

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

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

S. 1303

To ensure that certain Federal infrastructure programs require the use of materials produced in the United States, 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.

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. PETERS (for himself and Mr.
PORTMAN)

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Build America, Buy America Act”.

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

Sec. 1. Short title; table of contents.

TITLE I—BUILD AMERICA, BUY AMERICA

Sec. 101. Findings.

1 to environmental, worker, and workplace safety pro-
2 tectations;

3 (4) in procuring materials for public works
4 projects, entities using taxpayer-financed Federal as-
5 sistance should give a commonsense procurement
6 preference for the materials and products produced
7 by companies and workers in the United States in
8 accordance with the high ideals embodied in the en-
9 vironmental, worker, workplace safety, and other
10 regulatory requirements of the United States;

11 (5) common construction materials used in pub-
12 lic works infrastructure projects, including steel,
13 iron, manufactured products, non-ferrous metals,
14 plastic and polymer-based products (including
15 polyvinylchloride, composite building materials, and
16 polymers used in fiber optic cables), concrete and
17 other aggregates, glass (including optic glass), lum-
18 ber, and drywall are not adequately covered by a do-
19 mestic content procurement preference, thus limiting
20 the impact of taxpayer purchases to enhance supply
21 chains in the United States;

22 (6) the benefits of domestic content procure-
23 ment preferences extend beyond economics;

24 (7) by incentivizing domestic manufacturing,
25 domestic content procurement preferences reinvest

1 tax dollars in companies and processes using the
2 highest labor and environmental standards in the
3 world;

4 (8) strong domestic content procurement pref-
5 erence policies act to prevent shifts in production to
6 countries that rely on production practices that are
7 significantly less energy efficient and far more pol-
8 luting than those in the United States;

9 (9) for over 75 years, Buy America and other
10 domestic content procurement preference laws have
11 been part of the United States procurement policy,
12 ensuring that the United States can build and re-
13 build the infrastructure of the United States with
14 high-quality American-made materials;

15 (10) before the date of enactment of this Act,
16 a domestic content procurement preference require-
17 ment may not apply, may apply only to a narrow
18 scope of products and materials, or may be limited
19 by waiver with respect to many infrastructure pro-
20 grams, which necessitates a review of such pro-
21 grams, including programs for roads, highways, and
22 bridges, public transportation, dams, ports, harbors,
23 and other maritime facilities, intercity passenger and
24 freight railroads, freight and intermodal facilities,
25 airports, water systems, including drinking water

1 and wastewater systems, electrical transmission fa-
2 cilities and systems, utilities, broadband infrastruc-
3 ture, and buildings and real property;

4 (11) Buy America laws create demand for do-
5 mestically produced goods, helping to sustain and
6 grow domestic manufacturing and the millions of
7 jobs domestic manufacturing supports throughout
8 product supply chains;

9 (12) as of the date of enactment of this Act,
10 domestic content procurement preference policies
11 apply to all Federal Government procurement and to
12 various Federal-aid infrastructure programs;

13 (13) a robust domestic manufacturing sector is
14 a vital component of the national security of the
15 United States;

16 (14) as more manufacturing operations of the
17 United States have moved offshore, the strength and
18 readiness of the defense industrial base of the
19 United States has been diminished; and

20 (15) domestic content procurement preference
21 laws—

22 (A) are fully consistent with the inter-
23 national obligations of the United States; and

24 (B) together with the government procure-
25 ments to which the laws apply, are important

1 levers for ensuring that United States manufac-
2 turers can access the government procurement
3 markets of the trading partners of the United
4 States.

5 **SEC. 102. DEFINITIONS.**

6 In this title:

7 (1) DEFICIENT PROGRAM.—The term “deficient
8 program” means a program identified by the head of
9 a Federal agency under section 103(c).

10 (2) DOMESTIC CONTENT PROCUREMENT PREF-
11 ERENCE.—The term “domestic content procurement
12 preference” means a requirement that no amounts
13 made available through a program for Federal finan-
14 cial assistance may be obligated for a project un-
15 less—

16 (A) all iron and steel used in the project
17 are produced in the United States;

18 (B) the manufactured products used in the
19 project are produced in the United States; or

20 (C) the construction materials used in the
21 project are produced in the United States.

