

# **TITLE IX—BUILD AMERICA, BUY AMERICA**

## **Subtitle A—Build America, Buy America**

### **SEC. 70901. SHORT TITLE.**

This subtitle may be cited as the “Build America, Buy America Act”.

## **PART I—BUY AMERICA SOURCING REQUIREMENTS**

### **SEC. 70911. FINDINGS.**

Congress finds that—

- (1) the United States must make significant investments to install, upgrade, or replace the public works infrastructure of the United States;
- (2) with respect to investments in the infrastructure of the United States, taxpayers expect that their public works infrastructure will be produced in the United States by American workers;
- (3) United States taxpayer dollars invested in public infrastructure should not be used to reward companies that have moved their operations, investment dollars, and jobs to foreign countries or foreign factories, particularly those that do not share or openly flout the commitments of the United States to environmental, worker, and workplace safety protections;
- (4) in procuring materials for public works projects, entities using taxpayer-financed Federal assistance should give a commonsense procurement preference for the materials and products produced by companies and workers in the United States in accordance with the high ideals embodied in the environmental, worker, workplace safety, and other regulatory requirements of the United States;
- (5) common construction materials used in public works infrastructure projects, including steel, iron, manufactured products, non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, and drywall are not adequately covered by a domestic content procurement preference, thus limiting the impact of taxpayer purchases to enhance supply chains in the United States;
- (6) the benefits of domestic content procurement preferences extend beyond economics;
- (7) by incentivizing domestic manufacturing, domestic content procurement preferences reinvest tax dollars in companies and processes using the highest labor and environmental standards in the world;
- (8) strong domestic content procurement preference policies act to prevent shifts in production to countries that rely on production practices that are significantly less energy efficient and far more polluting than those in the United States;
- (9) for over 75 years, Buy America and other domestic content procurement preference laws have been part of the United States procurement policy, ensuring that the United States can build and rebuild the infrastructure of the United

States with high-quality American-made materials;

(10) before the date of enactment of this Act, a domestic content procurement preference requirement may not apply, may apply only to a narrow scope of products and materials, or may be limited by waiver with respect to many infrastructure programs, which necessitates a review of such programs, including programs for roads, highways, and bridges, public transportation, dams, ports, harbors, and other maritime facilities, intercity passenger and freight railroads, freight and intermodal facilities, airports, water systems, including drinking water and wastewater systems, electrical transmission facilities and systems, utilities, broadband infrastructure, and buildings and real property;

(11) Buy America laws create demand for domestically produced goods, helping to sustain and grow domestic manufacturing and the millions of jobs domestic manufacturing supports throughout product supply chains;

(12) as of the date of enactment of this Act, domestic content procurement preference policies apply to all Federal Government procurement and to various Federal-aid infrastructure programs;

(13) a robust domestic manufacturing sector is a vital component of the national security of the United States;

(14) as more manufacturing operations of the United States have moved offshore, the strength and readiness of the defense industrial base of the United States has been diminished; and

(15) domestic content procurement preference laws—

(A) are fully consistent with the international obligations of the United States; and

(B) together with the government procurements to which the laws apply, are important levers for ensuring that United States manufacturers can access the government procurement markets of the trading partners of the United States.

**SEC. 70912. DEFINITIONS.**

In this part:

(1) **DEFICIENT PROGRAM.**—The term “deficient program” means a program identified by the head of a Federal agency under section 70913(c).

(2) **DOMESTIC CONTENT PROCUREMENT PREFERENCE.**—The term “domestic content procurement preference” means a requirement that no amounts made available through a program for Federal financial assistance may be obligated for a project unless—

(A) all iron and steel used in the project are produced in the United States;

(B) the manufactured products used in the project are produced in the United States; or

(C) the construction materials used in the project are produced in the United States.

(3) **FEDERAL AGENCY.**—The term “Federal agency” means any authority of the United States that is an “agency” (as defined in section 3502 of title 44, United States Code), other than an independent regulatory agency (as defined in that

section).

(4) FEDERAL FINANCIAL ASSISTANCE.—

(A) IN GENERAL.—The term “Federal financial assistance” has the meaning given the term in section 200.1 of title 2, Code of Federal Regulations (or successor regulations).

(B) INCLUSION.—The term “Federal financial assistance” includes all expenditures by a Federal agency to a non-Federal entity for an infrastructure project, except that it does not include expenditures for assistance authorized under section 402, 403, 404, 406, 408, or 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170a, 5170b, 5170c, 5172, 5174, or 5192) relating to a major disaster or emergency declared by the President under section 401 or 501, respectively, of such Act (42 U.S.C. 5170, 5191) or pre and post disaster or emergency response expenditures.

