Buy American: You CAN do this!

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Session Purpose

- **Buy American the benefits and basics** of using domestic foods
- **Importance of Stakeholders** in the effort to increase compliance with and enforcement of Buy American
- **Guidance** USDA has published to assist with compliance
- **Best practices** to maximize domestic foods and ensure procurement of American foods
Buy American Benefits

• Using food products from local sources supports local farmers, ranchers, and other sources

• Buy American supports SFAs working with local, or small, minority, and women-owned businesses

• Encourages purchasing agricultural commodities and food products from local and regional sources
The National School Lunch Act

“It is declared to be the policy of Congress, as a measure of national security, to safeguard the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food, by assisting the States, through grants-in-aid and other means, in providing an adequate supply of food and other facilities for the establishment, maintenance, operation, and expansion of nonprofit school lunch programs.”
Buy American Basics

• The National School Lunch Act requires SFAs to purchase domestic commodities or products “to the maximum extent practicable”

• Buy American applies to any food and food products procured by SFAs using the nonprofit food service account (both program and non-program foods)
Buy American Basics

• Applies to the 48 contiguous United States

• Specific provisions for Hawaii:
  • Must purchase domestic commodities/products produced in Hawaii in sufficient quantities

• Specific provisions for Puerto Rico:
  • Must purchase domestic commodities/products produced in Puerto Rico in sufficient quantities
Buy American Basics

Domestic commodity:
• An agricultural commodity that is produced in the U.S.

Food Product:
• A food product that is processed in the U.S. substantially using agricultural commodities produced in the U.S.
• Over 51% from American products, determined by weight or volume
Key Stakeholders

- School Food Authorities
- State agencies
- Institute for Child Nutrition
- School Nutrition Association
- American Commodity Distributor’s Association
- Food Industry
Recent Buy American Guidance

**SP 38-2017: “Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program”**

- Clarifies that processed foods must be processed in the United States containing over 51% domestic foods measured by weight or volume; and
- Provides guidance for the procurement process for how this requirement can be accomplished.
A food component = one of the food groups comprising a reimbursable meal

<table>
<thead>
<tr>
<th>Meat/meat alternates</th>
<th>Grains</th>
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<tbody>
<tr>
<td>Vegetables</td>
<td>Fruits</td>
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<tr>
<td>Fluid milk</td>
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</tbody>
</table>

Foods from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are considered domestic.
BUY AMERICAN: SUPPORTING DOMESTIC AGRICULTURE IN SCHOOL MEALS

The BUY AMERICAN PROVISION was enacted to help ensure that when our nation’s children are fed, they are fed American food. The provision supports the United States economy, American farmers, and local and small agricultural businesses. (7 C.F.R. 201.31(d) and Memo NO-58-2017).

School food authorities (SFAs) in the continental United States* must purchase domestic agricultural commodities and food products. For foods that are processed, the agricultural commodities must be domestic, and for foods that are processed, they may be processed domestically using domestic agricultural food commodities that are comprised of over 91% domestic-grade ingredients, by weight or volume. A domestic commodity food component is the portion that counts toward a reimbursable school meal. Fruits, meat alternates, grains, vegetables, fruits, and fluid milk.

- Foods and food products of Guam, American Samoa, U.S. Virgin Islands, Puerto Rico, and the Northern Marianas Islands are considered domestic.

How SFAs Can Buy American Foods
- Demand means that includes only domestic foods and dry goods.
- Allocate the Buy American provisions and Geographical Preference section in purchase procurement procedures, specifications in solicitation, and contracts for food to ensure ininer competitive performance.
- People support to ensure that their food products are either 100% domestic commodities or a food product containing over 91% domestic food components, by weight or volume.
- Use USDA Foods and food products processed in the United States utilizing USDA Foods.
- Participate in Farm-to-School.

Exceptions to Buy American
- There are two limited exceptions when non-domestic foods may be purchased. These exceptions are determined by the USDA.
- The food is produced by a small business and the food product is processed in the United States.
- The food is processed in the United States using domestic ingredients.

REMEMBER: Document exceptions and keep records.

*Note: The Buy American provision applies to all U.S. federal agencies, except those operated by military, postal, and transportation departments.
BUY AMERICAN PROVISION- Agriculture Improvement Act of 2018

• Requires the Secretary “to enforce full compliance” with the Buy American requirements in the NSLA and report to Congress on actions taken and planned

• USDA is currently developing guidance in response to this directive
Agriculture Improvement Act of 2018

Guidance Will Provide Clarity and Resources on:

- Wild-caught and farmed fish
- State agency enforcement tools
Exemptions? Waivers?
Limited Exceptions to Buy American

There are **two limited exceptions** to the Buy American requirement:

1. A food is not produced or manufactured in the U.S. in sufficient and reasonably available **quantities** of a satisfactory quality; or

2. **Competitive bids** reveal the **cost** of a U.S. food is significantly higher than the non-domestic food

SP38-2017
Before Utilizing An Exception...

• Is there another domestic food or food product that can be substituted?
• Is this the best time of year to solicit bids for a specific product?
• How can I determine a third-party verification for cost and availability?
• https://www.ams.usda.gov/market-news
• https://marketnews.usda.gov
If an exception is utilized the SFA must keep documentation and the new memo provides information on the frequency of the exception process.
Limited Exceptions: Solicitation Sample Language

“Exceptions may be approved upon request. The request must include the:

• Price of the domestic food alternative substitute(s); and
• Availability of domestic alternative substitute(s) (quantity)
• Reason for exception: limited/lack of availability or price (include price):
  Price of the domestic food product; and
  Price of the non-domestic product that meets the required specification of the domestic product.”

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Maximize Domestic Foods: Procurement Documents

Include domestic foods in:

- Procurement procedures
- Specifications for food—domestic foods produced and processed in U.S.—including domestic foods from local sources
- Solicitations and contracts
- State agency prototype documents
Maximize Domestic Foods: Certification

Certify domestic foods and food products when testing foods, prior to approval

Sample language might state:

“We certify that (insert commodity or product name) was produced and processed in the U.S. and contains over 51% of its agricultural food component, by weight or volume, from the U.S."

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“Your brain is like a sponge that absorbs knowledge, but that’s not exactly how it’s done.”
Questions?
Thank you for your time and participation!

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