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1. ***Subtitle C-Provisions Relating to***
2. ***Commercial Items***
3. ***SEC. 831. REVISION OF DEFINITION OF COMMERCIAL ITEM***
4. ***FOR PURPOSES OF FEDERAL ACQUISITION***
5. ***STATUTES.***
6. *(a)* ***DEFINITIONS IN CHAPTER*** *1* ***OF TITLE*** *41,* ***UNITED***
7. ***STATES CODE.-***

#### (1) SEPARATION OF "COMMERCIAL ITEM" DEFI-

* 1. ***NITION INTO DEFINITIONS OF "COMMERCIAL PROD-***
  2. ***UCT" AND "COMMERCIAL SERVICE".-Chapter 1 of***
  3. ***title 41, United States Code, is amended by striking***
  4. ***section 103 and inserting the following new sections:***
  5. ***"§ 103. Commercial product***

#### "In this subtitle, the term 'commercial product' means

* 1. *any of the following:*
  2. *"(1) A product, other than real property, that-*
  3. *"(A) is of a type customarily used by the*
  4. *general public or by nongovernmental entities for*
  5. *purposes other than governmental purposes; and*
  6. *"(B) has been sold, leased, or licensed, or of-*
  7. *fered for sale, lease, or license, to the general*
  8. *public.*
  9. *"(2) A product that-*
  10. *"(A) evolved from a product described in*
  11. *paragraph (1) through advances in technology or*
  12. *performance; and*
  13. *"(B) is not yet available in the commercial*
  14. *marketplace but will be available in the commer­*
  15. *cial marketplace in time to satisfy the delivery*
  16. *requirements under a Federal Government solici­*
  17. *tation.*

1. *"(3) A product that would satisfy the criteria in*
2. *paragraph (1) or (2) were it not for-*
3. *"(A) modifications of a type customarily*
4. *available in the commercial marketplace; or*
5. *"(B) minor modifications made to meet*
6. *Federal Government requirements.*
7. *"( 4) Any combination of products meeting the*
8. *requirements of paragraph (1), (2), or (3) that are of*
9. *a type customarily combined and sold in combination*
10. *to the general public.*
11. *"(5) A**product, or combination of products, re-*
12. *}erred to in paragraphs (1) through (4), even though*
13. *the product, or combination of products, is trans-*
14. *ferred between or among separate divisions, subsidi-*
15. *aries, or affiliates of a contractor.*
16. *"(6) A**nondevelopmental item if the procuring*
17. *agency determines, in accordance with conditions in*
18. *the Federal Acquisition Regulation, that-*
19. *"(A) the product was developed exclusively*
20. *at private expense; and*
21. *"(B) has been sold in substantial quantities,*
22. *on a competitive basis, to multiple State and*
23. *local governments or to multiple foreign govern-*
24. *ments.*
    1. ***"§ 103a. Commercial service***
    2. *"In this subtitle, the term (commercial service' means*
    3. *any of the following:*
    4. *“(1) Installation services, maintenance services,*
    5. *repair services, training services, and other services*
    6. *if-*
    7. *"(A) those services are procured for support*
    8. *of a commercial product, regardless of whether*
    9. *the services are provided by the same source or*
    10. *at the same time as the commercial product; and*
    11. *"(B) the source of the services provides*
    12. *similar services contemporaneously to the general*
    13. *public under terms and conditions similar to*
    14. *those offered to the Federal Government;*
    15. *“(2) Services of a type offered and sold competi-*
    16. *tively, in substantial quantities, in the commercial*
    17. *marketplace-*

**l 8** "(A) based on established catalog or market

1. *prices;*
2. *"(B) for specific tasks performed or specific*
3. *outcomes to be achieved; and*
4. *"(C) under standard commercial terms and*
5. *conditions.*
6. *“(3) A service described in paragraph (1) or (2),*
7. *even though the service is transferred between or*
8. *among separate divisions, subsidiaries, or affiliates of*
9. *a contractor.".*
10. ***(2) CONFORMING AMENDMENTS TO TITLE*** *41*
11. ***DEFINITIONS.-***
12. ***(A) DEFINITION OF COMMERCIAL COMPO -***
13. *NENT. - Section 102 of such title is amended by*
14. *striking “commercial item" and inserting “com-*
15. *mercial product".*
16. ***(B)*** *DEFINITION OF COMMERCIALLY AVAIL-*
17. *ABLE OFF-THE-SHELF ITEM.-Section 104(1)(A)*
18. *is amended by striking “commercial item" and*
19. *inserting “commercial product".*
20. ***(C) DEFINITION OF NONDEVELOPMENTAL***
21. *ITEM.-Section 110(1) of such title is amended*
22. *by striking “commercial item" and inserting*
23. *"commercial product".*
24. *(3) CLERICAL AMENDMENT.- The table of sec-*
25. *tions at the beginning of chapter 1 of title 41, United*
26. *States Code, is amended by striking the item relating*
27. *to section 103 and inserting the following new items:*

*"103. Commercial product.*

*"103a. Commercial service.".*

1. *(b) CONFORMING AMENDMENTS TO O1WER PR0VI-*
2. *SIGNS OF TITLE 41, UNITED STATES C0DE.-Title 41,*
3. *United States Code, is further amended as follows:*
4. *(1) Section 1502(b) is amended-*
   1. *(A) in paragraph (1)(A), by striking "com-*
   2. *mercial items" and inserting “commercial prod-*
   3. *ucts or commercial services";*
   4. *(B)**in paragraph (1)(C)(i), by striking*
   5. *"commercial item" and inserting "commercial*
   6. *product or commercial service"; and*
   7. *(C) in paragraph (3)(A)(i), by striking*
   8. *"commercial items" and inserting "commercial*
   9. *products or commercial services".*
   10. *(2) Section 1705(c) is amended by striking*
   11. *"commercial items" and inserting "commercial prod-*
   12. *ucts and commercial services".*
   13. *(3) Section 1708 is amended by striking "com-*
   14. *mercial items" in subsections (c)(6) and (e)(3) and*
   15. *inserting "commercial products or commercial serv-*
   16. *ices".*
   17. *(4) Section 1901 is amended-*
   18. *(A) in subsection (a )(2 ), by striking "com­*
   19. *mercial items" and inserting "commercial prod­*
   20. *ucts or commercial services"; and*
   21. *(B) in subsection (e)-*
   22. *(i) by striking "COMMERCIAL ITEMS"*
   23. *in the subsection heading and inserting*
   24. *"COMMERCIAL PRODUCTS AND COMMER­*
   25. *CIAL SERVICES"; and*
       1. *(ii) by striking "commercial items"*
       2. *and inserting "commercial products or com -*
       3. *mercial services".*
       4. *(5) Section 1903(c) is amended-*
       5. *(A) in the subsection heading, by striking*
       6. *"COMMERCIAL ITEM" and inserting " C OMME R -*

