

110TH CONGRESS
2D SESSION

H. R. 5935

To require certain Federal agencies to use iron and steel produced in the United States in carrying out projects for the construction, alteration, or repair of a public building or public work, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 30, 2008

Mr. VISCLOSKY (for himself, Mr. ENGLISH of Pennsylvania, Ms. KAPTUR, Ms. SUTTON, Mr. BRADY of Pennsylvania, Mr. OBERSTAR, Mr. WILSON of Ohio, Mr. WILSON of South Carolina, Mr. STUPAK, Mr. SOUDER, and Mr. ALTMIRE) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committees on Homeland Security and Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To require certain Federal agencies to use iron and steel produced in the United States in carrying out projects for the construction, alteration, or repair of a public building or public work, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “American Steel First
5 Act of 2008”.

1 **SEC. 2. USE OF IRON AND STEEL PRODUCED IN THE**
2 **UNITED STATES IN THE CONSTRUCTION OF**
3 **PUBLIC WORKS.**

4 (a) IN GENERAL.—Notwithstanding any other provi-
5 sion of law, the head of a covered Federal agency shall
6 not obligate or expend funds appropriated to the agency,
7 or provide financial assistance using funds appropriated
8 to the agency, for a project for the construction, alter-
9 ation, maintenance, or repair of a public building or public
10 work unless all of the iron and steel used in such project
11 is produced in the United States.

12 (b) EXCEPTIONS.—The provisions of subsection (a)
13 shall not apply to a covered Federal agency in any case
14 in which the head of the agency finds—

15 (1) that their application would be inconsistent
16 with the public interest;

17 (2) that iron and steel are not produced in the
18 United States in sufficient and reasonably available
19 quantities and of a satisfactory quality; or

20 (3) that inclusion of iron and steel produced in
21 the United States will increase the cost of the overall
22 project contract by more than 25 percent.

23 (c) WRITTEN JUSTIFICATION FOR WAIVER.—

24 (1) NOTICE AND COMMENT.—If the head of a
25 covered Federal agency determines that it is nec-
26 essary to waive the application of subsection (a)

1 based on a finding under subsection (b), the head of
2 the agency shall, before the waiver becomes effective—
3

4 (A) publish in the Federal Register a detailed written justification as to why the waiver
5 is needed; and
6

7 (B) provide the public with a reasonable
8 period of time for notice and comment.

9 (2) ANNUAL REPORT.—Not later than one year
10 after the date of enactment of this Act, and annually
11 thereafter, the head of a covered Federal agency
12 shall submit to Congress a report on—

13 (A) any waivers granted by the head of the
14 agency under subsection (b) in the preceding
15 year, including justifications for the waivers;
16 and

17 (B) any obligation or expenditure of funds
18 by the head of the agency in the preceding year
19 that did not conform to the requirements of this
20 section due to limitations imposed by a treaty,
21 agreement, or other provision of law.

22 (d) RELATIONSHIP TO STATE REQUIREMENTS.—The
23 head of a covered Federal agency shall not impose any
24 limitation or condition on financial assistance provided
25 using funds appropriated to the agency that restricts any

1 State from imposing more stringent requirements than
2 this section on the use of iron and steel in foreign coun-
3 tries in projects carried out with such assistance or re-
4 stricts any recipient of such assistance from complying
5 with such State imposed requirements.

6 (e) INTENTIONAL VIOLATIONS.—If it has been deter-
7 mined by a court or Federal agency that any person inten-
8 tionally—

9 (1) affixed a label bearing a “Made in Amer-
10 ica” inscription, or any inscription with the same
11 meaning, to any product used in projects to which
12 this section applies, sold in or shipped to the United
13 States that was not made in the United States; or
14 (2) represented that any product used in
15 projects to which this section applies, sold in or
16 shipped to the United States that was not produced
17 in the United States, was produced in the United
18 States;

19 that person shall be ineligible, for a period of 6 years be-
20 ginning on the date of the determination, to receive any
21 contract or subcontract made with funds authorized to be
22 appropriated to the agency pursuant to the debarment,
23 suspension, and ineligibility procedures in subpart 9.4 of
24 chapter 1 of title 48, Code of Federal Regulations.

