



WHITE PAPER

Buy American Act (BAA)

Compliance Framework, Thresholds & Supply Chain Implications

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DISCLAIMER: This white paper is for general informational and educational purposes only. It does not constitute legal advice. Consult qualified legal counsel and a licensed customs broker for guidance specific to your transactions.



1. Introduction & Purpose

The Buy American Act (BAA), codified at 41 U.S.C. §§ 8301–8305, is the foundational federal statute governing domestic preference in U.S. government procurement. Enacted in 1933, the BAA requires federal agencies to prefer domestically manufactured goods when procuring supplies for use in the United States.

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For suppliers, importers, and manufacturers seeking or holding federal contracts — or those supporting prime contractors through subcontracting chains — BAA compliance is not optional. Violations can trigger civil and criminal liability under the False Claims Act and, following the U.S. Supreme Court's 2025 Kousisis ruling, federal wire fraud charges.

This white paper provides:

- A clear explanation of the BAA two-part domestic end product test
- Current domestic content thresholds and the phase-in schedule through 2029
- A comparison with the Build America, Buy America Act (BABA) for infrastructure
- All recognized exceptions, waivers, and the TAA interaction
- Price preference mechanics used by contracting officers
- Enforcement risks and legal exposure for non-compliance
- Practical guidance for importers and supply chain participants

2. Statutory & Regulatory Framework

2.1 Origin and Scope

The BAA applies to all federal agency procurement of supplies (goods) for use within the United States where the contract value exceeds the micro-purchase threshold. It does not apply to services contracts unless the services involve the furnishing of supplies above that threshold.

Key enabling statutes and regulations:

- 41 U.S.C. §§ 8301–8305 — core BAA statute
- FAR Part 25 (Subparts 25.1 and 25.2) — primary implementing regulation
- FAR 52.225-1 — contract clause (Buy American—Supplies)
- FAR 52.225-2 — solicitation provision (Buy American Certificate)
- Executive Order 13881 (Trump, 2019) — strengthened domestic content preference
- Executive Order 14005 (Biden, 2021) — directed threshold increases to 75%

¹41 U.S.C. §§ 8301–8305 (Buy American Act 1933); FAR Part 25 — <https://www.acquisition.gov/far/part-25>



- Federal Acquisition Circular (FAC) 2022-05 — implemented phased threshold increases
- DFARS (Feb. 2024 Final Rule) — aligned DoD thresholds with FAR

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2.2 The Two-Part Test for "Domestic End Product"

To qualify as a domestic end product under the BAA, a manufactured product must satisfy BOTH conditions:

	Part 1 — Manufacturing Location	Part 2 — Domestic Content Percentage
RULE	The end product must be manufactured in the United States.	The cost of domestic components must meet the applicable threshold (by delivery year).
KEY	A U.S.-incorporated company importing a fully foreign-made product does NOT satisfy Part 1. "Manufactured in the U.S." refers to where the product is made, not where the selling entity is registered.	COTS items: domestic content test is WAIVED (only Part 1 applies). Iron/Steel products: <5% foreign iron/steel rule applies instead of the percentage threshold.

3. Domestic Content Thresholds (2022–2029)

FAC 2022-05 and the 2024 DFARS Final Rule established a phased schedule of increasing domestic content requirements. Contractors must apply the threshold applicable to the year of delivery, not the year of award — unless an "Alternate Domestic Content Test" is approved by the agency's Senior Procurement Executive.

Delivery Period	Domestic Content Required	Fallback Threshold	Price Preference Applied
Oct 2022 – Dec 2023	60%	55% fallback	Large: +20%; Small: +30%
Jan 2024 – Dec 2028	65%	55% fallback	Large: +20%; Small: +30%
Jan 2029 onward	75%	Fallback expires ~2030	Large: +20%; Small: +30%
Iron/Steel products (all years)	<5% foreign steel	COTS fasteners exempt	Same preference rules

²FAC 2022-05 Final Rule, Federal Register Vol. 87, No. 45 (March 7, 2022); DOD DFARS Final Rule (February 15, 2024) — [Inside Government Contracts](#)



NOTE — Fallback Threshold: Until January 1, 2030, if no offer meets the current threshold at reasonable cost, contracting officers may treat a foreign end product manufactured in the U.S. with >55% domestic content as a domestic end product. This provision expires approximately one year after the 75% threshold takes effect.