(5) INFRASTRUCTURE.—The term “infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States—

(A) roads, highways, and bridges;

(B) public transportation;

(C) dams, ports, harbors, and other maritime facilities;

(D) intercity passenger and freight railroads;

(E) freight and intermodal facilities;

(F) airports;

(G) water systems, including drinking water and wastewater systems;

(H) electrical transmission facilities and systems;

(I) utilities;

(J) broadband infrastructure; and

(K) buildings and real property.

(6) PRODUCED IN THE UNITED STATES.—The term “produced in the United States” means—

(A) in the case of iron or steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

(B) in the case of manufactured products, that—

(i) the manufactured product was manufactured in the United States; and

(ii) the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and

(C) in the case of construction materials, that all manufacturing processes for the construction material occurred in the United States.

(7) PROJECT.—The term “project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

**SEC. 70913. IDENTIFICATION OF DEFICIENT PROGRAMS.**

(a) **IN GENERAL.**—Not later than 60 days after the date of enactment of this Act, the head of each Federal agency shall—

(1) submit to the Office of Management and Budget and to Congress, including a separate notice to each appropriate congressional committee, a report that identifies each Federal financial assistance program for infrastructure administered by the Federal agency; and

(2) publish in the Federal Register the report under paragraph (1).

(b) **REQUIREMENTS.**—In the report under subsection (a), the head of each Federal agency shall, for each Federal financial assistance program—

(1) identify all domestic content procurement preferences applicable to the Federal financial assistance;

(2) assess the applicability of the domestic content procurement preference requirements, including—

(A) section 313 of title 23, United States Code;

(B) section 5323(j) of title 49, United States Code;

(C) section 22905(a) of title 49, United States Code;

(D) section 50101 of title 49, United States Code;

(E) section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1388);

(F) section 1452(a)(4) of the Safe Drinking Water Act (42 U.S.C. 300j-12(a)(4));

(G) section 5035 of the Water Infrastructure Finance and Innovation Act of 2014 (33 U.S.C. 3914);

(H) any domestic content procurement preference included in an appropriations Act; and

(I) any other domestic content procurement preference in Federal law (including regulations);

(3) provide details on any applicable domestic content procurement preference requirement, including the purpose, scope, applicability, and any exceptions and waivers issued under the requirement; and

(4) include a description of the type of infrastructure projects that receive funding under the program, including information relating to—

(A) the number of entities that are participating in the program;

(B) the amount of Federal funds that are made available for the program for each fiscal year; and

(C) any other information the head of the Federal agency determines to be relevant.

(c) **LIST OF DEFICIENT PROGRAMS.**—In the report under subsection

(a), the head of each Federal agency shall include a list of Federal financial assistance programs for infrastructure identified under that subsection for which a domestic content procurement preference requirement—

(1) does not apply in a manner consistent with section 70914; or

(2) is subject to a waiver of general applicability not limited to the use of specific products for use in a specific project.

**SEC. 70914. APPLICATION OF BUY AMERICA PREFERENCE.**

(a) **IN GENERAL.**—Not later than 180 days after the date of

enactment of this Act, the head of each Federal agency shall ensure that none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.

(b) **WAIVER.**—The head of a Federal agency that applies a domestic content procurement preference under this section may waive the application of that preference in any case in which the head of the Federal agency finds that—

(1) applying the domestic content procurement preference would be inconsistent with the public interest;

(2) types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or

(3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) **WRITTEN JUSTIFICATION.**—Before issuing a waiver under subsection (b), the head of the Federal agency shall—

(1) make publicly available in an easily accessible location on a website designated by the Office of Management and Budget and on the website of the Federal agency a detailed written explanation for the proposed determination to issue the waiver; and

(2) provide a period of not less than 15 days for public comment on the proposed waiver.

(d) **REVIEW OF WAIVERS OF GENERAL APPLICABILITY.**—

(1) **IN GENERAL.**—An existing general applicability waiver or a general applicability waiver issued under subsection (b) shall be reviewed every 5 years after the date on which the waiver is issued.

(2) **REVIEW.**—In conducting a review of a general applicability waiver, the head of a Federal agency shall—

(A) publish in the Federal Register a notice that—

(i) describes the justification for a general applicability waiver; and

(ii) requests public comments for a period of not less than 30 days on the continued need for a general applicability waiver; and

(B) publish in the Federal Register a determination on whether to continue or discontinue the general applicability waiver, taking into account the comments received in response to the notice published under subparagraph (A).

(3) **LIMITATION ON THE REVIEW OF EXISTING WAIVERS OF GENERAL APPLICABILITY.**—For a period of 5 years beginning on the date of enactment of this Act, paragraphs (1) and (2) shall not apply to any product-specific general applicability waiver that was issued more than 180 days before the date of enactment of this Act.