22 (3) FEDERAL AGENCY.—The term “Federal
23 agency” means any authority of the United States
24 that is an “agency” (as defined in section 3502 of
25 title 44, United States Code), other than an inde-

1 (B) public transportation;

2 (C) dams, ports, harbors, and other mari-
3 time facilities;

4 (D) intercity passenger and freight rail-
5 roads;

6 (E) freight and intermodal facilities;

7 (F) airports;

8 (G) water systems, including drinking
9 water and wastewater systems;

10 (H) electrical transmission facilities and
11 systems;

12 (I) utilities;

13 (J) broadband infrastructure; and

14 (K) buildings and real property.

15 (6) PRODUCED IN THE UNITED STATES.—The
16 term “produced in the United States” means—

17 (A) in the case of iron or steel products,
18 that all manufacturing processes, from the ini-
19 tial melting stage through the application of
20 coatings, occurred in the United States;

21 (B) in the case of manufactured products,
22 that—

23 (i) the manufactured product was
24 manufactured in the United States; and

1 (ii) the cost of the components of the
2 manufactured product that are mined, pro-
3 duced, or manufactured in the United
4 States is greater than 55 percent of the
5 total cost of all components of the manu-
6 factured product, unless another standard
7 for determining the minimum amount of
8 domestic content of the manufactured
9 product has been established under appli-
10 cable law or regulation; and

11 (C) in the case of construction materials,
12 that all manufacturing processes for the con-
13 struction material occurred in the United
14 States.

15 (7) PROJECT.—The term “project” means the
16 construction, alteration, maintenance, or repair of
17 infrastructure in the United States.

18 **SEC. 103. IDENTIFICATION OF DEFICIENT PROGRAMS.**

19 (a) IN GENERAL.—Not later than 60 days after the
20 date of enactment of this Act, the head of each Federal
21 agency shall—

22 (1) submit to the Office of Management and
23 Budget and to Congress, including a separate notice
24 to each appropriate congressional committee, a re-
25 port that identifies each Federal financial assistance

1 program for infrastructure administered by the Fed-
2 eral agency; and

3 (2) publish in the Federal Register the report
4 under paragraph (1).

5 (b) REQUIREMENTS.—In the report under subsection
6 (a), the head of each Federal agency shall, for each Fed-
7 eral financial assistance program—

8 (1) identify all domestic content procurement
9 preferences applicable to the Federal financial as-
10 sistance;

11 (2) assess the applicability of the domestic con-
12 tent procurement preference requirements, includ-
13 ing—

14 (A) section 313 of title 23, United States
15 Code;

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

18 (C) section 22905(a) of title 49, United
19 States Code;

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

22 (E) section 603 of the Federal Water Pol-
23 lution Control Act (33 U.S.C. 1388);

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

1 (G) section 5035 of the Water Infrastruc-
2 ture Finance and Innovation Act of 2014 (33
3 U.S.C. 3914);

4 (H) any domestic content procurement
5 preference included in an appropriations Act;
6 and

7 (I) any other domestic content procure-
8 ment preference in Federal law (including regu-
9 lations);

10 (3) provide details on any applicable domestic
11 content procurement preference requirement, includ-
12 ing the purpose, scope, applicability, and any excep-
13 tions and waivers issued under the requirement; and

14 (4) include a description of the type of infra-
15 structure projects that receive funding under the
16 program, including information relating to—

17 (A) the number of entities that are partici-
18 pating in the program;

19 (B) the amount of Federal funds that are
20 made available for the program for each fiscal
21 year; and

22 (C) any other information the head of the
23 Federal agency determines to be relevant.

24 (c) LIST OF DEFICIENT PROGRAMS.—In the report
25 under subsection (a), the head of each Federal agency

1 shall include a list of Federal financial assistance pro-
2 grams for infrastructure identified under that subsection
3 for which a domestic content procurement preference re-
4 quirement—

5 (1) does not apply in a manner consistent with
6 section 104; or

7 (2) is subject to a waiver of general applica-
8 bility not limited to the use of specific products for
9 use in a specific project.

10 **SEC. 104. APPLICATION OF BUY AMERICA PREFERENCE.**

11 (a) IN GENERAL.—Not later than 180 days after the
12 date of enactment of this Act, the head of each Federal
13 agency shall ensure that none of the funds made available
14 for a Federal financial assistance program for infrastruc-
15 ture, including each deficient program, may be obligated
16 for a project unless all of the iron, steel, manufactured
17 products, and construction materials used in the project
18 are produced in the United States.

