 **MANUFACTURING CAPABILITIES**

3 **Subtitle A—Build America, Buy**
4 **America**

5 **SEC. 4101. SHORT TITLE.**

6 This subtitle may be cited as the “Build America,
7 Buy America Act”.

8 **PART I—BUY AMERICA SOURCING**
9 **REQUIREMENTS**

10 **SEC. 4111. FINDINGS.**

11 Congress finds that—

- 12 (1) the United States must make significant in-
13 vestments to install, upgrade, or replace the public
14 works infrastructure of the United States;

1 (2) with respect to investments in the infra-
2 structure of the United States, taxpayers expect that
3 their public works infrastructure will be produced in
4 the United States by American workers;

5 (3) United States taxpayer dollars invested in
6 public infrastructure should not be used to reward
7 companies that have moved their operations, invest-
8 ment dollars, and jobs to foreign countries or foreign
9 factories, particularly those that do not share or
10 openly flout the commitments of the United States
11 to environmental, worker, and workplace safety pro-
12 tections;

13 (4) in procuring materials for public works
14 projects, entities using taxpayer-financed Federal as-
15 sistance should give a commonsense procurement
16 preference for the materials and products produced
17 by companies and workers in the United States in
18 accordance with the high ideals embodied in the en-
19 vironmental, worker, workplace safety, and other
20 regulatory requirements of the United States;

21 (5) common construction materials used in pub-
22 lic works infrastructure projects, including steel,
23 iron, manufactured products, non-ferrous metals,
24 plastic and polymer-based products (including
25 polyvinylchloride, composite building materials, and

1 polymers used in fiber optic cables), concrete and
2 other aggregates, glass (including optic glass), lum-
3 ber, and drywall are not adequately covered by a do-
4 mestic content procurement preference, thus limiting
5 the impact of taxpayer purchases to enhance supply
6 chains in the United States;

7 (6) the benefits of domestic content procure-
8 ment preferences extend beyond economics;

9 (7) by incentivizing domestic manufacturing,
10 domestic content procurement preferences reinvest
11 tax dollars in companies and processes using the
12 highest labor and environmental standards in the
13 world;

14 (8) strong domestic content procurement pref-
15 erence policies act to prevent shifts in production to
16 countries that rely on production practices that are
17 significantly less energy efficient and far more pol-
18 luting than those in the United States;

19 (9) for over 75 years, Buy America and other
20 domestic content procurement preference laws have
21 been part of the United States procurement policy,
22 ensuring that the United States can build and re-
23 build the infrastructure of the United States with
24 high-quality American-made materials;

1 (10) before the date of enactment of this Act,
2 a domestic content procurement preference require-
3 ment may not apply, may apply only to a narrow
4 scope of products and materials, or may be limited
5 by waiver with respect to many infrastructure pro-
6 grams, which necessitates a review of such pro-
7 grams, including programs for roads, highways, and
8 bridges, public transportation, dams, ports, harbors,
9 and other maritime facilities, intercity passenger and
10 freight railroads, freight and intermodal facilities,
11 airports, water systems, including drinking water
12 and wastewater systems, electrical transmission fa-
13 cilities and systems, utilities, broadband infrastruc-
14 ture, and buildings and real property;

15 (11) Buy America laws create demand for do-
16 mestically produced goods, helping to sustain and
17 grow domestic manufacturing and the millions of
18 jobs domestic manufacturing supports throughout
19 product supply chains;

20 (12) as of the date of enactment of this Act,
21 domestic content procurement preference policies
22 apply to all Federal Government procurement and to
23 various Federal-aid infrastructure programs;

1 (13) a robust domestic manufacturing sector is
2 a vital component of the national security of the
3 United States;

4 (14) as more manufacturing operations of the
5 United States have moved offshore, the strength and
6 readiness of the defense industrial base of the
7 United States has been diminished; and

8 (15) domestic content procurement preference
9 laws—

10 (A) are fully consistent with the inter-
11 national obligations of the United States; and

12 (B) together with the government procure-
13 ments to which the laws apply, are important
14 levers for ensuring that United States manufac-
15 turers can access the government procurement
16 markets of the trading partners of the United
17 States.

18 **SEC. 4112. DEFINITIONS.**

19 In this part:

20 (1) **DEFICIENT PROGRAM.**—The term “deficient
21 program” means a program identified by the head of
22 a Federal agency under section 4113(c).

23 (2) **DOMESTIC CONTENT PROCUREMENT PREF-**
24 **ERENCE.**—The term “domestic content procurement
25 preference” means a requirement that no amounts

1 made available through a program for Federal finan-
2 cial assistance may be obligated for a project un-
3 less—

4 (A) all iron and steel used in the project
5 are produced in the United States;

6 (B) the manufactured products used in the
7 project are produced in the United States; or

8 (C) the construction materials used in the
9 project are produced in the United States.

10 (3) FEDERAL AGENCY.—The term “Federal
11 agency” means any authority of the United States
12 that is an “agency” (as defined in section 3502 of
13 title 44, United States Code), other than an inde-
14 pendent regulatory agency (as defined in that sec-
15 tion).

16 (4) FEDERAL FINANCIAL ASSISTANCE.—

17 (A) IN GENERAL.—The term “Federal fi-
18 nancial assistance” has the meaning given the
19 term in section 200.1 of title 2, Code of Federal
20 Regulations (or successor regulations).

21 (B) INCLUSION.—The term “Federal fi-
22 nancial assistance” includes all expenditures by
23 a Federal agency to a non-Federal entity for an
24 infrastructure project, except that it does not
25 include expenditures for assistance authorized

1 under section 402, 403, 404, 406, 408, or 502
2 of the Robert T. Stafford Disaster Relief and
3 Emergency Assistance Act (42 U.S.C. 5170a,
4 5170b, 5170c, 5172, 5174, or 5192) relating to
5 a major disaster or emergency declared by the
6 President under section 401 or 501, respec-
7 tively, of such Act (42 U.S.C. 5170, 5191) or
8 pre and post disaster or emergency response ex-
9 penditures.

10 (5) INFRASTRUCTURE.—The term “infrastruc-
11 ture” includes, at a minimum, the structures, facili-
12 ties, and equipment for, in the United States—

13 (A) roads, highways, and bridges;

14 (B) public transportation;

15 (C) dams, ports, harbors, and other mari-
16 time facilities;

17 (D) intercity passenger and freight rail-
18 roads;

19 (E) freight and intermodal facilities;

20 (F) airports;

21 (G) water systems, including drinking
22 water and wastewater systems;

23 (H) electrical transmission facilities and
24 systems;

25 (I) utilities;

1 (J) broadband infrastructure; and

2 (K) buildings and real property.

3 (6) PRODUCED IN THE UNITED STATES.—The
4 term “produced in the United States” means—

5 (A) in the case of iron or steel products,
6 that all manufacturing processes, from the ini-
7 tial melting stage through the application of
8 coatings, occurred in the United States;

9 (B) in the case of manufactured products,
10 that—

11 (i) the manufactured product was
12 manufactured in the United States; and

13 (ii) the cost of the components of the
14 manufactured product that are mined, pro-
15 duced, or manufactured in the United
16 States is greater than 55 percent of the
17 total cost of all components of the manu-
18 factured product, unless another standard
19 for determining the minimum amount of
20 domestic content of the manufactured
21 product has been established under appli-
22 cable law or regulation; and

23 (C) in the case of construction materials,
24 that all manufacturing processes for the con-

1 struction material occurred in the United
2 States.

3 (7) PROJECT.—The term “project” means the
4 construction, alteration, maintenance, or repair of
5 infrastructure in the United States.

6 **SEC. 4113. IDENTIFICATION OF DEFICIENT PROGRAMS.**

7 (a) IN GENERAL.—Not later than 60 days after the
8 date of enactment of this Act, the head of each Federal
9 agency shall—

10 (1) submit to the Office of Management and
11 Budget and to Congress, including a separate notice
12 to each appropriate congressional committee, a re-
13 port that identifies each Federal financial assistance
14 program for infrastructure administered by the Fed-
15 eral agency; and

16 (2) publish in the Federal Register the report
17 under paragraph (1).

18 (b) REQUIREMENTS.—In the report under subsection
19 (a), the head of each Federal agency shall, for each Fed-
20 eral financial assistance program—

21 (1) identify all domestic content procurement
22 preferences applicable to the Federal financial as-
23 sistance;

1 (2) assess the applicability of the domestic con-
2 tent procurement preference requirements, includ-
3 ing—

4 (A) section 313 of title 23, United States
5 Code;

6 (B) section 5323(j) of title 49, United
7 States Code;

8 (C) section 22905(a) of title 49, United
9 States Code;

10 (D) section 50101 of title 49, United
11 States Code;

12 (E) section 603 of the Federal Water Pol-
13 lution Control Act (33 U.S.C. 1388);

14 (F) section 1452(a)(4) of the Safe Drink-
15 ing Water Act (42 U.S.C. 300j-12(a)(4));

16 (G) section 5035 of the Water Infrastruc-
17 ture Finance and Innovation Act of 2014 (33
18 U.S.C. 3914);

19 (H) any domestic content procurement
20 preference included in an appropriations Act;
21 and

22 (I) any other domestic content procure-
23 ment preference in Federal law (including regu-
24 lations);

1 (3) provide details on any applicable domestic
2 content procurement preference requirement, includ-
3 ing the purpose, scope, applicability, and any excep-
4 tions and waivers issued under the requirement; and

5 (4) include a description of the type of infra-
6 structure projects that receive funding under the
7 program, including information relating to—

8 (A) the number of entities that are partici-
9 pating in the program;

10 (B) the amount of Federal funds that are
11 made available for the program for each fiscal
12 year; and

13 (C) any other information the head of the
14 Federal agency determines to be relevant.

15 (c) LIST OF DEFICIENT PROGRAMS.—In the report
16 under subsection (a), the head of each Federal agency
17 shall include a list of Federal financial assistance pro-
18 grams for infrastructure identified under that subsection
19 for which a domestic content procurement preference re-
20 quirement—

21 (1) does not apply in a manner consistent with
22 section 4114; or

23 (2) is subject to a waiver of general applica-
24 bility not limited to the use of specific products for
25 use in a specific project.

1 **SEC. 4114. APPLICATION OF BUY AMERICA PREFERENCE.**

2 (a) IN GENERAL.—Not later than 180 days after the
3 date of enactment of this Act, the head of each Federal
4 agency shall ensure that none of the funds made available
5 for a Federal financial assistance program for infrastruc-
6 ture, including each deficient program, may be obligated
7 for a project unless all of the iron, steel, manufactured
8 products, and construction materials used in the project
9 are produced in the United States.

10 (b) WAIVER.—The head of a Federal agency that ap-
11 plies a domestic content procurement preference under
12 this section may waive the application of that preference
13 in any case in which the head of the Federal agency finds
14 that—

15 (1) applying the domestic content procurement
16 preference would be inconsistent with the public in-
17 terest;

18 (2) types of iron, steel, manufactured products,
19 or construction materials are not produced in the
20 United States in sufficient and reasonably available
21 quantities or of a satisfactory quality; or

22 (3) the inclusion of iron, steel, manufactured
23 products, or construction materials produced in the
24 United States will increase the cost of the overall
25 project by more than 25 percent.

1 (c) WRITTEN JUSTIFICATION.—Before issuing a
2 waiver under subsection (b), the head of the Federal agen-
3 cy shall—

4 (1) make publicly available in an easily acces-
5 sible location on a website designated by the Office
6 of Management and Budget and on the website of
7 the Federal agency a detailed written explanation for
8 the proposed determination to issue the waiver; and

9 (2) provide a period of not less than 15 days
10 for public comment on the proposed waiver.

11 (d) AUTOMATIC SUNSET ON WAIVERS OF GENERAL
12 APPLICABILITY.—

13 (1) IN GENERAL.—A general applicability waiv-
14 er issued under subsection (b) shall expire not later
15 than 2 years after the date on which the waiver is
16 issued.

17 (2) REISSUANCE.—The head of a Federal agen-
18 cy may reissue a general applicability waiver only
19 after—

20 (A) publishing in the Federal Register a
21 notice that—

22 (i) describes the justification for re-
23 issuing a general applicability waiver; and

24 (ii) requests public comments for a
25 period of not less than 30 days; and

1 (B) publishing in the Federal Register a
2 second notice that—

3 (i) responds to the public comments
4 received in response to the first notice; and

5 (ii) provides the final decision on
6 whether the general applicability waiver
7 will be reissued.

8 (e) CONSISTENCY WITH INTERNATIONAL AGREE-
9 MENTS.—This section shall be applied in a manner con-
10 sistent with United States obligations under international
11 agreements.

12 **SEC. 4115. OMB GUIDANCE AND STANDARDS.**

13 (a) GUIDANCE.—The Director of the Office of Man-
14 agement and Budget shall—

15 (1) issue guidance to the head of each Federal
16 agency—

17 (A) to assist in identifying deficient pro-
18 grams under section 4113(c); and

19 (B) to assist in applying new domestic con-
20 tent procurement preferences under section
21 4114; and

22 (2) if necessary, amend subtitle A of title 2,
23 Code of Federal Regulations (or successor regula-
24 tions), to ensure that domestic content procurement
25 preference requirements required by this part or

1 other Federal law are imposed through the terms
2 and conditions of awards of Federal financial assist-
3 ance.

4 (b) STANDARDS FOR CONSTRUCTION MATERIALS.—

5 (1) IN GENERAL.—Not later than 180 days
6 after the date of enactment of this Act, the Director
7 of the Office of Management and Budget shall issue
8 standards that define the term “all manufacturing
9 processes” in the case of construction materials.

10 (2) CONSIDERATIONS.—In issuing standards
11 under paragraph (1), the Director shall—

12 (A) ensure that the standards require that
13 each manufacturing process required for the
14 manufacture of the construction material and
15 the inputs of the construction material occurs
16 in the United States; and

17 (B) take into consideration and seek to
18 maximize the direct and indirect jobs benefited
19 or created in the production of the construction
20 material.

21 **SEC. 4116. TECHNICAL ASSISTANCE PARTNERSHIP AND**
22 **CONSULTATION SUPPORTING DEPARTMENT**
23 **OF TRANSPORTATION BUY AMERICA RE-**
24 **QUIREMENTS.**

25 (a) DEFINITIONS.—In this section:

1 (1) BUY AMERICA LAW.—The term “Buy Amer-
2 ica law” means—

3 (A) section 313 of title 23, United States
4 Code;

5 (B) section 5323(j) of title 49, United
6 States Code;

7 (C) section 22905(a) of title 49, United
8 States Code;

9 (D) section 50101 of title 49, United
10 States Code; and

11 (E) any other domestic content procure-
12 ment preference for an infrastructure project
13 under the jurisdiction of the Secretary.

14 (2) SECRETARY.—The term “Secretary” means
15 the Secretary of Transportation.

16 (b) TECHNICAL ASSISTANCE PARTNERSHIP.—Not
17 later than 90 days after the date of the enactment of this
18 Act, the Secretary shall enter into a technical assistance
19 partnership with the Secretary of Commerce, acting
20 through the Director of the National Institute of Stand-
21 ards and Technology—

22 (1) to ensure the development of a domestic
23 supply base to support intermodal transportation in
24 the United States, such as intercity high speed rail
25 transportation, public transportation systems, high-

1 way construction or reconstruction, airport improve-
2 ment projects, and other infrastructure projects
3 under the jurisdiction of the Secretary;

4 (2) to ensure compliance with Buy America
5 laws that apply to a project that receives assistance
6 from the Federal Highway Administration, the Fed-
7 eral Transit Administration, the Federal Railroad
8 Administration, the Federal Aviation Administra-
9 tion, or another office or modal administration of
10 the Secretary of Transportation;

11 (3) to encourage technologies developed with
12 the support of and resources from the Secretary to
13 be transitioned into commercial market and applica-
14 tions; and

15 (4) to establish procedures for consultation
16 under subsection (c).

17 (c) CONSULTATION.—Before granting a written waiv-
18 er under a Buy America law, the Secretary shall consult
19 with the Director of the Hollings Manufacturing Exten-
20 sion Partnership regarding whether there is a domestic en-
21 tity that could provide the iron, steel, manufactured prod-
22 uct, or construction material that is the subject of the pro-
23 posed waiver.

