

108TH CONGRESS  
2D SESSION

# H. R. 3741

To amend the Buy American Act to increase the requirement for American-made content, to tighten the waiver provisions, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 28, 2004

Mr. BROWN of Ohio (for himself and Mr. RYAN of Ohio) introduced the following bill; which was referred to the Committee on Government Reform

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## A BILL

To amend the Buy American Act to increase the requirement for American-made content, to tighten the waiver provisions, 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 “Buy American Im-  
5       provement Act of 2004”.

6       **SEC. 2. REQUIREMENTS FOR WAIVERS.**

7       (a) IN GENERAL.—Section 2 of the Buy American  
8       Act (41 U.S.C. 10a) is amended—

9               (1) by striking “Notwithstanding” and insert-  
10       ing the following:

1 “(a) IN GENERAL.—Notwithstanding”; and

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

3 “(b) SPECIAL RULES.—The following rules shall  
4 apply in carrying out the provisions of subsection (a):

5 “(1) PUBLIC INTEREST WAIVER.—A determina-  
6 tion that it is inconsistent with the public interest to  
7 enter into a contract in accordance with this Act  
8 may not be made after a notice of solicitation of of-  
9 fers for the contract is published in accordance with  
10 section 18 of the Office of Federal Procurement Pol-  
11 icy Act (41 U.S.C. 416) and section 8(e) of the  
12 Small Business Act (15 U.S.C. 637(e)).

13 “(2) DOMESTIC BIDDER.—A Federal agency  
14 entering into a contract shall give preference to a  
15 company submitting an offer on the contract that  
16 manufactures in the United States the article, mate-  
17 rial, or supply for which the offer is solicited, if—

18 “(A) that company’s offer is substantially  
19 the same as an offer made by a company that  
20 does not manufacture the article, material, or  
21 supply in the United States; or

22 “(B) that company is the only company  
23 that manufactures in the United States the ar-  
24 ticle, material, or supply for which the offer is  
25 solicited.

1 “(3) USE OUTSIDE THE UNITED STATES.—

2 “(A) IN GENERAL.—Subsection (a) shall  
3 apply without regard to whether the articles,  
4 materials, or supplies to be acquired are for use  
5 outside the United States if the articles, mate-  
6 rials, or supplies are not needed on an urgent  
7 basis or if they are acquired on a regular basis.

8 “(B) COST ANALYSIS.—In any case where  
9 the articles, materials, or supplies are to be ac-  
10 quired for use outside the United States and  
11 are not needed on an urgent basis, before enter-  
12 ing into a contract an analysis shall be made of  
13 the difference in the cost for acquiring the arti-  
14 cles, materials, or supplies from a company  
15 manufacturing the articles, materials, or sup-  
16 plies in the United States (including the cost of  
17 shipping) and the cost for acquiring the arti-  
18 cles, materials, or supplies from a company  
19 manufacturing the articles, materials, or sup-  
20 plies outside the United States (including the  
21 cost of shipping).

22 “(4) DOMESTIC AVAILABILITY.—The head of a  
23 Federal agency may not make a determination under  
24 subsection (a) that an article, material, or supply is  
25 not mined, produced, or manufactured, as the case

1 may be, in the United States in sufficient and rea-  
2 sonably available commercial quantities and of satis-  
3 factory quality, unless the head of the agency has  
4 conducted a study and, on the basis of such study,  
5 determined that—

6 “(A) domestic production cannot be initi-  
7 ated to meet the procurement needs; and

8 “(B) a comparable article, material, or  
9 supply is not available from a company in the  
10 United States.

11 “(5) CERTAIN CONGRESSIONAL PURCHASES.—

12 Subsection (a) shall not apply with respect to a con-  
13 tract entered into by the office of a Member of the  
14 House of Representatives or the office of a Senator  
15 during a fiscal year if—

16 “(A) the funds used to make payment  
17 under the contract are derived from the Mem-  
18 bers’ Representational Allowance under section  
19 101(a) of the House of Representatives Admin-  
20 istrative Reform and Technical Corrections Act  
21 (2 U.S.C. 57b) or the Senators’ Official Per-  
22 sonnel and Office Expense Account established  
23 under subsection (a) of the first section of Pub-  
24 lic Law 100–137 (2 U.S.C. 58c), as the case  
25 may be; and

1           “(B) the aggregate amount expended by  
2           the office during the year for the article, mate-  
3           rial, or supply which is the subject of the con-  
4           tract does not exceed \$100.

5           “(c) REPORTS.—

6           “(1) IN GENERAL.—Not later than 60 days  
7           after the end of each fiscal year, the head of each  
8           Federal agency shall submit to Congress a report on  
9           the amount of the acquisitions made by the agency  
10          from entities that manufacture the articles, mate-  
11          rials, or supplies outside the United States in that  
12          fiscal year.

13          “(2) CONTENT OF REPORT.—The report re-  
14          quired by paragraph (1) shall separately indicate the  
15          following information:

16               “(A) The dollar value of any articles, ma-  
17               terials, or supplies for which this Act was  
18               waived.

19               “(B) An itemized list of all waivers grant-  
20               ed with respect to such articles, materials, or  
21               supplies under this Act.

22               “(C) A list of all articles, materials, and  
23               supplies acquired, their source, and the amount  
24               of the acquisitions.

