

BUY AMERICAN STATEMENT (Food only)

Contractor must comply with the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Buy American Act -7 CFR 210.21(d)) which requires schools and institutions participating in the National School Lunch Program (NSLP) and School Breakfast Program (SBP) in the contiguous United States to purchase, to maximum extent practicable, domestic commodities or products for use in meals served under the NSLP and SBP. Buy American -

(1) Definition of domestic commodity or product. In this paragraph, 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. Substantial means over 51% 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 United States.

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. Documentation must be received that requests:

- (1.) Consideration on the use of domestic alternative foods before approving an exception and
- (2.) The use of a non-domestic food exception when competition reveals the cost of domestic food is significantly higher than non-domestic food and
- (3.) The use of a non-domestic alternative food due to the domestic good not produced or manufactured in sufficient and reasonable available quantities of a satisfactory quality.

Additional sample language that is a best practice to include:

Sample Language that a **School Food Authority (SFA)** can revise and include in addition to their basic Buy American Statement to ensure compliance:

"Exceptions 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 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 specifications: (a) Price of the domestic food alternative substitute(s); and (b) 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): (a) Price of the domestic food product; and (b) Price of the non-domestic product that meets the required specification of the domestic product."

Sample Language that a **vendor** can provide to a SFA for compliance:

"We certify that ___(insert product name)___ was processed in the U.S. and contains over 51% of its agricultural food component, by weight or volume, from the U.S.," with space for the supplier to fill in the name of the product and its specific percentage of the domestic agricultural food component contained therein.

Other valuable Buy American considerations:

- When soliciting bids and awarding contracts, the SFA must establish clear expectations that the vendor is required to provide 100% domestic products to the SFA. On limited occasions, if domestic items are not available, the SFA should be made aware before delivery and should be the determining party for acceptance of an alternative item.
- Resources to document exceptions, such as the market news reports available from the USDA Agricultural Marketing Service (AMS). AMS provides free, unbiased price and sales information on farm commodities at: [Market News - Fruit and Vegetable - Custom Reports \(usda.gov\)](https://www.ams.usda.gov/market-news). Using this website, SFAs and State agencies can find third-party verification of cost and availability of domestic and nondomestic foods. Further, SFAs may use the information to communicate alternatives with food suppliers and document purchase decisions.
- The GADOE SNP Buy American Justification Form is a helpful resource that can be used to guide an SFA's decision making process when determining the potential use of a non-domestic versus domestic food product. When completed, this can also be retained as documentation during limited occasions when a non-domestic product is accepted. This form can be located on the GaDOE SNP website at [Procurement \(gadoe.org\)](https://www.gadoe.org/procurement).
- The USDA Buy American Fact Sheet is a beneficial resource that offers suggestions for ensuring that domestic foods are purchased. It also includes a decision tree to guide the SFA through the application of the Buy American Provision. This document can be located on the USDA website at [Buy American Fact Sheet | USDA-FNS](https://www.usda.gov/procurement/buy-american).