



New Jersey Department of Agriculture
Division of Food and Nutrition
School Nutrition Programs

Buy American Provision
Exception Documentation
Worksheet/Instructions
Webinar – July 2019



Buy American Authority

- Authority: Section 104(d) – William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105-336) added Section 12 (n) to the National School Lunch Act (42 USC 160(n))
 - Requires SFAs and ANY entity that procures food and food products for an SFA to utilize domestic agricultural commodities and food products **to the maximum extent practicable**



Buy American supports local and small businesses

- Using food products from local sources supports local farmers
- Buy American supports SFAs working with local, or small, minority , and women-owned businesses
- **USDA ENCOURAGES** purchasing food products from local and regional sources



Buy American Provision Requirements 7 CFR 210.21 (d)

- Applies to the 48 contiguous United States
- Specific provisions for Hawaii and Puerto Rico
- Foods from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are considered domestic

Buy American Provision Requirements 7 CFR 219.21 (d)

- **Domestic commodity:**
 - An agricultural commodity that is produced in the United States
- **Product:**
 - Food Product that is processed in the U.S. Substantially using agricultural commodities produced in the U.S.
 - Substantially: over 51 % from American Products determined by weight or volume **NOT** cost



Buy American Provision Requirements 7 CFR 210.21 (d)

- The creditable food component IS the agricultural commodity
- USDA defines a food component as one of the food groups comprising a reimbursable meal
- These are: meats/meat alternates, grains, vegetables, fruits and fluid milk
- WATER is not considered a domestic agricultural commodity for this Provision



USDA Foods

- Comply with the Buy American requirements
- 100 % American
- SFAs should maximize their use of USDA Foods
- **REMEMBER:** processed end products containing USDA Foods must also meet the overall 51 % domestic requirement, by weight or volume



Implementing the Buy American Provision

Critical to include Buy American in:

- Documented procurement procedures
- All procurement solicitations and contracts
- Bid specifications
- State Agency prototype contract documents

Two (2) Exceptions to Buy American

- Availability: Not produced or manufactured in U.S.
- Cost: cost of U.S. product is significantly* higher
(* Determined by the SFA)

SFA Compliance with Buy American

- Compliance is the SFA's Responsibility
 - Include in all solicitations, contracts, and product specifications
 - Procurement Procedures
 - *Method of requesting exceptions **before receipt***
 - Request information on domestic content
 - Require certification of domestic percentage

SFA Monitoring of Buy American

- Monitor solicitation and contract language
- Review product and delivery invoices or receipts
- Periodically review storage facilities, freezers etc.



Solicitation

- The use of domestic alternative foods before approving an exception.
- The use of a non-domestic food exception when competition reveals the cost of domestic is significantly higher than non-domestic food.
- The use of a non-domestic alternative food due to the domestic food not produced or manufactured in sufficient and reasonable available quantities of a satisfactory quality.
- USDA Memo SP 38-2017

Buy American Provision Exception Documentation Worksheet

- New SAMPLE State Agency Form # 149
- This new SA form or equivalent documentation with the same level of detail must be completed by the SFA every time an agricultural or processed product does not meet the Buy American requirement
- Only ONE food product may be listed on each worksheet

Buy American Provision Exception Documentation Worksheet

- Document exceptions
- SFA must approve **prior** to accepting non-domestic food products
- Letters from vendors may be attached to support
- Worksheet should be signed by the authorized SFA representative identified in Section 1 on Form 149
 - ❖ Self-operating SFAS – **SFA** Food Service Director
 - ❖ SFAs contracting with a FSMC – **SFA** Authorized Rep
 - ❖ SFA – SFA Contracts – Receiving **SFA** Authorized Rep
 - ❖ Commercial Vendor Meals Contracts – **SFA** Authorized Rep



Three Types of Exceptions

- ❖ Annual Exception – ONLY used for the following seven (7) food items:
 - Bananas
 - Canned mandarin oranges
 - Pineapple
 - Jicama
 - Olives
 - Canned Tuna
 - Mangos



Three Types of Exceptions - con't

- ❖ Seasonal Exception – not available in sufficient quantities for duration of season
- ❖ One-Time Exception – domestic not practicable/cost effective



Be Sure to Include:

- ✓ Authorized **SFA** staff member
- ✓ Date of occurrence(s)
- ✓ Provide the non-domestic food product and country of origin
- ✓ Which of the two allowable exceptions are being used?



