

## Calendar No. 586

117TH CONGRESS  
2D SESSION**S. 732****[Report No. 117-227]**

To strengthen Buy American requirements, and for other purposes.

## IN THE SENATE OF THE UNITED STATES

MARCH 11, 2021

Mr. PORTMAN (for himself, Mr. MURPHY, Mr. GRAHAM, Mr. BROWN, and Ms. STABENOW) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

DECEMBER 5, 2022

Reported by Mr. PETERS, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

**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 2021~~”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) **BUY AMERICAN LAW.**—The term “Buy  
4 American law” means any law, regulation, Executive  
5 order, or rule relating to Federal contracts, grants,  
6 or financial assistance that requires or provides a  
7 preference for the purchase or use of goods, prod-  
8 ucts, or materials mined, produced, or manufactured  
9 in the United States, including—

10 (A) chapter 83 of title 41, United States  
11 Code (commonly referred to as the “Buy Amer-  
12 ican Act”);

13 (B) section 5323(j) of title 49, United  
14 States Code;

15 (C) section 313 of title 23, United States  
16 Code;

17 (D) section 50101 of title 49, United  
18 States Code;

19 (E) section 24405 of title 49, United  
20 States Code;

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

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

1           (H) section 5035 of the Water Resources  
2           Reform and Development Act of 2014 (33  
3           U.S.C. 3914);

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

7           (J) section 2533b of title 10, United  
8           States Code; and

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

11          (2) EXECUTIVE AGENCY.—The term “executive  
12          agency” has the meaning given the term in section  
13          133 of title 41, United States Code.

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

15          It is the sense of Congress that—

16           (1) every executive agency should maximize,  
17           through terms and conditions of Federal financial  
18           assistance awards and Federal procurements, the  
19           use of goods, products, and materials produced in  
20           the United States and contracts for outsourced gov-  
21           ernment service contracts to be performed by United  
22           States nationals;

23           (2) every executive agency should scrupulously  
24           monitor, enforce, and comply with Buy American



1 by type and impact on domestic jobs and manufac-  
2 turing.

3 ~~(3)~~ Recommendations for policies for executive  
4 agencies to ensure that, to the extent permitted by  
5 law, Federal financial assistance awards and Federal  
6 contacts maximize the use of goods, products, and  
7 materials mined, produced, and manufactured in the  
8 United States, including manufactured products,  
9 components of manufactured products, and mate-  
10 rials such as steel, iron, aluminum, and cement and  
11 services.

12 ~~(c)~~ AGENCY REPORTS.—Not later than 180 days  
13 after the date of the enactment of this Act, and annually  
14 thereafter for two years, the head of each executive agency  
15 shall submit to the Secretary of Commerce and the Direc-  
16 tor of the Office of Management and Budget a report on  
17 the implementation of, and compliance with, Buy Amer-  
18 ican laws and covering with respect to that agency the ele-  
19 ments set forth in subsection (b).

20 ~~(d)~~ GUIDANCE.—The head of each executive agency  
21 shall review the guidance issued to executive agencies in  
22 accordance with Executive Order 13788 regarding assess-  
23 ment of waivers and policies addressing Buy American  
24 laws and, as necessary, issue additional guidance.

1 **SEC. 5. ASSESSMENT OF IMPACT OF FREE TRADE AGREE-**  
2 **MENTS.**

3 Not later than 150 days after the date of the enact-  
4 ment of this Act, the Secretary of Commerce and the  
5 United States Trade Representative shall assess the im-  
6 pacts in a publicly available report of all United States  
7 free trade agreements and the World Trade Organization  
8 Agreement on Government Procurement on the operation  
9 of Buy American Laws, including their impacts on the im-  
10 plementation of domestic procurement preferences.

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

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

16 (b) PUBLIC INTEREST WAIVER DETERMINATIONS.—  
17 To the extent permitted by law, determination of public  
18 interest waivers shall be made by the head of the agency  
19 with the authority over the Federal financial assistance  
20 award or Federal procurement under consideration.

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

22 Not later than one year after the date of the enact-  
23 ment of this Act, the Administrator of General Services  
24 shall establish an internet website with the address  
25 BuyAmerican.gov that will be publicly available and free  
26 to access. The website shall include information on all

1 waivers of and exceptions to Buy American laws that have  
2 been requested, are under consideration, or have been  
3 granted by executive agencies and be designed to enable  
4 manufacturers and other interested parties to easily iden-  
5 tify waivers. The website shall also include the results of  
6 routine audits of the Federal Procurement Data System—  
7 Next Generation to determine data errors and Buy Amer-  
8 ican law violations after the award of a contract. The  
9 website shall provide publicly available contact information  
10 for the contracting agencies.