4. Exceptions and Waivers

The BAA provides several categories of mandatory and discretionary exceptions. A contractor offering a foreign end product must identify it on FAR 52.225-2 (Buy American Certificate) — silence implies domestic product certification.

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Exception Type	Condition	FAR Reference
Public Interest	Agency head determines domestic preference inconsistent with public interest	FAR 25.103(a)
Nonavailability	39 listed articles not produced in sufficient US quantities (antimony, bamboo shoots, cocoa, rubber, etc.)	FAR 25.103(b) / 25.104
Unreasonable Cost	Domestic offer price exceeds foreign offer + applicable price preference factor	FAR 25.103(c) / 25.106
Resale	Foreign end products acquired for commissary resale	FAR 25.103(d)
IT – Commercial Products	Information technology that is a commercial product (FY2004+ funds)	FAR 25.103(e)
COTS Items	Waives domestic content test (not manufacturing requirement) for commercially available off-the-shelf items	FAR 12.505(a) / 25.101
Trade Agreements Act (TAA)	BAA waived for acquisitions ≥\$182,000 covered by WTO GPA; eligible products from designated countries	FAR 25.4 / 48 CFR 25.402

4.1 COTS Items — Special Treatment

COTS items sold "in the same form" as offered to the general public commercial marketplace do not need to meet the domestic component-cost percentage test. However, they must still be manufactured

³FAR 52.225-1 (Buy American—Supplies) and FAR 52.225-2 (Buy American Certificate) — <https://www.acquisition.gov/far/52.225-2>



in the United States to receive the domestic preference. A product made entirely overseas and sold on Amazon in its original form is COTS — but it remains a foreign end product under the BAA and cannot receive the domestic preference.

4.2 TAA Supersession

For acquisitions at or above the TAA threshold (\$182,000 as of current FAR), the BAA restrictions are generally waived and the Trade Agreements Act applies instead. Under the TAA, products from WTO Government Procurement Agreement (GPA) designated countries that have been "substantially transformed" in a designated country are treated as eligible products. Importers and suppliers should verify annually whether their procurement falls under BAA or TAA, as the applicable threshold is periodically adjusted for inflation.

5. Price Preferences

When a domestic offer is not the lowest bid, contracting officers apply an evaluation factor (price preference) to the foreign low offer to determine whether the domestic offer is reasonable:

- Large business domestic offer: Contracting officer adds 20% to the foreign low offer price (inclusive of duty). If the domestic offer does not exceed the adjusted foreign price, the domestic offer is deemed reasonably priced.
- Small business domestic offer: Contracting officer adds 30% to the foreign low offer price.
- Critical items / critical components: The base 20% or 30% factor is supplemented by an additional preference factor listed at FAR 25.105 for the specific critical item (list to be published in a separate FAR rulemaking).

Example: A foreign supplier offers \$100,000. A large domestic supplier offers \$118,000. The contracting officer adds 20% to the foreign offer: $\$100,000 \times 1.20 = \$120,000$. The domestic offer at \$118,000 is below \$120,000 — so it is deemed reasonably priced and receives the award.

6. Build America, Buy America Act (BABA) — Infrastructure Overlay

The Build America, Buy America Act (BABA), enacted as §§ 70901–70927 of the Infrastructure Investment and Jobs Act (IIJA, Pub. L. 117-58, Nov. 15, 2021), imposes a separate and broader domestic content regime for federally funded infrastructure projects.



6.1 BABA vs. BAA — Key Distinctions

Factor	BAA (Federal Direct Procurement)	BABA (Federal Financial Assistance / Infrastructure)
Governing Statute	41 U.S.C. §§ 8301–8305	IIJA §§ 70901–70927 (2 CFR Part 184)
Applicability	Direct federal purchases above micro-purchase threshold	All federally funded infrastructure projects after May 14, 2022
Iron / Steel Rule	<5% foreign steel in product	100% U.S. manufacture from melting through coating
Manufactured Products	65% domestic components (2024–2028)	Must be manufactured in U.S.; 55% component test (FHWA from Oct 2026)
Construction Materials	BAA applies to supply contracts	All construction materials must be U.S.-produced
Waiver Authority	Agency head waiver (public interest, nonavailability, cost)	Made in America Office (MIAO) + agency; 25% cost increase test

7. Enforcement, Penalties & Legal Exposure

BAA non-compliance carries severe legal and financial consequences. Enforcement has intensified under both the Biden and Trump administrations, and the U.S. Supreme Court's 2025 Kousisis ruling significantly expanded criminal exposure for false certifications.