Be Sure to Include:

- ✓ Provide justification documents
 - Obtained by the vendor or;
 - Through third party verification
- ✓ Recommended: What alternatives to purchasing nondomestic commodity or product were considered?
 - SFA should work with the Vendor



Section on Form 149

- Signature/Printed Name of Authorized SFA Rep and Date
- By signing below, I confirm that: (1) the information provided above is true to the best of my knowledge; (2) this documentation will be retained for three years including the current program year and made available during an on-site administrative review and an off-site Procurement reviews, and (3) exceptions to the Buy American requirement will be documented **prior** to accepting non-domestic agricultural food item.

USDA Market News Website


- Log into <https://www.ams.usda.gov/market-news>
- Select the Market News tab
- Click “Specialty Crops”



The screenshot displays the USDA Market News website interface. At the top, the USDA logo and "United States Department of Agriculture Agricultural Marketing Service" are visible. A navigation menu includes "Market News", "Rules & Regulations", "Grades & Standards", "Services", "Resources", and "Selling Food to USDA". The "Market News" section is active, showing a sidebar with categories like Cotton, Dairy, Livestock, Poultry & Grain, Specialty Crops, Tobacco, Local & Regional Food Marketing, Organic, and Retail. The "Specialty Crops" section is highlighted, featuring a photo of fresh produce and a text block explaining the service's history and mission. A "Contact Market News" button and a "Learn about our FACAs & Advisory Boards" link are also present. The "Custom Reports" section lists various commodities such as Fruit, Onions & Potatoes, Vegetables, Herbs, Nuts, Ornementals, and Honey. The "News & Announcements" section lists recent updates, including "05/01 USDA Seeks Nominees for the National Potato Promotion Board" and "04/27 USDA Files Action Against Goodness Greeness Inc. in Illinois for Alleged PACA Violations".

USDA Market News Website

- Under the “By Commodity” Category, choose Fruit or Vegetables as applicable:

