

117TH CONGRESS
1ST SESSION

S. 363

To amend chapter 83 of title 41, United States Code, to increase the requirement for American-made content, to strengthen the waiver provisions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 23, 2021

Ms. STABENOW (for herself, Mr. BRAUN, Mr. PETERS, Mr. PORTMAN, and Ms. BALDWIN) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To amend chapter 83 of title 41, United States Code, to increase the requirement for American-made content, to strengthen the waiver provisions, 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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Make It in America Act”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Regulations relating to Buy American Act.

- Sec. 3. Amendments relating to Buy American Act.
 Sec. 4. Made in America Office.
 Sec. 5. Department of Transportation Buy America provisions.
 Sec. 6. Hollings Manufacturing Extension Partnership activities.
 Sec. 7. United States obligations under international agreements.
 Sec. 8. Definitions.

1 **SEC. 2. REGULATIONS RELATING TO BUY AMERICAN ACT.**

2 (a) IN GENERAL.—Not later than 1 year after the
 3 date of the enactment of this Act, the Director of the Of-
 4 fice of Management and Budget (“Director”), acting
 5 through the Administrator for Federal Procurement Pol-
 6 icy and, in consultation with the Federal Acquisition Reg-
 7 ulatory Council, shall promulgate final regulations to
 8 standardize and simplify how Federal agencies comply
 9 with, report on, and enforce the Buy American Act. The
 10 regulations shall include, at a minimum, the following:

11 (1) Guidelines for Federal agencies to deter-
 12 mine, for the purposes of applying sections 8302(a)
 13 and 8303(b)(3) of title 41, United States Code, the
 14 circumstances under which the acquisition of arti-
 15 cles, materials, or supplies mined, produced, or man-
 16 ufactured in the United States is inconsistent with
 17 the public interest.

18 (2) Uniform procedures for each Federal agen-
 19 cy to make publicly available, in an easily identifi-
 20 able location on the website of the agency, and with-
 21 in the following time periods, the following informa-
 22 tion:

1 (A) A written description of the cir-
2 cumstances in which the head of the agency
3 may waive the requirements of the Buy Amer-
4 ican Act.

5 (B) Each waiver made by the head of the
6 agency within 30 days after making such waiv-
7 er, including a detailed justification for the
8 waiver.

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

13 (4) Increasing the price preferences for domes-
14 tic end products and domestic construction mate-
15 rials.

16 (5) Amending the definitions of “domestic end
17 product” and “domestic construction material” to
18 ensure that iron and steel products are, to the great-
19 est extent possible, made with domestic components.

20 (b) GUIDELINES RELATING TO WAIVERS.—

21 (1) INCONSISTENCY WITH PUBLIC INTEREST.—

22 (A) IN GENERAL.—With respect to the
23 guidelines developed under subsection (a)(1),
24 the Administrator shall seek to minimize waiv-
25 ers related to contract awards that—

1 (i) result in a decrease in employment
2 in the United States, which shall be con-
3 sidered to be inconsistent with the public
4 interest, including employment among enti-
5 ties that manufacture the articles, mate-
6 rials, or supplies; or

7 (ii) result in not awarding a contract
8 that would boost domestic employment.

9 (B) COVERED EMPLOYMENT.—For pur-
10 poses of subparagraph (A), employment refers
11 to positions directly involved in the manufacture
12 of articles, materials, or supplies, and does not
13 include positions related to management, re-
14 search and development, or engineering and de-
15 sign.

16 (2) ASSESSMENT ON USE OF DUMPED OR SUB-
17 SIDIZED FOREIGN PRODUCTS.—

18 (A) IN GENERAL.—To the extent otherwise
19 permitted by law, before granting a waiver in
20 the public interest to the guidelines developed
21 under subsection (a)(1) with respect to a prod-
22 uct sourced from a foreign country, a Federal
23 agency shall assess whether a significant por-
24 tion of the cost advantage of the product is the
25 result of the use of dumped steel, iron, or man-

1 unfactured goods or the use of injuriously sub-
2 sidized steel, iron, or manufactured goods.