24 (d) ANNUAL REPORT.—Not later than 1 year after
25 the date of enactment of this Act, and annually thereafter,

1 the Secretary shall submit to the Committee on Com-
2 merce, Science, and Transportation, the Committee on
3 Banking, Housing, and Urban Affairs, the Committee on
4 Environment and Public Works, and the Committee on
5 Homeland Security and Governmental Affairs of the Sen-
6 ate and the Committee on Transportation and Infrastruc-
7 ture and the Committee on Oversight and Reform of the
8 House of Representatives a report that includes—

9 (1) a detailed description of the consultation
10 procedures developed under subsection (b)(4);

11 (2) a detailed description of each waiver re-
12 quested under a Buy America law in the preceding
13 year that was subject to consultation under sub-
14 section (c), and the results of the consultation;

15 (3) a detailed description of each waiver grant-
16 ed under a Buy America law in the preceding year,
17 including the type of waiver and the reasoning for
18 granting the waiver; and

19 (4) an update on challenges and gaps in the do-
20 mestic supply base identified in carrying out sub-
21 section (b)(1), including a list of actions and policy
22 changes the Secretary recommends be taken to ad-
23 dress those challenges and gaps.

1 **SEC. 4117. APPLICATION.**

2 (a) IN GENERAL.—This part shall apply to a Federal
3 financial assistance program for infrastructure only to the
4 extent that a domestic content procurement preference as
5 described in section 4114 does not already apply to iron,
6 steel, manufactured products, and construction materials.

7 (b) SAVINGS PROVISION.—Nothing in this part af-
8 fects a domestic content procurement preference for a
9 Federal financial assistance program for infrastructure
10 that is in effect and that meets the requirements of section
11 4114.

12 **PART II—MAKE IT IN AMERICA**

13 **SEC. 4121. REGULATIONS RELATING TO BUY AMERICAN**
14 **ACT.**

15 (a) IN GENERAL.—Not later than 1 year after the
16 date of the enactment of this Act, the Director of the Of-
17 fice of Management and Budget (“Director”), acting
18 through the Administrator for Federal Procurement Pol-
19 icy and, in consultation with the Federal Acquisition Reg-
20 ulatory Council, shall promulgate final regulations or
21 other policy or management guidance, as appropriate, to
22 standardize and simplify how Federal agencies comply
23 with, report on, and enforce the Buy American Act. The
24 regulations or other policy or management guidance shall
25 include, at a minimum, the following:

1 (1) Guidelines for Federal agencies to deter-
2 mine, for the purposes of applying sections 8302(a)
3 and 8303(b)(3) of title 41, United States Code, the
4 circumstances under which the acquisition of arti-
5 cles, materials, or supplies mined, produced, or man-
6 ufactured in the United States is inconsistent with
7 the public interest.

8 (2) Guidelines to ensure Federal agencies base
9 determinations of non-availability on appropriate
10 considerations, including anticipated project delays
11 and lack of substitutable articles, materials, and
12 supplies mined, produced, or manufactured in the
13 United States, when making determinations of non-
14 availability under section 8302(a)(1) of title 41,
15 United States Code.

16 (3)(A) Uniform procedures for each Federal
17 agency to make publicly available, in an easily iden-
18 tifiable location on the website of the agency, and
19 within the following time periods, the following infor-
20 mation:

21 (i) A written description of the cir-
22 cumstances in which the head of the agency
23 may waive the requirements of the Buy Amer-
24 ican Act.

1 (i) result in a decrease in employment
2 in the United States, including employ-
3 ment among entities that manufacture the
4 articles, materials, or supplies; or

5 (ii) result in awarding a contract that
6 would decrease domestic employment.

7 (B) COVERED EMPLOYMENT.—For pur-
8 poses of subparagraph (A), employment refers
9 to positions directly involved in the manufacture
10 of articles, materials, or supplies, and does not
11 include positions related to management, re-
12 search and development, or engineering and de-
13 sign.

14 (2) ASSESSMENT ON USE OF DUMPED OR SUB-
15 SIDIZED FOREIGN PRODUCTS.—

16 (A) IN GENERAL.—To the extent otherwise
17 permitted by law, before granting a waiver in
18 the public interest to the guidelines developed
19 under subsection (a)(1) with respect to a prod-
20 uct sourced from a foreign country, a Federal
21 agency shall assess whether a significant por-
22 tion of the cost advantage of the product is the
23 result of the use of dumped steel, iron, or man-
24 ufactured goods or the use of injuriously sub-
25 sidized steel, iron, or manufactured goods.

1 (B) CONSULTATION.—The Federal agency
2 conducting the assessment under subparagraph
3 (A) shall consult with the International Trade
4 Administration in making the assessment if the
5 agency considers such consultation to be help-
6 ful.

7 (C) USE OF FINDINGS.—The Federal
8 agency conducting the assessment under sub-
9 paragraph (A) shall integrate any findings from
10 the assessment into its waiver determination.

11 (c) SENSE OF CONGRESS ON INCREASING DOMESTIC
12 CONTENT REQUIREMENTS.—It is the sense of Congress
13 that the Federal Acquisition Regulatory Council should
14 amend the Federal Acquisition Regulation to increase the
15 domestic content requirements for domestic end products
16 and domestic construction material to 75 percent, or, in
17 the event of no qualifying offers, 60 percent.

18 (d) DEFINITION OF END PRODUCT MANUFACTURED
19 IN THE UNITED STATES.—Not later than 1 year after the
20 date of the enactment of this Act, the Federal Acquisition
21 Regulatory Council shall amend part 25 of the Federal
22 Acquisition Regulation to provide a definition for “end
23 product manufactured in the United States,” including
24 guidelines to ensure that manufacturing processes in-
25 volved in production of the end product occur domestically.

1 **SEC. 4122. AMENDMENTS RELATING TO BUY AMERICAN**
2 **ACT.**

3 (a) SPECIAL RULES RELATING TO AMERICAN MATE-
4 RIALS REQUIRED FOR PUBLIC USE.—Section 8302 of title
5 41, United States Code, is amended by adding at the end
6 the following new subsection:

7 “(c) SPECIAL RULES.—The following rules apply in
8 carrying out the provisions of subsection (a):

9 “(1) IRON AND STEEL MANUFACTURED IN THE
10 UNITED STATES.—For purposes of this section,
11 manufactured articles, materials, and supplies of
12 iron and steel are deemed manufactured in the
13 United States only if all manufacturing processes in-
14 volved in the production of such iron and steel, from
15 the initial melting stage through the application of
16 coatings, occurs in the United States.

17 “(2) LIMITATION ON EXCEPTION FOR COMMER-
18 CIALY AVAILABLE OFF-THE-SHELF ITEMS.—Not-
19 withstanding any law or regulation to the contrary,
20 including section 1907 of this title and the Federal
21 Acquisition Regulation, the requirements of this sec-
22 tion apply to all iron and steel articles, materials,
23 and supplies.”.

24 (b) PRODUCTION OF IRON AND STEEL FOR PUR-
25 POSES OF CONTRACTS FOR PUBLIC WORKS.—Section
26 8303 of title 41, United States Code, is amended—

1 (1) by redesignating subsection (c) as sub-
2 section (d); and

3 (2) by inserting after subsection (b) the fol-
4 lowing new subsection:

5 “(c) SPECIAL RULES.—

6 “(1) PRODUCTION OF IRON AND STEEL.—For
7 purposes of this section, manufactured articles, ma-
8 terials, and supplies of iron and steel are deemed
9 manufactured in the United States only if all manu-
10 facturing processes involved in the production of
11 such iron and steel, from the initial melting stage
12 through the application of coatings, occurs in the
13 United States.

14 “(2) LIMITATION ON EXCEPTION FOR COMMER-
15 CIALLY AVAILABLE OFF-THE-SHELF ITEMS.—Not-
16 withstanding any law or regulation to the contrary,
17 including section 1907 of this title and the Federal
18 Acquisition Regulation, the requirements of this sec-
19 tion apply to all iron and steel articles, materials,
20 and supplies used in contracts described in sub-
21 section (a).”.

22 (c) ANNUAL REPORT.—Subsection (b) of section
23 8302 of title 41, United States Code, is amended to read
24 as follows:

25 “(b) REPORTS.—

1 “(1) IN GENERAL.—Not later than 180 days
2 after the end of the fiscal year during which the
3 Build America, Buy America Act is enacted, and an-
4 nually thereafter for 4 years, the Director of the Of-
5 fice of Management and Budget, in consultation
6 with the Administrator of General Services, shall
7 submit to the Committee on Homeland Security and
8 Governmental Affairs of the Senate and the Com-
9 mittee on Oversight and Reform of the House of
10 Representatives a report on the total amount of ac-
11 quisitions made by Federal agencies in the relevant
12 fiscal year of articles, materials, or supplies acquired
13 from entities that mine, produce, or manufacture the
14 articles, materials, or supplies outside the United
15 States.

16 “(2) EXCEPTION FOR INTELLIGENCE COMMU-
17 NITY.—This subsection does not apply to acquisi-
18 tions made by an agency, or component of an agen-
19 cy, that is an element of the intelligence community
20 as specified in, or designated under, section 3 of the
21 National Security Act of 1947 (50 U.S.C. 3003).”.

22 (d) DEFINITION.—Section 8301 of title 41, United
23 States Code, is amended by adding at the end the fol-
24 lowing new paragraph:

1 “(3) FEDERAL AGENCY.—The term ‘Federal
2 agency’ has the meaning given the term ‘executive
3 agency’ in section 133 of this title.”.

4 (e) CONFORMING AMENDMENTS.—Title 41, United
5 States Code, is amended—

6 (1) in section 8302(a)—

7 (A) in paragraph (1)—

8 (i) by striking “department or inde-
9 pendent establishment” and inserting
10 “Federal agency”; and

11 (ii) by striking “their acquisition to be
12 inconsistent with the public interest or
13 their cost to be unreasonable” and insert-
14 ing “their acquisition to be inconsistent
15 with the public interest, their cost to be
16 unreasonable, or that the articles, mate-
17 rials, or supplies of the class or kind to be
18 used, or the articles, materials, or supplies
19 from which they are manufactured, are not
20 mined, produced, or manufactured in the
21 United States in sufficient and reasonably
22 available commercial quantities and of a
23 satisfactory quality”; and

24 (B) in paragraph (2), by amending sub-
25 paragraph (B) to read as follows:

1 “(B) to any articles, materials, or supplies
2 procured pursuant to a reciprocal defense pro-
3 curement memorandum of understanding (as
4 described in section 8304 of this title), or a
5 trade agreement or least developed country des-
6 ignation described in subpart 25.400 of the
7 Federal Acquisition Regulation; and”;

8 (2) in section 8303—

9 (A) in subsection (b)—

10 (i) by striking “department or inde-
11 pendent establishment” each place it ap-
12 pears and inserting “Federal agency”;

13 (ii) by amending subparagraph (B) of
14 paragraph (1) to read as follows:

15 “(B) to any articles, materials, or supplies
16 procured pursuant to a reciprocal defense pro-
17 curement memorandum of understanding (as
18 described in section 8304), or a trade agree-
19 ment or least developed country designation de-
20 scribed in subpart 25.400 of the Federal Acqui-
21 sition Regulation; and”;

22 (iii) in paragraph (3)—

23 (I) in the heading, by striking

24 “INCONSISTENT WITH PUBLIC INTER-

1 EST” and inserting “WAIVER AU-
2 THORITY”; and

3 (II) by striking “their purchase
4 to be inconsistent with the public in-
5 terest or their cost to be unreason-
6 able” and inserting “their acquisition
7 to be inconsistent with the public in-
8 terest, their cost to be unreasonable,
9 or that the articles, materials, or sup-
10 plies of the class or kind to be used,
11 or the articles, materials, or supplies
12 from which they are manufactured,
13 are not mined, produced, or manufac-
14 tured in the United States in suffi-
15 cient and reasonably available com-
16 mercial quantities and of a satisfac-
17 tory quality”; and

18 (B) in subsection (d), as redesignated by
19 subsection (b)(1) of this section, by striking
20 “department, bureau, agency, or independent
21 establishment” each place it appears and insert-
22 ing “Federal agency”.

23 (f) EXCLUSION FROM INFLATION ADJUSTMENT OF
24 ACQUISITION-RELATED DOLLAR THRESHOLDS.—Sub-
25 paragraph (A) of section 1908(b)(2) of title 41, United

1 States Code, is amended by striking “chapter 67” and in-
2 serting “chapters 67 and 83”.

3 **SEC. 4123. MADE IN AMERICA OFFICE.**

4 (a) ESTABLISHMENT.—The Director of the Office of
5 Management and Budget shall establish within the Office
6 of Management and Budget an office to be known as the
7 “Made in America Office”. The head of the office shall
8 be appointed by the Director of the Office of Management
9 and Budget (in this section referred to as the “Made in
10 America Director”).

11 (b) DUTIES.—The Made in America Director shall
12 have the following duties:

13 (1) Maximize and enforce compliance with do-
14 mestic preference statutes.

15 (2) Develop and implement procedures to re-
16 view waiver requests or inapplicability requests re-
17 lated to domestic preference statutes.

18 (3) Prepare the reports required under sub-
19 sections (c) and (e).

20 (4) Ensure that Federal contracting personnel,
21 financial assistance personnel, and non-Federal re-
22 cipients are regularly trained on obligations under
23 the Buy American Act and other agency-specific do-
24 mestic preference statutes.

1 (5) Conduct the review of reciprocal defense
2 agreements required under subsection (d).

3 (6) Ensure that Federal agencies, Federal fi-
4 nancial assistance recipients, and the Hollings Man-
5 ufacturing Extension Partnership partner with each
6 other to promote compliance with domestic pref-
7 erence statutes.

8 (7) Support executive branch efforts to develop
9 and sustain a domestic supply base to meet Federal
10 procurement requirements.

11 (c) OFFICE OF MANAGEMENT AND BUDGET RE-
12 PORT.—Not later than 1 year after the date of the enact-
13 ment of this Act, the Director of the Office of Manage-
14 ment and Budget, working through the Made in America
15 Director, shall report to the relevant congressional com-
16 mittees on the extent to which, in each of the three fiscal
17 years prior to the date of enactment of this Act, articles,
18 materials, or supplies acquired by the Federal Government
19 were mined, produced, or manufactured outside the
20 United States. Such report shall include for each Federal
21 agency the following:

22 (1) A summary of total procurement funds ex-
23 pended on articles, materials, and supplies mined,
24 produced, or manufactured—

25 (A) inside the United States;

1 (B) outside the United States; and

2 (C) outside the United States—

3 (i) under each category of waiver
4 under the Buy American Act;

5 (ii) under each category of exception
6 under such chapter; and

7 (iii) for each country that mined, pro-
8 duced, or manufactured such articles, ma-
9 terials, and supplies.

10 (2) For each fiscal year covered by the report—

11 (A) the dollar value of any articles, mate-
12 rials, or supplies that were mined, produced, or
13 manufactured outside the United States, in the
14 aggregate and by country;

15 (B) an itemized list of all waivers made
16 under the Buy American Act with respect to ar-
17 ticles, materials, or supplies, where available,
18 and the country where such articles, materials,
19 or supplies were mined, produced, or manufac-
20 tured;

21 (C) if any articles, materials, or supplies
22 were acquired from entities that mine, produce,
23 or manufacture such articles, materials, or sup-
24 plies outside the United States due to an excep-
25 tion (that is not the micro-purchase threshold

1 exception described under section 8302(a)(2)(C)
2 of title 41, United States Code), the specific ex-
3 ception that was used to purchase such articles,
4 materials, or supplies; and

5 (D) if any articles, materials, or supplies
6 were acquired from entities that mine, produce,
7 or manufacture such articles, materials, or sup-
8 plies outside the United States pursuant to a
9 reciprocal defense procurement memorandum of
10 understanding (as described in section 8304 of
11 title 41, United States Code), or a trade agree-
12 ment or least developed country designation de-
13 scribed in subpart 25.400 of the Federal Acqui-
14 sition Regulation, a citation to such memo-
15 randum of understanding, trade agreement, or
16 designation.

17 (3) A description of the methods used by each
18 Federal agency to calculate the percentage domestic
19 content of articles, materials, and supplies mined,
20 produced, or manufactured in the United States.

21 (d) REVIEW OF RECIPROCAL DEFENSE AGREE-
22 MENTS.—

23 (1) REVIEW OF PROCESS.—Not later than 180
24 days after the date of the enactment of this Act, the
25 Made in America Director shall review the Depart-

1 ment of Defense’s use of reciprocal defense agree-
2 ments to determine if domestic entities have equal
3 and proportional access and report the findings of
4 the review to the Director of the Office of Manage-
5 ment and Budget, the Secretary of Defense, and the
6 Secretary of State.

7 (2) REVIEW OF RECIPROCAL PROCUREMENT
8 MEMORANDA OF UNDERSTANDING.—The Made in
9 America Director shall review reciprocal procure-
10 ment memoranda of understanding entered into
11 after the date of the enactment of this Act between
12 the Department of Defense and its counterparts in
13 foreign governments to assess whether domestic enti-
14 ties will have equal and proportional access under
15 the memoranda of understanding and report the
16 findings of the review to the Director of the Office
17 of Management and Budget, the Secretary of De-
18 fense, and the Secretary of State.

