

115TH CONGRESS
1ST SESSION

H. R. 904

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 HOUSE OF REPRESENTATIVES

FEBRUARY 7, 2017

Mr. LIPINSKI (for himself, Mr. JOYCE of Ohio, Ms. SHEA-PORTER, Mr. MICHAEL F. DOYLE of Pennsylvania, Mr. GARAMENDI, Mr. NOLAN, Ms. NORTON, Mr. RYAN of Ohio, Mrs. BUSTOS, Ms. BROWNLEY of California, Mr. CARSON of Indiana, and Mr. JONES) introduced the following bill; which was referred to the Committee on Oversight and Government Reform, and in addition to the Committees on Financial Services, Transportation and Infrastructure, Energy and Commerce, Agriculture, Natural Resources, and Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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 “Buy American Improvement Act of 2017”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—MATTERS RELATING TO BUY AMERICAN ACT

Sec. 101. Regulations relating to Buy American Act.
 Sec. 102. Amendments relating to Buy American Act.
 Sec. 103. Report by Comptroller General.
 Sec. 104. Border protection infrastructure.
 Sec. 105. United States obligations under international agreements.
 Sec. 106. Definitions.

TITLE II—BUY AMERICA IMPROVEMENT

Sec. 201. Annual report.
 Sec. 202. Component requirements and verification.
 Sec. 203. FHWA domestic content standards improvement.
 Sec. 204. Rail Buy America modernization.
 Sec. 205. FAA Buy America modernization.
 Sec. 206. Application of Buy America requirements to projects financed with
 passenger facility charges.
 Sec. 207. Notice and comment requirement for waiver petitions.
 Sec. 208. Drinking water state revolving funds.
 Sec. 209. Rural Utilities Service Buy American modernization.
 Sec. 210. Community development block grant Buy America modernization.
 Sec. 211. Rural Water Supply Program.
 Sec. 212. Economic development administration Buy American modernization.
 Sec. 213. Rail loan and loan guarantee Buy America requirements.

3 **TITLE I—MATTERS RELATING** 4 **TO BUY AMERICAN ACT**

5 **SEC. 101. REGULATIONS RELATING TO BUY AMERICAN ACT.**

6 (a) IN GENERAL.—Not later than 1 year after the
 7 date of the enactment of this Act, the Administrator for
 8 Federal Procurement Policy, in consultation with the Fed-
 9 eral Acquisition Regulatory Council, shall promulgate reg-
 10 ulations to standardize and simplify how Federal agencies
 11 comply with, report on, and enforce chapter 83 of title
 12 41, United States Code (commonly known as the Buy

1 American Act). The regulations shall include, at a min-
2 imum, the following:

3 (1) Guidelines for Federal agencies to deter-
4 mine, for the purposes of applying sections 8302(a)
5 and 8303(b)(3) of such title, the circumstances
6 under which the acquisition of articles, materials, or
7 supplies mined, produced, or manufactured in the
8 United States is inconsistent with the public inter-
9 est.

10 (2) Uniform procedures for each Federal agen-
11 cy to make publicly available, in an easily identifi-
12 able location on the website of the agency, and with-
13 in the following time periods, the following informa-
14 tion:

15 (A) A description of the circumstances in
16 which the head of the agency may waive the re-
17 quirements of chapter 83 of such title.

18 (B) Each waiver made by the head of the
19 agency within 30 days after making such waiv-
20 er, including a detailed justification for the
21 waiver.

22 (3) Rules for Federal agencies to ensure that a
23 project is not disaggregated for purposes of avoiding
24 the applicability of the requirements under chapter
25 83 of such title.

1 (4) Procedures to investigate occurrences when
2 the head of a Federal agency improperly waives the
3 requirements of chapter 83 of such title.

4 (5) Rules for the Administrator to evaluate the
5 percentage of domestic content in a manufactured
6 end product, including providing a definition for the
7 term “manufactured end product”.

8 (b) GUIDELINES RELATING TO INCONSISTENCY
9 WITH PUBLIC INTEREST.—With respect to the guidelines
10 developed under subsection (a)(1), the Administrator shall
11 consider any significant decrease in employment in the
12 United States resulting from a waiver to be inconsistent
13 with the public interest and seek to minimize waivers that
14 would result in a decrease in employment in the United
15 States in both the short and long term.

16 (c) RULES RELATING TO DOMESTIC CONTENT.—
17 With respect to the rules developed under subsection
18 (a)(5), the Administrator may not treat components of
19 foreign origin of the same class or kind as those that are
20 not mined, produced, or manufactured in the United
21 States in sufficient and reasonably available commercial
22 quantities of a satisfactory quality as domestic content.
23 With respect to providing a definition for the term “manu-
24 factured end product”, the Administrator shall consider
25 previous judicial rulings on the question of—

1 (1) whether the product is completed in the
 2 final form required for use by the Federal Govern-
 3 ment; and

4 (2) whether separate manufacturing stages or
 5 continuous processes constitute “manufacturing”.

