



Regulatory Act Information Guide





The Buy American Act

The Buy American Act (BAA) requires the Federal Government to give preference to US made products in its purchases. You may also see BAA provisions in local government contracts, such as state, city, and municipality.

In order to be eligible for the Buy American Act, two specific requirements must be met:

1. The item must be manufactured in the USA. While there is no formal government definition for “manufactured”, it is generally accepted that an end item, which has been domestically completed into the form required for use by the Federal Purchasing Entity, has been manufactured in the US¹, and
2. The item must meet ONE of the following:
 - a. Contain a minimum 50% US cost of components. That is, at least 50% of the finished good’s cost (in component materials) must be of US origin. Or,
 - b. Be classified as a COTS (Commercially Available Off the Shelf) item. This means that the item has been sold in substantial quantities in the commercial marketplace and is available to the Government for purchase in an unmodified manner. In other words, it has not been specifically modified from its commercially available format for government use. Varying available options do not constitute “specifically modified”.

When a contract calls out the Buy American Act, you may see these, or other, FAR (Federal Acquisition Regulation) references cited: 52.225-1, 52.225-2, 52.225-9, 52.225-10, 52.225-11, 52.225-12, 52.225-21, 52.225-22. For further detail on these FAR clauses, please contact our Trade Compliance Department.

This should not be confused with the Buy America Act, which is defined later in this document.

¹ U.S. Government Accountability Office. (B-242052.2, May 7, 1991, 70 Comp.Gen. 473)



Trade Agreements Act

The Trade Agreements Act of 1979 (TAA) allows for additional exceptions to the BAA regulations when, and only when, certain conditions exist and will only be seen in Federal Contracts. These conditions are primarily dictated by dollar thresholds that apply to the prime contract and not any subcontract.

When the TAA is applied, the requirements for the manufactured good(s) being purchased are different than that of the BAA. Trade Agreements Act requires ONE of the following:

1. The item is 100% US; or
2. The item contains foreign content, but that content has been “substantially transformed” in the US or designated country or Free Trade Agreement country. This means that the foreign part has been made into “a new and different manufactured good distinct from the materials from which it was transformed.”⁴ Note the dollar thresholds on the chart above for which Free Trade Agreement can apply; or
3. The item is from a Designated Country or Free Trade Agreement Country. Note the dollar thresholds on the chart above for which Free Trade Agreement can apply.

A current list of TAA Designated Countries can be found here:

<http://gsa.federalschedules.com/resource-center/resources/taa-designated-countries.aspx>



American Recovery Reinvestment Act of 2009 (ARRA)

Also known as the Stimulus Act, ARRA specifically relates to funding and includes a Buy American provision. Any public building or public works project funded by the stimulus package must use only iron, steel, and other manufactured goods produced in the US. If the prime contract is a construction contract and exceeds \$7,804,000, then the Government can purchase products from WTO (World Trade Organization), FTA (Free Trade Agreement), or least developed countries. For the purposes of the Recovery Act, designated countries do not include the Caribbean Basin Countries.⁶ Funding is now exhausted and no further funds have been approved.

³ <http://www.ustr.gov/sites/default/files/FRN%202014-2015%20Thresholds.pdf>

⁴ 2 CFR 176.160

⁵ Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua

⁶ http://www.acquisition.gov/far/html/Subpart%2025_6.html

Buy America Act

Different from the Buy American Act (Buy America [a](#) vs. Buy American [n](#)), this Act has a different set of requirements. Further, Buy America applies only to grantees that are recipients of FTA funds. That is, the contract will be Federal Transit Administration funded. If your contract is not for a transit related project, the Buy America Act will not likely apply to you.

The Buy America Act requires that:

- (a) No funds may be obligated by FTA for a grantee project unless all iron, steel, and manufactured products used in the project are produced in the United States.
- (b) All steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives.
- (c) The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in infrastructure projects such as transit or maintenance facilities, rail lines, and bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock, or to bimetallic power rail incorporating steel or iron components.
- (d) For a manufactured product to be considered produced in the United States:
 - (1) All of the manufacturing processes for the product must take place in the United States; and
 - (2) All of the components of the product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents.⁷

IMPORTANT: Note that components of the manufactured good must also be manufactured in the US.

Consolidated Appropriations Act, 2014

This Act, which is in place from January 17, 2014 through the end of Federal Fiscal Year 2014, contains a provision for the use of American Iron and Steel (known as the “AIS” provision).

This provision requires the use of US origin iron and steel for projects funded by the Clean Water State Revolving Loan Fund (CWSRF) and the Drinking Water State Revolving Loan Fund (DWSRF). Further, it defines specific items which are and are not included. Items such as valves, hydrants, and drainage grates, if made predominantly of iron or steel, which the EPA defines as a minimum of 50% by cost, must be made of US origin iron or steel. This means the iron or steel must be melted and poured in the US. There is no requirement for the origin of the raw materials used in the production of the iron or steel. However, it is important to note that even if you cast the item in the US, you cannot send that item to be further processed in any way in another country. This includes simple operations such as painting or coating. There is no origin requirement for components that are not of iron or steel.

The EPA's State Revolving Fund AIS website can be found here, and includes a link to the EPA's final Guidance on this topic along with an extensive Q&A section: http://water.epa.gov/grants_funding/aisrequirement.cfm

The Water Resources Reform and Development Act

Another piece of legislation that was signed into law in June of 2014, this Act amends the Federal Water Pollution Control Act (Clean Water Act) to, in essence, make permanent the American Iron and Steel (AIS) provisions recently attached to the Consolidated Appropriations Act of 2014.

