

H.R. 3533, THE INVEST IN AMERICAN JOBS ACT OF 2011
INTRODUCED BY
THE HONORABLE NICK J. RAHALL, II
RANKING DEMOCRATIC MEMBER
AND OTHER DEMOCRATIC MEMBERS OF THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

December 1, 2011

INTRODUCTION

On July 11, 2011, workers in Shanghai, China, began loading four steel modules, weighing a combined 5,300 tons, onto a ship to make the 22-day journey across the Pacific Ocean to the United States.



Source: http://usa.chinadaily.com.cn/business/2011-07/12/content_12883862.htm

These enormous steel structures are among the final critical components of the State of California's project to replace the 2.2-mile East Span of the San Francisco-Oakland Bay Bridge, which was damaged in the 1989 Loma Prieta earthquake. The \$6.3 billion project is the largest public works project in the history of the State of California.

Regrettably, the 525-foot, single tower at the heart of the suspension bridge, 28 steel bridge decks, and a total of 43,000 tons of steel for the project will be stamped "Made in China".



Source: <http://www.berkeleyside.com/2011/10/05/view-from-the-water-new-span-of-bay-bridge-takes-shape/>

Even though more than \$320 million of Federal-aid Highway funds have been expended on the East Span project, the project has been divided into 20 separate construction contracts. By subdividing the project into multiple contracts, the State of California avoided the application of Buy America statutory requirements, which require that all steel, iron, and manufactured goods used to construct Federal-aid Highway projects are produced in the United States. Shanghai Zhenhau Heavy Industries Company, a Chinese state-owned company that had no prior bridge-building experience, employed 3,000 workers on the project, including welders, polishers, and engineers.

The American people, still recovering from the worst economic recession since the Great Depression, are desperately seeking work. The manufacturing and construction sectors have been particularly hard hit. In the past decade, more than 56,000 U.S. factories have closed or moved overseas and an additional 90,000 manufacturing firms, most of which are small businesses, are at risk of going out of business.¹

At a time when more than 25 million Americans are unable to find jobs, are only working part-time, or have given up hope of finding a job, H.R. 3533, the “Invest in American Jobs Act of 2011”, will ensure that all future bridges and similar transportation and infrastructure projects financed by U.S. taxpayers will be stamped “Made in America”, crafted with American workmanship, and will create and sustain good-paying jobs in our local communities – not outsourced overseas.²

¹ According to U.S. Census data, of the 286,000 manufacturing firms in the United States, more than 100,000 firms are small businesses with four or fewer employees and 50,000 firms are small businesses with five to nine employees.

² The Federal Highway Administration of the U.S. Department of Transportation estimates that each \$1 billion of Federal investment creates or sustains 34,779 jobs and \$6.2 billion in economic activity. Similarly, the nonpartisan Congressional Budget Office finds that additional investment in infrastructure is among the most effective policy options to create jobs. Congressional Budget Office, “Policies for Increasing Economic Growth and Employment in the Short Term,” January 2010. Moreover, 80 percent of the jobs created by infrastructure investment are construction, manufacturing, and retail trade jobs. Nearly 90 percent of these jobs are middle-class jobs. U.S. Department of Treasury and Council of Economic Advisers, “An Economic Analysis of Infrastructure Investment,” October 11, 2010, p. 2.

H.R. 3533, THE INVEST IN AMERICAN JOBS ACT OF 2011

SUMMARY

H.R. 3533, the “Invest in American Jobs Act of 2011”, strengthens Buy America requirements for investments in transportation and infrastructure to put Americans back to work. The bill ensures that **all** of the steel, iron, and manufactured goods used to construct these projects, which are financed by U.S. taxpayers, is produced in the United States. Specifically, the bill:

- Strengthens existing Buy America requirements for investments in highway, bridge, public transit, rail, and aviation infrastructure and equipment to ensure that **all** of the steel, iron, and manufactured goods used in these projects is produced in the United States;
- Applies Buy America requirements to other transportation and infrastructure investment, including rail infrastructure grants, loans, and loan guarantees, Clean Water State Revolving Fund grants, and Economic Development Administration (EDA) grants; and
- Requires Federal agencies to justify any proposed waiver of the Buy America requirements and ensures that the American public has notice of and an opportunity to comment on any proposed waiver prior to it taking effect.