? ***CIAL PRODUCT OR COMMERCIAL SERVICE";***

1. *(BJ in paragraph (1), by striking "as a*
2. *commercial item" and inserting "as a commer-*
3. *cial product or a commercial service"; and*
4. *(CJ in paragraph (2), by striking "for an*
5. *item or service treated as a commercial item"*
6. *and inserting "for a product or service treated as*
7. *a commercial product or a commercial service".*
8. *(6)(A) Section 1906 is amended by striking*
9. *"commercial items" each place it appears in sub-*
10. *sections (b), (c), and (d) and inserting "commercial*
11. *products or commercial services" .*
12. *(B)(i) The heading of such section is amended to*
13. *read as follows:*
    1. ***"§ 1906. List of laws inapplicable to procurements of***
    2. ***commercial products and commercial***
    3. ***services".***
    4. *(ii) The table of sections at the beginning of*
    5. *chapter 19 is amended by striking the item relating*
    6. *to section 1906 and inserting the following new item :*

*"1906. List of laws inapplicable to procurements of commercial products and com­ mercial services.".*

* 1. *(7) Section 3304 is amended by striking "com -*
  2. *mercial item" in subsections (a)(5) and (e)(4)(B) and*
  3. *inserting "commercial product".*
  4. *(8) Section 3305(a)(2) is amended by striking*
  5. *"commercial items" and inserting "commercial prod-*
  6. *ucts or commercial services".*
  7. *(9) Section 3306(b) is amended by striking*
  8. *"commercial items" and inserting "commercial prod-*
  9. *ucts or commercial services".*
  10. *(10)(A) Section 3307 is amended-*
  11. *(i) in subsection (a)-*
  12. *(I) by striking "COMMERCIAL I TEMS"*
  13. *in the subsection heading and inserting*
  14. *"COMMERCIAL PRODUCTS AND COMMER-*
  15. *CIAL SERVICES";*
  16. *(II) in paragraph (1), by striking*
  17. *"commercial items" and inserting "com-*

1. *mercial products and commercial services";*
2. *and*
3. *(III) in paragraph (2), by striking “a*
4. *commercial item" and inserting “a com­*
5. *mercial product or commercial service";*
6. *(ii) in subsection (b)-*
7. *(I) in paragraph (2), by striking*
8. *“commercial items or, to the extent that*
9. *commercial items suitable to meet the execu­*
10. *tive agency's needs are not available, non­*
11. *developmental items other than commercial*
12. *items" and inserting “commercial services*
13. *or commercial products or, to the extent*
14. *that commercial products suitable to meet*
15. *the executive agency's needs are not avail­*
16. *able, nondevelopmental items other than*
17. *commercial products"; and*
18. *(II) in paragraph (3), by striking*
19. *“commercial items and nondevelopmental*
20. *items other than commercial items" and in­*
21. *serting “commercial services, commercial*
22. *products, and nondevelopmental items other*
23. *than commercial products",-*
24. *(iii) in subsection (c)-*
    1. *(I) in paragraphs (1) and (2), by*
    2. *striking “commercial items or nondevelop­*
    3. *mental items other than commercial items"*
    4. *and inserting “commercial services or com­*
    5. *mercial products or nondevelopmental items*
    6. *other than commercial products";*
    7. *(II) in paragraphs (3) and (4), by*
    8. *striking “commercial items or, to the extent*
    9. *that commercial items suitable to meet the*
    10. *executive agency's needs are not available,*
    11. *nondevelopmental items other than commer­*
    12. *cial items" and inserting “commercial serv­*
    13. *ices or commercial products or, to the extent*
    14. *that commercial products suitable to meet*
    15. *the executive agency's needs are not avail­*
    16. *able, nondevelopmental items other than*
    17. *commercial products"; and*
    18. *(III) in paragraphs (5) and (6), by*
    19. *striking “commercial items" and inserting*
    20. *“commercial products and commercial serv-*
    21. *ices";*

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* 1. *(iv) in subsection (d)( 2), by striking “com­*
  2. *mercial items or, to the extent that commercial*
  3. *items suitable to meet the executive agency's*
  4. *needs are not available, nondevelopmental items*

1. *other than commercial items" and inserting*
2. *"commercial services or commercial products or,*
3. *to the extent that commercial products suitable*
4. *to meet the executive agency's needs are not*
5. *available, nond evelopmental items other than*
6. *commercial products"; and*
7. *(v) in subsection (e)-*
8. *(I) in paragraph (1), by inserting*

9 "103a, 104," after "sections 102, 103,";

1. *(II) in paragraph (2)(A), by striking*
2. *"commercial items" and inserting "com­*
3. *mercial products or commercial services";*
4. *(III) in the first sentence of paragraph*
5. *(2)(B), by striking "commercial end items"*
6. *and inserting "end items that are commer­*
7. *cial products";*
8. *(IV) in paragraphs (2)(B)(i), (2)(C)(i)*
9. *and (2)(D), by striking "commercial items*
10. *or commercial components" and inserting*
11. *"commercial products, commercial compo­*
12. *nents, or commercial services";*
13. *(V) in paragraph (2)(C), in the matter*
14. *preceding clause (i), by striking "commer­*
15. *cial items" and inserting "commercial*
16. *products or commercial services";*
    1. *(VI) in paragraph (4)(A), by striking*
    2. *“commercial items" and inserting “com-*
    3. *mercial products or commercial services";*
    4. *(VII) in paragraph (4)(C)(i), by strik-*
    5. *ing “commercial item, as described in sec-*
    6. *tion 103(5)" and inserting “commercial*
    7. *product, as described in section 103a(1 )";*
    8. *and*
    9. *(VIII) in paragraph (5), by striking*
    10. *“items" each place it appears and inserting*
    11. *“products".*
    12. *(B)(i)**The heading of such section is amended to*
    13. *read as follows:*
    14. ***"§ 3307. Preference for commercial products and com-***
    15. ***mercial services".***
    16. *(ii) The table of sections at the beginning of*
    17. *chapter 33 is amended by striking the item relating*
    18. *to section 3307 and inserting the following new item:*