19 (e) REPORT ON USE OF MADE IN AMERICA LAWS.—
20 The Made in America Director shall submit to the relevant
21 congressional committees a summary of each report on the
22 use of Made in America Laws received by the Made in
23 America Director pursuant to section 11 of Executive
24 Order 14005, dated January 25, 2021 (relating to ensur-
25 ing the future is made in all of America by all of America’s

1 workers) not later than 90 days after the date of the en-
2 actment of this Act or receipt of the reports required
3 under section 11 of such Executive Order, whichever is
4 later.

5 (f) DOMESTIC PREFERENCE STATUTE DEFINED.—

6 In this section, the term “domestic preference statute”
7 means any of the following:

8 (1) the Buy American Act;

9 (2) a Buy America law (as that term is defined
10 in section 4116(a));

11 (3) the Berry Amendment;

12 (4) section 604 of the American Recovery and
13 Reinvestment Act of 2009 (6 U.S.C. 453b) (com-
14 monly referred to as the “Kissell amendment”);

15 (5) section 2533b of title 10 (commonly re-
16 ferred to as the “specialty metals clause”);

17 (6) laws requiring domestic preference for mari-
18 time transport, including the Merchant Marine Act,
19 1920 (Public Law 66–261), commonly known as the
20 “Jones Act”; and

21 (7) any other law, regulation, rule, or executive
22 order relating to Federal financial assistance awards
23 or Federal procurement, that requires, or provides a
24 preference for, the purchase or acquisition of goods,
25 products, or materials produced in the United

1 States, including iron, steel, construction material,
2 and manufactured goods offered in the United
3 States.

4 **SEC. 4124. HOLLINGS MANUFACTURING EXTENSION PART-**
5 **nership ACTIVITIES.**

6 (a) USE OF HOLLINGS MANUFACTURING EXTENSION
7 PARTNERSHIP TO REFER NEW BUSINESSES TO CON-
8 TRACTING OPPORTUNITIES.—The head of each Federal
9 agency shall work with the Director of the Hollings Manu-
10 facturing Extension Partnership, as necessary, to ensure
11 businesses participating in this Partnership are aware of
12 their contracting opportunities.

13 (b) AUTOMATIC ENROLLMENT IN GSA ADVAN-
14 TAGE!.—The Administrator of the General Services Ad-
15 ministration and the Secretary of Commerce, acting
16 through the Under Secretary of Commerce for Standards
17 and Technology, shall jointly ensure that each business
18 that participates in the Hollings Manufacturing Extension
19 Partnership is automatically enrolled in General Services
20 Administration Advantage!.

21 **SEC. 4125. UNITED STATES OBLIGATIONS UNDER INTER-**
22 **NATIONAL AGREEMENTS.**

23 This part, and the amendments made by this part,
24 shall be applied in a manner consistent with United States
25 obligations under international agreements.

1 **SEC. 4126. DEFINITIONS.**

2 In this part:

3 (1) BERRY AMENDMENT.—The term “Berry
4 Amendment” means section 2533a of title 10,
5 United States Code.

6 (2) BUY AMERICAN ACT.—The term “Buy
7 American Act” means chapter 83 of title 41, United
8 States Code.

9 (3) FEDERAL AGENCY.—The term “Federal
10 agency” has the meaning given the term “executive
11 agency” in section 133 of title 41, United States
12 Code.

13 (4) RELEVANT CONGRESSIONAL COMMIT-
14 TEES.—The term “relevant congressional commit-
15 tees” means—

16 (A) the Committee on Homeland Security
17 and Governmental Affairs, the Committee on
18 Commerce, Science, and Transportation, the
19 Committee on Environment and Public Works,
20 the Committee on Banking, Housing, and
21 Urban Affairs, and the Committee on Armed
22 Services of the Senate; and

23 (B) the Committee on Oversight and Re-
24 form, the Committee on Armed Services, and
25 the Committee on Transportation and Infra-
26 structure of the House of Representatives.

1 (5) WAIVER.—The term “waiver”, with respect
2 to the acquisition of an article, material, or supply
3 for public use, means the inapplicability of chapter
4 83 of title 41, United States Code, to the acquisition
5 by reason of any of the following determinations
6 under section 8302(a)(1) or 8303(b) of such title:

7 (A) A determination by the head of the
8 Federal agency concerned that the acquisition
9 is inconsistent with the public interest.

10 (B) A determination by the head of the
11 Federal agency concerned that the cost of the
12 acquisition is unreasonable.

13 (C) A determination by the head of the
14 Federal agency concerned that the article, ma-
15 terial, or supply is not mined, produced, or
16 manufactured in the United States in sufficient
17 and reasonably available commercial quantities
18 of a satisfactory quality.

19 **SEC. 4127. PROSPECTIVE AMENDMENTS TO INTERNAL**
20 **CROSS-REFERENCES.**

21 (a) SPECIALTY METALS CLAUSE REFERENCE.—Sec-
22 tion 4123(f)(5) is amended by striking “section 2533b”
23 and inserting “section 4863”.

1 (b) BERRY AMENDMENT REFERENCE.—Section
2 4126(1) is amended by striking “section 2533a” and in-
3 serting “section 4862”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall take effect on January 1, 2022.

6 **Subtitle B—BuyAmerican.gov**

7 **SEC. 4131. SHORT TITLE.**

8 This subtitle may be cited as the “BuyAmerican.gov
9 Act of 2021”.

10 **SEC. 4132. DEFINITIONS.**

11 In this subtitle:

12 (1) BUY AMERICAN LAW.—The term “Buy
13 American law” means any law, regulation, Executive
14 order, or rule relating to Federal contracts, grants,
15 or financial assistance that requires or provides a
16 preference for the purchase or use of goods, prod-
17 ucts, or materials mined, produced, or manufactured
18 in the United States, including—

19 (A) chapter 83 of title 41, United States
20 Code (commonly referred to as the “Buy Amer-
21 ican Act”);

22 (B) section 5323(j) of title 49, United
23 States Code;

24 (C) section 313 of title 23, United States
25 Code;

1 (D) section 50101 of title 49, United
2 States Code;

3 (E) section 24405 of title 49, United
4 States Code;

5 (F) section 608 of the Federal Water Pol-
6 lution Control Act (33 U.S.C. 1388);

7 (G) section 1452(a)(4) of the Safe Drink-
8 ing Water Act (42 U.S.C. 300j-12(a)(4));

9 (H) section 5035 of the Water Resources
10 Reform and Development Act of 2014 (33
11 U.S.C. 3914);

12 (I) section 2533a of title 10, United States
13 Code (commonly referred to as the “Berry
14 Amendment”); and

15 (J) section 2533b of title 10, United
16 States Code.

17 (2) EXECUTIVE AGENCY.—The term “executive
18 agency” has the meaning given the term “agency”
19 in paragraph (1) of section 3502 of title 44, United
20 States Code, except that it does not include an inde-
21 pendent regulatory agency, as that term is defined
22 in paragraph (5) of such section.

23 (3) BUY AMERICAN WAIVER.—The term “Buy
24 American waiver” refers to an exception to or waiver
25 of any Buy American law, or the terms and condi-

1 tions used by an agency in granting an exception to
2 or waiver from Buy American laws.

3 **SEC. 4133. SENSE OF CONGRESS ON BUYING AMERICAN.**

4 It is the sense of Congress that—

5 (1) every executive agency should maximize,
6 through terms and conditions of Federal financial
7 assistance awards and Federal procurements, the
8 use of goods, products, and materials produced in
9 the United States and contracts for outsourced gov-
10 ernment service contracts to be performed by United
11 States nationals;

12 (2) every executive agency should scrupulously
13 monitor, enforce, and comply with Buy American
14 laws, to the extent they apply, and minimize the use
15 of waivers; and

16 (3) every executive agency should use available
17 data to routinely audit its compliance with Buy
18 American laws.

19 **SEC. 4134. ASSESSMENT OF IMPACT OF FREE TRADE**
20 **AGREEMENTS.**

21 Not later than 150 days after the date of the enact-
22 ment of this Act, the Secretary of Commerce, the United
23 States Trade Representative, and the Director of the Of-
24 fice of Management and Budget shall assess the impacts
25 in a publicly available report of all United States free

1 trade agreements, the World Trade Organization Agree-
2 ment on Government Procurement, and Federal permit-
3 ting processes on the operation of Buy American laws, in-
4 cluding their impacts on the implementation of domestic
5 procurement preferences.

6 **SEC. 4135. JUDICIOUS USE OF WAIVERS.**

7 (a) IN GENERAL.—To the extent permitted by law,
8 a Buy American waiver that is determined by an agency
9 head or other relevant official to be in the public interest
10 shall be construed to ensure the maximum utilization of
11 goods, products, and materials produced in the United
12 States.

13 (b) PUBLIC INTEREST WAIVER DETERMINATIONS.—
14 To the extent permitted by law, determination of public
15 interest waivers shall be made by the head of the agency
16 with the authority over the Federal financial assistance
17 award or Federal procurement under consideration.

18 **SEC. 4136. ESTABLISHMENT OF BUYAMERICAN.GOV**
19 **WEBSITE.**

20 (a) IN GENERAL.—Not later than one year after the
21 date of the enactment of this Act, the Administrator of
22 General Services shall establish an Internet website with
23 the address BuyAmerican.gov that will be publicly avail-
24 able and free to access. The website shall include informa-
25 tion on all waivers of and exceptions to Buy American laws

1 since the date of the enactment of this Act that have been
2 requested, are under consideration, or have been granted
3 by executive agencies and be designed to enable manufac-
4 turers and other interested parties to easily identify waiv-
5 ers. The website shall also include the results of routine
6 audits to determine data errors and Buy American law
7 violations after the award of a contract. The website shall
8 provide publicly available contact information for the rel-
9 evant contracting agencies.

10 (b) UTILIZATION OF EXISTING WEBSITE.—The re-
11 quirements of subsection (a) may be met by utilizing an
12 existing website, provided that the address of that website
13 is BuyAmerican.gov.

14 **SEC. 4137. WAIVER TRANSPARENCY AND STREAMLINING**
15 **FOR CONTRACTS.**

16 (a) COLLECTION OF INFORMATION.—The Adminis-
17 trator of General Services, in consultation with the heads
18 of relevant agencies, shall develop a mechanism to collect
19 information on requests to invoke a Buy American waiver
20 for a Federal contract, utilizing existing reporting require-
21 ments whenever possible, for purposes of providing early
22 notice of possible waivers via the website established under
23 section 4136.

24 (b) WAIVER TRANSPARENCY AND STREAMLINING.—

1 (1) REQUIREMENT.—Prior to granting a re-
2 quest to waive a Buy American law, the head of an
3 executive agency shall submit a request to invoke a
4 Buy American waiver to the Administrator of Gen-
5 eral Services, and the Administrator of General
6 Services shall make the request available on or
7 through the public website established under section
8 4136 for public comment for not less than 15 days.

9 (2) EXCEPTION.—The requirement under para-
10 graph (1) does not apply to a request for a Buy
11 American waiver to satisfy an urgent contracting
12 need in an unforeseen and exigent circumstance.

13 (c) INFORMATION AVAILABLE TO THE EXECUTIVE
14 AGENCY CONCERNING THE REQUEST.—

15 (1) REQUIREMENT.—No Buy American waiver
16 for purposes of awarding a contract may be granted
17 if, in contravention of subsection (b)—

18 (A) information about the waiver was not
19 made available on the website under section
20 4136; or

21 (B) no opportunity for public comment
22 concerning the request was granted.

23 (2) SCOPE.—Information made available to the
24 public concerning the request included on the
25 website described in section 4136 shall properly and

1 adequately document and justify the statutory basis
2 cited for the requested waiver. Such information
3 shall include—

4 (A) a detailed justification for the use of
5 goods, products, or materials mined, produced,
6 or manufactured outside the United States;

7 (B) for requests citing unreasonable cost
8 as the statutory basis of the waiver, a compari-
9 son of the cost of the domestic product to the
10 cost of the foreign product or a comparison of
11 the overall cost of the project with domestic
12 products to the overall cost of the project with
13 foreign-origin products or services, pursuant to
14 the requirements of the applicable Buy Amer-
15 ican law, except that publicly available cost
16 comparison data may be provided in lieu of pro-
17 prietary pricing information;

18 (C) for requests citing the public interest
19 as the statutory basis for the waiver, a detailed
20 written statement, which shall include all appro-
21 priate factors, such as potential obligations
22 under international agreements, justifying why
23 the requested waiver is in the public interest;
24 and

1 (D) a certification that the procurement
2 official or assistance recipient made a good
3 faith effort to solicit bids for domestic products
4 supported by terms included in requests for
5 proposals, contracts, and nonproprietary com-
6 munications with the prime contractor.

7 (d) NONAVAILABILITY WAIVERS.—

8 (1) IN GENERAL.—Except as provided under
9 paragraph (2), for a request citing nonavailability as
10 the statutory basis for a Buy American waiver, an
11 executive agency shall provide an explanation of the
12 procurement official's efforts to procure a product
13 from a domestic source and the reasons why a do-
14 mestic product was not available from a domestic
15 source. Those explanations shall be made available
16 on BuyAmerican.gov prior to the issuance of the
17 waiver, and the agency shall consider public com-
18 ments regarding the availability of the product be-
19 fore making a final determination.

20 (2) EXCEPTION.—An explanation under para-
21 graph (1) is not required for a product the nonavail-
22 ability of which is established by law or regulation.

23 **SEC. 4138. COMPTROLLER GENERAL REPORT.**

24 Not later than two years after the date of the enact-
25 ment of this Act, the Comptroller General of the United

1 States shall submit to Congress a report describing the
2 implementation of this subtitle, including recommenda-
3 tions for any legislation to improve the collection and re-
4 porting of information regarding waivers of and exceptions
5 to Buy American laws.

6 **SEC. 4139. RULES OF CONSTRUCTION.**

7 (a) DISCLOSURE REQUIREMENTS.—Nothing in this
8 subtitle shall be construed as preempting, superseding, or
9 otherwise affecting the application of any disclosure re-
10 quirement or requirements otherwise provided by law or
11 regulation.

12 (b) ESTABLISHMENT OF SUCCESSOR INFORMATION
13 SYSTEMS.—Nothing in this subtitle shall be construed as
14 preventing or otherwise limiting the ability of the Adminis-
15 trator of General Services to move the data required to
16 be included on the website established under subsection
17 (a) to a successor information system. Any such informa-
18 tion system shall include a reference to BuyAmerican.gov.

19 **SEC. 4140. CONSISTENCY WITH INTERNATIONAL AGREE-**
20 **MENTS.**

21 This subtitle shall be applied in a manner consistent
22 with United States obligations under international agree-
23 ments.

1 **SEC. 4141. PROSPECTIVE AMENDMENTS TO INTERNAL**
2 **CROSS-REFERENCES.**

3 (a) IN GENERAL.—Section 4132(1) is amended—

4 (1) in subparagraph (I), by striking “section
5 2533a” and inserting “section 4862”; and

6 (2) in subparagraph (J), by striking “section
7 2533b” and inserting “section 4863”.

8 (b) EFFECTIVE DATE.—The amendments made by
9 subsection (a) shall take effect on January 1, 2022.

10 **Subtitle C—Make PPE in America**

11 **SEC. 4151. SHORT TITLE.**

12 This subtitle may be cited as the “Make PPE in
13 America Act”.

14 **SEC. 4152. FINDINGS.**

15 Congress makes the following findings:

16 (1) The COVID–19 pandemic has exposed the
17 vulnerability of the United States supply chains for,
18 and lack of domestic production of, personal protec-
19 tive equipment (PPE).

20 (2) The United States requires a robust, secure,
21 and wholly domestic PPE supply chain to safeguard
22 public health and national security.

23 (3) Issuing a strategy that provides the govern-
24 ment’s anticipated needs over the next three years
25 will enable suppliers to assess what changes, if any,

1 are needed in their manufacturing capacity to meet
2 expected demands.

3 (4) In order to foster a domestic PPE supply
4 chain, United States industry needs a strong and
5 consistent demand signal from the Federal Govern-
6 ment providing the necessary certainty to expand
7 production capacity investment in the United States.

8 (5) In order to effectively incentivize investment
9 in the United States and the re-shoring of manufac-
10 turing, long-term contracts must be no shorter than
11 three years in duration.

