

# Buy American

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**Issue Number:** CNU E-Memo 09-2025

**Correspondence Date:** 8/26/2024

**Regulatory Authority:** 7 CFR 210.21, 7 CFR 220.16, [SP 23-2024](#)

**Response Required:** No

**Attention:** Superintendents, Child Nutrition Directors and Managers

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The purpose of this memo is to provide information regarding implementation of the Buy American provision. The United States Department of Agriculture (USDA), Food and Nutrition Service (FNS) published final rule titled, [Child Nutrition Programs: Meal Patterns Consistent With the 2020-2025 Dietary Guidelines for Americans](#). This final rule contained updates regarding the Buy American provision. While this rule is effective July 1, 2024, USDA is gradually phasing in required changes. The Buy American provision requires school food authorities (SFAs) to purchase, to the maximum extent practicable, domestic commodity products. Domestic commodity products are defined as an agricultural commodity that is produced in the United States; and a food product that is processed in the United States substantially using agricultural commodities that are produced in the United States. The final rule provides a definition of “substantially” using agriculture commodities that are produced in the United States to mean that over 51 percent of a food product must consist of agricultural commodities that were grown domestically. Lastly, the final rule outlines in regulations the statutory requirements for fish and fish products to be compliant with Buy American provision, requiring that farmed fish must be harvested within the United States or any territory of 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.

To ensure compliance with the Buy American provision the SFA must ensure solicitation and contract language includes the requirement for domestic agricultural commodities and products. The SFA must also include the Buy American requirement in its documented procurement procedures. It is the responsibility of the SFA to monitor contracts in accordance with 2 CFR 200.318(b), in order to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Monitoring is also accomplished by reviewing products and delivery invoices or receipts to ensure the domestic food that was solicited and awarded is the food that is received.

When a Food Service Management Company (FSMC) purchases food or food products on behalf of the SFA, the FSMC must follow the same Buy American provisions and exceptions that are required of the

SFA. To ensure that the FSMC follows the Buy American provisions contained in 7 CFR 210.21(d) and 7 CFR 220.16(d) the SFA must verify the provisions are contained in the procurement documents of the FMSC. When exceptions to the Buy American are identified as in SP 23-2024, the FSMC must notify the SFA in advance that a nondomestic substitute may be necessary. The SFA can approve the use of the foreign substitute or require a domestic substitution for the product.

There are limited exceptions to the Buy American provision which allow for the purchase of foods not meeting the domestic standards. These exceptions, as determined by the SFA, are:

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

Before utilizing an exception, alternatives to purchasing non-domestic food products should be considered. For example, SFAs should ask:

- Are there other domestic sources for this product?
- Is there a domestic product that could be easily substituted?
- 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 AMS, to determine the cost and availability of domestic and nondomestic foods?

SFAs wishing to utilize an exemption to the Buy American provision must complete a [Buy American Justification Form](#), for products listed on the Nonavailable articles list a Buy American Justification form is not required. The form and any supporting documentation should be retained for five years plus the current year.

The rule also implements a cap on the amount of non-domestic food purchases a school may make when utilizing the exceptions. Items listed on the Federal Acquisitions Regulations Nonavailable articles list must be counted toward the cap on non-domestic purchases when it goes into effect

School Year 2025-2026 (July 1, 2025)	10 percent cap on non-domestic food purchases
School Year 2028-2029 (July 1, 2028)	8 percent cap on non-domestic food purchases
School year 2031-2032 (July 1, 2031)	5 percent cap on non-domestic food purchases

The state agency will monitor compliance with the Buy American provision as part of the Administrative and Procurement Review.

If you have any questions, please contact your Area Specialist at 501-324-9502.