



**Report on USDA Actions to Promote Compliance with the Buy American Provision of the  
National School Lunch Act  
U.S. Department of Agriculture  
Food and Nutrition Service  
A Report to Congress  
June 2019**

The following report addresses actions taken by the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS), and plans to take, to comply with Section 4207(c) of the Agriculture Improvement Act of 2018 (Public Law 115-334). This Act directs USDA to provide a report on the actions that have been taken, and will be taken, to ensure full compliance with the requirements of section 12(n) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1760(n)) for purchases of agricultural commodities, including fish, meats, vegetables, and fruits, and the products thereof, and ensure that States and school food authorities fully understand their responsibilities under such Act. This report fulfills those directives.

**Importance of the Buy American Provision:**

Congress established Buy American requirements for the National School Lunch and School Breakfast Programs through the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105-336). Since its passage into law, USDA has recognized the importance of the Buy American provision to our Nation's children and the domestic economy. Buy American requirements support the mission of USDA and the National School Lunch and School Breakfast Programs, which is to serve children nutritious meals and support American agriculture. As such, USDA has placed an emphasis on stakeholder engagement, technical assistance, and strong Program oversight to ensure compliance with these requirements.

**Buy American Statute and Policy:**

Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105-336) added a new section 12(n) to the National School Lunch Act (NSLA) (42 USC 1760(n)), which requires that school food authorities (SFAs) in the contiguous 48 States purchase, to the maximum extent practicable, domestic commodities or products. Report language accompanying the legislation (Conference Report 105-786) provides additional direction on determining if processed products meet the standard for a domestic product.

Accordingly, USDA regulations at 7 CFR 210.21(d)(3) and 7 CFR 220.16(d) and Policy Memorandum SP 38-2017, *Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program*, dated June 30, 2017 codify the Buy American requirements in section 12(n) of the NSLA and provide technical assistance to aid States and SFAs in complying. USDA policy on State agency monitoring at 7 CFR 210.29 includes oversight of SFA compliance with procurement requirements as a responsibility of the State agency.

In certain circumstances, the use of domestic foods is truly not practicable. As such, the statute and USDA policy permit limited exceptions to the Buy American requirements to allow for the purchase of foods not meeting the “domestic” standard (i.e., “non-domestic”). Consistent with the statute, USDA has set clear standards in Policy Memorandum SP 38-2017 for when an exemption may be appropriate and provides local SFAs the discretion to determine if local conditions meet the standard for an exemption. USDA implementing guidance provides two exceptions to the Buy American provision:

- When a food or food product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or
- When the cost of the U.S. food or food product is significantly higher than the non-domestic food or food product.

#### **USDA Support of the Buy American Provision:**

USDA’s role in ensuring that States and SFAs understand and comply with Buy American requirements is multi-faceted. A main tenant is ensuring State agencies and SFAs understand the Buy American provision and have the tools they need to implement it with fidelity. Through technical assistance and training, USDA takes a proactive role in supporting compliance with the Buy American provision. In addition, USDA oversees how State agencies execute education and enforcement activities to ensure compliance at the local level. Finally, USDA endeavors to support strong ties between SFAs and domestic agriculture producers to harness American abundance to strengthen their meal programs and promote agriculture and nutrition education in schools.

The following is a summary of activities that USDA has taken to aid States and SFAs in enforcing the Buy American provision through technical assistance, program oversight, and promotion of domestic agriculture:

Technical Assistance: USDA provides technical assistance, training, and tools to strengthen compliance with the Buy American provision in schools and enforcement by State agencies. USDA currently offers the following resources:

- Policy Memorandum SP38-2017, *Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program*, dated June 30, 2017, which helps strengthen the understanding of the requirements for school food authorities to purchase domestic foods and food products for the school meals programs. This guidance includes:

- Clarifications regarding the requirement that foods and food products must be produced and processed in the United States using over 51% domestic commodities.
- Template language that SFAs can modify and incorporate into solicitations for manufacturers and distributors to certify their food products contains over 51% domestic foods.
- Template language that SFAs can use in solicitations and contracts to comply with the requirement to retain records documenting exceptions to the Buy American provision.
- A resource that SFAs can use to identify sales information on farm commodities when documenting exceptions.
- A one-page flowchart, the *Buy American Fact Sheet*, which aides SFAs and State agencies with compliance and oversight.
- A “*Did You Know...?*” fact sheet with cost tips and resources to provide SFAs and State agencies with key information for compliance with the Buy American provision.
- In-person trainings and webinars for program stakeholders to explain Buy American requirements and best practices that can be used in oversight and compliance activities. Trainings are offered to stakeholders at all levels and customized to meet the needs of different stakeholder groups.
- On-going training opportunities, in collaboration with the Institute of Child Nutrition, for school nutrition professionals on the Buy American provision.
- An updated *USDA Menu Planner for School Meals*, a resource schools use to plan menus, that incorporates new information on the purchase of domestic foods and food products.