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Legal Basis	Trigger Condition	Consequence
False Claims Act (31 U.S.C. §3729)	Knowingly submitting false BAA certification	Civil: up to 3x damages + \$13,946–\$27,894/claim; Criminal: up to 10 years imprisonment
Wire Fraud (18 U.S.C. §1343)	Fraudulent certification submitted electronically (per SCOTUS Kousisis, 2025)	Federal felony; up to 20 years imprisonment per count

⁴Build America, Buy America Act (BABA), §§70901–70927 of IIJA (Pub. L. 117-58, Nov. 15, 2021); OMB 2 CFR Part 184 — [Cherry Bekaert BABA Guide](#)

⁵SCOTUS, Kousisis v. United States (2025) — False certification constitutes wire fraud regardless of net economic harm. OutSolve summary: <https://www.outsolve.com/blog/scotus-deems-fraudulent-certification-in-federal-contracting-a-criminal-offense>



Legal Basis	Trigger Condition	Consequence
Contract Termination	Non-compliant products delivered under BAA contract	Termination for default; reprocurement costs charged to contractor
Suspension & Debarment	Repeated or willful violations	Prohibition from all federal contracting (can be indefinite)
Qui Tam Actions	Whistleblower files on behalf of government	Relator receives 15–30% of government recovery; contractor liable for all damages

7.1 Certification Risk

Contractor liability begins at the moment of certification. FAR 52.225-2 (Buy American Certificate) requires offerors to identify all foreign end products. Omitting a foreign end product — or affirmatively certifying it as domestic without verifying compliance — constitutes a false certification.

Practical rule: Every product identified as "domestic" on FAR 52.225-2 must independently satisfy both parts of the two-part test for each delivery year. Contractors should maintain written, dated, evidence-based documentation of domestic content calculations for every line item.

8. The 2025 Regulatory Environment

The BAA compliance landscape has been shaped by several significant 2025 developments:

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8.1 Trump Administration "America First Trade Policy"

Executive Order issued January 20, 2025, directed a comprehensive review of all trade agreements (including the WTO GPA) to ensure implementation favors domestic workers and manufacturers. A White House report (April 3, 2025) signaled potential tightening of BAA waivers and scrutiny of foreign subsidies distorting federal procurement markets.

8.2 FAR Reform — "Restoring Common Sense to Federal Procurement"

President Trump's April 15, 2025 Executive Order directed a FAR overhaul, reducing the FAR to only provisions required by statute or necessary for system efficacy. The April 16, 2025 EO directed agencies to maximize use of commercial products. BAA requirements — being statutorily mandated — are unlikely to be eliminated, but implementing rules and certification procedures may be simplified.

⁶Trump EO "America First Trade Policy" (Jan. 20, 2025); White House BAA Report Summary (Apr. 3, 2025) — [Public Procurement International](#)



8.3 SCOTUS Kousisis Ruling (2025)

The Supreme Court unanimously held that fraudulent certifications in federal contract proposals constitute federal wire fraud, even if the government suffers no net pecuniary loss. This means submitting a BAA Certificate (FAR 52.225-2) via electronic means (e.g., SAM.gov, email) containing any false statement about product origin creates felony wire fraud exposure per submission.

8.4 Ongoing Threshold Schedule

The 65% domestic content threshold remains in effect for all deliveries in calendar years 2024–2028. Contractors entering multi-year contracts now should plan supply chain domestication strategies to meet the 75% threshold required for items delivered on or after January 1, 2029.

