

SFAs participating in the National School Lunch Program (NSLP) and/or School Breakfast Program (SBP) must follow the Buy American Provision found in program regulations 7 CFR 210.21(d) and 7 CFR 220.16(d), respectively. A domestic commodity or product means: 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. 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. **A School Food Authority (SFA) must purchase, to the maximum extent practicable, domestic commodities or products.**

There are two limited circumstances, or “exceptions”, when SFAs may purchase non-domestic foods. SFAs must make a case-by-case determination to purchase a non-domestic product and are responsible for defining key terms related to the below Buy American exceptions, such as “significantly higher” cost.

Exception 1

The product is listed on the [Federal Acquisitions Regulations \(FAR\) 25.104](#) 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.

Exception 2

Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.

Please note, items purchased under an exception for the NSLP still count toward the 10% threshold for non-domestic food purchases.

Important Information Regarding the Integrity Rule

Effective July 1, 2025 - Non-domestic food purchases by the SFA cannot exceed the annual threshold, which for SY 2025-26 is 10 percent of total commercial food purchases

Beginning School Year (SY) 2025-26, there are new thresholds on non-domestic foods (including items on the [Federal Acquisitions Regulations \(FAR\) 25.104 Non-available articles list](#)):

- 10% by SY 2025-26
- 8% by SY 2028-29
- 5% by SY 2031-32

Tracking Requirements

SFAs must track:

- Use of exceptions
- All food purchases in NSLP and SBP to determine total food costs
- Non-domestic food purchases not exceeding the annual threshold

SFAs must maintain documentation to demonstrate when using an exception (except for items that appear on the FAR list-the FAR list can serve as the documentation for those items). SFAs must also track the purchases of all non-domestic foods purchased under the exception to ensure that the annual threshold is not exceeded. **Please note, items purchased under an**

exception for the NSLP still count toward the 10% threshold for non-domestic food purchases.

The Optional Exceptions Tracking Standards form provides:

- Documentation for Buy American exceptions
- A space to track costs of non-domestic purchases
- Calculation of the percentage costs over a specified time frame

Resources for Tracking

USDA and Maine Dept of Education have provided two tools to aid in the tracking:

[USDA Standard Form for Buy American Tracking](#)

[Maine Department of Education Buy American Tracking Tool](#)

Temporary Accommodation

In SY 2025-26 and using the Food and Nutrition Services (FNS) guidance outlined at SP 09-2025, Maine DOE will offer an accommodation that will temporarily allow the SFA to exceed the 10 percent threshold for non-domestic food purchases. Maine DOE will also provide technical assistance to SFAs to support the temporary accommodation consistent with the availability of the two regulatory exceptions for non-domestic purchases, if the SFA demonstrates they are unable to meet the requirement. Temporary accommodation for the threshold requirement is only available for non-domestic purchases that qualify under one or more of the regulatory exceptions outlined above. To receive this temporary accommodation, SFAs must request the temporary waiver. The procedure to request a waiver can be found here: <https://www.maine.gov/doe/schools/nutrition/financial>.

Tips to Ensure Compliance with the Buy American Provision

- Plan menus around USDA foods
- Participate in Farm and Sea to School programs and the Local Foods Fund
- Include geographic preference and the Buy American Provision in procurement procedures and product specifications when conducting procurement.

Guidance Documents

- [USDA Memo SP 09-2025](#) - Buy American Accommodation Process for School Year 2025-2026
- [USDA Memo SP 23-2024](#) - Buy American Provisions Related to the Final Rule

Frequently Asked Questions (FAQ's):

1. **Is it possible to shorten the period of Buy American compliance assessment to a reference period rather than reviewing annual purchases?** No, because the requirement is based on total annual commercial food purchases in recognition that nondomestic and domestic purchases may fluctuate month to month, State agencies will need to review the entire year.

Non-Domestic Food Purchases:

2. **Would I include garnishes or other ingredients, such as pineapple on pizza, as part of the non-domestic cap, even if I'm not crediting as a component?** Yes, all food products, additions, and garnishes, would need to be included if they can be categorized as a component. For example, pineapple is in the fruit component, therefore it would need to be tracked.
3. **Are items purchased for the Fresh Fruit & Vegetable program included in the non-domestic cap?** No, items purchased for FFVP do not count toward the cap on non-domestic purchases. Only items served as part of the National School Lunch Program (NSLP) and School Breakfast Program, including the NSLP Afterschool Snack Program, are included in this requirement.
4. **Must items on the FAR list be counted as part of the non-domestic cap (such as spices and mandarin oranges)?** Yes, they must be counted towards the cap. Items on the FAR list are considered to be an "exception" to the Buy American rule because they have been determined to be non-available in accordance with 25.103(b)(1) and further documentation is not needed to justify their purchase. They do still count towards the cap.
5. **The process of tracking non- domestic items seems daunting. What are some tips to assist with this?**
 - a. Recruit high school students or interns to help with entering information on the tracking tool
 - b. Have staff track non-domestic items on their monthly inventory.

Total Commercial Food Purchases:

6. **Do I include local foods purchases in my calculation of total foods purchased?** Yes, local foods are included in the calculation.
7. **Do I include a la carte/catering purchases under the total foods purchased?** Yes, all purchases made in the non-profit food service account, including a la carte/catering, must be included.
8. **For USDA foods ("brown box" items), is the delivery fee and storage fee included in the total foods purchased calculation?** No, this should be categorized as "other" cost and is not a food cost. Items purchased through USDA foods are not included in the tracking as they are not considered to be commercial food purchases.
9. **Are Net Off Invoice (NOI) items included in the total foods purchased calculation?** Yes, after the NOI discount has been applied.

*This document is subject to change and is based on current USDA information.