

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2114

To prohibit the Department of Homeland Security from procuring certain items directly related to the national security unless the items are grown, reprocessed, reused, or produced in the United States, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2012

Mr. ROCKEFELLER (for himself, Ms. COLLINS, and Mr. TESTER) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To prohibit the Department of Homeland Security from procuring certain items directly related to the national security unless the items are grown, reprocessed, reused, or produced in the United States, 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 “Berry Amendment Ex-  
5 tension Act”.

1 **SEC. 2. BUY AMERICAN REQUIREMENT IMPOSED ON DE-**  
2 **PARTMENT OF HOMELAND SECURITY; EXCEP-**  
3 **TIONS.**

4 (a) IN GENERAL.—Subtitle H of title VIII of the  
5 Homeland Security Act of 2002 (6 U.S.C. 451 et seq.)  
6 is amended by adding at the end the following new section:

7 **“SEC. 890. BUY AMERICAN REQUIREMENT; EXCEPTIONS.**

8 “(a) REQUIREMENT.—Except as provided in sub-  
9 sections (c) through (f), the Secretary may not procure  
10 an item described in subsection (b) if the item is not  
11 grown, reprocessed, reused, or produced in the United  
12 States.

13 “(b) COVERED ITEMS.—

14 “(1) IN GENERAL.—An item referred to in sub-  
15 section (a) is any item described in paragraph (2),  
16 if the item is directly related to the national security  
17 interests of the United States.

18 “(2) ITEMS DESCRIBED.—An item described in  
19 this paragraph is any article or item of—

20 “(A) clothing or footwear and the mate-  
21 rials and components thereof, other than sen-  
22 sors, electronics, or other items added to, and  
23 not normally associated with, clothing or foot-  
24 wear (and the materials and components there-  
25 of);

1           “(B) tents, tarpaulins, covers, textile belts,  
2           bags, protective equipment (including body  
3           armor), sleep systems, load carrying equipment  
4           (including fieldpacks), textile marine equipment,  
5           parachutes, or bandages;

6           “(C) cotton and other natural fiber prod-  
7           ucts, woven silk or woven silk blends, spun silk  
8           yarn for cartridge cloth, synthetic fabric or  
9           coated synthetic fabric (including all textile fi-  
10          bers and yarns that are for use in such fabrics),  
11          canvas products, or wool (whether in the form  
12          of fiber or yarn or contained in fabrics, mate-  
13          rials, or manufactured articles); or

14          “(D) any item of individual equipment  
15          manufactured from or containing such fibers,  
16          yarns, fabrics, or materials.

17          “(c) AVAILABILITY EXCEPTION.—Subsection (a)  
18          does not apply to the extent that the Secretary determines  
19          that satisfactory quality and sufficient quantity of any  
20          such article or item described in subsection (b)(2) grown,  
21          reprocessed, reused, or produced in the United States can-  
22          not be procured as and when needed or in a time period  
23          that meets the national security needs of the United  
24          States. This section is not applicable to covered items that  
25          are, or include, materials determined to be nonavailable

1 in accordance with subpart 25.104 of the Federal Acquisi-  
2 tion Regulation (relating to nonavailable articles).

3 “(d) DE MINIMIS EXCEPTION.—Notwithstanding  
4 subsection (a), the Secretary may accept delivery of an  
5 item covered by subsection (b) that contains non-compli-  
6 ant fibers if the total value of non-compliant fibers con-  
7 tained in the end item does not exceed 10 percent of the  
8 total purchase price of the end item.

9 “(e) EXCEPTION FOR CERTAIN PROCUREMENTS  
10 OUTSIDE THE UNITED STATES.—Subsection (a) does not  
11 apply to the following:

12 “(1) Procurements by vessels in foreign waters.

13 “(2) Emergency procurements.

14 “(f) EXCEPTION FOR SMALL PURCHASES.—Sub-  
15 section (a) does not apply to purchases for amounts not  
16 greater than the simplified acquisition threshold referred  
17 to in section 134 of title 41, United States Code.

18 “(g) APPLICABILITY TO CONTRACTS AND SUB-  
19 CONTRACTS FOR PROCUREMENT OF COMMERCIAL  
20 ITEMS.—This section is applicable to contracts and sub-  
21 contracts for the procurement of commercial items not-  
22 withstanding section 1906 of title 41, United States Code,  
23 with the exception of commercial items listed under sub-  
24 paragraphs (C) and (D) of subsection (b)(2). For the pur-  
25 poses of this subsection, the term ‘commercial item’ has

1 the meaning given the term in section 2.101 of the Federal  
2 Acquisition Regulation.

3 “(h) GEOGRAPHIC COVERAGE.—In this section, the  
4 term ‘United States’ includes the possessions of the  
5 United States.

6 “(i) NOTIFICATION REQUIRED WITHIN 7 DAYS  
7 AFTER CONTRACT AWARD IF CERTAIN EXCEPTIONS AP-  
8 PLIED.—In the case of any contract for the procurement  
9 of an item described in subsection (b)(2), if the Secretary  
10 applies the exception set forth in subsection (c) with re-  
11 spect to that contract, the Secretary shall, not later than  
12 7 days after the award of the contract—

13 “(1) post a notification that the exception has  
14 been applied on the Internet website maintained by  
15 the General Services Administration known as  
16 FedBizOpps (or any successor website); and

17 “(2) notify the Committee on Homeland Secu-  
18 rity and Governmental Affairs of the Senate and the  
19 Committee on Oversight and Government Reform  
20 and the Committee on Homeland Security of the  
21 House of Representatives of the exception.

22 “(j) TRAINING.—

23 “(1) IN GENERAL.—The Secretary shall ensure  
24 that each member of the acquisition workforce who  
25 participates personally and substantially in the ac-

1       quisition of textiles on a regular basis receives train-  
 2       ing on the requirements of this section and the regu-  
 3       lations implementing this section.

4               “(2) INCLUSION OF INFORMATION IN NEW  
 5       TRAINING PROGRAMS.—The Secretary shall ensure  
 6       that any training program for the acquisition work-  
 7       force developed or implemented after the date of the  
 8       enactment of this section includes comprehensive in-  
 9       formation on the requirements described in para-  
 10      graph (1).

11              “(k) CONSISTENCY WITH INTERNATIONAL AGREE-  
 12      MENTS.—This section shall be applied in a manner con-  
 13      sistent with United States obligations under international  
 14      agreements.”.

15              (b) TABLE OF CONTENTS.—The table of contents in  
 16      section 1(b) of the Homeland Security Act of 2002 (6  
 17      U.S.C. 101(b)) is amended by inserting after the item re-  
 18      lating to section 889 the following new item:

“Sec. 890. Buy American requirement; exceptions.”.

19              (c) EFFECTIVE DATE.—Section 890 of the Homeland  
 20      Security Act of 2002, as added by subsection (a), shall  
 21      apply with respect to contracts entered into by the Depart-  
 22      ment of Homeland Security on and after the date occur-  
 23      ring 180 days after the date of the enactment of this Act.

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