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

**SEC. 70915. OMB GUIDANCE AND STANDARDS.**

(a) GUIDANCE.—The Director of the Office of Management and Budget shall—

(1) issue guidance to the head of each Federal agency—

(A) to assist in identifying deficient programs under section 70913(c); and

(B) to assist in applying new domestic content procurement preferences under section 70914; and

(2) if necessary, amend subtitle A of title 2, Code of Federal Regulations (or successor regulations), to ensure that domestic content procurement preference requirements required by this part or other Federal law are imposed through the terms and conditions of awards of Federal financial assistance.

(b) STANDARDS FOR CONSTRUCTION MATERIALS.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Director of the Office of Management and Budget shall issue standards that define the term “all manufacturing processes” in the case of construction materials.

(2) CONSIDERATIONS.—In issuing standards under paragraph (1), the Director shall—

(A) ensure that the standards require that each manufacturing process required for the manufacture of the construction material and the inputs of the construction material occurs in the United States; and

(B) take into consideration and seek to maximize the direct and indirect jobs benefited or created in the production of the construction material.

**SEC. 70916. TECHNICAL ASSISTANCE PARTNERSHIP AND CONSULTATION SUPPORTING DEPARTMENT OF TRANSPORTATION BUY AMERICA REQUIREMENTS.**

(a) DEFINITIONS.—In this section:

(1) BUY AMERICA LAW.—The term “Buy America law” means—

(A) section 313 of title 23, United States Code;

(B) section 5323(j) of title 49, United States Code;

(C) section 22905(a) of title 49, United States Code;

(D) section 50101 of title 49, United States Code; and

(E) any other domestic content procurement preference for an infrastructure project under the jurisdiction of the Secretary.

(2) SECRETARY.—The term “Secretary” means the Secretary of Transportation.

(b) TECHNICAL ASSISTANCE PARTNERSHIP.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall enter into a technical assistance partnership with the Secretary of Commerce, acting through the Director of the National Institute of Standards and Technology—

(1) to ensure the development of a domestic supply base to support intermodal transportation in the United States, such as intercity high speed rail transportation, public transportation systems, highway construction or reconstruction, airport improvement projects, and other infrastructure projects under the jurisdiction of the Secretary;

(2) to ensure compliance with Buy America laws that apply

to a project that receives assistance from the Federal Highway Administration, the Federal Transit Administration, the Federal Railroad Administration, the Federal Aviation Administration, or another office or modal administration of the Secretary of Transportation;

(3) to encourage technologies developed with the support of and resources from the Secretary to be transitioned into commercial market and applications; and

(4) to establish procedures for consultation under subsection (c).

(c) CONSULTATION.—Before granting a written waiver under a Buy America law, the Secretary shall consult with the Director of the Hollings Manufacturing Extension Partnership regarding whether there is a domestic entity that could provide the iron, steel, manufactured product, or construction material that is the subject of the proposed waiver.

(d) ANNUAL REPORT.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Secretary shall submit to the Committee on Commerce, Science, and Transportation, the Committee on Banking, Housing, and Urban Affairs, the Committee on Environment and Public Works, and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Transportation and Infrastructure and the Committee on Oversight and Reform of the House of Representatives a report that includes—

(1) a detailed description of the consultation procedures developed under subsection (b)(4);

(2) a detailed description of each waiver requested under a Buy America law in the preceding year that was subject to consultation under subsection (c), and the results of the consultation;

(3) a detailed description of each waiver granted under a Buy America law in the preceding year, including the type of waiver and the reasoning for granting the waiver; and

(4) an update on challenges and gaps in the domestic supply base identified in carrying out subsection (b)(1), including a list of actions and policy changes the Secretary recommends be taken to address those challenges and gaps.

#### **SEC. 70917. APPLICATION.**

(a) IN GENERAL.—This part shall apply to a Federal financial assistance program for infrastructure only to the extent that a domestic content procurement preference as described in section 70914 does not already apply to iron, steel, manufactured products, and construction materials.

(b) SAVINGS PROVISION.—Nothing in this part affects a domestic content procurement preference for a Federal financial assistance program for infrastructure that is in effect and that meets the requirements of section 70914.

(c) LIMITATION WITH RESPECT TO AGGREGATES.—In this part—

(1) the term “construction materials” shall not include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives; and

(2) the standards developed under section 70915(b)(1) shall not include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives

as inputs of the construction material.

## **PART II—MAKE IT IN AMERICA**

### **SEC. 70921. REGULATIONS RELATING TO BUY AMERICAN ACT.**

(a) **IN GENERAL.**—Not later than 1 year after the date of the enactment of this Act, the Director of the Office of Management and Budget (“Director”), acting through the Administrator for Federal Procurement Policy and, in consultation with the Federal Acquisition Regulatory Council, shall promulgate final regulations or other policy or management guidance, as appropriate, to standardize and simplify how Federal agencies comply with, report on, and enforce the Buy American Act. The regulations or other policy or management guidance shall include, at a minimum, the following:

(1) Guidelines for Federal agencies to determine, for the purposes of applying sections 8302(a) and 8303(b)(3) of title 41, United States Code, the circumstances under which the acquisition of articles, materials, or supplies mined, produced, or manufactured in the United States is inconsistent with the public interest.