*"3307. Preference for commercial products and commercial services.".*

|  |  |  |
| --- | --- | --- |
| **19** | *(11)* | *Section 3501 is amended­* |
| 20 |  | *(A) in subsection (a)-* |
| 21 |  | *(i) by striking paragraph (1);* |
| 22 |  | *(ii) by redesignating paragraphs (2)* |
| 23 |  | *and (3) as paragraphs (1) and (2), respec­* |
| 24 |  | *tively; and* |

* + 1. *(iii) in paragraph (2) (as so redesig-*
    2. *nated), by striking "commercial items" and*
    3. *inserting "commercial products or commer-*
    4. *cial services"; and*
    5. *(B)**in subsection (b)-*
    6. *(i) by striking "ITEM" in the heading*
    7. *for paragraph (1); and*
    8. *(ii) by striking "commercial items" in*
    9. *paragraphs (1) and (2)(A) and inserting*
    10. *"commercial services".*
    11. *(12) Section 3503 is amended-*
    12. *(A) in subsection (a)(2) , by striking "a*
    13. *commercial item" and inserting "a commercial*
    14. *product or a commercial service"; and*
    15. *(B)**in subsection (b)-*
    16. *(i) by striking "COMMERCIAL ITEMS"*
    17. *in the subsection heading and inserting*
    18. *"COMMERCIAL PRODUCTS OR COMMERCIAL*
    19. *SERVICES"; and*
    20. *(ii) by striking “a commercial item"*
    21. *each place it appears and inserting “a com-*
    22. *mercial product or a commercial service".*
    23. *(13) Section 3505(b) is amended by striking*
    24. *"commercial items" each place it appears and insert-*
    25. *ing “commercial products or commercial services".*
        1. *(14) Section 3509(b) is amended by striking*
        2. *"commercial items" and inserting "commercial prod-*
        3. *ucts or commercial services".*
        4. *(15) Section 3704(c)(5) is amended by striking*
        5. *"commercial item" and inserting "commercial prod-*
        6. *uct".*
        7. *(16) Section 3901(b)(3) is amended by striking*
        8. *"commercial items" and inserting "commercial prod-*
        9. *ucts or commercial services".*
        10. *(17) Section 4301(2) is amended by striking*
        11. *"commercial items" and inserting "commercial prod-*
        12. *ucts or commercial services".*
        13. *(18)(A) Section 4505 is amended by striking*
        14. *"commercial items" in subsections (a) and (c) and*
        15. *inserting "commercial products or commercial serv-*
        16. *ices".*
        17. *(B)(i)**The heading of such section is amended to*
        18. *read as follows:*
        19. ***"§ 4505. Payments for commercial products and com-***
        20. ***mercial services".***
        21. *(ii) The table of sections at the beginning of*
        22. *chapter 45 is amended by striking the item relating*
        23. *to section 4505 and inserting the following new item:*

*" 4505. Payments for commercial products and commercial services." .*

* + - * 1. *(19) Section 4704(d) is amended by striking*
        2. *"commercial items" both places it appears and insert-*
        3. *ing "commercial products or commercial services".*

**4** (20) Sections 8102(a)(1), 8703(d)(2), and

1. *8704(b) are amended by striking "commercial items*
2. *(as defined in section 103 of this title)" and inserting*
3. *"commercial products or commercial services (as de-*
4. *fined in sections 103 and 103a, respective l y, of this*
5. *title)".*
6. *(c) AMENDMENTS TO CHAPTER 137 OF TITLE 10,*
7. *UNITED STATES CODE .- Chapter 137 of title 10, United*
8. *States Code, is amended as follows:*
9. *(1) Section 2302(3) is amended-*
10. *(A) by redesignating subparagraphs (J),*
11. *(K), and (L) as subparagraphs (K), (L), and*
12. *(M); and*
13. *(B) by striking subparagraph (I) and in­*
14. *serting the following new subparagraphs (I) and*

19 *(J):*

1. *"(I) The term 'commercial product'.*
2. *"(J)**The term 'commercial service'.".*
3. *(2) Section 2304 is amended-*
4. *(A) in subsections (c)(5) and (f)(2)(B), by*
5. *striking "brand-name commercial item" and in­*
6. *serting "brand-name commercial product";*
   1. *(B) in subsection (g)(1)(B), by striking*
   2. *"commercial items" and inserting "commercial*
   3. *products or commercial services"; and*
   4. *(C) in subsection (i)(3), by striking "com-*
   5. *mercial items" and inserting “commercial prod-*
   6. *ucts".*
   7. *(3) Section 2305* is *amended-*
   8. *(A) in subsection (a)(2), by striking "com-*
   9. *mercial items" and inserting "commercial prod-*

**IO** ucts or commercial services"; and

1. *(B) in subsection (b)(5)(B)(v), by striking*
2. *"commercial item" and inserting "commercial*
3. *product".*
4. *(4) Section 2306(b)* is *amended by striking*
5. *"commercial items" and inserting "commercial prod-*
6. *ucts or commercial services".*
7. *(5) Section 2306a* is *amended-*
8. *(A) in subsection (b)-*
9. *(i) in paragraph (1)(B), by striking "a*
10. *commercial item" and inserting "a com-*
11. *mercial product or a commercial service";*
12. *(ii) in paragraph (2)-*
13. ***(I)*** *by striking "COMMERCIAL*
14. *ITEMS" in the paragraph heading and*
15. *inserting "COMMERCIAL PRODUCTS OR*
16. *COMMERCIAL SERVICES"; and*
17. *(II) by striking "commercial*
18. *item" each place it appears and insert­*
19. *ing "commercial product or commer­*
20. *cial services'';*
21. *(iii) in paragraph (3)-*
22. *(I) by striking "COMMERCIAL*
23. *ITEMS" in the paragraph heading and*
24. *inserting "COMMERCIAL PRODUCTS";*
25. *and*
26. *(II) by striking "item" each place*
27. *it appears and inserting "product";*
28. *and*
29. *(iv) in paragraph (4)-*
30. *(I) by striking "COMMERCIAL*
31. *ITEM" in the paragraph heading and*
32. *inserting "COMMERCIAL PRODUCT OR*
33. *COMMERCIAL SERVICE";*
34. *(II) by striking "commercial*
35. *item" in subparagraph (A) after "ap­*
36. *plying the";*
37. *(III) by striking "prior commer­*
38. *cial item determination" in subpara-*



