**Buy American Provision**

The School Food Authority (SFA) will to the maximum extent practicable purchase American grown products as required by participation in the federal school meal programs. Domestic commodity or product means an agricultural commodity produced in the U.S. and a food product processed in the U.S. substantially (at least 51 percent) (7 CFR 210.21, 220.16).

The school food service department will ensure whenever possible and applicable the following language will be added to all written solicitation documents. Absence of this language in a solicitation document does not absolve the school food service department from following the regulations when conducting procurements. This requirement will be communicated to all applicable vendors holding awarded contracts with the school food service department.

**Contract Language**

1. Federal regulations require all foods purchased for USDA Child Nutrition Programs be of domestic origin to the maximum extent practicable. While rare, two (2) exceptions may exist when:
2. the product is not produced or manufactured in the U.S. in sufficient, reasonable and available quantities of a satisfactory quality, such as bananas and pineapple; and
3. Competitive proposals reveal the cost of a domestic product is significantly higher than a non-domestic product.
4. Products that are normally purchased by a distributor as non-domestic and proposed as part of a Request for Proposal (RFP) must be identified with the normal country of origin. Distributors shall outline their procedures to notify the SFA when products are purchased as non-domestic.
5. The following products may be exceptions to Buy American provisions: pineapples, mandarin oranges, olives, tuna, bananas and coffee.
6. Any substitution of a non-domestic product for a domestic product (which was originally a part of the RFP), must be approved, in writing, by the food service director, prior to the delivery of the product to the School.
7. Any non-domestic product delivered to the school, without the prior, written approval of the Food Service Director, will be rejected. Should non-domestic substitutes that were not pre-approved in writing by the food service director be delivered to and rejected by the school, selected distributor(s) shall be held accountable for all over-claims that result from failure to meet the school’s required meal pattern.
8. Agricultural products which are canned or packed outside of the U.S. may be accepted with proof from manufacturer that poor market conditions exist (weather, and/or supply availability of market); this requirement applies to private labels as well as other labels.

Distributors must affirm their willingness to assert their best and reasonable efforts to ensure compliance with this federal rule.

**The Buy American Provision**

The Buy American provision was added to the National School Lunch Act (NSLA) by Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105-336). Section 12(n) to the NSLA (42 USC 1760(n)), requiring SFAs to purchase, to the maximum extent practicable, domestic commodities or products.

* “Domestic Commodity or Product” are defined as an agricultural commodity that is produced in the United States and a food product that is processed in the U.S. using substantial agricultural commodities that are produced in the U.S.
* “Substantial” means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically.

Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are allowed under this provision as territories of the U.S.

The Buy American provision (7 CFR Part 210.21(d)) is one of the procurement standards SFAs must comply with when purchasing commercial food products served in the school meals programs.

**Reference attached DPI and USDA memos for updates related to this regulation requirements.**