Oversight: Buy American requirements are monitored and enforced by State agencies through regular reviews of SFAs. USDA, in turn, monitors State oversight and review of the Buy American provisions through the Management Evaluation process.

USDA strengthened oversight of Buy American requirements through the review process by bolstering the requirements for State agency reviews of SFA procurement practices. Program guidance and regulations provide State agencies with the ability to take fiscal measures for SFAs that are determined to be out of compliance with the Buy American provision.

Supporting Domestic Agriculture: USDA Foods and USDA Farm to School efforts help SFAs serve foods produced and processed in the United States as part of school meals. These efforts reinforce the importance of the Buy American provision, promote the use of nutritious foods in school meals, provide opportunities to engage students and communities in agriculture and nutrition education, and have positive effects on small and local businesses. USDA provides the following resources to support State and local efforts to incorporate local foods into school meal programs:

- All States participating in National School Lunch Program also have access to USDA Foods, which are 100 percent domestically produced and nutritious foods purchased by USDA. Many States choose to obtain products such as fruits and vegetables through USDA Foods since those items can sometimes be challenging to purchase domestically. USDA Foods make up about 15-20 percent of the items served in the school meal program.
- USDA farm to school efforts also support the Buy American provision, as foods and food products purchased from local sources support local farmers, ranchers, small businesses, and the local economy. On an annual basis, USDA awards competitive Farm to School grants. Since the grant program's inception in FY2013, USDA has invested over \$30 million in farm to school grant funds in all 50 states as well as the District of Columbia, Puerto Rico, and the U.S. Virgin Islands and in FY 2019, USDA expects to award approximately \$7.5 million in grant funds.

### **New and Ongoing Activities:**

USDA will continue its longstanding commitment to provide excellent customer service to the children and families who participate in the National School Lunch and Breakfast Programs, State agencies, SFAs, and other stakeholders through ongoing support of the Buy American requirements. USDA will maintain the existing technical assistance, program oversight, and promotion of domestic agriculture activities discussed above, and will pursue new strategies to support effective compliance with the statute.

In response to the Buy American requirements included in Section 4207 of the Agriculture Improvement Act of 2018, USDA will release additional guidance on the Buy American provision this summer. This guidance will provide information on Buy American requirements for wild-caught and farmed fish. This guidance will also reiterate enforcement tools that State agencies have to assist with noncompliance and will provide SFAs with information regarding obtaining foods that are not domestically available. USDA is also developing a *Buy American Oversight: Administrative Review and Procurement Review* one-page flowchart identifying oversight activities in each review process to help enforce compliance.

USDA relies on feedback from a variety of stakeholders, including Program operators and participants, to identify ways to improve the Program and provide better customer service. The Department will continue to engage with the public through conferences, trainings, requests for information, and other forums to gather information that can be used to further strengthen compliance with Buy American requirements for Child Nutrition Programs.

## APPENDIX: Additional Resources

Policy Memorandum SP 38-2017, *Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program*, dated June 30, 2017

<https://www.fns.usda.gov/school-meals/compliance-enforcement-buy-american>

USDA Regulations for Administration of the National School Lunch Program at 7 CFR 210.21

<https://www.ecfr.gov/cgi-bin/text-idx?SID=ec7e8aa50f26447a2b92305b4a2bdc1a&mc=true&node=pt7.4.210&rgn=div5>

Institute of Child Nutrition (ICN) Training *Buy American: U.S. Agriculture Supporting Healthy School Meals*

<https://theicn.org/icn-resources-a-z/buy-american/>

MyPlate, MyState: This resource is a part of USDA's efforts to support local and regional food systems, galvanize the importance of American agriculture, and connect healthy eating with more than 160,000 farmers and ranchers nationwide selling to local markets:

<https://www.choosemyplate.gov/myplate-mystate>.

Seasonal Produce Guide: A USDA guide identifying different fruits and vegetables available throughout the year: <https://snaped.fns.usda.gov/seasonal-produce-guide>.

Team Nutrition-What's In Season: A USDA guide to foods commonly available by season:

<https://healthymeals.fns.usda.gov/features-month/whats-season>.

Food Specification Example-Alaskan Pollack: A USDA Food purchase specification to assist with writing a food specification: <https://fns-prod.azureedge.net/sites/default/files/fdd/110851-alaska-pollock.pdf>.

Local Meats in Schools: An overview of how to incorporate local meat in schools:

<https://www.fns.usda.gov/farmtoschool/local-meat-schools>.

Geographic Preference Fact Sheet: This resources provides a quick reference guide for incorporating this preference into procurements: <https://fns-prod.azureedge.net/sites/default/files/f2s/GeoPreference.pdf>.

Buy American Fact Sheet: A flow chart of the decision-making process for purchasing domestic foods and the documentation process to approve an exception when domestic foods are prohibitively costly or not available in the quality or quantity needed (to be released on public webpage in Summer 2019).