The bill allows Federal agencies to waive Buy America requirements if the Secretary or the Administrator of the Department or agency, as appropriate, finds that applying the Buy America requirements would be inconsistent with the public interest; the steel, iron, or manufactured goods is not produced in the United States in sufficient and reasonably available quantities or to a satisfactory quality; or the use of steel, iron, and manufactured goods produced in the United States for the project will increase the total cost of the project by more than 25 percent. The bill also requires that Buy America requirements are applied in a manner that is consistent with United States obligations under international agreements.

STRENGTHENS EXISTING BUY AMERICA REQUIREMENTS

H.R. 3533 strengthens existing Buy America requirements for investments in highway, bridge, public transit, high-speed and intercity passenger rail, and aviation infrastructure and equipment to ensure that **all** of the steel, iron, and manufactured goods used in these projects is produced in the United States.

Highways and Bridges. The bill ensures that highway and bridge projects cannot be segmented to evade Buy America requirements. The bill also establishes a process for the Secretary of Transportation to review all nationwide waivers of Buy America requirements issued by the Federal Highway Administration to determine if such waivers are still warranted.

Public Transit. The bill incrementally increases the percentage of components and subcomponents of rolling stock (e.g., buses, rail cars, rolling stock prototypes) that must be made in the U.S. from 60 percent under current law to 100 percent by fiscal year (FY) 2016. The bill also ensures that transit projects and rolling stock procurements cannot be segmented to evade Buy America requirements.

High-Speed and Intercity Passenger Rail. The bill eliminates Amtrak's exemption from Buy America requirements for capital projects that cost less than \$1 million. The bill also eliminates a similar exemption for high-speed and intercity passenger rail projects that cost less than \$100,000. The bill ensures that Amtrak and other passenger rail capital projects and rolling stock procurements cannot be segmented to evade Buy America requirements.

Aviation. The bill incrementally increases the percentage of components and subcomponents of aviation equipment, such as runway lighting systems and navigational radio beacons, that must be made in the U.S. from 60 percent under current law to 100 percent by FY 2016.

APPLIES BUY AMERICA TO OTHER INFRASTRUCTURE INVESTMENT

The bill applies Buy America requirements to other transportation and infrastructure investment to ensure that such investments use only steel, iron, and manufactured goods produced in the United States. Specifically, the bill applies Buy America requirements to the following infrastructure investments:

- Railroad loans and loan guarantees under the Railroad Rehabilitation and Improvement Financing program; short-line and regional railroad grants; and rail line relocation grants;
- Clean Water State Revolving Fund grants;
- EDA grants; and
- Federal Emergency Management Agency (FEMA) mitigation grants.

ENSURES WAIVER JUSTIFICATION AND PUBLIC TRANSPARENCY

The bill requires Federal agencies to justify any proposed waiver of the Buy America requirements and ensures that the American public has notice of and an opportunity to comment on any proposed waiver prior to it taking effect. Specifically, the bill requires the Secretary or Administrator to provide notice of and an opportunity to comment on any waiver request at least 30 days prior to making a finding based on the request. If the Secretary issues a waiver, the Secretary must publish a detailed justification for the waiver in the Federal Register before it takes effect.

The bill also requires the U.S. Department of Transportation (DOT), the Environmental Protection Agency (EPA), EDA, and FEMA to publish an annual report that specifies each project with respect to which the Department or agency issued a waiver from a Buy America requirement; provides the justification for such waiver; summarizes the Department's or agency's funds expended on steel, iron, and manufactured goods produced in the United States and produced outside of the United States pursuant to a waiver; and provides an employment

impact analysis of the cumulative effect of all waivers on manufacturing employment in the United States.

SECTION-BY-SECTION

Section 1. Short title; table of contents.

This section provides that the short title of the bill is the “Invest in American Jobs Act of 2011” and sets out the table of contents for the bill.

TITLE I – DEPARTMENT OF TRANSPORTATION

Sec. 101. Federal-aid highway Buy America provisions.

This section amends section 313 of title 23, United States Code, and makes several changes to strengthen Buy America requirements applicable to Federal-aid highway and bridge projects.

