

Buy American Checklist for Non-Domestic Food Product Purchases

CEs may use this form to assist them in documenting compliance with the Buy American requirement.

CE Name: _____ CE ID: _____ Date: _____

What is the food product? _____

Part 1: Answer the following question

A. Is the food product grown in the United States (US) or does 51% of the final processed food product consist of agricultural commodities that were grown domestically (in the US)? (See the directions for additional guidance.)

- | | |
|--|--|
| <input type="checkbox"/> Yes—The food product label indicates the origin is the US: therefore, it meets the Buy American requirements. No additional questions need to be answered. | <input type="checkbox"/> No—This food product is not of US origin; therefore, it does not meet the Buy American requirements. Answer the remaining questions. |
|--|--|

Part 2: Answer the following questions to determine if the CE (or the distributor, supplier, or vendor purchasing on behalf of the CE) is able to purchase a domestically grown food product in large enough quantities of a satisfactory quality so that the purchase of non-domestic food product is not necessary.¹

A. Are there other sources for purchasing a domestic food product instead of a non-domestic product?

- | | |
|---|---|
| <input type="checkbox"/> Yes—Another source can provide a domestic product instead of non-domestic product. | <input type="checkbox"/> No—There is no alternative source that can provide a domestic product. |
|---|---|

B. Is there another domestic food product that can be easily substituted for the non-domestic food product?

- | | |
|--|---|
| <input type="checkbox"/> Yes—Another domestic food product can easily be substituted for the non-domestic product. | <input type="checkbox"/> No—There is no substitute domestic food product for this food product. |
|--|---|

C. Is the price difference between the domestic product and non-domestic product reasonable in light of the CE's anticipated per meal price?

- | | |
|---|---|
| <input type="checkbox"/> Yes—The cost difference in purchasing a more expensive domestic product is reasonable. | <input type="checkbox"/> No—The cost difference in purchasing a domestic product is unreasonable. |
|---|---|

Part 3: As part of the process to explore whether a domestic product is available, the CE must verify that the lack of availability of a domestic product is accurate and cost range for the non-domestic product is reasonable.

What documentation has the CE retained to demonstrate that there is a lack of availability and that the cost range is reasonable?

¹ See the directions for additional information about availability of domestic food products by using the USDA Marketing Resource Center.

Directions: Buy American Checklist for Non-Domestic Food Product Purchases

Purpose

The Buy American provision is intended to ensure that federal funds are used to support United States (US) or domestic agricultural food production. CEs must include this requirement in their contracts, requests for offers, and purchase orders for all potential contractors, including third party contractors.

When there is an occasion where a distributor, supplier, or vendor is unable to provide a domestic food product, this checklist along with the documentation described in the checklist will assist the CE in demonstrating why a non-domestic product was the CE's only and/or best choice. The *Administrator's Reference Manual, Section 17, Procurement* also provides additional guidance on this topic.

As a sole source of documentation, this checklist is not sufficient to document compliance. The CE must also retain documentation that demonstrates that the answers provided on the checklist are accurate.

The CE—not the distributor, supplier, or vendor—must determine that the use of a non-domestic food product is acceptable.

The purchase of a non-domestic food product should be an occasional not frequent occurrence. Each time a non-domestic food product is purchased or delivered, the CE must determine if the Buy American requirements are met.

For Example: If there is an occurrence in January, the CE must reevaluate the situation and determine if the factors that allowed the non-domestic product to be used still exist in March.

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.

Footnote References, Additional Information

Product Availability: USDA provides information on where food products are grown, expected price, and expected availability at USDA Agricultural Marketing Resource Center (<http://www.agmrc.org/commodities-products/>). The CE may verify that a food product is not grown in the United States in sufficient quantities for purchase as a domestic food product through this website. Use the search text box to find item. If the CE uses this source, it must retain documentation to demonstrate compliance. This information is updated each year.

Reasonable Cost: Reasonable cost is defined as *the amount that does not exceed a cost that a prudent (sensible) person would consider acceptable under similar circumstances.*

Use This Form	
Frequency	As needed.
Required Form Format	Not required.
Record 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 child care institutions (RCCIs) are required to keep documentation for 3 years.