19 (b) WAIVER.—The head of a Federal agency that ap-
20 plies a domestic content procurement preference under
21 this section may waive the application of that preference
22 in any case in which the head of the Federal agency finds
23 that—

1 (1) applying the domestic content procurement
2 preference would be inconsistent with the public in-
3 terest;

4 (2) types of iron, steel, manufactured products,
5 or construction materials are not produced in the
6 United States in sufficient and reasonably available
7 quantities or of a satisfactory quality; or

8 (3) the inclusion of iron, steel, manufactured
9 products, or construction materials produced in the
10 United States will increase the cost of the overall
11 project by more than 25 percent.

12 (c) WRITTEN JUSTIFICATION.—Before issuing a
13 waiver under subsection (b), the head of the Federal agen-
14 cy shall—

15 (1) make publicly available in an easily acces-
16 sible location on a website designated by the Office
17 of Management and Budget and on the website of
18 the Federal agency a detailed written explanation for
19 the proposed determination to issue the waiver; and

20 (2) provide a period of not less than 15 days
21 for public comment on the proposed waiver.

22 (d) AUTOMATIC SUNSET ON WAIVERS OF GENERAL
23 APPLICABILITY.—

24 (1) IN GENERAL.—A general applicability waiv-
25 er issued under subsection (b) shall expire not later

1 than 2 years after the date on which the waiver is
2 issued.

3 (2) REISSUANCE.—The head of a Federal agen-
4 cy may reissue a general applicability waiver only
5 after—

6 (A) publishing in the Federal Register a
7 notice that—

8 (i) describes the justification for re-
9 issuing a general applicability waiver; and

10 (ii) requests public comments for a
11 period of not less than 30 days; and

12 (B) publishing in the Federal Register a
13 second notice that—

14 (i) responds to the public comments
15 received in response to the first notice; and

16 (ii) provides the final decision on
17 whether the general applicability waiver
18 will be reissued.

19 (e) CONSISTENCY WITH INTERNATIONAL AGREE-
20 MENTS.—This section shall be applied in a manner con-
21 sistent with United States obligations under international
22 agreements.

23 **SEC. 105. OMB GUIDANCE AND STANDARDS.**

24 (a) GUIDANCE.—The Director of the Office of Man-
25 agement and Budget shall—

1 (1) issue guidance to the head of each Federal
2 agency—

3 (A) to assist in identifying deficient pro-
4 grams under section 103(c); and

5 (B) to assist in applying new domestic con-
6 tent procurement preferences under section
7 104; and

8 (2) if necessary, amend subtitle A of title 2,
9 Code of Federal Regulations (or successor regula-
10 tions), to ensure that domestic content procurement
11 preference requirements required by this title or
12 other Federal law are imposed through the terms
13 and conditions of awards of Federal financial assist-
14 ance.

15 (b) STANDARDS FOR CONSTRUCTION MATERIALS.—

16 (1) IN GENERAL.—Not later than 180 days
17 after the date of enactment of this Act, the Director
18 of the Office of Management and Budget shall issue
19 standards that define the term “all manufacturing
20 processes” in the case of construction materials.

21 (2) CONSIDERATIONS.—In issuing standards
22 under paragraph (1), the Director shall—

23 (A) ensure that the standards require that
24 each manufacturing process required for the
25 manufacture of the construction material and

1 the inputs of the construction material occurs
2 in the United States; and

3 (B) take into consideration and seek to
4 maximize the direct and indirect jobs benefited
5 or created in the production of the construction
6 material.

7 **SEC. 106. TECHNICAL ASSISTANCE PARTNERSHIP AND CON-**
8 **SULTATION SUPPORTING DEPARTMENT OF**
9 **TRANSPORTATION BUY AMERICA REQUIRE-**
10 **MENTS.**

11 (a) DEFINITIONS.—In this section:

12 (1) BUY AMERICA LAW.—The term “Buy Amer-
13 ica law” means—

14 (A) section 313 of title 23, United States
15 Code;

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

18 (C) section 22905(a) of title 49, United
19 States Code;

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

22 (E) any other domestic content procure-
23 ment preference for an infrastructure project
24 under the jurisdiction of the Secretary.

