

113TH CONGRESS  
1ST SESSION

# H. R. 3346

To amend chapter 83 of title 41, United States Code, to increase the requirement for American-made content, to strengthen the waiver provisions, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 28, 2013

Mr. LIPINSKI (for himself, Mr. ADERHOLT, and Ms. SHEA-PORTER) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

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## A BILL

To amend chapter 83 of title 41, United States Code, to increase the requirement for American-made content, to strengthen 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 2013”.

6 **SEC. 2. STRENGTHENING AND SIMPLIFYING FEDERAL PRO-**  
7 **CUREMENT POLICIES.**

8 (a) IN GENERAL.—Not later than one year after the  
9 date of the enactment of this Act, the Administrator for

1 Federal Procurement Policy, in consultation with the Fed-  
2 eral Acquisition Regulatory Council, shall promulgate reg-  
3 ulations to standardize and simplify how Federal agencies  
4 comply with, report on, and enforce chapter 83 of title  
5 41, United States Code (commonly known as the Buy  
6 American Act). The regulations shall include, at a min-  
7 imum, the following:

8 (1) Guidelines for determining, for the purposes  
9 of applying sections 8302(a) and 8303(b)(3) of such  
10 title, the circumstances under which the acquisition  
11 of articles, materials, or supplies mined, produced,  
12 or manufactured in the United States is inconsistent  
13 with the public interest.

14 (2) Uniform procedures for collecting, report-  
15 ing, and making publicly available information about  
16 waivers under chapter 83 of such title, including—

17 (A) procedures for making a request for a  
18 waiver publicly available before granting the  
19 waiver; and

20 (B) procedures for providing the rationale  
21 for why a waiver is granted.

22 (3) Rules to ensure that projects are not  
23 disaggregated for purposes of avoiding the applica-  
24 bility of the requirements under chapter 83 of such  
25 title to such larger project.

1           (4) Procedures for investigating waiver re-  
2           quests.

3           (5) Rules for evaluating the percentage of do-  
4           mestic content in a manufactured end product.

5           (b) GUIDELINES RELATING TO INCONSISTENCY  
6 WITH PUBLIC INTEREST.—In the guidelines developed  
7 under subsection (a)(1), the Administrator shall consider  
8 any significant decrease in employment in the United  
9 States resulting from the granting of waivers to be incon-  
10 sistent with the public interest and seek to minimize—

11           (1) the granting of waivers that would result in  
12           a decrease in employment in the United States in  
13           both the short- and long-term; and

14           (2) the granting of waivers for procurement of  
15           articles, materials, or supplies mined, produced, or  
16           manufactured in a foreign country with which the  
17           United States does not have a relevant trade agree-  
18           ment and which has a government that maintains,  
19           in regard to government procurement, a significant  
20           and persistent pattern or practice of discrimination  
21           against products produced in the United States.

22           (c) PROCEDURES RELATING TO THE PUBLICATION  
23 OF REQUESTS FOR WAIVERS.—In the procedures devel-  
24 oped under subsection (a)(2)(A), the Administrator shall

1 require the head of a Federal agency, after receiving a  
2 request for a waiver, to complete each of the following:

3           (1) Publish the request for a waiver on a pub-  
4           licly available website of the agency in an easily  
5           identifiable location within 15 days after receiving  
6           such request.

7           (2) A waiver may not be issued before the expi-  
8           ration of the 15-day period beginning on the date on  
9           which the request for waiver is published pursuant  
10          to paragraph (1) to provide the public an oppor-  
11          tunity for notice and comment.

12          (d) PROCEDURES RELATING TO THE PUBLICATION  
13          OF WAIVERS GRANTED.—In the procedures developed  
14          under subsection (a)(2)(B), the Administrator shall re-  
15          quire the head of a Federal agency to publish the deter-  
16          mination for why a waiver was granted and the rationale  
17          for such determination in the Federal Register and on a  
18          publicly available website of the agency in an easily identi-  
19          fiable location not later than 30 days after the head of  
20          the agency determines to issue such waiver.

21          (e) RULES RELATING TO DOMESTIC CONTENT.—In  
22          the rules developed under subsection (a)(5), the Adminis-  
23          trator shall not consider as domestic content components  
24          of foreign origin of the same class or kind as those that  
25          are not mined, produced, or manufactured in the United

1 States in sufficient and reasonably available commercial  
2 quantities of a satisfactory quality.

3 (f) DEFINITIONS.—In this section:

4 (1) FEDERAL AGENCY.—The term “Federal  
5 agency” means any executive agency (as defined in  
6 section 133 of title 41, United States Code) or any  
7 establishment in the legislative or judicial branch of  
8 the Federal Government.

