



California Department of Education

It Has Not Ensured That School Food Authorities Comply With the Federal Buy American Requirement

Report 2016-139



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July 27, 2017

2016-139

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

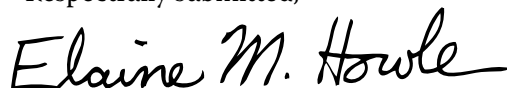
As requested by the Joint Legislative Audit Committee, the California State Auditor presents this audit report concerning the California Department of Education's (Education) efforts to ensure that school food authorities—which in California are mostly school districts—comply with the federal Buy American requirement. This federal law requires school food authorities purchasing food for the School Breakfast and National School Lunch programs to purchase, to the maximum extent practicable, domestic food—that which is produced in the United States or processed in the United States substantially using food produced in the United States.

Federal data show that California has the largest share of agricultural sales of any state in the nation. Therefore, California stands to benefit significantly from compliance with the Buy American requirement. However, despite these benefits and its obligation to do so, Education has not ensured that school food authorities comply with the Buy American requirement. Specifically, Education had not monitored compliance with this federal requirement until school year 2016–17. In addition, Education's current process for monitoring has weaknesses that have led to inadequate and inconsistent reviews of compliance with the Buy American requirement. We noted several instances in which it appeared that Education's reviewers concluded that a school food authority complied with the Buy American requirement based on insufficient information.

In the absence of adequate oversight by Education, the six school districts we visited did not adequately address the Buy American requirement. Specifically, we found that none of the districts had adequate policies and procedures for ensuring compliance with the Buy American requirement. Further, only two of the six school districts consistently included language related to the Buy American requirement in their food procurement documents. Finally, although the U.S. Department of Agriculture (USDA) expects that school food authorities will document their reasons for purchasing foreign-sourced food products, each district we reviewed failed to adequately maintain this documentation. In total, the districts were unable to provide sufficient documentation for almost all—22 of 23—foreign-sourced food items we found during our review.

However, as Education and school food authorities improve their approach to the Buy American requirement, they will face challenges when using food product labels to verify compliance. Federal food labeling laws do not always mandate that the country of origin for food items or their ingredients be included on their labels. In fact, we found that 241 of the 375 food items we reviewed at the six school districts had labels that did not clearly identify country of origin. We recommend that the Legislature work with the California congressional delegation to petition Congress for changes that would add clarity about the origins of food products that school food authorities purchase. For example, Congress could direct the USDA to develop a certification program that would indicate whether food products were compliant with the Buy American requirement. Specifically, the USDA could develop a voluntary certification program that would allow vendors to submit information regarding the origin of food items. The USDA could then verify that information and certify food items as Buy American-compliant.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

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Summary

Results in Brief

As a result of federal law authorizing grant funding to states in support of the School Breakfast and National School Lunch programs (meal programs), California receives nearly \$2 billion each year to provide meals to children throughout the State. In 1998 Congress amended federal law to include the Buy American requirement in the meal programs. The Buy American requirement requires school districts and other entities that participate in the meal programs—known as *school food authorities*—to purchase, to the maximum extent practicable, domestic commodities or domestic products. *Domestic commodities* are agricultural goods that are produced in the United States. *Domestic products* are foods that are processed in the United States substantially using agricultural commodities produced in the United States.

Because California has the largest agricultural economy in the country, compliance with the Buy American requirement offers the State significant benefits. However, despite these benefits, the California Department of Education (Education) has not taken adequate steps to ensure that California's school food authorities comply with the Buy American requirement. For example, until recently, Education did not monitor school food authorities' compliance with the Buy American requirement when it assessed their compliance with other federal requirements related to the meal programs. Although Education asserted that it was not required to do so until the U.S. Department of Agriculture (USDA) explicitly prescribed how it should perform such monitoring, we disagree with its conclusion. Specifically, federal regulations require Education to ensure that school food authorities comply with *all* federal requirements related to the meal programs, and the Buy American requirement has been a part of federal law since 1998. Further, the USDA issued guidance in 2006 that clearly stated that state agencies have an obligation to ensure that school food authorities comply with the Buy American requirement. Because Education did not monitor school food authorities' compliance with this requirement, it did not meet the USDA's expectations and did not ensure statewide compliance with federal law.

Education began evaluating school food authorities' compliance with the Buy American requirement in school year 2016–17, in response to updated guidance the USDA published that explicitly directed state agencies to do so. However, Education's process for evaluating school food authorities' compliance has weaknesses that have led to inadequate and inconsistent reviews. For example, Education has not established procedures identifying the level of evidence its reviewers must collect during their reviews. As a result,

Audit Highlights . . .