6 **SEC. 102. AMENDMENTS RELATING TO BUY AMERICAN ACT.**

7 (a) SPECIAL RULES RELATING TO AMERICAN MATE-
 8 RIALS REQUIRED FOR PUBLIC USE.—Section 8302 of title
 9 41, United States Code, is amended by adding at the end
 10 the following:

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

13 “(1) CALCULATION OF DOMESTIC AND NON-DO-
 14 MESTIC OFFERS.—

15 “(A) EXCLUSION OF START-UP COSTS IN
 16 CALCULATING COST OF OFFER.—When com-
 17 paring offers between domestic entities and
 18 non-domestic entities, costs related to the start-
 19 up of a project shall be excluded from a domes-
 20 tic offer.

21 “(B) UNREASONABLE COST DETERMINA-
 22 TION.—

23 “(i) IN GENERAL.—The head of a
 24 Federal agency may not determine the cost
 25 of acquiring articles, materials, or supplies

1 mined, produced, or manufactured in the
2 United States to be unreasonable under
3 subsection (a)(1), unless the acquisition of
4 such articles, materials, or supplies would
5 increase the cost of the overall project by
6 more than 25 percent.

7 “(ii) RULE OF CONSTRUCTION.—With
8 respect to the percentage increase required
9 for a determination of unreasonable cost
10 applicable to projects under Department of
11 Defense contracts as of the date of the en-
12 actment of the Buy American Improve-
13 ment Act of 2017, nothing in this subpara-
14 graph may be construed as reducing such
15 percentage increase.

16 “(2) USE OUTSIDE THE UNITED STATES.—

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

24 “(B) COST ANALYSIS.—In any case in
25 which articles, materials, or supplies are to be

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

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

21 “(A) domestic production cannot be initi-
22 ated without significantly delaying the project
23 for which the article, material, or supply is to
24 be acquired; and

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

6 (b) REPORTS.—Subsection (b) of section 8302 of title
7 41, United States Code, is amended to read as follows:

8 “(b) REPORTS.—

9 “(1) IN GENERAL.—Not later than 180 days
10 after the end of each of fiscal years 2018 through
11 2022, the Director of the Office of Management and
12 Budget, in consultation with the Administrator of
13 General Services, shall submit to the Committee on
14 Oversight and Government Reform of the House of
15 Representatives and the Committee on Homeland
16 Security and Governmental Affairs of the Senate a
17 report on the total amount of acquisitions made by
18 Federal agencies in the relevant fiscal year of arti-
19 cles, materials, or supplies acquired from entities
20 that mine, produce, or manufacture the articles, ma-
21 terials, or supplies outside the United States.

22 “(2) ADDITIONAL CONTENT.—Each report re-
23 quired under paragraph (1) shall separately include,
24 for the 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 this chapter with respect to articles, ma-
7 terials, or supplies and the country where such
8 articles, materials, or supplies were mined, pro-
9 duced, 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 subsection (a)(2)(C)),
16 the specific exception that was used to purchase
17 such articles, materials, or supplies;

18 “(D) if any articles, materials, or supplies
19 were acquired from entities that mine, produce,
20 or manufacture such articles, materials, or sup-
21 plies outside the United States pursuant to a
22 reciprocal defense procurement memorandum of
23 understanding (as described in section 8304),
24 or a trade agreement or least developed country
25 designation described in subpart 25.400 of the

1 Federal Acquisition Regulation, a citation to
2 such memorandum of understanding, trade
3 agreement, or designation; and

4 “(E) a summary of—

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

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

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

19 “(3) PUBLIC AVAILABILITY.—Not later than
20 180 days after the end of each relevant fiscal year,
21 the Director of the Office of Management and Budg-
22 et shall make the relevant report required under
23 paragraph (1) publicly available on a website.

24 “(4) EXCEPTION FOR INTELLIGENCE COMMU-
25 NITY.—This subsection does not apply to acquisi-

1 tions made by an agency, or component of an agen-
2 cy, that is an element of the intelligence community
3 as specified in, or designated under, section 3 of the
4 National Security Act of 1947 (50 U.S.C. 3003).”.

5 (c) DEFINITIONS.—Section 8301 of title 41, United
6 States Code, is amended by adding at the end the fol-
7 lowing:

8 “(3) FEDERAL AGENCY.—The term ‘Federal
9 agency’ has the meaning given the term ‘executive
10 agency’ in section 133 of title 41, United States
11 Code.

12 “(4) SUBSTANTIALLY ALL.—The term ‘substan-
13 tially all’, with respect to articles, materials, or sup-
14 plies mined, produced, or manufactured in the
15 United States, means that the cost of the domestic
16 components of such articles, materials, or supplies
17 exceeds 75 percent of the total cost of all compo-
18 nents of such articles, materials, or supplies.

19 “(5) WAIVER.—The term ‘waiver’, with respect
20 to the acquisition of an article, material, or supply
21 for public use, means the inapplicability of this
22 chapter to the acquisition by reason of any of the
23 following determinations under section 8302(a)(1) or
24 8303(b)(3):

1 “(A) A determination by the head of the
2 Federal agency concerned that the acquisition
3 is inconsistent with the public interest.