12 (6) To accomplish this aim, the United States
13 should seek to ensure compliance with its inter-
14 national obligations, such as its commitments under
15 the World Trade Organization's Agreement on Gov-
16 ernment Procurement and its free trade agreements,
17 including by invoking any relevant exceptions to
18 those agreements, especially those related to national
19 security and public health.

20 (7) The United States needs a long-term invest-
21 ment strategy for the domestic production of PPE
22 items critical to the United States national response
23 to a public health crisis, including the COVID-19
24 pandemic.

1 **SEC. 4153. REQUIREMENT OF LONG-TERM CONTRACTS FOR**
2 **DOMESTICALLY MANUFACTURED PERSONAL**
3 **PROTECTIVE EQUIPMENT.**

4 (a) DEFINITIONS.—In this section:

5 (1) APPROPRIATE CONGRESSIONAL COMMIT-
6 TEES.—The term “appropriate congressional com-
7 mittees” means—

8 (A) the Committee on Homeland Security
9 and Governmental Affairs, the Committee on
10 Health, Education, Labor, and Pensions, the
11 Committee on Finance, and the Committee on
12 Veterans’ Affairs of the Senate; and

13 (B) the Committee on Homeland Security,
14 the Committee on Oversight and Reform, the
15 Committee on Energy and Commerce, the Com-
16 mittee on Ways and Means, and the Committee
17 on Veterans’ Affairs of the House of Represent-
18 atives.

19 (2) COVERED SECRETARY.—The term “covered
20 Secretary” means the Secretary of Homeland Secu-
21 rity, the Secretary of Health and Human Services,
22 and the Secretary of Veterans Affairs.

23 (3) PERSONAL PROTECTIVE EQUIPMENT.—The
24 term “personal protective equipment” means sur-
25 gical masks, respirator masks and powered air puri-
26 fying respirators and required filters, face shields

1 and protective eyewear, gloves, disposable and reus-
2 able surgical and isolation gowns, head and foot cov-
3 erings, and other gear or clothing used to protect an
4 individual from the transmission of disease.

5 (4) UNITED STATES.—The term “United
6 States” means the 50 States, the District of Colum-
7 bia, and the possessions of the United States.

8 (b) CONTRACT REQUIREMENTS FOR DOMESTIC PRO-
9 Duction.—Beginning 90 days after the date of the enact-
10 ment of this Act, in order to ensure the sustainment and
11 expansion of personal protective equipment manufacturing
12 in the United States and meet the needs of the current
13 pandemic response, any contract for the procurement of
14 personal protective equipment entered into by a covered
15 Secretary, or a covered Secretary’s designee, shall—

16 (1) be issued for a duration of at least 2 years,
17 plus all option periods necessary, to incentivize in-
18 vestment in the production of personal protective
19 equipment and the materials and components there-
20 of in the United States; and

21 (2) be for personal protective equipment, in-
22 cluding the materials and components thereof, that
23 is grown, reprocessed, reused, or produced in the
24 United States.

1 (c) ALTERNATIVES TO DOMESTIC PRODUCTION.—

2 The requirement under subsection (b) shall not apply to
3 an item of personal protective equipment, or component
4 or material thereof if, after maximizing to the extent fea-
5 sible sources consistent with subsection (b), the covered
6 Secretary—

7 (1) maximizes sources for personal protective
8 equipment that is assembled outside the United
9 States containing only materials and components
10 that are grown, reprocessed, reused, or produced in
11 the United States; and

12 (2) certifies every 120 days that it is necessary
13 to procure personal protective equipment under al-
14 ternative procedures to respond to the immediate
15 needs of a public health emergency.

16 (d) AVAILABILITY EXCEPTION.—

17 (1) IN GENERAL.—Subsections (b) and (c) shall
18 not apply to an item of personal protective equip-
19 ment, or component or material thereof—

20 (A) that is, or that includes, a material
21 listed in section 25.104 of the Federal Acquisi-
22 tion Regulation as one for which a non-avail-
23 ability determination has been made; or

24 (B) as to which the covered Secretary de-
25 termines that a sufficient quantity of a satisfac-

1 tory quality that is grown, reprocessed, reused,
2 or produced in the United States cannot be pro-
3 cured as, and when, needed at United States
4 market prices.

5 (2) CERTIFICATION REQUIREMENT.—The cov-
6 ered Secretary shall certify every 120 days that the
7 exception under paragraph (1) is necessary to meet
8 the immediate needs of a public health emergency.

9 (e) REPORT.—

10 (1) IN GENERAL.—Not later than 180 days
11 after the date of the enactment of this Act, the Di-
12 rector of the Office of Management and Budget, in
13 consultation with the covered Secretaries, shall sub-
14 mit to the chairs and ranking members of the appro-
15 priate congressional committees a report on the pro-
16 curement of personal protective equipment.

17 (2) ELEMENTS.—The report required under
18 paragraph (1) shall include the following elements:

19 (A) The United States long-term domestic
20 procurement strategy for PPE produced in the
21 United States, including strategies to
22 incentivize investment in and maintain United
23 States supply chains for all PPE sufficient to
24 meet the needs of the United States during a
25 public health emergency.

1 (B) An estimate of long-term demand
2 quantities for all PPE items procured by the
3 United States.

4 (C) Recommendations for congressional ac-
5 tion required to implement the United States
6 Government's procurement strategy.

7 (D) A determination whether all notifica-
8 tions, amendments, and other necessary actions
9 have been completed to bring the United States
10 existing international obligations into con-
11 formity with the statutory requirements of this
12 subtitle.

13 (f) AUTHORIZATION OF TRANSFER OF EQUIP-
14 MENT.—

15 (1) IN GENERAL.—A covered Secretary may
16 transfer to the Strategic National Stockpile estab-
17 lished under section 319F-2 of the Public Health
18 Service Act (42 U.S.C. 247d-6b) any excess per-
19 sonal protective equipment acquired under a con-
20 tract executed pursuant to subsection (b).

21 (2) TRANSFER OF EQUIPMENT DURING A PUB-
22 LIC HEALTH EMERGENCY.—

23 (A) AMENDMENT.—Title V of the Home-
24 land Security Act of 2002 (6 U.S.C. 311 et

1 seq.) is amended by adding at the end the fol-
2 lowing:

3 **“SEC. 529. TRANSFER OF EQUIPMENT DURING A PUBLIC**
4 **HEALTH EMERGENCY.**

5 “(a) AUTHORIZATION OF TRANSFER OF EQUIP-
6 MENT.—During a public health emergency declared by the
7 Secretary of Health and Human Services under section
8 319(a) of the Public Health Service Act (42 U.S.C.
9 247d(a)), the Secretary, at the request of the Secretary
10 of Health and Human Services, may transfer to the De-
11 partment of Health and Human Services, on a reimburs-
12 able basis, excess personal protective equipment or medi-
13 cally necessary equipment in the possession of the Depart-
14 ment.

15 “(b) DETERMINATION BY SECRETARIES.—

16 “(1) IN GENERAL.—In carrying out this sec-
17 tion—

18 “(A) before requesting a transfer under
19 subsection (a), the Secretary of Health and
20 Human Services shall determine whether the
21 personal protective equipment or medically nec-
22 essary equipment is otherwise available; and

23 “(B) before initiating a transfer under
24 subsection (a), the Secretary, in consultation

1 with the heads of each component within the
2 Department, shall—

3 “(i) determine whether the personal
4 protective equipment or medically nec-
5 essary equipment requested to be trans-
6 ferred under subsection (a) is excess equip-
7 ment; and

8 “(ii) certify that the transfer of the
9 personal protective equipment or medically
10 necessary equipment will not adversely im-
11 pact the health or safety of officers, em-
12 ployees, or contractors of the Department.

13 “(2) NOTIFICATION.—The Secretary of Health
14 and Human Services and the Secretary shall each
15 submit to Congress a notification explaining the de-
16 termination made under subparagraphs (A) and (B),
17 respectively, of paragraph (1).

18 “(3) REQUIRED INVENTORY.—

19 “(A) IN GENERAL.—The Secretary shall—

20 “(i) acting through the Chief Medical
21 Officer of the Department, maintain an in-
22 ventory of all personal protective equip-
23 ment and medically necessary equipment in
24 the possession of the Department; and

1 “(ii) make the inventory required
2 under clause (i) available, on a continual
3 basis, to—

4 “(I) the Secretary of Health and
5 Human Services; and

6 “(II) the Committee on Appro-
7 priations and the Committee on
8 Homeland Security and Governmental
9 Affairs of the Senate and the Com-
10 mittee on Appropriations and the
11 Committee on Homeland Security of
12 the House of Representatives.

13 “(B) FORM.—Each inventory required to
14 be made available under subparagraph (A) shall
15 be submitted in unclassified form, but may in-
16 clude a classified annex.”.

17 (B) TABLE OF CONTENTS AMENDMENT.—
18 The table of contents in section 1(b) of the
19 Homeland Security Act of 2002 (Public Law
20 107–296; 116 Stat. 2135) is amended by in-
21 serting after the item relating to section 528
22 the following:

“Sec. 529. Transfer of equipment during a public health emergency.”.

23 (3) STRATEGIC NATIONAL STOCKPILE.—Section
24 319F–2(a) of the Public Health Service Act (42

1 U.S.C. 247d–6b(a)) is amended by adding at the
2 end the following:

3 “(6) TRANSFERS OF ITEMS.—The Secretary, in
4 coordination with the Secretary of Homeland Secu-
5 rity, may sell drugs, vaccines and other biological
6 products, medical devices, or other supplies main-
7 tained in the stockpile under paragraph (1) to a
8 Federal agency or private, nonprofit, State, local,
9 tribal, or territorial entity for immediate use and
10 distribution, provided that any such items being sold
11 are—

12 “(A) within 1 year of their expiration date;

13 or

14 “(B) determined by the Secretary to no
15 longer be needed in the stockpile due to ad-
16 vances in medical or technical capabilities.”.

17 (g) COMPLIANCE WITH INTERNATIONAL AGREE-
18 MENTS.—The President or the President’s designee shall
19 take all necessary steps, including invoking the rights of
20 the United States under Article III of the World Trade
21 Organization’s Agreement on Government Procurement
22 and the relevant exceptions of other relevant agreements
23 to which the United States is a party, to ensure that the
24 international obligations of the United States are con-
25 sistent with the provisions of this subtitle.

1 **TITLE II—CYBER AND**
2 **ARTIFICIAL INTELLIGENCE**
3 **Subtitle A—Advancing American**
4 **AI**

5 **SEC. 4201. SHORT TITLE.**

6 This subtitle may be cited as the “Advancing Amer-
7 ican AI Act”.

8 **SEC. 4202. PURPOSE.**

9 The purposes of this subtitle are to—

10 (1) encourage agency artificial intelligence-re-
11 lated programs and initiatives that enhance the com-
12 petitiveness of the United States and foster an ap-
13 proach to artificial intelligence that builds on the
14 strengths of the United States in innovation and
15 entrepreneurialism;

16 (2) enhance the ability of the Federal Govern-
17 ment to translate research advances into artificial
18 intelligence applications to modernize systems and
19 assist agency leaders in fulfilling their missions;

20 (3) promote adoption of modernized business
21 practices and advanced technologies across the Fed-
22 eral Government that align with the values of the
23 United States, including the protection of privacy,
24 civil rights, and civil liberties; and

1 (4) test and harness applied artificial intel-
2 ligence to enhance mission effectiveness and business
3 practice efficiency.

4 **SEC. 4203. DEFINITIONS.**

5 In this subtitle:

6 (1) AGENCY.—The term “agency” has the
7 meaning given the term in section 3502 of title 44,
8 United States Code.

9 (2) APPROPRIATE CONGRESSIONAL COMMIT-
10 TEES.—The term “appropriate congressional com-
11 mittees” means—

12 (A) the Committee on Homeland Security
13 and Governmental Affairs of the Senate; and

14 (B) the Committee on Oversight and Re-
15 form of the House of Representatives.

16 (3) ARTIFICIAL INTELLIGENCE.—The term “ar-
17 tificial intelligence” has the meaning given the term
18 in section 238(g) of the John S. McCain National
19 Defense Authorization Act for Fiscal Year 2019 (10
20 U.S.C. 2358 note).

21 (4) ARTIFICIAL INTELLIGENCE SYSTEM.—The
22 term “artificial intelligence system”—

23 (A) means any data system, software, ap-
24 plication, tool, or utility that operates in whole
25 or in part using dynamic or static machine

1 learning algorithms or other forms of artificial
2 intelligence, whether—

3 (i) the data system, software, applica-
4 tion, tool, or utility is established primarily
5 for the purpose of researching, developing,
6 or implementing artificial intelligence tech-
7 nology; or

8 (ii) artificial intelligence capability is
9 integrated into another system or agency
10 business process, operational activity, or
11 technology system; and

12 (B) does not include any common commer-
13 cial product within which artificial intelligence
14 is embedded, such as a word processor or map
15 navigation system.

16 (5) DEPARTMENT.—The term “Department”
17 means the Department of Homeland Security.

18 (6) DIRECTOR.—The term “Director” means
19 the Director of the Office of Management and Budg-
20 et.

21 **SEC. 4204. PRINCIPLES AND POLICIES FOR USE OF ARTIFI-**
22 **CIAL INTELLIGENCE IN GOVERNMENT.**

23 (a) GUIDANCE.—The Director shall, when developing
24 the guidance required under section 104(a) of the AI in

1 Government Act of 2020 (title I of division U of Public
2 Law 116–260), consider—

3 (1) the considerations and recommended prac-
4 tices identified by the National Security Commission
5 on Artificial Intelligence in the report entitled “Key
6 Considerations for the Responsible Development and
7 Fielding of AI”, as updated in April 2021;

8 (2) the principles articulated in Executive
9 Order 13960 (85 Fed. Reg. 78939; relating to pro-
10 moting the use of trustworthy artificial intelligence
11 in Government); and

12 (3) the input of—

13 (A) the Privacy and Civil Liberties Over-
14 sight Board;

15 (B) relevant interagency councils, such as
16 the Federal Privacy Council, the Chief Informa-
17 tion Officers Council, and the Chief Data Offi-
18 cers Council;

19 (C) other governmental and nongovern-
20 mental privacy, civil rights, and civil liberties
21 experts; and

22 (D) any other individual or entity the Di-
23 rector determines to be appropriate.

24 (b) DEPARTMENT POLICIES AND PROCESSES FOR
25 PROCUREMENT AND USE OF ARTIFICIAL INTELLIGENCE-

1 ENABLED SYSTEMS.—Not later than 180 days after the
2 date of enactment of this Act—

3 (1) the Secretary of Homeland Security, with
4 the participation of the Chief Procurement Officer,
5 the Chief Information Officer, the Chief Privacy Of-
6 ficer, and the Officer for Civil Rights and Civil Lib-
7 erties of the Department and any other person de-
8 termined to be relevant by the Secretary of Home-
9 land Security, shall issue policies and procedures for
10 the Department related to—

11 (A) the acquisition and use of artificial in-
12 telligence; and

13 (B) considerations for the risks and im-
14 pacts related to artificial intelligence-enabled
15 systems, including associated data of machine
16 learning systems, to ensure that full consider-
17 ation is given to—

18 (i) the privacy, civil rights, and civil
19 liberties impacts of artificial intelligence-
20 enabled systems; and

21 (ii) security against misuse, degrada-
22 tion, or rendering inoperable of artificial in-
23 telligence-enabled systems; and

24 (2) the Chief Privacy Officer and the Officer
25 for Civil Rights and Civil Liberties of the Depart-

1 ment shall report to Congress on any additional
2 staffing or funding resources that may be required
3 to carry out the requirements of this subsection.

4 (c) INSPECTOR GENERAL.—Not later than 180 days
5 after the date of enactment of this Act, the Inspector Gen-
6 eral of the Department shall identify any training and in-
7 vestments needed to enable employees of the Office of the
8 Inspector General to continually advance their under-
9 standing of—

10 (1) artificial intelligence systems;

11 (2) best practices for governance, oversight, and
12 audits of the use of artificial intelligence systems;
13 and

14 (3) how the Office of the Inspector General is
15 using artificial intelligence to enhance audit and in-
16 vestigative capabilities, including actions to—

17 (A) ensure the integrity of audit and inves-
18 tigative results; and

19 (B) guard against bias in the selection and
20 conduct of audits and investigations.

