



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, Mango 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, mangoes and pineapples, as they are not currently sourced domestically. <https://marketnews.usda.gov/mnp/fv-report-config-step1?type=termPrice>. Using this website, SFAs and State agencies can find third-party verification of cost and availability of domestic and nondomestic foods.

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 and mangoes aren't native to the US, and both domestic pineapples and oranges are not available canned and/or in sufficient quantities that 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, non-native mandarin oranges are better for canning than American orange varieties because mandarins do not have seeds, they're smaller in size and their skins are easier to peel. Also, most of the oranges harvested in America are for retail juice purposes per farmer's choice. Canned pineapples cannot be easily substituted, as there are no pineapple canning facilities in the USA currently. Mangoes cannot be easily substituted either, all three products are tropical fruits that aren't available in the US.
- **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 <https://fns-prod.azureedge.net/sites/default/files/cn/SP38-2017os.pdf>.