9 (2) RELEVANT TRADE AGREEMENT.—The term  
10 “relevant trade agreement” means—

11 (A) a reciprocal defense procurement  
12 memorandum of understanding, as described in  
13 section 8304 of title 41, United States Code;

14 (B) any trade agreement for which the  
15 President, or his delegate, has issued a blanket  
16 waiver under section 301 of the Trade Agree-  
17 ments Act of 1979 (19 U.S.C. 2511); and

18 (C) any trade agreement described in sub-  
19 part 25.4 of the Federal Acquisition Regula-  
20 tion.

21 (3) WAIVER.—The term “waiver” means, with  
22 respect to the acquisition of an article, material, or  
23 supply for public use, the inapplicability of chapter  
24 83 of title 41, United States Code, to the acquisition  
25 by reason of any of the following determinations:

1 (A) A determination by the head of the  
2 Federal agency concerned that the acquisition  
3 is inconsistent with the public interest.

4 (B) A determination by the head of the  
5 Federal agency concerned that the cost of the  
6 acquisition is unreasonable.

7 (C) A determination by the head of the  
8 Federal agency concerned that the article, ma-  
9 terial, or supply is not mined, produced, or  
10 manufactured in the United States in sufficient  
11 and reasonably available commercial quantities  
12 of a satisfactory quality.

13 **SEC. 3. INCREASING TRANSPARENCY AND ACCOUNT-**  
14 **ABILITY IN FEDERAL PROCUREMENT.**

15 Subsection (b) of section 8302 of title 41, United  
16 States Code, is amended to read as follows:

17 “(b) REPORTS.—

18 “(1) IN GENERAL.—

19 “(A) AGENCY REPORT.—Not later than  
20 120 days after the end of each of fiscal years  
21 2013 through 2018, the head of each Federal  
22 agency shall submit to the Administrator for  
23 Federal Procurement Policy a report on the  
24 amount of the acquisitions made by the agency  
25 in that fiscal year of articles, materials, or sup-

1           plies purchased from entities that manufacture  
2           the articles, materials, or supplies outside of the  
3           United States. A separate report is not required  
4           by a Federal agency under this subparagraph if  
5           such agency has already submitted the informa-  
6           tion required in such report for a fiscal year  
7           through the Federal Procurement Data System  
8           (as referred to in section 1122(a)(4)(A)) or an-  
9           other uniform comprehensive system prescribed  
10          by the Federal Acquisition Regulation.

11           “(B) CONSOLIDATED REPORT.—Not later  
12          than 180 days after the end of each of fiscal  
13          years 2011 through 2016, the Administrator  
14          for Federal Procurement Policy, in consultation  
15          with the Administrator of General Services,  
16          shall submit to the Committee on Homeland  
17          Security and Governmental Affairs of the Sen-  
18          ate and the Committee on Oversight and Gov-  
19          ernment Reform of the House of Representa-  
20          tives a consolidated report that includes each  
21          report and any information submitted pursuant  
22          to subparagraph (A) and the total amount of  
23          acquisitions made by Federal agencies in the  
24          relevant fiscal year of articles, materials, or  
25          supplies purchased from entities that manufac-

1           ture or produce the articles, materials, or sup-  
2           plies outside of the United States.

3           “(2) CONTENTS OF REPORT.—The report re-  
4           quired by paragraph (1)(A) shall separately include,  
5           for the fiscal year covered by the report—

6                   “(A) the dollar value of any articles, mate-  
7                   rials, or supplies that were manufactured or  
8                   produced outside the United States, in the ag-  
9                   gregate and by country;

10                   “(B) an itemized list of all waivers granted  
11                   with respect to such articles, materials, or sup-  
12                   plies under this chapter, and the country where  
13                   such articles, materials, or supplies were manu-  
14                   factured or produced;

15                   “(C) if any articles, materials, or supplies  
16                   were acquired from entities that manufacture or  
17                   produce articles, materials, or supplies outside  
18                   the United States due to an exception (that is  
19                   not the micro-purchase threshold exception de-  
20                   scribed under subsection (a)(2)(C)), the specific  
21                   exception that was used to purchase such arti-  
22                   cles, materials, or supplies;

23                   “(D) if any articles, materials, or supplies  
24                   were acquired from entities that manufacture or  
25                   produce articles, materials, or supplies outside



1 the United States pursuant to a relevant trade  
2 agreement, a citation to such agreement; and

3 “(E) a summary of—

4 “(i) the total procurement funds ex-  
5 pended on articles, materials, and supplies  
6 manufactured or produced inside the  
7 United States;

8 “(ii) the total procurement funds ex-  
9 pended on articles, materials, and supplies  
10 manufactured or produced outside the  
11 United States; and

12 “(iii) the total procurement funds ex-  
13 pended on articles, materials, and supplies  
14 manufactured or produced outside the  
15 United States for each country that manu-  
16 factured or produced such articles, mate-  
17 rials, and supplies.