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1. *mercial product or commercial service*
2. *determination'';*
3. *(IV) by striking "of such item" in*
4. *subparagraph (A) and inserting "of*
5. *such product or service";*
6. *(V) by striking "of an item pre­*
7. *viously determined to be a commercial*
8. *item" in subparagraph (B) and insert­*
9. *ing "of a product or service previously*
10. *determined to be a commercial product*
11. *or a commercial service";*
12. *(VI) by striking "of a commercial*
13. *item,*" *in subparagraph (B) and in­*
14. *serting "of a commercial product or a*
15. *commercial service, as the case may*
16. *be,* ";
17. *(VII) by striking "the commercial*
18. *item determination" in subparagraph*
19. *(B) and inserting "the commercial*
20. *product or commercial service deter­*
21. *mination"; and*
22. *(VIII) by striking "commercial*
23. *item" in subparagraph (C); and*
24. *(v) in paragraph (5), by striking*
25. *“commercial items" and inserting “com­*
26. *mercial products or commercial services";*
27. *(B) in subsection (d)(2), by striking “com-*
28. *mercial items" each place it appears and insert­*
29. *ing “commercial products or commercial serv­*
30. *ices"; and*
31. *(C) in subsection (h)-*
32. *(i) in paragraph (2), by striking “com­*
33. *mercial items" and inserting “commercial*
34. *products or commercial services"; and*
35. *(ii) by striking paragraph (3).*
36. *(6) Section 2307(1) is amended-*
37. *(A) by striking “COMMERCIAL ITEMS" in*
38. *the subsection heading and inserting “COMMER­*
39. *CIAL PRODUCTS AND COMMERCIAL SERVICES";*
40. *and*
41. *(B) by striking “commercial items" in*
42. *paragraphs (1) and (2) and inserting “commer­*
43. *cial products and commercial services".*
44. *(7) Section 2320(b) is amended-*
45. *(A) in paragraph (1), by striking “a com­*
46. *mercial item, the item" and inserting “a com­*
47. *mercial product, the product"; and*
    1. *(B) in paragraph (9)(A), by striking "any*
    2. *noncommercial item or process" and inserting*
    3. *"any noncommercial product or process".*
    4. *(8) Section 2321(1)* is *amended-*
    5. *(A) in paragraph (1)-*
    6. *(i) by striking "commercial items" and*
    7. *inserting "commercial products"; and*
    8. *(ii) by striking "the item" both places*
    9. *it appears and inserting "commercial prod-*
    10. *ucts"; and*
    11. *(B) in paragraph (2)(A), in clauses (i) and*
    12. *(ii), by striking "commercial item" and insert-*
    13. *ing "commercial product".*
    14. *(9) Section 2324(l)(1)(A)* is *amended by striking*
    15. *"commercial items" and inserting "commercial prod-*
    16. *ucts or commercial services".*
    17. *(10) Section 2335(b)* is *amended by striking*
    18. *"commercial items" and inserting "commercial prod-*
    19. *ucts and commercial services".*
    20. *(d) AMENDMENTS TO CHAPTER 140 OF TITLE 10,*
    21. *UNITED STATES CODE.-Chapter 140 of title 10, United*
    22. *States Code,* is *amended as follows:*
    23. *(1) Section 2375* is *amended-*
        1. *(A) in subsection (a), by striking "commer­*
        2. *cial item" in paragraphs (1) and (2) and insert­*
        3. *ing "commercial product or commercial service";*
        4. *(B) in subsections (b) and (c)-*
        5. *(i) by striking "COMMERCIAL ITEMS"*
        6. *in the subsection heading and inserting*
        7. *"COMMERCIAL PRODUCTS AND COMMER­*
        8. *CIAL SERVICES"; and*
        9. *(ii) by striking "commercial items"*
        10. *each place it appears and inserting "com­*
        11. *mercial products and commercial services";*
        12. *and*
        13. *(C) in subsection (e)(3), by striking "com­*
        14. *mercial items" and inserting “commercial prod­*
        15. *ucts and commercial services".*
        16. *(2) Section 2376(1)* is *amended-*
        17. *(A) by striking "terms (commercial item',"*
        18. *and inserting "terms (commercial product', (com­*
        19. *mercial service',"; and*
        20. *(B) by striking "chapter 1 of title 41" and*
        21. *inserting "sections 103, 103a, 110, 105, and 102,*
        22. *respectively, of title 41*".
        23. *(3) Section 2377* is *amended­*
        24. *(A) in subsection (a)-*
            1. *(i) in paragraph (2), by striking “com-*
            2. *mercial items or, to the extent that commer­*
            3. *cial items suitable to meet the agency's*
            4. *needs are not available, nondevelopmental*
            5. *items other than commercial items" and in­*
            6. *serting “commercial services or commercial*
            7. *products or, to the extent that commercial*
            8. *products suitable to meet the agency's needs*
            9. *are not available, nondevelopmental items*
            10. *other than commercial products"; and*
            11. *(ii) in paragraph (3), by striking*
            12. *“commercial items and nondevelopmental*
            13. *items other than commercial items" and in­*
            14. *serting “commercial services, commercial*
            15. *products, and nondevelopmental items other*
            16. *than commercial products";*
            17. ***(B)*** *in subsection (b)-*
            18. *(i) in paragraphs (1) and (2), by strik­*
            19. *ing “commercial items or nondevelopmental*
            20. *items other than commercial items" and in­*
            21. *serting “commercial services, commercial*
            22. *products, or nondevelopmental items other*
            23. *than commercial products";*
            24. *(ii) in paragraphs (3) and (4), by*
            25. *striking “commercial items or, to the extent*

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1. *that commercial items suitable to meet the*
2. *agency's needs are not available, non­*
3. *developmental items other than commercial*
4. *items" and inserting "commercial services*
5. *or commercial products or, to the extent*
6. *that commercial products suitable to meet*
7. *the agency's needs are not available, non­*
8. *developmental items other than commercial*
9. *products"; and*
10. *(iii) in paragraphs (5) and (6), by*
11. *striking "commercial items" and inserting*
12. *"commercial products and commercial serv­*
13. *ices"·*

