

NATIONAL SCHOOL LUNCH PROGRAM PROCUREMENT REQUIREMENT

# BUY AMERICAN PROVISION

The Buy American Provision does not apply to all Child Nutrition Programs.  
The National School Lunch Program is the only procurement process affected.  
Child and Adult Nutrition Food Programs – CACFP  
And  
Summer Food Service Programs – SFSP are not required to follow this regulation.  
There have been significant changes in the provision  
We will go over the changes first, then describe the whole provision in general and recap  
the changes at the end



# Buy American Provisions Related to the Final Rule - CNP Meal Patterns Consistent with the 2020-25 DGAs

[HOME](#)

## Resource type

Policy  
Policy Memos

## Resource Materials

 Policy memo (209.39 KB)  
 Buy American Exceptions Tracking Standard Form Template (76.58 KB)

**DATE:** May 29, 2024

**MEMO CODE:** SP 23-2024

**SUBJECT:** Buy American Provisions Related to the Final Rule Titled, *Child Nutrition Programs: Meal Patterns Consistent With the 2020-2025 Dietary Guidelines for Americans*

**TO:** Regional Directors  
Child Nutrition Programs  
All Regions

State Directors  
Child Nutrition Programs  
All States

On April 25, 2024, FNS published the final rule, *Child Nutrition Programs: Meal Patterns Consistent With the 2020-2025 Dietary Guidelines for Americans* (89 FR 31962). Among other provisions, this rule finalizes regulations that strengthen the School Meal Programs' Buy American provision.

The Buy American provision requires school food authorities to purchase, to the maximum extent practicable, domestic commodities or products. The Buy American provision applies to school food authorities located in the 48 contiguous United States.

SP 23-2024

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Take some time to read this Memo

Enter SP 23-2024 into a search browser and a link to the memo will appear in the results.


We will take a look at three areas that affect the schools this year.

Provision	Previous Requirement	Updated Requirement	Regulations Impacted	Implementation Date
<b>Limited Exceptions to the Buy American Requirement</b>	Through policy guidance, USDA detailed two limited exceptions for price and availability that school food authorities could use to purchase non-domestic items under the requirement that school food authorities purchase domestic products to the maximum extent practicable.	<p>USDA codified in regulations the two limited exceptions when non-domestic foods may be purchased by school food authorities. USDA also added to the first exception the option to use the <a href="#">48 CFR 25.104 Nonavailable articles list</a>, as a list of excepted items.</p> <p>The final rule codifies the two limited exceptions as follows:</p> <ol style="list-style-type: none"> <li>1. The product is listed on the Federal Acquisitions Regulations Nonavailable articles list found at <a href="#">48 CFR 25.104</a> and/or is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or</li> <li>2. Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.</li> </ol>	<p>7 CFR 210.21(d)(5)</p> <p>7 CFR 220.16(d)(5)</p>	July 1, 2024

48 CFR25.104

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There are still only two exceptions allowed:  
 Items that are not domestically available.  
 And bid prices for domestic product are significantly higher than a non-domestic source.  
 But now there is an actual list of items that are determined non-available or not produced in sufficient quantities in the US.  
 It is available for immediate use The list name is 48 CFR25.104 – Non available articles.  
 Enter 48 CFR25.104 into a search browser and a link to the list will appear in the results.



Bamboo Shoots	Coffee, raw or green bean
Bananas	Grapefruit sections, canned
Beef, corned, canned	Olive oil
Beef extract	Olives green pitted or unpitted or stuffed in bulk
Brazil nuts, unroasted	Oranges, mandarin canned
Capers	Pineapple canned
Cashew nuts	Sugars raw
Castor beans and castor oil	Tapioca flour and cassava
Chestnuts	Tea in bulk
Cocoa beans	Vanilla beans
Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form	Water chestnuts
	Yeast active dry and instant active dry
	Cobra venom

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I selected a sample of items from the list that might be used in the nutrition program. You need to refer to the on-line list yourself in case there are items you use that I did not include.

You will also refer to the online list often to learn about updated items.

Because bananas, are on this list, a separate exemption form is not necessary – which is good news for users of bananas, canned mandarin oranges, and pineapple.

Cost documentation must be retained on their usage, however – we will address that in the next slide.

Cobra venom - Just kidding – We haven't seen Cobra venom on pantry shelves, but it is on the list and I thought that was funny.