Specifically, subsection (a) ensures that highway and bridge projects receiving Federal assistance cannot be segmented to evade Buy America requirements by specifying that such requirements apply to all contracts carried out within the scope of the applicable finding, determination, or decision under the National Environmental Policy Act of 1969 (NEPA), regardless of whether each specific contract is funded with Federal funds.

This subsection also requires the Secretary of Transportation (Secretary) to justify any proposed waiver of the Buy America requirements and ensures that the public has notice of and an opportunity to comment on any proposed waiver prior to it taking effect. Specifically, subsection (a) requires the Secretary to provide notice of and an opportunity to comment on any waiver request at least 30 days prior to making a finding based on the request. If the Secretary issues a waiver, the Secretary must publish a detailed justification for the waiver in the Federal Register before it takes effect.

Subsection (b) requires the Secretary, not later than one year after the date of enactment of this Act, to review each standing nationwide waiver to determine whether continuing such waiver is necessary. At a minimum, the Secretary review shall review the following nationwide waivers:

- Manufactured products, as published in the Federal Register on November 25, 1983 (48 Fed. Reg. 53099) (Nov. 25, 1983);
- Ferry boat equipment and machinery, as published in the Federal Register on February 9, 1994 (94 Fed. Reg. 6080) (Feb. 9, 1994); and
- Pig iron and processed, pelletized and reduced iron ore, as published in the Federal Register on March 24, 1995 (95 Fed. Reg. 15478) (Mar. 24, 1995).

The Secretary must conduct such a review every five years thereafter.

Subsection (c) repeals notice and comment requirements included in section 117 of the SAFETEA-LU Technical Corrections Act of 2008 (23 U.S.C. 313 note) and section 123 of title I of Division A of the Consolidated Appropriations Act, 2010 (23 U.S.C. 313 note).

Sec. 102. Public transportation Buy America provisions.

Subsection (a) amends section 5323(j) of title 49, United States Code, and makes several changes to strengthen Buy America requirements applicable to public transportation.

Specifically, subsection (a) incrementally increases the percentage of components and subcomponents of rolling stock that must be made in the United States from 60 percent under current law to 100 percent by FY 2016. For the procurement of rolling stock, the cost of components and subcomponents produced in the U.S. must be more than 60 percent of the cost of all components in FY 2012, more than 70 percent in FY 2013, more than 80 percent in FY 2014, more than 90 percent in FY 2015, and 100 percent in FY 2016 and thereafter. Final assembly of the rolling stock, including prototypes, must occur in the United States in each fiscal year.³ This subsection also codifies existing Federal Transit Administration regulations with respect to rolling stock waivers. If the Secretary finds that a rolling stock component or subcomponent is not produced domestically in sufficient and reasonably available quantity or of a satisfactory quality, the Secretary may issue a component-specific waiver. In this way, Buy America requirements are not waived for the entire project, but only for the unavailable component.

Subsection (a) also ensures that public transportation projects receiving Federal assistance cannot be segmented to evade Buy America requirements by specifying that such requirements apply to all contracts carried out within the scope of the applicable finding, determination, or decision under NEPA, regardless of whether each specific contract is funded with Federal funds.

In addition, this subsection requires the Secretary to justify any proposed waiver of the Buy America requirements and ensures that the public has notice of and an opportunity to comment on any proposed waiver prior to it taking effect. Specifically, subsection (a) requires the Secretary to provide notice of and an opportunity to comment on any waiver request at least 30 days prior to making a finding based on the request. If the Secretary issues a waiver, the Secretary must publish a detailed justification for the waiver in the Federal Register before it takes effect.

Subsection (b) requires the Secretary, within one year of the date of enactment of this Act, to review general public interest waivers in place for microprocessors, computers, microcomputers, software, and other devices used to process or store data to determine whether continuing such waivers is in the public interest. The Secretary must conduct such a review every five years thereafter.

³ The majority of public interest waivers granted by FTA in the past 10 years have waived the final assembly requirements for rolling stock prototypes. This bill ensures that 100 percent of rolling stock prototypes will also be made, and assembled, in the United States.

Sec. 103. Rail grant Buy America provisions.

