



“Buy American” Provision

Some school districts have questioned the ‘Buy American’ provision (see below) in the NSLP and the NSBP guidelines regarding whether it is reasonable to purchase our products when there may be a similar US made product available. As a US company we understand the sentiment but offer the following points below.

Here is the regulation:

Subpart E—State Agency and School Food Authority Re- sponsibilities

§ 210.21 Procurement.

(d) Buy American.—(1) Definition of domestic commodity or product. In this paragraph (d), the term ‘domestic commodity or product’ means—

(i) An agricultural commodity that is produced in the United States; and

(ii) A food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

(2) Requirement. (i) In general. Subject to paragraph (d)(2)(ii) of this section, the Department shall require that a school food authority purchase, to the maximum extent practicable, domestic commodities or products.

To clarify this section of the regulations, the USDA published a memo.



United States
Department of
Agriculture

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Food and
Nutrition
Service

Memo Code: SP 20-2006

SUBJECT: Procurement Questions Relevant to the Buy American Provision

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TO: State Directors
Child Nutrition Programs
All States

Recently, we have received a number of questions regarding the Buy American provision applicable to our National School Lunch and School Breakfast Programs. Attached are the most recently received questions and answers. As in the past, please share these questions and answers with your State agencies and request that they provide this information to their school food authorities. If you have any questions, please contact your regional office.

STANLEY C. GARNETT
Director
Child Nutrition Division

Attachment

cc: Lael Lubing, GMD
Rachel Bishop, OGC

1) Question: What are the requirements of the Richard B. Russell National School Lunch Act's (NSLA) Buy American provision that school food authorities (SFAs) must follow when purchasing food and food products for use in the Child Nutrition Programs?

Answer: Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105-336) added a new provision, Section 12(n) of the NSLA (42 USC 1760(n)), requiring SFAs to purchase domestically grown and processed foods, to the maximum extent practicable. Purchases made in accordance with the Buy American provision must still follow the applicable procurement rules calling for free and open competition.

2) Question: How would a SFA determine it's a "domestic commodity or product"?

Answer: Section 12(n) of the NSLA defines "domestic commodity or product" as one that is produced and processed in the United States substantially using agricultural commodities that are produced in the United States. One of the reports accompanying the legislation noted that "substantially" means that over 51% of the final processed product consists of agricultural commodities that were grown domestically.

3) Question: Are there any exceptions to the requirements of the Buy American provision?

Answer: Yes. While rare, two situations which may warrant a waiver to permit purchases of foreign food products include: 1) the product is not produced or manufactured in the U.S. in sufficient and reasonable available quantities of a satisfactory quality; and 2) competitive bids reveal the costs of a U.S. product is significantly higher than the foreign product.

● Brookside Fruit Company, certifies that CLODHOPPERS® contains over 51% of agricultural commodities that were grown and processed in the U.S.A.

● Brookside is the only manufacturer of CLODHOPPERS®. There are no other product remotely similar being produced in the U.S.A.

In conclusion:

The “Buy American” regulation has been created by government agencies, but they allow the School Food Authority to make the final determination.

We hope you will agree that both the X-TREME FRUIT® bites and CLODHOPPERS® are fine products that will not jeopardize the thoughts behind the ‘Buy American’ provision noted

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Duffin", is centered on a light yellow rectangular background.

Brookside Fruit Company