Provision	Previous Requirement	Updated Requirement	Regulations Impacted	Implementation Date
<b>Exception Documentation and Reporting Requirements</b>	Through policy guidance, USDA instructed school food authorities to maintain documentation justifying the use of exceptions.	USDA codified in regulations the requirement for school food authorities to maintain documentation to demonstrate the use of exceptions. Items found on the Federal Acquisitions Regulations Nonavailable articles list are exempt from the documentation requirement, but these items must be counted toward the cap on non-domestic purchases when that goes into effect.	7 CFR 210.21(d)(5)(iii)  7 CFR 220.16(d)(5)(iii)	July 1, 2024

As mentioned, the SFAs still need to document the cost use of the two exceptions – even if an item is on the list of Non-available articles.


Read the Updated Requirement

Cap? What cap.

Provision	Previous Requirement	Updated Requirement	Regulations Impacted	Implementation Date
Cap on Non-Domestic Food Purchases	USDA had not previously defined a dollar amount or threshold limiting commercial non- domestic food purchases.	USDA established in regulations a new threshold for school food authorities that use exceptions. The limit on the percent of <b>total</b> commercial food costs from non- domestic foods will be phased in over 7 school years. <ul style="list-style-type: none"> <li>Beginning in SY 2025-26, the non-domestic food purchases cap will be 10 percent.</li> <li>Beginning in SY 2028-29, the non-domestic food purchases cap will be 8 percent.</li> <li>Beginning in SY 2031-32, the non-domestic food purchases cap will be 5 percent.</li> </ul>	7 CFR 210.21(d)(5) 7 CFR 220.16(d)(5)	July 1, 2025

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There are non-domestic purchase caps being put into place beginning SY2025-26. Read the Previous Requirement and the Updated Requirement



**Updated Requirement**

USDA established in regulations a new threshold for school food authorities that use exceptions. The limit on the percent of **total** commercial food costs from non-domestic foods will be phased in over 7 school years.

- Beginning in SY 2025-26, the non-domestic food purchases cap will be 10 percent.
- Beginning in SY 2028-29, the non-domestic food purchases cap will be 8 percent.
- Beginning in SY 2031-32, the non-domestic food purchases cap will be 5

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Let take a closer look at this.

There will be limits on the percent of total food costs that may be used on non-domestic foods.

Beginning in SY 2025-26, the non-domestic food purchases cap will be 10%

In SY2028-29, the cap will be 8%

In SY2031-32 the cap will be 5%

How can a school keep track of these costs and percentages?

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On April 25, 2024, FNS published the final rule, *Child Nutrition Programs: Meal Patterns Consistent With the 2020-2025 Dietary Guidelines for Americans* (89 FR 31962). Among other provisions, this rule finalizes regulations that strengthen the School Meal Programs' Buy American provision.

The Buy American provision requires school food authorities to purchase, to the maximum extent practicable, domestic commodities or products. The Buy American provision applies to school food authorities located in the 48 contiguous United

On Memo SP 23-2024 there is a link to a tracking template  
Let's take a look



## Buy American

### Exceptions Tracking Standard Form Overview

#### **Purpose**

The Exceptions Tracking Standard Form is an **optional** template that school food authorities can use to document the use of exceptions to purchase non-domestic foods under the Buy American provision. The purpose of this form is to track both the exceptions and costs related to non-domestic product purchases. School food authorities can input data related to non-domestic product costs in the Exceptions Tracker tab, and the Exceptions Summary tab will help the school food authority calculate its percentage of costs from non-domestic products within a specified time frame.

#### **Background and Requirements**

Under the Buy American provision, school food authorities in the contiguous United States that participate in the National School Lunch Program or the School Breakfast Program are required to purchase domestic commodities or products for their school meal programs to the maximum extent practicable (42 U.S.C. § 1760(n)).

##### **DEFINITION OF DOMESTIC COMMODITIES OR PRODUCTS**

A domestic commodity or product is defined as an agricultural commodity that is produced in one of the 50 states, the District of Columbia, Puerto Rico, or any U.S. territory. A domestic commodity or product can also be defined as a food product that is processed in the United States substantially using agricultural commodities that are produced in the United States (7 CFR 210.21(d)(1)).

##### **DEFINITION OF "SUBSTANTIALLY"**

"Substantially using agricultural commodities that are produced in the United States" means over 51 percent of a food product (by weight or volume) must consist of agricultural commodities that were grown domestically (7 CFR 210.21(d)(1)(ii)).

##### **REQUIREMENTS FOR FISH AND FISH PRODUCTS**

For information on how the Buy American requirements apply to fish and fish products offered in school lunch and breakfast programs, please review 7 CFR 210.21(d)(6) and/or 7 CFR 220.16(d)(6).

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This is an optional template available to track the use of exceptions and costs related to the non-domestic product purchases.

It is an excel form and the first tab is an Overview – It explains the background, exception documentation and reporting requirements, the cap on non-domestic spending and the exceptions summary tab.

We will walk through these two tabs in the next slides.

