Section 17b

Buy American

Section 17b, Buy American

Update Guide	
June 8, 2026	Replaced references to *ARM Section 14a, USDA Foods Processing*. This section has been removed from the ARM and renamed to the "USDA Foods Processor Handbook." The handbook is located under *Policy/Handbook* on the *Food Distribution Program for Child Nutrition Programs* landing page on SquareMeals.
May 5, 2025	Incorporated the remaining Buy American provisions from the final rule, *Child Nutrition Programs: Meal Patterns Consistent With the 2020-2025 Dietary Guidelines for Americans*. - Exception Threshold - Exception Accommodation Clarified the following guidance: - Determining Country of Origin
February 14, 2025	Incorporated the Buy American documentation provisions for exceptions from the final rule, *Child Nutrition Programs: Meal Patterns Consistent With the 2020-2025 Dietary Guidelines for Americans*.
December 7, 2023	Clarified guidance on the requirement of documenting solicitations.
May 19, 2023	Created new *Definitions* and *Contact Information* sections, located at the beginning of the *Administrator's Reference Manual (ARM)*. Removed definitions and contact information from this section.
July 28, 2022	Updated *Section 17b, Buy American* to fix broken links. Clarified the following guidance: - Definitions
August 16, 2021	Updated the definition of aggregate.
May 27, 2021	Updated *Section 17b, Buy American* to clarify the following: - Definitions

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Buy American

The guidance in this section is intended to assist contracting entities (CEs) in implementing the Buy American provision in procurement activities.

The Buy American provision requires CEs and third parties, acting on behalf of CEs, to purchase domestically grown and processed food to the maximum extent practicable.

Per USDA guidance, this provision applies to all food purchases made with funds from the nonprofit food service account. Therefore, this section applies to food purchased for the following programs:

- School Nutrition Programs (SNP)
  - National School Lunch Program (NSLP)
  - School Breakfast Program (SBP)
  - Afterschool Care Program (ASCP)
  - Fresh Fruit and Vegetable Program (FFVP)
  - Seamless Summer Option (SSO)
  - Special Milk Program (SMP)
- All CACFP programs administered by the CE, including CACFP At-Risk[1]
- SFSP[1]
- All other foods purchased with funds from the nonprofit food service account

Information Box 1

Procurement

Procurement is the act of obtaining goods or services in exchange for money or value. Value may be monetary or material worth, but it may also be something that has usefulness that can be exchanged for something of worth, merit, or importance.

The guidance in this section is intended to be used with the procurement and financial guidance provided in the following *Administrator's Reference Manual (ARM)* sections:

- *Section 14, USDA Foods*
- *Section 15, Program Integrity*
- *Section 16, Financial System*
- *Section 16a, Contract Management*
- *Section 17, Procurement*
- *Section 17a, Procurement Procedures*
- *Section 17c, Cooperative Purchasing*
- *Section 18, Food Service Contracts*
- *Section 23, Food Product Documentation*

[1] Only applies to School Food Authorities (SFAs) that operate CACFP or SFSP.

- *Section 26, Food Safety*
- *Section 27, Professional Standards*
- *Section 30, Records Retention*

Information Box 2

Implementation of 2 Code of Federal Regulation (CFR) Part 200

The updates to this section include the consolidated 2 Code of Federal Regulation (CFR) Part 200 which replaced existing rules at 7 CFR Parts 3015, 3016, 3019, and 3052, and the following Office of Management and Budget (OMB) guidance documents; 2 CFR Part 220 (A-21), A-50 (sections related to audits), 2 CFR Part 225 (A-87), A-89, A-102, A-110, 2 CFR Part 230 (A-122), and A-133.

2 CFR Part 200 primarily serves to consolidate the previous regulations into one location as a convenience and for clarity. For procurement, 2 CFR Part 200 clarifies existing regulation and adds one new flexibility—micro-purchasing.

[NOTE: 2 CFR Part 200 also applies to all financial and accounting practices. Section 17, Procurement only addresses issues related to procurement. Other finance and accounting issues are addressed in Section 16, Financial System.]

Conflicting Program Regulations

For CEs operating Child Nutrition Programs (CNPs), there are federal, state, and local regulations that govern the actions of the CE. When there is a conflict between USDA regulations and other regulations, the CE must follow USDA regulations for the use of CNP funds. If other applicable federal, state, or local regulations do not conflict with USDA regulations, the CE will follow the most restrictive other federal, state, or local regulations. All programs that receive federal funds are required to follow 2 CFR Part 200 unless federal legislation supersedes 2 CFR Part 200.