This section amends section 24405(a) of title 49, United States Code, and makes several changes to strengthen Buy America requirements applicable to grants provided to States and Amtrak to develop intercity passenger and high-speed rail (chapters 244 and 261 of title 49). This section also applies Buy America requirements to grants issued to States, or to Amtrak in cooperation with States, for financing the capital costs of facilities, infrastructure, and equipment under the following programs:

- Capital grants for Class II and III railroads (49 U.S.C. 22301); and
- Capital grants to States for rail line relocation (49 U.S.C. 20154).

Subsection (a) ensures that rail grant projects receiving Federal assistance cannot be segmented to evade Buy America requirements by specifying that such requirements apply to all contracts carried out within the scope of the applicable finding, determination, or decision under NEPA, regardless of whether each specific contract is funded with Federal funds. This subsection eliminates the exemption from Buy America requirements for intercity passenger and high-speed rail projects that cost less than \$100,000.

This subsection also requires the Secretary to justify any proposed waiver of the Buy America requirements and ensures that the public has notice of and an opportunity to comment on any proposed waiver prior to it taking effect. Specifically, subsection (a) requires the Secretary to provide notice of and an opportunity to comment on any waiver request at least 30 days prior to making a finding based on the request. If the Secretary issues a waiver, the Secretary must publish a detailed justification for the waiver in the Federal Register before it takes effect.

Subsection (b) requires the Secretary, not later than one year after the date of enactment of this Act, to review each standing nationwide waiver to determine whether continuing such waiver is necessary. The Secretary must conduct such a review every five years thereafter.

Sec. 104. Rail Loan and Loan Guarantee Buy America Provisions.

This section applies the Buy America requirements of section 24405(a) of title 49, as amended by this Act, to the Railroad Rehabilitation and Improvement Financing (RRIF) loan program. The RRIF program authorizes the Secretary to provide up to \$35 billion in direct loans and loan guarantees to State and local governments, railroads, and rail shippers for acquiring, improving, or rehabilitating intermodal or rail equipment or facilities or developing or establishing new intermodal or rail facilities.

Sec. 105. Amtrak Buy America provisions.

This section amends section 24305(f) of title 49, and makes several changes to strengthen Buy America requirements applicable to grants provided to Amtrak to develop intercity passenger and high-speed rail.

Subsection (a) ensures that Amtrak capital grant projects receiving Federal assistance cannot be segmented to evade Buy America requirements by specifying that such requirements apply to all contracts carried out within the scope of the applicable finding, determination, or decision under NEPA, regardless of whether each specific contract is funded with Federal funds. This subsection eliminates the exemption from Buy America requirements for capital projects that cost less than \$1 million.

This subsection also requires the Secretary to justify any proposed waiver of the Buy America requirements and ensures that the public has notice of and an opportunity to comment on any proposed waiver prior to it taking effect. Specifically, subsection (a) requires the Secretary to provide notice of and an opportunity to comment on any waiver request at least 30 days prior to making a finding based on the request. If the Secretary issues a waiver, the Secretary must publish a detailed justification for the waiver in the Federal Register before it takes effect.

Subsection (b) requires the Secretary, not later than one year after the date of enactment of this Act, to review each standing nationwide waiver to determine whether continuing such waiver is necessary. The Secretary must conduct such a review every five years thereafter.

Sec. 106. Aviation Buy America provisions.

This section amends chapter 501 of title 49, and makes several changes to strengthen Buy America requirements applicable to aviation programs.

Subsection (a) makes a conforming amendment to the heading of chapter 501 of title 49.

Subsection (b) amends section 50101 of title 49 to add iron to the required materials that must be produced in the United States for aviation projects pursuant to the Buy America requirements. Subsection (b) also ensures that aviation projects receiving Federal assistance cannot be segmented to evade Buy America requirements by specifying that such requirements apply to all contracts carried out within the scope of the applicable finding, determination, or decision under NEPA, regardless of whether each specific contract is funded with Federal funds.