Our review of California's school food authorities' compliance with the federal Buy American requirement highlighted the following:

- » *Although required to ensure compliance, Education did not begin monitoring school food authorities' compliance with the federal requirement until school year 2016–17.*
- » *Education's new compliance review process has weaknesses that have led to inadequate and inconsistent reviews.*
 - *Reviewers collect insufficient evidence to support conclusions of compliance.*
 - *Education has not published the results of any of the 146 reviews that it is federally required to post on its website.*
- » *None of the six school districts we reviewed had adequate policies and procedures related to the Buy American requirement, and they had purchased foreign-sourced food items but did not have adequate documentation to justify the purchases.*
- » *Verifying compliance with the requirement will be challenging because federal food labeling laws do not always mandate that the country of origin for food items or their ingredients be included on labels.*

the reviewers do not collect a sufficient level of documentation to support their determinations of compliance, and Education's managers cannot monitor the reviewers' conclusions. Moreover, as of July 2016, federal regulations require state agencies to post on their websites a summary of the most recent results for each review no later than 30 days after Education provides those results to the school food authority. Nonetheless, as of June 2017, Education had yet to report the results of any of the 146 reviews for which it shared the results of and had an exit conference with the relevant school food authorities since the regulations took effect. Until Education begins posting the results of its reviews, it will continue to not comply with federal regulations and it will fail to provide the public with important information about meal programs, including whether California schools are complying with the Buy American requirement.

Further, Education's current efforts do not allow it to identify all foreign-sourced food that school food authorities purchase annually. Because the USDA's guidance only directs reviewers to inspect a limited selection of food items across nine food categories at the school food authorities' storage facilities, Education's reviews are unlikely to identify all foreign-sourced food items. Therefore, Education would need to go beyond the USDA's minimum requirements to identify the magnitude of the foreign-sourced food items that school food authorities are procuring. Education asserted that it does not collect this level of information because doing so is not a USDA requirement. However, this information is potentially valuable to different stakeholders. For example, it could provide local food producers opportunities to market to school food authorities. It could also provide information for policymakers to consider when making decisions regarding food policy. Finally, it could better allow parents to make informed choices regarding the food their children eat while at school.

In the absence of adequate oversight by Education, school food authorities have not adequately addressed the Buy American requirement. We reviewed six school districts—Elk Grove Unified, Fresno Unified, Los Angeles Unified, San Diego Unified (San Diego), San Francisco Unified (San Francisco), and Stockton Unified (Stockton)—to determine whether they had controls in place to ensure their compliance with the Buy American requirement.¹ We found that none had implemented adequate

¹ The conclusions we present in this report are based on guidance the USDA had issued regarding compliance with the Buy American requirement at the time of our review. On June 30, 2017, after we completed our on-site review, the USDA issued guidance that updated how it expects state educational agencies and school food authorities to understand and apply the Buy American requirement. After a review of the new guidance, we determined that our recommendations remain the same.

policies and procedures related to the Buy American requirement. Further, only San Diego and San Francisco consistently included language related to the Buy American requirement in their bid solicitations and contracts with food vendors. Most of the districts we reviewed cited Education's lack of emphasis on the Buy American requirement, which, we concluded, likely contributed to their lack of policies and procedures that addressed purchasing domestic food. However, by not implementing appropriate policies and procedures or including adequate language in their contracts, these school districts risk noncompliance with the Buy American requirement. In fact, we found all six of these districts had purchased foreign-sourced food items without maintaining adequate documentation justifying their purchases, as the USDA requires.

However, as Education and the school food authorities address the deficiencies we noted in our audit, they will face challenges in using food product labels to verify compliance with the Buy American requirement. Specifically, federal food labeling laws do not always mandate that the country of origin for food items or their ingredients be included on their labels; in fact, we found that 241 of the 375 food items we reviewed at the six school districts had labels that did not clearly identify country of origin for those items or their ingredients. Instead, these products were often labeled with information about where a product was distributed from or the location of the distributing company. This language does not provide sufficient information about whether the items or their ingredients are domestic commodities or products, making it difficult to determine compliance with the Buy American requirement.

California's economy stands to gain from increased compliance with the Buy American requirement; accordingly, resolving the challenges created by these federal requirements is in the State's best interest. California lawmakers could work with their counterparts in the California congressional delegation to petition Congress for changes that would add clarity about the origins of food products that school food authorities purchase. For example, Congress could direct the USDA to develop a certification program that would indicate whether food products were compliant with the Buy American requirement. Specifically, the USDA could develop a voluntary certification program that would allow vendors to submit information regarding the origin of food items. The USDA could then verify that information and certify food items as Buy American-compliant.

Summary of Recommendations

Legislature

To ensure effective oversight of the meal programs and to increase public transparency, the Legislature should require Education to track school food authorities' purchases of foreign-sourced food items and post this information to its website.

To address the challenges food labels present to ensuring that California's school food authorities purchase domestic food items, the Legislature should work with the California congressional delegation and request that Congress direct the USDA to establish a voluntary certification program through which the USDA could certify that food products are compliant with the Buy American requirement.

Education

To strengthen its administrative reviews and help ensure that school food authorities comply with the Buy American requirement, Education should update its written procedures no later than October 1, 2017, to include a requirement that reviewers collect and retain evidence for all items they evaluate for compliance with the Buy American requirement.

To comply with federal regulations and provide transparency to the public, Education should immediately begin posting to its website a summary of the results of any administrative reviews that it has shared with the relevant school food authorities.