21 (d) ARTIFICIAL INTELLIGENCE HYGIENE AND PRO-
22 TECTION OF GOVERNMENT INFORMATION, PRIVACY,
23 CIVIL RIGHTS, AND CIVIL LIBERTIES.—

24 (1) ESTABLISHMENT.—Not later than 1 year
25 after the date of enactment of this Act, the Director,

1 in consultation with a working group consisting of
2 members selected by the Director from appropriate
3 interagency councils, shall develop an initial means
4 by which to—

5 (A) ensure that contracts for the acquisi-
6 tion of an artificial intelligence system or serv-
7 ice—

8 (i) align with the guidance issued to
9 the head of each agency under section
10 104(a) of the AI in Government Act of
11 2020 (title I of division U of Public Law
12 116–260);

13 (ii) address protection of privacy, civil
14 rights, and civil liberties;

15 (iii) address the ownership and secu-
16 rity of data and other information created,
17 used, processed, stored, maintained, dis-
18 seminated, disclosed, or disposed of by a
19 contractor or subcontractor on behalf of
20 the Federal Government; and

21 (iv) include considerations for secur-
22 ing the training data, algorithms, and
23 other components of any artificial intel-
24 ligence system against misuse, unauthor-

1 ized alteration, degradation, or rendering
2 inoperable; and

3 (B) address any other issue or concern de-
4 termined to be relevant by the Director to en-
5 sure appropriate use and protection of privacy
6 and Government data and other information.

7 (2) CONSULTATION.—In developing the consid-
8 erations under paragraph (1)(A)(iv), the Director
9 shall consult with the Secretary of Homeland Secu-
10 rity, the Director of the National Institute of Stand-
11 ards and Technology, and the Director of National
12 Intelligence.

13 (3) REVIEW.—The Director—

14 (A) should continuously update the means
15 developed under paragraph (1); and

16 (B) not later than 2 years after the date
17 of enactment of this Act and not less frequently
18 than every 2 years thereafter, shall update the
19 means developed under paragraph (1).

20 (4) BRIEFING.—The Director shall brief the ap-
21 propriate congressional committees—

22 (A) not later than 90 days after the date
23 of enactment of this Act and thereafter on a
24 quarterly basis until the Director first imple-

1 ments the means developed under paragraph
2 (1); and

3 (B) annually thereafter on the implementa-
4 tion of this subsection.

5 (5) SUNSET.—This subsection shall cease to be
6 effective on the date that is 5 years after the date
7 of enactment of this Act.

8 **SEC. 4205. AGENCY INVENTORIES AND ARTIFICIAL INTEL-**
9 **LIGENCE USE CASES.**

10 (a) INVENTORY.—Not later than 60 days after the
11 date of enactment of this Act, and continuously thereafter
12 for a period of 5 years, the Director, in consultation with
13 the Chief Information Officers Council, the Chief Data Of-
14 ficers Council, and other interagency bodies as determined
15 to be appropriate by the Director, shall require the head
16 of each agency to—

17 (1) prepare and maintain an inventory of the
18 artificial intelligence use cases of the agency, includ-
19 ing current and planned uses;

20 (2) share agency inventories with other agen-
21 cies, to the extent practicable and consistent with
22 applicable law and policy, including those concerning
23 protection of privacy and of sensitive law enforce-
24 ment, national security, and other protected infor-
25 mation; and

1 (3) make agency inventories available to the
2 public, in a manner determined by the Director, and
3 to the extent practicable and in accordance with ap-
4 plicable law and policy, including those concerning
5 the protection of privacy and of sensitive law en-
6 forcement, national security, and other protected in-
7 formation.

8 (b) CENTRAL INVENTORY.—The Director is encour-
9 aged to designate a host entity and ensure the creation
10 and maintenance of an online public directory to—

11 (1) make agency artificial intelligence use case
12 information available to the public and those wishing
13 to do business with the Federal Government; and

14 (2) identify common use cases across agencies.

15 (c) SHARING.—The sharing of agency inventories de-
16 scribed in subsection (a)(2) may be coordinated through
17 the Chief Information Officers Council, the Chief Data Of-
18 ficers Council, the Chief Financial Officers Council, the
19 Chief Acquisition Officers Council, or other interagency
20 bodies to improve interagency coordination and informa-
21 tion sharing for common use cases.

1 **SEC. 4206. RAPID PILOT, DEPLOYMENT AND SCALE OF AP-**
2 **PLIED ARTIFICIAL INTELLIGENCE CAPABILI-**
3 **TIES TO DEMONSTRATE MODERNIZATION AC-**
4 **TIVITIES RELATED TO USE CASES.**

5 (a) IDENTIFICATION OF USE CASES.—Not later than
6 270 days after the date of enactment of this Act, the Di-
7 rector, in consultation with the Chief Information Officers
8 Council, the Chief Data Officers Council, and other inter-
9 agency bodies as determined to be appropriate by the Di-
10 rector, shall identify 4 new use cases for the application
11 of artificial intelligence-enabled systems to support inter-
12 agency or intra-agency modernization initiatives that re-
13 quire linking multiple siloed internal and external data
14 sources, consistent with applicable laws and policies, in-
15 cluding those relating to the protection of privacy and of
16 sensitive law enforcement, national security, and other
17 protected information.

18 (b) PILOT PROGRAM.—

19 (1) PURPOSES.—The purposes of the pilot pro-
20 gram under this subsection include—

21 (A) to enable agencies to operate across or-
22 ganizational boundaries, coordinating between
23 existing established programs and silos to im-
24 prove delivery of the agency mission; and

25 (B) to demonstrate the circumstances
26 under which artificial intelligence can be used

1 to modernize or assist in modernizing legacy
2 agency systems.

3 (2) DEPLOYMENT AND PILOT.—Not later than
4 1 year after the date of enactment of this Act, the
5 Director, in coordination with the heads of relevant
6 agencies and other officials as the Director deter-
7 mines to be appropriate, shall ensure the initiation
8 of the piloting of the 4 new artificial intelligence use
9 case applications identified under subsection (a),
10 leveraging commercially available technologies and
11 systems to demonstrate scalable artificial intel-
12 ligence-enabled capabilities to support the use cases
13 identified under subsection (a).

14 (3) RISK EVALUATION AND MITIGATION
15 PLAN.—In carrying out paragraph (2), the Director
16 shall require the heads of agencies to—

17 (A) evaluate risks in utilizing artificial in-
18 telligence systems; and

19 (B) develop a risk mitigation plan to ad-
20 dress those risks, including consideration of—

21 (i) the artificial intelligence system
22 not performing as expected;

23 (ii) the lack of sufficient or quality
24 training data; and

1 (iii) the vulnerability of a utilized arti-
2 ficial intelligence system to unauthorized
3 manipulation or misuse.

4 (4) PRIORITIZATION.—In carrying out para-
5 graph (2), the Director shall prioritize modernization
6 projects that—

7 (A) would benefit from commercially avail-
8 able privacy-preserving techniques, such as use
9 of differential privacy, federated learning, and
10 secure multiparty computing; and

11 (B) otherwise take into account consider-
12 ations of civil rights and civil liberties.

13 (5) USE CASE MODERNIZATION APPLICATION
14 AREAS.—Use case modernization application areas
15 described in paragraph (2) shall include not less
16 than 1 from each of the following categories:

17 (A) Applied artificial intelligence to drive
18 agency productivity efficiencies in predictive
19 supply chain and logistics, such as—

20 (i) predictive food demand and opti-
21 mized supply;

22 (ii) predictive medical supplies and
23 equipment demand and optimized supply;

24 or

1 (iii) predictive logistics to accelerate
2 disaster preparedness, response, and recov-
3 ery.

4 (B) Applied artificial intelligence to accel-
5 erate agency investment return and address
6 mission-oriented challenges, such as—

7 (i) applied artificial intelligence port-
8 folio management for agencies;

9 (ii) workforce development and
10 upskilling;

11 (iii) redundant and laborious analyses;

12 (iv) determining compliance with Gov-
13 ernment requirements, such as with grants
14 management; or

15 (v) outcomes measurement to measure
16 economic and social benefits.

17 (6) REQUIREMENTS.—Not later than 3 years
18 after the date of enactment of this Act, the Director,
19 in coordination with the heads of relevant agencies
20 and other officials as the Director determines to be
21 appropriate, shall establish an artificial intelligence
22 capability within each of the 4 use case pilots under
23 this subsection that—

24 (A) solves data access and usability issues
25 with automated technology and eliminates or

1 minimizes the need for manual data cleansing
2 and harmonization efforts;

3 (B) continuously and automatically ingests
4 data and updates domain models in near real-
5 time to help identify new patterns and predict
6 trends, to the extent possible, to help agency
7 personnel to make better decisions and take
8 faster actions;

9 (C) organizes data for meaningful data vis-
10 ualization and analysis so the Government has
11 predictive transparency for situational aware-
12 ness to improve use case outcomes;

13 (D) is rapidly configurable to support mul-
14 tiple applications and automatically adapts to
15 dynamic conditions and evolving use case re-
16 quirements, to the extent possible;

17 (E) enables knowledge transfer and col-
18 laboration across agencies; and

19 (F) preserves intellectual property rights to
20 the data and output for benefit of the Federal
21 Government and agencies.

22 (c) BRIEFING.—Not earlier than 270 days but not
23 later than 1 year after the date of enactment of this Act,
24 and annually thereafter for 4 years, the Director shall
25 brief the appropriate congressional committees on the ac-

1 tivities carried out under this section and results of those
2 activities.

3 (d) SUNSET.—The section shall cease to be effective
4 on the date that is 5 years after the date of enactment
5 of this Act.

6 **SEC. 4207. ENABLING ENTREPRENEURS AND AGENCY MIS-**
7 **SIONS.**

8 (a) INNOVATIVE COMMERCIAL ITEMS.—Section 880
9 of the National Defense Authorization Act for Fiscal Year
10 2017 (41 U.S.C. 3301 note) is amended—

11 (1) in subsection (c), by striking “\$10,000,000”
12 and inserting “\$25,000,000”;

13 (2) by amending subsection (f) to read as fol-
14 lows:

15 “(f) DEFINITIONS.—In this section—

16 “(1) the term ‘commercial product’—

17 “(A) has the meaning given the term ‘com-
18 mercial item’ in section 2.101 of the Federal
19 Acquisition Regulation; and

20 “(B) includes a commercial product or a
21 commercial service, as defined in sections 103
22 and 103a, respectively, of title 41, United
23 States Code; and

24 “(2) the term ‘innovative’ means—

1 “(A) any new technology, process, or meth-
2 od, including research and development; or

3 “(B) any new application of an existing
4 technology, process, or method.”; and

5 (3) in subsection (g), by striking “2022” and
6 insert “2027”.

7 (b) DHS OTHER TRANSACTION AUTHORITY.—Sec-
8 tion 831 of the Homeland Security Act of 2002 (6 U.S.C.
9 391) is amended—

10 (1) in subsection (a)—

11 (A) in the matter preceding paragraph (1),
12 by striking “September 30, 2017” and inserting
13 “September 30, 2024”; and

14 (B) by amending paragraph (2) to read as
15 follows:

16 “(2) PROTOTYPE PROJECTS.—The Secretary—

17 “(A) may, under the authority of para-
18 graph (1), carry out prototype projects under
19 section 2371b of title 10, United States Code;
20 and

21 “(B) in applying the authorities of such
22 section 2371b, the Secretary shall perform the
23 functions of the Secretary of Defense as pre-
24 scribed in such section.”;

1 has occurred and to establish the authorities that
2 are provided under the declaration to respond to and
3 recover from the significant incident; and

4 “(2) the authorities established under this sub-
5 title are intended to enable the Secretary to provide
6 voluntary assistance to non-Federal entities im-
7 pacted by a significant incident.

8 **“SEC. 2232. DEFINITIONS.**

9 “For the purposes of this subtitle:

10 “(1) ASSET RESPONSE ACTIVITY.—The term
11 ‘asset response activity’ means an activity to support
12 an entity impacted by an incident with the response
13 to, remediation of, or recovery from, the incident, in-
14 cluding—

15 “(A) furnishing technical and advisory as-
16 sistance to the entity to protect the assets of
17 the entity, mitigate vulnerabilities, and reduce
18 the related impacts;

19 “(B) assessing potential risks to the crit-
20 ical infrastructure sector or geographic region
21 impacted by the incident, including potential
22 cascading effects of the incident on other crit-
23 ical infrastructure sectors or geographic re-
24 gions;

1 “(C) developing courses of action to miti-
2 gate the risks assessed under subparagraph
3 (B);

4 “(D) facilitating information sharing and
5 operational coordination with entities per-
6 forming threat response activities; and

7 “(E) providing guidance on how best to
8 use Federal resources and capabilities in a
9 timely, effective manner to speed recovery from
10 the incident.

11 “(2) DECLARATION.—The term ‘declaration’
12 means a declaration of the Secretary under section
13 2233(a)(1).

14 “(3) DIRECTOR.—The term ‘Director’ means
15 the Director of the Cybersecurity and Infrastructure
16 Security Agency.

17 “(4) FEDERAL AGENCY.—The term ‘Federal
18 agency’ has the meaning given the term ‘agency’ in
19 section 3502 of title 44, United States Code.

20 “(5) FUND.—The term ‘Fund’ means the
21 Cyber Response and Recovery Fund established
22 under section 2234(a).

23 “(6) INCIDENT.—The term ‘incident’ has the
24 meaning given the term in section 3552 of title 44,
25 United States Code.

1 “(7) RENEWAL.—The term ‘renewal’ means a
2 renewal of a declaration under section 2233(d).

3 “(8) SIGNIFICANT INCIDENT.—The term ‘sig-
4 nificant incident’—

5 “(A) means an incident or a group of re-
6 lated incidents that results, or is likely to re-
7 sult, in demonstrable harm to—

8 “(i) the national security interests,
9 foreign relations, or economy of the United
10 States; or

11 “(ii) the public confidence, civil lib-
12 erties, or public health and safety of the
13 people of the United States; and

14 “(B) does not include an incident or a por-
15 tion of a group of related incidents that occurs
16 on—

17 “(i) a national security system (as de-
18 fined in section 3552 of title 44, United
19 States Code); or

20 “(ii) an information system described
21 in paragraph (2) or (3) of section 3553(e)
22 of title 44, United States Code.

23 **“SEC. 2233. DECLARATION.**

24 “(a) IN GENERAL.—

1 “(1) DECLARATION.—The Secretary, in con-
2 sultation with the National Cyber Director, may
3 make a declaration of a significant incident in ac-
4 cordance with this section for the purpose of ena-
5 bling the activities described in this subtitle if the
6 Secretary determines that—

7 “(A) a specific significant incident—

8 “(i) has occurred; or

9 “(ii) is likely to occur imminently; and

10 “(B) otherwise available resources, other
11 than the Fund, are likely insufficient to respond
12 effectively to, or to mitigate effectively, the spe-
13 cific significant incident described in subpara-
14 graph (A).

15 “(2) PROHIBITION ON DELEGATION.—The Sec-
16 retary may not delegate the authority provided to
17 the Secretary under paragraph (1).

18 “(b) ASSET RESPONSE ACTIVITIES.—Upon a dec-
19 laration, the Director shall coordinate—

20 “(1) the asset response activities of each Fed-
21 eral agency in response to the specific significant in-
22 cident associated with the declaration; and

23 “(2) with appropriate entities, which may in-
24 clude—

1 “(A) public and private entities and State
2 and local governments with respect to the asset
3 response activities of those entities and govern-
4 ments; and

5 “(B) Federal, State, local, and Tribal law
6 enforcement agencies with respect to investiga-
7 tions and threat response activities of those law
8 enforcement agencies; and

9 “(3) Federal, State, local, and Tribal emer-
10 gency management and response agencies.

11 “(c) DURATION.—Subject to subsection (d), a dec-
12 laration shall terminate upon the earlier of—

13 “(1) a determination by the Secretary that the
14 declaration is no longer necessary; or

15 “(2) the expiration of the 120-day period begin-
16 ning on the date on which the Secretary makes the
17 declaration.

18 “(d) RENEWAL.—The Secretary, without delegation,
19 may renew a declaration as necessary.

20 “(e) PUBLICATION.—

21 “(1) IN GENERAL.—Not later than 72 hours
22 after a declaration or a renewal, the Secretary shall
23 publish the declaration or renewal in the Federal
24 Register.

1 “(2) PROHIBITION.—A declaration or renewal
2 published under paragraph (1) may not include the
3 name of any affected individual or private company.

4 “(f) ADVANCE ACTIONS.—

5 “(1) IN GENERAL.—The Secretary—

6 “(A) shall assess the resources available to
7 respond to a potential declaration; and

8 “(B) may take actions before and while a
9 declaration is in effect to arrange or procure
10 additional resources for asset response activities
11 or technical assistance the Secretary determines
12 necessary, which may include entering into
13 standby contracts with private entities for cy-
14 bersecurity services or incident responders in
15 the event of a declaration.