4 “(B) A determination by the head of the
5 Federal agency concerned that the cost of the
6 acquisition is unreasonable.

7 “(C) A determination by the head of the
8 Federal agency concerned that the article, ma-
9 terial, or supply is not mined, produced, or
10 manufactured in the United States in sufficient
11 and reasonably available commercial quantities
12 of a satisfactory quality.”.

13 (d) CONFORMING AMENDMENTS.—Title 41, United
14 States Code, is amended—

15 (1) in section 8302—

16 (A) in paragraph (1) of subsection (a)—

17 (i) by striking “department or inde-
18 pendent establishment” and inserting
19 “Federal agency”; and

20 (ii) by striking “their acquisition to be
21 inconsistent with the public interest or
22 their cost to be unreasonable” and insert-
23 ing “their acquisition to be inconsistent
24 with the public interest, their cost to be
25 unreasonable, or that the articles, mate-

1 rials, or supplies of the class or kind to be
2 used, or the articles, materials, or supplies
3 from which they are manufactured, are not
4 mined, produced, or manufactured in the
5 United States in sufficient and reasonably
6 available commercial quantities and of a
7 satisfactory quality”; and

8 (B) in paragraph (2) of subsection (a)—

9 (i) in subparagraph (A), by inserting
10 “subject to subsection (c)(2)(A),” before
11 “to articles, materials, or supplies”; and

12 (ii) by amending subparagraph (B) to
13 read as follows:

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

21 (2) in section 8303—

22 (A) in subsection (b)—

23 (i) by striking “department or inde-
24 pendent establishment” each place it ap-
25 pears and inserting “Federal agency”;

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

3 “(B) to any articles, materials, or supplies
4 procured pursuant to a reciprocal defense pro-
5 curement memorandum of understanding (as
6 described in section 8304), or a trade agree-
7 ment or least developed country designation de-
8 scribed in subpart 25.400 of the Federal Acqui-
9 sition Regulation; and”; and

10 (iii) in paragraph (3)—

11 (I) in the heading, by striking
12 “INCONSISTENT WITH PUBLIC INTER-
13 EST” and inserting “WAIVER AU-
14 THORITY”; and

15 (II) by striking “their purchase
16 to be inconsistent with the public in-
17 terest or their cost to be unreason-
18 able” and inserting “their acquisition
19 to be inconsistent with the public in-
20 terest, their cost to be unreasonable,
21 or that the articles, materials, or sup-
22 plies of the class or kind to be used,
23 or the articles, materials, or supplies
24 from which they are manufactured,
25 are not mined, produced, or manufac-

1 tured in the United States in suffi-
2 cient and reasonably available com-
3 mercial quantities and of a satisfac-
4 tory quality”; and

5 (B) in subsection (c), by striking “depart-
6 ment, bureau, agency, or independent establish-
7 ment” each place it appears and inserting
8 “Federal agency”.

9 (e) EXCLUSION FROM INFLATION ADJUSTMENT OF
10 ACQUISITION-RELATED DOLLAR THRESHOLDS.—Sub-
11 paragraph (A) of section 1908(b)(2) of title 41, United
12 States Code, is amended by striking “chapter 67” and in-
13 serting “chapters 67 and 83”.

14 **SEC. 103. REPORT BY COMPTROLLER GENERAL.**

15 Not later than 1 year after the date of the enactment
16 of this Act, the Comptroller General of the United States
17 shall report to Congress on the extent to which, in each
18 of fiscal years 2011, 2012, 2013, 2014, 2015, articles, ma-
19 terials, or supplies acquired by the Federal Government
20 were mined, produced, or manufactured outside the
21 United States. Such report shall include for each Federal
22 agency the following:

23 (1) A summary of total procurement funds ex-
24 pended on articles, materials, and supplies mined,
25 produced, or manufactured—

1 (A) inside the United States;

2 (B) outside the United States; and

3 (C) outside the United States—

4 (i) under each category of waiver
5 under chapter 83 of title 41, United States
6 Code;

7 (ii) under each category of exception
8 under such chapter; and

9 (iii) for each country that mined, pro-
10 duced, or manufactured such articles, ma-
11 terials, and supplies.

12 (2) An analysis of the impact of eliminating the
13 exception for acquisitions for information technology
14 (as defined in section 11101 of title 40, United
15 States Code) that is a commercial item (as defined
16 in section 103 of title 41, United States Code).

17 **SEC. 104. BORDER PROTECTION INFRASTRUCTURE.**

18 Paragraph (1) of section 604(b) of the American Re-
19 covery and Reinvestment Act of 2009 (Public Law 111–
20 5; 6 U.S.C. 453b(b)(1)) is amended—

21 (1) in subparagraph (C), by striking “; or” and
22 inserting a semicolon;

23 (2) in subparagraph (D), by striking the period
24 at the end and inserting “; or”; and

25 (3) by adding at the end the following:

1 “(E) materials and supplies used in the
2 construction of border protection barriers and
3 roads constructed under section 102 of the Ille-
4 gal Immigration and Reform and Immigrant
5 Responsibility Act of 1996 (division C of Public
6 Law 104–208; 8 U.S.C. 1103 note).”.