To ensure that school food authorities comply with the Buy American requirement, Education should use its reviews to verify that school food authorities have policies and procedures that address the Buy American requirement. Further, Education should verify that these policies and procedures align with the USDA's guidance for including Buy American-related language in bid solicitations and contract documents and for maintaining documentation that justifies foreign-sourced food purchases.

School Districts

To help ensure that they consistently comply with the Buy American requirement, the school districts we reviewed should establish written policies and procedures related to the Buy American requirement by October 1, 2017. At a minimum, those policies and procedures should include the following:

- An explanation of how each school district will ensure that it consistently includes language related to the Buy American requirement in its bid solicitation documents and contracts.
- Guidance for how it will maintain documentation justifying its purchases of foreign-sourced food items.

Agency Comments

Although it agreed with all but one of the recommendations we made to it, Education expressed concern about our conclusion that it did not adequately ensure compliance with the Buy American provision. Five of the six school districts we audited agreed with the recommendation we made to each of them and indicated they would implement it. The sixth district—Stockton—did not indicate whether it agreed with our recommendation that it establish written policies and procedures to ensure compliance with the Buy American requirement.

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Introduction

Background

Federal law authorizes grant funding and food donations to states in support of, among other things, the School Breakfast and National School Lunch programs (meal programs). These meal programs can operate in public and nonprofit private schools as well as in residential childcare institutions to help fight hunger. Participating schools and institutions receive cash subsidies from the U.S. Department of Agriculture (USDA) for each meal served, and in return these meals must meet federal requirements. According to records maintained by the California Department of Education (Education), California receives approximately \$2 billion in federal funding each year to deliver the meal programs to children throughout the State.

With the William F. Goodling Child Nutrition Reauthorization Act of 1998, Congress amended federal law to include in the meal programs a requirement known as the Buy American requirement. Congress added this requirement to address concerns regarding the healthfulness of foreign-sourced food and to benefit the United States' agriculture industry. This federal law requires local meal program providers, known as *school food authorities*, to purchase domestic commodities or products to the maximum extent practicable. *Domestic commodities* are agricultural goods that are produced in the United States. *Domestic products* are foods that are processed in the United States substantially using agricultural commodities produced in the United States. In this case, *substantially* means that the final processed product must be composed of more than 51 percent domestic agricultural commodities. In addition, USDA guidance only allows the Buy American requirement to be waived for one of the two following reasons:

- When food products are not produced or manufactured in the United States in sufficient and reasonably available quantities of satisfactory quality.
- When competitive bids reveal the costs of domestic products are significantly higher than the costs of foreign-sourced products.

Congress intended the Buy American requirement to, in part, benefit United States agriculture, and because California has the largest agricultural economy of any state in the nation, the State's overall economy stands to benefit from compliance with it. Based on the most recently available information from the USDA, California products accounted for about 11 percent of all agricultural sales in the country in 2012—a higher share than any

other state—including nearly 70 percent of fruit, tree nut, and berry sales; more than 35 percent of vegetable sales; and nearly 20 percent of dairy sales. According to a publication by the University of California (UC) Agricultural Issues Center at UC Davis, every dollar of value added to California's farming and agriculture related industries leads to an additional \$1.27 for the State's economy.²

Education's Responsibilities Related to the Meal Programs

The USDA provides funding to Education, and Education then distributes these funds to school food authorities. These school food authorities—the majority of which are school districts—provide meals to students across the State. Federal regulations require state educational agencies—which in California is the California Department of Education—to ensure that school food authorities comply with all meal program requirements, some of which relate to food safety, local school wellness policies, dietary specifications, and certification of student eligibility for free or reduced-price meals, as well as the Buy American requirement.

To review participating school food authority compliance, the USDA expects Education to conduct two types of reviews of the meal programs: administrative reviews and procurement reviews. To help guide administrative reviews, the USDA publishes an administrative review manual (review manual). Federal regulations require Education to perform administrative reviews of all school food authorities at least once during a three-year cycle. According to Education's website, administrative reviews have four objectives: to determine if the school food authority is meeting all federal and state meal program requirements; to provide focused technical assistance to assist with correcting any findings; to secure necessary corrective action documentation demonstrating the school food authority's corrections; and to assess fiscal action and, when applicable, recover improperly paid funds.

In school year 2016–17, Education began assessing compliance with the Buy American requirement during its administrative reviews. The USDA's review manual directs state agencies to evaluate compliance with the Buy American requirement by checking food labels in various on- and off-site storage facilities to assess the country of origin of the products. The review manual asks state agencies to review up to four products from nine food categories, such as condiments, frozen fruit, and fruit juice. If the information on the label does not provide the product's origin, the USDA's

² Jonathan Barker, et al., "The Measure of California Agriculture," UC Agricultural Issues Center, August 2009, <http://aic.ucdavis.edu/publications/moca/moca09/moca09.pdf>, accessed on June 26, 2017.

review manual suggests that the reviewer should check whether the school food authority's contract documents contain language about the Buy American requirement. If so, the reviewer can consider the school food authority to be compliant for that food item. If a label identifies that a food product originates from outside of the United States, the reviewer must check to determine if the school food authority has documentation to support that the purchase of the item fits into one of the two exception categories for the Buy American requirement noted previously.

