

Buy American (BAA) or Buy America

This factsheet provides an understanding of Made in America Laws including the difference between “Buy American” and “Buy America”

[Executive Order 14005](#) (the Executive Order), *Ensuring the Future Is Made in All of America By All of America’s Workers*, makes it the United States Government’s policy to use terms and conditions of Federal financial assistance awards and Federal procurements to maximize use of goods, products, and materials produced in, and services offered in, the United States. The Federal Government will work to, whenever possible *and consistent with applicable law*, procure and support through financial assistance goods, products, materials, and services from sources that will help American domestic businesses compete in strategic industries and help America’s workers thrive.

The Executive Order is part of a larger overall policy effort intended to promote domestic production in critical industries, make supply chains more resilient, and address supply chain vulnerabilities, including those exposed by the COVID-19 pandemic.

The Made in America Office is driving this effort to support America’s manufacturing companies and workers through better implementation and enforcement of Made in America Laws. Made in America Laws include two main domestic content preference types for goods: Buy American Act requirements for Government procurement and Buy America requirements for Federal financial assistance. These domestic preferences have similar sounding names, but are different in important ways. This fact sheet provides an overview of the basic differences between the two preference types. Stakeholders seeking to supply the U.S. Government or its assistance recipients should inquire directly with the agency or recipient in question for further information.

Buy American Act Requirements for Government Procurement

“Buy American” is the phrase used to describe domestic content preferences generally applied to direct Federal procurement—that is, the goods that the U.S. Government buys for its own use. The [Buy American Act](#) (BAA) (41 U.S.C. §§ 8301–8305) is the primary law addressing domestic content preferences in Federal procurement. It provides a preference for the purchase of domestic supplies (or domestic end products) and domestic construction materials. The implementing regulations for the BAA in the [Federal Acquisition Regulation](#) (FAR) provide a two-part test for determining if an end product (that does not consist wholly or predominantly of iron or steel or a combination of both) qualifies as a domestic end product: (i) the end product must be manufactured in the U.S.; and (ii) effective October 25, 2022 more than 60 percent of the cost of its components must be mined, produced, or manufactured in the U.S.¹ The domestic content threshold increased to 60 percent on October 25, 2022, further increases to 65 percent in calendar year 2024, and 75 percent in calendar year 2029. In the event no domestic products can meet the new thresholds or the cost to acquire them would be unreasonable, there is a 55 percent fallback threshold in effect from October 25, 2022 through December 31, 2029. For end products consisting wholly or predominantly of iron or steel or a combination of both, the cost of domestic components must be 95 percent to qualify as a domestic end product.² The FAR provides similar standards for domestic construction materials.³

Buy America Requirements for Federal Financial Assistance

“Buy America” is the phrase used to describe domestic preferences generally applied to awards made with Federal financial assistance. There is no single “Buy America” statute. Rather, there are a number of statutes that require certain Federal agencies providing Federal financial assistance to apply domestic content procurement preferences for goods, products, and materials made in the U.S. [The Infrastructure Investment and Jobs Act \(IIJA\)](#), also known as the Bipartisan Infrastructure Law (BIL), enacted on November 15, 2021, includes the Build America, Buy America Act, which expands Buy America requirements government-wide to Federal financial assistance programs for infrastructure.

¹ See 48 CFR 25.003; see also Amendments to the FAR Buy American Act Requirements, 87 FR 12780 (Mar. 7, 2022), effective Oct. 25, 2022.

² See 48 CFR 25.003.

³ See 48 CFR 25.003; 87 FR 12780 (Mar. 7, 2022); and FAR subpart 25.2.

Buy American Act

Buy America Laws

What Federal funding does the requirement apply to?

Generally, “Buy American Act” requirements apply to direct Federal procurement—what the Federal government buys for its own use.

“Buy America” requirements are domestic content requirements that apply to certain Federal financial assistance programs.⁴

What is the requirement?

The Buy American Act (41 U.S.C. § 8301–8305) requires a preference for domestic end products (*i.e.*, an article, material, or supply to be acquired for public use) and domestic construction materials procured by the Federal Government valued at more than the micro-purchase threshold, which is \$10,000, but may be raised during an emergency, such as in response to a major disaster.