11 **SEC. 8. WAIVER TRANSPARENCY AND STREAMLINING FOR**  
12 **GRANTS.**

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

1           (b) ~~WAIVER TRANSPARENCY AND STREAMLINING.—~~  
 2 Not less than 20 days prior to waiving, under his or her  
 3 statutory authority, any applicable Buy American law, the  
 4 head of an executive agency shall submit to the Adminis-  
 5 trator of General Services a notice of the agency's inten-  
 6 tion to waive the Buy American law. Not later than 5 days  
 7 after receiving this information from the head of an execu-  
 8 tive agency, the Administrator of General Services shall  
 9 make available to the public, by posting on the website  
 10 established under section 7, a copy of the information pro-  
 11 vided pursuant to subsection (a), and shall allow for infor-  
 12 mal public comment on the request for at least 15 days  
 13 prior to making a finding based on the request.

14           (c) ~~INFORMATION AVAILABLE TO THE EXECUTIVE~~  
 15 ~~AGENCY CONCERNING THE REQUEST.—~~

16                 (1) ~~REQUIREMENT.—~~No requested waiver of an  
 17 applicable Buy American Law may be granted if, in  
 18 contravention of subsection (b)—

19                         (A) information about the waiver was not  
 20 made available on the website under section 7;  
 21 or

22                         (B) no opportunity for public comment  
 23 concerning the request was granted.

24                 (2) ~~SCOPE.—~~Information made available to the  
 25 public concerning the request included on the

1 website described in section 7 shall properly and  
2 adequately document and justify the statutory basis  
3 cited for the requested waiver. Such information  
4 shall include—

5 (A) a detailed justification for the use of  
6 goods, products, or materials mined, produced,  
7 or manufactured outside the United States;

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

19 (C) for requests citing the public interest  
20 as the statutory basis for the waiver, a detailed  
21 written statement, which shall include all appro-  
22 priate factors, such as potential obligations  
23 under international agreements, justifying why  
24 the requested waiver is in the public interest;  
25 and

1           (D) a certification that the procurement  
 2           official or assistance recipient made a good  
 3           faith effort to solicit bids for domestic products  
 4           supported by terms included in requests for  
 5           proposals, contracts, and nonproprietary com-  
 6           munications with the prime contractor.

7           (d) **NONAVAILABILITY WAIVERS.—**

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

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

22           **SEC. 9. WAIVER TRANSPARENCY AND STREAMLINING FOR**  
 23           **PROCUREMENT.**

24          (a) **PUBLICATION OF INFORMATION.—**Not less than  
 25          20 days prior to waiving, pursuant to statutory authority,

1 any applicable Buy American law, the head of an executive  
2 agency shall make information concerning the intention to  
3 issue a waiver or exception in connection with a Federal  
4 procurement available to the Administrator of General  
5 Services. A notice of the agency's intention to waive a Buy  
6 American law shall be made available to the public  
7 through BuyAmerican.gov and shall include the statutory  
8 basis for exercise of the waiver or exception.

9 (b) NONAVAILABILITY WAIVERS.—

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

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

1 **SEC. 10. COMPTROLLER GENERAL REPORT.**

2 Not later than two years after the date of the enact-  
3 ment of this Act, the Comptroller General of the United  
4 States shall submit to Congress a report describing the  
5 implementation of this Act, including recommendations  
6 for any legislation to improve the collection and reporting  
7 of information regarding waivers of and exceptions to Buy  
8 American laws.

9 **SEC. 11. RULES OF CONSTRUCTION.**

10 (a) **DISCLOSURE REQUIREMENTS.**—Nothing in this  
11 Act shall be construed as preempting, superseding, or oth-  
12 erwise affecting the application of any disclosure require-  
13 ment or requirements otherwise provided by law or regula-  
14 tion.

15 (b) **ESTABLISHMENT OF SUCCESSOR INFORMATION**  
16 **SYSTEMS.**—Nothing in this Act shall be construed as pre-  
17 venting or otherwise limiting the ability of the Adminis-  
18 trator of General Services to move the data required to  
19 be included on the website established under subsection  
20 (a) to a successor information system. Any such informa-  
21 tion system shall include a reference to BuyAmerican.gov.