(2) Guidelines to ensure Federal agencies base determinations of non-availability on appropriate considerations, including anticipated project delays and lack of substitutable articles, materials, and supplies mined, produced, or manufactured in the United States, when making determinations of non-availability under section 8302(a)(1) of title 41, United States Code.

(3)(A) Uniform procedures for each Federal agency to make publicly available, in an easily identifiable location on the website of the agency, and within the following time periods, the following information:

(i) A written description of the circumstances in which the head of the agency may waive the requirements of the Buy American Act.

(ii) Each waiver made by the head of the agency within 30 days after making such waiver, including a justification with sufficient detail to explain the basis for the waiver.

(B) The procedures established under this paragraph shall ensure that the head of an agency, in consultation with the head of the Made in America Office established under section 70923(a), may limit the publication of classified information, trade secrets, or other information that could damage the United States.

(4) Guidelines for Federal agencies to ensure that a project is not disaggregated for purposes of avoiding the applicability of the requirements under the Buy American Act.

(5) An increase to the price preferences for domestic end products and domestic construction materials.

(6) Amending the definitions of “domestic end product” and “domestic construction material” to ensure that iron and steel products are, to the greatest extent possible, made with domestic components.

(b) **GUIDELINES RELATING TO WAIVERS.**—

(1) **INCONSISTENCY WITH PUBLIC INTEREST.**—

(A) **IN GENERAL.**—With respect to the guidelines developed under subsection (a)(1), the Administrator shall seek

to minimize waivers related to contract awards that—

(i) result in a decrease in employment in the United States, including employment among entities that manufacture the articles, materials, or supplies; or

(ii) result in awarding a contract that would decrease domestic employment.

(B) COVERED EMPLOYMENT.—For purposes of subparagraph (A), employment refers to positions directly involved in the manufacture of articles, materials, or supplies, and does not include positions related to management, research and development, or engineering and design.

(2) ASSESSMENT ON USE OF DUMPED OR SUBSIDIZED FOREIGN PRODUCTS.—

(A) IN GENERAL.—To the extent otherwise permitted by law, before granting a waiver in the public interest to the guidelines developed under subsection (a)(1) with respect to a product sourced from a foreign country, a Federal agency shall assess whether a significant portion of the cost advantage of the product is the result of the use of dumped steel, iron, or manufactured goods or the use of injuriously subsidized steel, iron, or manufactured goods.

(B) CONSULTATION.—The Federal agency conducting the assessment under subparagraph (A) shall consult with the International Trade Administration in making the assessment if the agency considers such consultation to be helpful.

(C) USE OF FINDINGS.—The Federal agency conducting the assessment under subparagraph (A) shall integrate any findings from the assessment into its waiver determination.

(c) SENSE OF CONGRESS ON INCREASING DOMESTIC CONTENT REQUIREMENTS.—It is the sense of Congress that the Federal Acquisition Regulatory Council should amend the Federal Acquisition Regulation to increase the domestic content requirements for domestic end products and domestic construction material to 75 percent, or, in the event of no qualifying offers, 60 percent.

(d) DEFINITION OF END PRODUCT MANUFACTURED IN THE UNITED STATES.—Not later than 1 year after the date of the enactment of this Act, the Federal Acquisition Regulatory Council shall amend part 25 of the Federal Acquisition Regulation to provide a definition for “end product manufactured in the United States,” including guidelines to ensure that manufacturing processes involved in production of the end product occur domestically.

#### **SEC. 70922. AMENDMENTS RELATING TO BUY AMERICAN ACT.**

(a) SPECIAL RULES RELATING TO AMERICAN MATERIALS REQUIRED FOR PUBLIC USE.—Section 8302 of title 41, United States Code, is amended by adding at the end the following new subsection: “(c) SPECIAL RULES.—The following rules apply in carrying out the provisions of subsection (a):

“(1) IRON AND STEEL MANUFACTURED IN THE UNITED STATES.—For purposes of this section, manufactured articles, materials, and supplies of iron and steel are deemed manufactured in the United States only if all manufacturing processes

involved in the production of such iron and steel, from the initial melting stage through the application of coatings, occurs in the United States.

“(2) LIMITATION ON EXCEPTION FOR COMMERCIALY AVAILABLE OFF-THE-SHELF ITEMS.—Notwithstanding any law or regulation to the contrary, including section 1907 of this title and the Federal Acquisition Regulation, the requirements of this section apply to all iron and steel articles, materials, and supplies.”.