18 “(3) PUBLIC AVAILABILITY.—Not later than  
19 180 days after the end of the relevant fiscal year,  
20 the Administrator for Federal Procurement Policy  
21 shall make the consolidated report described under  
22 paragraph (1)(B) publicly available on a website.

23 “(4) EXCEPTION FOR INTELLIGENCE COMMU-  
24 NITY.—This subsection shall not apply to acquisi-  
25 tions made by an agency, or component of an agen-

1 cy, that is an element of the intelligence community  
2 as specified in, or designated under, section 3 of the  
3 National Security Act of 1947 (50 U.S.C. 401a).”.

4 **SEC. 4. STRENGTHENING THE BUY AMERICAN ACT.**

5 (a) REQUIREMENTS FOR WAIVERS.—Section 8302 of  
6 title 41, United States Code, is amended by adding at the  
7 end the following new subsection:

8 “(c) SPECIAL RULES.—The following rules apply in  
9 carrying out the provisions of subsection (a):

10 “(1) CALCULATION OF DOMESTIC AND NON-DO-  
11 MESTIC BIDS.—

12 “(A) EXCLUSION OF START-UP COSTS IN  
13 CALCULATING COST OF BID.—When comparing  
14 bids between domestic entities and non-domes-  
15 tic entities, costs related to the start-up of a  
16 project shall be excluded from a domestic bid.

17 “(B) UNREASONABLE COST DETERMINA-  
18 TION.—

19 “(i) IN GENERAL.—The head of a  
20 Federal agency shall not determine the  
21 cost of acquiring articles, materials, or  
22 supplies produced or manufactured in the  
23 United States to be unreasonable under  
24 subsection (a) unless the acquisition of  
25 such articles, materials, or supplies would

1           increase the cost of the overall project by  
2           more than 25 percent.

3           “(ii) RULE OF CONSTRUCTION.—  
4           Nothing in this subparagraph shall be con-  
5           strued as reducing the percentage increase  
6           required as of the date of the enactment of  
7           the Buy American Improvement Act of  
8           2013 for a determination of unreasonable  
9           cost applicable to projects under Depart-  
10          ment of Defense contracts.

11          “(2) USE OUTSIDE THE UNITED STATES.—

12           “(A) IN GENERAL.—Subsection (a) shall  
13           apply without regard to whether the articles,  
14           materials, or supplies to be acquired are for use  
15           outside the United States if the articles, mate-  
16           rials, or supplies are not needed on an urgent  
17           basis or if they are acquired on a regular basis.

18           “(B) COST ANALYSIS.—In any case in  
19           which the articles, materials, or supplies are to  
20           be acquired for use outside the United States  
21           and are not needed on an urgent basis, before  
22           entering into a contract an analysis shall be  
23           made of the difference in the cost of acquiring  
24           the articles, materials, or supplies from a com-  
25           pany manufacturing the articles, materials, or

1 supplies in the United States (including the  
2 cost of shipping) and the cost of acquiring the  
3 articles, materials, or supplies from a company  
4 manufacturing the articles, materials, or sup-  
5 plies outside the United States (including the  
6 cost of shipping).

7 “(3) DOMESTIC AVAILABILITY.—The head of a  
8 Federal agency may not make a determination under  
9 subsection (a) that an article, material, or supply is  
10 not mined, produced, or manufactured, as the case  
11 may be, in the United States in sufficient and rea-  
12 sonably available commercial quantities and of satis-  
13 factory quality, unless the head of the agency has  
14 determined that—

15 “(A) domestic production cannot be initi-  
16 ated without significantly delaying the project  
17 for which the article, material, or supply is to  
18 be procured; and

19 “(B) a substitutable article, material, or  
20 supply is not available in reasonable quantities  
21 and of satisfactory quality from a company in  
22 the United States.

23 “(4) DEFINITIONS.—In this subsection:

24 “(A) EXCEPTION.—The term ‘exception’  
25 means, with respect to the acquisition of an ar-

1           title, material, or supply for public use, the in-  
2           applicability of chapter 83 to the acquisition by  
3           reason of any of the following:

4                   “(i) Use outside the United States  
5                   (described in section 8302(a)(2)(A)).

6                   “(ii) Procured under a contract with  
7                   an award value that is not more than the  
8                   micro-purchase threshold (described in sec-  
9                   tion 8302(a)(2)(C)).

10                   “(iii) Specifically excepted for infor-  
11                   mation technology (as defined in section  
12                   11101 of title 40) that is a commercial  
13                   item (as defined in section 103).

14                   “(iv) A relevant trade agreement.

15                   “(B) WAIVER.—The term ‘waiver’ means,  
16                   with respect to the acquisition of an article, ma-  
17                   terial, or supply for public use, the inapplica-  
18                   bility of this chapter to the acquisition by rea-  
19                   son of any of the following determinations:

20                           “(i) A determination by the head of  
21                           the Federal agency concerned that the ac-  
22                           quisition is inconsistent with the public in-  
23                           terest.