As another means of ensuring school food authorities' compliance with meal program requirements, the USDA expects Education to conduct procurement reviews and encourages state agencies to conduct them on a three year-cycle. According to guidance the USDA issued in 2016, during these reviews Education should examine bid solicitations, contracts, and invoices to determine their compliance with federal requirements. The USDA's June 2016 procurement review tool explicitly states that the procurement reviewer should assess whether the solicitations include a requirement that food items must be produced and processed in the United States. As we discuss further in the Audit Results, Education has yet to conduct these procurement reviews.

The School Food Authorities' Responsibilities Related to the Meal Programs

School food authorities are responsible for maintaining compliance with many federal requirements under the meal programs. For example, they need to plan food purchases in advance, addressing issues such as the federal requirement to ensure that students have access to dark green vegetables at least once every week. Education's records indicate that the majority of school food authorities in California are public school districts. In addition, they may be public or nonprofit private schools with high school grades or below, or public or private nonprofit licensed residential childcare institutions. School food authorities can directly purchase food from vendors by soliciting bids or proposals to ensure that they receive the best possible goods at the lowest possible prices. They can also either contract with vendors to provide prepared food, or they can prepare the food themselves. School food authorities can also choose to outsource the provision of food services by contracting with food service management companies. The USDA's guidance indicates that in making decisions about their meal programs, school food authorities should also consider how they will maintain compliance with the Buy American requirement.

Scope and Methodology

The Joint Legislative Audit Committee (Audit Committee) directed the California State Auditor to determine whether Education is ensuring that public school districts under its jurisdiction are complying with the Buy American provision in the William F. Goodling Child Nutrition Reauthorization Act of 1998. Table 1 lists the objectives that the Audit Committee approved and the methods used to address those objectives.

Table 1
Audit Objectives and the Methods Used to Address Them

AUDIT OBJECTIVE	METHOD
1 Review and evaluate the laws, rules, and regulations significant to the audit objectives.	Reviewed relevant laws, rules, and regulations related to the Buy American requirement.
2 Assess the extent to which Education monitors and enforces public school districts' compliance with the Buy American requirement, including whether school districts' procurement specifications and solicitations include Buy American provisions and whether school districts are appropriately documenting exemptions to the Buy American requirement.	<ul style="list-style-type: none"> • Interviewed Education staff to determine how Education ensures that school food authorities comply with the Buy American requirement, including whether it reviews school food authorities' procurement specifications and solicitations to assess whether they include Buy American requirement language. • For school years 2013–14 through 2016–17, reviewed Education's training materials and documentation to determine the adequacy of its trainings related to the Buy American requirement. • Reviewed 33 school year 2016–17 administrative reviews to determine if those reviews identified instances in which school food authorities had not complied with the Buy American requirement. • Determined whether Education verified that the school food authorities appropriately documented exceptions when purchasing foreign-sourced food.

AUDIT OBJECTIVE	METHOD
<p>3 Determine whether Education tracks purchases of food products by individual public school districts and, if so, whether Education can identify those districts purchasing food for school meal programs from outside of the United States when such foods are also grown or produced domestically. To the extent possible, identify school districts making such purchases and identify the food products purchased.</p>	<ul style="list-style-type: none"> • Interviewed key Education managers to determine whether Education tracks purchases of food items by individual school food authorities. • To determine school food authorities' methods of ensuring compliance with the Buy American requirement during school years 2014–15 through 2016–17, we surveyed a random selection of school food authorities from those that received reimbursement under the meal programs for school year 2015–16. However, we do not present the full results of the survey because of concerns about the accuracy of the responses. We describe these concerns in more detail in the Appendix beginning on page 41. • Selected six school districts—Elk Grove Unified School District (Elk Grove), Fresno Unified School District (Fresno), Los Angeles Unified School District (Los Angeles), San Diego Unified School District (San Diego), San Francisco Unified School District (San Francisco), and Stockton Unified School District (Stockton)—based on their locations and the amounts of funding they received for their participation in the meal programs. As we described earlier, the majority of school food authorities are school districts. • Interviewed key food service officials at each school district to determine the extent to which each had controls in place designed to ensure compliance with the Buy American requirement. • Obtained policies and procedures from the school districts and conducted analyses to determine how the school districts' procedures ensure compliance with the Buy American requirement. • Reviewed a judgmental selection of each school district's bid solicitations and contracts for school years 2013–14 through 2016–17 to determine whether the school districts consistently included language related to the Buy American requirement. • Performed on-site inventory reviews of the school districts' food storage facilities. We reviewed the labels on selected food items to identify their countries of origin. • For food items we determined were foreign-sourced, we confirmed whether the school district maintained required documentation justifying the exception to the Buy American requirement. • Reviewed a haphazard selection of food supplier invoices at the school districts to determine whether the invoices identified food items' countries of origin. Our review determined that food supplier invoices do not usually identify food items' countries of origin. • Interviewed relevant food service officials at the school districts to obtain their perspectives on the deficiencies we identified during our review of their policies and procedures, contracts, and exception documentation.
<p>4 Assess whether Education policies related to reporting school purchasing decisions are sufficient to identify foreign-sourced food products served by California school districts. Determine whether Education has made any recent changes to improve transparency of school districts' decisions to purchase foreign-sourced food products.</p>	<ul style="list-style-type: none"> • Reviewed relevant policies pertaining to Education's oversight of school food authorities' compliance with the Buy American requirement to determine whether they are sufficient to identify foreign-sourced food products served by school food authorities. • Interviewed relevant Education staff to determine how Education modified its procedures to address the Buy American requirement in its administrative reviews. Reviewed the revised procedures to determine whether the procedures Education follows and the type of information it gathers when conducting administrative reviews are sufficient to identify foreign-sourced food products served by school food authorities. • Interviewed relevant staff and reviewed Education's website in February 2017 and in June 2017 to determine whether it published the results of its administrative reviews as federal regulations have required since July 2016.
<p>5 Identify and report any changes that Education plans to make related to monitoring and enforcing the Buy American requirement and assess whether such changes will ensure greater compliance with the requirement.</p>	<ul style="list-style-type: none"> • Interviewed relevant staff to determine how Education plans to increase the transparency of school food authorities' decisions to purchase foreign-sourced food products. Education told us it does not have any plans to increase transparency in this area. • Interviewed key Education managers to determine what changes Education plans to make related to monitoring and enforcing the Buy American requirement.
<p>6 Review and assess any other issues that are significant to the audit.</p>	<p>Reviewed available information about a haphazard selection of 10 other states' monitoring of school food authorities' food purchases to determine whether they tracked school food authorities' foreign-sourced food purchases. For four of the 10 states and one additional state, we also reviewed their websites to determine if those states had posted the results of their administrative reviews.</p>