In addition, this subsection incrementally increases the percentage of components and subcomponents of aviation facilities and equipment that must be made in the United States from 60 percent under current law to 100 percent in FY 2016 and thereafter. For the procurement of aviation facilities and equipment, the cost of components and subcomponents produced in the U.S. must be more than 60 percent of the cost of all components in FY 2012, more than 70 percent in FY 2013, more than 80 percent in FY 2014, more than 90 percent in FY 2015, and 100 percent in FY 2016 and thereafter. If the Secretary finds that a component or subcomponent is not produced domestically in sufficient and reasonably available quantity or of a satisfactory quality, the Secretary may issue a component-specific waiver. In this way, Buy America requirements are not waived for the entire project, but only for the unavailable component. For cases in which waivers of the Buy America requirement are necessary, subsection (b) adds a

preference for the acquisition of facilities and equipment for which final assembly occurs in the United States.

This subsection also requires the Secretary to justify any proposed waiver of the Buy America requirements and ensures that the public has notice of and an opportunity to comment on any proposed waiver prior to it taking effect. Specifically, subsection (b) requires the Secretary to provide notice of and an opportunity to comment on any waiver request at least 30 days prior to making a finding based on the request. If the Secretary issues a waiver, the Secretary must publish a detailed justification for the waiver in the Federal Register before it takes effect.

Finally, this subsection precludes the Secretary from preventing the recipients of FAA-administered grants, including airport improvement grants, from complying with more stringent Buy America requirements arising under State law.

Subsection (c) amends section 50105 of title 49 to add steel and iron to the items covered by the provision for debarment of contractors that intentionally affix “Made in America” labels to foreign-made items.

Subsection (d) requires the Secretary, not later than one year after the date of enactment of this Act, to review each standing nationwide waiver to determine whether continuing such waiver is necessary. The Secretary must conduct such a review every five years thereafter.

Sec. 107. Department of Transportation Buy America annual report.

This section amends section 308 of title 49 to add subsection (f) requiring the U.S. Department of Transportation (DOT) to submit a Buy America annual report to Congress.

Subsection (f) of section 308 requires the Secretary, not later than February 1 of each year, to submit to Congress a report that:

- specifies each project with respect to which the Secretary issued a waiver from a Buy America requirement during the preceding year;
- identifies the country of origin and product specifications for steel, iron, or manufactured goods acquired pursuant to each waiver;
- summarizes the monetary value of contracts awarded pursuant to the waiver;
- provides the justification of each waiver;
- summarizes the DOT funds expended on steel, iron, and manufactured goods produced in the United States and produced outside of the United States pursuant to a waiver; and
- provides an employment impact analysis of the cumulative effect of all waivers issued by the Secretary in the preceding year on manufacturing employment in the United States.

TITLE II – OTHER INFRASTRUCTURE INVESTMENT

Sec. 201. Wastewater treatment Buy America provisions.

This section amends Title VI of the Federal Water Pollution Control Act, more commonly referred to as the Clean Water Act, to add section 608 requiring that the construction of wastewater treatment works comply with Buy America requirements.

Specifically, subsection (a) of section 608 provides that funds made available from the Clean Water State Revolving Fund (Clean Water SRF) may not be used, in whole or in part, for a project for construction of a publicly owned treatment works unless the steel, iron, and manufactured goods used for the project are produced in the United States. These Buy America requirements codify the requirements applied to Clean Water SRF funds provided under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

Subsection (a) also ensures that treatment works projects receiving Federal assistance cannot be segmented to evade Buy America requirements by specifying that such requirements apply to all contracts carried out within the scope of the applicable finding, determination, or decision under NEPA, regardless of whether each specific contract is funded with Federal funds. For purposes of section 511(c)(1) of the Clean Water Act, this requirement would include the scope of projects undertaken under EPA-approved State Environmental Planning Requirements.

Subsection (b) of section 608 provides limited exceptions to the Buy America requirements. The Administrator of EPA may waive the Buy America requirements only if the Administrator finds that:

- applying the requirements would be inconsistent with the public interest;
- the steel, iron, or manufactured goods required for the project are not produced in the United States in sufficient and reasonably available quantities, or to a satisfactory quality; or
- the use of steel, iron, and manufactured goods produced in the United States for the project will increase the total cost of the project by more than 25 percent.

Subsection (c) of section 608 requires the Administrator to justify any proposed waiver of the Buy America requirements and ensures that the public has notice of and an opportunity to comment on any proposed waiver prior to it taking effect. Specifically, subsection (c) requires the Administrator to provide notice of and an opportunity to comment on any waiver request at least 30 days prior to making a finding based on the request. If the Administrator issues a waiver, the Administrator must publish a detailed justification for the waiver in the Federal Register before it takes effect.

