



State of Arizona Department of Education



Health and Nutrition Services Division

Buy American Provision Webinar - Question & Answer

1) What if I receive non-domestic items from my distributor?

Language in the contract with that distributor will determine the appropriate course of action to take, which could include refusing the item. Please remember that SFAs are still responsible for meeting meal pattern requirements. Sample contract language can be found in [Memo SP 38-2017](#).

2) Is it only food from the 50 states that is considered domestic?

No. Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are allowed under the Buy American provision as these products are from the territories of the United States.

3) When do I document an exception?

Exceptions must be documented before utilizing an exception and must be documented for each purchase of a non-domestic product. Documentation must be maintained for five years.

4) Do I have to use ADE's Buy American Exception Form?

No. Exceptions can be documented using records of communication between the SFA and the supplier such as emails or documentation of phone conversations. Documentation should include specific product names and dates and should be kept on file for five years. SFAs may also utilize reports available at USDA AMS website: <https://www.ams.usda.gov/market-news>.

5) Does ADE have to approve my exceptions?

If an SFA is using one of the two exceptions defined by the USDA, then the SFA does not have to request approval from the State agency or FNS to purchase a non-domestic product.

6) How do I know if the language in my contract/bid solicitation is appropriate to address Buy American?

Refer to [Memo SP 38-2017](#) for sample language and utilize ADE templates on the School Foods Webpage: <http://www.azed.gov/hns/sfp/>. Contact the Contracts Management Officer at fdp@azed.gov for further assistance.



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7) Do I need an exception for each school or district-wide?

An exception is required for each purchase of a non-domestic product. If the purchase of a non-domestic product was made by the district for multiple sites, then one exception form would be used for that purchase. If the purchase of a non-domestic product was made for a single site an exception form would be used for each purchase made by that site.

8) If my school purchases food from a different account does it have to follow the Buy American provision?

The Buy American provision applies to purchases using any funds, such as competitive food sales or money received from children for program meals, from the nonprofit food service account. If any part of the payment is made with funds from the nonprofit school food service account, then the Buy American provision applies. If a purchase is made using funds from a different account but the revenue accrues to the nonprofit food service account, is also subject to the Buy American provision.

9) What do I do if my vendor or caterer is not following the Buy American provision found in the contract/solicitation?

You may have the option to terminate your contract. Work with your ADE School Nutrition Programs Specialist and Contracts Management Officer for further guidance.

10) Are FSMCs or caterers exempt from Buy American provision?

Any entity that purchases food or food products on behalf of the SFA must follow the same Buy American provision and exceptions that the SFA is required to follow. SFAs must ensure that all agricultural commodity or food products procured using funds from the nonprofit school food service account comply with the Buy American provision.

11) Does the Buy American Provision apply to RCCIs and Juvenile Detention Centers?

Yes, the provision applies to ALL types of organizations operating the USDA Child Nutrition Programs.

12) Does the Buy American provision apply to the Afterschool Care Snack Program?

Yes, this provision applies to ALL USDA Child Nutrition Programs including: National School Lunch Program, School Breakfast Program, Afterschool Care Snack Program, Special Milk Program, Fresh Fruit and Vegetable Program, At-Risk After School Meals, and Summer Food Service Program.



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13) If I purchase food from a local grocery store does the product have to meet Buy American requirements?

Yes. Any food purchased with funds from the nonprofit school food service account, regardless of the supplier, must meet the requirements of the Buy American provision. In this scenario please check the label at the store.

14) My students love bananas. Can I serve these every day if I have documentation on file?

According to the USDA, exceptions to the Buy American provision are limited and alternatives to purchasing non-domestic food commodities or products should be considered first. In addition to considering alternatives, reasons for any exceptions must be provided as to why the domestic product is being substituted with a non-domestic commodity or product. Student preference alone is not a sufficient reason for an exception. One resource SFAs may use when considering alternatives is the market news reports available from the Agricultural Marketing Service (AMS). AMS provides free, unbiased price, availability, and sales information on agricultural commodities. AMS can be accessed at <https://www.ams.usda.gov/market-news>.

15) Can ADE provide a list of foods that are not available domestically and therefore not subject to the Buy American provision?

According to the USDA, State agencies may not make the determination that a domestic commodity or product is not available. Each SFA should determine on an individual basis, whether domestic alternatives exist first, and if not, whether an exception is warranted.

16) Does the Buy American Provision apply to food brought to school by students?

No. The provision only applies to food purchased with funds from the nonprofit school food service account.

17) Do the Brown Box items we receive from commodities comply with the Buy American provision?

Yes. All USDA foods, including Brown Box and DOD Fresh Produce Program items should comply with the Buy American provision. If you do receive a non-domestic product, please collect and keep documentation of this occurrence and notify fdp@azed.gov.

18) Can I complete only one exception form per non-domestic product?

Yes. You may then use the tracking form to document additional purchases of the same product. However, be sure to determine if the exception is still valid and provide supporting documentation for each instance an exception was made.



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19) If I use the tracking form for a product that is not available domestically, such as bananas, do I have to provide supporting documentation each time I purchase it, or can I use my initial supporting documentation for the entire year?

SFAs must provide supporting documentation each time a non-domestic product is purchased.

20) What is acceptable documentation from my supplier?

Supporting documentation can be in the form of records of communication with your supplier including emails or documentation of telephone communications. Market news reports from the [Agricultural Marketing Service](#) (AMS) can also be used. The documentation needs to support the appropriate exception being utilized:

- a) The product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or
- b) Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.

21) My vendor provides me with a set list of domestic and non-domestic products/prices for the school year, is this sufficient documentation to utilize an exception?

No. SFAs should obtain third-party verification, such as through [AMS](#), to determine price and availability from other potential sources. Exceptions to the Buy American provision are limited and SFAs should consider other domestic sources prior to utilizing an exception (ie: substitute domestic pears for non-domestic apples).

***A recorded version of the Buy American webinar can be accessed at *Training and Professional Standards - Live & Recorded Webinars*: <http://www.azed.gov/hns/nslp/trainings/>.**

****A copy of the Buy American Exception form can be found under *Program Forms - Additional Forms*: <http://www.azed.gov/hns/nslp/forms/>.**