(b) PRODUCTION OF IRON AND STEEL FOR PURPOSES OF CONTRACTS FOR PUBLIC WORKS.—Section 8303 of title 41, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection:

“(c) SPECIAL RULES.—

“(1) PRODUCTION OF IRON AND STEEL.—For purposes of this section, manufactured articles, materials, and supplies of iron and steel are deemed manufactured in the United States only if all manufacturing processes involved in the production of such iron and steel, from the initial melting stage through the application of coatings, occurs in the United States.

“(2) LIMITATION ON EXCEPTION FOR COMMERCIALY AVAILABLE OFF-THE-SHELF ITEMS.—Notwithstanding any law or regulation to the contrary, including section 1907 of this title and the Federal Acquisition Regulation, the requirements of this section apply to all iron and steel articles, materials, and supplies used in contracts described in subsection (a).”.

(c) ANNUAL REPORT.—Subsection (b) of section 8302 of title 41, United States Code, is amended to read as follows:

“(b) REPORTS.—

“(1) IN GENERAL.—Not later than 180 days after the end of the fiscal year during which the Build America, Buy America Act is enacted, and annually thereafter for 4 years, the Director of the Office of Management and Budget, in consultation with the Administrator of General Services, shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Reform of the House of Representatives a report on the total amount of acquisitions made by Federal agencies in the relevant fiscal year of articles, materials, or supplies acquired from entities that mine, produce, or manufacture the articles, materials, or supplies outside the United States.

“(2) EXCEPTION FOR INTELLIGENCE COMMUNITY.—This subsection does not apply to acquisitions made by an agency, or component of an agency, that is an element of the intelligence community as specified in, or designated under, section 3 of the National Security Act of 1947 (50 U.S.C. 3003).”.

(d) DEFINITION.—Section 8301 of title 41, United States Code, is amended by adding at the end the following new paragraph:

“(3) FEDERAL AGENCY.—The term ‘Federal agency’ has the meaning given the term ‘executive agency’ in section 133 of this title.”.

(e) CONFORMING AMENDMENTS.—Title 41, United States Code, is amended—

(1) in section 8302(a)—

(A) in paragraph (1)—

(i) by striking “department or independent establishment” and inserting “Federal agency”; and  
(ii) by striking “their acquisition to be inconsistent with the public interest or their cost to be unreasonable” and inserting “their acquisition to be inconsistent with the public interest, their cost to be unreasonable, or that the articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality”; and

(B) in paragraph (2), by amending subparagraph (B) to read as follows:

“(B) to any articles, materials, or supplies procured pursuant to a reciprocal defense procurement memorandum of understanding (as described in section 8304 of this title), or a trade agreement or least developed country designation described in subpart 25.400 of the Federal Acquisition Regulation; and”;

(2) in section 8303—

(A) in subsection (b)—

(i) by striking “department or independent establishment” each place it appears and inserting “Federal agency”;

(ii) by amending subparagraph (B) of paragraph (1) to read as follows:

“(B) to any articles, materials, or supplies procured pursuant to a reciprocal defense procurement memorandum of understanding (as described in section 8304), or a trade agreement or least developed country designation described in subpart 25.400 of the Federal Acquisition Regulation; and”;

(iii) in paragraph (3)—

(I) in the heading, by striking “INCONSISTENT WITH PUBLIC INTEREST” and inserting “WAIVER AUTHORITY”; and

(II) by striking “their purchase to be inconsistent with the public interest or their cost to be unreasonable” and inserting “their acquisition to be inconsistent with the public interest, their cost to be unreasonable, or that the articles, materials, or supplies of the class or kind to be used, or the articles, materials, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality”; and

(B) in subsection (d), as redesignated by subsection (b)(1) of this section, by striking “department, bureau, agency, or independent establishment” each place it appears and inserting “Federal agency”.

(f) EXCLUSION FROM INFLATION ADJUSTMENT OF ACQUISITION RELATED DOLLAR THRESHOLDS.—Subparagraph (A) of section 1908(b)(2) of title 41, United States Code, is amended by striking

“chapter 67” and inserting “chapters 67 and 83”.

**SEC. 70923. MADE IN AMERICA OFFICE.**

(a) **ESTABLISHMENT.**—The Director of the Office of Management and Budget shall establish within the Office of Management and Budget an office to be known as the “Made in America Office”. The head of the office shall be appointed by the Director of the Office of Management and Budget (in this section referred to as the “Made in America Director”).

(b) **DUTIES.**—The Made in America Director shall have the following duties:

(1) Maximize and enforce compliance with domestic preference statutes.

(2) Develop and implement procedures to review waiver requests or inapplicability requests related to domestic preference statutes.

(3) Prepare the reports required under subsections (c) and (e).

(4) Ensure that Federal contracting personnel, financial assistance personnel, and non-Federal recipients are regularly trained on obligations under the Buy American Act and other agency-specific domestic preference statutes.

(5) Conduct the review of reciprocal defense agreements required under subsection (d).

