

# Buy American *In a Nutshell*

## Purpose of the Buy American Provision

The USDA requires that School Food Authorities (SFAs) purchase, to the maximum extent practicable, domestic commodities or products. It is each school's responsibility to ensure USDA dollars are spent on American grown products. Non-domestic items must have sufficient documentation, as outlined below.

## Definitions

A "domestic product" is defined as an agricultural commodity or product that is produced or processed in the United States (U.S.) (including Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands), using substantial agricultural commodities that are domestic. "Substantial" means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically.

## Documentation for non-domestic items

There are limited exceptions to the Buy American Provision. These exceptions allow for the purchase of products that do not meet the "domestic" standard when use of domestic products is not practicable. The following must be recorded for each non-domestic product purchased:

- Date (date documentation is completed)
- Name of product
- Country of origin
- Reason for purchase (must select one)
  - **Cost analysis** – The SFA determined the cost of the domestic product was exceptionally more than the cost of the non-domestic alternative.
    - *Ex. If a domestic product costs 20 percent more than non-domestic product then the SFA will purchase the non-domestic product.*
  - **Seasonality** - The product is not available domestically during certain times of the year.
    - SFA is required to record or list the months that the domestic product is not available.
    - *Ex. Blueberries are not available domestically during the months of December – June.*
  - **Availability** – The product is not available to purchase domestically.
    - *Ex. pineapples, bananas, and mandarin oranges*
  - **Substitution** - A domestic product is unavailable to the distributors so they must substitute a non-domestic product.
    - The SFA is required to record the reason the distributor substituted the product.
    - *Ex. At the time of ordering/shipping domestic product was unavailable/damaged at distributor site and domestic options could not be substituted. As a result, non-domestic product was substituted in its place.*
  - **Distribution** - The SFA's contracted distributor is unable to source domestic products so the distributor does not carry the domestic product.
    - The SFA is required to record the reason the distributor carries the non-domestic product.
    - *Ex. Due to supply/constraints/recall of domestic product, the distributor was unable to source domestic product leaving only non-domestic option available for order fulfillment.*
  - **Other** - Please provide a written explanation.
    - *Ex. The SFA received a donation of non-domestic oranges.*
    - *Ex. The SFA did not use School's Nonprofit Food Service Account to purchase the non-domestic products.*

A [Buy American - Non Compliant Product List template](https://dpi.wi.gov/sites/default/files/imce/school-nutrition/doc/buy-american-noncompliant-list.docx) is available on the Buy American webpage (<https://dpi.wi.gov/sites/default/files/imce/school-nutrition/doc/buy-american-noncompliant-list.docx>). You may create your own tracking tool, so long as the required information from above is recorded for each product.

### **Reading product labels**

If no country of origin is identified on the label, then the SFA must get documentation/certification from the distributor or supplier. Below is sample language contractors may use to comply with the Buy American provision; however, language should be tailored to the needs of the contracting parties:

“We certify that (insert product name) was processed in the U.S. and contains over 51 percent of its agricultural food component, by weight or volume, from the U.S.”. This is acceptable via email.

The label should indicate if the product is grown, processed, and packed in the U.S. and/or Territories. If the label indicates the product is distributed or packed in the U.S, but the country of origin is not listed, this product requires the distributor’s certification as described above.

### **When to review inventory and update documentation**

For domestic products without country of origin labeling (COOL), consider the [Buy American Provision Attestation for Agricultural Product\(s\) Purchased Between School and Contractor](https://dpi.wi.gov/sites/default/files/imce/school-nutrition/doc/buy-american-attestation.docx) (<https://dpi.wi.gov/sites/default/files/imce/school-nutrition/doc/buy-american-attestation.docx>). By signing this Attestation, the Contractor is attesting that the agricultural product(s) listed are compliant with the Buy American Provision as defined in 7 CFR Part 210.21(d).

### **When to review inventory and update documentation**

Review inventory at minimum of once per semester and as growing seasons change. Be mindful of new products, special orders, and product substitution. Each product only needs to be documented once through the term of the contract, unless product information or reason for purchase changes.

### **Adding language to your contract**

Include the Buy American Provision in solicitations, contracts, and product specifications. The SFA should maintain written procedures to ensure product received and inventory are compliant with the Buy American procedure. Sample written [Procurement Contract Management Procedures](https://dpi.wi.gov/school-nutrition/procurement/contract-procedures/contract-management) and Buy American monitoring procedures may be used and adjusted to meet the SFA’s needs (<https://dpi.wi.gov/school-nutrition/procurement/contract-procedures/contract-management>).

### **Common non-domestic items found in schools (this is not an exhaustive list)**

Fresh fruits and vegetables	Mandarin oranges	Fruit or vegetable juice
Frozen vegetables	Mixed tropical fruit	Gravy mix
Olives	Bananas	Balsamic vinegar
Canned mushrooms	Kiwis	Olive oil
Pineapple	Grapes	

### **USDA Procurement Specialists**

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William F. Goodling Child Nutrition Reauthorization Act of 1998 Section 104(d)(Public Law 105 336) added a provision, Section 12(n) to the National School Lunch Act (NSLA) (42 USC 1760(n))  
USDA, Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program, SP 38-2017