

Overview of Buy American

Background

The Buy American Provision of the William F. Goodling Child Nutrition Reauthorization Act of 1998 requires school food authorities (SFA) to purchase, to the maximum extent practicable, domestic commodity or product.

Definitions

- **Domestic commodity or product:** includes agricultural commodities produced in the U.S. and food products processed in the U.S. substantially using agricultural commodities produced in the U.S.
 - **Agricultural commodity** means the product's food component.
 - The food components are: meats/meat alternates, grains, vegetables, fruits, and fluid milk.
 - **Substantially** means over 51% from domestic products
 - 51% of the final processed product (by weight or volume) must consist of agricultural commodities that were grown domestically.
 - Products from the U.S. territories of Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are considered domestic products.

Steps to Ensure Compliance

1. All procurement procedures, solicitations and contracts should include language about Buy American requirements.
2. Check food orders, deliveries and inventory to monitor non-domestic foods.
 - a. Some products may need additional documentation from the manufacturer to prove they are over 51% domestic.
3. Keep documentation to justify any exceptions made for non-domestic products.

Exceptions for Non-domestic Products

Limited Exceptions Are Allowed

Exceptions to the Buy American Provision may be made on a limited basis for the following reasons:

- The product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or
- Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product; or
- The item appears on the [Nonavailable articles list](#) in 48 CFR 25.104

Consider Alternatives

SFAs should consider alternatives to non-domestic products before making an exception:

- Are there other domestic sources for this product?
- Is there a domestic product that could be easily substituted, if the non-domestic product is less expensive (e.g. substitute domestic pears for non-domestic apples)?
- Am I soliciting bids for this product at the best time of year? If I contracted earlier or later in the season, would prices and/or availability change?
- Am I using third-party verification, such as through USDA Agricultural Marketing Service (AMS), to determine the cost and availability of domestic and non-domestic foods?

Documenting Exceptions

SFAs must document exceptions **before** they order and receive non-domestic products.

- Ways to document exceptions:
 - Use the [USDA's Exceptions Tracking Template](#) to document non-domestic items where an exception is used. The SFA should also keep on file:
 - Documentation to support the unavailability of domestic products.
 - Price comparison to show the domestic product is cost-prohibitive.

Non-domestic Food Caps

Caps on Non-domestic Food Purchases

SFAs must limit the purchase of non-domestic food products to meet the below caps. These limits apply to the percentage of non-domestic food products of the SFAs total commercial food costs. Note: USDA Foods are not considered commercial food products.

- **Non-domestic Food Purchase Caps:**
 - Beginning in SY 2025-26: 10%
 - Beginning in SY 2028-29: 8%
 - Beginning in SY 2031-32: 5%

Temporary Accommodation for SY2025-26

If an SFA is unable to meet the food purchase cap for SY2025-26, they may request temporary accommodation by completing [CDE's Buy American Accommodation Request Form](#).

- SFAs must demonstrate they are unable to meet the requirements and provide a plan and timeline for how they will meet the requirements.

Resources

- [USDA Buy American Provisions webinar](#) highlighting New Final Rule revisions
- [USDA Buy American Exceptions Tracking Template](#) for calculating caps
- [CDE Buy American Accommodation Request Form](#)
- USDA webpage ["Buy American Provisions Related to the Final Rule"](#)
- [Nonavailable articles list](#)
- [7 CFR 210.21\(d\)](#)

Frequently Asked Questions

1. Do items on the Exceptions List count towards the caps?

Yes, the Exceptions List provides justification for sourcing a non-domestic product. However, because the item is non-domestic, it still must be counted toward the cap.

2. When using the USDA's Exceptions Tracking Template, what items do I include in the tracker to calculate the caps?

When an exception is used for the purchase of a non-domestic commodity or food item, that item should be entered into the USDA Exceptions Tracking Template along with the necessary information about that item. You will need to know the associated costs of the item. You will also need access to your total food budget.

3. Do I include USDA Foods, such as DOD Fresh produce, as part of my total domestic food purchases when calculating the caps?

USDA Foods should not be included in your total domestic food calculations. [7 CFR 210.21\(d\)](#) stipulates non-domestic food purchases must not exceed the given percentage of the “annual *commercial* food costs.” USDA Foods are not considered commercial food products.

4. How do I know if a processed food item has 51% domestically grown items?

- Manufacturer labels or Product Formulation Statements often provide this information. If not found in this documentation, you may need to reach out to your distributor or the manufacturer.
- Ensure contracts include the required Buy American language.
- Check food packaging for the country of origin. It is recommended that staff are trained to monitor labels.
- Have a system to ensure communication and tracking of food substitutions in the event a non-domestic item is substituted for an item that is typically domestic.

5. Does Buy American apply to ingredients in processed foods with multiple ingredients?

Yes, Buy American applies to processed foods with multiple ingredients: “for foods that are processed, they must be processed domestically using domestic agricultural food components that are comprised of over 51% domestically grown items, by weight or volume.” ([Buy American Fact Sheet](#))

This institution is an equal opportunity provider.