#	SCHOOL NAME	INVOICE NUMBER	INVOICE DATE	SOURCE	PRODUCT DESCRIPTION	FOOD COMPONENT	NON-DOMESTIC	EXCEPTION TYPE	UNIT	PRICE PER UNIT	NUMBER OF UNITS	TOTAL AMOUNT
Count.	<i>if relevant.</i>	<i>if relevant.</i>	(MM/DD/YYYY)	What is the origin of the invoice?	(e.g., lettuce mix, applesauce, whole wheat rolls, ground beef, etc.)	Select the most appropriate food component label for the product purchased.	Was this product produced in one of the 50 states, the District of Columbia, Puerto Rico, or any U.S. territory? If not, confirm by selecting "Non-domestic".  Does this product consist of more than 51 percent of domestically grown food by weight or volume? If not, confirm by selecting "Non-domestic".	<b>Exception 1.</b> The product is listed on the Federal Acquisitions Regulations Nonavailable articles list found at 48 CFR 25.104 and/or is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality.  <b>Exception 2.</b> Competitive bids reveal the cost of a U.S. product is significantly higher than the non-domestic product.	Optional (e.g., case, dozen, pound, bunch).  If you prefer not listing items by unit, you can leave this column blank or enter "N/A".	Optional.  If you prefer not listing items by unit, you can leave this column blank or enter zero.	Optional.  If you prefer not listing items by unit, you can leave this column blank or enter "N/A".	Enter the total cost for this line.  If you choose to include price per unit and number of units, you can use this column to calculate the total by multiplying price per unit by number of units.
1	Montlake School	1200AT68	08/15/2025	Fresh Food Hub	Tomatoes, diced, #10 can	Vegetables	Non-domestic	Exception 2	Case	\$ 40.00	25	\$ 1,000.00
2	Lakemont School	1459AT68	08/20/2025	Star Food	Bananas, whole, fresh	Fruits	Non-domestic	Exception 1, listed on the Nonavailable articles list	N/A	-	N/A	\$ 300.00
3												
4												

Overview **Exceptions Tracker** Exceptions Summary

The previous slide was from the Overview tab in the excel form  
 This slide is the second tab – Exceptions Tracker  
 The two preloaded rows on the form is an example of how to fill it out  
 Many of the columns are optional data entry – the only data that carries forward to the Summary Tab is in the Total Amount column.  
 The total amount field will tally Price per unit and the number of units  
 or  
 You can enter a direct amount into the Total Amount field.  
 Using an acceptable exceptions does not require a waiver from the State agency  
 Note the total amount is 1,300.00 – we will reference that number in the next slide

**Buy American**  
Exceptions Summary

**Total Non-domestic Costs** \$ **1,300.00**  
*This will be automatically calculated.*

**Total Annual Commercial Food Costs** \$ **25,000.00**  
*Please enter the SFA's total annual commercial food costs here.*

**Percentage of Commercial Food Costs from Non-domestic Foods** **5%**  
*This field will highlight green, yellow, or red depending on the percentage calculated.*

Overview | Exceptions Tracker | **Exceptions Summary**

This is the Summary tab

In the top cell, the Total Non-domestic Costs carry from the Tracker tab. Here we see that total of \$1,300 from the previous tab.

In the second cell, the school will enter the Total Annual Commercial Food Costs in the Blue data field – this is total spent on food and includes the non-domestic costs.

The third cell displays the Percentage of dollars spent on Non-domestic foods

In this case:

The Total Non-domestic Costs brought over from the Exceptions Tracker tab totaled \$1,300. The manual entry of the Total Annual Commercial Food Costs is \$25,000. The total amount of food purchased.

The Percentage of Commercial Food Costs from Non-domestic Foods is shown at 5%.

This is a handy tool to use as a running total to ensure purchases remain within the capped amount.

**Buy American**  
Exceptions Summary

Total Non-domestic Costs	\$ 1,300.00 <small>This will be automatically calculated.</small>
Total Annual Commercial Food Costs	\$ 25,000.00 <small>Please enter the SFA's total annual commercial food costs here.</small>
Percentage of Commercial Food Costs from Non-domestic Foods	5% <small>This field will highlight green, yellow, or red depending on the percentage calculated.</small>

July 1, 2025, non-domestic food purchases must not exceed 10 percent of total annual commercial food costs that a school food authority purchases per school year.  
July 1, 2028 the cap is 8%  
July 1, 2031 the cap is 5%

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Remember in beginning July 1, 2025 the cap is 10%

2028 is 8%

2031 is 5%

This phased-in approach will allow schools to gradually adjust to the new requirement and will allow USDA to continue to collect data on use of the Buy American exceptions. Items listed on the Federal Acquisitions Regulations Non-available articles list **must be counted** toward the cap on non-domestic purchases when it goes into effect.

