HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
8506	41:48c.	June 25, 1938, ch. 697, §6, 52 Stat. 1196; Pub. L. 92–28, §1, June 23, 1971, 85 Stat. 82; Pub. L. 93–76, July 30, 1973, 87 Stat. 176; Pub. L. 93–358, §1(4), July 25, 1974, 88 Stat. 393.

The reference to the fiscal year ending June 30, 1974 is omitted as obsolete.

CHAPTER 87—KICKBACKS

§ 8701. Definitions

In this chapter:

(1) CONTRACTING AGENCY.—The term "contracting agency", when used with respect to a prime contractor, means a department, agency, or establishment of the Federal Government that enters into a prime contract with a prime contractor.

(2) KICKBACK.—The term "kickback" means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided to a prime contractor, prime contractor employee, subcontractor, or subcontractor employee to improperly obtain or reward favorable treatment in connection with a prime contract or a subcontract relating to a prime contract.

(3) PERSON.—The term "person" means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

(4) PRIME CONTRACT.—The term "prime contract" means a contract or contractual action entered into by the Federal Government to obtain supplies, materials, equipment, or services of any kind.

(5) PRIME CONTRACTOR.—The term "prime contractor" means a person that has entered into a prime contract with the Federal Government.

(6) PRIME CONTRACTOR EMPLOYEE.—The term "prime contractor employee" means an officer, partner, employee, or agent of a prime contractor.

(7) SUBCONTRACT.—The term "subcontract" means a contract or contractual action entered into by a prime contractor or subcontractor to obtain supplies, materials, equipment, or services of any kind under a prime contract.

(8) SUBCONTRACTOR.—The term "subcontractor"—

(A) means a person, other than the prime contractor, that offers to furnish or furnishes supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with the prime contract; and

(B) includes a person that offers to furnish or furnishes general supplies to the prime contractor or a higher tier subcontractor.

(9) SUBCONTRACTOR EMPLOYEE.—The term "subcontractor employee" means an officer, partner, employee, or agent of a subcontractor.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3838.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
8701	41:52.	Mar. 8, 1946, ch. 80, §2, 60 Stat. 37; Pub. L. 86–695, Sept. 2, 1960, 74 Stat. 740; Pub. L. 99–634, §2(a), Nov. 7, 1986, 100 Stat. 3523.

In this section, the text of 41:52(3) is omitted because of the definition of "person" in 1:1.

In paragraph (2), the words "directly or indirectly" are omitted as unnecessary.

SENATE REVISION AMENDMENT

Senate amendment 4726 (111th Cong.) added par. (3) and redesignated former pars. (3) to (8) as (4) to (9), respectively. See 156 Cong. Rec. S8442, Dec. 2, 2010 (daily ed.).

§ 8702. Prohibited conduct

A person may not—

(1) provide, attempt to provide, or offer to provide a kickback;

(2) solicit, accept, or attempt to accept a kickback; or

(3) include the amount of a kickback prohibited by paragraph (1) or (2) in the contract price—

(A) a subcontractor charges a prime contractor or a higher tier subcontractor; or

(B) a prime contractor charges the Federal Government.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3839.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
8702	41:53.	Mar. 8, 1946, ch. 80, §3, 60 Stat. 37; Pub. L. 86–695, Sept. 2, 1960, 74 Stat. 740; Pub. L. 99–634, §2(a), Nov. 7, 1986, 100 Stat. 3524.

In paragraph (3), before subparagraph (A), the words "directly or indirectly" are omitted as unnecessary.

§ 8703. Contractor responsibilities

(a) REQUIREMENTS INCLUDED IN CONTRACTS.—Each contracting agency shall include in each prime contract awarded by the agency a requirement that the prime contractor shall—

(1) have in place and follow reasonable procedures designed to prevent and detect violations of section 8702 of this title in its own operations and direct business relationships; and

(2) cooperate fully with a Federal Government agency investigating a violation of section 8702 of this title.

(b) FULL COOPERATION REQUIRED.—Notwithstanding subsection (d), a prime contractor shall cooperate fully with a Federal Government agency investigating a violation of section 8702 of this title.

(c) REPORTING REQUIREMENT.—

(1) IN GENERAL.—A prime contractor or subcontractor that has reasonable grounds to be-

lieve that a violation of section 8702 of this title may have occurred shall promptly report the possible violation in writing to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General.

(2) SUPPLYING INFORMATION AS FAVORABLE EVIDENCE.—In an administrative or contractual action to suspend or debar a person who is eligible to enter into contracts with the Federal Government, evidence that the person has supplied information to the Federal Government pursuant to paragraph (1) is favorable evidence of the person's responsibility for the purposes of Federal procurement laws and regulations.

