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To: School Food Service Directors/Managers

From: Paula Tyner-Doyle, Coordinator

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Subject: "BUY AMERICAN" National School Act Requirement

Conversations with School Food Service Directors indicate that they have been receiving foods from other countries from their vendors. It appears that a number of vendors are substituting these foods for products regularly produced in the U.S. The problem occurs when the vendor order is being paid from the school food service account. USDA has provided us with new guidance on this growing challenge.

This notice is to reiterate the "Buy American" provision of Section 104(d) of the William F. Goodling Child Nutrition Act of 1998 to ensure that all administrators of the National School Lunch Program (NSLP) and the School Breakfast Program (SBP) are in compliance when purchasing food products for the federal child nutrition programs.

The 1998 re-authorization of the National School Lunch Act (NSLA) included language that requires schools in the contiguous United States (U.S.), to the maximum extent practicable, to purchase products produced in the U.S. when buying with federal funds. This includes all money received from children as payment for program meals, all proceeds from the sale of competitive foods, and all other income generated by the school food service, which must accrue to the food service account. As defined in the legislation, a domestic food commodity is an agricultural commodity (for example, meat, fruit, vegetable or grain) that is produced in the U.S. A domestic food product is processed in the U.S. substantially using domestic agricultural commodities. Substantial means that over 51 percent of the processed food comes from American produced products. Regulations implementing these requirements (7CFR 210.21 (d) and 220.16 (d)) were published on September 20, 1999.

Some persons are mistakenly under the impression that you cannot use child nutrition funds to purchase products that are grown in other countries. This is not true. You can purchase bananas, coffee, etc. Exemptions are allowed for the purchase of "...unusual or ethnic food preferences..." and if the product is not produced or manufactured in the U.S. in sufficient quantities and when competitive bids reveal the cost of a U.S. product is significantly higher than the foreign product.

School Food Authorities (SFAs) must ensure that all procurements using funds from the nonprofit school food service account comply with the Buy American provisions. This includes foods that are sold to students as a la carte food items.

Accordingly, you should:

- include a Buy American clause in all procurement documents (product specifications, bid solicitations, purchase orders etc; check your specifications to ensure procurement of U.S. products;
- remind your vendors and distributors of the "Buy American " requirement; you could do this by including it in your bidding requirements process, for example: "We require that suppliers certify the percentage of U.S. content in products supplied to us. If you are unable or unwilling to make such certification, we will not purchase from you." If you wish, under that sentence you could state, "We certify that \_\_\_\_ has at least \_\_\_\_% U.S. content." Therefore, the supplier has space to fill in the product and its percentage of U.S. content. Upon delivery, check to see the country of origin of products;
- monitor contractor performance;
- require suppliers to certify the origin of the product;
- ask the supplier for specific information about the percentage of U.S. content in the food product; and
- examine product packaging for identification of the country of origin. The Nutrition Labeling and Education Act of 1990 mandates that the country of origin for domestic and imported food products be identified on the product label.

Compliance with this provision places more responsibility on the School Food Service Director/Manager. Procurement procedures should be established and shared with all those who are part of the procurement chain including whomever writes the product specifications, orders the food, and the person who receives the shipments.

You can accept product substitutions from other countries providing a fund source other than the school lunch account is used for payment.

Purchasing Cooperatives and Food Service Management Companies that purchase on behalf of your federal Child Nutrition Programs must also comply with the "Buy American" provision or school lunch account funds can not be used to cover those food costs. It is the ultimate responsibility of the school food authority to ensure adherence to "Buy American" provisions.

## [Questions & Answers](#)

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