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

3 (b) TECHNICAL ASSISTANCE PARTNERSHIP.—Not
4 later than 90 days after the date of the enactment of this
5 Act, the Secretary shall enter into a technical assistance
6 partnership with the Secretary of Commerce, acting
7 through the Director of the National Institute of Stand-
8 ards and Technology—

9 (1) to ensure the development of a domestic
10 supply base to support intermodal transportation in
11 the United States, such as intercity high speed rail
12 transportation, public transportation systems, high-
13 way construction or reconstruction, airport improve-
14 ment projects, and other infrastructure projects
15 under the jurisdiction of the Secretary;

16 (2) to ensure compliance with Buy America
17 laws that apply to a project that receives assistance
18 from the Federal Highway Administration, the Fed-
19 eral Transit Administration, the Federal Railroad
20 Administration, the Federal Aviation Administra-
21 tion, or another office or modal administration of
22 the Secretary of Transportation;

23 (3) to encourage technologies developed with
24 the support of and resources from the Secretary to

1 be transitioned into commercial market and applica-
2 tions; and

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

5 (c) CONSULTATION.—Before granting a written waiv-
6 er under a Buy America law, the Secretary shall consult
7 with the Director of the Hollings Manufacturing Exten-
8 sion Partnership regarding whether there is a domestic en-
9 tity that could provide the iron, steel, manufactured prod-
10 uct, or construction material that is the subject of the pro-
11 posed waiver.

12 (d) ANNUAL REPORT.—Not later than 1 year after
13 the date of enactment of this Act, and annually thereafter,
14 the Secretary shall submit to the Committee on Com-
15 merce, Science, and Transportation, the Committee on
16 Banking, Housing, and Urban Affairs, the Committee on
17 Environment and Public Works, and the Committee on
18 Homeland Security and Governmental Affairs of the Sen-
19 ate and the Committee on Transportation and Infrastruc-
20 ture and the Committee on Oversight and Reform of the
21 House of Representatives a report that includes—

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

24 (2) a detailed description of each waiver re-
25 quested under a Buy America law in the preceding

1 year that was subject to consultation under sub-
2 section (c), and the results of the consultation;

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

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

12 **SEC. 107. APPLICATION.**

13 (a) **IN GENERAL.**—This title shall apply to a Federal
14 financial assistance program for infrastructure only to the
15 extent that a domestic content procurement preference as
16 described in section 104 does not already apply to iron,
17 steel, manufactured products, and construction materials.

18 (b) **SAVINGS PROVISION.**—Nothing in this title af-
19 fects a domestic content procurement preference for a
20 Federal financial assistance program for infrastructure
21 that is in effect and that meets the requirements of section
22 104.

1 **TITLE II—MAKE IT IN AMERICA**

2 **SEC. 201. REGULATIONS RELATING TO BUY AMERICAN ACT.**

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

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

21 (2) Guidelines to ensure Federal agencies base
22 determinations of non-availability on appropriate
23 considerations, including anticipated project delays
24 and lack of substitutable articles, materials, and
25 supplies mined, produced, or manufactured in the

1 United States, when making determinations of non-
2 availability under section 8302(a)(1) of title 41,
3 United States Code.

4 (3)(A) Uniform procedures for each Federal
5 agency to make publicly available, in an easily iden-
6 tifiable location on the website of the agency, and
7 within the following time periods, the following infor-
8 mation:

9 (i) A written description of the cir-
10 cumstances in which the head of the agency
11 may waive the requirements of the Buy Amer-
12 ican Act.

13 (ii) Each waiver made by the head of the
14 agency within 30 days after making such waiv-
15 er, including a justification with sufficient detail
16 to explain the basis for the waiver.

17 (B) The procedures established under this para-
18 graph shall ensure that the head of an agency may
19 limit the publication of classified information.

20 (4) Guidelines for Federal agencies to ensure
21 that a project is not disaggregated for purposes of
22 avoiding the applicability of the requirements under
23 the Buy American Act.

1 (5) An increase to the price preferences for do-
2 mestic end products and domestic construction ma-
3 terials.

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

8 (b) GUIDELINES RELATING TO WAIVERS.—

9 (1) INCONSISTENCY WITH PUBLIC INTEREST.—

10 (A) IN GENERAL.—With respect to the
11 guidelines developed under subsection (a)(1),
12 the Administrator shall seek to minimize waiv-
13 ers related to contract awards that—

14 (i) result in a decrease in employment
15 in the United States, including employ-
16 ment among entities that manufacture the
17 articles, materials, or supplies; or

18 (ii) result in awarding a contract that
19 would decrease domestic employment.