Sources: California State Auditor's analysis of the Joint Legislative Audit Committee audit request 2016-139 and information and documentation identified in the table column titled *Method*.

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Audit Results

Education Has Not Provided the Oversight Necessary to Ensure That School Food Authorities Comply With the Buy American Requirement

Education has not taken the steps necessary to ensure school food authorities' compliance with the Buy American requirement. As the state level administrator of the meal programs, Education is responsible for ensuring that California's school food authorities adhere to federal meal program requirements. However, until recently, Education did not provide sufficient training to school food authorities on the federal Buy American requirement or monitor their compliance with the requirement. In addition, although it began conducting reviews of school food authority compliance in school year 2016–17, Education has not developed adequate procedures for conducting those reviews. As a result, its reviews have been inconsistent and inadequate. It has also not taken steps to publicly report the results of its monitoring as federal regulations require. Finally, it has not collected and reported information about the magnitude of school food authorities' foreign-sourced food purchases. Although federal regulations do not require Education to track this information, we believe doing so would place California at the forefront of transparency with regard to the Buy American requirement.

Until Recently, Education Did Not Monitor Whether School Food Authorities Complied With the Buy American Requirement

Education did not ensure that school food authorities that participated in the meal programs complied with the Buy American requirement. As the Introduction explains, federal regulations require Education to ensure that school food authorities comply with all federal requirements related to the meal programs. An essential component of ensuring compliance is monitoring activities to verify that processes are working as required. However, despite monitoring other federal requirements, according to the associate director of Education's Nutrition Services Division (associate director), Education did not begin to monitor or enforce school food authorities' compliance with the Buy American requirement until school year 2016–17. Specifically, she stated that before that year, Education did not assess whether school food authorities appropriately documented exceptions to the Buy American requirement or whether they included provisions related to the Buy American requirement in their procurement specifications and solicitations. As a result, Education did not know whether school food authorities were appropriately spending the federal funds that support the meal programs.

We disagree with Education's contention that it was not required to monitor this requirement before 2016.

Education did not prioritize monitoring the school food authorities' compliance with the Buy American requirement until school year 2016–17 because it did not believe it was required to do so. According to the associate director, state law does not require such monitoring. The associate director further explained that Education did not believe that federal regulations required it to monitor this specific area until the USDA published its June 2016 review manual, which included an explicit requirement for states to evaluate school food authorities' compliance with the Buy American requirement. In response, in school year 2016–17, Education began reviewing school food authorities' compliance with the Buy American requirement as part of its administrative reviews.

However, we disagree with Education's contention that it was not required to monitor this requirement before 2016. Specifically, federal regulations require state educational agencies such as Education to ensure that school food authorities administer the meal programs in accordance with all applicable requirements, including the Buy American requirement, which has been part of federal law since 1998. Further, as part of its 1998 agreement with the USDA to receive grant funds for the meal programs, Education agreed to comply with all relevant federal laws and regulations as well as all instructions related to those regulations. In August 2006 the USDA issued guidance about the meal programs that explicitly states that state educational agencies have an obligation to ensure that school food authorities are complying with the Buy American requirement to the maximum extent practicable. Therefore, although the USDA only recently updated its administrative review manual, federal regulations and its contractual obligations have called for Education to ensure food authorities' compliance with the Buy American requirement since 1998, and the USDA's guidance shows it expected Education to do so.

