

115TH CONGRESS
2D SESSION

S. 2284

To strengthen Buy American requirements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 9, 2018

Mr. PORTMAN (for himself, Mr. MURPHY, Mr. GRAHAM, and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To strengthen Buy American requirements, 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 “BuyAmerican.gov Act
5 of 2018”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **BUY AMERICAN LAW.**—The term “Buy
9 American Law” means any law, regulation, Execu-
10 tive order, regulation, or rule relating to Federal

1 contracts or grants that requires or provides a pref-
2 erence for the purchase or use of goods, products, or
3 materials mined, produced, or manufactured in the
4 United States, including—

5 (A) chapter 83 of title 41, United States
6 Code (commonly referred to as the “Buy Amer-
7 ican Act”);

8 (B) section 5323(j) of title 49, United
9 States Code (commonly referred to as the “Buy
10 America Act”);

11 (C) section 2533a of title 10, United
12 States Code (commonly referred to as the
13 “Berry Amendment”);

14 (D) section 2533b of title 10, United
15 States Code; and

16 (E) section 604 of the American Recovery
17 and Reinvestment Act of 2009 (6 U.S.C. 453b).

18 (2) EXECUTIVE AGENCY.—The term “executive
19 agency” has the meaning given the term in section
20 133 of title 41, United States Code.

21 **SEC. 3. SENSE OF CONGRESS ON BUYING AMERICAN.**

22 It is the sense of Congress that—

23 (1) every executive agency should maximize,
24 through terms and conditions of Federal financial
25 assistance awards and Federal procurements, the

1 use of goods, products, and materials produced in
2 the United States and contracts for outsourced gov-
3 ernment service contracts to be performed by United
4 States nationals; and

5 (2) every executive agency should scrupulously
6 monitor, enforce, and comply with Buy American
7 Laws, to the extent they apply, and minimize the
8 use of waivers.

9 **SEC. 4. REPORT ON BUY AMERICAN COMPLIANCE EF-**
10 **FORTS.**

11 (a) IN GENERAL.—Not later than 180 days after the
12 date of the enactment of this Act, and annually thereafter
13 for two years, the Secretary of Commerce, in consultation
14 with the Director of the Office of Management and Budg-
15 et, the United States Trade Representative, the Secretary
16 of State, and the heads of other executive agencies, shall
17 submit to Congress and the President a report on the im-
18 plementation of, and compliance with, Buy American laws.

19 (b) ELEMENTS.—The report required under sub-
20 section (a) shall include the following elements:

21 (1) An assessment of the monitoring of, en-
22 forcement of, implementation of, and compliance
23 with Buy American Laws within each executive
24 agency.

1 (2) A listing of each waiver and exception used
2 by an executive agency and an assessment of waivers
3 by type and impact on domestic jobs and manufac-
4 turing.

5 (3) Recommendations for policies for executive
6 agencies to ensure that, to the extent permitted by
7 law, Federal financial assistance awards and Federal
8 contacts maximize the use of goods, products, and
9 materials mined, produced, and manufactured in the
10 United States, including manufactured products,
11 components of manufactured products, and mate-
12 rials such as steel, iron, aluminum, and cement and
13 services.

14 (c) AGENCY REPORTS.—Not later than 180 days
15 after the date of the enactment of this Act, and annually
16 thereafter for two years, the head of each executive agency
17 shall submit to the Secretary of Commerce and the Direc-
18 tor of the Office of Management and Budget a report on
19 the implementation of, and compliance with, Buy Amer-
20 ican laws and covering with respect to that agency the ele-
21 ments set forth in subsection (b).

22 (d) GUIDANCE.—Not later than 60 days after the
23 date of the enactment of this Act, the Secretary of Com-
24 merce and the Director of the Office of Management and
25 Budget, in consultation with the Secretary of State, the

1 Secretary of Labor, the United States Trade Representa-
2 tive, and the Federal Acquisition Regulatory Council, shall
3 issue guidance to executive agencies regarding how to
4 make the required waiver assessments and develop the
5 policies required under this section.

6 **SEC. 5. ASSESSMENT OF IMPACT OF FREE TRADE AGREE-**
7 **MENTS.**

8 Not later than 150 days after the date of the enact-
9 ment of this Act, the Secretary of Commerce and the
10 United States Trade Representative shall assess the im-
11 pacts of all United States free trade agreements and the
12 World Trade Organization Agreement on Government
13 Procurement on the operation of Buy American Laws, in-
14 cluding their impacts on the implementation of domestic
15 procurement preferences.

16 **SEC. 6. JUDICIOUS USE OF WAIVERS.**

17 (a) IN GENERAL.—To the extent permitted by law,
18 public interest waivers from Buy American Laws shall be
19 construed to ensure the maximum utilization of goods,
20 products, and materials produced in the United States.

21 (b) PUBLIC INTEREST WAIVER DETERMINATIONS.—
22 To the extent permitted by law, determination of public
23 interest waivers shall be made by the head of the agency
24 with the authority over the Federal financial assistance
25 award or Federal procurement under consideration.

1 (c) CONSIDERATION OF DUMPING AND SUBSIDIES.—
 2 To the extent permitted by law, before granting a public
 3 interest waiver, the head of an executive agency shall take
 4 appropriate account of whether a significant portion of the
 5 cost advantage of a foreign-sourced product is the result
 6 of the use of dumped steel, iron, or manufactured goods,
 7 the use of subsidized steel, iron, or manufactured goods,
 8 or the use of steel, iron, or manufactured goods that have
 9 entered the United States in violation of United States
 10 customs laws and shall, as appropriate, integrate any find-
 11 ings into its waiver determination.