9. Practical Guidance for Importers & Supply Chain Participants

9.1 Determine Applicability First

- Confirm whether the procurement is above the micro-purchase threshold and for use in the U.S.
- Determine whether the TAA applies (contract value \geq \$182,000 and covered by WTO GPA or applicable FTA)
- Identify whether BABA (infrastructure funding) applies instead of or in addition to BAA

9.2 Conduct Product-Level Compliance Analysis

- Map each line item: Where is it manufactured? (Part 1)
- Calculate domestic component cost percentage using supplier invoices, BOMs, and import cost data (Part 2)
- Apply correct threshold for year of delivery — not year of award
- For COTS items: confirm same-form commercial sale; only Part 1 (U.S. manufacture) applies
- For iron/steel: apply the <5% foreign iron/steel cost test instead of percentage threshold

9.3 Documentation Requirements

- Maintain a written BAA compliance file for every contract covering FAR 52.225-2
- Retain component cost calculations, supplier country-of-origin certifications, and bill of materials for each SKU/line item
- Date and version-control all compliance records — WORM-compatible record-keeping recommended for audit readiness
- Update records annually when supply chain sources change or when threshold steps occur



9.4 Supply Chain Structuring Considerations

- U.S.-based final assembly alone is insufficient if it does not constitute "substantial transformation" — simple bolt-together assembly of fully finished foreign components does not satisfy Part 1
- Authorized distributors of foreign-made products cannot claim BAA domestic preference regardless of U.S. incorporation
- Developing domestic supplier relationships now is critical to meeting the 2029 threshold of 75%
- For products currently unable to meet BAA thresholds, proactively identify applicable exceptions (COTS, TAA, nonavailability, unreasonable cost) and prepare waiver documentation

10. IBCA Role in BAA Compliance Support

The International Business Credential Association (IBCA), operating as IBCA, is a California 501(c)(6) nonprofit association whose core mission includes helping U.S. small and medium-sized businesses navigate federal and state procurement compliance requirements, including the Buy American Act.

IBCA services relevant to BAA compliance:

- Compliance education: Training resources, white papers, and certification standards for automated compliance systems
- Supplier verification: IBCA's AI-assisted, WORM-enabled evidence chain systems support immutable documentation of domestic content calculations and supply chain provenance
- Member networking: Connecting importers with U.S.-based manufacturers, component suppliers, and compliance consultants to build BAA-compliant supply chains
- Government procurement readiness: Guidance on SAM.gov registration, NAICS classification, and BAA certification preparation for new federal market entrants

IBCA does not provide legal advice. Members requiring legal guidance on BAA compliance should consult a licensed attorney with federal procurement experience.

11. Key Definitions Reference

Term	Definition (FAR Part 25)
Domestic End Product	An end product manufactured in the U.S. where the cost of domestic components exceeds the applicable threshold (or COTS item manufactured in the U.S.).



Term	Definition (FAR Part 25)
End Product	Those articles, materials, and supplies to be acquired under the contract for use by the Government.
Component	Any item supplied to a contractor directly incorporated into an end product or construction material.
COTS Item	Commercial product sold in substantial quantities in the commercial marketplace, offered without modification in the same form as sold commercially.
Foreign End Product	An end product other than a domestic end product (or U.S.-made end product).
U.S.-Made End Product	An end product manufactured in the U.S. without necessarily meeting domestic content requirements (relevant for BAA preferences but not full domestic status).
Domestic Component	A component mined, produced, or manufactured in the U.S.
Substantial Transformation	Concept from trade law (and TAA) — a manufacturing process that creates a new and different product with distinctive name, character, and use.

12. References

- 41 U.S.C. §§ 8301–8305 (Buy American Act, 1933)
- FAR Part 25 — Acquisition.gov: <https://www.acquisition.gov/far/part-25>
- FAR 52.225-1 (Buy American—Supplies Clause) and 52.225-2 (Buy American Certificate)
- FAC 2022-05 Final Rule — Federal Register Vol. 87, No. 45 (March 7, 2022)
- DFARS Final Rule — DoD Buy American Act Domestic Content (February 15, 2024)
- Build America, Buy America Act (BABA), IJIA §§ 70901–70927 (Pub. L. 117-58, 2021)
- OMB 2 CFR Part 184 — Buy America Requirements for Infrastructure (Aug. 2023)
- Trump EO "America First Trade Policy" (January 20, 2025)
- Trump EO "Restoring Common Sense to Federal Procurement" (April 15, 2025)
- SCOTUS, Kousisis v. United States (2025) — Fraudulent certification as wire fraud
- Braumiller Law Group — BAA vs. TAA Compliance Issues (2023): <https://www.braumillerlaw.com/compliance-issues-government-buy-america-solicitations/>
- Seyfarth Shaw — Six Essential Tips for Navigating Buy American Compliance (April 2025): <https://www.seyfarth.com/news-insights/six-essential-tips-for-navigating-buy-american-compliance-in-government-contracts.html>

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