## BUY AMERICAN PROVISION

Requires School Food Authorities (SFAs) to purchase, to the maximum extent practicable, **domestic commodities or products**.

That was a pretty in depth description about the changes, but let's look at the Provision as a whole.

The Provision requires SFAs to purchase, to the maximum extent practicable, domestic commodities or products.

## BUY AMERICAN PROVISION

- All procurement transactions for food, when funds are used from the nonprofit food service account, must comply with the Buy American provision.
  - Includes: a la carte, all nonprogram foods, Smart Snacks, and any other food purchased using food service funds.

To be clear the American Provision is required for all items purchased with the nonprofit food service account. Those items include a la carte and Smart Snacks – any food purchased using food service funds.

## **BUY AMERICAN PROVISION**

### **PURCHASING COOPERATIVES FOOD SERVICE MANAGEMENT COMPANIES**

Any entity that purchases food or food products on behalf of the SFA must follow the same Buy American provisions and exceptions that the SFA is required to follow.

This requirement extends to entities who purchase food on behalf of the school – which include Purchasing CO-Ops and Food Service Management Companies

## BUY AMERICAN PROVISION

### **Administrative Review:**

Labels on a variety of food products in SFA storage facilities are checked.

### **Procurement Review:**

Reviewed vendor invoices will confirm SFAs are purchasing domestic commodities.

Check that the Buy American certification language is in the SFA Procurement Plan and solicitations and contracts.

Buy American is checked in the Administrative Review and the Procurement Review  
Read slide



## BUY AMERICAN PROVISION

The provision supports the mission of the Child Nutrition Programs, which is to serve children nutritious meals and support American agriculture

Using food products from local sources supports local farmers

FNS also encourages purchasing food products from local and regional sources when expanding farm to school efforts.

The Buy American Act was generated to support the child nutrition programs AND to support American farmers and manufacturers.

The Federal Nutrition Service encourages the purchase of local foods when expanding farm to work.

The funds that make up a school's meal reimbursements are generated by American taxpayers, so it follows that domestically grown and processed foods should be purchased to the maximum extent practicable.

## DOES NOT MEET THE BUY AMERICAN PROVISION:

A product made from a U.S. agricultural product but manufactured in another country.

Non-domestic foods packed in the U.S.

Non-domestic foods in packaging produced in the U.S. do not meet the Buy American requirements.

Items that do not meet the Buy American Provision

Peanuts grown in the US, but shipped to another country for processing.

Tomatoes grown in another country and packaged in the US

**DOES MEET THE BUY AMERICAN PROVISION:**

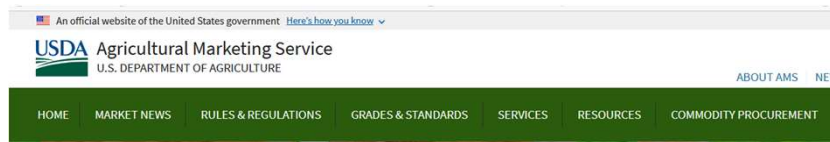
The product is processed entirely in the U.S. and substantially uses domestic agricultural commodities.

Substantially means over 51% from American products.

Read the slide

## AMS.USDA.GOV

An SFA can verify the cost and availability of domestic and non-domestic foods using data in the USDA Agricultural Marketing Service's (AMS) weekly market report.



AMS.USDA

AMS = Agricultural Marketing Service

An SFA can verify cost and availability of domestic and non-domestic foods using data in the USDA Agricultural Marketing Service's (AMS) weekly market report  
AMS.USDA in the web browser will return a link to the marketing service. There is a lot of information and interesting to navigate.

## RECAP

Available Immediately

7 CFR 210.21(d) Describes the Buy American provision. It provides a link to 48CFR25.104, the list of products determined to not be produced or manufactured in the US in sufficient and reasonably available quantities or satisfactory quality.

[48 CFR25.104](#)

Let's recap the changes described at the beginning of the presentation.

A list of items determined to be domestically non-available can be accessed through the 7CFR regulation or directly by typing 48CFR25.104 into a search browser.

## RECAP

Beginning July 1, 2025 caps will be placed on non-domestic food purchases.

July 1, 2025 - 10%

July 1, 2028 - 8%

July 1, 2031 - 5%

The regulation also displays the caps placed on non-domestic food purchases in descending percentages as time progresses.

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## RECAP

There is a Buy American Exceptions Tracking Template link in Memo SP 23-2024 that calculates the percentage of non-domestic foods purchased for the year.

To assist the school with documenting exceptions of the Buy American provision, a template is available to enter exceptions used and a dollar amount spent on the non-domestic food whether on the exception list or determined as too costly.



# QUESTIONS?

## CANS

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