

**Changes to Section 1112, Buy America, as recommended by NAPA and the Highway Material Group (NSSGA, PCA, NRMCA) and included in the Manager's Amendment offered by Chairman DeFazio to H.R. 3684, the INVEST in America Act.**

**Changes in Red**

5 **SEC. 1112. BUY AMERICA.**

6 (a) IN GENERAL.—Section 313 of title 23, United  
7 States Code, is amended—

8 (1) in subsection (a)—

9 (A) by striking “Notwithstanding” and in-  
10 sserting “IN GENERAL.—Notwithstanding”;

11 (B) by striking “Secretary of Transpor-  
12 tation” and inserting “Secretary”;

13 (C) by striking “the Surface Transpor-  
14 tation Assistance Act of 1982 (96 Stat. 2097)  
15 or”;

16 (D) by striking “and manufactured prod-  
17 ucts” and inserting “manufactured products,  
18 and construction materials”;

19 (2) in subsection (b) by inserting “DETERMINA-  
20 TION.—” before “The provisions”;

21 (3) in subsection (c) by striking “For purposes”  
22 and inserting “CALCULATION.—For purposes”;

23 (4) in subsection (d)—

1 (A) by striking “The Secretary of Trans-  
2 portation” and inserting “REQUIREMENTS.—  
3 The Secretary”; and

4 (B) by striking “the Surface Transpor-  
5 tation Assistance Act of 1982 (96 Stat. 2097)  
6 or”;

7 (5) in subsection (g) by inserting “or within the  
8 scope of the applicable finding, determination, or en-  
9 vironmental review decision made pursuant to au-  
10 thority granted by the Secretary under section 330,  
11 if applicable,” before “regardless of the”; and

12 (6) by adding at the end the following:

13 “(h) WAIVER PROCEDURE.—

14 “(1) IN GENERAL.—Not later than 120 days  
15 after the submission of a request for a waiver, the  
16 Secretary shall make a determination under para-  
17 graph (1) or (2) of subsection (b) as to whether sub-  
18 section (a) shall apply.

19 “(2) PUBLIC NOTIFICATION AND COMMENT.—

20 “(A) IN GENERAL.—Not later than 30  
21 days before making a determination regarding a  
22 waiver described in paragraph (1), the Sec-  
23 retary shall provide notification and an oppor-  
24 tunity for public comment on the request for  
25 such waiver.

1           “(B) NOTIFICATION REQUIREMENTS.—The  
2 notification required under subparagraph (A)  
3 shall—

4           “(i) describe whether the application  
5 is being made for a determination de-  
6 scribed in subsection (b)(1); and

7           “(ii) be provided to the public by elec-  
8 tronic means, including on the public  
9 website of the Department of Transpor-  
10 tation.

11           “(3) DETERMINATION.—Before a determination  
12 described in paragraph (1) takes effect, the Sec-  
13 retary shall publish a detailed justification for such  
14 determination that addresses all public comments re-  
15 ceived under paragraph (2)—

16           “(A) on the public website of the Depart-  
17 ment of Transportation; and

18           “(B) if the Secretary issues a waiver with  
19 respect to such determination, in the Federal  
20 Register.

21           “(i) REVIEW OF NATIONWIDE WAIVERS.—

22           “(1) IN GENERAL.—Not later than 1 year after  
23 the date of enactment of this subsection, and at  
24 least every 5 years thereafter, the Secretary shall re-  
25 view any standing nationwide waiver issued by the

1 Secretary under this section to ensure such waiver  
2 remains justified.

3 “(2) PUBLIC NOTIFICATION AND OPPORTUNITY  
4 FOR COMMENT.—

5 “(A) IN GENERAL.—Not later than 30  
6 days before the completion of a review under  
7 paragraph (1), the Secretary shall provide noti-  
8 fication and an opportunity for public comment  
9 on such review.

10 “(B) MEANS OF NOTIFICATION.—Notifica-  
11 tion provided under this subparagraph shall be  
12 provided by electronic means, including on the  
13 public website of the Department of Transpor-  
14 tation.

15 “(3) DETAILED JUSTIFICATION IN FEDERAL  
16 REGISTER.—After the completion of a review under  
17 paragraph (1), the Secretary shall publish in the  
18 Federal Register a detailed justification for the de-  
19 termination made under paragraph (1) that address-  
20 es all public comments received under paragraph  
21 (2).

22 “(4) CONSIDERATION.—In conducting the re-  
23 view under paragraph (1), the Secretary shall con-  
24 sider the ~~research~~ on supply chains carried out  
*study*

1 under section 1112(c) of the INVEST in America  
2 Act.

3 “(j) REPORT.—Not later than 120 days after the last  
4 day of each fiscal year, the Secretary shall submit to the  
5 Committee on Transportation and Infrastructure of the  
6 House of Representatives, the Committee on Appropria-  
7 tions of the House of Representatives, the Committee on  
8 Environment and Public Works of the Senate, and the  
9 Committee on Appropriations of the Senate a report on  
10 the waivers provided under subsection (h) during the pre-  
11 vious fiscal year and the justifications for such waivers.