12 **SEC. 7. WAIVER TRANSPARENCY AND STREAMLINING**
 13 **THROUGH THE ESTABLISHMENT OF**
 14 **BUYAMERICAN.GOV WEBSITE.**

15 (a) IN GENERAL.—Not later than one year after the
 16 date of the enactment of this Act, the Administrator of
 17 General Services shall establish an Internet website with
 18 the address BuyAmerican.gov that will be publicly avail-
 19 able and free to access. The website shall include informa-
 20 tion on all waivers of and exceptions to Buy American laws
 21 that have been requested, are under consideration, or have
 22 been granted by executive agencies and be designed to en-
 23 able manufacturers and other interested parties to easily
 24 identify waivers, and shall provide publicly available con-
 25 tact information for the contracting agencies.

1 (b) COLLECTION OF INFORMATION.—The President,
2 in consultation with the heads of relevant agencies, shall
3 develop a mechanism to collect information on requests to
4 waive Buy American laws and other domestic content re-
5 strictions, utilizing existing reporting requirements when-
6 ever possible, for purposes of providing early notice to pos-
7 sible waivers via the website established under subsection
8 (a). The heads of executive agencies shall report to the
9 Administrator as quickly as possible waivers requested or
10 under consideration and waivers granted due to the non-
11 availability of procured items or service providers for pur-
12 poses of posting such information on the website estab-
13 lished under such subsection.

14 (c) WAIVER TRANSPARENCY AND STREAMLINING.—
15 Not less than 20 days prior to waiving, under his or her
16 statutory authority, any applicable Buy American Law,
17 the head of an executive agency shall submit to the Ad-
18 ministrator of General Services a copy of the request and
19 information available to the executive agency concerning
20 the request. Not later than 5 days after receiving this in-
21 formation from the head of an executive agency, the Ad-
22 ministrator of General Services shall make available to the
23 public, by posting on the website established under sub-
24 section (a), a copy of the request and information available
25 to the executive agency concerning the request, and shall

1 allow for informal public comment on the request for at
 2 least 15 days prior to making a finding based on the re-
 3 quest.

4 (d) INFORMATION AVAILABLE TO THE EXECUTIVE
 5 AGENCY CONCERNING THE REQUEST.—

6 (1) REQUIREMENT.—No requested waiver of an
 7 applicable Buy American Law may be granted if, in
 8 contravention of subsection (c)—

9 (A) the request was not made available to
 10 the public;

11 (B) the information available to the execu-
 12 tive agency concerning the request was not
 13 made available to the public; or

14 (C) no opportunity for public comment
 15 concerning the request was granted.

16 (2) SCOPE.—Information made available to the
 17 public under this section concerning the request
 18 shall properly and adequately document and justify
 19 the statutory basis cited for the requested waiver.
 20 Such information shall include—

21 (A) a detailed justification for the use of
 22 goods, products, or materials mined, produced,
 23 or manufactured outside the United States;

24 (B) for requests citing unreasonable cost
 25 as the statutory basis of the waiver, a compari-

son of the cost of the domestic product to the cost of the foreign product or a comparison of the overall cost of the project with domestic products to the overall cost of the project with foreign-origin products or services, pursuant to the requirements of the applicable Buy American law, except that publicly available cost comparison data may be provided in lieu of proprietary pricing information;

(C) for requests citing availability, quantity, or quality as the statutory basis for the waiver, information from a reasonable number of domestic suppliers concerning a product's availability, quantity, or quality, documentation of the procurement official's or assistance recipient's efforts to procure from domestic sources and relevant excerpts from project plans, specifications, and permits indicating the required quantity and quality of the relevant products;

(D) for requests citing the public interest as the statutory basis for the waiver, a detailed written statement, which shall include all appropriate factors, such as potential obligations under international agreements, justifying why

1 the requested waiver is in the public interest;
2 and

3 (E) a certification that the procurement of-
4 ficial or assistance recipient made a good faith
5 effort to solicit bids for domestic products sup-
6 ported by terms included in requests for pro-
7 posals, contracts, and communications with the
8 prime contractor.

9 (e) COMPTROLLER GENERAL REPORT.—Not later
10 than two years after the date of the enactment of this Act,
11 the Comptroller General of the United States shall submit
12 to Congress a report describing the implementation of this
13 section, including recommendations for any legislation to
14 improve the collection and reporting of information re-
15 garding waivers of and exceptions to Buy American laws.

16 (f) RULES OF CONSTRUCTION.—

17 (1) DISCLOSURE REQUIREMENTS.—Nothing in
18 this section shall be construed as preempting, super-
19 seding, or otherwise affecting the application of any
20 disclosure requirement or requirements otherwise
21 provided by law or regulation.

22 (2) ESTABLISHMENT OF SUCCESSOR INFORMA-
23 TION SYSTEMS.—Nothing in this section shall be
24 construed as preventing or otherwise limiting the
25 ability of the Administrator of General Services to

1 move the data required to be included on the website
2 established under subsection (a) to a successor infor-
3 mation system. Any such information system shall
4 include a reference to BuyAmerican.gov.

5 **SEC. 8. CONSISTENCY WITH INTERNATIONAL AGREE-**
6 **MENTS.**

7 This Act shall be applied in a manner consistent with
8 United States obligations under international agreements.

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