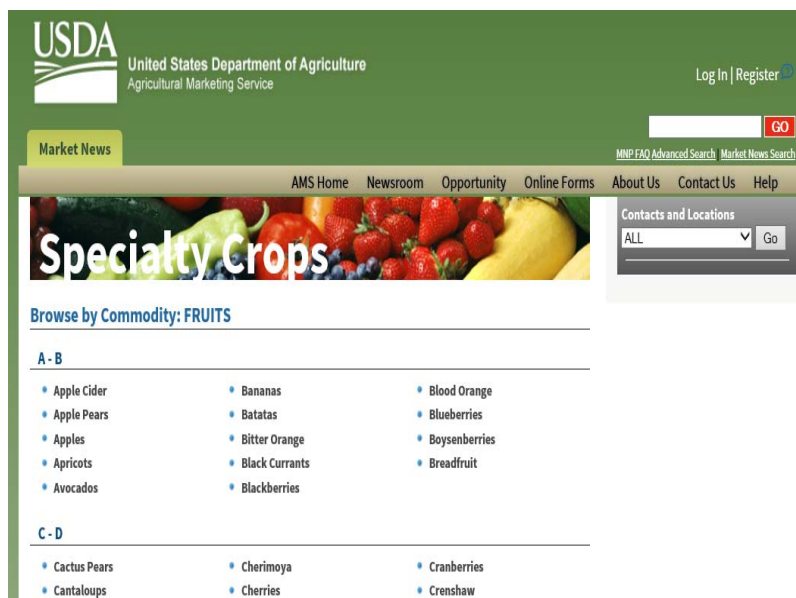


The screenshot displays the USDA Market News website interface. At the top, the USDA logo and "United States Department of Agriculture Agricultural Marketing Service" are visible. A search bar is located in the top right corner. Below the header, a navigation menu includes "Market News", "Rules & Regulations", "Grades & Standards", "Services", "Resources", and "Selling Food to USDA". A "Stay connected" section features social media icons for Facebook, Twitter, YouTube, LinkedIn, RSS, and Instagram. The main content area is divided into several sections: "Market News" with a list of commodity categories (Cotton, Dairy, Livestock, Poultry & Grain, Specialty Crops, Tobacco, Local & Regional Food Marketing, Organic, Retail); "Run a Custom Report" with options for "Subscribe to Standard Reports" and "Search Market News"; "Related Websites" listing the Foreign Agricultural Service (FAS), National Agricultural Statistics Service (NASS), Economic Research Service (ERS), Farm Service Agency (FSA), and Market Information Organization of the Americas; "Specialty Crops" featuring a photo of fresh produce and a text block about the history of Market News reports; "Contact Market News" with icons for phone, email, and a truck; "Learn about our FACAs & Advisory Boards"; "Custom Reports" with a link to the "Market News Portal"; "By Commodity" listing Fruit, Onions & Potatoes, Vegetables, Herbs, Nuts, Ornaments, and Honey; "News & Announcements" with recent news items dated 05/01, 04/27, and 04/27; and "Recent Blogs".

USDA Market News Website

:

- All products are listed in alphabetical order



The screenshot displays the USDA Market News Website interface. At the top, the USDA logo and "United States Department of Agriculture Agricultural Marketing Service" are visible. A search bar with a "GO" button is present. Below the header, a navigation menu includes "Market News", "AMS Home", "Newsroom", "Opportunity", "Online Forms", "About Us", "Contact Us", and "Help". A "Specialty Crops" banner features an image of various fruits. A "Browse by Commodity: FRUITS" section lists products in alphabetical order, categorized into "A - B" and "C - D".

Specialty Crops

Browse by Commodity: FRUITS

A - B

- Apple Cider
- Apple Pears
- Apples
- Apricots
- Avocados
- Bananas
- Batatas
- Bitter Orange
- Black Currants
- Blackberries
- Blood Orange
- Blueberries
- Boysenberries
- Breadfruit

C - D

- Cactus Pears
- Cantaloups
- Cherimoya
- Cherries
- Cranberries
- Crenshaw



USDA Market News Website

- ❑ Select the product and a report will open in a separate tab. This report shows the Terminal Markets. There are thirteen Markets in the US. Keep in mind, not all product types will be coming in through all terminals.
- ❑ Terminal Markets in Philadelphia and New York both handle fruits and vegetables.
- ❑ The product origin, price range, package type and size, and other information is available.
- ❑ Pay special attention to the “**ORIGIN**”

USDA Market News Website



New York

- All Fruits & Vegetables
- Only Fruits
- Onions & Potatoes
- Only Vegetables
- Herbs
- Nuts

Philadelphia

- All Fruits & Vegetables
- Only Ornamentals
- Only Fruits
- Onions & Potatoes
- Only Vegetables
- Herbs
- Nuts

USDA Market News Website

Report Results

Commodity: BLACKBERRIES Report Type: Terminal Market
 Aggregate by: Daily Date(s): 05/04/2018

Download as: [Excel](#) [Text](#) [XML](#) [PDF \(adobe reader required\)](#) [Printable View \(adobe reader required\)](#)

Report Type: **TERMINAL MARKET**
 SHIPPING POINT
 MOVEMENT
 RETAIL

Refine results

Location: Environment:
 Type: Hide Empty Columns:
 Date:
 Date Format: mm/dd/yyyy

* No results found for that date range. Displaying report for most recent date.