16 “(2) EXPENDITURE OF FUNDS.—Any expendi-
17 ture from the Fund for the purpose of paragraph
18 (1)(B) shall be made from amounts available in the
19 Fund, and amounts available in the Fund shall be
20 in addition to any other appropriations available to
21 the Cybersecurity and Infrastructure Security Agen-
22 cy for such purpose.

23 **“SEC. 2234. CYBER RESPONSE AND RECOVERY FUND.**

24 “(a) IN GENERAL.—There is established a Cyber Re-
25 sponse and Recovery Fund, which shall be available for—

1 “(1) the coordination of activities described in
2 section 2233(b);

3 “(2) response and recovery support for the spe-
4 cific significant incident associated with a declara-
5 tion to Federal, State, local, and Tribal, entities and
6 public and private entities on a reimbursable or non-
7 reimbursable basis, including through asset response
8 activities and technical assistance, such as—

9 “(A) vulnerability assessments and mitiga-
10 tion;

11 “(B) technical incident mitigation;

12 “(C) malware analysis;

13 “(D) analytic support;

14 “(E) threat detection and hunting; and

15 “(F) network protections;

16 “(3) as the Director determines appropriate,
17 grants for, or cooperative agreements with, Federal,
18 State, local, and Tribal public and private entities to
19 respond to, and recover from, the specific significant
20 incident associated with a declaration, such as—

21 “(A) hardware or software to replace, up-
22 date, improve, harden, or enhance the
23 functionality of existing hardware, software, or
24 systems; and

1 “(B) technical contract personnel support;

2 and

3 “(4) advance actions taken by the Secretary

4 under section 2233(f)(1)(B).

5 “(b) DEPOSITS AND EXPENDITURES.—

6 “(1) IN GENERAL.—Amounts shall be deposited

7 into the Fund from—

8 “(A) appropriations to the Fund for activi-

9 ties of the Fund; and

10 “(B) reimbursement from Federal agencies

11 for the activities described in paragraphs (1),

12 (2), and (4) of subsection (a), which shall only

13 be from amounts made available in advance in

14 appropriations Acts for such reimbursement.

15 “(2) EXPENDITURES.—Any expenditure from

16 the Fund for the purposes of this subtitle shall be

17 made from amounts available in the Fund from a

18 deposit described in paragraph (1), and amounts

19 available in the Fund shall be in addition to any

20 other appropriations available to the Cybersecurity

21 and Infrastructure Security Agency for such pur-

22 poses.

23 “(c) SUPPLEMENT NOT SUPPLANT.—Amounts in the

24 Fund shall be used to supplement, not supplant, other

1 Federal, State, local, or Tribal funding for activities in
2 response to a declaration.

3 “(d) REPORTING.—The Secretary shall require an
4 entity that receives amounts from the Fund to submit a
5 report to the Secretary that details the specific use of the
6 amounts.

7 **“SEC. 2235. NOTIFICATION AND REPORTING.**

8 “(a) NOTIFICATION.—Upon a declaration or renewal,
9 the Secretary shall immediately notify the National Cyber
10 Director and appropriate congressional committees and in-
11 clude in the notification—

12 “(1) an estimation of the planned duration of
13 the declaration;

14 “(2) with respect to a notification of a declara-
15 tion, the reason for the declaration, including infor-
16 mation relating to the specific significant incident or
17 imminent specific significant incident, including—

18 “(A) the operational or mission impact or
19 anticipated impact of the specific significant in-
20 cident on Federal and non-Federal entities;

21 “(B) if known, the perpetrator of the spe-
22 cific significant incident; and

23 “(C) the scope of the Federal and non-
24 Federal entities impacted or anticipated to be
25 impacted by the specific significant incident;

1 “(3) with respect to a notification of a renewal,
2 the reason for the renewal;

3 “(4) justification as to why available resources,
4 other than the Fund, are insufficient to respond to
5 or mitigate the specific significant incident; and

6 “(5) a description of the coordination activities
7 described in section 2233(b) that the Secretary an-
8 ticipates the Director to perform.

9 “(b) REPORT TO CONGRESS.—Not later than 180
10 days after the date of a declaration or renewal, the Sec-
11 retary shall submit to the appropriate congressional com-
12 mittees a report that includes—

13 “(1) the reason for the declaration or renewal,
14 including information and intelligence relating to the
15 specific significant incident that led to the declara-
16 tion or renewal;

17 “(2) the use of any funds from the Fund for
18 the purpose of responding to the incident or threat
19 described in paragraph (1);

20 “(3) a description of the actions, initiatives, and
21 projects undertaken by the Department and State
22 and local governments and public and private enti-
23 ties in responding to and recovering from the spe-
24 cific significant incident described in paragraph (1);

1 “(4) an accounting of the specific obligations
2 and outlays of the Fund; and

3 “(5) an analysis of—

4 “(A) the impact of the specific significant
5 incident described in paragraph (1) on Federal
6 and non-Federal entities;

7 “(B) the impact of the declaration or re-
8 newal on the response to, and recovery from,
9 the specific significant incident described in
10 paragraph (1); and

11 “(C) the impact of the funds made avail-
12 able from the Fund as a result of the declara-
13 tion or renewal on the recovery from, and re-
14 sponse to, the specific significant incident de-
15 scribed in paragraph (1).

16 “(c) CLASSIFICATION.—Each notification made
17 under subsection (a) and each report submitted under sub-
18 section (b)—

19 “(1) shall be in an unclassified form with ap-
20 propriate markings to indicate information that is
21 exempt from disclosure under section 552 of title 5,
22 United States Code (commonly known as the ‘Free-
23 dom of Information Act’); and

24 “(2) may include a classified annex.

1 “(d) CONSOLIDATED REPORT.—The Secretary shall
2 not be required to submit multiple reports under sub-
3 section (b) for multiple declarations or renewals if the Sec-
4 retary determines that the declarations or renewals sub-
5 stantively relate to the same specific significant incident.

6 “(e) EXEMPTION.—The requirements of subchapter
7 I of chapter 35 of title 44 (commonly known as the ‘Pa-
8 perwork Reduction Act’) shall not apply to the voluntary
9 collection of information by the Department during an in-
10 vestigation of, a response to, or an immediate post-re-
11 sponse review of, the specific significant incident leading
12 to a declaration or renewal.

13 **“SEC. 2236. RULE OF CONSTRUCTION.**

14 “Nothing in this subtitle shall be construed to impair
15 or limit the ability of the Director to carry out the author-
16 ized activities of the Cybersecurity and Infrastructure Se-
17 curity Agency.

18 **“SEC. 2237. AUTHORIZATION OF APPROPRIATIONS.**

19 “There are authorized to be appropriated to the Fund
20 \$20,000,000 for fiscal year 2022, which shall remain
21 available until September 30, 2028.

22 **“SEC. 2238. SUNSET.**

23 “The authorities granted to the Secretary or the Di-
24 rector under this subtitle shall expire on the date that is
25 7 years after the date of enactment of this subtitle.”.

1 (b) CLERICAL AMENDMENT.—The table of contents
 2 in section 1(b) of the Homeland Security Act of 2002
 3 (Public Law 107–296; 116 Stat. 2135) is amended by
 4 adding at the end the following:

“Subtitle C—Declaration of a Significant Incident

“Sec. 2231. Sense of Congress.

“Sec. 2232. Definitions.

“Sec. 2233. Declaration.

“Sec. 2234. Cyber response and recovery fund.

“Sec. 2235. Notification and reporting.

“Sec. 2236. Rule of construction.

“Sec. 2237. Authorization of appropriations.

“Sec. 2238. Sunset.”.

5 **TITLE III—PERSONNEL**
 6 **Subtitle A—Facilitating Federal**
 7 **Employee Reskilling**

8 **SEC. 4301. RESKILLING FEDERAL EMPLOYEES.**

9 (a) DEFINITIONS.—In this section:

10 (1) AGENCY.—The term “agency” has the
 11 meaning given the term “Executive agency” in sec-
 12 tion 105 of title 5, United States Code.

13 (2) APPROPRIATE COMMITTEES OF CON-
 14 GRESS.—The term “appropriate committees of Con-
 15 gress” means—

16 (A) the Committee on Homeland Security
 17 and Governmental Affairs of the Senate; and

18 (B) the Committee on Oversight and Re-
 19 form of the House of Representatives.

1 (3) COMPETITIVE SERVICE.—The term “com-
2 petitive service” has the meaning given the term in
3 section 2102 of title 5, United States Code.

4 (4) DIRECTOR.—The term “Director” means
5 the Director of the Office of Personnel Management.

6 (5) EMPLOYEE.—The term “employee” means
7 an employee serving in a position in the competitive
8 service or the excepted service.

9 (6) EXCEPTED SERVICE.—The term “excepted
10 service” has the meaning given the term in section
11 2103 of title 5, United States Code.

12 (7) FEDERAL RESKILLING PROGRAM.—The
13 term “Federal reskilling program” means a program
14 established by the head of an agency or the Director
15 to provide employees with the technical skill or ex-
16 pertise that would qualify the employees to serve in
17 a different position in the competitive service or the
18 excepted service that requires such technical skill or
19 expertise.

20 (b) REQUIREMENTS.—With respect to a Federal
21 reskilling program established by the head of an agency
22 or by the Director before, on, or after the date of enact-
23 ment of this Act, the agency head or the Director, as ap-
24 plicable, shall ensure that the Federal reskilling pro-
25 gram—

1 (1) is implemented in a manner that is in ac-
2 cordance with the bar on prohibited personnel prac-
3 tices under section 2302 of title 5, United States
4 Code, and consistent with the merit system prin-
5 ciples under section 2301 of title 5, United States
6 Code, including by using merit-based selection proce-
7 dures for participation by employees in the Federal
8 reskilling program;

9 (2) includes appropriate limitations or restric-
10 tions associated with implementing the Federal
11 reskilling program, which shall be consistent with
12 any regulations prescribed by the Director under
13 subsection (e);

14 (3) provides that any new position to which an
15 employee who participates in the Federal reskilling
16 program is transferred will utilize the technical skill
17 or expertise that the employee acquired by partici-
18 pating in the Federal reskilling program;

19 (4) includes the option for an employee partici-
20 pating in the Federal reskilling program to return to
21 the original position of the employee, or a similar
22 position, particularly if the employee is unsuccessful
23 in the position to which the employee transfers after
24 completing the Federal reskilling program;

1 (5) provides that an employee who successfully
2 completes the Federal reskilling program and trans-
3 fers to a position that requires the technical skill or
4 expertise provided through the Federal reskilling
5 program shall be entitled to have the grade of the
6 position held immediately before the transfer in a
7 manner in accordance with section 5362 of title 5,
8 United States Code;

9 (6) provides that an employee serving in a posi-
10 tion in the excepted service may not transfer to a
11 position in the competitive service solely by reason of
12 the completion of the Federal reskilling program by
13 the employee; and

14 (7) includes a mechanism to track outcomes of
15 the Federal reskilling program in accordance with
16 the metrics established under subsection (c).

17 (c) REPORTING AND METRICS.—Not later than 1
18 year after the date of enactment of this Act, the Director
19 shall establish reporting requirements for, and standard-
20 ized metrics and procedures for agencies to track out-
21 comes of, Federal reskilling programs, which shall include,
22 with respect to each Federal reskilling program—

23 (1) providing a summary of the Federal
24 reskilling program;

1 (2) collecting and reporting demographic and
2 employment data with respect to employees who
3 have applied for, participated in, or completed the
4 Federal reskilling program;

5 (3) attrition of employees who have completed
6 the Federal reskilling program; and

7 (4) any other measures or outcomes that the
8 Director determines to be relevant.

9 (d) GAO REPORT.—Not later than 3 years after the
10 date of enactment of this Act, the Comptroller General
11 of the United States shall conduct a comprehensive study
12 of, and submit to Congress a report on, Federal reskilling
13 programs that includes—

14 (1) a summary of each Federal reskilling pro-
15 gram and methods by which each Federal reskilling
16 program recruits, selects, and retrain employees;

17 (2) an analysis of the accessibility of each Fed-
18 eral reskilling program for a diverse set of can-
19 didates;

20 (3) an evaluation of the effectiveness, costs, and
21 benefits of the Federal reskilling programs; and

22 (4) recommendations to improve Federal
23 reskilling programs to accomplish the goal of
24 reskilling the Federal workforce.

25 (e) REGULATIONS.—The Director—

1 (1) not later than 1 year after the date of en-
2 actment of this Act, shall prescribe regulations for
3 the reporting requirements and metrics and proce-
4 dures under subsection (c);

5 (2) may prescribe additional regulations, as the
6 Director determines necessary, to provide for re-
7 quirements with respect to, and the implementation
8 of, Federal reskilling programs; and

9 (3) with respect to any regulation prescribed
10 under this subsection, shall brief the appropriate
11 committees of Congress with respect to the regula-
12 tion not later than 30 days before the date on which
13 the final version of the regulation is published.

14 (f) **RULE OF CONSTRUCTION.**—Nothing in this sec-
15 tion may be construed to require the head of an agency
16 or the Director to establish a Federal reskilling program.

17 (g) **USE OF FUNDS.**—Any Federal reskilling program
18 established by the head of an agency or the Director shall
19 be carried out using amounts otherwise made available to
20 that agency head or the Director, as applicable.

21 **Subtitle B—Federal Rotational** 22 **Cyber Workforce Program**

23 **SEC. 4351. SHORT TITLE.**

24 This subtitle may be cited as the “Federal Rotational
25 Cyber Workforce Program Act of 2021”.

1 **SEC. 4352. DEFINITIONS.**

2 In this subtitle:

3 (1) AGENCY.—The term “agency” has the
4 meaning given the term “Executive agency” in sec-
5 tion 105 of title 5, United States Code, except that
6 the term does not include the Government Account-
7 ability Office.

8 (2) COMPETITIVE SERVICE.—The term “com-
9 petitive service” has the meaning given that term in
10 section 2102 of title 5, United States Code.

11 (3) COUNCILS.—The term “Councils” means—

12 (A) the Chief Human Capital Officers
13 Council established under section 1303 of the
14 Chief Human Capital Officers Act of 2002 (5
15 U.S.C. 1401 note); and

16 (B) the Chief Information Officers Council
17 established under section 3603 of title 44,
18 United States Code.

19 (4) CYBER WORKFORCE POSITION.—The term
20 “cyber workforce position” means a position identi-
21 fied as having information technology, cybersecurity,
22 or other cyber-related functions under section 303 of
23 the Federal Cybersecurity Workforce Assessment
24 Act of 2015 (5 U.S.C. 301 note).

25 (5) DIRECTOR.—The term “Director” means
26 the Director of the Office of Personnel Management.

1 (6) EMPLOYEE.—The term “employee” has the
2 meaning given the term in section 2105 of title 5,
3 United States Code.

4 (7) EMPLOYING AGENCY.—The term “employ-
5 ing agency” means the agency from which an em-
6 ployee is detailed to a rotational cyber workforce po-
7 sition.

8 (8) EXCEPTED SERVICE.—The term “excepted
9 service” has the meaning given that term in section
10 2103 of title 5, United States Code.

11 (9) ROTATIONAL CYBER WORKFORCE POSI-
12 TION.—The term “rotational cyber workforce posi-
13 tion” means a cyber workforce position with respect
14 to which a determination has been made under sec-
15 tion 4353(a)(1).

16 (10) ROTATIONAL CYBER WORKFORCE PRO-
17 GRAM.—The term “rotational cyber workforce pro-
18 gram” means the program for the detail of employ-
19 ees among rotational cyber workforce positions at
20 agencies.

21 (11) SECRETARY.—The term “Secretary”
22 means the Secretary of Homeland Security.

23 **SEC. 4353. ROTATIONAL CYBER WORKFORCE POSITIONS.**

24 (a) DETERMINATION WITH RESPECT TO ROTA-
25 TIONAL SERVICE.—

1 (1) IN GENERAL.—The head of each agency
2 may determine that a cyber workforce position in
3 that agency is eligible for the rotational cyber work-
4 force program, which shall not be construed to mod-
5 ify the requirement under section 4354(b)(3) that
6 participation in the rotational cyber workforce pro-
7 gram by an employee shall be voluntary.

8 (2) NOTICE PROVIDED.—The head of an agency
9 shall submit to the Director—

10 (A) notice regarding any determination
11 made by the head of the agency under para-
12 graph (1); and

13 (B) for each position with respect to which
14 the head of the agency makes a determination
15 under paragraph (1), the information required
16 under subsection (b)(1).