3 (B) CONSULTATION.—The Federal agency
4 conducting the assessment under subparagraph
5 (A) shall consult with the International Trade
6 Administration in making the assessment if the
7 agency considers such consultation to be help-
8 ful.

9 (C) USE OF FINDINGS.—The Federal
10 agency conducting the assessment under sub-
11 paragraph (A) shall integrate any findings from
12 the assessment into its waiver determination.

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

21 **SEC. 3. AMENDMENTS RELATING TO BUY AMERICAN ACT.**

22 (a) SPECIAL RULES RELATING TO AMERICAN MATE-
23 RIALS REQUIRED FOR PUBLIC USE.—Section 8302 of title
24 41, United States Code, is amended by adding at the end
25 the following new subsection:

1 “(c) SPECIAL RULES.—The following rules apply in
2 carrying out the provisions of subsection (a):

3 “(1) IRON AND STEEL MANUFACTURED IN THE
4 UNITED STATES.—For purposes of this section,
5 manufactured articles, materials, and supplies of
6 iron and steel are deemed manufactured in the
7 United States only if all manufacturing processes in-
8 volved in the production of such iron and steel, from
9 the initial melting stage through the application of
10 coatings, occurs in the United States.

11 “(2) LIMITATION ON EXCEPTION FOR COMMER-
12 CIALY AVAILABLE OFF-THE-SHELF ITEMS.—Not-
13 withstanding any law or regulation to the contrary,
14 including section 1907 of this title and the Federal
15 Acquisition Regulation, the requirements of this sec-
16 tion apply to all iron and steel articles, materials,
17 and supplies.

18 “(3) USE OUTSIDE THE UNITED STATES.—

19 “(A) IN GENERAL.—Notwithstanding the
20 exception described in subsection (a)(2)(A),
21 subsection (a)(1) shall apply to articles, mate-
22 rials, or supplies for use outside the United
23 States if such articles, materials, or supplies are
24 not needed on an urgent basis or are acquired
25 on a regular basis.

1 “(B) COST ANALYSIS.—In any case in
2 which articles, materials, or supplies are to be
3 acquired for use outside the United States and
4 are not needed on an urgent basis or are ac-
5 quired on a regular basis, before entering into
6 a contract, an analysis shall be made of the dif-
7 ference in the cost of acquiring such articles,
8 materials, or supplies from a company mining,
9 producing, or manufacturing the articles, mate-
10 rials, or supplies in the United States (exclud-
11 ing the cost of shipping) and the cost of acquir-
12 ing such articles, materials, or supplies from a
13 company mining, producing, or manufacturing
14 the articles, materials, or supplies outside the
15 United States (including the cost of shipping).

16 “(4) DOMESTIC AVAILABILITY.—The head of a
17 Federal agency may not determine that an article,
18 material, or supply is not mined, produced, or manu-
19 factured in the United States in sufficient and rea-
20 sonably available commercial quantities and of a sat-
21 isfactory quality under subsection (a)(1) unless the
22 head of the agency first determines that—

23 “(A) domestic production cannot be initi-
24 ated without delaying the project for which the

1 article, material, or supply is to be acquired;
2 and

3 “(B) a substitutable article, material, or
4 supply is not mined, produced, or manufactured
5 in the United States in sufficient and reason-
6 ably available commercial quantities and of a
7 satisfactory quality.”.

8 (b) PRODUCTION OF IRON AND STEEL FOR PUR-
9 POSES OF CONTRACTS FOR PUBLIC WORKS.—Section
10 8303 of title 41, United States Code, is amended—

11 (1) by redesignating subsection (c) as sub-
12 section (d); and

13 (2) by inserting after subsection (b) the fol-
14 lowing new subsection:

15 “(c) SPECIAL RULES.—

16 “(1) PRODUCTION OF IRON AND STEEL.—For
17 purposes of this section, manufactured articles, ma-
18 terials, and supplies of iron and steel are deemed
19 manufactured in the United States only if all manu-
20 facturing processes involved in the production of
21 such iron and steel, from the initial melting stage
22 through the application of coatings, occurs in the
23 United States.

