

Buy American Provision Exception Documentation Worksheet and Instructions

For instructions on how to complete this worksheet, please refer to the Buy American Exception Worksheet Instructions. Please note: **Only one food product may be listed on each worksheet.**

Check one box below to indicate the type of exception:

Annual Exception

Seasonal Exception

One-Time Exception

Dates applicable: _____

1. Authorized SFA staff member:

First and Last Name: _____ Position: _____

SFA (e.g. school district name): _____

Vendor: _____

2. Date of occurrences:

Vendor requested approval to provide non-domestic food product: _____

SFA agreed to accept this food product **in advance of delivery**: _____

Food product was received by the SFA: _____

3. Provide the non-domestic food product and country of origin:

Non-domestic food product: _____

Country of origin: _____

4. Which of the two allowable exceptions is being used? (Check at least one box)

The food product is not produced or manufactured domestically in sufficient and reasonably available quantities of a satisfactory quality.

Proper procurement methods reveal costs of the domestic food product are *significantly* higher than the non-domestic food product.

5. Provide justification documents:

a. For each type of exception: Provide pricing or availability data for both domestic and non-domestic food products. This can be attached as additional pages.

b. For exceptions based on price: Is the cost difference significant as determined by the SFA? Provide documentation on how this determination was made.

6. Recommended: What alternatives to purchasing this non-domestic food product were considered?

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

8. 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 review, and (3) exceptions to the Buy American requirement will be documented **prior** to accepting nondomestic agricultural food item.

Print Name/Position/Signature of Authorized School Food Authority Representative

Date: _____

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The Buy American provision requires school food authorities (SFA) to purchase, to the maximum extent practicable, domestic commodities or products. A **domestic commodity** is an agricultural food component that is produced 100 percent domestically (United States and its territories). A **domestic product** is a food product that is processed 100 percent domestically and is comprised of over 51 percent domestic food components, by weight or volume.

Commodities and products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are considered domestic products under the Buy American provision, as these are territories of the United States.

Packaging and labor are not considered to be agricultural commodities.

This Buy American Provision Exception Documentation Worksheet, or equivalent documentation with the same level of detail, must be completed by the SFA every time an agricultural or processed product (i.e. processed food product that includes food components, such as a chicken patty) does not meet the Buy American requirement in Title 7, *Code of Federal Regulations*, sections 210.21(d) and 220.16(d).

This worksheet is for use by SFAs to document exceptions to the Buy American Provision. SFAs must document exceptions to the Buy American requirement **prior** to accepting nondomestic agricultural commodities or products. This documentation must be kept on file for at least three years including the current program year and must be made available during Administrative and Procurement Reviews.

The SFA must retain written documentation for exceptions to the Buy American requirement when one of the following two conditions exists:

1. The food product is not produced or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality, **or**
2. Proper procurement methods reveal the costs of a United States product are *significantly* higher than the nondomestic food product.

Exceptions to the Buy American provision are *used as a last resort* and are only allowable for one of the two exceptions listed above and outlined in further detail in the U.S. Department of Agriculture (USDA) Policy Memorandum (PM) SP 38-2017, June 30, 2017, Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program.

The Buy American Provision Exception Documentation worksheet, or equivalent documentation with the same level of detail, can be utilized to document three types of exceptions:

- **Annual Exception**: Can **only** be used for the following seven (7) food items: bananas, canned mandarin oranges, pineapple, jicama, olives, canned tuna and mangos. Complete the worksheet one time each school year for each food item that is nondomestic.
- **Seasonal Exception** for a range of months when food items are seasonally not available.
- **One-time Exception**: Can be used for food items in circumstances when the use of domestic foods is truly not practicable. Must be completed every time a food item is used that is nondomestic.

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Type of Exception- Check one box only in this section.

