

Changes to USC Title 23, § 313. Buy America
As Proposed in the House INVEST in America Act
Prepared by NAPA

(a) In General. - Notwithstanding any other provision of law, the Secretary shall not obligate any funds authorized to be appropriated to carry out this title and administered by the Department of Transportation, unless steel, iron, and manufactured products and construction materials used in such project are produced in the United States.

(b) Determination. - The provisions of subsection (a) of this section shall not apply where the Secretary finds--

(1) that their application would be inconsistent with the public interest;

(2) that such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(3) that inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

(c) Calculations. - For purposes of this section, in calculating components' costs, labor costs involved in final assembly shall not be included in the calculation.

(d) Requirements. - The Secretary shall not impose any limitation or condition on assistance provided under this title that restricts any State from imposing more stringent requirements than this section on the use of articles, materials, and supplies mined, produced, or manufactured in foreign countries in projects carried out with such assistance or restricts any recipient of such assistance from complying with such State imposed requirements.

(e) **Intentional violations.** --If it has been determined by a court or Federal agency that any person intentionally--

(1) affixed a label bearing a "Made in America" inscription, or any inscription with the same meaning, to any product used in projects to which this section applies, sold in or shipped to the United States that was not made in the United States; or

(2) represented that any product used in projects to which this section applies, sold in or shipped to the United States that was not produced in the United States, was produced in the United States;

that person shall be ineligible to receive any contract or subcontract made with funds authorized under the Intermodal Surface Transportation Efficiency Act of 1991 pursuant

to the debarment, suspension, and ineligibility procedures in subpart 9.4 of chapter 1 of title 48, Code of Federal Regulations.

(f) Limitation on applicability of waivers to products produced in certain foreign countries. --If the Secretary, in consultation with the United States Trade Representative, determines that--

(1) a foreign country is a party to an agreement with the United States and pursuant to that agreement the head of an agency of the United States has waived the requirements of this section, and

(2) the foreign country has violated the terms of the agreement by discriminating against products covered by this section that are produced in the United States and are covered by the agreement,

the provisions of subsection (b) shall not apply to products produced in that foreign country.

(g) Application to highway programs. --The requirements under this section shall apply to all contracts eligible for assistance under this chapter for a project carried out within the scope of the applicable finding, determination, or decision under the National Environmental Policy Act of 1969 ([42 U.S.C. 4321 et seq.](#)), regardless of the funding source of such contracts, if at least 1 contract for the project is funded with amounts made available to carry out this title.

(k) CONSTRUCTION MATERIALS DEFINED.—In this section, the term ‘construction materials’ means primary materials that are commonly used in highway construction, as determined by the Secretary.”

(b) CONSTRUCTION MATERIALS.—

(1) ESTABLISHMENT OF REQUIREMENTS.—The Secretary shall issue such regulations as are necessary to implement the amendment made subsection (a)(1)(D). Such regulations shall ensure the continued availability of construction materials to carry out projects under title 23, United States Code.

(2) CONSIDERATIONS.—The requirements of this section, and the amendments made by this section—

(A) shall seek to maximize jobs located in the United States;

(B) may establish domestic content requirements that increase over time, based on the current and expected future domestic availability of construction materials; and

(C) shall take into consideration the research conducted under subsection (c).

(3) APPLICABILITY.—The amendment made by subsection (a)(1)(D) shall take effect beginning on the date that the Secretary establishes the requirements described under paragraph (1).

(c) RESEARCH ON SUPPLY CHAINS.—

(1) IN GENERAL.—The Secretary shall conduct research on covered items that are commonly used or acquired under title 23, United States Code, including—

(A) construction materials;

(B) manufactured products;

(C) vehicles; and

(D) alternative fuel infrastructure and electric vehicle supply equipment.

(2) CONSIDERATIONS.—The research under paragraph (1) shall consider—

(A) the domestic availability of covered items;

(B) the supply chain for covered items.

(C) the estimated market share of covered items from—

(i) procurement under the Federal-aid highway program;

(ii) procurement under other programs administered by the Secretary of Transportation; and

(iii) other Federal procurement; and (D) the cost differential, if any, of domestically produced covered items as compared to non-domestically produced covered items.

(3) DOMESTIC SUPPLIERS.—As part of the review under this paragraph, the Secretary may establish and maintain a list of known domestic suppliers of covered items.

(4) DEFINITION OF COVERED ITEM.—For the purposes of this section, the term “covered item” means any material or product subject to the requirements of section 313(a) of title 23, United States Code, that is commonly used in highway construction or procured under the Federal-aid highway program.

(d) SAFETEA-LU TECHNICAL CORRECTIONS ACT OF 2008.—Section 117 of the SAFETEA-LU Technical Corrections Act of 2008 (23 U.S.C. 313 note) is repealed.