24 “(2) LIMITATION ON EXCEPTION FOR COMMER-
25 CIALLY AVAILABLE OFF-THE-SHELF ITEMS.—Not-

1 withstanding any law or regulation to the contrary,
2 including section 1907 of this title and the Federal
3 Acquisition Regulation, the requirements of this sec-
4 tion apply to all iron and steel articles, materials,
5 and supplies used in contracts described in sub-
6 section (a).”.

7 (c) ANNUAL REPORT.—Subsection (b) of section
8 8302 of title 41, United States Code, is amended to read
9 as follows:

10 “(b) REPORTS.—

11 “(1) IN GENERAL.—Not later than 180 days
12 after the end of the fiscal year during which the
13 Make It in America Act is enacted, and annually
14 thereafter for 4 years, the Director of the Office of
15 Management and Budget, in consultation with the
16 Administrator of General Services, shall submit to
17 the Committee on Oversight and Government Re-
18 form of the House of Representatives and the Com-
19 mittee on Homeland Security and Governmental Af-
20 fairs of the Senate a report on the total amount of
21 acquisitions made by Federal agencies in the rel-
22 evant fiscal year of articles, materials, or supplies
23 acquired from entities that mine, produce, or manu-
24 facture the articles, materials, or supplies outside
25 the United States.

1 “(2) ADDITIONAL CONTENT.—Each report re-
2 quired under paragraph (1) shall separately include,
3 for the fiscal year covered by the report—

4 “(A) the dollar value of any articles, mate-
5 rials, or supplies that were mined, produced, or
6 manufactured outside the United States, in the
7 aggregate and by country;

8 “(B) an itemized list of all waivers made
9 under this chapter with respect to articles, ma-
10 terials, or supplies and the country where such
11 articles, materials, or supplies were mined, pro-
12 duced, or manufactured;

13 “(C) if any articles, materials, or supplies
14 were acquired from entities that mine, produce,
15 or manufacture such articles, materials, or sup-
16 plies outside the United States due to an excep-
17 tion (that is not the micro-purchase threshold
18 exception described under subsection (a)(2)(C)),
19 the specific exception that was used to purchase
20 such articles, materials, or supplies;

21 “(D) if any articles, materials, or supplies
22 were acquired from entities that mine, produce,
23 or manufacture such articles, materials, or sup-
24 plies outside the United States pursuant to a
25 reciprocal defense procurement memorandum of

1 understanding (as described in section 8304),
2 or a trade agreement or least developed country
3 designation described in subpart 25.400 of the
4 Federal Acquisition Regulation, a citation to
5 such memorandum of understanding, trade
6 agreement, or designation; and

7 “(E) a summary of—

8 “(i) the total procurement funds ex-
9 pended on articles, materials, and supplies
10 mined, produced, or manufactured inside
11 the United States;

12 “(ii) the total procurement funds ex-
13 pended on articles, materials, and supplies
14 mined, produced, or manufactured outside
15 the United States; and

16 “(iii) the total procurement funds ex-
17 pended on articles, materials, and supplies
18 mined, produced, or manufactured outside
19 the United States per country that mined,
20 produced, or manufactured such articles,
21 materials, and supplies.

22 “(3) PUBLIC AVAILABILITY.—Not later than
23 180 days after the end of the fiscal year during
24 which the Make It in America Act is enacted, and
25 annually thereafter for 4 years, the Director of the

1 Office of Management and Budget shall make the
2 relevant report required under paragraph (1) pub-
3 licly available on a website.

4 “(4) EXCEPTION FOR INTELLIGENCE COMMU-
5 NITY.—This subsection does not apply to acquisi-
6 tions made by an agency, or component of an agen-
7 cy, that is an element of the intelligence community
8 as specified in, or designated under, section 3 of the
9 National Security Act of 1947 (50 U.S.C. 3003).”.