## '

1. *(C) in subsection (c)-*
2. *(i) in paragraph (2), by striking "com­*
3. *mercial items or, to the extent that commer­*
4. *cial items suitable to meet the agency's*
5. *needs are not available, nondevelopmental*
6. *items other than commercial items" and in­*
7. *serting "commercial services or commercial*
8. *products or, to the extent that commercial*
9. *products suitable to meet the agency's needs*
10. *are not available, nondevelopmental items*
11. *other than commercial products"; and*
    1. *(ii) in paragraph (4), by striking*
    2. *"items other than commercial items" and*
    3. *inserting "products other than commercial*
    4. *products or services other than commercial*
    5. *services";*
    6. ***(D)*** *in subsection (d)-*
    7. *(i) in the first sentence, by striking*
    8. *"commercial items" and inserting "com­*
    9. *mercial products or commercial services";*
    10. *(ii) in paragraph (1), by striking*
    11. *"items" and inserting "products or serv­*
    12. *ices"; and*

## 

* 1. *(iii) in paragraph (2), by striking*
  2. *"items" and inserting "products or serv­*
  3. *ices"; and*

|  |  |  |  |
| --- | --- | --- | --- |
| **16** |  | *(E) in subsection (e)(1), by striking "com­* | |
| **17** | *mercial items" and inserting “commercial prod­* | | |
| **18** | *ucts and commercial services".* | | |
| **19** | *(4)* | *Section 2379 is amended-* | |
| **20** | *(A) by striking "COMMERCIAL ITEMS" in* | |  | |
| **21** | *the headings of subsections (b) and (c) and in­* | |  | |
| **22** | *serting "COMMERCIAL PRODUCTS" ;* | |  | |
| **23** | *(B) in subsections (a)(1)(A), (b)(2), and* | |  | |
| **24** | *(c)(1)(B), by striking ", as defined in section 103* | |  | |
| **25** | *of title 41*"; *and* | |  | |

1. *(C)**by striking “commercial item" and*
2. *“commercial items" each place they appear and*
3. *inserting “commercial product" and “commer­*
4. *cial products", respectively.*
5. *(5) Section 2380 is amended-*
6. *(A) in subsection (a), by striking a commer­*
7. *cial item determinations" in paragraphs (1) and*
8. *(2) and inserting “commercial product and com­*
9. *mercial service determinations"; and*
10. *(B)**in subsection (b) (as added by section*
11. *848 of the National Defense Authorization Act*
12. *for Fiscal Year 2018)-*
13. *(i) by striking “ITEM" in the sub­*
14. *section heading;*
15. *(ii) by striking “an item" each place it*
16. *appears and inserting “a product or serv-*
17. *ice";*
18. *(iii) by striking “item" after "using*
19. *commercial" each place it appears;*
20. *(iv) by striking “prior commercial*
21. *item determination" and inserting “prior*
22. *commercial product or service determina­*
23. *tion"·*

## '

1. *(v) by striking “such item" and insert­*
2. *ing “such product or service"; and*
   1. *(vi) by striking “the item" both places*
   2. *it appears and inserting “the product or*
   3. *service”.*
   4. *(6) Section 2380a is amended­*
   5. *(A) in subsection (a )-*
   6. *(i) by striking “items and" and insert ­*
   7. *ing “products and"; and*
   8. *(ii) by striking “ commercial items"*
   9. *and inserting “commercial products and*
   10. *commercial services, respectively,*"; *and*
   11. *(B) in subsection (b), by striking “ commer­*
   12. *cial items" and inserting “commercial services".*
   13. *(7) Section 238GB is amended by striking “com ­*
   14. *mercial item" and inserting “commercial product" .*
   15. *(8) AMENDMENTS TO HEADINGS, ETC.-*
   16. *(A) The heading of such chapter is amended*
   17. *to read as follows :*

# "CHAPTER 140-PROCUREMENT OF COM-

* 1. ***MERCIAL PRODUCTS AND COMMER-***
  2. ***CIAL SERVICES".***
  3. *(B) The heading of section 2375 is amended*
  4. *to read as follows:*
     1. *"§* ***2375. Relationship of other provisions of law to pro-***
     2. ***curement of commercial products and***
     3. ***commercial services".***
     4. *(C) The heading of section 2377 is amended*
     5. *to read as follows:*
     6. *"§* ***2377. Preference for commercial products and com-***
     7. ***mercial services".***
     8. *(D) The heading of section 2379 is amended*
     9. *to read as follows:*
     10. *"§* ***2379. Procurement of a major weapon system as a***
     11. ***commercial product: requirement for***
     12. ***prior determination by Secretary of De-***
     13. ***fense and notification to Congress" .***
     14. *(E) The heading of section 2380 is amended*
     15. *to read as follows:*
     16. *"§* ***2380. Commercial product and commercial service***
     17. ***determinations by Department of De-***

l 8 ***fense".***

1. *(F) The heading of section 2380a is amend ­*
2. *ed to read as follows :*
3. *"§* ***2380a. Treatment of certain products and services***
4. ***as commercial products and commercial***
5. ***services".***
6. *(G) Section 2380B is redesignated as sec­*
7. *tion 2380b and the heading of that section is*
8. *amended to read as follows:*
   1. ***"§ 2380b. Treatment of commingled items purchased***
   2. ***by contractors as commercial products".***
   3. ***(H)*** *The table of sections at the beginning of*
   4. *such chapter is amended to read as follows:*

*"2375. Relationship of other provision s of law to procurement of commercial prod- ucts and commercial services.*

*"2376. Definitions.*

*"2377. Preference for commercial products and commercial services.*

*"2379. Procurement of a major weapon system as a commercial product: requirement for prior determination by Secretary of Defense and notification to Congress.*

*"2380. Commercial product and commercial service determinations by Department of Defense.*

*"2380a. Treatment of certain product s and services as commercial products and commercial services.*

*"2380b. Treatment of commingled items purchased by contractors as commercial*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | | *products." .* |  | |
| **5** | *(e)* | *OTHER AMENDMENTS TO TITLE 10, U NITED* | | |
| **6** | *STATES* | *CODE.-Title 10, United States Code, is further* | | |
| 7 | *amended* | *as follows:* | | |
| **8**  **9** | *serv* | *(1) Section 2226(b) is amended by striking “for*  *ices" and all that follows through “deliverable* | | |
| **10** | *items" and inserting* | | *“for services or* | *deliverable* |
| **11** | *items".* | |  |  |

