

113TH CONGRESS  
2D SESSION

# S. 2391

To amend chapter 83 of title 41, United States Code (popularly referred to as the Buy American Act) and certain other laws with respect to certain waivers under those laws, to provide greater transparency regarding exceptions to domestic sourcing requirements, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MAY 22, 2014

Mr. MURPHY 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 amend chapter 83 of title 41, United States Code (popularly referred to as the Buy American Act) and certain other laws with respect to certain waivers under those laws, to provide greater transparency regarding exceptions to domestic sourcing 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 “21st Century Buy  
5 American Act”.

1 **SEC. 2. INCREASE OF DOMESTIC CONTENT PERCENTAGE**  
 2 **TO 60 PERCENT.**

3 Section 8301 of title 41, United States Code, is  
 4 amended by adding at the end the following new para-  
 5 graph:

6 “(3) SUBSTANTIALLY ALL.—Articles, materials,  
 7 or supplies shall be treated as made substantially all  
 8 from articles, materials, or supplies mined, pro-  
 9 duced, or manufactured in the United States, if the  
 10 cost of the domestic components of such articles,  
 11 materials, or supplies exceeds 60 percent of the total  
 12 cost of all components of such articles, materials, or  
 13 supplies.”.

14 **SEC. 3. CRITERIA REQUIRED FOR USE OF OVERSEAS EX-**  
 15 **CEPTION.**

16 Section 8302 of title 41, United States Code, is  
 17 amended by adding at the end the following new sub-  
 18 section:

19 “(c) CRITERIA FOR USE OF OVERSEAS EXCEP-  
 20 TION.—

21 “(1) IN GENERAL.—The exception under sub-  
 22 section (a)(2)(A) for articles, materials, or supplies  
 23 to be acquired for use outside the United States may  
 24 not be used unless one of the following criteria is  
 25 met:

1           “(A) The articles, materials, or supplies  
2           are needed on an urgent basis.

3           “(B) The articles, materials, or supplies  
4           are to be purchased using a local supplier.

5           “(C) A cost analysis described in para-  
6           graph (2) demonstrates that the articles, mate-  
7           rials, or supplies to be acquired (if acquired  
8           from a company manufacturing in the United  
9           States) would be more than 50 percent more  
10          expensive for the Federal agency acquiring the  
11          articles, materials, or supplies.

12          “(2) COST ANALYSIS.—In any case in which ar-  
13          ticles, materials, or supplies are to be acquired for  
14          use outside the United States and are not needed on  
15          an urgent basis or are not to be purchased using a  
16          local supplier, before entering into a contract an  
17          analysis shall be made of the difference in the cost  
18          of acquiring the articles, materials, or supplies from  
19          a company manufacturing the articles, materials, or  
20          supplies in the United States (including the cost of  
21          shipping) and the cost of acquiring the articles, ma-  
22          terials, or supplies from a company manufacturing  
23          the articles, materials, or supplies outside the United  
24          States (including the cost of shipping).”.

1 **SEC. 4. CRITERIA REQUIRED FOR USE OF PUBLIC INTER-**  
2 **EST EXCEPTION.**

3 (a) BUY AMERICAN ACT.—Section 8302 of title 41,  
4 United States Code, as amended by section 3, is further  
5 amended by adding at the end the following new sub-  
6 section:

7 “(d) CRITERIA FOR USE OF PUBLIC INTEREST EX-  
8 CEPTION.—In determining whether a public interest ex-  
9 ception shall be applied under subsection (a), the head of  
10 a Federal agency shall—

11 “(1) consider the short-term and long-term ef-  
12 fects of applying such exception on employment  
13 within the United States, taking into account infor-  
14 mation provided by entities that manufacture the ar-  
15 ticles, materials, or supplies concerned in the United  
16 States; and

17 “(2) determine that preserving or increasing  
18 employment within the United States is consistent  
19 with the public interest.”.

20 (b) FEDERAL TRANSIT ADMINISTRATION FUNDS.—  
21 Section 5323(j) of title 49, United States Code, is amend-  
22 ed by adding at the end the following new paragraph:

23 “(10) CRITERIA FOR USE OF PUBLIC INTEREST  
24 WAIVER.—In determining whether a public interest  
25 waiver shall be issued under paragraph (2)(A), the  
26 Secretary shall—

1           “(A) consider the short-term and long-  
2           term effects of applying such waiver on employ-  
3           ment within the United States, taking into ac-  
4           count information provided by entities that  
5           produce the steel, iron, and goods concerned in  
6           the United States; and

7           “(B) determine that preserving or increas-  
8           ing employment within the United States is  
9           consistent with the public interest.”.

