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BUREAU OF HEALTH AND NUTRITION SERVICES AND
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TO: National School Lunch, School Breakfast and Special Milk Program Sponsors

FROM: Charlene Russell-Tucker, Chief
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DATE: November 24, 2006

SUBJECT: Operational Memorandum #07-07
I. Buy American Reminder
II. Department of Defense's Family Subsistence Supplemental Allowance (FSSA)

- I. This guidance serves as a general reminder to school sponsors about the importance of complying with the Buy American provisions that are found in the regulations of the National School Lunch Program (NSLP) at 7 CFR 210.21(d) and the School Breakfast Program (SBP) at 7 CFR 220.16(d).

One issue in particular that is being addressed is the applicability of the provision to *all foods purchased* by School Food Authorities (SFAs) with funds from the nonprofit food service account. The United States Department of Agriculture (USDA) has informed State Agencies about a food product that was displayed at the School Nutrition Association (SNA) 2006 conference that was non-compliant with the Buy American provisions. This food item, which was produced and exhibited by a major food company at the conference, was clearly marked as containing a main ingredient from China and prepared in Thailand.

Although the food item was not displayed at the SNA conference as a component of any of the menu planning options in the NSLP or the SBP, USDA expressed concern that conference attendees could have mistakenly concluded that such products are acceptable for a la carte sales. 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.

As with all other program requirements, SFAs must comply with the Buy American provisions, to the maximum extent practicable. The following are ways that SFAs can take action to comply with the Buy American requirements:

- include a Buy American clause in all procurement documents (product specifications, bid solicitations, requests for proposals, purchase orders, etc.);
- monitor contractor performance;
- require suppliers to certify the origin of the product;

- examine product packaging for identification of the country of origin; and
- ask the supplier for specific information about the percentage of U.S. content in the food product.

II. This is to inform you that Public Law 109-163 (January 6, 2006) made the *Department of Defense's Family Subsistence Supplemental Allowance* (FSSA) permanently available. Therefore, the exclusion of the FSSA as income for the Child Nutrition programs is also permanent. As a reminder, since May 2001, the Department of Defense has paid certain members of the Armed Forces and their families a FSSA. The FSSA is designed to bring a household's income up to 130% of the Federal poverty line and decrease the reliance on Food Stamps for affected members and their families. The amount of the FSSA, based on household size and income, may not exceed \$500 per month. Previously, for purposes of Child Nutrition Programs (CNP) eligibility determination, the FSSA payments were counted as earned income for households (see Q and A #2 on page 37 of the August 2001, *Eligibility Guidance for School Meals Manual* <http://www.state.ct.us/sde/deps/nutrition/EligGuidManual.pdf>). However, in Section 602 of the *Ronald W. Reagan National Defense Authorization Act* for Fiscal Year 2005, Public Law 108-375, Congress specified that in the event that counting the FSSA as income would put a family over the CNP income limits, the family must be considered eligible to receive CNP benefits.

Therefore, in accordance with Public Law 108-375, any FSSA that a household receives must not be treated as income in determining eligibility for free and reduced price meals under any of the CNPs.

If there are questions concerning these provisions, please contact:

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