



TOM TORLAKSON
State Superintendent
of Public Instruction

A map of the state of California is shown, filled with the colors and patterns of the United States flag. The top-left portion of the map is blue with white stars, and the rest is filled with horizontal stripes of red, white, and red.

Procurement Guidance

Buy American Provision in School Nutrition Programs

September 2017





TOM TORLAKSON
State Superintendent
of Public Instruction

Training Objectives

- Learn the definition of the Buy American provision
- Identify the two limited Buy American exceptions
- Determine how a school food authority (SFA) can ensure compliance



TOM TORLAKSON
State Superintendent
of Public Instruction

Buy American Requirement

- Added to the National School Lunch Act (NSLA) by the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105-336)
- Included in Title 7, *Code of Federal Regulations* (7 *CFR*), parts 210.21(d) and 220.16(d), as one of the procurement standards SFAs must comply with when purchasing agricultural food products served in school nutrition meals programs
- Policy Memos SP-24-2016 , SP-38-2017

For further information refer to USDA Policy Memo SP-38-2017



TOM TORLAKSON
State Superintendent
of Public Instruction

Buy American Requirement

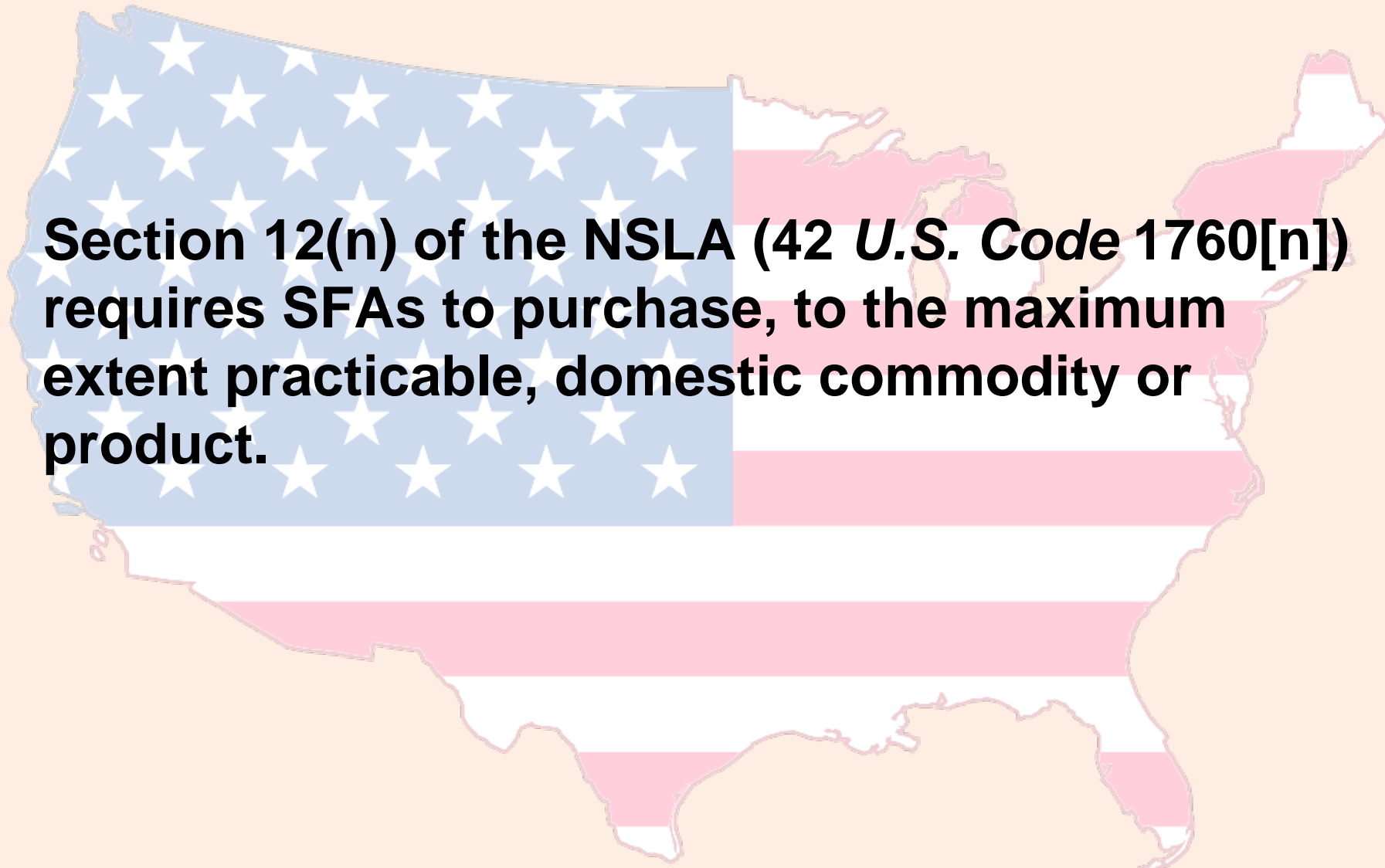
(continued)

- Supports the mission of child nutrition programs, to **serve nutritious meals** and **support American agriculture**
- Includes entities purchasing on behalf of SFAs (e.g., food service management companies)



TOM TORLAKSON
State Superintendent
of Public Instruction

Federal Buy American Provision



Section 12(n) of the NSLA (42 U.S. Code 1760[n]) requires SFAs to purchase, to the maximum extent practicable, domestic commodity or product.