10       (c) FEDERAL HIGHWAY ADMINISTRATION FUNDS.—

11       Section 313 of title 23, United States Code, is amended  
12       by adding at the end the following new subsection:

13       “(h) CRITERIA FOR USE OF PUBLIC INTEREST FIND-  
14       ING.—In determining whether a public interest finding  
15       shall be made under subsection (b)(1), the Secretary  
16       shall—

17           “(1) consider the short-term and long-term ef-  
18           fects of making such finding on employment within  
19           the United States, taking into account information  
20           provided by entities that produce the materials or  
21           products concerned in the United States; and

22           “(2) determine that preserving or increasing  
23           employment within the United States is consistent  
24           with the public interest.”.

1 (d) AMTRAK FUNDS.—Section 24305(f) of title 49,  
2 United States Code, is amended by adding at the end the  
3 following new paragraph:

4 “(5) In deciding whether a public interest exemption  
5 shall be issued under paragraph (4)(A)(i), the Secretary  
6 shall—

7 “(A) consider the short-term and long-term ef-  
8 fects of issuing such exemption on employment with-  
9 in the United States, taking into account informa-  
10 tion provided by entities that manufacture the arti-  
11 cles, material, or supplies concerned in the United  
12 States; and

13 “(B) determine that preserving or increasing  
14 employment within the United States is consistent  
15 with the public interest.”.

16 (e) FEDERAL RAILROAD ADMINISTRATION HIGH  
17 SPEED RAIL PROGRAM FUNDS.—Section 24405(a) of title  
18 49, United States Code, is amended by adding at the end  
19 the following new paragraph:

20 “(12) In determining whether a public interest waiver  
21 shall be granted under paragraph (2)(A), the Secretary  
22 shall—

23 “(A) consider the short-term and long-term ef-  
24 fects of granting such waiver on employment within  
25 the United States, taking into account information

1 provided by entities that produce the steel, iron, or  
2 goods concerned in the United States; and

3 “(B) determine that preserving or increasing  
4 employment within the United States is consistent  
5 with the public interest.”.

6 (f) FEDERAL AVIATION ADMINISTRATION FUNDS.—  
7 Section 50101 of title 49, United States Code, is amended  
8 by adding at the end the following new subsection:

9 “(d) CRITERIA FOR USE OF PUBLIC INTEREST  
10 WAIVER.—In determining whether a public interest waiver  
11 shall be granted under subsection (b)(1), the Secretary  
12 shall—

13 “(1) consider the short-term and long-term ef-  
14 fects of granting such waiver on employment within  
15 the United States, taking into account information  
16 provided by entities that produce the steel or goods  
17 concerned in the United States; and

18 “(2) determine that preserving or increasing  
19 employment within the United States is consistent  
20 with the public interest.”.

21 (g) WATER POLLUTION PREVENTION AND CONTROL  
22 GRANTS FOR CONSTRUCTION OF TREATMENT WORKS.—  
23 Section 1295 of title 33, United States Code, is amend-  
24 ed—

1           (1) by inserting “(a) IN GENERAL.—” before  
2           “Notwithstanding”; and

3           (2) by adding at the end the following new sub-  
4           section:

5           “(b) CRITERIA FOR USE OF PUBLIC INTEREST EX-  
6           CEPTION.—In determining whether a public interest ex-  
7           ception shall be applied under subsection (a), the Adminis-  
8           trator shall—

9           “(1) consider the short-term and long-term ef-  
10          fects of applying such exception on employment  
11          within the United States, taking into account infor-  
12          mation provided by entities that manufacture the ar-  
13          ticles, materials, or supplies concerned in the United  
14          States; and

15          “(2) determine that preserving or increasing  
16          employment within the United States is consistent  
17          with the public interest.”.

18   **SEC. 5. TRANSPARENCY REQUIREMENTS.**

19          (a) REQUIREMENT FOR AGENCIES TO NOTIFY  
20          OMB.—Each agency that applies an exception to, or  
21          grants a waiver under, chapter 83 of title 41, United  
22          States Code (popularly referred to as the Buy American  
23          Act) shall submit to the Director of the Office of Manage-  
24          ment and Budget a notification of the application of the  
25          exception or the grant of a waiver and a statement de-



1 scribing the procurement and the exception being applied  
2 or waiver granted.

3 (b) REQUIREMENT FOR DIRECTOR OF OMB TO POST  
4 ON WEBSITE.—Not later than 7 days after receiving a no-  
5 tification under subsection (a), the Director of the Office  
6 of Management and Budget shall post the notification on  
7 a central, publicly accessible website of the Office.

8 (c) DEFINITION OF AGENCY.—In this section, the  
9 term “agency” has the meaning given the term in section  
10 551 of title 5, United States Code.