ATLANTA : BLACKBERRIES Offerings : VERY LIGHT.																
Location : ATLANTA Commodity : BLACKBERRIES Package: flats 12 6-oz cups with lids																
Date	Low-High Price	Mostly Low-High Price	Origin	Origin District	Item Size	Environment	Color	Unit of Sale	Quality	Condition	Storage	Appearance	Crop	Trans Mode	Repacked	Comment
05/04/2018	15.75 - 16.00	16.00 - 16.00	MEXICO		lge											occas 13.00-13.75

BALTIMORE : BLACKBERRIES Market : ABOUT STEADY.																
Location : BALTIMORE Commodity : BLACKBERRIES Package: flats 12 6-oz cups with lids																
Date	Low-High Price	Mostly Low-High Price	Origin	Origin District	Item Size	Environment	Color	Unit of Sale	Quality	Condition	Storage	Appearance	Crop	Trans Mode	Repacked	Comment
05/04/2018	16.00 - 16.00		MEXICO		lge											occas higher and lower
05/04/2018	24.00 - 24.00		MEXICO		lge							FINEAPPEAR				occas higher

BOSTON : BLACKBERRIES Market : LOWER.																
Location : BOSTON Commodity : BLACKBERRIES Package: flats 12 12-oz cups with lids																
Date	Low-High Price	Mostly Low-High Price	Origin	Origin District	Item Size	Environment	Color	Unit of Sale	Quality	Condition	Storage	Appearance	Crop	Trans Mode	Repacked	Comment
05/04/2018	36.00 - 36.00		MEXICO		lge							FINEAPPEAR				

Location : BOSTON Commodity : BLACKBERRIES Package: flats 12 6-oz cups with lids																
Date	Low-High Price	Mostly Low-High Price	Origin	Origin District	Item Size	Environment	Color	Unit of Sale	Quality	Condition	Storage	Appearance	Crop	Trans Mode	Repacked	Comment
05/04/2018	8.00 - 10.00	9.00 - 10.00	GUATEMALA		med											
05/04/2018	3.00 - 3.00		MEXICO		lge					POOR COND						
05/04/2018	25.00 - 27.00	25.00 - 25.00	MEXICO		lge							FINEAPPEAR				occas high as 30.00
05/04/2018	14.00 - 20.00	15.00 - 16.00	MEXICO		lge											occas low as 10.00

USDA Market News Website

	Date	Low-High Price	Mostly Low-High Price	Origin	Origin District	Item Size	Color	Environment	Unit of Sale	Quality	Condition	Appearance	Storage	Crop	Repack	Trans Mode	Offerings	Market Tone	Price Comment	Comments
ATLANTA - BLACKBERRIES - flats 12 6-oz cups with lids	05/16/2019	25.00 - 28.00		MEXICO		lge						FINE APPEAR			N		VERY LIGHT.			
ATLANTA - BLACKBERRIES - flats 12 6-oz cups with lids	05/16/2019	19.50 - 21.00		MEXICO		lge									N		VERY LIGHT.		few 15.50-17.50	
COLUMBIA - BLACKBERRIES - flats 12 6-oz cups with lids	05/16/2019	19.50 - 19.50		GUATEMALA		lge									N		VERY LIGHT.	STEADY.		

USDA Market News Website

Close Window

Report Results






Location: MIAMI

Commodity: BLACKBERRIES

Report Type: Terminal Market

Aggregate by: Daily

Date(s): 05/04/2018

Download as:
  Excel
  Text
  XML
  PDF (adobe reader required)
  Printable View (adobe reader required)

Refine results

Location: Environment:


Type: Hide Empty Columns:

Date:
 Date Format: mm/dd/yyyy

MIAMI : BLACKBERRIES Market : ABOUT STEADY. Offerings : LIGHT.

BLACKBERRIES Package: flats 12 6-oz cups with lids

Date	Low-High Price	Mostly Low-High Price	Origin	Origin District	Item Size	Environment	Color	Unit of Sale	Quality	Condition	Storage	Appearance	Crop	Trans Mode	Repacked	Comment
05/04/2018	16.00 - 20.00	16.00 - 19.00	GUATEMALA		lge											occas higher and lower
05/04/2018	23.00 - 26.50	23.00 - 26.00	MEXICO		lge											occas higher and lower



Additional Questions to be Answered

- What alternatives to purchasing this non-domestic food product were considered?
- **If Applicable:** If the vendor did not request permission to provide the SFA with non-domestic product, and a non-domestic products was discovered;
 - what action was taken to correct this occurrence?
 - what is being done to prevent future occurrences?

