

Buy American Quick Facts for School Nutrition Programs

School Food Authorities are required to purchase, to the maximum extent practicable, domestic commodities or products. This requirement supports the mission of Child Nutrition programs, which is to serve children nutritious meals and support American agriculture. The Buy American regulation is found in 7 CFR 210.21(d) with additional guidance in memorandum SP 38-2017 Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program and Buy American Provisions Related to the Final Rule - Child Nutrition Programs (CNP) Meal Patterns Consistent with the 2020-25 Dietary Guidelines for Americans (DGAs).

What products does the Buy American provision apply to?

For foods that are unprocessed, the agricultural commodities must be domestic and for foods that are processed, they must be processed domestically using domestic agricultural food components that are comprised of over 51 percent domestically grown items, by weight or volume. A domestic creditable food component is the portion that counts toward a reimbursable school meal (meat/meat alternates, grains vegetables, fruits, and fluid milk).

What is the difference between an unprocessed food and a processed food?

Example	Unprocessed foods are those agricultural products that retain their inherent character.	Processed foods have been treated by a chemical or industrial process and may have had other food items added to the product.
Carrots	Carrot sticks, carrot coins, shredded carrots.	Carrot muffins, Breakfast bread with carrots
Ground Beef	100 percent ground beef patties, 100 percent ground beef crumbles	Beef patty with soy protein, all beef hot dog, beef crumbles with onions
Tomato	Diced tomatoes, sliced tomato	Tomato soup, spaghetti sauce, salsa

Buy American Provisions Final Rule May 29, 2024

In 2024 USDA updated the requirements for Buy American in relation to SFAs. This section details those changes. More information can be found in the USDA memo Buy American Provisions Related to the Final Rule - CNP Meal Patterns Consistent with the 2020-25 DGAs

The final rule codifies the two limited exceptions as follows:

- The product is listed on the Federal Acquisitions Regulations Non-available 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; or
- Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.

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 percent.

Updated USDA Documentation Requirements

- 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 Non-available articles list are exempt from the documentation requirement, these items must be counted toward the cap on non-domestic purchases when that goes into effect.
- USDA codified in program regulations the requirement for school food authorities to include the Buy American provisions in all procurement procedures, solicitations, and contracts.

USDA codified how Buy American requirements apply to fish and fish products.

- Farmed fish must be harvested within the United States or any territory or possession of the United States.
- Wild caught fish must be harvested within the Exclusive Economic Zone of the United States or by a United States flagged vessel.

Best Practice Action Steps for Buy American

There are six major steps a School Food Authority (SFA) can take to ensure compliance with Buy American requirements:

1. Plan menus that focus on domestic products and minimize the use of known non-domestic agricultural commodities and foods.

2. Procure domestic agricultural commodities and food products by including a Buy American requirement in all procurement documents.
3. Require suppliers to certify that food products provided are either 100 percent domestic commodities or food products containing over 51 percent domestic food components, by weight or volume.
4. Purchase from local farmers and producers.
5. Utilize USDA Foods entitlements. All foods processed and unprocessed, available through the USDA Foods program meet Buy American standards.
6. Monitor vendors to ensure contract compliance.

Menu Planning

Be proactive and plan menus around Buy American requirements. Here are some steps to get you started.

1. Evaluate your current menu for items you are serving that are not available domestically. Common items that are known to be non-domestic include: bananas, canned pineapple, canned mandarin oranges, canned grapefruit sections, water chestnuts, mango and coconut. While these items can still be served, could you offer them less often and replace them with a domestic product? For example, instead of offering bananas twice a week could you limit them to once a week?
2. Identify USDA Foods on the menu and consider planning the menu around available USDA Foods. All USDA Foods products meet Buy American requirements including the requirement for processed foods to be at least 51 percent domestic and manufactured in the US. Focus on the center of the plate which typically includes more processed items. It may be more difficult to get documentation from a distributor that processed items meet Buy American requirements.
3. Become familiar with the types of foods that may be available from local producers and the time of year they are available. Consider planning local foods on the menu at the peak times of year they are available. Initiatives such as Minnesota Thursdays can provide inspiration for planning menus with a local focus.

Procure Buy American

1. Include Buy American requirements in solicitations and bids. Below are some suggested statements that could be used:
 - a. Vendor will comply with the Buy American provision for the purchase of food products with federal fund. Vendor will purchase, to the maximum extent possible, domestic commodities or products that are either (1) an agricultural commodity produced in the United States (U.S.) or (2) a food product processed in the U.S. substantially using agricultural commodities produced in the U.S.
 - b. The SFA by participating in the federal school meal programs is required to purchase domestic commodities and products for school meals to the maximum extent practicable. Domestic commodity or product means an agricultural commodity produced in the U.S. and a food product processed in the U.S. substantially (at least 51 percent) using agricultural commodities which are produced in the U.S. (7 CFR 210.21, 220.16).
 - c. Bidders are required to identify foods offered in their bid that do not meet this requirement. Further, the awarded vendor shall notify the SFA in advance of delivery of any product not compliant with this requirement. Product(s) delivered to the SFA which are not compliant with this requirement will be returned and invoice(s) for those items will not be paid.
 - d. Purchasing from local producers supports the Buy American requirements. Locally grown and raise agricultural products go beyond just produce and include chicken, turkey, milk, cheese, and grain items. The purchasing institution identifies the geographical area within which unprocessed locally

raised and grown agricultural products will originate from. This area can include counties, states or regions of the US. For more information check out Procuring Local Foods on the USDA website.

2. Develop a strategy to utilize your full USDA Foods entitlement. There are four main methods for utilizing USDA Foods entitlement.
 - a. Regular USDA Foods provides canned, dry, and frozen items through USDA Food surveys offered twice a year. Products are delivered through your selected distributor as product is available at the state contracted warehouse.
 - b. Net Off Invoice diverts entitlement to for specific commodities such as chicken, turkey, and cheese to manufacturers of commercial products containing the commodities (pizza, fajita, cheese slices, chicken strips, turkey burgers), which are then delivered by your distributor, as you need it with regular deliveries. Invoice charges for the products are reduced by the amount of USDA Foods incorporated into the product. When the diverted entitlement is used up the same commercial product can be purchased for the full price.
 - c. DoD Fresh allows for the distribution of a wide variety of domestically grown fresh produce directly to schools on a regular basis through the selected produce distributor.
 - d. Fee for Service diverts beef and pork to USDA approved processors to be converted into more usable end products.

Monitor Vendor Compliance

Vendor compliance with Buy American requirements specified in contracts can be monitored as products are delivered, through requiring vendor certification statements and requiring documentation that products meet Buy American standards.

1. When products are delivered training staff to look for the country of origin, distribution locations and/or packaging locations on products.
2. Require vendors to sign statements certifying that products delivered comply with Buy American requirements. Below are examples of certifications statements.
 - a. We require bidders to certify that _____ was processed in the U.S. and contains over _____ of its agricultural food component from the U.S.
 - b. We certify that _____ was processed in the U.S. and contains over 51 percent of its agricultural food component, by weight or volume, from the U.S.," with space for the supplier to fill in the name of the product and its specific percentage of the domestic agricultural food component contained therein.
3. Request documentation for items that are difficult to determine the origin of ingredients or place of manufacturing.