1           “(ii) A determination by the head of  
2           the Federal agency concerned that the cost  
3           of the acquisition is unreasonable.

4           “(iii) A determination by the head of  
5           the Federal agency concerned that the ar-  
6           ticle, material, or supply is not mined, pro-  
7           duced, or manufactured in the United  
8           States in sufficient and reasonably avail-  
9           able commercial quantities of a satisfactory  
10          quality.”.

11          (b) DEFINITIONS; INCREASING DOMESTIC CONTENT  
12          REQUIREMENT.—Section 8301 of title 41, United States  
13          Code, is amended—

14                 (1) by adding at the end the following new  
15          paragraphs:

16                 “(3) FEDERAL AGENCY.—The term ‘Federal  
17                 agency’ means any executive agency (as defined in  
18                 section 133) or any establishment in the legislative  
19                 or judicial branch of the Federal Government.

20                 “(4) RELEVANT TRADE AGREEMENT.—The  
21                 term ‘relevant trade agreement’ means—

22                         “(A) a reciprocal defense procurement  
23                         memorandum of understanding, as described in  
24                         section 8304 of title 41, United States Code;

1           “(B) any trade agreement for which the  
2           President, or his delegate, has issued a blanket  
3           waiver under section 301 of the Trade Agree-  
4           ments Act of 1979 (19 U.S.C. 2511); and

5           “(C) any trade agreement described in  
6           subpart 25.4 of the Federal Acquisition Regula-  
7           tion.

8           “(5) SUBSTANTIALLY ALL.—Articles, materials,  
9           or supplies shall be treated as made substantially all  
10          from articles, materials, or supplies mined, pro-  
11          duced, or manufactured in the United States, if the  
12          cost of the domestic components of such articles,  
13          materials, or supplies exceeds 75 percent of the total  
14          cost of all components of such articles, materials, or  
15          supplies.”; and

16          (2) by reordering paragraphs (1) and (2) and  
17          the paragraphs added by paragraph (1) of this sub-  
18          section in alphabetical order based on the headings  
19          of such paragraphs and renumbering such para-  
20          graphs as so reordered.

21          (c) CONFORMING AMENDMENTS.—Title 41, United  
22          States Code, is amended—

23          (1) in section 8302(a)(1), by striking “depart-  
24          ment or independent establishment” and inserting  
25          “Federal agency”; and

1 (2) in section 8303—

2 (A) in subsection (b)—

3 (i) in paragraph (2), by striking “de-  
4 partment or independent establishment”  
5 and inserting “Federal agency”; and

6 (ii) in paragraph (3), by striking “de-  
7 partment or independent establishment”  
8 and inserting “Federal agency”; and

9 (B) in subsection (c), by striking “depart-  
10 ment, bureau, agency, or independent establish-  
11 ment” and inserting “Federal agency”, each  
12 place it appears.

13 (d) INFLATION ADJUSTMENT EXCLUSION.—Section  
14 1908(b)(2)(A) of title 41, United States Code, is amended  
15 by striking “chapter 67” and inserting “chapters 67 and  
16 83”.

17 **SEC. 5. GAO REPORT AND RECOMMENDATION.**

18 Not later than one year after the date of the enact-  
19 ment of this Act, the Comptroller General shall report to  
20 Congress on the extent to which, in each of fiscal years  
21 2009, 2010, 2011, 2012, and 2013, articles, materials, or  
22 supplies acquired by the Federal Government were manu-  
23 factured, mined, or produced outside of the United States.  
24 Such report shall include for each Federal agency the fol-  
25 lowing:



1           (1) A summary of total procurement funds ex-  
2           pended on articles, materials, and supplies manufac-  
3           tured—

4                   (A) inside the United States;

5                   (B) outside the United States; and

6                   (C) outside the United States—

7                           (i) under each type of waiver (as de-  
8                           fined in section 2(f) of this Act);

9                           (ii) under each category of exception  
10                           (as defined in section 8301 of title 41,  
11                           United States Code, as added by section  
12                           4(b)(1) of this Act); and

13                           (iii) for each country that manufac-  
14                           tured or produced such articles, materials,  
15                           and supplies.

16           (2) An analysis of the impact of eliminating the  
17           exception for acquisitions for information technology  
18           (as defined in section 11101 of title 40, United  
19           States Code) that is a commercial item (as defined  
20           in section 103 of title 41, United States Code).

1 **SEC. 6. UNITED STATES OBLIGATIONS UNDER INTER-**  
2 **NATIONAL AGREEMENTS.**

3       This Act, and the amendments made by this Act,  
4 shall be applied in a manner consistent with United States  
5 obligations under international agreements.

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