- **Annual Exception:** Can only be used for the following seven (7) food items: **bananas, canned mandarin oranges, pineapple, jicama, olives, canned tuna, and mangos.** Complete the worksheet one time each school year for each food item that is nondomestic. If you use multiple vendors for the same food item, then you will need to fill out an exception form for each vendor supplying the food item. **NOTE:** Using this worksheet to document an annual exception for a food item other than the seven items listed above is not allowable and will be considered insufficient documentation for an exception during an Administrative or Procurement Review.
 - **Seasonal Exception:** Seasonal Exception can be utilized if a product is not expected to be available in sufficient quantities of satisfactory quality, for the duration of the season and/or there is a significant price difference expected to be in place the duration of the season. This could be due to weather impacting crops creating a shortage or other similar circumstances. Seasonal Exception can also be used in situations which commodities are not available seasonally (e.g., if grapes are not available domestically from January through May). Keep in mind, if a domestic item is not available due to seasonality; it is recommended that a different item is selected. This will allow domestic products to be purchased for the best value. Complete the worksheet one time for consecutive season(s) or month(s) for each commodity item that has been determined to be unavailable for the above stated reasons.
 - **One-Time Exception:** Can be used for commodities or processed products in circumstances when the use of domestic foods is truly not practicable and/or cost effective (e.g., using star fruit in a nutrition education activity or following a price comparison of a product showing significant difference for one-time use). Note: All processed products must use a one-time exception. Seasonal exceptions are not allowable exception types for processed products.
1. **Authorized SFA staff member-** Include the first and last name, and position, of the person permitted to make the decision on accepting non-domestic food products. Also, include the name of the SFA.
 2. **Date of occurrences-** Provide the date that the vendor requested approval to provide a non-domestic food product. Provide the date that the SFA agreed to accept the food product in advance of delivery. Provide the date that the commodity or product was received by the SFA. If the SFA did not receive a request from the vendor and has discovered a non-domestic food product was provided, be sure to answer question 7.
 3. **Provide the non-domestic food product and country of origin-** Only one food product per worksheet. Include the name of the non-domestic food product and the country of origin.
 4. **Which of the two allowable exceptions are being used?** - Check one box only. Either the product is not produced or manufactured domestically in sufficient and reasonably available quantities of a satisfactory quality **or** costs of the domestic product are significantly higher than the non-domestic product.
 5. **Provide justification documents-** Price or availability data must be provided.

Provide pricing or availability data for both domestic and non-domestic commodities or products. This can be obtained by the vendor or through third-party verification. If the product is available, document whether the cost difference is significant as determined by the SFA. Note: The USDA has not defined a dollar amount or percentage for this exception; the SFA determines whether the cost is significant to operations.

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The SFA should document their use of a third-party and unbiased verification, such as the USDA Agricultural Marketing Service (AMS) to determine the cost and availability of domestic and non-domestic commodity or product. Using third-party verification increases the likelihood of an objective justification. Follow the instructions on the website to confirm origin on questionable items and to determine if food products are available domestically. Run a Custom Report on the USDA AMS web page to find cost and availability of produce: <https://www.ams.usda.gov/market-news>

Maintain documentation for this verification, if performed.

6. **Recommended: What alternatives to purchasing nondomestic commodity or product were considered?** - Although this section is optional, it is strongly recommended that the SFA document whether there are other domestic sources for the product or if other considerations for substituted/different products have been considered. For example, the SFA should work with the vendor to determine whether the vendor can get the product domestically from another source.

The SFA should question whether there is a domestic food product that could easily be substituted. For example, if the SFA is considering accepting a non-domestic food product on the basis that the non-domestic food product is less expensive than the domestic food product, could they substitute a domestic commodity or product that is similar (e.g. substitute domestic orange juice rather than using non-domestic apple juice).

The SFA should question whether bids are being solicited for this food product at the best time of the year. For example, if the SFA contracted earlier or later in the season (e.g. issue solicitation for grapes for the spring months instead of winter), would prices and/or availability change?

Is the SFA using third-party and unbiased verification, such as the USDA Agricultural Marketing Service (AMS), to determine the cost and availability of domestic and nondomestic commodity or product?

7. **If Applicable: If the vendor did not request permission to provide the SFA with non-domestic product, and a non-domestic product was discovered; what action was taken to correct this occurrence? What is being done to prevent future occurrences?** - Vendors are required to request SFA approval when substituting domestic food products for non-domestic food products. This expectation is outlined in vendor contracts, and it is the SFA's responsibility to ensure it is effectively managed. If a vendor fails to notify an SFA and a non-domestic product is discovered, the SFA should remind the vendor of the contractual requirements and set forth a plan to prevent future occurrences.

8. **Signature of Authorized School Food Authority (SFA) Representative**

Buy American Provision Exception Documentation Worksheet should be signed by the individual authorized to procure on behalf of the SFA identified in Section 1. In self-operating SFAs this would be the Food Service Director designated on the Schedule A. For SFAs contracting with a food service management company (FSMC) this might be a FSMC representative where the SFA does not have a designated Food Service Director.