7 **SEC. 105. UNITED STATES OBLIGATIONS UNDER INTER-**
8 **NATIONAL AGREEMENTS.**

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

12 **SEC. 106. DEFINITIONS.**

13 In this title:

14 (1) **FEDERAL AGENCY.**—The term “Federal
15 agency” has the meaning given the term “executive
16 agency” in section 133 of title 41, United States
17 Code.

18 (2) **WAIVER.**—The term “waiver”, with respect
19 to the acquisition of an article, material, or supply
20 for public use, means the inapplicability of chapter
21 83 of title 41, United States Code, to the acquisition
22 by reason of any of the following determinations
23 under section 8302(a)(1) or 8303(b)(3) of such title:

1 (A) A determination by the head of the
2 Federal agency concerned that the acquisition
3 is inconsistent with the public interest.

4 (B) A determination by the head of the
5 Federal agency concerned that the cost of the
6 acquisition is unreasonable.

7 (C) A determination by the head of the
8 Federal agency concerned that the article, ma-
9 terial, or supply is not mined, produced, or
10 manufactured in the United States in sufficient
11 and reasonably available commercial quantities
12 of a satisfactory quality.

13 **TITLE II—BUY AMERICA**
14 **IMPROVEMENT**

15 **SEC. 201. ANNUAL REPORT.**

16 Not later than 180 days after the end of each fiscal
17 year, the Secretary of Transportation shall submit a re-
18 port to the Committee on Transportation and Infrastruc-
19 ture in the House of Representatives and the Committee
20 on Commerce, Science, and Transportation in the Senate,
21 and publish on the Department’s website, that—

22 (1) itemizes all waivers regarding domestic con-
23 tent granted by the Department within that fiscal
24 year and provides the justification for each waiver;

1 (2) identifies the country of origin and product
 2 specifications for goods used in construction pursu-
 3 ant to each waiver granted; and

4 (3) summarizes the total value of acquisitions
 5 made under each waiver.

6 **SEC. 202. COMPONENT REQUIREMENTS AND**
 7 **VERIFICATION.**

8 (a) AUDITING AND CERTIFICATION MODERNIZA-
 9 TION.—

10 (1) Not later than 6 months after the date of
 11 enactment of this Act, the Secretary of Transpor-
 12 tation shall—

13 (A) initiate a rulemaking to develop audit
 14 procedures for the Federal Transit Administra-
 15 tion to review offeror and recipient compliance
 16 with domestic content provisions; and

17 (B) issue guidance on best practices for
 18 pre-award and post-delivery audits by recipients
 19 under section 5323(m) of title 49, United
 20 States Code.

21 (2) In developing the guidance required under
 22 paragraph (1)(B), the Secretary shall consider best
 23 practices for—

24 (A) proper and sufficient documentation
 25 requests from bidders by recipients under sec-

1 tion 5323(m) of such title to support certifi-
 2 cation of compliance;

3 (B) proper and sufficient documentation
 4 requests from bidders by recipients under sec-
 5 tion 5323(m) of such title to support pre-award
 6 and post-delivery audits;

7 (C) determining the timing and require-
 8 ments for post-delivery audit; and

9 (D) verifying the origin of supplier compo-
 10 nents and subcomponents.

11 (b) COMPONENT GUIDANCE.—Not later than 6
 12 months after the date of enactment of this Act, the Sec-
 13 retary shall initiate a rulemaking to further develop stand-
 14 ards under section 5323(j) of title 49, United States Code,
 15 for measuring the percentage value of a component rel-
 16 ative to the entire procurement.

17 **SEC. 203. FHWA DOMESTIC CONTENT STANDARDS IM-**
 18 **PROVEMENT.**

19 (a) CMAQ LOOPHOLE.—Section 313(b) of title 23,
 20 United States Code, is amended—

21 (1) by redesignating paragraph (3) as para-
 22 graph (4);

23 (2) in paragraph (2) by striking “or”; and

24 (3) by inserting after paragraph (2) the fol-
 25 lowing:

1 “(3) that when procuring rolling stock under
2 this chapter—

3 “(A) the cost of components and sub-
4 components produced in the United States is
5 more than 60 percent of the cost of all compo-
6 nents of the rolling stock; and

7 “(B) final assembly of the rolling stock has
8 occurred in the United States; or”.

9 (b) **RULE REEVALUATION.**—Not later than 1 year
10 after the date of enactment of this Act, the Secretary of
11 Transportation shall review the regulations found in sec-
12 tion 635.410 of title 23, Code of Federal Regulations, or
13 any similar successor regulations, to determine whether
14 manufactured products other than those containing steel
15 and iron should be considered for the purposes of domestic
16 content preferences.