Subsection (c) also requires the Administrator, not later than February 1 of each year, to submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that:

- specifies each project with respect to which the Administrator issued a waiver from a Buy America requirement during the preceding year;
- identifies the country of origin and product specifications for steel, iron, or manufactured goods acquired pursuant to each waiver;
- summarizes the monetary value of contracts awarded pursuant to the waiver;
- provides the justification of each waiver;
- summarizes the EPA funds expended on steel, iron, and manufactured goods produced in the United States and produced outside of the United States pursuant to a waiver; and
- provides an employment impact analysis of the cumulative effect of all waivers issued by the Administrator in the preceding year on manufacturing employment in the United States.

Subsection (d) of section 608 prohibits the Administrator from imposing any limitation or condition on assistance from the Clean Water SRF to any State that implements a more stringent domestic purchase requirement than is required by this section.

Subsection (e) of section 608 provides penalties for intentional violations of the Buy America or “Made in America” requirements of this section.

Subsection (f) of section 608 provides that this section shall be applied in a manner consistent with the United States obligations under international agreements.

Subsection (b) of section 201 of the bill requires the Administrator, not later than one year after the date of enactment of this Act, to review each standing nationwide waiver to determine whether continuing such waiver is necessary. The Administrator must conduct such a review every five years thereafter.

Sec. 202. Economic Development Buy America provisions.

This section amends Title VI of the Public Works and Economic Development Act of 1965 (PWEDA) to add section 613 requiring that EDA economic development projects comply with Buy America requirements.

Specifically, subsection (a) of section 613 provides that EDA funds may not be obligated for an economic development project unless the steel, iron, and manufactured goods used for the project are produced in the United States. These Buy America requirements codify the requirements applied to EDA funds provided under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

Subsection (a) also ensures that economic development projects receiving Federal assistance cannot be segmented to evade Buy America requirements by specifying that such requirements apply to all contracts carried out within the scope of the applicable finding, determination, or decision under NEPA, regardless of whether each specific contract is funded with Federal funds.

Subsection (b) of section 613 provides limited exceptions to the Buy America requirements. The Secretary of Commerce may waive the Buy America requirements only if the Secretary finds that:

- applying the requirements would be inconsistent with the public interest;
- the steel, iron, or manufactured goods required for the project are not produced in the United States in sufficient and reasonably available quantities, or to a satisfactory quality; or
- the use of steel, iron, and manufactured goods produced in the United States for the project will increase the total cost of the project by more than 25 percent.

Subsection (c) of section 613 requires the Secretary of Commerce to justify any proposed waiver of the Buy America requirements and ensures that the public has notice of and an opportunity to comment on any proposed waiver prior to it taking effect. Specifically, subsection (c) requires the Secretary to provide notice of and an opportunity to comment on any waiver request at least 30 days prior to making a finding based on the request. If the Secretary of Commerce issues a waiver, the Secretary must publish a detailed justification for the waiver in the Federal Register before it takes effect.

Subsection (c) also requires the Secretary of Commerce, not later than February 1 of each year, to submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that:

- specifies each project with respect to which the Secretary of Commerce issued a waiver from a Buy America requirement during the preceding year;
- identifies the country of origin and product specifications for steel, iron, or manufactured goods acquired pursuant to each waiver;
- summarizes the monetary value of contracts awarded pursuant to the waiver;
- provides the justification of each waiver;
- summarizes the EDA funds expended on steel, iron, and manufactured goods produced in the United States and produced outside of the United States pursuant to a waiver; and
- provides an employment impact analysis of the cumulative effect of all waivers issued by the Secretary in the preceding year on manufacturing employment in the United States.

Subsection (d) of section 613 prohibits the Secretary of Commerce from imposing any limitation or condition on EDA assistance to any State that implements a more stringent domestic purchase requirement than is required by this section.

Subsection (e) of section 613 provides penalties for intentional violations of the Buy America or “Made in America” requirements of this section.

Subsection (f) of section 613 provides that this section shall be applied in a manner consistent with the United States obligations under international agreements.