Monitoring of the Buy American Provision by the State Agency

- Administrative Review
 - Look at labels
 - Request documentation for exceptions
- Potential findings of non-compliance
 - Review food deliveries
 - Monitor deliveries
 - Approved exceptions PRIOR to delivery
 - Fiscal action for repeat and egregious findings (with USDA review)**



Monitoring of the Buy American Provision by the State Agency

Procurement Review

- Check solicitations/ contracts contain Buy American certification language
- Review sample of supplier invoices/receipts to determine whether solicited domestic foods were ultimately provided
- Review documentation for exceptions

Potential findings of non-compliance

- Require contract amendments
- Participation in procurement trainings
- Fiscal action for repeat and egregious findings (with USDA review)**




USDA Guidance Memo SP 38 – 2017 released June 30, 2017

- Most current USDA guidance memo on Buy American Provision
- Updated guidance on over 51 % domestic food product requirement Includes SUGGESTED contract language
- Contains Q & As based on SFA inquiries
- Several Q & As emphasized in this webinar



Q - Does the Buy American Provision apply to entities that purchase food on behalf of an SFA?

- **A – YES – Any entity that purchases food or food products on behalf of the SFA MUST follow the Buy American Provision**



Q – Are all agricultural commodity or food products purchased using the non-profit food service account subject to the Buy American Provision?

- A – YES , this includes all competitive and non-program foods



**Q - What can an SFA do to
comply with the requirements of
the Buy American Provision?**

A – Solicitations and contracts

Procurement procedures

Document exceptions

Require certification of domestic origin

Monitor contract performance

Include sample language




USDA Sample Language

The School participates in the National School Breakfast/Lunch 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 produced in the U.S. and is process in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7 CFR 210.21 (d)



USDA Suggested Language Requirement for Certification in Bidding Process

- **“We require that suppliers certify the food product was processed in the United States and certify the percentage of domestic content, by weight or volume, in the food component of processed food products supplied to us”**




Q – How can SFAs comply with the requirement to retain records, which should include documentation of exceptions in adhering to the Buy American Provision?

A – Include sample language

USDA Sample Language – Documentation of Exceptions

- Exception to the Buy American Provision are very limited; however, an alternative or exception may be approved upon request. To be considered for an alternative or exception, the request must be submitted in writing to a designated SFA official, **a minimum of ___ day(s) in advance of delivery.**

- 
- The request must include the:
 - (1) Alternative substitute(s) that are domestic and meet the required specification:
 - Price of the domestic food alternative substitute(s) ; and
 - Availability of the domestic alternative substitute(s) in relation to the quantity ordered.
 - (2) Reason for exception: limited/lack of availability or price (include price):
 - Price of the domestic food product; and
 - Price of the non-domestic product that meets the required specification of the domestic product



Buy American Resources

USDA Guidance:

- Memo SP 38 -2017 released 6/30/17
Compliance with and Enforcement of the Buy American Provision in the NSLP
- Buy American Fact Sheet released 6/6/19

NJDA Resource:

- Form 149 is posted in SNEARS Resources, under the category heading “Procurement Documents:” .
- This Webinar will be posted in SNEARS
RESOURCES - TRAININGS



Professional Standards Credits

This webinar can count towards 1 1/2 hours of professional standards training

Key Area – Operations

Learning Topic – Purchasing/Procurement

Topic Code – 2400

New Jersey Department of Agriculture

School Nutrition Programs

(609) 984-0692

www.nj.gov/agriculture

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QUESTIONS





THANK YOU FOR PARTICIPATING

- Disclaimer: This presentation was provided as technical assistance to assist SFAs in complying with the requirements of the Buy American Provision including the proper documentation of the procurement of non-domestic of food products by any entity that purchases food or food products on behalf of the SFA

Contact the School Nutrition Programs – 609 984-0692

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