This Act further establishes a new funding arm, Water Infrastructure Finance Innovations Authority (WIFIA), which includes the same AIS provision.

If your contract is funded, in any part, by the SRF or the WIFIA, then you are likely subject to these requirements.

Frequently Asked Questions



Q: What is the difference between Buy American with an “n” and Buy America?

A: The Buy America Act is another specific federal law that applies exclusively to transportation related projects. An easy way to identify projects requiring Buy America compliance is when the job quote is for any federal highway, rail, or airport facility. As always, the contract requirements must be verified.

Q: What is the difference between ARRA and the Buy American Act?

A: The Buy American Act is a well established law that has been around for many years and will continue to be used for federal construction projects. ARRA requirements were added to the Buy American Act in 2009, but the ARRA requirements are only tied to the funds distributed through that act. ARRA requires that products be substantially transformed in the US, but there is no percentage requirement or COTS exemption. ARRA is stricter than the Buy American Act in that it requires all iron and steel to be of US origin. Since all of the ARRA funds have been allocated, these requirements will be less common as ARRA projects are completed.

Q: What is the Buy American Act?

A: The Buy American Act is a US Federal Law that establishes a preference for US manufactured products for use in construction of public infrastructure.

Q: What are the requirements of the Buy American Act?

A: The first requirement of the Buy American Act is that a product must be manufactured in the US. The second requirement is that at least 50% of the components in the product must be of US origin by cost or the product may qualify as a commercially available off-the-shelf (COTS) item.

Q: How do I know which Zurn products are Buy American compliant?

A: Refer to the Zurn compliant products guide, available on zurn.com. For other Act eligibility or items not included in the product listing, please contact your Customer Care Representative.

Q: How do I address questions from customers that state products need to be 51% compliant?

A: In many cases, customers requesting 51% in reality simply need product that is compliant with Buy American Act (BAA). BAA provides two ways for products to comply. One way is a minimum 50% domestic cost, and the other is COTS. In either case, the item must be “manufactured” in the US. The best way to determine what compliance is needed is to obtain job specifications and forward to Zurn Customer Care.

Frequently Asked Questions



Q: How can I be sure the items I am requesting meet the specific Act clauses called out in the prime contract?

A: The best way is to have a copy of the prime contract so that the regulation clauses can be reviewed. However, there is certain information you can supply to Zurn, even if the actual contract is not available, which will enable us to make an educated assessment of what is required on the particular order. Furthermore, you should ensure you know what the contract requires so that you supply the correct items. On the following page, you will find an information sheet that can guide you on the questions to ask your customer. This completed sheet should be submitted to your Zurn contact before placing your order. Your Zurn Customer Care Representative will work with our Trade Compliance Department to evaluate if we have the proper items which meet the required criteria.

Q: If an item meets Buy American, is that the same as “Made in the USA”?

A: No. The rules for determining origin in each of these scenarios are different. “Made in the USA” claims are governed by the Federal Trade Commission (FTC) which has a different set of origin requirements.

Q: Where can I find more information on these topics?

A: Additional information can be found by clicking the following links:

- Federal Acquisition information: www.acquisition.gov/far/
- ARRA Information: www.recovery.gov
- Buy America Act: <http://www.fhwa.dot.gov/construction/cqit/buyam.cfm>
- Buy American and Trade Agreements:
<http://www.acquisition.gov/Far/current/html/FARTOCP25.html>
- FTC and “Made in the USA”: www.ftc.gov/os/statutes/usajump.shtm

Q: What about state-specific procurement regulations?

A: There are quite a few states which have their own Buy American regulations. These regulations could be limited to iron and steel or include manufactured goods. The most common state regulations we see are Pennsylvania, Illinois, and Maryland. Read the contract carefully to ascertain if adherence to state regulations is required. The state requirements will vary from the Federal requirements.

REMEMBER: You should ALWAYS ask the Procurement Office in charge of the Government contract for the details regarding which Buy American or other regulatory clauses are called out in the contract.

The information contained herein does not constitute legal advice. Rather, it is meant as a general guide and overview of the Buy American Act and other regulatory acts. You should consult with the Procurement Office in charge of the government contract and, if necessary, your attorney, if you have questions about the applicability of any government contract provision.

Buy American Clause Determination Worksheet*

This completed sheet should be submitted to your Zurn contact before placing your order. Your Zurn Customer Care Representative will work with our Trade Compliance Department to evaluate if we have the proper items which meet the required criteria.

Your request for Regulatory compliant product or a Regulatory certification letter should include the following:

- 1. Project Name _____
- 2. Solicitation or Contract Award Number _____
- 3. Total Project Size (Prime Contract Dollar Amount) _____
- 4. Is this a Federal Project? Yes No
- 5. Is this a State Project? Yes No
 If yes, indicate state _____
- 6. Is this a City Project? Yes No
- 7. Is this an EPA Project? Yes No
- 8. Is it ARRA funded? Yes No
- 9. Is it SRF Funded? Yes No
- 10. Is it WIFIA funded? Yes No

List of specified products (Use additional pages if necessary):

* Failure to include certain pieces of information about the Prime Contract could result in customer receiving non compliant product. The customer is responsible for providing valid contract BAA requirements to ensure proper order fulfillment. This information should be verified prior to order placement.



Call 855-ONE-ZURN

**to speak to a Customer Care Representative
or contact your local Zurn Sales Representative.**

1-855-ONE-ZURN
www.zurn.com

Form No. ZMKTG111-15, Rev. 1/15