

Date: May 29, 2024

Memo code: SP 23-2024

Subject: Buy American Provisions Related to the Final Rule Titled, *Child Nutrition Programs: Meal Patterns Consistent With the 2020-2025 Dietary Guidelines for Americans*

To: Regional Directors
Child Nutrition Programs
All Regions
State Directors
Child Nutrition Programs
All States

On April 25, 2024, FNS published the final rule, *Child Nutrition Programs: Meal Patterns Consistent With the 2020-2025 Dietary Guidelines for Americans* ([89 FR 31962](#), April 25, 2024). Among other provisions, this rule finalizes regulations that strengthen the School Meal Programs' Buy American provision.

The Buy American provision requires school food authorities to purchase, to the maximum extent practicable, domestic commodities or products. The Buy American provision applies to school food authorities located in the 48 contiguous United States. Although Alaska, Hawaii, and the U.S. territories are exempt from the Buy American provision, school food authorities in Hawaii are required to purchase food products produced in Hawaii in sufficient quantities. Likewise, school food authorities in Puerto Rico are required to purchase food products produced in Puerto Rico in sufficient quantities.

This provision supports the mission of the Child Nutrition Programs, which is to serve children nutritious meals and support American agriculture. Program regulations that govern this provision apply to school food authorities that operate the National School Lunch and/or

School Breakfast Programs and are found at 7 CFR 210.21(d) and 7 CFR 220.16(d), respectively. This memorandum provides information regarding implementation of the Buy American provisions recently codified in the final regulations.

The final rule is effective on July 1, 2024; some provisions have phased-in implementation dates. The following table compares previous requirements with the updated requirements for each provision.

Buy American Provisions

Provision	Previous Requirement	Updated Requirement	Regulations Impacted	Implementation Date
Limited Exceptions to the Buy American Requirement	<p>Through policy guidance, USDA detailed two limited exceptions for price and availability that school food authorities could use to purchase non-domestic items under the requirement that school food authorities purchase domestic products to the maximum extent practicable.</p>	<p>USDA codified in regulations the two limited exceptions when non-domestic foods may be purchased by school food authorities. USDA also added to the first exception the option to use the 48 CFR 25.104 Nonavailable articles list, as a list of excepted items.</p> <p>The final rule codifies the two limited exceptions as follows:</p> <ol style="list-style-type: none"> 1. The product is listed on the Federal Acquisitions Regulations Nonavailable 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 2. Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product. 	<p>7 CFR 210.21(d)(5) 7 CFR 220.16(d)(5)</p>	<p>July 1, 2024</p>

Provision	Previous Requirement	Updated Requirement	Regulations Impacted	Implementation Date
<p>Cap on Non-Domestic Food Purchases</p>	<p>USDA had not previously defined a dollar amount or threshold limiting commercial non-domestic food purchases.</p>	<p>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.</p> <ul style="list-style-type: none"> • Beginning in SY 2025-2026, the non-domestic food purchases cap will be 10 percent. • Beginning in SY 2028-2029, the non-domestic food purchases cap will be 8 percent. • Beginning in SY 2031-2032, the non-domestic food purchases cap will be 5 percent. <p>This phased-in approach will allow schools to gradually adjust to the new requirement and will allow USDA to continue to collect data on use of the Buy American 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.</p>	<p>7 CFR 210.21(d)(5) 7 CFR 220.16(d)(5)</p>	<p>July 1, 2025</p>

Provision	Previous Requirement	Updated Requirement	Regulations Impacted	Implementation Date
Exception Documentation and Reporting Requirements	Through policy guidance, USDA instructed school food authorities to maintain documentation justifying the use of exceptions.	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 Nonavailable articles list are exempt from the documentation requirement, but these items must be counted toward the cap on non-domestic purchases when that goes into effect.	7 CFR 210.21(d)(5)(iii) 7 CFR 220.16(d)(5)(iii)	July 1, 2024
Procurement Procedures	Through policy guidance, USDA instructed school food authorities to include Buy American provisions in documented procurement procedures, solicitations, or contracts.	USDA codified in Program regulations the requirement for school food authorities to include the Buy American provisions in all procurement procedures, solicitations, and contracts. Inclusion of this language in procurement materials is already widely implemented by school food authorities and is codified through this rulemaking.	7 CFR 210.21(d)(3) 7 CFR 220.16(d)(3)	July 1, 2024

Provision	Previous Requirement	Updated Requirement	Regulations Impacted	Implementation Date
Definition of “Substantially”	Through policy guidance, USDA defined the term “substantially”.	USDA codified the definition of substantially that was previously provided in guidance. The definition is as follows: “Substantially using agriculture commodities that are produced in the United States” means over 51 percent of a food product must consist of agricultural commodities that were grown domestically.	7 CFR 210.21(d)(1)(ii) 7 CFR 220.16(d)(1)(ii)	July 1, 2024
Clarification of Requirements for Harvested, Farmed, and Wild Caught Fish	The statute and USDA guidance outlined the applicability of Buy American requirements to fish or fish products, but Program regulations did not previously include any specific requirements or information on the Buy American provision’s applicability to fish.	USDA codified in Program regulations, with no changes from current statutory requirements or policy guidance, language that addresses how Buy American requirements apply to fish and fish products. <ul style="list-style-type: none"> • 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. 	7 CFR 210.21(d)(6) 7 CFR 220.16(d)(6)	July 1, 2024

Monitoring of Buy American Provisions

The [Child Nutrition Program Integrity](#) rule recently added the review of Buy American requirements to regulations that govern State agency reviews of school food authorities. As there may be school food authorities that have challenges in meeting the non-domestic food purchases cap, State agencies will review this requirement through the Administrative Review process.

The *Child Nutrition Programs: Meal Patterns Consistent With the 2020-2025 Dietary Guidelines for Americans* final rule provides States with discretion to allow an accommodation for temporary relief from this requirement while the school food authority works to increase their domestic food purchases (see 7 CFR 210.21(d)(8)). USDA will closely monitor implementation of the cap and provide guidance as needed to State agencies that may need to use this accommodation.

Technical Assistance

USDA will continue to provide guidance and technical assistance on these provisions as they are implemented, including on the implementation of the cap and tracking the use of exceptions and non-domestic purchases. In response to requests from commenters on the final rule, USDA is providing an optional template for documenting Buy American exceptions.

This optional template will help schools organize documentation and can be used to track the costs and exceptions related to non-domestic food purchases. The template will also help school food authorities more easily calculate the cost of non-domestic purchases as a percentage of total purchases.

State agencies are reminded to distribute this information to Program operators immediately.

Program operators should direct any questions regarding this memorandum to the appropriate State agency. State agencies should direct questions to the appropriate FNS [Regional Office](#).

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Child Nutrition Programs