17 **SEC. 204. RAIL BUY AMERICA MODERNIZATION.**

18 Section 24305(f) of title 49, United States Code, is
19 amended by adding at the end the following:

20 “(5) Before applying for an exemption under para-
21 graph (4), Amtrak shall enter into an arrangement with
22 the National Institute of Standards and Technology to
23 conduct a supplier scouting process for domestic suppliers
24 that can provide the compliant articles, materials, or sup-
25 plies for which an exemption will be sought. Upon conclu-

1 sion of the supplier scouting process for a particular arti-
 2 cle, material, or supply, Amtrak shall submit to the Sec-
 3 retary a scouting report along with the exemption applica-
 4 tion. The Secretary shall consider the results of the sup-
 5 plier scouting process before making a decision on Am-
 6 trak’s exemption application. If the Secretary decides to
 7 grant the exemption, the Secretary shall publish in the
 8 Federal Register a summary of the scouting report and
 9 the reasons for the Secretary’s decision.”.

10 **SEC. 205. FAA BUY AMERICA MODERNIZATION.**

11 Section 50101 of title 49, United States Code, is
 12 amended by adding at the end the following:

13 “(d) SUPPLIER SCOUTING.—Before issuing a waiver
 14 under subsection (b), the Secretary shall—

15 “(1) consult with the National Institute of
 16 Standards and Technology; and

17 “(2) begin a supplier scouting process for do-
 18 mestic suppliers that can provide for those compliant
 19 products for which a waiver will be sought.

20 “(e) PUBLICATION REQUIRED.—Upon conclusion of
 21 the supplier scouting process required under subsection
 22 (d)(2) for a particular component, material, or subcompo-
 23 nent, the Secretary shall make the results of the supplier
 24 scouting available to the public.”.

1 **SEC. 206. APPLICATION OF BUY AMERICA REQUIREMENTS**
2 **TO PROJECTS FINANCED WITH PASSENGER**
3 **FACILITY CHARGES.**

4 (a) IN GENERAL.—Section 50101(a) of title 49,
5 United States Code, is amended by inserting “, and may
6 approve a project under section 40117,” before “only if
7 steel”.

8 (b) APPLICABILITY.—The amendment made by sub-
9 section (a) shall apply to an application submitted pursu-
10 ant to section 40177(c) of title 49, United States Code,
11 after the date of enactment of this Act.

12 **SEC. 207. NOTICE AND COMMENT REQUIREMENT FOR**
13 **WAIVER PETITIONS.**

14 (a) IN GENERAL.—The Secretary of Transportation
15 shall require the head of a Federal agency, after receiving
16 a request for a waiver of any applicable domestic content
17 requirement under title 49, to publish the request for a
18 waiver in the Federal Register within 15 days after receiv-
19 ing such request.

20 (b) NOTICE AND COMMENT.—A waiver under this
21 section may not be issued before the expiration of the 15-
22 day period beginning on the date on which the request
23 for waiver is published pursuant to subsection (a) to pro-
24 vide the public an opportunity for notice and comment.

25 (c) PUBLICATION OF WAIVER.—If the Secretary or
26 head of a Federal Agency issues a waiver, the Secretary

1 or head shall publish in the Federal Register not later
2 than 15 days after issuing such a waiver a detailed jus-
3 tification for the waiver that addresses any public com-
4 ments received under subsection (b).

5 **SEC. 208. DRINKING WATER STATE REVOLVING FUNDS.**

6 Section 1452(a)(4) of the Safe Drinking Water Act
7 (42 U.S.C. 300j–12(a)(4)) is amended—

8 (1) by amending subparagraph (A) to read as
9 follows:

10 “(A) IN GENERAL.—Funds made available
11 from a State drinking water treatment revolv-
12 ing loan fund established under this section
13 may not be used for a project for the construc-
14 tion, alteration, maintenance, or repair of col-
15 lection, treatment, storage, and distribution fa-
16 cilities, including publicly and privately owned
17 pipes or other constructed conveyances, unless
18 all of the iron and steel products used in the
19 project are produced in the United States.”;
20 and

21 (2) by amending subparagraph (D) to read as
22 follows:

23 “(D) PUBLIC NOTICE; WRITTEN JUS-
24 TIFICATION.—

1 “(i) PUBLIC NOTICE.—If the Adminis-
2 trator receives a request for a waiver under
3 this paragraph, the Administrator shall—

4 “(I) make available to the public
5 on an informal basis, including on the
6 public website of the Administrator—

7 “(aa) a copy of the request;

8 and

9 “(bb) any information avail-
10 able to the Administrator regard-
11 ing the request; and

12 “(II) provide notice of, and op-
13 portunity for public comment on, the
14 request for a period of not less than
15 15 days before making a finding
16 under subparagraph (C).

17 “(ii) WRITTEN JUSTIFICATION.—If,
18 after the period provided under clause (i),
19 the Administrator makes a finding under
20 subparagraph (C), the Administrator shall
21 publish in the Federal Register a written
22 justification as to why subparagraph (A) is
23 being waived.”.