(6) Ensure that Federal agencies, Federal financial assistance recipients, and the Hollings Manufacturing Extension Partnership partner with each other to promote compliance with domestic preference statutes.

(7) Support executive branch efforts to develop and sustain a domestic supply base to meet Federal procurement requirements.

(c) **OFFICE OF MANAGEMENT AND BUDGET REPORT.**—Not later than 1 year after the date of the enactment of this Act, the Director of the Office of Management and Budget, working through the Made in America Director, shall report to the relevant congressional committees on the extent to which, in each of the three fiscal years prior to the date of enactment of this Act, articles, materials, or supplies acquired by the Federal Government were mined, produced, or manufactured outside the United States. Such report shall include for each Federal agency the following:

(1) A summary of total procurement funds expended on articles, materials, and supplies mined, produced, or manufactured—

(A) inside the United States;

(B) outside the United States; and

(C) outside the United States—

(i) under each category of waiver under the Buy American Act;

(ii) under each category of exception under such chapter; and

(iii) for each country that mined, produced, or manufactured such articles, materials, and supplies.

(2) For each fiscal year covered by the report—

(A) the dollar value of any articles, materials, or supplies that were mined, produced, or manufactured outside the United States, in the aggregate and by country;

(B) an itemized list of all waivers made under the

Buy American Act with respect to articles, materials, or supplies, where available, and the country where such articles, materials, or supplies were mined, produced, or manufactured;

(C) if any articles, materials, or supplies were acquired from entities that mine, produce, or manufacture such articles, materials, or supplies outside the United States due to an exception (that is not the micro-purchase threshold exception described under section 8302(a)(2)(C) of title 41, United States Code), the specific exception that was used to purchase such articles, materials, or supplies; and

(D) if any articles, materials, or supplies were acquired from entities that mine, produce, or manufacture such articles, materials, or supplies outside the United States pursuant to a reciprocal defense procurement memorandum of understanding (as described in section 8304 of title 41, United States Code), or a trade agreement or least developed country designation described in subpart 25.400 of the Federal Acquisition Regulation, a citation to such memorandum of understanding, trade agreement, or designation.

(3) A description of the methods used by each Federal agency to calculate the percentage domestic content of articles, materials, and supplies mined, produced, or manufactured in the United States.

(d) REVIEW OF RECIPROCAL DEFENSE AGREEMENTS.—

(1) REVIEW OF PROCESS.—Not later than 180 days after the date of the enactment of this Act, the Made in America Director shall review the Department of Defense's use of reciprocal defense agreements to determine if domestic entities have equal and proportional access and report the findings of the review to the Director of the Office of Management and Budget, the Secretary of Defense, and the Secretary of State.

(2) REVIEW OF RECIPROCAL PROCUREMENT MEMORANDA OF UNDERSTANDING.—The Made in America Director shall review reciprocal procurement memoranda of understanding entered into after the date of the enactment of this Act between the Department of Defense and its counterparts in foreign governments to assess whether domestic entities will have equal and proportional access under the memoranda of understanding and report the findings of the review to the Director of the Office of Management and Budget, the Secretary of Defense, and the Secretary of State.

(e) REPORT ON USE OF MADE IN AMERICA LAWS.—The Made in America Director shall submit to the relevant congressional committees a summary of each report on the use of Made in America Laws received by the Made in America Director pursuant to section 11 of Executive Order 14005, dated January 25, 2021 (relating to ensuring the future is made in all of America by all of America's workers) not later than 90 days after the date of the enactment of this Act or receipt of the reports required under section 11 of such Executive Order, whichever is later.

(f) DOMESTIC PREFERENCE STATUTE DEFINED.—In this section, the term "domestic preference statute" means any of the following:

(1) the Buy American Act;

(2) a Buy America law (as that term is defined in section 70916(a));

- (3) the Berry Amendment;
- (4) section 604 of the American Recovery and Reinvestment Act of 2009 (6 U.S.C. 453b) (commonly referred to as the “Kissell amendment”);
- (5) section 2533b of title 10 (commonly referred to as the “specialty metals clause”);
- (6) laws requiring domestic preference for maritime transport, including the Merchant Marine Act, 1920 (Public Law 66-261), commonly known as the “Jones Act”; and
- (7) any other law, regulation, rule, or executive order relating to Federal financial assistance awards or Federal procurement, that requires, or provides a preference for, the purchase or acquisition of goods, products, or materials produced in the United States, including iron, steel, construction material, and manufactured goods offered in the United States.