1. *(2) Section 2384(b)(2) is amended by striking*
2. *“commercial items" and inserting ..commercial prod-*
3. *ucts" .*
4. *(3) Section 2393(d) is amended by striking*
5. *“commercial items (as defined in section 103 of title*
6. *41)" and inserting “commercial products or commer-*
7. *cial services (as defined in sections 103 and 103a, re-*

**l 9** spectively, of title 41)" .

* 1. *(4) Section 2402(d) is amended-*
  2. *(A) in paragraph (1)) by striking “commer­*
  3. *cial items" both places it appears and inserting*
  4. *“commercial products or commercial services";*
  5. *and*
  6. *(B)**in paragraph (2)) by striking “the*
  7. *term" and all that follows and inserting “the*
  8. *terms 'commercial product' and 'commercial*
  9. *service) have the meanings given those terms in*
  10. *sections 103 and 103a) respectively) of title 41.*".
  11. *(5) Section 2408(a)(4)(B) is amended by strik-*
  12. *ing “commercial items (as defined in section 103 of*
  13. *title 41)" and inserting “commercial products or*
  14. *commercial services (as defined in sections 103 and*
  15. *103a) respectively) of title 41)".*
  16. *(6) Section 2410b(c) is amended by striking*
  17. *“commercial items" and inserting “commercial prod-*
  18. *ucts".*
  19. *(7) Section 2410g(d)(1) is amended by striking*
  20. *“Commercial items (as defined in section 103 of title*
  21. *41)" and inserting “Commercial products or commer-*
  22. *cial services (as defined in sections 103 and 103a, re-*
  23. *spectively, of title 41)".*
  24. *(8) Section 2447a is amended-*
      1. *(A) in subsection (a)(2), by striking "com-*
      2. *mercial items and technologies" and inserting*
      3. *"commercial products and technologies"; and*
      4. *(B) in subsection (c), by inserting before the*
      5. *period at the end the following: “and the term*
      6. *(commercial product' has the meaning given that*
      7. *term in section 103 of title 41*".
      8. *(9) Section 2451(d) is amended by striking*
      9. *“commercial items" and inserting “commercial prod-*

**IO** ucts (as defined in section 103 of title 41)".

1. *(10) Section 2464 is amended-*
2. *(A) in subsection (a)-*
3. *(i) in paragraph (3), by striking "com-*
4. *mercial items" and inserting “commercial*
5. *products or commercial services"; and*
6. *(ii) in paragraph (5), by striking “The*
7. *commercial items covered by paragraph (3)*
8. *are commercial items" and inserting “The*
9. *commercial products or commercial services*
10. *covered by paragraph (3) are commercial*
11. *products (as defined in section 103 of title*
12. *41) or commercial services (as defined in*
13. *section 103a of such title)" ; and*
14. *(B) in subsection (c)-*
    1. *(i) by striking "COMMERCIAL ITEMS"*
    2. *in the subsection heading and inserting*
    3. *"COMMERCIAL PRODUCTS OR COMMERCIAL*
    4. *SERVICES"; and*
    5. *(ii) by striking "commercial item" and*
    6. *inserting "commercial product or commer­*
    7. *cial service".*
    8. *(11) Section 2484(!) is amended-*
    9. *(A) by striking "COMMERCIAL ITEMS" in*
    10. *the subsection heading and inserting "COMMER­*
    11. *CIAL PRODUCTS"; and*
    12. *(B) by striking "commercial item" and in­*
    13. *serting "commercial product".*
    14. *(12) The items relating to chapter 140 in the ta­*
    15. *bles of chapters at the beginning of subtitle A, and at*
    16. *the beginning of part IV of subtitle A, are amended*
    17. *to read as follows:*

***"140. Procurement of Commercial Products and Commer-***

***cial Services*** ................................................................ ***2377".***

* 1. *(f) AMENDMEN1'S TO PROVISIONS OF NATIONAL DE-*
  2. *PENSE AUTHORIZATION ACTS.-*
  3. *(1) Section 806(b) of the National Defense Au-*
  4. *thorization Act for Fiscal Years 1992 and 1993 (Pub-*
  5. *lie Law 102-190; 10 U.S.C. 2302 note) is amended*
  6. *by striking "commercial items (as defined in section*
  7. *103 of title 41, United States Code)" and inserting*

1. *"commercial products or commercial services (as de-*
2. *fined in sections 103 and 103a, respectively, of title*
3. *41, United States Code)".*
4. *(2) Section 821(e) of the Floyd D.**Spence Na-*
5. *tional Defense Authorization Act for Fiscal Year 2001*
6. *(as enacted into law by Public Law 106-398; 10*
7. *U.S.C. 2302 note)* is *amended-*
8. *(A) by striking paragraph (2); and*
9. *(B) by redesignating paragraph (3) as*
10. *paragraph (2).*
11. *(3) Section 821(b) of the National Defense Au-*
12. *thorization Act for Fiscal Year 2008 (Public Law*