20 (B) COVERED EMPLOYMENT.—For pur-
21 poses of subparagraph (A), employment refers
22 to positions directly involved in the manufacture
23 of articles, materials, or supplies, and does not
24 include positions related to management, re-

1 search and development, or engineering and de-
2 sign.

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

5 (A) IN GENERAL.—To the extent otherwise
6 permitted by law, before granting a waiver in
7 the public interest to the guidelines developed
8 under subsection (a)(1) with respect to a prod-
9 uct sourced from a foreign country, a Federal
10 agency shall assess whether a significant por-
11 tion of the cost advantage of the product is the
12 result of the use of dumped steel, iron, or man-
13 ufactured goods or the use of injuriously sub-
14 sidized steel, iron, or manufactured goods.

15 (B) CONSULTATION.—The Federal agency
16 conducting the assessment under subparagraph
17 (A) shall consult with the International Trade
18 Administration in making the assessment if the
19 agency considers such consultation to be help-
20 ful.

21 (C) USE OF FINDINGS.—The Federal
22 agency conducting the assessment under sub-
23 paragraph (A) shall integrate any findings from
24 the assessment into its waiver determination.

1 (c) SENSE OF CONGRESS ON INCREASING DOMESTIC
2 CONTENT REQUIREMENTS.—It is the sense of Congress
3 that the Federal Acquisition Regulatory Council should
4 amend the Federal Acquisition Regulation to increase the
5 domestic content requirements for domestic end products
6 and domestic construction material to 75 percent, or, in
7 the event of no qualifying offers, 60 percent.

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

16 **SEC. 202. AMENDMENTS RELATING TO BUY AMERICAN ACT.**

17 (a) SPECIAL RULES RELATING TO AMERICAN MATE-
18 RIALS REQUIRED FOR PUBLIC USE.—Section 8302 of title
19 41, United States Code, is amended by adding at the end
20 the following new subsection:

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

23 “(1) IRON AND STEEL MANUFACTURED IN THE
24 UNITED STATES.—For purposes of this section,
25 manufactured articles, materials, and supplies of

1 iron and steel are deemed manufactured in the
2 United States only if all manufacturing processes in-
3 volved in the production of such iron and steel, from
4 the initial melting stage through the application of
5 coatings, occurs in the United States.

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

13 (b) PRODUCTION OF IRON AND STEEL FOR PUR-
14 POSES OF CONTRACTS FOR PUBLIC WORKS.—Section
15 8303 of title 41, United States Code, is amended—

16 (1) by redesignating subsection (c) as sub-
17 section (d); and

18 (2) by inserting after subsection (b) the fol-
19 lowing new subsection:

20 “(c) SPECIAL RULES.—

21 “(1) PRODUCTION OF IRON AND STEEL.—For
22 purposes of this section, manufactured articles, ma-
23 terials, and supplies of iron and steel are deemed
24 manufactured in the United States only if all manu-
25 facturing processes involved in the production of

1 such iron and steel, from the initial melting stage
2 through the application of coatings, occurs in the
3 United States.

4 “(2) LIMITATION ON EXCEPTION FOR COMMER-
5 CIALLY AVAILABLE OFF-THE-SHELF ITEMS.—Not-
6 withstanding any law or regulation to the contrary,
7 including section 1907 of this title and the Federal
8 Acquisition Regulation, the requirements of this sec-
9 tion apply to all iron and steel articles, materials,
10 and supplies used in contracts described in sub-
11 section (a).”.

12 (c) ANNUAL REPORT.—Subsection (b) of section
13 8302 of title 41, United States Code, is amended to read
14 as follows:

15 “(b) REPORTS.—

16 “(1) IN GENERAL.—Not later than 180 days
17 after the end of the fiscal year during which the
18 Build America, Buy America Act is enacted, and an-
19 nually thereafter for 4 years, the Director of the Of-
20 fice of Management and Budget, in consultation
21 with the Administrator of General Services, shall
22 submit to the Committee on Homeland Security and
23 Governmental Affairs of the Senate and the Com-
24 mittee on Oversight and Reform of the House of
25 Representatives a report on the total amount of ac-

1 quisitions made by Federal agencies in the relevant
2 fiscal year of articles, materials, or supplies acquired
3 from entities that mine, produce, or manufacture the
4 articles, materials, or supplies outside the United
5 States.