There is no single “Buy America” statute. However, the Build America, Buy America Act⁵ (BABAA) is the most expansive statute (*i.e.*, covering multiple agencies and domestic content preferences), requiring that financial assistance programs for infrastructure⁶ utilize American-made iron, steel, construction materials, and manufactured products.

What are the criteria?

Under FAR 25.003, for products that are not iron and steel products, a product qualifies as a domestic end product if the item is manufactured in the U.S. and more than 60 percent of the cost of all the component parts is also mined, produced, or manufactured in the U.S. The standard for domestic end products increased to 60 percent on October 25, 2022, further increases to 65 percent in calendar year 2024, and 75 percent in calendar year 2029.⁷ In the event no product is available that can meet the new thresholds or the cost to acquire them would be unreasonable, there is a 55 percent fallback threshold in effect from October 25, 2022 through December 31, 2029. For iron and steel products, the applicable percentage for cost of domestic components is 95 percent. The FAR provides a similar standard for domestic construction materials.

Under BABAA, items purchased for use in a covered infrastructure project must meet the following requirements⁸:

- (1) Iron and steel: All manufacturing processes, from the initial melting stage through the application of coatings, occurred in the U.S.
- (2) Manufactured products: All products are manufactured in the U.S., and the cost of its components that are mined, produced, or manufactured in the U.S. is greater than 55 percent of the total cost of all components.
- (3) Construction materials: All manufacturing processes occurred in the U.S.

See [M-22-11 Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure](#) for more information. Additional information is also available from the awarding agency on agency-specific statutes and requirements.

Can the requirements be waived?

Yes, when necessary. The FAR includes exceptions for nonavailability; unreasonable cost; public interest; and commercial information technology. Other general exceptions include acquisitions subject to certain trade agreements; and the partial waiver for commercial off-the-shelf (COTS) products. For additional information, consult the agency making the purchase.

Yes, when necessary. In general, agencies may waive application of the Buy America requirements on the following bases: domestic non-availability, unreasonable cost, and public interest. For additional information, consult the awarding agency.

How does the Trade Agreements Act (TAA) apply?

For certain goods, services, and construction contracts that exceed certain thresholds (See FAR 25.402 for applicable thresholds as they vary depending on the agreement), agencies cannot discriminate against products and suppliers from designated countries,

The BABA provisions apply in a manner consistent with United States obligations under international agreements. Typically, Federal financial assistance awards are generally not subject to international trade agreements because these international obligations only

⁴ See Title IX-BABAA of div. G of the [IIJA](#) at §§ 70901-27 for details.

⁵ See Title IX-BABAA of div. G of the [IIJA](#) at §§ 70901-27 for details.

⁶ See Title IX-BABAA of div. G of the [IIJA](#) at Section 70912 for definition.

⁷ See 87 FR 12780 (Mar. 7, 2022), effective Oct. 25, 2022.

⁸ See [M-22-11 Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure](#).

including countries party to the World Trade Organization Agreement on Government Procurement (GPA) or a U.S. Free Trade Agreement (FTA), and certain least developed countries⁹. EO 14005 does not change the operation of the TAA.

apply to direct procurement activities by signatories to such agreements.

In certain circumstances, however, a number of States have opted to obligate their procurement activities to the terms of one or more international trade agreements, and as such, are included in schedules to the international trade agreements. In such cases, agencies may propose waivers in the public interest to allow State entities to comply with their international trade obligations.

For additional information, consult the State in question or the agency providing the funds.

Do items receive a price preference if they are domestically made?

Yes, for offers of domestic end products and construction material subject to the BAA, an evaluation factor (price preference) is applied. The preference is 50 percent in procurements conducted by the Department of Defense.¹⁰ For procurements conducted by civilian agencies, the preference is 30 percent if the offer is made by a small business and 20 percent if the offer is made by an entity other than a small business.¹¹ Regulatory changes that will take effect at a future date will authorize agencies to apply an enhanced price preference to domestic end products and construction material that is considered a critical item or made up of critical components.

No, a price preference or evaluation factor is not typically applied to awards of Federal financial assistance. Agencies evaluate and make awards consistent with their specific legal authorities.

⁹ See 48 CFR 25.402. See also [52.225-5 Trade Agreements](#).

¹⁰ See 48 CFR 225.502.

¹¹ See 48 CFR 25.106 (effective Oct. 25, 2022). Prior to October 25, 2022, evaluation factors were addressed at 48 CFR 25.105.