



How Nu Health Fruit Cups are the Exceptions in the Buy American Provision

The Buy American Act is Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105-336) added a new provision, Section 12(n) of the NSLA (42 USC 1760(n)), requiring School Food Authorities (SFAs) to purchase domestically grown and processed foods to the maximum extent practicable. This provision contains exceptions that are outlined in the USDA memo SP-24-2016, permitting any Food Service Authority (FSA) to source internationally if:

- 1) the product is not produced or manufactured in the U.S. in sufficient and reasonable available quantities of a satisfactory quality; or
- 2) competitive bids reveal the costs of a U.S. product are significantly higher than the foreign product.

Nu-Health Fruit Cups in Mandarin Orange and Pineapple automatically fall under these special exceptions to the Buy American Program because they are not native to the USA, and/or they are not domestically available in sufficient quantities.

SFAs are Buy American compliant when purchasing our mandarin oranges and pineapples, as they are not currently sourced domestically and are also not available through the USDA Foods program: <http://www.fns.usda.gov/fdd/foods-expected-be-available>.

In Section 25.104 of the USDA's Buy American Act, it lists articles that have been determined to be unavailable in accordance with 25.103 (Exceptions), including canned mandarin oranges, and canned pineapple. <https://www.acquisition.gov/?q=browse/far/25/1&searchTerms=mandarins>

We are a reputable importer who meets or exceeds the regulations outlined in the Food Safety Modernization Act: <http://www.fda.gov/Food/GuidanceRegulation/FSMA/>.

We can assure that the foreign canned fruits we produce meet or exceed the Food and Drug Administration standards for foreign foods: <http://www.fda.gov/Food/GuidanceRegulation/ImportsExports/Importing/default.htm>.

The standard questions SFAs should ask themselves when deciding whether to source internationally are given by the USDA and apply to us as follows:

- [Are there other domestic sources for this product?](#)
No – mandarin oranges are native to China, and both domestic pineapples and oranges are not available canned and/or in the quantities schools require.
- [Is there a domestic product that could be easily substituted, if the non-domestic product is less expensive \(e.g. substitute domestic pears for non-domestic apples\)?](#)
No, mandarin oranges are better for canning than American oranges because mandarins do not have seeds, they're smaller in size and their skins are easier to peel. Canned pineapples cannot be easily substituted, as there are no pineapple canning facilities in the USA currently.
- [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?](#)
Our prices are stable from school year to school year. We offer to bid our products out and often sign contracts for yearlong pricing.

If you have any further questions, please contact us at info@nuhealthfruit.com or check out the FAQ page from USDA - Procurement Questions Relevant to the Buy American Provision <http://www.fns.usda.gov/sites/default/files/SP14-2012os.pdf>.