1 (f) LIMITATION ON APPLICABILITY OF WAIVERS TO
2 PRODUCTS PRODUCED IN CERTAIN FOREIGN COUN-
3 TRIES.—If the head of a covered Federal agency, in con-
4 sultation with the United States Trade Representative, de-
5 termines that—

6 (1) a foreign country is a party to an agree-
7 ment with the United States and pursuant to that
8 agreement the head of an agency of the United
9 States has waived the requirements of this section;
10 and

11 (2) the foreign country has violated the terms
12 of the agreement by discriminating against products
13 covered by this section that are produced in the
14 United States and are covered by the agreement,
15 the provisions of subsection (b) shall not apply with re-
16 spect to the head of the covered Federal agency in connec-
17 tion with products produced in that foreign country.

18 (g) RELATIONSHIP TO TRANSPORTATION PROVI-
19 SIONS.—Notwithstanding any provision of this section, the
20 requirements contained in section 313 of title 23, United
21 States Code, and sections 5323(j) and 50101 of title 49,
22 United States Code, as amended by this Act, shall con-
23 tinue to apply.

24 (h) APPLICATION OF REQUIREMENTS TO ENTIRE
25 PROJECT.—The requirement of subsection (a) and the ex-

1 ceptions specified in subsection (b) apply to the total of
 2 obligations and expenditures for an entire project and not
 3 only to obligations and expenditures for component parts
 4 of such project.

5 (i) DEFINITIONS.—In this section, the following defi-
 6 nitions apply:

7 (1) COVERED FEDERAL AGENCY.—The term
 8 “covered Federal agency” means the Department of
 9 Homeland Security, the Department of Defense, and
 10 the Department of Transportation.

11 (2) PUBLIC BUILDING; PUBLIC WORK.—The
 12 terms “public building” and “public work” have the
 13 meanings given such terms in section 1 of the Buy
 14 American Act (41 U.S.C. 10c) and include airports,
 15 bridges, canals, dams, dikes, pipelines, railroads,
 16 multiline mass transit systems, roads, tunnels, har-
 17 bors, and piers.

18 **SEC. 3. BUY AMERICA REQUIREMENTS IN TRANSPOR-**
 19 **TATION LAWS.**

20 (a) HIGHWAYS.—Section 313 of title 23, United
 21 States Code, is amended—

22 (1) by redesignating subsections (c) through (f)
 23 as subsections (d) through (g), respectively;

24 (2) by inserting after subsection (b) the fol-
 25 lowing:

1 “(c) WRITTEN JUSTIFICATION FOR WAIVER.—

2 “(1) NOTICE AND COMMENT.—If the Secretary
3 determines that it is necessary to waive the applica-
4 tion of subsection (a) based on a finding under sub-
5 section (b), the Secretary shall, before the waiver be-
6 comes effective—

7 “(A) publish in the Federal Register a de-
8 tailed written justification as to why the waiver
9 is needed; and

10 “(B) provide the public with a reasonable
11 period of time for notice and comment.

12 “(2) ANNUAL REPORT.—Not later than one
13 year after the date of enactment of this paragraph,
14 and annually thereafter, the Secretary shall submit
15 to the Committee on Transportation and Infrastruc-
16 ture of the House of Representatives and the Com-
17 mittee on Environment and Public Works of the
18 Senate a report on—

19 “(A) any waivers granted under subsection
20 (b) in the preceding year, including justifica-
21 tions for the waivers; and

22 “(B) any obligation of funds by the Sec-
23 retary in the preceding year that did not con-
24 form to the requirements of this section due to

1 limitations imposed by a treaty, agreement, or
2 other provision of law.”; and

3 (3) by adding at the end the following:

4 “(h) APPLICATION OF REQUIREMENTS TO ENTIRE
5 PROJECT.—The requirement of subsection (a) and the ex-
6 ceptions specified in subsection (b) apply to the total of
7 obligations for an entire project and not only to obligations
8 for component parts of such project.”.

