

## Buy American Checklist for Non-Domestic Food Product Purchases

School Food Authorities may use this form to help document compliance with the Buy American requirement.

**SFA Name:** \_\_\_\_\_ **SFA ID:** \_\_\_\_\_ **Date:** \_\_\_\_\_

What is the food product? \_\_\_\_\_

*For any food product not grown in the United States (US) or for which 51% of the final processed food product does not consist of agricultural commodities that were grown in the US, School Food Authorities (SFAs) may use this form to help document compliance with the Buy American requirement.*

### Part 1: Answer the following question.

**A. Is the product listed on the Non-Available Articles list, or “FAR” List (<https://www.acquisition.gov/far/25.104>)?**

- Yes**— The food product is listed on the FAR List and therefore meets the Buy American provisions. **No further questions are required.**
- No**—This food product is not listed on the FAR List. **Proceed to Part 2.**

### Part 2: Answer the following questions to determine if the SFA (or the distributor, supplier, or vendor purchasing on behalf of the SFA) 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.<sup>1</sup>

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

- Yes**—Another source can provide a domestic product instead of non-domestic product.
- 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?**

- Yes**— Another domestic food product can easily be substituted for the non-domestic product.
- 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 SFA’s anticipated per meal price?**

- Yes**—The cost difference in purchasing a more expensive domestic product is reasonable.
- No**—The cost difference in purchasing a domestic product is unreasonable.

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

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

What documentation for this specific food product has the SFA retained to demonstrate the exception? **Check the corresponding box below.**

[NOTE: This documentation must be obtained for **each** item **each** time it is purchased.]

- Product is not available in sufficient quantities or of satisfactory quality.  
*If checked, indicate what documentation is retained to support this exception for this food product at the time it was purchased:*

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- The cost of a US product for this food item is significantly higher than the non-domestic product.  
*If checked, indicate what documentation is retained to support this exception for this food product at the time it was purchased:*
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## 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. SFAs 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 SFA in demonstrating why a non-domestic product was the SFA's only and/or best choice. The *Administrator's Reference Manual (ARM), 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 SFA must also retain documentation that demonstrates that the answers provided on the checklist are accurate.

The SFA—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 SFA must determine if the Buy American requirements are met.

Example: If there is an occurrence in January, the SFA 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 repeatedly unable to provide domestic food products, the SFA 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 SFA 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 SFA 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	
<b>Frequency</b>	As needed.
<b>Required Form Format</b>	Not required.
<b>Record Retention</b>	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

### SFA Name

- Record the name of the school food authority (SFA) in the designated space.

### SFA ID

- Record the SFA'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 an SFA accepts the delivery of a non-domestic food product, the SFA 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 SFA in that determination.

### Part 1

The FAR List is a collection of food products that do not require documentation for a Buy American exception because they are not available domestically. 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>.

**If the answer recorded is yes**, the product does not require documentation for a Buy American exception.

- No additional questions need to be answered.

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

- When a non-domestic food product is not located on the FAR List, the SFA 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 SFA must purchase a domestic product.

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

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

- In all cases, if the SFA purchases a non-domestic product, the SFA must have documentation that demonstrates that the SFA has followed its purchasing procedures related to the Buy American provisions and that SFA 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 SFA has documentation demonstrating compliance as described in Part 3.

### Part 3

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

### 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.<sup>3</sup> 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 following 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 lists the US and other non-US locations—such as *Product of US, Mexico, and Canada*

### 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*.

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<sup>2</sup> Available at [www.ams.usda.gov/](http://www.ams.usda.gov/).

<sup>3</sup> Sometimes referred to as *processed substantially using domestic agricultural commodities*.

- 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)