

116TH CONGRESS
1ST SESSION

S. 1324

To strengthen Buy American requirements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 6, 2019

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 2019”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

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

1 or financial assistance that requires or provides a
2 preference for the purchase or use of goods, prod-
3 ucts, or materials mined, produced, or manufactured
4 in the 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;

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

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

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

16 (F) section 608 of the Federal Water Pol-
17 lution Control Act (33 U.S.C. 1388);

18 (G) section 1452(a)(4) of the Safe Drink-
19 ing Water Act (42 U.S.C. 300j–12(a)(4));

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

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

1 (J) section 2533b of title 10, United
2 States Code; and

3 (K) section 604 of the American Recovery
4 and Reinvestment Act of 2009 (6 U.S.C. 453b).

5 (2) EXECUTIVE AGENCY.—The term “executive
6 agency” has the meaning given the term in section
7 133 of title 41, United States Code.

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

9 It is the sense of Congress that—

10 (1) every executive agency should maximize,
11 through terms and conditions of Federal financial
12 assistance awards and Federal procurements, the
13 use of goods, products, and materials produced in
14 the United States and contracts for outsourced gov-
15 ernment service contracts to be performed by United
16 States nationals;

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

21 (3) every executive agency should implement
22 processes to routinely audit its compliance with Buy
23 American laws using data from the Federal Procure-
24 ment Data System—Next Generation.

1 **SEC. 4. REPORT ON BUY AMERICAN COMPLIANCE EF-**
2 **FORTS.**

3 (a) IN GENERAL.—Not later than 180 days after the
4 date of the enactment of this Act, and annually thereafter
5 for two years, the Secretary of Commerce, in consultation
6 with the Director of the Office of Management and Budg-
7 et, the United States Trade Representative, the Secretary
8 of State, and the heads of other executive agencies, shall
9 submit to Congress and the President a report on the im-
10 plementation of, and compliance with, Buy American laws.

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

13 (1) An assessment of the monitoring of, en-
14 forcement of, implementation of, and compliance
15 with Buy American Laws within each executive
16 agency.

17 (2) A listing of each waiver and exception used
18 by an executive agency and an assessment of waivers
19 by type and impact on domestic jobs and manufac-
20 turing.

21 (3) Recommendations for policies for executive
22 agencies to ensure that, to the extent permitted by
23 law, Federal financial assistance awards and Federal
24 contacts maximize the use of goods, products, and
25 materials mined, produced, and manufactured in the
26 United States, including manufactured products,

1 components of manufactured products, and mate-
2 rials such as steel, iron, aluminum, and cement and
3 services.

4 (c) AGENCY REPORTS.—Not later than 180 days
5 after the date of the enactment of this Act, and annually
6 thereafter for two years, the head of each executive agency
7 shall submit to the Secretary of Commerce and the Direc-
8 tor of the Office of Management and Budget a report on
9 the implementation of, and compliance with, Buy Amer-
10 ican laws and covering with respect to that agency the ele-
11 ments set forth in subsection (b).

12 (d) GUIDANCE.—The head of each executive agency
13 shall review the guidance issued to executive agencies in
14 accordance with Executive Order 13788 regarding assess-
15 ment of waivers and policies addressing Buy American
16 laws and, as necessary, issue additional guidance.

17 **SEC. 5. ASSESSMENT OF IMPACT OF FREE TRADE AGREE-**
18 **MENTS.**

19 Not later than 150 days after the date of the enact-
20 ment of this Act, the Secretary of Commerce and the
21 United States Trade Representative shall assess the im-
22 pacts in a publicly available report of all United States
23 free trade agreements and the World Trade Organization
24 Agreement on Government Procurement on the operation

1 of Buy American Laws, including their impacts on the im-
2 plementation of domestic procurement preferences.

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

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

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

13 **SEC. 7. ESTABLISHMENT OF BUYAMERICAN.GOV WEBSITE.**

14 Not later than one year after the date of the enact-
15 ment of this Act, the Administrator of General Services
16 shall establish an Internet website with the address
17 BuyAmerican.gov that will be publicly available and free
18 to access. The website shall include information on all
19 waivers of and exceptions to Buy American laws that have
20 been requested, are under consideration, or have been
21 granted by executive agencies and be designed to enable
22 manufacturers and other interested parties to easily iden-
23 tify waivers. The website shall also include the results of
24 routine audits of the Federal Procurement Data System—
25 Next Generation to determine data errors and Buy Amer-

1 ican law violations after the award of a contract. The
 2 website shall provide publicly available contact information
 3 for the contracting agencies.

4 **SEC. 8. WAIVER TRANSPARENCY AND STREAMLINING FOR**
 5 **GRANTS.**

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

19 (b) WAIVER TRANSPARENCY AND STREAMLINING.—
 20 Not less than 20 days prior to waiving, under his or her
 21 statutory authority, any applicable Buy American law, the
 22 head of an executive agency shall submit to the Adminis-
 23 trator of General Services a notice of the agency's inten-
 24 tion to waive the Buy American law. Not later than 5 days
 25 after receiving this information from the head of an execu-

1 tive agency, the Administrator of General Services shall
 2 make available to the public, by posting on the website
 3 established under section 7, a copy of the information pro-
 4 vided pursuant to subsection (a), and shall allow for infor-
 5 mal public comment on the request for at least 15 days
 6 prior to making a finding based on the request.