**SEC. 70924. HOLLINGS MANUFACTURING EXTENSION PARTNERSHIP ACTIVITIES.**

- (a) USE OF HOLLINGS MANUFACTURING EXTENSION PARTNERSHIP TO REFER NEW BUSINESSES TO CONTRACTING OPPORTUNITIES.—The head of each Federal agency shall work with the Director of the Hollings Manufacturing Extension Partnership, as necessary, to ensure businesses participating in this Partnership are aware of their contracting opportunities.
- (b) AUTOMATIC ENROLLMENT IN GSA ADVANTAGE!.—The Administrator of the General Services Administration and the Secretary of Commerce, acting through the Under Secretary of Commerce for Standards and Technology, shall jointly ensure that each business that participates in the Hollings Manufacturing Extension Partnership is automatically enrolled in General Services Administration Advantage!.

**SEC. 70925. UNITED STATES OBLIGATIONS UNDER INTERNATIONAL AGREEMENTS.**

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

**SEC. 70926. DEFINITIONS.**

In this part:

- (1) BERRY AMENDMENT.—The term “Berry Amendment” means section 2533a of title 10, United States Code.
- (2) BUY AMERICAN ACT.—The term “Buy American Act” means chapter 83 of title 41, United States Code.
- (3) FEDERAL AGENCY.—The term “Federal agency” has the meaning given the term “executive agency” in section 133 of title 41, United States Code.
- (4) RELEVANT CONGRESSIONAL COMMITTEES.—The term “relevant congressional committees” means—
  - (A) the Committee on Homeland Security and Governmental Affairs, the Committee on Commerce, Science, and Transportation, the Committee on Environment and Public Works, the Committee on Banking, Housing, and Urban Affairs, and the Committee on Armed Services of the Senate; and
  - (B) the Committee on Oversight and Reform, the Committee

on Armed Services, and the Committee on Transportation and Infrastructure of the House of Representatives.

(5) **WAIVER.**—The term “waiver”, with respect to the acquisition of an article, material, or supply for public use, means the inapplicability of chapter 83 of title 41, United States Code, to the acquisition by reason of any of the following determinations under section 8302(a)(1) or 8303(b) of such title:

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

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

(C) A determination by the head of the Federal agency concerned that the article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

**SEC. 70927. PROSPECTIVE AMENDMENTS TO INTERNAL CROSS-REFERENCES.**

(a) **SPECIALTY METALS CLAUSE REFERENCE.**—Section 70923(f)(5) is amended by striking “section 2533b” and inserting “section 4863”.

(b) **BERRY AMENDMENT REFERENCE.**—Section 70926(1) is amended by striking “section 2533a” and inserting “section 4862”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on January 1, 2022.

## **Subtitle B—BuyAmerican.gov**

**SEC. 70931. SHORT TITLE.**

This subtitle may be cited as the “BuyAmerican.gov Act of 2021”.

**SEC. 70932. DEFINITIONS.**

In this subtitle:

(1) **BUY AMERICAN LAW.**—The term “Buy American law” means any law, regulation, Executive order, or rule relating to Federal contracts, grants, or financial assistance that requires or provides a preference for the purchase or use of goods, products, or materials mined, produced, or manufactured in the United States, including—

(A) chapter 83 of title 41, United States Code (commonly referred to as the “Buy American Act”);

(B) section 5323(j) of title 49, United States Code;

(C) section 313 of title 23, United States Code;

(D) section 50101 of title 49, United States Code;

(E) section 24405 of title 49, United States Code;

(F) section 608 of the Federal Water Pollution Control Act (33 U.S.C. 1388);

(G) section 1452(a)(4) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(4));

(H) section 5035 of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 3914);

(I) section 2533a of title 10, United States Code (commonly referred to as the “Berry Amendment”); and

(J) section 2533b of title 10, United States Code.

(2) **EXECUTIVE AGENCY.**—The term “executive agency” has

the meaning given the term “agency” in paragraph (1) of section 3502 of title 44, United States Code, except that it does not include an independent regulatory agency, as that term is defined in paragraph (5) of such section.

(3) **BUY AMERICAN WAIVER.**—The term “Buy American waiver” refers to an exception to or waiver of any Buy American law, or the terms and conditions used by an agency in granting an exception to or waiver from Buy American laws.

**SEC. 70933. SENSE OF CONGRESS ON BUYING AMERICAN.**

It is the sense of Congress that—

(1) every executive agency should maximize, through terms and conditions of Federal financial assistance awards and Federal procurements, the use of goods, products, and materials produced in the United States and contracts for outsourced government service contracts to be performed by United States nationals;

(2) every executive agency should scrupulously monitor, enforce, and comply with Buy American laws, to the extent they apply, and minimize the use of waivers; and

(3) every executive agency should use available data to routinely audit its compliance with Buy American laws.

**SEC. 70934. ASSESSMENT OF IMPACT OF FREE TRADE AGREEMENTS.**

Not later than 150 days after the date of the enactment of this Act, the Secretary of Commerce, the United States Trade Representative, and the Director of the Office of Management and Budget shall assess the impacts in a publicly available report of all United States free trade agreements, the World Trade Organization Agreement on Government Procurement, and Federal permitting processes on the operation of Buy American laws, including their impacts on the implementation of domestic procurement preferences.