10 (d) DEFINITIONS.—Section 8301 of title 41, United
11 States Code, is amended by adding at the end the fol-
12 lowing new paragraphs:

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

16 “(4) SUBSTANTIALLY ALL.—The term ‘substan-
17 tially all’, with respect to articles, materials, or sup-
18 plies mined, produced, or manufactured in the
19 United States, means that—

20 “(A) the cost of the domestic components
21 of such articles, materials, or supplies exceeds
22 75 percent of the total cost of all components
23 of such articles, materials, or supplies; or

24 “(B) in the event that a Federal agency
25 does not receive an offer on a contract that

1 meets such threshold, the cost of the domestic
2 components of such articles, materials, or sup-
3 plies exceeds 60 percent of the total cost of all
4 components of such articles, materials, or sup-
5 plies.

6 “(5) WAIVER.—The term ‘waiver’, with respect
7 to the acquisition of an article, material, or supply
8 for public use, means the inapplicability of this
9 chapter to the acquisition by reason of any of the
10 following determinations under section 8302(a)(1) or
11 8303(b)(3) of this title:

12 “(A) A written determination by the head
13 of the Federal agency concerned that the acqui-
14 sition is inconsistent with the public interest.

15 “(B) A written determination by the head
16 of the Federal agency concerned that the cost
17 of the acquisition is unreasonable.

18 “(C) A written determination by the head
19 of the Federal agency concerned that the arti-
20 cle, material, or supply is not mined, produced,
21 or manufactured in the United States in suffi-
22 cient and reasonably available commercial quan-
23 tities of a satisfactory quality.”.

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

1 (1) in section 8302(a)—

2 (A) in paragraph (1)—

3 (i) by striking “department or inde-
4 pendent establishment” and inserting
5 “Federal agency”; and

6 (ii) by striking “their acquisition to be
7 inconsistent with the public interest or
8 their cost to be unreasonable” and insert-
9 ing “their acquisition to be inconsistent
10 with the public interest, their cost to be
11 unreasonable, or that the articles, mate-
12 rials, or supplies of the class or kind to be
13 used, or the articles, materials, or supplies
14 from which they are manufactured, are not
15 mined, produced, or manufactured in the
16 United States in sufficient and reasonably
17 available commercial quantities and of a
18 satisfactory quality”; and

19 (B) in paragraph (2)—

20 (i) in subparagraph (A), by inserting
21 “subject to subsection (c)(2)(A),” before
22 “to articles, materials, or supplies”; and

23 (ii) by amending subparagraph (B) to
24 read as follows:

1 “(B) to any articles, materials, or supplies
2 procured pursuant to a reciprocal defense pro-
3 curement memorandum of understanding (as
4 described in section 8304 of this title), or a
5 trade agreement or least developed country des-
6 ignation described in subpart 25.400 of the
7 Federal Acquisition Regulation; and”;

8 (2) in section 8303—

9 (A) in subsection (b)—

10 (i) by striking “department or inde-
11 pendent establishment” each place it ap-
12 pears and inserting “Federal agency”;

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

15 “(B) to any articles, materials, or supplies
16 procured pursuant to a reciprocal defense pro-
17 curement memorandum of understanding (as
18 described in section 8304), or a trade agree-
19 ment or least developed country designation de-
20 scribed in subpart 25.400 of the Federal Acqui-
21 sition Regulation; and”;

22 (iii) in paragraph (3)—

23 (I) in the heading, by striking

24 “INCONSISTENT WITH PUBLIC INTER-

1 EST” and inserting “WAIVER AU-
2 THORITY”; and

3 (II) by striking “their purchase
4 to be inconsistent with the public in-
5 terest or their cost to be unreason-
6 able” and inserting “their acquisition
7 to be inconsistent with the public in-
8 terest, their cost to be unreasonable,
9 or that the articles, materials, or sup-
10 plies of the class or kind to be used,
11 or the articles, materials, or supplies
12 from which they are manufactured,
13 are not mined, produced, or manufac-
14 tured in the United States in suffi-
15 cient and reasonably available com-
16 mercial quantities and of a satisfac-
17 tory quality”; and

18 (B) in subsection (c), by striking “depart-
19 ment, bureau, agency, or independent establish-
20 ment” each place it appears and inserting
21 “Federal agency”.