Education asserted that it did ensure school food authorities' compliance with the Buy American requirement; however, the steps it took were insufficient to ensure compliance. Specifically, according to the associate director, Education ensured compliance by forwarding the USDA's guidance to school food authorities, by investigating complaints regarding violations of the Buy American requirement, and by offering training to school food authorities about the requirement. We discuss the facts surrounding our conclusion that Education's trainings related to the Buy American requirement were insufficient later in this report. Further, a manager in Education's Nutrition Services Division stated that Education received only three complaints about the Buy American requirement. As we indicate earlier, monitoring school food authorities' implementation of the Buy American requirement is a necessary component of ensuring their compliance with the requirement. Therefore, by not monitoring—and instead, simply

forwarding guidance to school food authorities and responding to a low number of complaints—Education was unable to know whether school food authorities statewide were following the guidance it distributed and complying with the Buy American requirement.

In the absence of such monitoring, Education deferred to the school food authorities the responsibility to ensure statewide compliance. According to the associate director, Education believed that before July 2016, the school food authorities were responsible for ensuring their own compliance with the Buy American requirement. Although school food authorities must take steps to comply with the Buy American requirement, Education is responsible for ensuring statewide compliance. Because it did not actively monitor school food authorities' compliance, Education did not meet the USDA's expectations or ensure statewide compliance with federal law. If the USDA determines that Education fails to comply with the conditions associated with the award of the meal program grant funding, it may impose additional conditions on Education, or it may take more serious action such as temporarily withholding cash payment, wholly or partly suspending or terminating the federal award, or withholding further federal awards for the program.

Moreover, Education's recent monitoring has given it only a limited perspective on statewide compliance with the Buy American requirement. According to Education's records, about 1,300 school food authorities had received reimbursement under the meal programs for school year 2015–16. However, according to a manager in the Nutrition Services Division, as of May 1, 2017, Education had only provided the results to the relevant school food authorities of 146 administrative reviews that included evaluations of compliance with the Buy American requirement. An analyst in the Nutrition Services Division reported to us that as of May 22, 2017, nine of its reviews had findings related to the Buy American requirement. However, as we discuss later, we have concerns about the quality of Education's reviews of Buy American compliance.

In addition, Education did not meet USDA's expectation for reviewing school food authorities' procurement practices to ensure that all contracts for food items comply with federal regulations. Specifically, in a March 2016 management evaluation report, the USDA determined that Education did not conduct procurement-specific reviews as part of its administration of the meal programs in school year 2015–16. Subsequently, the USDA released specific guidance in June 2016 on how to conduct these reviews. Unlike the administrative review process, the USDA's guidance for procurement-specific reviews does not include steps, such as determining country of origin by examining food labels, which are necessary to determine whether school food authorities are actually purchasing food items that comply

Education's recent monitoring has given it only a limited perspective on statewide compliance with the Buy American requirement.

with the Buy American requirement. However, had Education conducted these reviews as the USDA expected, it would have determined whether school food authorities had language in their bid documentation and contracts regarding the Buy American requirement. According to the associate director, Education plans to begin reviewing a selection of school food authorities' procurement documents in school year 2017–18. Until it completes more administrative reviews that include a review of Buy American compliance and begins conducting procurement reviews, Education will not be able to say with certainty that school food authorities are complying with the Buy American requirement.

Education's Recent Reviews of the Buy American Requirement Have Been Inadequate

Education's current process for evaluating school food authorities' compliance with the Buy American requirement has weaknesses that have resulted in inadequate and inconsistent reviews. According to the associate director, before the USDA issued updated guidance in June 2016 for how state educational agencies should assess compliance with the Buy American requirement during administrative reviews, Education did not have written procedures in place that would help it to identify foreign-sourced food products. She stated that Education adopts USDA's policies and procedures for administering the meal programs. Consequently, after the USDA released its updated guidance for administrative reviews in 2016, Education created its own procedures for evaluating school food authorities' compliance with the Buy American requirement. However, instead of providing further guidance to its staff, Education's procedures simply mirror the steps found in the USDA's guidance. Although it has taken steps to follow this guidance, Education has not implemented additional procedures in key areas that would ensure that it adequately and consistently evaluates school food authorities' compliance with the Buy American requirement.

Education has not implemented additional procedures in key areas that would ensure that it adequately and consistently evaluates school food authorities' compliance with the Buy American requirement.

For example, Education has not established procedures identifying the level of evidence its reviewers must collect during their reviews, and as a result, the reviewers have not collected a sufficient level of documentation to support their determinations of compliance. According to the associate director, Education's reviewers only collect and retain evidence for those food items they determine are not compliant with the Buy American requirement. She explained that if the reviewers determine that food items comply with the Buy American requirement, they simply note the compliance. As a result, managers in the Nutrition Services Division cannot review the evidence supporting all compliance determinations.