**SEC. 70935. JUDICIOUS USE OF WAIVERS.**

(a) **IN GENERAL.**—To the extent permitted by law, a Buy American waiver that is determined by an agency head or other relevant official to be in the public interest shall be construed to ensure the maximum utilization of goods, products, and materials produced in the United States.

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

**SEC. 70936. ESTABLISHMENT OF BUYAMERICAN.GOV WEBSITE.**

(a) **IN GENERAL.**—Not later than one year after the date of the enactment of this Act, the Administrator of General Services shall establish an Internet website with the address [BuyAmerican.gov](http://BuyAmerican.gov) that will be publicly available and free to access. The website shall include information on all waivers of and exceptions to Buy American laws since the date of the enactment of this Act that have been requested, are under consideration, or have been granted by executive agencies and be designed to enable manufacturers and other interested parties to easily identify waivers. The website shall also include the results of routine audits

to determine data errors and Buy American law violations after the award of a contract. The website shall provide publicly available contact information for the relevant contracting agencies.

(b) UTILIZATION OF EXISTING WEBSITE.—The requirements of subsection (a) may be met by utilizing an existing website, provided that the address of that website is BuyAmerican.gov.

**SEC. 70937. WAIVER TRANSPARENCY AND STREAMLINING FOR CONTRACTS.**

(a) COLLECTION OF INFORMATION.—The Administrator of General Services, in consultation with the heads of relevant agencies, shall develop a mechanism to collect information on requests to existing reporting requirements whenever possible, for purposes of providing early notice of possible waivers via the website established under section 70936.

(b) WAIVER TRANSPARENCY AND STREAMLINING.—

(1) REQUIREMENT.—Prior to granting a request to waive a Buy American law, the head of an executive agency shall submit a request to invoke a Buy American waiver to the Administrator of General Services, and the Administrator of General Services shall make the request available on or through the public website established under section 70936 for public comment for not less than 15 days.

(2) EXCEPTION.—The requirement under paragraph (1) does not apply to a request for a Buy American waiver to satisfy an urgent contracting need in an unforeseen and exigent circumstance.

(c) INFORMATION AVAILABLE TO THE EXECUTIVE AGENCY CONCERNING THE REQUEST.—

(1) REQUIREMENT.—No Buy American waiver for purposes of awarding a contract may be granted if, in contravention of subsection (b)—

(A) information about the waiver was not made available on the website under section 70936; or

(B) no opportunity for public comment concerning the request was granted.

(2) SCOPE.—Information made available to the public concerning the request included on the website described in section 70936 shall properly and adequately document and justify the statutory basis cited for the requested waiver. Such information shall include—

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

(B) for requests citing unreasonable cost as the statutory basis of the waiver, a comparison 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 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 the requested waiver is in the public interest; and  
(D) a certification that the procurement official or assistance recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.

**(d) NONAVAILABILITY WAIVERS.—**

(1) **IN GENERAL.**—Except as provided under paragraph (2), for a request citing nonavailability as the statutory basis for a Buy American waiver, an executive agency shall provide an explanation of the procurement official's efforts to procure a product from a domestic source and the reasons why a domestic product was not available from a domestic source. Those explanations shall be made available on BuyAmerican.gov prior to the issuance of the waiver, and the agency shall consider public comments regarding the availability of the product before making a final determination.

(2) **EXCEPTION.**—An explanation under paragraph (1) is not required for a product the nonavailability of which is established by law or regulation.

**SEC. 70938. COMPTROLLER GENERAL REPORT.**

Not later than two years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report describing the implementation of this subtitle, including recommendations for any legislation to improve the collection and reporting of information regarding waivers of and exceptions to Buy American laws.

**SEC. 70939. RULES OF CONSTRUCTION.**

(a) **DISCLOSURE REQUIREMENTS.**—Nothing in this subtitle shall be construed as preempting, superseding, or otherwise affecting the application of any disclosure requirement or requirements otherwise provided by law or regulation.

(b) **ESTABLISHMENT OF SUCCESSOR INFORMATION SYSTEMS.**—Nothing in this subtitle shall be construed as preventing or otherwise limiting the ability of the Administrator of General Services to move the data required to be included on the website established under subsection (a) to a successor information system. Any such information system shall include a reference to BuyAmerican.gov.

**SEC. 70940. CONSISTENCY WITH INTERNATIONAL AGREEMENTS.**

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

**SEC. 70941. PROSPECTIVE AMENDMENTS TO INTERNAL CROSS-REFERENCES.**

(a) **IN GENERAL.**—Section 70932(1) is amended—

(1) in subparagraph (I), by striking “section 2533a” and inserting “section 4862”; and

(2) in subparagraph (J), by striking “section 2533b” and inserting “section 4863”.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect on January 1, 2022.