22 (f) EXCLUSION FROM INFLATION ADJUSTMENT OF
23 ACQUISITION-RELATED DOLLAR THRESHOLDS.—Sub-
24 paragraph (A) of section 1908(b)(2) of title 41, United

1 States Code, is amended by striking “chapter 67” and in-
2 serting “chapters 67 and 83”.

3 **SEC. 4. MADE IN AMERICA OFFICE.**

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

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

13 (1) Maximize and enforce compliance with do-
14 mestic preference statutes.

15 (2) Develop and implement procedures to re-
16 view waiver requests or inapplicability requests re-
17 lated to domestic preference statutes under sub-
18 section (c).

19 (3) Prepare the reports required under sub-
20 section (d) and (f).

21 (4) Ensure that contracting personnel at each
22 Federal agency annually complete training on obliga-
23 tions under the Buy American Act and other agen-
24 cy-specific domestic preference statutes.

1 (5) Conduct the review of reciprocal defense
2 agreements required under subsection (e).

3 (6) Ensure that Federal agencies and the Hol-
4 lings Manufacturing Extension Partnership partner
5 with each other to promote compliance with domestic
6 preference statutes.

7 (7) Ensure the development of a domestic sup-
8 ply base to meet Federal procurement requirements.

9 (c) REVIEW OF WAIVER REQUESTS AND INAPPLICA-
10 BILITY REQUESTS.—

11 (1) REQUIRED REVIEW.—Before a Federal
12 agency grants a waiver or determines the inapplica-
13 bility of a domestic preference statute, the head of
14 the Federal agency shall transmit a written request
15 for such waiver to the Made in America Director for
16 review, together with a detailed justification for the
17 request.

18 (2) NOTIFICATION OF DETERMINATION.—The
19 Made in America Director, in consultation with the
20 Administrator for Federal Procurement Policy and
21 the Federal Acquisition Regulatory Council, shall re-
22 view the waiver request or request to determine the
23 inapplicability of domestic preference statutes and
24 provide to the requesting agency a written notifica-
25 tion approving or denying the request.

1 (3) DISAGREEMENTS.—

2 (A) NOTIFICATION.—If the head of the re-
3 questing agency disagrees with some or all of
4 the bases for the Made in America Director's
5 determination under paragraph (2), the head of
6 the agency shall inform the Made in America
7 Director in writing.

8 (B) RESOLUTION.—To the extent per-
9 mitted by law, disagreements or conflicts be-
10 tween the Made in America Director and the
11 agency head shall be resolved in accordance
12 with procedures that parallel those set forth in
13 section 7 of Executive Order No. 12866, dated
14 September 30, 1993 (related to regulatory plan-
15 ning and review), with respect to the Director
16 of the Office of Information and Regulatory Af-
17 fairs within the Office of Management and
18 Budget.

19 (4) NOTIFICATION OF SPECIAL CIR-
20 CUMSTANCES.—If a Federal agency is obligated by
21 law to act more quickly than otherwise provided for
22 in accordance with the review procedures established
23 under this section, the head of the agency shall no-
24 tify the Made in America Director of the cir-
25 cumstances as soon as possible.

1 (d) OFFICE OF MANAGEMENT AND BUDGET RE-
2 PORT.—Not later than 1 year after the date of the enact-
3 ment of this Act, the Director of the Office of Manage-
4 ment and Budget, working through the Made in America
5 Director, shall report to Congress on the extent to which,
6 in each of fiscal years 2018, 2019, and 2020 articles, ma-
7 terials, or supplies acquired by the Federal Government
8 were mined, produced, or manufactured outside the
9 United States. Such report shall include for each Federal
10 agency the following:

11 (1) A summary of total procurement funds ex-
12 pended on articles, materials, and supplies mined,
13 produced, or manufactured—

14 (A) inside the United States;

15 (B) outside the United States; and

16 (C) outside the United States—

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

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

21 (iii) for each country that mined, pro-
22 duced, or manufactured such articles, ma-
23 terials, and supplies.