1 **SEC. 209. RURAL UTILITIES SERVICE BUY AMERICAN MOD-**
2 **ERNIZATION.**

3 Section 232 of the Department of Agriculture Reor-
4 ganization Act of 1994 (7 U.S.C. 6942) is amended by
5 adding at the end the following new subsection:

6 “(d) DOMESTIC SOURCE REQUIREMENT FOR STEEL,
7 IRON, AND MANUFACTURED GOODS USED IN RURAL
8 UTILITIES SERVICE SUPPORTED PROJECTS.—

9 “(1) BUY AMERICAN REQUIRED.—Notwith-
10 standing any other provision of law, funds made
11 available under a program carried out by the Sec-
12 retary through the Rural Utilities Service, including
13 a program specified in subsection (c), may not be
14 used, in whole or in part, for a project utilizing steel,
15 iron, or manufactured goods unless the steel, iron,
16 and manufactured goods are produced in the United
17 States.

18 “(2) SCOPE.—The requirement specified in
19 paragraph (1) applies to each contract for a project
20 referred to in such paragraph, regardless of the
21 funding source of the contract, if at least one con-
22 tract for the project is funded with amounts made
23 available under a program referred to in such para-
24 graph.

25 “(3) WAIVER AUTHORITY; CONDITIONS.—

1 “(A) IN GENERAL.—The Administrator of
2 the Rural Utilities Service may grant a waiver
3 from the requirements of paragraph (1) or (2)
4 for a project referred to in paragraph (1) only
5 if the Administrator finds that—

6 “(i) applying the requirement in such
7 paragraph would be inconsistent with the
8 public interest, as determined in accord-
9 ance with the regulations required under
10 subparagraph (B);

11 “(ii) the steel, iron, or manufactured
12 goods required for the project are not pro-
13 duced in the United States—

14 “(I) in sufficient and reasonably
15 available quantities; or

16 “(II) to a satisfactory quality; or

17 “(iii) the use of steel, iron, and manu-
18 factured goods produced in the United
19 States for a project will increase the total
20 cost of the project by more than 25 per-
21 cent.

22 “(B) PUBLIC INTEREST CRITERIA.—Not
23 later than 1 year after the date of enactment of
24 the Buy American Improvement Act of 2017,
25 the Administrator shall issue regulations estab-

1 lishing the criteria that the Administrator shall
2 use to determine whether the application of
3 paragraph (1) or (2) is inconsistent with the
4 public interest for purposes of subparagraph
5 (A)(i).

6 “(C) REQUEST FOR WAIVER.—A recipient
7 of assistance under a program referred to in
8 paragraph (1) seeking a waiver under subpara-
9 graph (A) shall submit to the Administrator a
10 request for the waiver in such form and con-
11 taining such information as the Administrator
12 may require.

13 “(D) NOTICE AND COMMENT FOR WAIVER
14 REQUESTS.—Within 15 days after the date on
15 which the Administrator receives a request for
16 a waiver under subparagraph (C), the Adminis-
17 trator shall publish in the Federal Register no-
18 tice of the request for a waiver. The Adminis-
19 trator may not grant the waiver before the expi-
20 ration of the 15-day period beginning on the
21 date of the publication of the notice to provide
22 the public an opportunity for notice and com-
23 ment.

24 “(E) NOTICE OF WAIVERS.—Within 15
25 days after granting a waiver request under this

paragraph, the Administrator shall publish in the Federal Register notice of the waiver, including—

“(i) the justification for the waiver;

“(ii) the Administrator’s response to any public comments received under subparagraph (D) with respect to the request for that waiver; and

“(iii) an employment impact analysis of the cumulative effect of the waiver, together with all other waivers previously granted under this paragraph during the preceding 1-year period, on manufacturing employment in the United States.

“(4) MANUFACTURED GOODS DEFINED.—In this subsection, the term ‘manufactured goods’ has the meaning given that term pursuant to the regulations required by section 106 of the Buy American Improvement Act of 2017.”.

SEC. 210. COMMUNITY DEVELOPMENT BLOCK GRANT BUY AMERICA MODERNIZATION.

Section 105 of the Housing and Community Development Act of 1974 (42 U.S.C. 5305) is amended by adding at the end the following new subsection:

“(i) BUY AMERICA.—

1 “(1) DOMESTIC SOURCE REQUIREMENT FOR
2 STEEL, IRON, AND MANUFACTURED GOODS.—Not-
3 withstanding any other provision of law, funds made
4 available from a grant under section 106 may not be
5 used, in whole or in part, for any project or activity
6 unless all of the steel, iron, and manufactured goods
7 used for the project or activity are produced in the
8 United States.

9 “(2) SCOPE.—The requirement specified in
10 paragraph (1) shall apply to all contracts for any
11 project or activity carried out in whole or in part
12 with funds made available from a grant under sec-
13 tion 106, regardless of the funding source of such
14 contracts, if at least one contract for such project or
15 activity is funded with amounts made available from
16 a grant under section 106.