9 (b) PUBLIC TRANSPORTATION.—Section 5323(j) of
10 title 49, United States Code, is amended—

11 (1) by striking paragraph (3) and inserting the
12 following:

13 “(3) WRITTEN JUSTIFICATION FOR WAIVER.—

14 “(A) NOTICE AND COMMENT.—If the Sec-
15 retary determines that it is necessary to waive
16 the application of paragraph (1) based on a
17 finding under paragraph (2), the Secretary
18 shall, before the waiver becomes effective—

19 “(i) publish in the Federal Register a
20 detailed written justification as to why the
21 waiver is needed; and

22 “(ii) provide the public with a reason-
23 able period of time for notice and com-
24 ment.

1 “(B) ANNUAL REPORT.—Not later than
2 one year after the date of enactment of this
3 subparagraph, and annually thereafter, the Sec-
4 retary shall submit to the Committee on Trans-
5 portation and Infrastructure of the House of
6 Representatives and the Committee on Bank-
7 ing, Housing, and Urban Affairs of the Senate
8 a report on—

9 “(i) any waivers granted under para-
10 graph (2) in the preceding year, including
11 justifications for the waivers; and

12 “(ii) any obligation of funds by the
13 Secretary in the preceding year that did
14 not conform to the requirements of this
15 subsection due to limitations imposed by a
16 treaty, agreement, or other provision of
17 law.”; and

18 (2) by adding at the end the following:

19 “(10) APPLICATION OF REQUIREMENTS TO EN-
20 TIRE PROJECT.—The requirement of paragraph (1)
21 and the exceptions specified in paragraph (2) apply
22 to the total of obligations for an entire project and
23 not only to obligations for component parts of such
24 project.”.

1 (c) AIRPORTS.—Section 50101 of title 49, United
2 States Code, is amended—

3 (1) by redesignating subsection (c) as sub-
4 section (d);

5 (2) by inserting after subsection (b) the fol-
6 lowing:

7 “(c) WRITTEN JUSTIFICATION FOR WAIVER.—

8 “(1) NOTICE AND COMMENT.—If the Secretary
9 determines that it is necessary to waive the applica-
10 tion of subsection (a) based on a finding under sub-
11 section (b), the Secretary shall, before the waiver be-
12 comes effective—

13 “(A) publish in the Federal Register a de-
14 tailed written justification as to why the waiver
15 is needed; and

16 “(B) provide the public with a reasonable
17 period of time for notice and comment.

18 “(2) ANNUAL REPORT.—Not later than one
19 year after the date of enactment of this paragraph,
20 and annually thereafter, the Secretary shall submit
21 to the Committee on Transportation and Infrastruc-
22 ture of the House of Representatives and the Com-
23 mittee on Commerce, Science, and Transportation of
24 the Senate a report on—

1 “(A) any waivers granted under subsection
2 (b) in the preceding year, including justifica-
3 tions for the waivers; and

4 “(B) any obligation of funds by the Sec-
5 retary in the preceding year that did not con-
6 form to the requirements of this section due to
7 limitations imposed by a treaty, agreement, or
8 other provision of law.”; and

9 (3) by adding at the end the following:

10 “(d) APPLICATION OF REQUIREMENTS TO ENTIRE
11 PROJECT.—The requirement of subsection (a) and the ex-
12 ceptions specified in subsection (b) apply to the total of
13 obligations for an entire project and not only to obligations
14 for component parts of such project.”.

15 **SEC. 4. EFFECTIVE DATE.**

16 This Act, and the amendments made by this Act,
17 shall apply to amounts appropriated or otherwise made
18 available after the date of enactment of this Act.

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