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

1 (A) the dollar value of any articles, mate-
2 rials, or supplies that were mined, produced, or
3 manufactured outside the United States, in the
4 aggregate and by country;

5 (B) an itemized list of all waivers made
6 under the Buy American Act with respect to ar-
7 ticles, materials, or supplies and the country
8 where such articles, materials, or supplies were
9 mined, produced, or manufactured;

10 (C) if any articles, materials, or supplies
11 were acquired from entities that mine, produce,
12 or manufacture such articles, materials, or sup-
13 plies outside the United States due to an excep-
14 tion (that is not the micro-purchase threshold
15 exception described under section 8302(a)(2)(C)
16 of title 41, United States Code), the specific ex-
17 ception that was used to purchase such articles,
18 materials, or supplies; and

19 (D) if any articles, materials, or supplies
20 were acquired from entities that mine, produce,
21 or manufacture such articles, materials, or sup-
22 plies outside the United States pursuant to a
23 reciprocal defense procurement memorandum of
24 understanding (as described in section 8304 of
25 title 41, United States Code), or a trade agree-

1 ment or least developed country designation de-
2 scribed in subpart 25.400 of the Federal Acqui-
3 sition Regulation, a citation to such memo-
4 randum of understanding, trade agreement, or
5 designation.

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

10 (e) REVIEW OF RECIPROCAL DEFENSE AGREE-
11 MENTS.—

12 (1) REVIEW OF PROCESS.—Not later than 180
13 days after the date of the enactment of this Act, the
14 Made in America Director shall review the Depart-
15 ment of Defense’s use of reciprocal defense agree-
16 ments to determine if domestic entities have equal
17 and proportional access.

18 (2) REVIEW OF RECIPROCAL PROCUREMENT
19 MEMORANDA OF UNDERSTANDING.—The Made in
20 America Director shall review and be responsible for
21 approving reciprocal procurement memoranda of un-
22 derstanding entered into after the date of the enact-
23 ment of this Act between the Department of Defense
24 and its counterparts in foreign governments.

1 (f) REPORT ON USE OF MADE IN AMERICA LAWS.—
2 Not later than 90 days after the date of the enactment
3 of this Act, the Made in America Director shall submit
4 to Congress each report on the use of Made in America
5 Laws received by the Made in America Director pursuant
6 to section 11 of Executive Order No. 14005, dated Janu-
7 ary 25, 2021 (relating to ensuring the future is made in
8 all of America by all of America’s workers).

9 (g) DOMESTIC PREFERENCE STATUTE DEFINED.—
10 In this section, the term “domestic preference statute”
11 means any of the following:

- 12 (1) the Buy American Act;
- 13 (2) a Buy America law (as that term is defined
14 in section 5(a));
- 15 (3) the Berry Amendment;
- 16 (4) section 604 of the American Recovery and
17 Reinvestment Act of 2009 (6 U.S.C. 453b) (com-
18 monly referred to as the “Kissell amendment”);
- 19 (5) section 2533b of title 10 (commonly re-
20 ferred to as the “specialty metals clause”); and
- 21 (6) any other law, regulation, rule, or executive
22 order relating to Federal financial assistance awards
23 or Federal procurement, that requires, or provides a
24 preference for, the purchase or acquisition of goods,
25 products, or materials produced in the United

1 States, including iron, steel, and manufactured
2 goods offered in the United States.

3 **SEC. 5. DEPARTMENT OF TRANSPORTATION BUY AMERICA**
4 **PROVISIONS.**

5 (a) DEFINITIONS.—In this section:

6 (1) BUY AMERICA LAW.—The term “Buy Amer-
7 ica law” means any of the following:

8 (A) Section 313 of title 23, United States
9 Code.

10 (B) Section 5323(j) of title 49, United
11 States Code.

12 (C) Section 22905(a) of title 49, United
13 States Code.

14 (D) Section 50101 of title 49, United
15 States Code.