17 “(3) WAIVER AUTHORITY; CONDITIONS.—

18 “(A) AUTHORITY.—The Secretary may
19 grant a waiver from the requirements of para-
20 graph (1) or (2) for a project or activity, but
21 only if the Secretary finds that—

22 “(i) applying such paragraph would be
23 inconsistent with the public interest, as de-
24 termined in accordance with the regula-
25 tions required under subparagraph (B);

1 “(ii) the steel, iron, or manufactured
2 goods required for a project or activity are
3 not produced in the United States—

4 “(I) in sufficient and reasonably
5 available quantities; or

6 “(II) to a satisfactory quality; or

7 “(iii) the use of steel, iron, and manu-
8 factured goods produced in the United
9 States for a project or activity will increase
10 the total cost of the project or activity by
11 more than 25 percent.

12 “(B) PUBLIC INTEREST CRITERIA.—Not
13 later than 1 year after the date of the enact-
14 ment of this subsection, the Secretary shall
15 issue regulations establishing the criteria that
16 the Secretary shall use to determine whether
17 the application of paragraph (1) or (2) is incon-
18 sistent with the public interest for purposes of
19 subparagraph (A)(i).

20 “(C) REQUESTS FOR WAIVERS.—A recipi-
21 ent of assistance under section 106 seeking a
22 waiver under subparagraph (A) shall submit to
23 the Secretary a request for the waiver in such
24 form and containing such information as the
25 Secretary may require. The Secretary shall pub-

lish the request for a waiver in the Federal Register within 15 days after receiving such request.

“(D) NOTICE AND COMMENT FOR WAIVER REQUESTS.—The Secretary may not issue a waiver before the expiration of the 15-day period beginning on the date of the publication of the notice to provide the public an opportunity for notice and comment.

“(E) NOTICE OF WAIVERS.—Within 15 days after granting a waiver request under this paragraph, the Secretary shall publish in the Federal Register notice of the waiver, including—

“(i) a detailed justification for the waiver;

“(ii) the Secretary’s response to any public comments received under subparagraph (D) with respect to the request for such waiver; and

“(iii) an employment impact analysis of the cumulative effect of the waiver, together with all other waivers previously granted under this paragraph during the

1 preceding 1-year period, on manufacturing
 2 employment in the United States.

3 “(4) MANUFACTURED GOODS DEFINED.—In
 4 this subsection, the term ‘manufactured goods’ has
 5 the meaning given that term pursuant to the regula-
 6 tions required by section 106 of the Buy American
 7 Improvement Act of 2017.”.

8 **SEC. 211. RURAL WATER SUPPLY PROGRAM.**

9 (a) BUY AMERICA ACT REQUIREMENTS.—The Rural
 10 Water Supply Act of 2006 (43 U.S.C. 2401 et seq.) is
 11 amended by adding at the end the following:

12 **“SEC. 111. BUY AMERICA.**

13 “(a) DOMESTIC SOURCE REQUIREMENT FOR STEEL,
 14 IRON, AND MANUFACTURED GOODS.—

15 “(1) IN GENERAL.—Notwithstanding any other
 16 provision of law, funds made available under this
 17 title may not be used, in whole or in part, for a
 18 project for the construction of treatment works un-
 19 less the steel, iron, and manufactured goods used for
 20 the project are produced in the United States.

21 “(2) SCOPE.—The requirements of this section
 22 apply to all contracts for the construction of projects
 23 regardless of the funding source of such contracts,
 24 if at least one contract for the construction is fund-
 25 ed with amounts made available under this title.

1 “(b) EXCEPTIONS.—

2 “(1) ISSUANCE OF WAIVERS.—The Secretary
3 may waive the requirements of subsection (a) only if
4 the Secretary finds that—

5 “(A) applying subsection (a) would be in-
6 consistent with the public interest;

7 “(B) the steel, iron, or manufactured
8 goods required for a project are not produced in
9 the United States—

10 “(i) in sufficient and reasonably avail-
11 able quantities; or

12 “(ii) to a satisfactory quality; or

13 “(C) the use of steel, iron, and manufac-
14 tured goods produced in the United States for
15 a project will increase the total cost of the
16 project by more than 25 percent.

17 “(2) REGULATIONS.—Not later than 1 year
18 after the date of enactment of this section, the Sec-
19 retary shall issue regulations establishing the criteria
20 that the Secretary shall use to determine whether
21 the application of subsection (a) is inconsistent with
22 the public interest for purposes of paragraph (1)(A).

23 “(3) REQUESTS FOR WAIVERS.—A recipient of
24 assistance under this title seeking a waiver under
25 paragraph (1) shall submit to the Secretary a re-

1 quest for the waiver in such form and containing
2 such information as the Secretary may require.

3 “(c) NOTICE AND COMMENT FOR WAIVER PETI-
4 TIONS.—

5 “(1) The Secretary shall publish the request for
6 a waiver in the Federal Register not later than 15
7 days after receiving such request.

8 “(2) A waiver may not be issued before the ex-
9 piration of the 15-day period beginning on the date
10 on which the request for waiver is published pursu-
11 ant to paragraph (1) to provide the public an oppor-
12 tunity for notice and comment.