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

9 (1) REQUIREMENT.—No requested waiver of an
 10 applicable Buy American Law may be granted if, in
 11 contravention of subsection (b)—

12 (A) information about the waiver was not
 13 made available on the website under section 7;
 14 or

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

17 (2) SCOPE.—Information made available to the
 18 public concerning the request included on the
 19 website described in section 7 shall properly and
 20 adequately document and justify the statutory basis
 21 cited for the requested waiver. Such information
 22 shall include—

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

1 (B) for requests citing unreasonable cost
2 as the statutory basis of the waiver, a compari-
3 son of the cost of the domestic product to the
4 cost of the foreign product or a comparison of
5 the overall cost of the project with domestic
6 products to the overall cost of the project with
7 foreign-origin products or services, pursuant to
8 the requirements of the applicable Buy Amer-
9 ican law, except that publicly available cost
10 comparison data may be provided in lieu of pro-
11 prietary pricing information;

12 (C) for requests citing the public interest
13 as the statutory basis for the waiver, a detailed
14 written statement, which shall include all appro-
15 priate factors, such as potential obligations
16 under international agreements, justifying why
17 the requested waiver is in the public interest;
18 and

19 (D) a certification that the procurement
20 official or assistance recipient made a good
21 faith effort to solicit bids for domestic products
22 supported by terms included in requests for
23 proposals, contracts, and nonproprietary com-
24 munications with the prime contractor.

25 (d) NONAVAILABILITY WAIVERS.—

1 (1) IN GENERAL.—Except as provided under
2 paragraph (2), for a request citing nonavailability as
3 the statutory basis for a waiver, an executive agency
4 shall provide an explanation of the procurement offi-
5 cial’s efforts to procure a product from a domestic
6 source and the reasons why a domestic product was
7 not suitable. Those explanations shall be made avail-
8 able on BuyAmerican.gov prior to the issuance of
9 the waiver, and the agency shall consider public
10 comments regarding the availability of the product
11 before making a final determination.

12 (2) EXCEPTION.—An explanation under para-
13 graph (1) is not required for a product the nonavail-
14 ability of which is established by law or regulation.

15 **SEC. 9. WAIVER TRANSPARENCY AND STREAMLINING FOR**
16 **PROCUREMENT.**

17 (a) PUBLICATION OF INFORMATION.—Not less than
18 20 days prior to waiving, pursuant to statutory authority,
19 any applicable Buy American law, the head of an executive
20 agency shall make information concerning the intention to
21 issue a waiver or exception in connection with a Federal
22 procurement available to the Administrator of General
23 Services. A notice of the agency’s intention to waive a Buy
24 American law shall be made available to the public

1 through BuyAmerican.gov and shall include the statutory
2 basis for exercise of the waiver or exception.

3 (b) NONAVAILABILITY WAIVERS.—

4 (1) IN GENERAL.—Except as provided under
5 paragraph (2), for a request citing nonavailability as
6 the statutory basis for a waiver, an executive agency
7 shall provide an explanation of the procurement offi-
8 cial's efforts to procure a product from a domestic
9 source and the reasons why a domestic product was
10 not suitable. The explanation shall be made available
11 on BuyAmerican.gov prior to the issuance of the
12 waiver, and the agency shall consider public com-
13 ments regarding the availability of the product be-
14 fore making a final determination.

15 (2) EXCEPTION.—An explanation under para-
16 graph (1) is not required for a product the nonavail-
17 ability of which is established by law or regulation.

18 **SEC. 10. COMPTROLLER GENERAL REPORT.**

19 Not later than two years after the date of the enact-
20 ment of this Act, the Comptroller General of the United
21 States shall submit to Congress a report describing the
22 implementation of this Act, including recommendations
23 for any legislation to improve the collection and reporting
24 of information regarding waivers of and exceptions to Buy
25 American laws.

1 **SEC. 11. RULES OF CONSTRUCTION.**

2 (a) DISCLOSURE REQUIREMENTS.—Nothing in this
3 Act shall be construed as preempting, superseding, or oth-
4 erwise affecting the application of any disclosure require-
5 ment or requirements otherwise provided by law or regula-
6 tion.

7 (b) ESTABLISHMENT OF SUCCESSOR INFORMATION
8 SYSTEMS.—Nothing in this Act shall be construed as pre-
9 venting or otherwise limiting the ability of the Adminis-
10 trator of General Services to move the data required to
11 be included on the website established under subsection
12 (a) to a successor information system. Any such informa-
13 tion system shall include a reference to BuyAmerican.gov.

14 **SEC. 12. CONSISTENCY WITH INTERNATIONAL AGREE-**
15 **MENTS.**

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

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