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.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “BuyAmerican.gov Act of 2018”.

SEC. 2. DEFINITIONS.

In this Act:

(1) Buy American Law.—The term “Buy American Law” means any law, regulation, Executive order, regulation, or rule relating to Federal
contracts or grants 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 (commonly referred to as the “Buy America Act”);

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

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


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

SEC. 3. 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 gov-
ernment service contracts to be performed by United
States nationals; and

(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.

SEC. 4. REPORT ON BUY AMERICAN COMPLIANCE EF-
FORTS.

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

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

(1) An assessment of the monitoring of, en-
forcement of, implementation of, and compliance
with Buy American Laws within each executive
agency.
(2) A listing of each waiver and exception used by an executive agency and an assessment of waivers by type and impact on domestic jobs and manufacturing.

(3) Recommendations for policies for executive agencies to ensure that, to the extent permitted by law, Federal financial assistance awards and Federal contacts maximize the use of goods, products, and materials mined, produced, and manufactured in the United States, including manufactured products, components of manufactured products, and materials such as steel, iron, aluminum, and cement and services.

(e) AGENCY REPORTS.—Not later than 180 days after the date of the enactment of this Act, and annually thereafter for two years, the head of each executive agency shall submit to the Secretary of Commerce and the Director of the Office of Management and Budget a report on the implementation of, and compliance with, Buy American laws and covering with respect to that agency the elements set forth in subsection (b).

(d) GUIDANCE.—Not later than 60 days after the date of the enactment of this Act, the Secretary of Commerce and the Director of the Office of Management and Budget, in consultation with the Secretary of State, the
Secretary of Labor, the United States Trade Representative, and the Federal Acquisition Regulatory Council, shall issue guidance to executive agencies regarding how to make the required waiver assessments and develop the policies required under this section.

SEC. 5. 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 and the United States Trade Representative shall assess the impacts of all United States free trade agreements and the World Trade Organization Agreement on Government Procurement on the operation of Buy American Laws, including their impacts on the implementation of domestic procurement preferences.

SEC. 6. JUDICIOUS USE OF WAIVERS.

(a) In General.—To the extent permitted by law, public interest waivers from Buy American Laws 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.
(c) Consideration of Dumping and Subsidies.—

To the extent permitted by law, before granting a public interest waiver, the head of an executive agency shall take appropriate account of whether a significant portion of the cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured goods, the use of subsidized steel, iron, or manufactured goods, or the use of steel, iron, or manufactured goods that have entered the United States in violation of United States customs laws and shall, as appropriate, integrate any findings into its waiver determination.

SEC. 7. WAIVER TRANSPARENCY AND STREAMLINING THROUGH THE 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 that will be publicly available and free to access. The website shall include information on all waivers of and exceptions to Buy American laws 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, and shall provide publicly available contact information for the contracting agencies.
(b) COLLECTION OF INFORMATION.—The President, in consultation with the heads of relevant agencies, shall develop a mechanism to collect information on requests to waive Buy American laws and other domestic content restrictions, utilizing existing reporting requirements whenever possible, for purposes of providing early notice to possible waivers via the website established under subsection (a). The heads of executive agencies shall report to the Administrator as quickly as possible waivers requested or under consideration and waivers granted due to the non-availability of procured items or service providers for purposes of posting such information on the website established under such subsection.

(e) WAIVER TRANSPARENCY AND STREAMLINING.—Not less than 20 days prior to waiving, under his or her statutory authority, any applicable Buy American Law, the head of an executive agency shall submit to the Administrator of General Services a copy of the request and information available to the executive agency concerning the request. Not later than 5 days after receiving this information from the head of an executive agency, the Administrator of General Services shall make available to the public, by posting on the website established under subsection (a), a copy of the request and information available to the executive agency concerning the request, and shall
allow for informal public comment on the request for at least 15 days prior to making a finding based on the request.

(d) Information Available to the Executive Agency Concerning the Request.—

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

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

(B) the information available to the executive agency concerning the request was not made available to the public; or

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

(2) Scope.—Information made available to the public under this section concerning the request 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 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 Amer-
ican law, except that publicly available cost
comparison data may be provided in lieu of pro-
prietary pricing information;

(C) for requests citing availability, quan-
tity, 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 re-
cipient’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 appro-
priate factors, such as potential obligations
under international agreements, justifying why
the requested waiver is in the public interest; and

(E) 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 communications with the prime contractor.

(e) 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 section, including recommendations for any legislation to improve the collection and reporting of information regarding waivers of and exceptions to Buy American laws.

(f) Rules of Construction.—

(1) Disclosure requirements.—Nothing in this section shall be construed as preempting, superseding, or otherwise affecting the application of any disclosure requirement or requirements otherwise provided by law or regulation.

(2) Establishment of successor information systems.—Nothing in this section 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. 8. CONSISTENCY WITH INTERNATIONAL AGREEMENTS.

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