In the absence of such evidence, Education's managers have to accept the reviewers' work without verifying the accuracy of their compliance judgments. For example, in one administrative review, the reviewer indicated that a food item was produced in a foreign country but that the school food authority had not violated the Buy American requirement. However, the reviewer did not document the reasoning for this decision. When we questioned Education about this item, a manager in the Nutrition Services Division had to obtain the documentation from the school food authority to demonstrate that the item met one of the two allowed exceptions. As the Introduction explains, the USDA's guidance provides two exceptions that school food authorities may cite when purchasing foreign-sourced food items: either that the product is not produced or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality, or that competitive bids reveal that the cost of a product from the United States is significantly higher than a nondomestic product.

At the beginning of our audit, Education increased the level of detail it expects its reviewers to record to demonstrate compliance with the Buy American requirement; however, its reviewers have not consistently implemented its new process. Specifically, Education began instructing reviewers to record the names of the food items they inspect on a template and use a checkmark to indicate if the items comply with the Buy American requirement. If followed, this template would provide Education's managers with at least some additional information about the food items that reviewers inspect. However, we found that Education's reviewers inconsistently documented the food items they reviewed. When we reviewed more than 30 administrative review results, we found that one reviewer merely stated that most items were of domestic origin and did not specifically identify any of the domestic food items inspected. On the other hand, some reviewers recorded the specific food names, vendor names, and other details from the product labels, such as the city and state. The inconsistent nature of the information the reviewers recorded, combined with the lack of supporting documentation, means that Education's management cannot know whether reviewers' compliance determinations are accurate and appropriate.

Further, Education's procedures do not include sufficient guidance to help reviewers and managers handle the complexities of determining compliance with the Buy American requirement. As we discuss later in this report, during our review of food items at six school districts, we encountered a large number of food item labels that did not provide clear country-of-origin information. Although Education has provided its staff with steps to follow when they encounter unclear labels, it has not provided a list of the types of labels its staff should consider inconclusive. As a result, different

In the absence of such evidence, Education's managers have to accept the reviewers' work without verifying the accuracy of their compliance judgments.

Education's lack of guidance to its managers and reviewers has resulted in its reviewers reaching different conclusions regarding compliance with the Buy American requirement about the same products.

reviewers may arrive at different conclusions when reviewing the same food labels. For example, a food label that states *prepared in the USA* may lead some reviewers to determine the product could include ingredients from outside of the United States, requiring them to look for additional evidence to determine compliance with the Buy American requirement. However, other reviewers may interpret this phrasing to indicate the product is from the United States and therefore complies with the Buy American requirement. According to a manager in the Nutrition Services Division, the managers typically discuss as a group their findings and the various issues that reviewers raise. Nonetheless, because managers only see documentation for items that reviewers have concluded were noncompliant, it is unclear to us how these discussions would identify that reviewers had dealt inappropriately with unclear food labels they encountered.

Education's lack of guidance to its managers and reviewers has resulted in its reviewers reaching different conclusions regarding compliance with the Buy American requirement about the same products. For example, during one administrative review, a reviewer noted the company, product type, and multiple countries of origin listed on the food label attached to an item and determined that the item did not comply with the Buy American requirement. However, during a review involving the same item at another site, a second reviewer noted the company and product type but only listed a domestic city and state as the item's place of origin. In this case, the reviewer indicated the item complied with the Buy American requirement. Based on our examination of the same product during our review of food items, it is clear that the second reviewer only obtained information about the product listed on the outside of the box in which the products were shipped rather than the correct country-of-origin information from the label on the actual item. There is no indication that the reviewer considered additional evidence beyond the information on the box to reach the conclusion that this product complied with the Buy American requirement. Moreover, as we indicated previously, the managers monitoring these reviewers are not in a position to know that such a difference exists because of the limited supporting evidence they are given to examine. Consequently, in instances such as these, Education would fail to identify noncompliance its reviewers may have overlooked or misjudged.

We also found a number of additional instances in which reviewers appeared to rely on insufficient information to reach compliance determinations. Specifically, when we examined 24 administrative reviews in which the reviewers completed Education's testing template to determine compliance with the Buy American requirement, we identified seven reviews in which the reviewers concluded that items were compliant but they recorded only a city

and state or just a state to support their determinations—similar to the second example we just described. Our own review of food items revealed that food labels often do not fully indicate whether products comply with the Buy American requirement even though they feature a domestic city and state. The USDA's administrative review guidance and Education's own procedures direct reviewers to take an additional step in these cases to determine whether the school food authority's bid or contract documents contained language related to the Buy American requirement. Therefore, we expected to see evidence that Education's reviewers took that step when reaching their conclusions. However, we found no indication that the reviewers took any additional steps to assess compliance in these instances. This leads us to believe that Education's reviewers concluded food products were domestic even though the food label they reviewed did not provide such assurance. The difficulties Education experienced in its first year of evaluating school food authorities' compliance with the Buy American requirement emphasize the importance of Education developing sufficient procedures for its reviewers to follow when conducting its reviews, including obtaining sufficient evidence to justify their conclusions. Until Education issues clear guidance regarding how reviewers should evaluate and document the evidence supporting their conclusions, it can expect such discrepancies and errors to continue in its administrative reviews.