13 “(3) If the Secretary issues a waiver, the Sec-
14 retary shall publish in the Federal Register not later
15 than 15 days after issuing such a waiver—

16 “(A) a detailed justification for the waiver
17 that addresses any public comments received
18 under subsection (a)(1); and

19 “(B) provides an employment impact anal-
20 ysis of the cumulative effect of all waivers
21 under subsection (b) issued by the Secretary
22 during the preceding calendar year on manufac-
23 turing employment in the United States.”.

24 (b) CLERICAL AMENDMENT.—The table of contents
25 of the Rural Water Supply Act of 2006 (43 U.S.C. 2401

1 et seq.) is amended by adding after the item for section
 2 110 the following:

“Sec. 111. Buy America.”.

3 **SEC. 212. ECONOMIC DEVELOPMENT ADMINISTRATION BUY**
 4 **AMERICAN MODERNIZATION.**

5 (a) IN GENERAL.—Title VI of the Federal Water
 6 Pollution Control Act (33 U.S.C. 1381 et seq.) is amended
 7 by adding at the end the following:

8 **“SEC. 609. BUY AMERICA.**

9 “(a) DOMESTIC SOURCE REQUIREMENT FOR STEEL,
 10 IRON, AND MANUFACTURED GOODS.—

11 “(1) IN GENERAL.—Notwithstanding any other
 12 provision of law, funds made available from a State
 13 water pollution control revolving fund established
 14 under this title grants and loan programs adminis-
 15 tered by the Economic Development Agency’s Public
 16 Works and Economic Development Program may
 17 not be used, in whole or in part, for a project for
 18 the construction of treatment works unless the steel,
 19 iron, and manufactured goods used for the project
 20 are produced in the United States.

21 “(2) SCOPE.—The requirements of this section
 22 apply to all contracts for the construction of treat-
 23 ment works carried out within the scope of the ap-
 24 plicable finding, determination, or decision under
 25 section 511(c)(1), regardless of the funding source

1 of such contracts, if at least one contract for the
2 construction is funded with amounts made available
3 to carry out this title.

4 “(b) EXCEPTIONS.—

5 “(1) ISSUANCE OF WAIVERS.—The Adminis-
6 trator may waive the requirements of subsection (a)
7 only if the Administrator finds that—

8 “(A) applying subsection (a) would be in-
9 consistent with the public interest, as deter-
10 mined in accordance with the regulations re-
11 quired under paragraph (2);

12 “(B) the steel, iron, or manufactured
13 goods required for a project are not produced in
14 the United States—

15 “(i) in sufficient and reasonably avail-
16 able quantities; or

17 “(ii) to a satisfactory quality; or

18 “(C) the use of steel, iron, and manufac-
19 tured goods produced in the United States for
20 a project will increase the total cost of the
21 project by more than 25 percent.

22 “(2) REGULATIONS.—Not later than 1 year
23 after the date of enactment of this section, the Ad-
24 ministrator shall issue regulations establishing the
25 criteria that the Administrator shall use to deter-

1 mine whether the application of subsection (a) is in-
2 consistent with the public interest for purposes of
3 paragraph (1)(A).

4 “(3) REQUESTS FOR WAIVERS.—A recipient of
5 assistance under this title seeking a waiver under
6 paragraph (1) shall submit to the Administrator a
7 request for the waiver in such form and containing
8 such information as the Administrator may require.

9 “(c) NOTICE AND COMMENT FOR WAIVER PETI-
10 TIONS.—

11 “(1) The Administrator shall publish the re-
12 quest for a waiver in the Federal Register within 15
13 days after receiving such request.

14 “(2) A waiver may not be issued before the ex-
15 piration of the 15-day period beginning on the date
16 on which the request for waiver is published pursu-
17 ant to paragraph (1) to provide the public an oppor-
18 tunity for notice and comment.

19 “(3) If the Administrator issues a waiver, the
20 Administrator shall publish in the Federal Register
21 within 15 days of issuing such a waiver—

22 “(A) a detailed justification for the waiver
23 that addresses any public comments received
24 under subsection (a)(1); and

1 “(B) provides an employment impact anal-
 2 ysis of the cumulative effect of all waivers
 3 under subsection (b) issued by the Adminis-
 4 trator during the preceding calendar year on
 5 manufacturing employment in the United
 6 States.”.

7 (b) CLERICAL AMENDMENT.—The table of contents
 8 of the Federal Water Pollution Control Act (33 U.S.C.
 9 1381 et seq.) is amended by adding after the item for sec-
 10 tion 608 the following:

“Sec. 609. Buy America.”.

11 **SEC. 213. RAIL LOAN AND LOAN GUARANTEE BUY AMERICA**
 12 **REQUIREMENTS.**

13 Section 502(h)(3) of the Railroad Revitalization and
 14 Regulatory Reform Act of 1976 (45 U.S.C. 822(h)(3)) is
 15 amended—

16 (1) in subparagraph (A) by striking “and” at
 17 the end;

18 (2) in subparagraph (B) by striking the period
 19 at the end and inserting “; and”; and

20 (3) by adding at the end the following:

21 “(C) the requirements of section 24405(a) of
 22 title 49, United States Code.”.

○