1           “(3) PUBLIC AVAILABILITY.—The head of each  
2       Federal agency submitting a report under paragraph  
3       (1) shall make the report publicly available by post-  
4       ing on an Internet website.”.

5       (b) DEFINITIONS.—Section 1 of the Buy American  
6   Act (41 U.S.C. 10c) is amended—

7           (1) by striking subsection (c) and inserting the  
8       following:

9       “(c) FEDERAL AGENCY.—The term ‘Federal agency’  
10   means any executive agency (as defined in section 4(1)  
11   of the Federal Procurement Policy Act (41 U.S.C.  
12   403(1))) or any establishment in the legislative or judicial  
13   branch of the Government.”; and

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

15       “(d) SUBSTANTIALLY ALL.—Articles, materials, or  
16   supplies shall be treated as made substantially all from  
17   articles, materials, or supplies mined, produced, or manu-  
18   factured, as the case may be, in the United States, if the  
19   cost of the domestic components of such articles, mate-  
20   rials, or supplies exceeds 75 percent.”.

21       (c) CONFORMING AMENDMENTS.—

22           (1) Section 2 of the Buy American Act (41  
23   U.S.C. 10a) is amended by striking “department or  
24   independent establishment” and inserting “Federal  
25   agency”.

1           (2) Section 3 of such Act (41 U.S.C. 10b) is  
2       amended—

3           (A) by striking “department or inde-  
4       pendent establishment” in subsection (a), and  
5       inserting “Federal agency”; and

6           (B) by striking “department, bureau, agen-  
7       cy, or independent establishment” in subsection  
8       (b) and inserting “Federal agency”.

9           (3) Section 633 of the National Military Estab-  
10      lishment Appropriations Act, 1950 (41 U.S.C. 10d)  
11      is amended by striking “department or independent  
12      establishment” and inserting “Federal agency”.

13          (4) Section 69 of the Revised Statutes of the  
14      United States (2 U.S.C. 109) is repealed.

15 **SEC. 3. DETERMINATIONS OF UNREASONABLE COST AND**  
16 **INCONSISTENT WITH THE PUBLIC INTEREST.**

17      (a) IN GENERAL.—Not later than 1 year after the  
18      date of the enactment of this Act, the Secretary of Com-  
19      merce shall prescribe final regulations establishing, for  
20      purposes of applying section 2(a) of the Buy American  
21      Act (41 U.S.C. 10a(a))—

22          (1) definitions for the terms “unreasonable  
23      cost” and “inconsistent with the public interest”;

1           (2) purposes for which a waiver may be granted  
2           under such section based on unreasonable cost or on  
3           inconsistency with the public interest; and

4           (3) procedures for all Federal agencies covered  
5           by the Act to consistently apply the waivers de-  
6           scribed in paragraph (2).

7           (b) ADVISORY PANEL.—Not later than 30 days after  
8           the date of the enactment of this Act, the Secretary shall  
9           appoint a panel to be known as the “Buy American Advi-  
10          sory Panel” consisting of members as follows:

11           (1) The Administrator of General Services or  
12           the Administrator’s designee, who shall serve as  
13           Chairman.

14           (2) The Secretary of Defense or the Secretary’s  
15           designee.

16           (3) A representative of the manufacturing in-  
17           dustry who is employed by a manufacturing business  
18           that produces the majority of its goods in the United  
19           States and is a Federal contractor at the time of ap-  
20           pointment to the panel.

21           (4) A representative of the services industry  
22           who is employed by a services business that provides  
23           the majority of its services to clients in the United  
24           States and is a Federal contractor at the time of ap-  
25           pointment to the panel.



1           (5) A representative of labor in the manufac-  
2           turing industry.

3           (6) A representative of labor in the services in-  
4           dustry.

5           (7) An academic economist.

6           (c) COMPENSATION AND EXPENSES.—The Secretary  
7 of Commerce shall provide the support services, facilities,  
8 and funds necessary for the performance of the Advisory  
9 Panel’s functions. No member may receive compensation  
10 for service as a member of the Advisory Panel, but a mem-  
11 ber of the Advisory Panel who is not a government em-  
12 ployee may receive travel expenses, including per diem in  
13 lieu of subsistence, in accordance with applicable provi-  
14 sions under subchapter I of chapter 57 of title 5, United  
15 States Code.

16          (d) REPORT.—The Chairman of the Advisory Panel  
17 shall, not later than 180 days after the date of the enact-  
18 ment of this Act, submit to the Secretary of Commerce  
19 a report making recommendations for implementing the  
20 requirements of subsection (a).

21 **SEC. 4. DUAL-USE TECHNOLOGIES.**

22          The head of a Federal agency (as defined in section  
23 1(c) of the Buy American Act (as amended by section 2))  
24 may not enter into a contract, nor permit a subcontract  
25 under a contract of the Federal agency, with a foreign

1 entity that involves giving the foreign entity plans, manu-  
2 als, or other information that would facilitate the manu-  
3 facture of a dual-use item on the Commerce Control List  
4 unless approval for providing such plans, manuals, or in-  
5 formation has been obtained in accordance with the provi-  
6 sions of the Export Administration Act of 1979 (50  
7 U.S.C. App. 2401 et seq.) and the Export Administration  
8 Regulations (15 C.F.R. part 730 et seq.).

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