11 **SEC. 6. LOANS AND LOAN GUARANTEES TO DOMESTIC MAN-**  
12 **UFACTURERS UNDER DEFENSE PRODUCTION**  
13 **ACT.**

14 (a) PROGRAM AUTHORIZED.—The President, acting  
15 through the Secretary of Defense, may establish and carry  
16 out a program to make or guarantee loans under title III  
17 of the Defense Production Act (50 U.S.C. App. 2091 et  
18 seq.) to eligible entities in accordance with this section.

19 (b) ELIGIBILITY REQUIREMENTS.—The Secretary of  
20 Defense shall establish eligibility requirements for pur-  
21 poses of the loans or loan guarantees under this section  
22 in order to provide assistance to any entity that—

23 (1) is a manufacturer in the United States;

1           (2) is a firm certified as eligible to apply for ad-  
2           justment assistance under section 251(c) of the  
3           Trade Act of 1974 (19 U.S.C. 2341(c)); and

4           (3) meets one of the following criteria:

5                   (A) The entity mines, produces, or manu-  
6                   factures a nonavailable item.

7                   (B) The entity is the last remaining manu-  
8                   facturer of an item in the United States, as de-  
9                   termined by the Secretary of Defense, and can  
10                  prove hardship because of foreign competition.

11                  (C) The entity is the last remaining manu-  
12                  facturer of an item in the United States and  
13                  that item is considered to be vital for national  
14                  security purposes by the Department of De-  
15                  fense or another department or agency of the  
16                  United States.

17           (c) AMOUNT OF LOAN OR LOAN GUARANTEE.—The  
18           amount of any loan made or guaranteed under this section  
19           may not exceed \$5,000,000 per entity.

20           (d) USE OF FUNDS.—Each eligible entity receiving  
21           a loan or loan guarantee under this section shall use the  
22           funds of the loan made or guaranteed only for one or more  
23           of the following purposes:

24                   (1) Increasing its ability to compete for a Gov-  
25                   ernment contract for a nonavailable item.

1           (2) Increasing its ability to produce a nonavail-  
2           able item.

3           (3) Increasing its capacity to produce items  
4           that are vital to national security.

5           (e) APPLICATION REQUIREMENTS.—To receive a  
6           loan or loan guarantee under this section, an eligible entity  
7           shall submit an application to the Secretary of Defense  
8           at such time, in such manner, and containing such infor-  
9           mation as the Secretary may require. At a minimum, the  
10          application shall include a statement regarding the num-  
11          ber of direct full-time domestic jobs expected to be created  
12          or retained as a result of the loan made or guaranteed,  
13          but such statement shall not be the sole factor used in  
14          determining the award of the loan or loan guarantee.

15          (f) ANNUAL EVALUATION OF LOAN OR LOAN GUAR-  
16          ANTEE RECIPIENTS BY DEPARTMENT OF DEFENSE.—  
17          The Secretary of Defense each year shall evaluate recipi-  
18          ents of loans or loan guarantees under this section to de-  
19          termine the proper allocation of loan funds that are loaned  
20          or guaranteed.

21          (g) DEFINITION OF NONAVAILABLE ITEM.—In this  
22          section, the term “nonavailable item” means any of the  
23          following:

24                 (1) An article, material, or supply—

1 (A) that has been determined by a Federal  
2 agency, pursuant to chapter 83 of title 41,  
3 United States Code (popularly referred to as  
4 the Buy American Act), to not be mined, pro-  
5 duced, or manufactured in the United States in  
6 sufficient and reasonably available commercial  
7 quantities of a satisfactory quality; or

8 (B) that is listed on the list of nonavailable  
9 articles under subpart 25.104 of the Federal  
10 Acquisition Regulation.

11 (2) An article or item—

12 (A) that is described in section 2533a(b) of  
13 title 10, United States Code, and grown, re-  
14 processed, reused, or produced in the United  
15 States; and

16 (B) satisfactory quality and sufficient  
17 quantity of which cannot be procured as and  
18 when needed at United States market prices, as  
19 determined by the Secretary of Defense or the  
20 Secretary of the military department concerned,  
21 pursuant to section 2533a(c) of such title.

22 (3) Compliant specialty metal—

23 (A) as defined in section 2533b(b) of title  
24 10, United States Code; and

1           (B) satisfactory quality and sufficient  
2           quantity of which, and in the required form,  
3           cannot be procured as and when needed, as de-  
4           termined by the Secretary of Defense or the  
5           Secretary of the military department concerned,  
6           pursuant to such section 2533b(b).

7           (4) An item listed in subsection (a) of section  
8           2534 of title 10, United States Code, if the Sec-  
9           retary determines, under subsection (d)(4) of such  
10          section, that satisfactory quality of the item manu-  
11          factured by an entity that is part of the national  
12          technology and industrial base (as defined in section  
13          2500(1) of such title) is not available.

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