17 (b) PREPARATION OF LIST.—The Director, with as-
18 sistance from the Councils and the Secretary, shall develop
19 a list of rotational cyber workforce positions that—

20 (1) with respect to each such position, to the
21 extent that the information does not disclose sen-
22 sitive national security information, includes—

23 (A) the title of the position;

24 (B) the occupational series with respect to
25 the position;

1 (C) the grade level or work level with re-
2 spect to the position;

3 (D) the agency in which the position is lo-
4 cated;

5 (E) the duty location with respect to the
6 position; and

7 (F) the major duties and functions of the
8 position; and

9 (2) shall be used to support the rotational cyber
10 workforce program.

11 (c) DISTRIBUTION OF LIST.—Not less frequently
12 than annually, the Director shall distribute an updated list
13 developed under subsection (b) to the head of each agency
14 and other appropriate entities.

15 **SEC. 4354. ROTATIONAL CYBER WORKFORCE PROGRAM.**

16 (a) OPERATION PLAN.—

17 (1) IN GENERAL.—Not later than 270 days
18 after the date of enactment of this Act, and in con-
19 sultation with the Councils, the Secretary, represent-
20 atives of other agencies, and any other entity as the
21 Director determines appropriate, the Director shall
22 develop and issue a Federal Rotational Cyber Work-
23 force Program operation plan providing policies,
24 processes, and procedures for a program for the de-
25 tailing of employees among rotational cyber work-

1 force positions at agencies, which may be incor-
2 porated into and implemented through mechanisms
3 in existence on the date of enactment of this Act.

4 (2) UPDATING.—The Director may, in consulta-
5 tion with the Councils, the Secretary, and other enti-
6 ties as the Director determines appropriate, periodi-
7 cally update the operation plan developed and issued
8 under paragraph (1).

9 (b) REQUIREMENTS.—The operation plan developed
10 and issued under subsection (a) shall, at a minimum—

11 (1) identify agencies for participation in the ro-
12 tational cyber workforce program;

13 (2) establish procedures for the rotational cyber
14 workforce program, including—

15 (A) any training, education, or career de-
16 velopment requirements associated with partici-
17 pation in the rotational cyber workforce pro-
18 gram;

19 (B) any prerequisites or requirements for
20 participation in the rotational cyber workforce
21 program; and

22 (C) appropriate rotational cyber workforce
23 program performance measures, reporting re-
24 quirements, employee exit surveys, and other

1 accountability devices for the evaluation of the
2 program;

3 (3) provide that participation in the rotational
4 cyber workforce program by an employee shall be
5 voluntary;

6 (4) provide that an employee shall be eligible to
7 participate in the rotational cyber workforce pro-
8 gram if the head of the employing agency of the em-
9 ployee, or a designee of the head of the employing
10 agency of the employee, approves of the participation
11 of the employee;

12 (5) provide that the detail of an employee to a
13 rotational cyber workforce position under the rota-
14 tional cyber workforce program shall be on a nonre-
15 imbursable basis;

16 (6) provide that agencies may agree to partner
17 to ensure that the employing agency of an employee
18 who participates in the rotational cyber workforce
19 program is able to fill the position vacated by the
20 employee;

21 (7) require that an employee detailed to a rota-
22 tional cyber workforce position under the rotational
23 cyber workforce program, upon the end of the period
24 of service with respect to the detail, shall be entitled
25 to return to the position held by the employee, or an

1 equivalent position, in the employing agency of the
2 employee without loss of pay, seniority, or other
3 rights or benefits to which the employee would have
4 been entitled had the employee not been detailed;

5 (8) provide that discretion with respect to the
6 assignment of an employee under the rotational
7 cyber workforce program shall remain with the em-
8 ploying agency of the employee;

9 (9) require that an employee detailed to a rota-
10 tional cyber workforce position under the rotational
11 cyber workforce program in an agency that is not
12 the employing agency of the employee shall have all
13 the rights that would be available to the employee if
14 the employee were detailed under a provision of law
15 other than this subtitle from the employing agency
16 to the agency in which the rotational cyber work-
17 force position is located;

18 (10) provide that participation by an employee
19 in the rotational cyber workforce program shall not
20 constitute a change in the conditions of the employ-
21 ment of the employee; and

22 (11) provide that an employee participating in
23 the rotational cyber workforce program shall receive
24 performance evaluations relating to service in the ro-

1 tational cyber workforce program in a participating
2 agency that are—

3 (A) prepared by an appropriate officer, su-
4 pervisor, or management official of the employ-
5 ing agency, acting in coordination with the su-
6 pervisor at the agency in which the employee is
7 performing service in the rotational cyber work-
8 force position;

9 (B) based on objectives identified in the
10 operation plan with respect to the employee;
11 and

12 (C) based in whole or in part on the con-
13 tribution of the employee to the agency in which
14 the employee performed such service, as com-
15 municated from that agency to the employing
16 agency of the employee.

17 (c) PROGRAM REQUIREMENTS FOR ROTATIONAL
18 SERVICE.—

19 (1) IN GENERAL.—An employee serving in a
20 cyber workforce position in an agency may, with the
21 approval of the head of the agency, submit an appli-
22 cation for detail to a rotational cyber workforce posi-
23 tion that appears on the list developed under section
24 4353(b).

1 (2) OPM APPROVAL FOR CERTAIN POSI-
2 TIONS.—An employee serving in a position in the ex-
3 cepted service may only be selected for a rotational
4 cyber workforce position that is in the competitive
5 service with the prior approval of the Office of Per-
6 sonnel Management, in accordance with section
7 300.301 of title 5, Code of Federal Regulations, or
8 any successor thereto.

9 (3) SELECTION AND TERM.—

10 (A) SELECTION.—The head of an agency
11 shall select an employee for a rotational cyber
12 workforce position under the rotational cyber
13 workforce program in a manner that is con-
14 sistent with the merit system principles under
15 section 2301(b) of title 5, United States Code.

16 (B) TERM.—Except as provided in sub-
17 paragraph (C), and notwithstanding section
18 3341(b) of title 5, United States Code, a detail
19 to a rotational cyber workforce position shall be
20 for a period of not less than 180 days and not
21 more than 1 year.

22 (C) EXTENSION.—The Chief Human Cap-
23 ital Officer of the agency to which an employee
24 is detailed under the rotational cyber workforce
25 program may extend the period of a detail de-

1 scribed in subparagraph (B) for a period of 60
2 days unless the Chief Human Capital Officer of
3 the employing agency of the employee objects to
4 that extension.

5 (4) WRITTEN SERVICE AGREEMENTS.—

6 (A) IN GENERAL.—The detail of an em-
7 ployee to a rotational cyber workforce position
8 shall be contingent upon the employee entering
9 into a written service agreement with the em-
10 ploying agency under which the employee is re-
11 quired to complete a period of employment with
12 the employing agency following the conclusion
13 of the detail that is equal in length to the pe-
14 riod of the detail.

15 (B) OTHER AGREEMENTS AND OBLIGA-
16 TIONS.—A written service agreement under
17 subparagraph (A) shall not supersede or modify
18 the terms or conditions of any other service
19 agreement entered into by the employee under
20 any other authority or relieve the obligations
21 between the employee and the employing agency
22 under such a service agreement. Nothing in this
23 subparagraph prevents an employing agency
24 from terminating a service agreement entered
25 into under any other authority under the terms

1 of such agreement or as required by law or reg-
2 ulation.

3 **SEC. 4355. REPORTING BY GAO.**

4 Not later than the end of the third fiscal year after
5 the fiscal year in which the operation plan under section
6 4354(a) is issued, the Comptroller General of the United
7 States shall submit to Congress a report assessing the op-
8 eration and effectiveness of the rotational cyber workforce
9 program, which shall address, at a minimum—

10 (1) the extent to which agencies have partici-
11 pated in the rotational cyber workforce program, in-
12 cluding whether the head of each such participating
13 agency has—

14 (A) identified positions within the agency
15 that are rotational cyber workforce positions;

16 (B) had employees from other partici-
17 pating agencies serve in positions described in
18 subparagraph (A); and

19 (C) had employees of the agency request to
20 serve in rotational cyber workforce positions
21 under the rotational cyber workforce program
22 in participating agencies, including a descrip-
23 tion of how many such requests were approved;
24 and

1 (2) the experiences of employees serving in ro-
2 tational cyber workforce positions under the rota-
3 tional cyber workforce program, including an assess-
4 ment of—

5 (A) the period of service;

6 (B) the positions (including grade level and
7 occupational series or work level) held by em-
8 ployees before completing service in a rotational
9 cyber workforce position under the rotational
10 cyber workforce program;

11 (C) the extent to which each employee who
12 completed service in a rotational cyber work-
13 force position under the rotational cyber work-
14 force program achieved a higher skill level, or
15 attained a skill level in a different area, with re-
16 spect to information technology, cybersecurity,
17 or other cyber-related functions; and

18 (D) the extent to which service in rota-
19 tional cyber workforce positions has affected
20 intra-agency and interagency integration and
21 coordination of cyber practices, functions, and
22 personnel management.

23 **SEC. 4356. SUNSET.**

24 Effective 5 years after the date of enactment of this
25 Act, this subtitle is repealed.

1 **TITLE IV—OTHER MATTERS**
2 **Subtitle A—Ensuring Security of**
3 **Unmanned Aircraft Systems**

4 **SEC. 4401. SHORT TITLE.**

5 This subtitle may be cited as the “American Security
6 Drone Act of 2021”.

7 **SEC. 4402. DEFINITIONS.**

8 In this subtitle:

9 (1) **COVERED FOREIGN ENTITY.**—The term
10 “covered foreign entity” means an entity included on
11 a list developed and maintained by the Federal Ac-
12 quisition Security Council. This list will include enti-
13 ties in the following categories:

14 (A) An entity included on the Consolidated
15 Screening List.

16 (B) Any entity that is subject to
17 extrajudicial direction from a foreign govern-
18 ment, as determined by the Secretary of Home-
19 land Security.

20 (C) Any entity the Secretary of Homeland
21 Security, in coordination with the Director of
22 National Intelligence and the Secretary of De-
23 fense, determines poses a national security risk.

24 (D) Any entity domiciled in the People’s
25 Republic of China or subject to influence or

1 control by the Government of the People Re-
2 public of China or the Communist Party of the
3 People's Republic of China, as determined by
4 the Secretary of Homeland Security.

5 (E) Any subsidiary or affiliate of an entity
6 described in subparagraphs (A) through (D).

7 (2) COVERED UNMANNED AIRCRAFT SYSTEM.—
8 The term “covered unmanned aircraft system” has
9 the meaning given the term “unmanned aircraft sys-
10 tem” in section 44801 of title 49, United States
11 Code.

12 **SEC. 4403. PROHIBITION ON PROCUREMENT OF COVERED**
13 **UNMANNED AIRCRAFT SYSTEMS FROM COV-**
14 **ERED FOREIGN ENTITIES.**

15 (a) IN GENERAL.—Except as provided under sub-
16 sections (b) through (f), the head of an executive agency
17 may not procure any covered unmanned aircraft system
18 that are manufactured or assembled by a covered foreign
19 entity, which includes associated elements (consisting of
20 communication links and the components that control the
21 unmanned aircraft) that are required for the operator to
22 operate safely and efficiently in the national airspace sys-
23 tem. The Federal Acquisition Security Council, in coordi-
24 nation with the Secretary of Transportation, shall develop
25 and update a list of associated elements.

1 (b) EXEMPTION.—The Secretary of Homeland Secu-
2 rity, the Secretary of Defense, and the Attorney General
3 are exempt from the restriction under subsection (a) if the
4 operation or procurement—

5 (1) is for the sole purposes of research, evalua-
6 tion, training, testing, or analysis for—

7 (A) electronic warfare;

8 (B) information warfare operations;

9 (C) development of UAS or counter-UAS
10 technology;

11 (D) counterterrorism or counterintelligence
12 activities; or

13 (E) Federal criminal or national security
14 investigations, including forensic examinations;
15 and

16 (2) is required in the national interest of the
17 United States.

18 (c) FEDERAL AVIATION ADMINISTRATION CENTER
19 OF EXCELLENCE FOR UNMANNED AIRCRAFT SYSTEMS
20 EXEMPTION.—The Secretary of Transportation, in con-
21 sultation with the Secretary of Homeland Security, is ex-
22 empt from the restriction under subsection (a) if the oper-
23 ation or procurement is for the sole purposes of research,
24 evaluation, training, testing, or analysis for the Federal
25 Aviation Administration’s Alliance for System Safety of

1 UAS through Research Excellence (ASSURE) Center of
2 Excellence (COE) for Unmanned Aircraft Systems.

3 (d) NATIONAL TRANSPORTATION SAFETY BOARD
4 EXEMPTION.—The National Transportation Safety Board
5 (NTSB), in consultation with the Secretary of Homeland
6 Security, is exempt from the restriction under subsection
7 (a) if the operation or procurement is necessary for the
8 sole purpose of conducting safety investigations.

9 (e) NATIONAL OCEANIC ATMOSPHERIC ADMINISTRA-
10 TION EXEMPTION.—The Administrator of the National
11 Oceanic Atmospheric Administration (NOAA), in con-
12 sultation with the Secretary of Homeland Security, is ex-
13 empt from the restriction under subsection (a) if the oper-
14 ation or procurement is necessary for the sole purpose of
15 marine or atmospheric science or management.

16 (f) WAIVER.—The head of an executive agency may
17 waive the prohibition under subsection (a) on a case-by-
18 case basis—

19 (1) with the approval of the Secretary of Home-
20 land Security or the Secretary of Defense; and

21 (2) upon notification to Congress.

22 **SEC. 4404. PROHIBITION ON OPERATION OF COVERED UN-**
23 **MANNED AIRCRAFT SYSTEMS FROM COV-**
24 **ERED FOREIGN ENTITIES.**

25 (a) PROHIBITION.—

1 (1) IN GENERAL.—Beginning on the date that
2 is 2 years after the date of the enactment of this
3 Act, no Federal department or agency may operate
4 a covered unmanned aircraft system manufactured
5 or assembled by a covered foreign entity.

6 (2) APPLICABILITY TO CONTRACTED SERV-
7 ICES.—The prohibition under paragraph (1) applies
8 to any covered unmanned aircraft systems that are
9 being used by any executive agency through the
10 method of contracting for the services of covered un-
11 manned aircraft systems.

12 (b) EXEMPTION.—The Secretary of Homeland Secu-
13 rity, the Secretary of Defense, and the Attorney General
14 are exempt from the restriction under subsection (a) if the
15 operation or procurement—

16 (1) is for the sole purposes of research, evalua-
17 tion, training, testing, or analysis for—

18 (A) electronic warfare;

19 (B) information warfare operations;

20 (C) development of UAS or counter-UAS
21 technology;

22 (D) counterterrorism or counterintelligence
23 activities; or

1 (E) Federal criminal or national security
2 investigations, including forensic examinations;
3 and

4 (2) is required in the national interest of the
5 United States.

6 (c) FEDERAL AVIATION ADMINISTRATION CENTER
7 OF EXCELLENCE FOR UNMANNED AIRCRAFT SYSTEMS
8 EXEMPTION.—The Secretary of Transportation, in con-
9 sultation with the Secretary of Homeland Security, is ex-
10 empt from the restriction under subsection (a) if the oper-
11 ation or procurement is for the sole purposes of research,
12 evaluation, training, testing, or analysis for the Federal
13 Aviation Administration’s Alliance for System Safety of
14 UAE through Research Excellence (ASSURE) Center of
15 Excellence (COE) for Unmanned Aircraft Systems.

16 (d) NATIONAL TRANSPORTATION SAFETY BOARD
17 EXEMPTION.—The National Transportation Safety Board
18 (NTSB), in consultation with the Secretary of Homeland
19 Security, is exempt from the restriction under subsection
20 (a) if the operation or procurement is necessary for the
21 sole purpose of conducting safety investigations.

22 (e) NATIONAL OCEANIC ATMOSPHERIC ADMINISTRA-
23 TION EXEMPTION.—The Administrator of the National
24 Oceanic Atmospheric Administration (NOAA), in con-
25 sultation with the Secretary of Homeland Security, is ex-

1 empt from the restriction under subsection (a) if the oper-
2 ation or procurement is necessary for the sole purpose of
3 marine or atmospheric science or management.

4 (f) WAIVER.—The head of an executive agency may
5 waive the prohibition under subsection (a) on a case-by-
6 case basis—

7 (1) with the approval of the Secretary of Home-
8 land Security or the Secretary of Defense; and

9 (2) upon notification to Congress.

10 (g) REGULATIONS AND GUIDANCE.—Not later than
11 180 days after the date of the enactment of this Act, the
12 Secretary of Homeland Security shall prescribe regula-
13 tions or guidance to implement this section.