**13** *110-181; 10 U.S.C. 2304 note)* is *amended-*

1. *(A) in paragraph (1), by striking "a com-*
2. *mercial item" and inserting "a commercial*
3. *product or a commercial service";*
4. *(B) in paragraph (2), by striking "commer-*
5. *cial item" and inserting "commercial product";*
6. *and*
7. *(C)**by adding at the end the following new*
8. *paragraph:*
9. *"(3) The term (commercial service' has the mean-*
10. *ing provided by section 103a of title 41, United*
11. *States Code.".*
    1. *(4) Section 817(d) of the Bob Stump National*
    2. *Defense Authorization Act for Fiscal Year 2003 (Pub-*
    3. *lie Law 107-314; 10 U.S.C. 2306a note) is amend-*
    4. *ed-*
    5. *(A) in paragraph (1), by striking "commer-*
    6. *cial item exceptions" and inserting "commercial*
    7. *product-commercial service exceptions"; and*
    8. *(B) in paragraph (2), by striking "commer-*
    9. *cial item exception" and inserting "commercial*
    10. *product-commercial service exception";*
    11. *(5) Section 852(b)(2)(A)(ii) of the National De-*
    12. *fense Authorization Act for Fiscal Year 2007 (Public*
    13. *Law 109-364; 10 U.S.C. 2324 note) is amended by*
    14. *striking "a commercial item, as defined in section*
    15. *103 of title 41" and inserting "a commercial product*
    16. *or a commercial service, as defined in sections 103*
    17. *and 103a, respectively) of title 41*".
    18. *(6) Section 805 of the National Defense Author-*
    19. *ization Act for Fiscal Year 2008 (Public Law 110-*
    20. *181; 10 U.S.C. 2330 note) is amended-*
    21. *(A) in subsection (b)) by striking "commer-*
    22. *cial items" in paragraphs (1) and (2)(A) and*
    23. *inserting "commercial services"; and*
    24. *(B)**in subsection (c)-*
        1. *(i) by striking "ITEM" in the headings*
        2. *for paragraphs (1) and (2) and inserting*
        3. *"SERVICES";*
        4. *(ii) in the matter in paragraph (1)*
        5. *preceding subparagraph (A), by striking*
        6. *"commercial item" and inserting "commer­*
        7. *cial service";*
        8. *(iii) in paragraph (1)(A), by striking*
        9. *"a commercial item, as described in section*
        10. *103(5) of title 41" and inserting "a service,*
        11. *as described in section 103a(1) of title 41*";
        12. *(iv) in paragraph (1)(C)(i), by strik­*
        13. *ing "section 103(6) of title 41" and insert­*
        14. *ing "section 103a(2) of title 41*"; *and*
        15. *(v) in paragraph (2), by striking*
        16. *"item" and inserting "service".*
        17. *(7) Section 849(d ) of the National Defense Au­*
        18. *thorization Act for Fiscal Year 2017 (Public Law*

**19** 114-328; 10 U.S.C. 2377 note) is amended-

1. *(A) by striking "commercial items" in*
2. *paragraph (1) and inserting “commercial prod-*
3. *ucts"·*

## '

1. *(B) by striking " commercial i tem" in para­*
2. *graph (3)(B)(i) and inserting “commercial prod-*
3. *uct"; and*

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* 1. *(C) by adding at the end the following new*
  2. *paragraph:*
  3. *"(5) DEFINITION.- In this subsection, the term*
  4. *'commercial product' has the meaning given that term*
  5. *in section 103 of title 41.*".
  6. *(8) Section 856(a)(1) of the National Defense*
  7. *Authorization Act for Fiscal Year 2016 (Public Law*
  8. *114- 92; 10 U.S.C. 2377 note) is amended by striking*
  9. *"commercial items or services" and inserting "a com ­*
  10. *mercial product or a commercial service, as defined*
  11. *in sections 103 and 103a, respectively, of title 41,*".
  12. *(9) Section 879 of the National Defense Author­*
  13. *ization Act for Fiscal Year 2017 (Public Law 114-*
  14. *328; 10 U.S.C. 2302 note) is amended-*
  15. *(A) in the section heading, by striking*
  16. *"****COMMERCIAL ITEMS****" and inserting "****COM­***
  17. ***MERCIAL PRODUCT S****";*
  18. *(B) in subsection (a), by striking "commer­*
  19. *cial items" and inserting "commercial prod ­*
  20. *ucts" ·*

'

* 1. *(C) in subsection (c)(3) -*
  2. *(i) by striking "COMMERCIAL ITEMS"*
  3. *in the paragraph heading and inserting*
  4. *"COMMERCIAL PRODUCTS OR COMMERCIAL*
  5. *SERVICES* "; *and*
     1. *(ii) by striking “commercial items"*
     2. *and inserting “commercial products or com-*
     3. *mercial services"; and*
     4. *(D) in subsection (e)(2), by striking “item"*
     5. *in subparagraphs (A) and (B) and inserting*
     6. *“products".*
     7. *(10) Section 880 of the National Defense Author-*
     8. *ization Act for Fiscal Year 2017 (Public Law 114-*
     9. *328; 41 U.S.C. 3301 note) is amended by striking*
     10. *“commercial items" in subsection (a)(1) and insert-*
     11. *ing "commercial products".*
     12. *(g) CONFORMING AMENDMENTS TO OTHER STAT-*
     13. *UTES.-*
     14. *(1) Section 604(g) of the American Recovery and*
     15. *Reinvestment Act of 2009 (6 U.S.C. 453b(g)) is*
     16. *amended-*
     17. *(A) by striking “COMMERCIAL ITEMS" in*
     18. *the subsection heading and inserting “COMMER-*
     19. *CIAL PRODUCTS";*
     20. *(B)**by striking “procurement of commer-*
     21. *cial" in the first sentence and all that follows*
     22. *through “items listed" and inserting “procure-*
     23. *ment of commercial products notwithstanding*
     24. *section 1906 of title 41, United States Code, with*
     25. *the exception of commercial products listed"; and*

|  |  |  |
| --- | --- | --- |
| **1** |  | ***(C)*** *in the second sentence-* |
| **2** |  | *(i) by inserting “product" after “com-* |
| **3** |  | *mercial"; and* |
| **4** |  | *(ii) by striking “in the" and all that* |
| **5** |  | *follows and inserting “in section 103 of title* |
| **6** |  | *41, United States Code.".* |
| **7** |  | *(2) Section 142 of the Higher Education Act of* |
| 8 | *1965* | *(20 U.S.C. 1018a) is amended-* |
| 9 |  | *(A) in subsection (e)-* |
| **10** |  | *(i) by striking “COMMERCIAL ITEMS"* |
| **11** |  | *in the subsection heading and inserting* |
| **12** |  | *“COMMERCIAL PRODUCTS AND COMMER-* |
| **13** |  | *CIAL SERVICES";* |
| **14** |  | *(ii) by striking “that commercial* |

1. *items" and inserting “that commercial*
2. *products or commercial services";*
3. *(iii) by striking “special rules for com­*
4. *mercial items" and inserting “special rules*
5. *for commercial products and commercial*
6. *services";*
7. *(iv) by striking “without regard to-"*
8. *and all that follows through “dollar limita­*
9. *tion" and inserting “without regard to any*
10. *dollar limitation";*
    1. *(v) by striking* "; *and" and inserting*
    2. *a period; and*
    3. *(vi) by striking paragraph (2);*
    4. *(B) in subsection (f)-*
    5. *(i) by striking "ITEMS" in the sub­*
    6. *section heading and inserting "PRODUCTS*
    7. *AND*