Education Department General Administrative Regulations (EDGAR)

CEs receiving funds through the United States Department of Education are required to follow the regulations described in the ***Education Department General Administrative Regulations (EDGAR)*** for those funds, which incorporates 2 CFR Part 200. However, Child Nutrition Programs (CNPs) are required to follow USDA regulations for financial management, including procurement. While there are regulations in EDGAR that conflict with USDA regulations, in most situations, CEs will find the regulations to be compatible. However, if there is a regulatory conflict, CEs are required to follow the USDA regulations for all CNP funds (income, allowable and unallowable costs, and procurement).

Buy American Purchases

The Buy American provision applies to all food purchases made with SNP funds. This provision requires CEs and third parties, acting on behalf of CEs, to purchase domestically grown and processed food to the maximum extent practicable.

Food Products That Meet the Buy American Provision	Food Products That Do Not Meet the Buy American Provision
– Food products grown domestically, which include products grown in the United States and its territories: Guam, American Samoa, the Virgin Islands, Puerto Rico, and the Northern Mariana Islands. – Processed food products with over 51% of the final product consisting of agricultural foods that were grown domestically and processed into final end products in the United States.	– Food products grown and processed in another country. – Food products grown in another country and processed in the United States. – Products grown in the United States and processed in another country.

Administrator's Reference Manual (ARM), Section 23, Food Product Documentation provides detailed information on how to identify the origin of a product.

The Buy American provision does not apply to spices.

CEs may use local preference to assist them in purchasing food grown in the United States. See the *Administrator's Reference Manual (ARM), Section 17, Procurement* for additional information on local preference.

Determining Country of Origin

Often, the country of origin can be determined based on product labeling. However, when this is unavailable, CEs should ask the supplier, i.e., manufacturer or distributor, for specific information about the percentage of U.S. content in the product. To be able to document the domestic content, CEs must include in their bidding process a requirement for certification such as: "We require that suppliers certify the food product was processed in the U.S. and specify the percentage of U.S. content, by weight or volume, in the food component of processed food products supplied to us."

Written Procurement Procedures

CEs are required to have written procurement procedures that reflect applicable local, state, and federal regulations that include, but are not limited to, checks and balances that provide internal controls for all financial matters. Written procurement procedures must include the Buy American provisions. See *Administrator's Reference Manual (ARM), Section 17a, Procurement Procedures* for additional information on procurement procedures.

Solicitations and Contracts

[NOTE: For this section, when the word contract is used, the guidance applies to both contracts and agreements, as appropriate.]

To address the Buy American provision in solicitations and contracts, CEs will incorporate the following guidance:

- Must require documentation from offerors, including statements on contracts and solicitations that all food products will meet the Buy American provisions.

  A CE may require all contractors to sign a certification that the contractor will adhere to the Buy American provision; however, the solicitation and contract must have a statement requiring that the contractor provide food products that meet the Buy American provision.

  USDA provides the following sample language for contracts related to the Buy American provisions:

  - General Statement for Solicitations and Contracts:

    The District/State agency/Territory participates in the National School Lunch Program and School Breakfast Program and is required to use the nonprofit food service funds, to the maximum extent practicable, to buy domestic commodities or products for Program meals. A domestic commodity or product is defined as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7 CFR 210.21(d).

  - Required Certification from Offerors

    We require that suppliers certify the food product was processed in the U.S. and certify the percentage of U.S. content, by weight or volume, in the food component of processed food products supplied to us.

    or

    We require bidders to certify that ____ (insert product name) ____ was processed in the U.S. and contains over _____ (insert % of weight or volume) of its agricultural food component from the U.S.

  CEs are not required to use this exact text, but they must include this requirement in solicitations and contracts.

- Must designate an offeror as non-responsive if the appropriate phrasing is not included in the offer.

- Establish penalties, including contract termination, for noncompliance with the Buy American provision.

  If the distributor, supplier, or vendor is repetitively unable to provide domestic food products, the CE should discuss the Buy American requirements with the distributor, supplier, or vendor and determine if the entity is capable of fulfilling the terms and conditions of the contract specific to the Buy American provision.

- Must include a statement in solicitations and contracts that the contractor must provide documentation that demonstrates that food products meet the Buy American Provision.

  A CE may require all contractors to sign a certification that the contractor will adhere to the documentation requirements for Buy American provision;

however, the solicitation and contract must have a statement requiring that the contractor provide food products that meet the Buy American provision.