Directions

CE Name: Record the name of the contracting entity (CE) in designated space.

CE ID: Record the CE's ID number in the designated space.

Procurement Year: Record fiscal year for the procurement in the designated space.

What is the food product?

- Record the name of the food product to be purchased from the distributor, supplier, or vendor in the designated space. Before a CE accepts the delivery of a non-domestic food product, the CE must determine that the non-domestic food product meets the criteria for an exception to the Buy American provision. The questions in Part 1 and 2 will assist the CE in that determination.

Part 1

If the answer recorded is yes, the product meets the Buy American provisions.

- No additional questions need to be answered.

If the answer recorded is no, answer all of the Part 2 and Part 3 questions.

- When the food product does not meet the criteria for a domestic food product, the CE must determine if there is an alternative to purchasing a non-domestic product. The questions in Part 2 prompt consideration of other options.

Part 2

If any one of the Part 2 questions is answered yes, the CE must purchase a domestic product.

- When the CE is able to find another purchasing source that can provide a domestic food product, the CE must purchase a domestic food product instead of a non-domestic food product.
- When the CE is able to identify and purchase a substitute domestic food product, the CE must purchase a domestic food product instead of a non-domestic food product.
- When the cost of purchasing a domestic food product is higher than a non-domestic product, the CE must purchase the domestic food product if the cost increase is reasonable.

If answer to all of the Part 2 questions is no, the CE may purchase a non-domestic food product instead of a domestic food product.

- In all cases, if the CE purchases a non-domestic product, the CE must have documentation that demonstrates that the CE has followed its purchasing procedures related to the Buy American provisions and that CE was unable to purchase a domestically grown food product in large enough quantities of a satisfactory quality. Specifically, documentation must demonstrate (1) that another source could not provide a domestic food product; (2) that

another food product could not be substituted; or (3) that the cost difference was unreasonable.

- Before purchasing the non-domestic food product, ensure that the CE has documentation demonstrating compliance as described in Part 3.

Part 3

If the CE has documentation verifying that a domestic product is not available and the cost range is reasonable, the CE may purchase a non-domestic product. Resources such as USDA Agricultural Marketing System (AMS) can assist with this effort.²

Identifying the Origin of Food Products

The Buy American provision requires the purchase of domestically grown and processed food to the maximum extent practicable. That is, over 51% of the final processed food product must consist of agricultural commodities that were grown domestically.³ Domestic food products include food products from the 50 states and the US territories: Guam, American Samoa, Virgin Island, Puerto Rico, and the Northern Marian Islands.

USDA requires that product labels have the follow information:

- Indication that the food product comes from the US, a US state, or a US territory.
- Indication that the food product was processed in the US, a US state, or a US territory.
- Indication of the name of manufacturer, packer, processor, supplier, or distributor and the location/address of the business where the processing occurred.

Origin Statement on Product Label

- Acceptable label statement phrases used to indicate the origin of food products include the following: *product of* and *grown in*.
- Unacceptable label statement phrases used to indicate the origin of food products include the following:
 - Regional location that does not list US, US state, or US territory (unless there is separate statement of origin)—such as *grown and raised in the Atlantic Region*
 - Flag or other symbols to represent origin location
 - Origin location as product name (unless there is separate statement of origin)—such as *Pecos Melon*
 - Origin location as the US and other non-US locations as origin location—such as *Product of US, Mexico, and Canada*

² Available at www.ams.usda.gov/.

³ Sometimes referred to as *processed substantially using domestic agricultural commodities*.

Location Where Product Was Processed on Product Label

- Acceptable label statement phrases used to indicate where a food product is processed includes the following: *manufactured in...*, *prepared in ...*, *produced in...*, *assembled in...*, and *processed in ...*; may also include the word *substantially*.
- Unacceptable label statements to indicate where a food product is processed include the following types of information:
 - Statement that provides insufficient information to determine process location
 - Indication that the food product was processed in US and non-US locations (unless there is an indication that it was processed substantially in US)