12 “(k) CONSTRUCTION MATERIALS DEFINED.—In this  
13 section, the term ‘construction materials’ means primary  
14 materials, except for iron and steel, that are commonly  
15 used in highway construction, as determined by the Sec-  
16 retary.”.

17 (b) CONSTRUCTION MATERIALS.—

18 (1) ESTABLISHMENT OF REQUIREMENTS.—~~The~~  
19 (A) In General.- The Secretary shall issue such regulations as are nec-  
20 essary to implement the amendment made sub-  
21 section (a)(1)(D). Such regulations shall ensure the  
22 continued availability of construction materials to  
23 carry out projects under title 23, United States  
24 Code.

1 (B) CONSIDERATIONS.—The regulations  
2 issued pursuant to subparagraph (A) shall—  
3 (i) ensure the continued availability of  
4 construction materials to carry out projects  
5 under title 23, United States Code;  
6 (ii) include authority for the Secretary  
7 to waive the applicability of the require-  
8 ment under section 313(a) of title 23,  
9 United States Code, to procure domestic  
10 construction materials if the study con-  
11 ducted under subsection (c)(1) determines  
12 that the domestic supply of construction  
13 materials is insufficient to meet the de-  
14 mand for activities covered under section  
15 313 of title 23, United States Code; and  
16 (iii) provide for efficient and timely—  
17 (I) project delivery for project  
18 sponsors; and

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(II) administration for the

Secretary.

(C) FINAL RULE.—The regulations issued pursuant to subparagraph (A) shall not be finalized until the study under subsection (c) has been completed and considered by the Secretary in the rulemaking process under such subparagraph.

1 (2) CONSIDERATIONS.—The requirements of  
 2 this section, and the amendments made by this sec-  
 3 tion—

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

6 (B) may establish domestic content re-  
 7 quirements <sup>^</sup>that are less than 100 percent and  
 8 that increase over time, based on  
 9 the current and expected future domestic avail-  
 10 ability of construction materials; and

11 ~~(C) shall take into consideration the re-  
 12 search conducted under subsection (c).~~

13 (3) APPLICABILITY.—The amendment made by  
 14 subsection (a)(1)(D) shall take effect beginning on  
 15 the date that the Secretary establishes the ~~require-~~  
~~ments~~ **regulation** described under paragraph (1).

16 (c) ~~RESEARCH ON SUPPLY CHAINS.~~

**Study**

17 (1) IN GENERAL.—The Secretary shall conduct  
 18 ~~research~~ **a study** on covered items that are commonly used  
 19 or acquired under title 23, United States Code, in-  
 20 cluding—

21 (A) construction materials;

22 (B) manufactured products;

23 (C) vehicles; and

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

**(C) shall take into  
 consideration the  
 study conducted  
 under subsection  
 (c), including any  
 potential—**

**(i) disruption in  
 the supply of con-  
 struction  
 materials to any  
 State or isolated  
 geographic  
 region; and  
 (ii) impacts on  
 the price of  
 covered items.**



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

- (A) the current domestic availability of covered items of sufficient and reasonably available quantity and of a satisfactory quality (including any specific impacts in a State or isolated geographic region (as applicable) necessary to meet the demand for activities covered under section 313 of title 23, United States Code;*  
*(B) the current supply chain for covered items including the impacts of extracting, refining, manufacturing, and transporting domestically available covered items;*  
*(C) anticipated impacts to the environment, public health, and safety from transportation of domestically available covered items;*  
*(D) the estimated demand, in relation to total domestic demand from all sources, for 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*  
*(E) the delivery cost differential of domestic covered items, as compared to non-domestic alternatives, including any specific impacts in a State or isolated geographic region, as applicable.*

*(3) INSPECTOR GENERAL REVIEW.—Not later than 120 days after the Secretary completes the study in paragraph (1), the Inspector General of the Department of Transportation shall—*

- (A) review the extent to which the study under paragraph (1) addresses the considerations under paragraph (2); and*  
*(B) submit to the Committee on Transportation and Infrastructure of the House of Representatives and Committee on Environment and Public Works of the Senate a report on the findings of the review under subparagraph (A).*

16           (3) DOMESTIC SUPPLIERS.—As part of the re-  
17           view under this paragraph, the Secretary may estab-  
18           lish and maintain a list of known domestic suppliers  
19           of covered items.

20           (4) DEFINITION OF COVERED ITEM.—For the  
21           purposes of this section, the term “covered item”  
22           means any material or product (except for iron and  
23           steel) subject to the requirements of section 313(a)  
24           of title 23, United States Code, that is commonly

1 used in highway construction or procured under the  
2 Federal-aid highway program.

3 (d) IRON AND STEEL.—This section, and the amend-  
4 ments made by this section, shall not affect the require-  
5 ments under section 635.410(b)(1)(ii) of title 23, Code of  
6 Federal Regulations, with respect to iron and steel.

7 ~~f~~ (e) SAFETEA-LU TECHNICAL CORRECTIONS ACT  
8 OF 2008.—Section 117 of the SAFETEA-LU Technical  
9 Corrections Act of 2008 (23 U.S.C. 313 note) is repealed.

**(e) CONSTRUCTION MATERIALS DEFINED.—In this section, the term “construction materials” has the meaning given such term in section 313 of title 23, United States Code.**