22 **SEC. 12. CONSISTENCY WITH INTERNATIONAL AGREE-**  
23 **MENTS.**

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

1 **SECTION 1. SHORT TITLE.**

2       *This Act may be cited as the “BuyAmerican.gov Act*  
3 *of 2021”.*

4 **SEC. 2. DEFINITIONS.**

5       *In this Act:*

6           (1) *BUY AMERICAN LAW.*—*The term “Buy Amer-*  
7 *ican law” means any law, regulation, Executive*  
8 *order, or rule relating to Federal contracts, grants, or*  
9 *financial assistance that requires or provides a pref-*  
10 *erence for the purchase or use of goods, products, or*  
11 *materials mined, produced, or manufactured in the*  
12 *United States, including—*

13           (A) *chapter 83 of title 41, United States*  
14 *Code (commonly referred to as the “Buy Amer-*  
15 *ican Act”);*

16           (B) *section 5323(j) of title 49, United States*  
17 *Code;*

18           (C) *section 313 of title 23, United States*  
19 *Code;*

20           (D) *section 50101 of title 49, United States*  
21 *Code;*

22           (E) *section 24405 of title 49, United States*  
23 *Code;*

24           (F) *section 608 of the Federal Water Pollu-*  
25 *tion Control Act (33 U.S.C. 1388);*

1           (G) section 1452(a)(4) of the Safe Drinking  
2           Water Act (42 U.S.C. 300j-12(a)(4));

3           (H) section 5035 of the Water Resources Re-  
4           form and Development Act of 2014 (33 U.S.C.  
5           3914);

6           (I) section 2533a of title 10, United States  
7           Code (commonly referred to as the “Berry  
8           Amendment”); and

9           (J) section 2533b of title 10, United States  
10          Code.

11          (2) *EXECUTIVE AGENCY*.—The term “executive  
12          agency” has the meaning given the term “agency” in  
13          paragraph (1) of section 3502 of title 44, United  
14          States Code, except that it does not include an inde-  
15          pendent regulatory agency, as that term is defined in  
16          paragraph (5) of such section.

17          (3) *BUY AMERICAN WAIVER*.—The term “Buy  
18          American waiver” refers to an exception to or waiver  
19          of any Buy American law, or the terms and condi-  
20          tions used by an agency in granting an exception to  
21          or waiver from Buy American laws.

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

23       *It is the sense of Congress that—*

24           (1) every executive agency should maximize,  
25           through terms and conditions of Federal financial as-



1 **SEC. 5. JUDICIOUS USE OF WAIVERS.**

2       (a) *IN GENERAL.*—*To the extent permitted by law, a*  
3 *Buy American waiver that is determined by an agency*  
4 *head or other relevant official to be in the public interest*  
5 *shall be construed to ensure the maximum utilization of*  
6 *goods, products, and materials produced in the United*  
7 *States.*

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

13 **SEC. 6. ESTABLISHMENT OF BUYAMERICAN.GOV WEBSITE.**

14       (a) *IN GENERAL.*—*Not later than one year after the*  
15 *date of the enactment of this Act, the Administrator of Gen-*  
16 *eral Services shall establish an Internet website with the*  
17 *address BuyAmerican.gov that will be publicly available*  
18 *and free to access. The website shall include information*  
19 *on all waivers of and exceptions to Buy American laws*  
20 *since the date of the enactment of this Act that have been*  
21 *requested, are under consideration, or have been granted by*  
22 *executive agencies and be designed to enable manufacturers*  
23 *and other interested parties to easily identify waivers. The*  
24 *website shall also include the results of routine audits to*  
25 *determine data errors and Buy American law violations*  
26 *after the award of a contract. The website shall provide pub-*

1 *licly available contact information for the relevant con-*  
 2 *tracting agencies.*

3       (b) *UTILIZATION OF EXISTING WEBSITE.*—*The re-*  
 4 *quirements of subsection (a) may be met by utilizing an*  
 5 *existing website, provided that the address of that website*  
 6 *is BuyAmerican.gov.*

7 **SEC. 7. WAIVER TRANSPARENCY AND STREAMLINING FOR**  
 8 **CONTRACTS.**

9       (a) *COLLECTION OF INFORMATION.*—*The Adminis-*  
 10 *trator of General Services, in consultation with the heads*  
 11 *of relevant agencies, shall develop a mechanism to collect*  
 12 *information on requests to invoke a Buy American waiver*  
 13 *for a Federal contract, utilizing existing reporting require-*  
 14 *ments whenever possible, for purposes of providing early no-*  
 15 *tice of possible waivers via the website established under sec-*  
 16 *tion 6.*

17       (b) *WAIVER TRANSPARENCY AND STREAMLINING.*—

18               (1) *REQUIREMENT.*—*Prior to granting a request*  
 19 *to waive a Buy American law, the head of an execu-*  
 20 *tive agency shall submit a request to invoke a Buy*  
 21 *American waiver to the Administrator of General*  
 22 *Services, and the Administrator of General Services*  
 23 *shall make the request available on or through the*  
 24 *public website established under section 6 for public*  
 25 *comment for not less than 15 days.*