Subsection (b) of section 202 of the bill requires the Secretary of Commerce, not later than one year after the date of enactment of this Act, to review each standing nationwide waiver to determine whether continuing such waiver is necessary. The Secretary must conduct such a review every five years thereafter.

Sec. 203. FEMA mitigation grant Buy America provisions.

This section amends Title VII of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, more commonly referred to as the Stafford Act, to add section 707 requiring that FEMA mitigation grants comply with Buy America requirements.

Specifically, subsection (a) of section 707 provides that FEMA funds may not be obligated for a mitigation grant project unless the steel, iron, and manufactured goods used for the project are produced in the United States. These Buy America requirements codify the requirements applied to FEMA funds provided under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

Subsection (a) also ensures that FEMA mitigation grant projects receiving Federal assistance cannot be segmented to evade Buy America requirements by specifying that such requirements apply to all contracts carried out within the scope of the applicable finding, determination, or decision under NEPA, regardless of whether each specific contract is funded with Federal funds.

Subsection (b) of section 707 provides limited exceptions to the Buy America requirements. The President may waive the Buy America requirements only if the President finds that:

- applying the requirements would be inconsistent with the public interest;
- the steel, iron, or manufactured goods required for the project are not produced in the United States in sufficient and reasonably available quantities, or to a satisfactory quality; or
- the use of steel, iron, and manufactured goods produced in the United States for the project will increase the total cost of the project by more than 25 percent.

Subsection (c) of section 707 requires the President to justify any proposed waiver of the Buy America requirements and ensures that the public has notice of and an opportunity to comment on any proposed waiver prior to it taking effect. Specifically, subsection (c) requires the President to provide notice of and an opportunity to comment on any waiver request at least 30 days prior to making a finding based on the request. If the President issues a waiver, the President must publish a detailed justification for the waiver in the Federal Register before it takes effect.

Subsection (c) also requires the President, not later than February 1 of each year, to submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report that:

- specifies each project with respect to which the President issued a waiver from a Buy America requirement during the preceding year;
- identifies the country of origin and product specifications for steel, iron, or manufactured goods acquired pursuant to each waiver;
- summarizes the monetary value of contracts awarded pursuant to the waiver;
- provides the justification of each waiver;
- summarizes the FEMA funds expended on steel, iron, and manufactured goods produced in the United States and produced outside of the United States pursuant to a waiver; and
- provides an employment impact analysis of the cumulative effect of all waivers issued by the President in the preceding year on manufacturing employment in the United States.

Subsection (d) of section 707 prohibits the President from imposing any limitation or condition on FEMA assistance to any State that implements a more stringent domestic purchase requirement than is required by this section.

Subsection (e) of section 707 provides penalties for intentional violations of the Buy America or “Made in America” requirements of this section.

Subsection (f) of section 707 provides that this section shall be applied in a manner consistent with the United States obligations under international agreements.

Subsection (g) of section 707 authorizes the President to waive the applicability of the Buy America requirements, in whole or in part, in an emergency.

Subsection (b) of section 203 of the bill requires the President, not later than one year after the date of enactment of this Act, to review each standing nationwide waiver to determine whether continuing such waiver is necessary. The President must conduct such a review every five years thereafter.

Subsection (c) of section 203 of the bill repeals section 306 of the Disaster Mitigation Act of 2000 (42 U.S.C. 5206).

Sec. 204. Americanization of offshore operations in the Exclusive Economic Zone.

This section amends section 12111 of title 46 to require vessels engaged in support of exploration, development, or production of resources in, on, above, or below the Exclusive Economic Zone (EEZ) or any other activity in the EEZ (as defined in section 46 U.S.C. 107) be U.S.-flag vessels owned by U.S. citizens. This section ensures that these vessels are subject to U.S. safety regulations, employ U.S. citizens on board the vessel, and that U.S. taxes are paid on the operations of the vessel and by the personnel engaged on the vessel.

In the 111th Congress, on July 27, 2010, the Committee on Transportation and Infrastructure reported this provision as section 11 of H.R. 5629, the “Oil Spill Accountability and Environmental Protection Act of 2010”. On July 30, 2010, the House of Representatives passed the bill as title VII of H.R. 3534, the “Consolidated Land, Energy, and Aquatic Resources Act of 2010”.