TOM TORLAKSON
State Superintendent
of Public Instruction

Domestic Products

An agricultural (domestic) commodity produced in the U.S. and a food product that is processed in the U.S. using substantial agricultural commodities that are produced in the U.S.



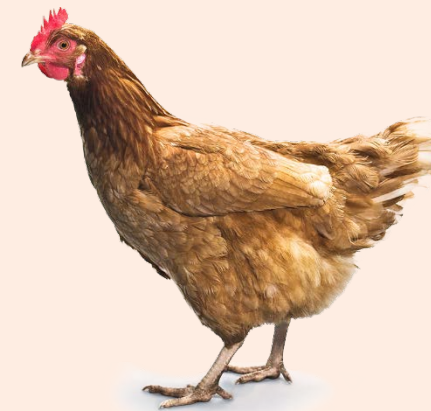


TOM TORLAKSON
State Superintendent
of Public Instruction

Commodity Versus Product

- **Domestic commodity**

- Examples: chicken, flour
- All commodities must be produced (i.e. raised, grown) in the U.S.



- **Domestic products**

- Example: breaded chicken nugget
- A substantial portion of the chicken meat and flour used for breading must have been produced in the U.S.





TOM TORLAKSON
State Superintendent
of Public Instruction

Reminders

1. The food product **can only be processed in the U.S.**
2. The Buy American provision **does not apply to nonagricultural products**, such as paper products and water





TOM TORLAKSON
State Superintendent
of Public Instruction

Limited Exceptions

1. Products not produced or manufactured in the U.S. in sufficient and reasonable quantities of satisfactory quality
2. Competitive bids reveal the cost of a U.S. product are significantly higher* than nondomestic products



*Determined by the SFA

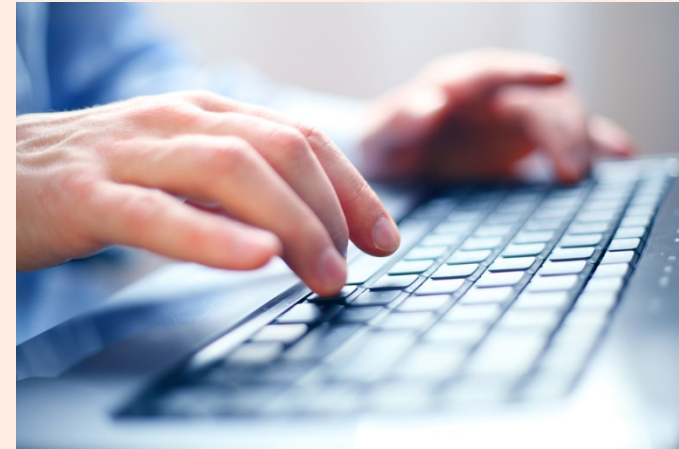
For further information refer to
USDA Policy Memo SP-38-2017



TOM TORLAKSON
State Superintendent
of Public Instruction

Using an Exception

- No waiver from the CDE required
- **SFA must provide documentation** upon request by the CDE justifying the exception during the off-site procurement reviews and SNP Administrative Reviews (AR):
 - E-mails and documentation of phone communications
 - Alternative considerations to approving an exception (e.g., quotes, etc.)
 - Reasons for the exception





TOM TORLAKSON
State Superintendent
of Public Instruction

Considerations Before Using Exceptions

Before using an exception, the SFA should determine whether:

1. There are other domestic sources of the product
2. There are substitutable domestic products
3. This is the best time of year to solicit bids
4. The cost and availability of domestic and nondomestic foods was verified through a third-party (e.g., USDA Agricultural Marketing Service [AMS])

For further information refer to
USDA Policy Memo SP-38-2017



TOM TORLAKSON
State Superintendent
of Public Instruction

Implementation

1. Ensure solicitations and contracts include the requirement for domestic agricultural commodities and products*
2. Include the requirement in documented procurement procedures*
3. Retain records documenting any exceptions*
4. Monitor contractor performance to ensure their compliance with all contractual requirements*

*Required by Title 2, *Code of Federal Regulations*, Section 200.318(b) and USDA Policy Memo SP-38-2017, Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program: <https://fns-prod.azureedge.net/sites/default/files/cn/SP38-2017os.pdf>



TOM TORLAKSON
State Superintendent
of Public Instruction

Implementation

(continued)