1           (2) *EXCEPTION.*—*The requirement under para-*  
2 *graph (1) does not apply to a request for a Buy*  
3 *American waiver to satisfy an urgent contracting*  
4 *need in an unforeseen and exigent circumstance.*

5           (c) *INFORMATION AVAILABLE TO THE EXECUTIVE*  
6 *AGENCY CONCERNING THE REQUEST.*—

7           (1) *REQUIREMENT.*—*No Buy American waiver*  
8 *for purposes of awarding a contract may be granted*  
9 *if, in contravention of subsection (b)—*

10                   (A) *information about the waiver was not*  
11 *made available on the website under section 6; or*

12                   (B) *no opportunity for public comment con-*  
13 *cerning the request was granted.*

14           (2) *SCOPE.*—*Information made available to the*  
15 *public concerning the request included on the website*  
16 *described in section 6 shall properly and adequately*  
17 *document and justify the statutory basis cited for the*  
18 *requested waiver. Such information shall include—*

19                   (A) *a detailed justification for the use of*  
20 *goods, products, or materials mined, produced,*  
21 *or manufactured outside the United States;*

22                   (B) *for requests citing unreasonable cost as*  
23 *the statutory basis of the waiver, a comparison*  
24 *of the cost of the domestic product to the cost of*  
25 *the foreign product or a comparison of the over-*

1           *all cost of the project with domestic products to*  
2           *the overall cost of the project with foreign-origin*  
3           *products or services, pursuant to the require-*  
4           *ments of the applicable Buy American law, ex-*  
5           *cept that publicly available cost comparison data*  
6           *may be provided in lieu of proprietary pricing*  
7           *information;*

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

15          *(D) a certification that the procurement of-*  
16          *ficial or assistance recipient made a good faith*  
17          *effort to solicit bids for domestic products sup-*  
18          *ported by terms included in requests for pro-*  
19          *posals, contracts, and nonproprietary commu-*  
20          *nications with the prime contractor.*

21          *(d) NONAVAILABILITY WAIVERS.—*

22            *(1) IN GENERAL.—Except as provided under*  
23            *paragraph (2), for a request citing nonavailability as*  
24            *the statutory basis for a Buy American waiver, an*  
25            *executive agency shall provide an explanation of the*

1        *procurement official's efforts to procure a product*  
2        *from a domestic source and the reasons why a domes-*  
3        *tic product was not available from a domestic source.*  
4        *Those explanations shall be made available on*  
5        *BuyAmerican.gov prior to the issuance of the waiver,*  
6        *and the agency shall consider public comments re-*  
7        *garding the availability of the product before making*  
8        *a final determination.*

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

12        **SEC. 8. COMPTROLLER GENERAL REPORT.**

13        *Not later than two years after the date of the enact-*  
14        *ment of this Act, the Comptroller General of the United*  
15        *States shall submit to Congress a report describing the im-*  
16        *plementation of this Act, including recommendations for*  
17        *any legislation to improve the collection and reporting of*  
18        *information regarding waivers of and exceptions to Buy*  
19        *American laws.*

20        **SEC. 9. RULES OF CONSTRUCTION.**

21                (a) *DISCLOSURE REQUIREMENTS.—Nothing in this*  
22        *Act shall be construed as preempting, superseding, or other-*  
23        *wise affecting the application of any disclosure requirement*  
24        *or requirements otherwise provided by law or regulation.*

1           **(b) ESTABLISHMENT OF SUCCESSOR INFORMATION**  
 2 **SYSTEMS.**—*Nothing in this Act shall be construed as pre-*  
 3 *venting or otherwise limiting the ability of the Adminis-*  
 4 *trator of General Services to move the data required to be*  
 5 *included on the website established under subsection (a) to*  
 6 *a successor information system. Any such information sys-*  
 7 *tem shall include a reference to BuyAmerican.gov.*

8 **SEC. 10. CONSISTENCY WITH INTERNATIONAL AGREE-**  
 9 **MENTS.**

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

12 **SEC. 11. PROSPECTIVE AMENDMENTS TO INTERNAL CROSS-**  
 13 **REFERENCES.**

14           **(a) IN GENERAL.**—*Section 2(1) is amended—*

15                   **(1)** *in subparagraph (I), by striking “section*  
 16 *2533a” and inserting “section 4862”; and*

17                   **(2)** *in subparagraph (J), by striking “section*  
 18 *2533b” and inserting “section 4863”.*

19           **(b) EFFECTIVE DATE.**—*The amendments made by sub-*  
 20 *section (a) shall take effect on January 1, 2022.*

Calendar No. 586

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

**S. 732**

[Report No. 117-227]

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**A BILL**

To strengthen Buy American requirements, and for  
other purposes.

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DECEMBER 5, 2022

Reported with an amendment