

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—117th Cong., 1st Sess.

S. 732

To strengthen Buy American requirements, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. PORTMAN (for himself and Mr. PETERS)

Viz:

1 Strike all after the enacting clause and insert the following:
2

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “BuyAmerican.gov Act
5 of 2021”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) BUY AMERICAN LAW.—The term “Buy
9 American law” means any law, regulation, Executive
10 order, or rule relating to Federal contracts, grants,
11 or financial assistance that requires or provides a

1 preference for the purchase or use of goods, prod-
2 ucts, or materials mined, produced, or manufactured
3 in the United States, including—

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

7 (B) section 5323(j) of title 49, United
8 States Code;

9 (C) section 313 of title 23, United States
10 Code;

11 (D) section 50101 of title 49, United
12 States Code;

13 (E) section 24405 of title 49, United
14 States Code;

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

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

19 (H) section 5035 of the Water Resources
20 Reform and Development Act of 2014 (33
21 U.S.C. 3914);

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

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

3 (2) EXECUTIVE AGENCY.—The term “executive
4 agency” has the meaning given the term “agency”
5 in paragraph (1) of section 3502 of title 44, United
6 States Code, except that it does not include an inde-
7 pendent regulatory agency, as that term is defined
8 in paragraph (5) of such section.

9 (3) BUY AMERICAN WAIVER.—The term “Buy
10 American waiver” refers to an exception to or waiver
11 of any Buy American law, or the terms and condi-
12 tions used by an agency in granting an exception to
13 or waiver from Buy American laws.

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 laws, to the extent they apply, and minimize the use
2 of waivers; and

3 (3) every executive agency should use available
4 data to routinely audit its compliance with Buy
5 American laws.

6 **SEC. 4. ASSESSMENT OF IMPACT OF FREE TRADE AGREE-**
7 **MENTS.**

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

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

17 (a) IN GENERAL.—To the extent permitted by law,
18 a Buy American waiver that is determined by an agency
19 head or other relevant official to be in the public interest
20 shall be construed to ensure the maximum utilization of
21 goods, products, and materials produced in the United
22 States.

23 (b) PUBLIC INTEREST WAIVER DETERMINATIONS.—
24 To the extent permitted by law, determination of public
25 interest waivers shall be made by the head of the agency

1 with the authority over the Federal financial assistance
2 award or Federal procurement under consideration.

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

4 (a) IN GENERAL.—Not later than one year after the
5 date of the enactment of this Act, the Administrator of
6 General Services shall establish an Internet website with
7 the address BuyAmerican.gov that will be publicly avail-
8 able and free to access. The website shall include informa-
9 tion on all waivers of and exceptions to Buy American laws
10 since the date of the enactment of this Act that have been
11 requested, are under consideration, or have been granted
12 by executive agencies and be designed to enable manufac-
13 turers and other interested parties to easily identify waiv-
14 ers. The website shall also include the results of routine
15 audits to determine data errors and Buy American law
16 violations after the award of a contract. The website shall
17 provide publicly available contact information for the rel-
18 evant contracting agencies.

19 (b) UTILIZATION OF EXISTING WEBSITE.—The re-
20 quirements of subsection (a) may be met by utilizing an
21 existing website, provided that the address of that website
22 is BuyAmerican.gov.

1 **SEC. 7. WAIVER TRANSPARENCY AND STREAMLINING FOR**
2 **CONTRACTS.**

3 (a) **COLLECTION OF INFORMATION.**—The Adminis-
4 trator of General Services, in consultation with the heads
5 of relevant agencies, shall develop a mechanism to collect
6 information on requests to invoke a Buy American waiver
7 for a Federal contract, utilizing existing reporting require-
8 ments whenever possible, for purposes of providing early
9 notice of possible waivers via the website established under
10 section 6.

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

12 (1) **REQUIREMENT.**—Prior to granting a re-
13 quest to waive a Buy American law, the head of an
14 executive agency shall submit a request to invoke a
15 Buy American waiver to the Administrator of Gen-
16 eral Services, and the Administrator of General
17 Services shall make the request available on or
18 through the public website established under section
19 6 for public comment for not less than 15 days.

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

24 (c) **INFORMATION AVAILABLE TO THE EXECUTIVE**
25 **AGENCY CONCERNING THE REQUEST.**—

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

4 (A) information about the waiver was not
5 made available on the website under section 6;
6 or

7 (B) no opportunity for public comment
8 concerning the request was granted.

9 (2) SCOPE.—Information made available to the
10 public concerning the request included on the
11 website described in section 6 shall properly and
12 adequately document and justify the statutory basis
13 cited for the requested waiver. Such information
14 shall include—

15 (A) a detailed justification for the use of
16 goods, products, or materials mined, produced,
17 or manufactured outside the United States;

18 (B) for requests citing unreasonable cost
19 as the statutory basis of the waiver, a compari-
20 son of the cost of the domestic product to the
21 cost of the foreign product or a comparison of
22 the overall cost of the project with domestic
23 products to the overall cost of the project with
24 foreign-origin products or services, pursuant to
25 the requirements of the applicable Buy Amer-

1 ican law, except that publicly available cost
2 comparison data may be provided in lieu of pro-
3 prietary pricing information;

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

11 (D) a certification that the procurement
12 official or assistance recipient made a good
13 faith effort to solicit bids for domestic products
14 supported by terms included in requests for
15 proposals, contracts, and nonproprietary com-
16 munications with the prime contractor.

17 (d) NONAVAILABILITY WAIVERS.—

18 (1) IN GENERAL.—Except as provided under
19 paragraph (2), for a request citing nonavailability as
20 the statutory basis for a Buy American waiver, an
21 executive agency shall provide an explanation of the
22 procurement official's efforts to procure a product
23 from a domestic source and the reasons why a do-
24 mestic product was not available from a domestic
25 source. Those explanations shall be made available

1 on BuyAmerican.gov prior to the issuance of the
2 waiver, and the agency shall consider public com-
3 ments regarding the availability of the product be-
4 fore making a final determination.

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

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

9 Not later than two years after the date of the enact-
10 ment of this Act, the Comptroller General of the United
11 States shall submit to Congress a report describing the
12 implementation of this Act, including recommendations
13 for any legislation to improve the collection and reporting
14 of information regarding waivers of and exceptions to Buy
15 American laws.

16 **SEC. 9. RULES OF CONSTRUCTION.**

17 (a) DISCLOSURE REQUIREMENTS.—Nothing in this
18 Act shall be construed as preempting, superseding, or oth-
19 erwise affecting the application of any disclosure require-
20 ment or requirements otherwise provided by law or regula-
21 tion.

22 (b) ESTABLISHMENT OF SUCCESSOR INFORMATION
23 SYSTEMS.—Nothing in this Act shall be construed as pre-
24 venting or otherwise limiting the ability of the Adminis-
25 trator of General Services to move the data required to

1 be included on the website established under subsection
2 (a) to a successor information system. Any such informa-
3 tion system shall include a reference to BuyAmerican.gov.

4 **SEC. 10. CONSISTENCY WITH INTERNATIONAL AGREE-**
5 **MENTS.**

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

8 **SEC. 11. PROSPECTIVE AMENDMENTS TO INTERNAL CROSS-**
9 **REFERENCES.**

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

11 (1) in subparagraph (I), by striking “section
12 2533a” and inserting “section 4862”; and

13 (2) in subparagraph (J), by striking “section
14 2533b” and inserting “section 4863”.

15 (b) EFFECTIVE DATE.—The amendments made by
16 subsection (a) shall take effect on January 1, 2022.