- Must include a statement in solicitations and contract that the contractor must notify CEs if a delivery contains non-domestic products, so the CE can approve delivery as an exception to the Buy American provision.[2]

  A CE may require all contractors to sign a certification that the contractor will adhere to the notification requirements for Buy American provision; however, the solicitation and contract must have a statement requiring that the contractor provide food products that meet the Buy American provision.

Third-Party Buy American Requirements

Third parties, acting on behalf of CEs, must purchase domestically grown fresh produce and processed food to the maximum extent practicable. Third parties must also provide the CE with all documentation the CE requires (1) for the CE to make a determination that procured food products are compliant with the Buy American provisions and (2) for the CE to make a determination that an exception to the Buy American provision is warranted.

USDA Foods

Non-processed USDA Foods delivered to a CE must be grown in the United States. When USDA Foods[3] items are made into processed end products, 51% of resulting food products must be of United States (US) origin. The food products must be manufactured/processed in the United States.

If a CE receives USDA Foods products that do not meet the Buy American requirements, the CE must refuse delivery and report the issue to TDA immediately.

Buy American Exception

The purchase of a non-domestic food product should be an occasional, not frequent occurrence. As stated in the *Solicitations and Contracts* subsection of this section, if the distributor, supplier, or vendor is repetitively unable to provide domestic food products, the CE may consider this inability to provide domestic food products in determining if the entity is able to fulfill the specifications, technical requirements, and term and conditions of the contract. It is the CE's responsibility to ensure that food products are sourced domestically.

In all cases, the CE—not the distributor, supplier, or vendor—must determine that the use of a non-domestic food product is appropriate. The distributor, supplier, or vendor may provide information that will assist the CE in this determination; however, the decision to purchase or accept delivery of a non-US product must be made and documented by the CE. See the *Sources of Documentation for Buy American Exception* subsection in this section for more information.

Exception Cap

Use of the Buy American exception is capped by a phased-in threshold starting in SY 2025-2026. Non-domestic commercial food purchases cannot exceed the following annual cap, which is a percentage of total commercial food costs.

- Beginning July 1, 2025, the non-domestic commercial food purchase cap is 10%.
- Beginning July 1, 2028, the non-domestic commercial food purchase cap is 8%.
- Beginning July 1, 2031, the non-domestic commercial food purchase cap is 5%.

[2] See the *Buy American Exception* subsection in this section for additional information on this topic.
[3] See *Administrator's Reference Manual (ARM), Section 14, USDA Foods* for additional information on the Buy American requirements for processing USDA Foods.

Buy American Exception Accommodation

For SY 2025 – 2026, TDA has the authority to temporarily allow CEs to exceed the annual cap in limited circumstances by providing an accommodation while the CE is working towards compliance with the Buy American exception cap. The accommodation is only available if offered by TDA as corrective action based on an Administrative Review, and approval is at TDA's discretion. Accommodation approval is short-term as the intent is to temporarily allow the CE to exceed the threshold while working to come into compliance.

Frequency of Approval

The Buy American exception is intended to be an occasional occurrence. Therefore, when a CE approves a Buy American exception, the CE cannot make a blanket approval.

The decision must be by occurrence (i.e., delivery) because the contractor has stipulated in the awarded and signed contract that the contractor is able to provide domestic food products to fulfill the procurement. When the contractor provides information that supports the CE's decision, the same requirement applies, it is not a blanket support; it is by occurrence.

Requirements for an Exception

When a CE determines an exception is allowed, the CE must use USDA prescribed questions in making the decision.

A. Is the food product grown domestically in large enough quantities of a satisfactory quality? Or does 51% of the final processed food product consist of agricultural commodities that were grown domestically?		
	No	**Yes**
	The food product is not produced in sufficient quantities of a satisfactory quality and/or is not of US origin. In this case, it may be possible to grant an exception. Go to Question B.	If the answer is yes, the purchase of a non-domestic food product is not appropriate. The CE must not grant an exception.
B. Are there other sources for purchasing a domestic food product instead of a non-domestic product?		
	No	**Yes**
	There is no alternative source that can provide a domestic product in sufficient quantities and/or of an acceptability quality. In this case, it may be possible to grant an exception. Go to Question C.	If the answer is yes, the purchase of a non-domestic food product is not appropriate. The CE must not grant an exception.
C. Is there another domestic food product that can be easily substituted for the non-domestic food product?		
	No	**Yes**
	There is no substitute domestic food product for this food product. In this case, it may be possible to grant an exception. Go to Question D.	If the answer is yes, the purchase of a non-domestic food product is not appropriate. The CE must not grant an exception.
D. Is the price difference between the domestic product and non-domestic product reasonable in light of the CE's anticipated per meal price?		
	No	**Yes**
	The cost difference in purchasing a non-domestic product is reasonable. In this case, it may be possible to grant an exception. Review the answers for Questions A-D.	If the answer is yes, the purchase of a non-domestic food product is not appropriate. The CE must not grant an exception.
	▼ All NOs ▼	**▼ Any Yes ▼**
	If no is the answer to all questions, the CE may decide to approve an exception.	**If yes is the answer to any one of the four questions, the CE cannot approve an exception.**
	If the CE has documentation that demonstrates that each of these questions has been considered and the non-domestic food product can be approved as an exception, the CE may purchase the non-domestic food product.	