8

*SERVICES* ;

*(ii) by striking "ITEMS" in the head­*

1. *ing of paragraph (2) and inserting "PROD­*
2. *UCTS AND SERVICES"; and*
3. *(iii) by striking "a commercial item"*
4. *in paragraph (2) and inserting "a commer­*
5. *cial product or a commercial service";*
6. *(C) in subsection (h)-*
7. *(i) by striking "ITEMS" in the sub­*
8. *section heading and inserting "SERVICES";*
9. *and*
10. *(ii) by striking "commercial items" in*
11. *paragraph (1) and inserting "commercial*
12. *services"; and*
13. *(D) in subsection (l)-*
14. *(i) by redesignating paragraphs (2),*

23 (3), (4), and (5) as paragraphs (3), (4), (5),

24 and (6), respectively;

1. *(ii) by striking paragraph (1) and in-*
2. *serting the following new paragraphs:*
3. *"(1) COMMERCIAL PRODUCT.-The term 'com-*
4. *mercial product' has the meaning given the term in*
5. *section 103 of title 41, United States Code.*
6. *"(2) COMMERCIAL SERVICE.-The term 'commer-*
7. *cial service' has the meaning given the term in section*
8. *103a of title 41, United States Code.";*
9. *(iii) in paragraph (3), as so redesig-*
10. *nated, by striking "in section" and all that*
11. *follows and inserting "in section 152 of title*
12. *41, United States Code.";*
13. *(iv) in paragraph (5), as so redesig-*
14. *nated -*
15. ***(I)*** *by striking "COMMERCIAL*
16. *ITEMS" in the paragraph heading and*
17. *inserting "COMMERCIAL PRODUCTS*
18. *AND COMMERCIAL SERVICES";*
19. *(II) by striking "commercial*
20. *items" and inserting "commercial*
21. *products and commercial services";*
22. *and*
23. *(III) by striking "pursuant to"*
24. *and all that follows and inserting*
25. *"pursuant to sections 1901 and*
26. *3305(a) of title 41, United States*
27. *Code."; and*
28. *(v) in paragraph (6), as so redesig-*
29. *nated, by striking “pursuant to" and all*
30. *that follows and inserting “pursuant to sec-*

**6** tions 1901(a)(1) and 3305(a)(1) of title 41,

**7** United States Code.".

**8** (3) Section 3901(a)(4)(A)(ii)(II) of title 31,

1. *United States Code,* is *amended by striking “commer-*
2. *cial item" and inserting “commercial product".*
3. *(4) Section 2455(c)(1) of the Federal Acquisition*
4. *Streamlining Act of 1994 (31 U.S.C. 6101 note)* is
5. *amended by striking “commercial items" and insert-*
6. *ing “commercial products".*
7. *(5) Section 508(1) of the Federal Water Pollution*
8. *Control Act (33 U.S.C. 1368(1))* is *amended-*
9. *(A) in paragraph (1), by striking “commer-*
10. *cial items" and inserting “commercial products*
11. *or commercial services"; and*
12. *(B) in paragraph (2 ), by striking “the*
13. *term" and all that follows and inserting “the*
14. *terms (commercial product' and (commercial*
15. *service' have the meanings given those terms in*
16. *sections 103 and 103a, respectively, of title 41,*
17. *United States Code.".*
18. *(6) Section 3707 of title 40, United States Code,*
19. is *amended by striking "a commercial item (as de-*
20. *fined in section 103 of title 41)" and inserting "a*
21. *commercial product (as defined in section 103 of title*
22. *41) or a commercial service (as defined in section*
23. *103a of title 41)".*
24. *(7) Subtitle III**of title 40, United States Code,*
25. is *amended-*
26. *(A) in section 11101(1), by striking "COM-*
27. *MERCIAL ITEM.- The term (commercial item'*
28. *has" and inserting "COMMERCIAL PRODUCT.-*
29. *The term (commercial product' has"; and*
30. *(B)**in section 11314(a)(3), by striking*
31. *“items" each place it appears and inserting*
32. *“products".*
33. *(8) Section 8301(g) of the Federal Acquisition*
34. *Streamlining Act of 1994 (42 U.S.C. 7606 note)* is
35. *amended by striking “commercial items" and insert-*
36. *ing “commercial products or commercial services".*
37. *(9) Section 40118(!) of title 49, United States*
38. *Code,* is *amended-*
39. *(A) in paragraph (1), by striking “commer-*
40. *cial items" and inserting “commercial prod-*
41. *ucts"; and*
    1. *(B) in paragraph (2), by striking “commer-*
    2. *cial item" and inserting “commercial product".*
    3. *(10) Chapter 501 of title 51, United States Code,*
    4. *is amended-*
    5. *(A) in section 50113(c)-*
    6. *(i) by striking “COMMERCIAL ITEM" in*
    7. *the subsection heading and inserting “COM­*
    8. *MERCIAL PRODUCT OR COMMERCIAL SERV-*
    9. *ICE*"*; and*
    10. *(ii) by striking “commercial item" in*
    11. *the second sentence and inserting “commer­*
    12. *cial product or commercial service"; and*
    13. *(B) in section 50115(b)-*
    14. *(i) by striking “COMMERCIAL ITEM" in*
    15. *the subsection heading and inserting “COM­*
    16. *MERCIAL PRODUCT OR COMMERCIAL SERV-*
    17. *ICE"; and*

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* 1. *(ii) by striking “commercial item" in*
  2. *the second sentence and inserting “commer­*
  3. *cial product or commercial service"; and*
  4. *(C) in section 50132(a)-*
  5. *(i) by striking “COMMERCIAL ITEM" in*
  6. *the subsection heading and inserting “COM­*
  7. *MERCIAL SERVICE"; and*

#### (ii) by striking "commercial item" in

* + 1. *the second sentence and inserting "commer-*
    2. *cial service".*
    3. *(h) SAVINGS PROVISION.-Any provision of law that*
    4. *on the day before the effective date of this section is on a*
    5. *list of provisions of law included in the Federal Acquisition*
    6. *Regulation pursuant to section 1907 of title 41, United*
    7. *States Code, shall be deemed as of that effective date to be*
    8. *on a list of provisions of law included in the Federal Acqui-*
    9. *sition Regulation pursuant to section 1906 of such title.*

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