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

12 (d) DEFINITION.—Section 8301 of title 41, United
13 States Code, is amended by adding at the end the fol-
14 lowing new paragraph:

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

18 (e) CONFORMING AMENDMENTS.—Title 41, United
19 States Code, is amended—

20 (1) in section 8302(a)—

21 (A) in paragraph (1)—

22 (i) by striking “department or inde-
23 pendent establishment” and inserting
24 “Federal agency”; and

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

14 (B) in paragraph (2), by amending sub-
15 paragraph (B) to read as follows:

16 “(B) to any articles, materials, or supplies
17 procured pursuant to a reciprocal defense pro-
18 curement memorandum of understanding (as
19 described in section 8304 of this title), or a
20 trade agreement or least developed country des-
21 ignation described in subpart 25.400 of the
22 Federal Acquisition Regulation; and”;

23 (2) in section 8303—

24 (A) in subsection (b)—

1 (i) by striking “department or inde-
2 pendent establishment” each place it ap-
3 pears and inserting “Federal agency”;

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

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

13 (iii) in paragraph (3)—

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

18 (II) by striking “their purchase
19 to be inconsistent with the public in-
20 terest or their cost to be unreason-
21 able” and inserting “their acquisition
22 to be inconsistent with the public in-
23 terest, their cost to be unreasonable,
24 or that the articles, materials, or sup-
25 plies of the class or kind to be used,

1 or the articles, materials, or supplies
2 from which they are manufactured,
3 are not mined, produced, or manufac-
4 tured in the United States in suffi-
5 cient and reasonably available com-
6 mercial quantities and of a satisfac-
7 tory quality”; and

8 (B) in subsection (d), as redesignated by
9 subsection (b)(1) of this section, by striking
10 “department, bureau, agency, or independent
11 establishment” each place it appears and insert-
12 ing “Federal agency”.

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

18 **SEC. 203. MADE IN AMERICA OFFICE.**

19 (a) ESTABLISHMENT.—The Director of the Office of
20 Management and Budget shall establish within the Office
21 of Management and Budget an office to be known as the
22 “Made in America Office”. The head of the office shall
23 be appointed by the Director of the Office of Management
24 and Budget (in this section referred to as the “Made in
25 America Director”).

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

3 (1) Maximize and enforce compliance with do-
4 mestic preference statutes.

5 (2) Develop and implement procedures to re-
6 view waiver requests or inapplicability requests re-
7 lated to domestic preference statutes.

8 (3) Prepare the reports required under sub-
9 sections (c) and (e).

10 (4) Ensure that Federal contracting personnel,
11 financial assistance personnel, and non-Federal re-
12 cipients are regularly trained on obligations under
13 the Buy American Act and other agency-specific do-
14 mestic preference statutes.

15 (5) Conduct the review of reciprocal defense
16 agreements required under subsection (d).

17 (6) Ensure that Federal agencies, Federal fi-
18 nancial assistance recipients, and the Hollings Man-
19 ufacturing Extension Partnership partner with each
20 other to promote compliance with domestic pref-
21 erence statutes.

22 (7) Support executive branch efforts to develop
23 and sustain a domestic supply base to meet Federal
24 procurement requirements.

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

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

15 (A) inside the United States;

16 (B) outside the United States; and

17 (C) outside the United States—

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

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

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

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

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

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

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

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

1 title 41, United States Code), or a trade agree-
2 ment or least developed country designation de-
3 scribed in subpart 25.400 of the Federal Acqui-
4 sition Regulation, a citation to such memo-
5 randum of understanding, trade agreement, or
6 designation.

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

11 (d) REVIEW OF RECIPROCAL DEFENSE AGREE-
12 MENTS.—

13 (1) REVIEW OF PROCESS.—Not later than 180
14 days after the date of the enactment of this Act, the
15 Made in America Director shall review the Depart-
16 ment of Defense's use of reciprocal defense agree-
17 ments to determine if domestic entities have equal
18 and proportional access and report the findings of
19 the review to the Director of the Office of Manage-
20 ment and Budget, the Secretary of Defense, and the
21 Secretary of State.