TDA's *Buy American Checklist* is designed to help CEs maintain documentation for an approved exception and is available at *www.SquareMeals.org*. USDA also offers the *Buy American Exceptions Tracking Standard Form Template, which is* available at *https://www.fns.usda.gov/cn/buy-american-provisions*.

Sources of Documentation for Buy American Exception

Items included on the Nonavailable Articles List (FAR List) located at 48 CFR 25.104 do not require documentation for a Buy American exception. The FAR List is located at *https://www.ecfr.gov/current/title-48/chapter-1/subchapter-D/part-25/subpart-25.1/section-25.104*.

All other food items not included in the FAR List require documentation. The following

information sources may assist the CE in documenting an exception to the Buy American provision:

- Information provided by a distributor, supplier, or vendor that supports the CE's decision that an exception is warranted.

  USDA does not allow CEs to use notifications, letters, or lists created by distributors, vendors, other suppliers, or organizations/agencies as the sole source of information to demonstrate that an exception to the Buy American provision is allowable.

- Information available from USDA.

  Agricultural Marketing Resource Center at *www.agmrc.org/commodities-products/* and/or USDA Marketing Resource Center at *www.ams.usda.gov/*

- Information obtained through general Internet agricultural news sources.
- Information from food product catalogs.
- Information from the USDA Foods survey list.

  USDA uses historical data and commodity forecasts to identify food items for the survey list. However, USDA only purchases food items when there is sufficient quantity at the time USDA issues the solicitation. If an item appeared on the survey list and was later dropped from the list, this is an indication that the product may be in short supply.

- Industry newsletters, bulletins, and reports on product availability and pricing.
- Notes created by CEs based on contacts with distributors, suppliers, vendors, or other commodity or agriculture sources.
- Responses recorded on the TDA form *Buy American Checklist for Non-Domestic Food Product Purchases*.[4]

Frequency of Establishing a Buy American Exception

Each time a non-domestic food product is purchased or delivered; the CE must determine if an exception to the Buy American provisions is appropriate.

For Example: A CE received non-domestic canned peppers as part of its regular delivery the first week of January. At that time, the CE determined that the purchase of a non-domestic product was acceptable and retained documentation demonstrating why it is appropriate. In April, the CE again received non-domestic canned peppers as part of its regular delivery. To be in compliance with the Buy American provision, the CE must again determine that the receipt of a non-domestic product is appropriate and retain documentation demonstrating why it is appropriate.

Additional Resources

TDA Resources

TDA resources are available on the SquareMeals website, *www.SquareMeals.org*.

- *Approved Purchase List*—Form designed to provide a list of products

[4] Available at *www.SquareMeals.org*.

approved to purchase with information that will be helpful to menu planners and staff managing the contract.

- *Buy American Checklist for Non-Domestic Food Product Purchases*—Checklist to assist CEs in determining if a non-domestic product is acceptable.

Institute for Child Nutrition (ICN)

- *First Choice*, a handbook for developing an effective procurement process, available at *www.theicn.org*
- *Procurement in the 21st Century*, manual providing specific details on the procurement process, available at *www.theicn.org*
  [NOTE: This resource is not a guidance document, but it does provide useful information.]
- *State Agency Guidance on Procurement*, a series of web-based training on procurement, available at *www.theicn.org*

USDA

- *Understanding Food Qualities Labels*, a manual provided by USDA's Agricultural Marketing Service (AMS) that provides a guide to product labeling that indicates quality, available at *www.ams.usda.gov/sites/default/files/media/AMS%20Product%20Label%20Factsheet.pdf*

Other Websites

- USDA Farm to School website, available at *www.fns.usda.gov/farmtoschool/*

Records Retention

The CE is required to maintain an organized accounting and financial system that includes documentation that demonstrates compliance with program regulations and the history of all procurements. Records retained for procurement must be sufficient to detail the history of procurement for each procured product and/or service, including but not limited to the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. CEs have the option to maintain records on paper or electronically.