- Require suppliers to provide certification of domestic origin of food products delivered and invoices submitted and include this in the SFA's procurement procedures
- Examine product packaging and delivery invoices or receipts to ensure the domestic food that was solicited and awarded is the food that is received
- Require suppliers to identify the percentage of U.S. content in food products (including processed end products)
- Conduct periodic review on storage facilities



TOM TORLAKSON
State Superintendent
of Public Instruction

Implementation

(continued)

- Include domestic requirements in bid specifications
- Verify cost and availability of domestic and nondomestic foods using data in the USDA AMS's Run a Custom Report Web page at <https://marketnews.usda.gov/mnp/fv-report-config-step1?type=termPrice>

The screenshot shows the USDA Agricultural Marketing Service's "Run a Custom Report" interface. At the top left is the USDA logo and the text "United States Department of Agriculture Agricultural Marketing Service". Below this is a "Close Window" button. A green header bar contains the title "Run a Custom Report". Underneath, a light blue box indicates "Step 1: Report Type". The form includes three dropdown menus: "Type:" set to "Terminal Market", "by" set to "Location", and "By:" set to "All Commodities". A "Run" button is positioned at the bottom center of the form area.



TOM TORLAKSON
State Superintendent
of Public Instruction

Sample Specification Language

1. Utilizing the Buy American definitions in 7 *CFR* 210.21(d) in all food product specifications, invitations for bids, and requests for proposals for food products, contracts, purchase orders, and other procurement documents issued
2. Requiring a certification of domestic origin for products which do not have country of origin labels



TOM TORLAKSON
State Superintendent
of Public Instruction

Sample Specification Language (*continued*)

3. Including the following language: “The (agency name) participates in the National School Lunch Program and School Breakfast Program and is required to use the nonprofit food service funds, to the maximum extent practicable, to buy domestic commodities or products for Program meals. A domestic commodity or product is defined as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7 *CFR* 210.21(d).”



TOM TORLAKSON
State Superintendent
of Public Instruction

Sample Certification Language For Contractors

"We certify that (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."





TOM TORLAKSON
State Superintendent
of Public Instruction

Sample Solicitation Language For SFAs During Bidding

1. "We require that suppliers certify the food product was processed in the U.S. and certify the percentage of U.S. content, by weight or volume, in the food component of processed food products supplied to us."
2. "We require bidders to certify that (product name) was processed in the U.S. and contains over (percent of weight or volume) of its agricultural food component from the U.S."



TOM TORLAKSON
State Superintendent
of Public Instruction

Monitoring by the CDE: Off-site Review

1. Determine if SFAs are purchasing domestic commodities as defined in 7 *CFR Section* 210.21(d)
2. Review a sample of supplier invoices or receipts to determine whether the solicited-for domestic foods were provided by the awarded contractor
3. Confirm that the SFA's solicitation and contract documents contain Buy American certification language
4. Coordinate with AR reviewers on the on-site Buy American observations





TOM TORLAKSON
State Superintendent
of Public Instruction

Monitoring by the CDE: On-site Review

1. Visually inspect on-site and off-site storage facilities of agricultural commodity labels in four categories: dry, canned, refrigerated, and frozen
2. Review solicitations, contracts, and supplier invoices or receipts
3. Review product labels: Inconclusive labels may be deemed compliant if Buy American language is included in procurement documents
4. Ensure written justification for exceptions are provided



TOM TORLAKSON
State Superintendent
of Public Instruction





TOM TORLAKSON
State Superintendent
of Public Instruction

Resources

CDE Procurement in Child Nutrition Programs Web page:

<http://www.cde.ca.gov/ls/nu/pr/>

Institute of Child Nutrition Procurement in the 21st Century Web page:

<http://www.nfsmi.org/resourceoverview.aspx?ID=475>

USDA Procuring Local Foods for Child Nutrition Programs:

<https://www.fns.usda.gov/farmentoschool/procuring-local-foods>

CDE SNP Management Bulletins Web page:

<http://www.cde.ca.gov/ls/nu/sn/mb.asp>

USDA Food and Nutrition Service School Meals Policy Web page:

<https://www.fns.usda.gov/school-meals/policy>



TOM TORLAKSON
State Superintendent
of Public Instruction

Contact Information

Procurement Resources Unit

NSDprocurementreview@cde.ca.gov

916-322-2498, Option 7

Web | <http://www.cde.ca.gov/ls/nu/>

Twitter | [@CDENutrition](https://twitter.com/CDENutrition)

YouTube | www.youtube.com/user/cdenutrition



TOM TORLAKSON
State Superintendent
of Public Instruction

Professional Standards Crediting Information

Key Area: Administration (3000)

Training Topic: Program Management (3200)

Learning Objective: Oversee Standard Operating Procedures for routine operations (3220)

Total Instructional Time = 0.5 hours



TOM TORLAKSON
State Superintendent
of Public Instruction



This institution is an equal opportunity provider