22 (2) REVIEW OF RECIPROCAL PROCUREMENT
23 MEMORANDA OF UNDERSTANDING.—The Made in
24 America Director shall review reciprocal procure-
25 ment memoranda of understanding entered into

1 after the date of the enactment of this Act between
2 the Department of Defense and its counterparts in
3 foreign governments to assess whether domestic enti-
4 ties will have equal and proportional access under
5 the memoranda of understanding and report the
6 findings of the review to the Director of the Office
7 of Management and Budget, the Secretary of De-
8 fense, and the Secretary of State.

9 (e) REPORT ON USE OF MADE IN AMERICA LAWS.—

10 The Made in America Director shall submit to the relevant
11 congressional committees a summary of each report on the
12 use of Made in America Laws received by the Made in
13 America Director pursuant to section 11 of Executive
14 Order 14005, dated January 25, 2021 (relating to ensur-
15 ing the future is made in all of America by all of America’s
16 workers) not later than 90 days after the date of the en-
17 actment of this Act or receipt of the reports required
18 under section 11 of such Executive Order, whichever is
19 later.

20 (f) DOMESTIC PREFERENCE STATUTE DEFINED.—

21 In this section, the term “domestic preference statute”
22 means any of the following:

- 23 (1) the Buy American Act;
- 24 (2) a Buy America law (as that term is defined
25 in section 106(a));

1 (3) the Berry Amendment;

2 (4) section 604 of the American Recovery and
3 Reinvestment Act of 2009 (6 U.S.C. 453b) (com-
4 monly referred to as the “Kissell amendment”);

5 (5) section 2533b of title 10 (commonly re-
6 ferred to as the “specialty metals clause”);

7 (6) laws requiring domestic preference for mari-
8 time transport, including the Merchant Marine Act,
9 1920 (Public Law 66–261), commonly known as the
10 “Jones Act”; and

11 (7) any other law, regulation, rule, or executive
12 order relating to Federal financial assistance awards
13 or Federal procurement, that requires, or provides a
14 preference for, the purchase or acquisition of goods,
15 products, or materials produced in the United
16 States, including iron, steel, construction material,
17 and manufactured goods offered in the United
18 States.

19 **SEC. 204. HOLLINGS MANUFACTURING EXTENSION PART-**
20 **nership ACTIVITIES.**

21 (a) USE OF HOLLINGS MANUFACTURING EXTENSION
22 PARTNERSHIP TO REFER NEW BUSINESSES TO CON-
23 TRACTING OPPORTUNITIES.—The head of each Federal
24 agency shall work with the Director of the Hollings Manu-
25 facturing Extension Partnership, as necessary, to ensure

1 businesses participating in this Partnership are aware of
2 their contracting opportunities.

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

11 **SEC. 205. UNITED STATES OBLIGATIONS UNDER INTER-**
12 **NATIONAL AGREEMENTS.**

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

16 **SEC. 206. DEFINITIONS.**

17 In this title:

18 (1) BERRY AMENDMENT.—The term “Berry
19 Amendment” means section 2533a of title 10,
20 United States Code.

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

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

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

3 (4) RELEVANT CONGRESSIONAL COMMIT-
4 TEES.—The term “relevant congressional commit-
5 tees” means—

6 (A) the Committee on Homeland Security
7 and Governmental Affairs, the Committee on
8 Commerce, Science, and Transportation, the
9 Committee on Environment and Public Works,
10 the Committee on Banking, Housing, and
11 Urban Affairs, and the Committee on Armed
12 Services of the Senate; and

13 (B) the Committee on Oversight and Re-
14 form, the Committee on Armed Services, and
15 the Committee on Transportation and Infra-
16 structure of the House of Representatives.

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

23 (A) A determination by the head of the
24 Federal agency concerned that the acquisition
25 is inconsistent with the public interest.

1 (B) A determination by the head of the
2 Federal agency concerned that the cost of the
3 acquisition is unreasonable.

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

10 **SEC. 207. PROSPECTIVE AMENDMENTS TO INTERNAL**
11 **CROSS-REFERENCES.**

12 (a) **SPECIALTY METALS CLAUSE REFERENCE.**—Sec-
13 tion 203(f)(5) is amended by striking “section 2533b” and
14 inserting “section 4863”.

15 (b) **BERRY AMENDMENT REFERENCE.**—Section
16 206(1) is amended by striking “section 2533a” and insert-
17 ing “section 4862”.

18 (c) **EFFECTIVE DATE.**—The amendments made by
19 this section shall take effect on January 1, 2022.