Information Box 3

Records Retention

Public and charter schools are required to keep documentation related to school nutrition programs for 5 years.

Private schools, other nonprofit organizations, and residential childcare institutions (RCCIs) are required to keep documentation for 3 years.

These records must be accessible to appropriate CE staff members and federal or state reviewers. TDA may request procurement documentation during both offsite and onsite administrative review processes as well as any additional review specific to procurement.

All documentation or records must be kept on file for a minimum of five years for public and charter schools or three years for private schools, other nonprofit organizations, and residential child care institutions (RCCIs) after the end of the fiscal year to which they pertain.

Procurement System
The CE has documentation that demonstrates that CE has established internal controls to promote program integrity. This includes, but is not limited to, documentation that illustrates the following:

- Written procurement procedures, including, but not limited to, actions or tasks for cost analysis, selection of procurement method, ethical standards, and other requirements, as described in this section.
- Procedures for effective contract management.
- Verification of third-party entity compliance with procurement regulations, including the requirements listed in this section.

Records retention to demonstrate compliance with the Buy American provision, including, but not limited to, documenting exceptions, descriptions on delivery invoices and receipts, and compliant product labels.

- Solicitation—Documentation that demonstrates that the CE has issued a solicitation that contains the Buy American provision requirement statement.
- Contract—Documentation that demonstrates that the CE has awarded a solicitation that contains the Buy American provision requirement statement.
- Food Products Received—Documentation that demonstrates the CE has received foods products that meet the Buy American provisions, including but not limited to, descriptions on delivery invoices and receipts and compliant product labels.
- Exceptions—Documentation that demonstrates the CE has used the questions USDA has provided to decide whether a Buy American exception can be made for the occurrence.
- Third-Party Contractor—Documentation that demonstrates that the CE has required all third-party contractors to apply the standards for the Buy American provision.

Compliance
TDA may take appropriate fiscal action or terminate the Food and Nutrition (FND) Agreement for any CE that is not in compliance with the procurement requirements. Additionally, TDA will assess compliance with the accounting and financial requirements based on the documentation that the CE has submitted throughout the year as well as documentation submitted for offsite and onsite administrative review processes or other procurement review activities.

The cost for any products and/or services that were procured improperly are unallowable costs to the school nutrition program.[5] This includes any costs that the CE has incurred as a result of intentionally breaking up purchases into smaller amounts to qualify under the micro-purchase threshold or simplified purchase threshold as well as purchases made on behalf of the CE by a third-party.

CEs must make available, upon request of the awarding agency (state or federal), any or all of the documentation described in the *Records Retention* subsection in this section.

[5] An unallowable cost or expense cannot be paid using school nutrition program funds.

Obligation of the Contracting Entity (CE) to Report Fraud, Bribery, and Gratuity Violations

CE's must report, in writing to TDA, all violations of federal criminal law—fraud, bribery, or gratuity.

> The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in § 200.338 Remedies for noncompliance, including suspension or debarment. (2 CFR 200.113; 31 U.S.C. 3321).

Criminal Penalty

The maximum fine for embezzling, willfully misapplying, stealing, or obtaining by fraud, funds, assets, or property acquired under the National School Lunch Act or Child Nutrition Act is $25,000.

Fraud

> Whoever embezzles, willfully misapplies, steals or obtains by fraud any funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program [and/or Special Milk Program] whether received directly or indirectly, shall, if such funds, assets or property are of a value of $100 or more, be fined no more than $25,000 or imprisoned not more than 5 years or both; or if such funds, assets or property are of a value of less than $100, be fined not more than $1,000 or imprisoned not more than 1 year or both. Whoever receives, conceals or retains for personal use or gain, funds, assets or property provided under the National School Lunch Program and/or School Breakfast Program, whether received directly or indirectly, knowing such funds, assets or property have been embezzled, willfully misapplied, stolen or obtained by fraud, shall be subject to the same penalties.

Termination of the Permanent Agreement for Financial Fraud or Misuse of Funds. If serious deficiencies, such as fraud or misuse of funds occur, and corrective action is not practical, TDA will amend the FND Agreement to terminate the CE's participation in the SNP. In this case, TDA may also refer the matter to the appropriate local, state, and/or federal authorities.