

Buy American Provision Reference Sheet

Buy American Provision Description

The Buy American provision applies to all commercial food and beverage purchases made with federal School Nutrition Program (SNP) funds. This provision requires school food authorities (SFAs) and third parties, acting on behalf of SFAs, to purchase domestically grown and processed food and beverages (commodities) to the maximum extent practicable ([7 C.F.R. § 210.21\(d\)](#), [7 C.F.R. § 220.16\(d\)](#)).

A “domestic commodity or product” is defined as one that is produced in the United States (U.S.) and is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7 C.F.R. 210.21(d)(1)(i) and [USDA Memo SP 23-2024](#). ***Products must be both produced and processed in the U.S.***

The term “substantially” means that over 51 percent of a food product consists of agricultural commodities that were grown domestically in the United States.

Program Requirements

The United States Department of Agriculture’s (USDA) Final Rule, as described in Memo SP 23-2024, summarizes all requirements SFAs must adhere to in order to maintain compliance with federal regulations.

Applicable Programs

- National School Lunch Program (NSLP)
- School Breakfast Program (SBP)
- Afterschool Snack Program (ASP)
- Child and Adult Care Food Program (CACFP)
- Summer Food Service Program (SFSP)
- Seamless Summer Option (SSO)

Applicable Commodities

- All program foods, including milk and juice
- USDA Foods products
- Herbs
- Spices and Oils

Caps on Non-Domestic Food and Beverage Purchases

The limit on the percentage of total commercial food costs from non-domestic foods will be phased in as follows:

- School year 2025-2026: 10 percent
- School year 2028-2029: 8 percent
- School year 2031-2032: 5 percent

SFAs are responsible for tracking all non-domestic commercial food purchases utilizing either the Tennessee Department of Education (department) [Buy American Tracker](#) tool or an internal document that contains the same information.

Limited Exceptions to the Buy American Provision

SFAs must maintain documentation to demonstrate the use of exceptions when non-domestic products are received from the commercial food vendor, *unless* the item appears on the FAR Nonavailable Articles list ([48 C.F.R. § 25.104](#)).

There are two (2) limited exceptions for the use of a non-domestic product:

1. The product is listed on the FAR Nonavailable Articles List and/or is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality.
2. Competitive bids reveal the costs of U.S. products are significantly higher than the non-domestic product.

Procurement Requirements

All solicitations, contracts, and agreements must comply with all federal guidance and regulations regarding the Buy American provision for the purchase of commercial commodities (products) using federal SNP funds. ***Contracts or agreements issued after the implementation of USDA's Final Rule must be amended to include updated verbiage and requirements.***

Procurements for non-food products and/or services DO NOT need to include the Buy American Provision.

Buy American Provision Clause

The SFA must ensure that all solicitations (including Invitation for Bid [IFB] and Request for Proposal [RFP] prototypes), contracts, and agreements contain the required verbiage to satisfy the minimum federal requirements for the Buy American Provision.

Buy American clauses must contain the following:

NOTE: The verbiage listed below is for commercial food contracts for self-operational SFAs. Additional verbiage is required for SFAs who procure for and utilize a Food Service Management Company (FSMC) or vended meal provider.

- Description of the Buy American Provision (General Statement).
- Required certification from offerors (vendors/contractors), including a signature page.
- Statement with the federal SNPs that the SFA participates in (e.g., National School Lunch Program and School Breakfast Program), including additional federal Child Nutrition Programs, such as CACFP At-Risk Snack or Supper.
- Definition of a “domestic commodity or product” and the term “substantially.”
- Requirements for “limited exceptions” to non-domestic purchases and/or substitutions.
- Requirements for the vendor/contractor to request non-domestic exceptions for SFA approval prior to receiving a food order:
 - Form to use (e.g., “Buy American Certification Form”)
 - Submission of the request in writing to the designated contact person with the email provided
 - Submission of the request for a minimum of the designated amount of operational or calendar days in advance of delivery

- Caps on non-domestic purchases per school year
- Documentation requirement for all non-domestic items not included on the FAR Nonavailable Article List
- Documentation requirements and reporting procedures for SFA tracking purposes (e.g., sales/velocity reports submitted quarterly)

Contract Amendments

Active contracts and agreements procured prior to the implementation of USDA's Final Rule must be amended to incorporate the updated federal regulations for the Buy American provision. Contract amendments must be developed by the SFA or designated agent on behalf of the SFA or third-party purchasing entity.

The Buy American Provision must contain the following revisions:

NOTE: The language below has been developed by the department's SNP for use by SFAs. SFAs are not obligated to utilize this exact verbiage. Revisions for the purposes of issuing an amendment are in *red and italicized*.

1. Buy American Provision clause must include citations for *7 C.F.R. § 210.21(d) and USDA Memo SP 23-2024*, with the note that *"Products must be both produced and processed in the United States."*
2. Definition of *substantially*:
The term, "substantially," means over 51 percent of a food product consists of agricultural commodities that were grown domestically in the United States. (USDA Memo SP 23-2024).
3. Limited exceptions clause for non-domestic food purchases:
The SFA may purchase non-domestic foods per "limited exceptions" codified in regulations by USDA in the following circumstances:
 - *Products are listed on the Federal Acquisitions Regulations Nonavailable Articles list found at 48 C.F.R. § 25.104 (Note: while these items do count towards the non-domestic food purchases cap, nonavailable articles are exempt from documentation requirements;*
 - *Products are not produced or manufactured domestically in sufficient and reasonably available quantities of a satisfactory quality; and/or*
 - *The cost of a U.S. product is significantly higher than the non-domestic product.*
4. Exceptions for non-domestic products may not exceed the following thresholds per total program food cost per school year *per USDA's Final Rule described in USDA Memo SP 23-2024:*
 - *School year 2025-2026: 10 percent*
 - *School year 2028-2029: 8 percent*
 - *School year 2031-2032: 5 percent*
5. SFA certification of the percentage of domestic content in the products supplied to the SFA by the vendor to show compliance with the Buy American Provision per *7 C.F.R. § 210.16(d) and 7 C.F.R. § 210.21(d)*.
6. Procedure for the SFA to request and receive documentation (e.g., sales/velocity reports) from the vendor/contractor at least annually to track non-domestic commercial food purchases.

All amendments issued must contain an “Acknowledgement Statement” to be signed and dated by authorized representatives for both the SFA and vendor/contractor.

Contract Management

The SFA must maintain effective contract management procedures to ensure the vendor/contractor adheres to the requirements of the Buy American Provision.

Steps to ensure compliance:

1. Ensure product packaging and/or delivery invoice/receipts/purchase orders identify the country of origin.
2. Include a “Buy American Clause” in all product specifications, bid solicitations, purchase orders, and other procurement documents.
3. Establish a Buy American Provision monitoring procedure to include documenting all limited exceptions and conducting periodic on-site reviews of stock on hand to ensure products comply with the Buy American Provision.
4. Train all school nutrition staff on the Buy American Provision requirements and contract management procedures annually, and as needed.
5. Retain documentation for all approved exceptions according to federal recordkeeping requirements.
6. Utilize the department’s *Buy American Tracker* tool to track non-domestic purchases per total commercial program food costs.
7. Determine whether non-domestic food costs exceed the maximum percentage allowed, and contact the department to request an accommodation, if necessary.