(d) INAPPLICABILITY TO CERTAIN PRIME CONTRACTS.—Subsection (a) does not apply to a prime contract—

(1) that is not greater than $100,000; or

(2) for the acquisition of commercial items (as defined in section 103 of this title).

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3839.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
8703(a)	41:57(a), (b).	Mar. 8, 1946, ch. 80, §7, 60 Stat. 37; Pub. L. 86–695, Sept. 2, 1960, 74 Stat. 740; Pub. L. 99–634, §2(a), Nov. 7, 1986, 100 Stat. 3525; Pub. L. 103–355, title IV, §4104(a), title VIII, §8301(c)(1), Oct. 13, 1994, 108 Stat. 3341, 3397; Pub. L. 104–106, div. D, title XLIII, §4321(g), Feb. 10, 1996, 110 Stat. 675.
8703(b)	41:57(e).	
8703(c)	41:57(c).	
8703(d)	41:57(d).	

In subsection (c)(1), the words "Attorney General" are substituted for "Department of Justice" because of 28:503.

§ 8704. Inspection authority

(a) IN GENERAL.—To ascertain whether there has been a violation of section 8702 of this title with respect to a prime contract, the Comptroller General and the inspector general of the contracting agency, or a representative of the contracting agency designated by the head of the agency if the agency does not have an inspector general, shall have access to and may inspect the facilities and audit the books and records, including electronic data or records, of a prime contractor or subcontractor under a prime contract awarded by the agency.

(b) EXCEPTION.—This section does not apply to a prime contract for the acquisition of commercial items (as defined in section 103 of this title).

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3839.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
8704	41:58.	Mar. 8, 1946, ch. 80, §8, 60 Stat. 37; Pub. L. 86–695, Sept. 2, 1960, 74 Stat. 740; Pub. L. 99–634, §2(a), Nov. 7, 1986, 100 Stat. 3525; Pub. L. 103–355, title VIII, §8301(c)(2), Oct. 13, 1994, 108 Stat. 3397.

In subsection (a), the words "Comptroller General" are substituted for "General Accounting Office" because of 31:702.

§ 8705. Administrative offsets

(a) DEFINITION.—In this section, the term "contracting officer" has the meaning given that term in chapter 71 of this title.

(b) OFFSET AUTHORITY.—A contracting officer of a contracting agency may offset the amount of a kickback provided, accepted, or charged in violation of section 8702 of this title against amounts the Federal Government owes the prime contractor under the prime contract to which the kickback relates.

(c) DUTIES OF PRIME CONTRACTOR.—

(1) WITHHOLDING AND PAYING OVER OR RETAINING AMOUNTS.—On direction of a contracting officer of a contracting agency with respect to a prime contract, the prime contractor shall withhold from amounts owed to a subcontractor under a subcontract of the prime contract the amount of a kickback which was or may be offset against the prime contractor under subsection (b). The contracting officer may order that amounts withheld—

(A) be paid over to the contracting agency; or

(B) be retained by the prime contractor if the Federal Government has already offset the amount against the prime contractor.

(2) NOTICE.—The prime contractor shall notify the contracting officer when an amount is withheld and retained under paragraph (1)(B).

(d) OFFSET, DIRECTION, OR ORDER IS CLAIM OF FEDERAL GOVERNMENT.—An offset under subsection (b) or a direction or order of a contracting officer under subsection (c) is a claim by the Federal Government for the purposes of chapter 71 of this title.

(Pub. L. 111–350, §3, Jan. 4, 2011, 124 Stat. 3840.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
8705(a)	41:56(d).	Mar. 8, 1946, ch. 80, §6, 60 Stat. 37; Pub. L. 86–695, Sept. 2, 1960, 74 Stat. 740; Pub. L. 99–634, §2(a), Nov. 7, 1986, 100 Stat. 3524.
8705(b)	41:56(a).	
8705(c)	41:56(b).	
8705(d)	41:56(c).	

§ 8706. Civil actions

(a) AMOUNT.—The Federal Government in a civil action may recover from a person—

(1) that knowingly engages in conduct prohibited by section 8702 of this title a civil penalty equal to—

(A) twice the amount of each kickback involved in the violation; and

(B) not more than $10,000 for each occurrence of prohibited conduct; and

(2) whose employee, subcontractor, or subcontractor employee violates section 8702 of this title by providing, accepting, or charging a kickback a civil penalty equal to the amount of that kickback.

(b) STATUTE OF LIMITATIONS.—A civil action under this section must be brought within 6 years after the later of the date on which—