14 **SEC. 4405. PROHIBITION ON USE OF FEDERAL FUNDS FOR**
15 **PURCHASES AND OPERATION OF COVERED**
16 **UNMANNED AIRCRAFT SYSTEMS FROM COV-**
17 **ERED FOREIGN ENTITIES.**

18 (a) IN GENERAL.—Beginning on the date that is 2
19 years after the date of the enactment of this Act, except
20 as provided in subsection (b), no Federal funds awarded
21 through a contract, grant, or cooperative agreement, or
22 otherwise made available may be used—

23 (1) to purchase a covered unmanned aircraft
24 system, or a system to counter unmanned aircraft

1 systems, that is manufactured or assembled by a
2 covered foreign entity; or

3 (2) in connection with the operation of such a
4 drone or unmanned aircraft system.

5 (b) EXEMPTION.—A Federal department or agency
6 is exempt from the restriction under subsection (a) if—

7 (1) the contract, grant, or cooperative agree-
8 ment was awarded prior to the date of the enact-
9 ment of this Act; or

10 (2) the operation or procurement is for the sole
11 purposes of research, evaluation, training, testing, or
12 analysis, as determined by the Secretary of Home-
13 land Security, the Secretary of Defense, or the At-
14 torney General, for—

15 (A) electronic warfare;

16 (B) information warfare operations;

17 (C) development of UAS or counter-UAS
18 technology;

19 (D) counterterrorism or counterintelligence
20 activities; or

21 (E) Federal criminal or national security
22 investigations, including forensic examinations;
23 or

1 (F) the safe integration of UAS in the na-
2 tional airspace (as determined in consultation
3 with the Secretary of Transportation); and

4 (3) is required in the national interest of the
5 United States.

6 (c) WAIVER.—The head of an executive agency may
7 waive the prohibition under subsection (a) on a case-by-
8 case basis—

9 (1) with the approval of the Secretary of Home-
10 land Security or the Secretary of Defense; and

11 (2) upon notification to Congress.

12 (d) REGULATIONS.—Not later than 180 days after
13 the date of the enactment of this Act, the Federal Acquisi-
14 tion Regulatory Council shall prescribe regulations or
15 guidance, as necessary, to implement the requirements of
16 this section pertaining to Federal contracts.

17 **SEC. 4406. PROHIBITION ON USE OF GOVERNMENT-ISSUED**
18 **PURCHASE CARDS TO PURCHASE COVERED**
19 **UNMANNED AIRCRAFT SYSTEMS FROM COV-**
20 **ERED FOREIGN ENTITIES.**

21 Effective immediately, Government-issued Purchase
22 Cards may not be used to procure any covered unmanned
23 aircraft system from a covered foreign entity.

1 **SEC. 4407. MANAGEMENT OF EXISTING INVENTORIES OF**
2 **COVERED UNMANNED AIRCRAFT SYSTEMS**
3 **FROM COVERED FOREIGN ENTITIES.**

4 (a) IN GENERAL.—Effective immediately, all execu-
5 tive agencies must account for existing inventories of cov-
6 ered unmanned aircraft systems manufactured or assem-
7 bled by a covered foreign entity in their personal property
8 accounting systems, regardless of the original procurement
9 cost, or the purpose of procurement due to the special
10 monitoring and accounting measures necessary to track
11 the items' capabilities.

12 (b) CLASSIFIED TRACKING.—Due to the sensitive na-
13 ture of missions and operations conducted by the United
14 States Government, inventory data related to covered un-
15 manned aircraft systems manufactured or assembled by
16 a covered foreign entity may be tracked at a classified
17 level.

18 (c) EXCEPTIONS.—The Department of Defense and
19 Department of Homeland Security may exclude from the
20 full inventory process, covered unmanned aircraft systems
21 that are deemed expendable due to mission risk such as
22 recovery issues or that are one-time-use covered unmanned
23 aircraft due to requirements and low cost.

24 **SEC. 4408. COMPTROLLER GENERAL REPORT.**

25 Not later than 275 days after the date of the enact-
26 ment of this Act, the Comptroller General of the United

1 States shall submit to Congress a report on the amount
2 of commercial off-the-shelf drones and covered unmanned
3 aircraft systems procured by Federal departments and
4 agencies from covered foreign entities.

5 **SEC. 4409. GOVERNMENT-WIDE POLICY FOR PROCURE-**
6 **MENT OF UNMANNED AIRCRAFT SYSTEMS.**

7 (a) IN GENERAL.—Not later than 180 days after the
8 date of the enactment of this Act, the Director of the Of-
9 fice of Management and Budget, in coordination with the
10 Department of Homeland Security, Department of Trans-
11 portation, the Department of Justice, and other Depart-
12 ments as determined by the Director of the Office of Man-
13 agement and Budget, and in consultation with the Na-
14 tional Institute of Standards and Technology, shall estab-
15 lish a government-wide policy for the procurement of
16 UAS—

17 (1) for non-Department of Defense and non-in-
18 telligence community operations; and

19 (2) through grants and cooperative agreements
20 entered into with non-Federal entities.

21 (b) INFORMATION SECURITY.—The policy developed
22 under subsection (a) shall include the following specifica-
23 tions, which to the extent practicable, shall be based on
24 industry standards and technical guidance from the Na-
25 tional Institute of Standards and Technology, to address

1 the risks associated with processing, storing and transmit-
2 ting Federal information in a UAS:

3 (1) Protections to ensure controlled access of
4 UAS.

5 (2) Protecting software, firmware, and hard-
6 ware by ensuring changes to UAS are properly man-
7 aged, including by ensuring UAS can be updated
8 using a secure, controlled, and configurable mecha-
9 nism.

10 (3) Cryptographically securing sensitive col-
11 lected, stored, and transmitted data, including prop-
12 er handling of privacy data and other controlled un-
13 classified information.

14 (4) Appropriate safeguards necessary to protect
15 sensitive information, including during and after use
16 of UAS.

17 (5) Appropriate data security to ensure that
18 data is not transmitted to or stored in non-approved
19 locations.

20 (6) The ability to opt out of the uploading,
21 downloading, or transmitting of data that is not re-
22 quired by law or regulation and an ability to choose
23 with whom and where information is shared when it
24 is required.

1 (c) REQUIREMENT.—The policy developed under sub-
2 section (a) shall reflect an appropriate risk-based ap-
3 proach to information security related to use of UAS.

4 (d) REVISION OF ACQUISITION REGULATIONS.—Not
5 later than 180 days after the date on which the policy
6 required under subsection (a) is issued—

7 (1) the Federal Acquisition Regulatory Council
8 shall revise the Federal Acquisition Regulation, as
9 necessary, to implement the policy; and

10 (2) any Federal department or agency or other
11 Federal entity not subject to, or not subject solely
12 to, the Federal Acquisition Regulation shall revise
13 applicable policy, guidance, or regulations, as nec-
14 essary, to implement the policy.

15 (e) EXEMPTION.—In developing the policy required
16 under subsection (a), the Director of the Office of Man-
17 agement and Budget shall incorporate an exemption to the
18 policy for the following reasons:

19 (1) In the case of procurement for the purposes
20 of training, testing, or analysis for—

21 (A) electronic warfare; or

22 (B) information warfare operations.

23 (2) In the case of researching UAS technology,
24 including testing, evaluation, research, or develop-
25 ment of technology to counter UAS.

1 (3) In the case of a head of the procuring de-
2 partment or agency determining, in writing, that no
3 product that complies with the information security
4 requirements described in subsection (b) is capable
5 of fulfilling mission critical performance require-
6 ments, and such determination—

7 (A) may not be delegated below the level of
8 the Deputy Secretary of the procuring depart-
9 ment or agency;

10 (B) shall specify—

11 (i) the quantity of end items to which
12 the waiver applies, the procurement value
13 of which may not exceed \$50,000 per waiv-
14 er; and

15 (ii) the time period over which the
16 waiver applies, which shall not exceed 3
17 years;

18 (C) shall be reported to the Office of Man-
19 agement and Budget following issuance of such
20 a determination; and

21 (D) not later than 30 days after the date
22 on which the determination is made, shall be
23 provided to the Committee on Homeland Secu-
24 rity and Governmental Affairs of the Senate

1 and the Committee on Oversight and Reform of
2 the House of Representatives.

3 **SEC. 4410. STUDY.**

4 (a) INDEPENDENT STUDY.—Not later than 3 years
5 after the date of the enactment of this Act, the Director
6 of the Office of Management and Budget shall seek to
7 enter into a contract with a federally funded research and
8 development center under which the center will conduct
9 a study of—

10 (1) the current and future unmanned aircraft
11 system global and domestic market;

12 (2) the ability of the unmanned aircraft system
13 domestic market to keep pace with technological ad-
14 vancements across the industry;

15 (3) the ability of domestically made unmanned
16 aircraft systems to meet the network security and
17 data protection requirements of the national security
18 enterprise;

19 (4) the extent to which unmanned aircraft sys-
20 tem component parts, such as the parts described in
21 section 4403, are made domestically; and

22 (5) an assessment of the economic impact, in-
23 cluding cost, of excluding the use of foreign-made
24 UAS for use across the Federal Government.

1 (b) SUBMISSION TO OMB.—Upon completion of the
2 study in subsection (a), the federally funded research and
3 development center shall submit the study to the Director
4 of the Office of Management and Budget.

5 (c) SUBMISSION TO CONGRESS.—Not later than 30
6 days after the date on which the Director of the Office
7 of Management and Budget receives the study under sub-
8 section (b), the Director shall submit the study to—

9 (1) the Committee on Homeland Security and
10 Governmental Affairs and the Select Committee on
11 Intelligence of the Senate; and

12 (2) the Committee on Homeland Security and
13 the Committee on Oversight and Reform and the
14 Permanent Select Committee on Intelligence of the
15 House of Representatives.

16 **SEC. 4411. SUNSET.**

17 Sections 4403, 4404, and 4405 shall cease to have
18 effect on the date that is 5 years after the date of the
19 enactment of this Act.

20 **Subtitle B—No TikTok on**
21 **Government Devices**

22 **SEC. 4431. SHORT TITLE.**

23 This subtitle may be cited as the “No TikTok on Gov-
24 ernment Devices Act”.

1 **SEC. 4432. PROHIBITION ON THE USE OF TIKTOK.**

2 (a) DEFINITIONS.—In this section—

3 (1) the term “covered application” means the
4 social networking service TikTok or any successor
5 application or service developed or provided by
6 ByteDance Limited or an entity owned by
7 ByteDance Limited;

8 (2) the term “executive agency” has the mean-
9 ing given that term in section 133 of title 41, United
10 States Code; and

11 (3) the term “information technology” has the
12 meaning given that term in section 11101 of title
13 40, United States Code.

14 (b) PROHIBITION ON THE USE OF TIKTOK.—

15 (1) IN GENERAL.—Not later than 60 days after
16 the date of the enactment of this Act, the Director
17 of the Office of Management and Budget, in con-
18 sultation with the Administrator of General Services,
19 the Director of the Cybersecurity and Infrastructure
20 Security Agency, the Director of National Intel-
21 ligence, and the Secretary of Defense, and consistent
22 with the information security requirements under
23 subchapter II of chapter 35 of title 44, United
24 States Code, shall develop standards and guidelines
25 for executive agencies requiring the removal of any
26 covered application from information technology.

1 (2) NATIONAL SECURITY AND RESEARCH EX-
2 CEPTIONS.—The standards and guidelines developed
3 under paragraph (1) shall include—

4 (A) exceptions for law enforcement activi-
5 ties, national security interests and activities,
6 and security researchers; and

7 (B) for any authorized use of a covered ap-
8 plication under an exception, requirements for
9 executive agencies to develop and document risk
10 mitigation actions for such use.

11 **Subtitle C—National Risk**
12 **Management**

13 **SEC. 4461. NATIONAL RISK MANAGEMENT CYCLE.**

14 (a) IN GENERAL.—Subtitle A of title XXII of the
15 Homeland Security Act of 2002 (6 U.S.C. 651 et seq.)
16 is amended by adding at the end the following:

17 **“SEC. 2218. NATIONAL RISK MANAGEMENT CYCLE.**

18 “(a) NATIONAL CRITICAL FUNCTIONS DEFINED.—In
19 this section, the term ‘national critical functions’ means
20 the functions of government and the private sector so vital
21 to the United States that their disruption, corruption, or
22 dysfunction would have a debilitating effect on security,
23 national economic security, national public health or safe-
24 ty, or any combination thereof.

25 “(b) NATIONAL RISK MANAGEMENT CYCLE.—

1 “(1) RISK IDENTIFICATION AND ASSESS-
2 MENT.—

3 “(A) IN GENERAL.—The Secretary, acting
4 through the Director, shall establish a recurring
5 process by which to identify, assess, and
6 prioritize risks to critical infrastructure, consid-
7 ering both cyber and physical threats, the asso-
8 ciated likelihoods, vulnerabilities, and con-
9 sequences, and the resources necessary to ad-
10 dress them.

11 “(B) CONSULTATION.—In establishing the
12 process required under subparagraph (A), the
13 Secretary shall consult with, and request and
14 collect information to support analysis from,
15 Sector Risk Management Agencies, critical in-
16 frastructure owners and operators, the Assist-
17 ant to the President for National Security Af-
18 fairs, the Assistant to the President for Home-
19 land Security, and the National Cyber Director.

20 “(C) PUBLICATION.—Not later than 180
21 days after the date of enactment of this section,
22 the Secretary shall publish in the Federal Reg-
23 ister procedures for the process established
24 under subparagraph (A), subject to any
25 redactions the Secretary determines are nec-

1 essary to protect classified or other sensitive in-
2 formation.

3 “(D) REPORT.—The Secretary shall sub-
4 mit to the President, the Committee on Home-
5 land Security and Governmental Affairs of the
6 Senate, and the Committee on Homeland Secu-
7 rity of the House of Representatives a report on
8 the risks identified by the process established
9 under subparagraph (A)—

10 “(i) not later than 1 year after the
11 date of enactment of this section; and

12 “(ii) not later than 1 year after the
13 date on which the Secretary submits a
14 periodic evaluation described in section
15 9002(b)(2) of title XC of division H of the
16 William M. (Mac) Thornberry National
17 Defense Authorization Act for Fiscal Year
18 2021 (Public Law 116–283).

19 “(2) NATIONAL CRITICAL INFRASTRUCTURE RE-
20 SILIENCE STRATEGY.—

21 “(A) IN GENERAL.—Not later than 1 year
22 after the date on which the Secretary delivers
23 each report required under paragraph (1), the
24 President shall deliver to majority and minority
25 leaders of the Senate, the Speaker and minority

1 leader of the House of Representatives, the
2 Committee on Homeland Security and Govern-
3 mental Affairs of the Senate, and the Com-
4 mittee on Homeland Security of the House of
5 Representatives a national critical infrastruc-
6 ture resilience strategy designed to address the
7 risks identified by the Secretary.

8 “(B) ELEMENTS.—Each strategy delivered
9 under subparagraph (A) shall—

10 “(i) identify, assess, and prioritize
11 areas of risk to critical infrastructure that
12 would compromise or disrupt national crit-
13 ical functions impacting national security,
14 economic security, or public health and
15 safety;

16 “(ii) assess the implementation of the
17 previous national critical infrastructure re-
18 siliance strategy, as applicable;

19 “(iii) identify and outline current and
20 proposed national-level actions, programs,
21 and efforts to be taken to address the risks
22 identified;

23 “(iv) identify the Federal departments
24 or agencies responsible for leading each na-
25 tional-level action, program, or effort and

1 the relevant critical infrastructure sectors
2 for each; and

3 “(v) request any additional authorities
4 necessary to successfully execute the strat-
5 egy.

6 “(C) FORM.—Each strategy delivered
7 under subparagraph (A) shall be unclassified,
8 but may contain a classified annex.

9 “(3) CONGRESSIONAL BRIEFING.—Not later
10 than 1 year after the date on which the President
11 delivers the first strategy required under paragraph
12 (2)(A), and every year thereafter, the Secretary, in
13 coordination with Sector Risk Management Agen-
14 cies, shall brief the appropriate congressional com-
15 mittees on—

16 “(A) the national risk management cycle
17 activities undertaken pursuant to the strategy;
18 and

19 “(B) the amounts and timeline for funding
20 that the Secretary has determined would be
21 necessary to address risks and successfully exe-
22 cute the full range of activities proposed by the
23 strategy.”.

24 (b) TECHNICAL AND CONFORMING AMENDMENT.—
25 The table of contents in section 1(b) of the Homeland Se-

1 curity Act of 2002 (Public Law 107–296; 116 Stat. 2135)
2 is amended by inserting after the item relating to section
3 2217 the following:

“Sec. 2218. National risk management cycle.”.

4 **Subtitle D—Safeguarding Amer-**
5 **ican Innovation [to Be Sup-**
6 **plied]**