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

18 (b) TECHNICAL ASSISTANCE PARTNERSHIP.—Not
19 later than 90 days after the date of the enactment of this
20 Act, the Secretary shall enter into a technical assistance
21 partnership with the Secretary of Commerce, acting
22 through the Director of the National Institute of Stand-
23 ards and Technology—

24 (1) to ensure the development of a domestic
25 supply base to support intermodal transportation in

1 the United States, such as intercity high speed rail
2 transportation, public transportation systems, high-
3 way construction or reconstruction, or airport im-
4 provement projects;

5 (2) to ensure compliance with Buy America
6 laws that apply to a project that receives assistance
7 from the Federal Highway Administration, the Fed-
8 eral Transit Administration, the Federal Railroad
9 Administration, the Federal Aviation Administra-
10 tion, or another office or modal administration of
11 the Secretary of Transportation;

12 (3) to encourage technologies developed with
13 the support of and resources from the Secretary to
14 be transitioned into commercial market and applica-
15 tions; and

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

18 (c) CONSULTATION.—Before granting a written waiv-
19 er under a Buy America law, the Secretary shall consult
20 with the Director of the Hollings Manufacturing Exten-
21 sion Partnership regarding whether there is a domestic en-
22 tity that could provide the iron, steel, or manufactured
23 good or product that is the subject of the proposed waiver.

24 (d) ANNUAL REPORT.—Not later than 1 year after
25 the date of enactment of this Act, and annually thereafter,

1 the Secretary shall submit to Congress a report that in-
2 cludes—

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

5 (2) a detailed description of each waiver re-
6 quested under a Buy America law in the preceding
7 year that was subject to consultation under sub-
8 section (c), and the results of the consultation;

9 (3) a detailed description of each waiver grant-
10 ed under a Buy America law in the preceding year,
11 including the type of waiver and the reasoning for
12 granting the waiver; and

13 (4) an update on challenges and gaps in the do-
14 mestic supply base identified in carrying out sub-
15 section (b)(1), including a list of actions and policy
16 changes the Secretary recommends be taken to ad-
17 dress those challenges and gaps.

18 **SEC. 6. HOLLINGS MANUFACTURING EXTENSION PARTNER-**

19 **SHIP ACTIVITIES.**

20 (a) **USE OF HOLLINGS MANUFACTURING EXTENSION**
21 **PARTNERSHIP TO REFER NEW BUSINESSES TO CON-**
22 **TRACTING OPPORTUNITIES.**—The head of each Federal
23 agency shall ensure that businesses participating in the
24 Hollings Manufacturing Extension Partnership are made
25 aware of Federal contracting opportunities.

1 (b) AUTOMATIC ENROLLMENT IN GSA ADVAN-
2 TAGE!.—The Administrator of the General Services Ad-
3 ministration and the Secretary of Commerce, acting
4 through the Under Secretary of Commerce for Standards
5 and Technology, shall jointly ensure that each business
6 that participates in the Hollings Manufacturing Extension
7 Partnership is automatically enrolled in General Services
8 Administration Advantage!.

9 **SEC. 7. UNITED STATES OBLIGATIONS UNDER INTER-**
10 **NATIONAL AGREEMENTS.**

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

14 **SEC. 8. DEFINITIONS.**

15 In this Act:

16 (1) BERRY AMENDMENT.—The term “Berry
17 Amendment” means section 4862 of title 10, United
18 States Code, as redesignated by section 1870(c)(2)
19 of the William M. (Mac) Thornberry National De-
20 fense Authorization Act for Fiscal Year 2021.

21 (2) BUY AMERICAN ACT.—The term “Buy
22 American Act” means chapter 83 of title 41, United
23 States Code.

24 (3) FEDERAL AGENCY.—The term “Federal
25 agency” has the meaning given the term “executive

1 agency” in section 133 of title 41, United States
2 Code.

3 (4) WAIVER.—The term “waiver”, with respect
4 to the acquisition of an article, material, or supply
5 for public use, means, other than for purposes of
6 section 5, the inapplicability of chapter 83 of title
7 41, United States Code, to the acquisition by reason
8 of any of the following determinations under section
9 8302(a)(1) or 8303(b)(3) of such title:

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

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

16 (C) A determination by the head of the
17 Federal agency concerned that the article, ma-
18 terial, or supply is not mined, produced, or
19 manufactured in the United States in sufficient
20 and reasonably available commercial quantities
21 of a satisfactory quality.

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