To prohibit the Department of Homeland Security from procuring certain items directly related to the national security unless the items are grown, reprocessed, reused, or produced in the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES
FEBRUARY 15, 2012

Mr. ROCKEFELLER (for himself, Ms. COLLINS, and Mr. TESTER) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL
To prohibit the Department of Homeland Security from procuring certain items directly related to the national security unless the items are grown, reprocessed, reused, or produced in the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Berry Amendment Extension Act”.

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SEC. 2. BUY AMERICAN REQUIREMENT IMPOSED ON DEPARTMENT OF HOMELAND SECURITY; EXCEPTIONS.

(a) IN GENERAL.—Subtitle H of title VIII of the Homeland Security Act of 2002 (6 U.S.C. 451 et seq.) is amended by adding at the end the following new section:

"SEC. 890. BUY AMERICAN REQUIREMENT; EXCEPTIONS.

"(a) REQUIREMENT.—Except as provided in subsections (c) through (f), the Secretary may not procure an item described in subsection (b) if the item is not grown, reprocessed, reused, or produced in the United States.

"(b) COVERED ITEMS.—

"(1) IN GENERAL.—An item referred to in subsection (a) is any item described in paragraph (2), if the item is directly related to the national security interests of the United States.

"(2) ITEMS DESCRIBED.—An item described in this paragraph is any article or item of—

"(A) clothing or footwear and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing or footwear (and the materials and components thereof);
“(B) tents, tarpaulins, covers, textile belts, bags, protective equipment (including body armor), sleep systems, load carrying equipment (including fieldpacks), textile marine equipment, parachutes, or bandages;

“(C) cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics), canvas products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles); or

“(D) any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials.

“(c) Availability Exception.—Subsection (a) does not apply to the extent that the Secretary determines that satisfactory quality and sufficient quantity of any such article or item described in subsection (b)(2) grown, reprocessed, reused, or produced in the United States cannot be procured as and when needed or in a time period that meets the national security needs of the United States. This section is not applicable to covered items that are, or include, materials determined to be nonavailable
in accordance with subpart 25.104 of the Federal Acquisition Regulation (relating to nonavailable articles).

“(d) De Minimis Exception.—Notwithstanding subsection (a), the Secretary may accept delivery of an item covered by subsection (b) that contains non-compliant fibers if the total value of non-compliant fibers contained in the end item does not exceed 10 percent of the total purchase price of the end item.

“(e) Exception for Certain Procurements Outside the United States.—Subsection (a) does not apply to the following:

“(1) Procurements by vessels in foreign waters.

“(2) Emergency procurements.

“(f) Exception for Small Purchases.—Subsection (a) does not apply to purchases for amounts not greater than the simplified acquisition threshold referred to in section 134 of title 41, United States Code.

“(g) Applicability to Contracts and Subcontracts for Procurement of Commercial Items.—This section is applicable to contracts and subcontracts for the procurement of commercial items notwithstanding section 1906 of title 41, United States Code, with the exception of commercial items listed under subparagraphs (C) and (D) of subsection (b)(2). For the purposes of this subsection, the term ‘commercial item’ has
the meaning given the term in section 2.101 of the Federal Acquisition Regulation.

“(h) GEOGRAPHIC COVERAGE.—In this section, the term ‘United States’ includes the possessions of the United States.

“(i) NOTIFICATION REQUIRED WITHIN 7 DAYS AFTER CONTRACT AWARD IF CERTAIN EXCEPTIONS APPLIED.—In the case of any contract for the procurement of an item described in subsection (b)(2), if the Secretary applies the exception set forth in subsection (c) with respect to that contract, the Secretary shall, not later than 7 days after the award of the contract—

“(1) post a notification that the exception has been applied on the Internet website maintained by the General Services Administration known as FedBizOpps (or any successor website); and

“(2) notify the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform and the Committee on Homeland Security of the House of Representatives of the exception.

“(j) TRAINING.—

“(1) IN GENERAL.—The Secretary shall ensure that each member of the acquisition workforce who participates personally and substantially in the ac-
acquisition of textiles on a regular basis receives training on the requirements of this section and the regulations implementing this section.

“(2) INCLUSION OF INFORMATION IN NEW TRAINING PROGRAMS.—The Secretary shall ensure that any training program for the acquisition workforce developed or implemented after the date of the enactment of this section includes comprehensive information on the requirements described in paragraph (1).

“(k) CONSISTENCY WITH INTERNATIONAL AGREEMENTS.—This section shall be applied in a manner consistent with United States obligations under international agreements.”.

(b) TABLE OF CONTENTS.—The table of contents in section 1(b) of the Homeland Security Act of 2002 (6 U.S.C. 101(b)) is amended by inserting after the item relating to section 889 the following new item:

“Sec. 890. Buy American requirement; exceptions.”.

(c) EFFECTIVE DATE.—Section 890 of the Homeland Security Act of 2002, as added by subsection (a), shall apply with respect to contracts entered into by the Department of Homeland Security on and after the date occurring 180 days after the date of the enactment of this Act.