Finally, Education has not reported the results of its administrative reviews as federal regulations require. Starting July 2016, federal regulations have required Education to post a summary of the results for each administrative review on its website no later than 30 days after it provides those results to the pertinent school food authority. According to a manager in the Nutrition Services Division, Education provided the results of 146 administrative reviews to school food authorities as of May 1, 2017. However, Education had not posted the results of any reviews on its website as of early June 2017. Consequently, Education has failed to comply with the federal requirement to provide the public with information about school food authority compliance with meal program requirements, including the Buy American requirement.

Although it has been one year since this reporting requirement took effect, Education has yet to determine how it will make the necessary information public. According to a manager in the Nutrition Services Division, Education is evaluating two factors affecting its ability to post the results of its reviews: how to manage the volume of reviews, given its current online storage capacity, and how to present the data in a consistent manner, given that its reviews are generated by numerous reviewers. However, we question whether Education's explanations for the delay are reasonable when other states have posted the results of their

Education has failed to comply with the federal requirement to provide the public with information about school food authority compliance with meal program requirements.

administrative reviews. For example, Arizona had posted the results of more than 125 reviews as of June 2017, suggesting that Education could have posted the results of at least some, if not all, of its completed administrative reviews. Although Education insists it is working on meeting this now one-year old requirement, it did not resolve the issue between our first inquiry in February 2017 and our follow-up inquiry in June 2017. Until Education begins posting the results of its reviews, it will continue to violate this federal regulation.

Education Has Not Emphasized Compliance With the Buy American Requirement in Its Trainings for School Food Authorities

Although it asserts that school food authorities are responsible for ensuring their own compliance, Education provided inadequate training to school food authority staff regarding how to comply with the Buy American requirement. From school years 2013–14 through 2016–17, Education provided 12 training courses to staff at multiple school food authorities that included information regarding the Buy American requirement. However, the training materials Education provided to us show that these training courses generally related to overall school food authority procurement practices and included only minimal segments related to the Buy American requirement. None of the training courses focused exclusively on compliance with the Buy American requirement. As a result, Education did not ensure that school food authorities were properly equipped with the knowledge and tools needed to achieve compliance with the Buy American requirement. It was not until November 2016 that Education finally offered a training that included sufficient information on how school food authorities could ensure compliance with the Buy American requirement.

The USDA has issued periodic guidance since 2001 to reinforce the importance of compliance with the Buy American requirement and to provide tips on how to comply, some of which Education forwarded to school food authorities by issuing management bulletins and informational emails. However, Education's lack of training appears to have affected school food authorities' awareness of the Buy American requirement. As we discuss in more detail later in this report, the school districts we reviewed had few measures in place to ensure compliance with the Buy American requirement, and they generally indicated that Education had not emphasized the importance of the Buy American requirement.

Education's lack of training appears to have affected school food authorities' awareness of the Buy American requirement.

According to a manager in the Nutrition Services Division, Education did not offer more robust training and guidance regarding the Buy American requirement before late 2016 because the Buy American requirement was not a primary focus of the

administration of the meal programs and the USDA has only recently placed a larger emphasis on evaluating compliance with the requirement. However, as we previously describe, the Buy American requirement has been in place since 1998. The associate director indicated that moving forward, Education plans to modify its training efforts to better address the Buy American requirement; specifically she stated that Education will gather and analyze information from its administrative and procurement reviews of school food authorities to better enhance the content of its future training materials. In addition, Education's Nutrition Services Division indicated that it plans to provide a webinar in the future that will focus primarily on compliance with the Buy American requirement. Although these seem to be positive first steps, until it consistently prioritizes providing adequate training on the Buy American requirement and monitoring the school food authorities' compliance with this guidance, Education risks that school food authorities will lack the knowledge they need to develop and implement appropriate procedures to ensure compliance with the Buy American requirement.

Because It Does Not Track the Frequency of School Food Authorities' Foreign-Sourced Food Purchases, Education Cannot Provide Valuable Information to the Legislature and the Public

Education does not collect information from school food authorities about the frequency and magnitude of their purchases of foreign-sourced food items because it is not currently required to do so. Congress added the Buy American requirement to federal law to benefit the American agriculture industry and to address public health concerns regarding imported food. By tracking school food authorities' foreign-sourced food purchases, Education could obtain a better understanding of where the food that California's students consume comes from and whether the State's nearly \$2 billion in federal meal program funding supports domestic agricultural producers. As we stated earlier, this is of particular importance to California because agriculture represents a significant part of its economy.

According to the associate director, Education does not currently—nor does it plan to—track school food authorities' purchases of food products because doing so is not a USDA requirement. The USDA's review manual does direct Education to check the labels of a selection of food items found at school food authorities' storage facilities to assess the countries of origin of those products. However, federal regulations do not require state agencies to perform administrative reviews of each school food authority every year. In addition, because the USDA's guidance only directs reviewers to inspect a limited selection of food items across nine food categories, Education may

Education does not currently—nor does it plan to—track school food authorities' purchases of food products.

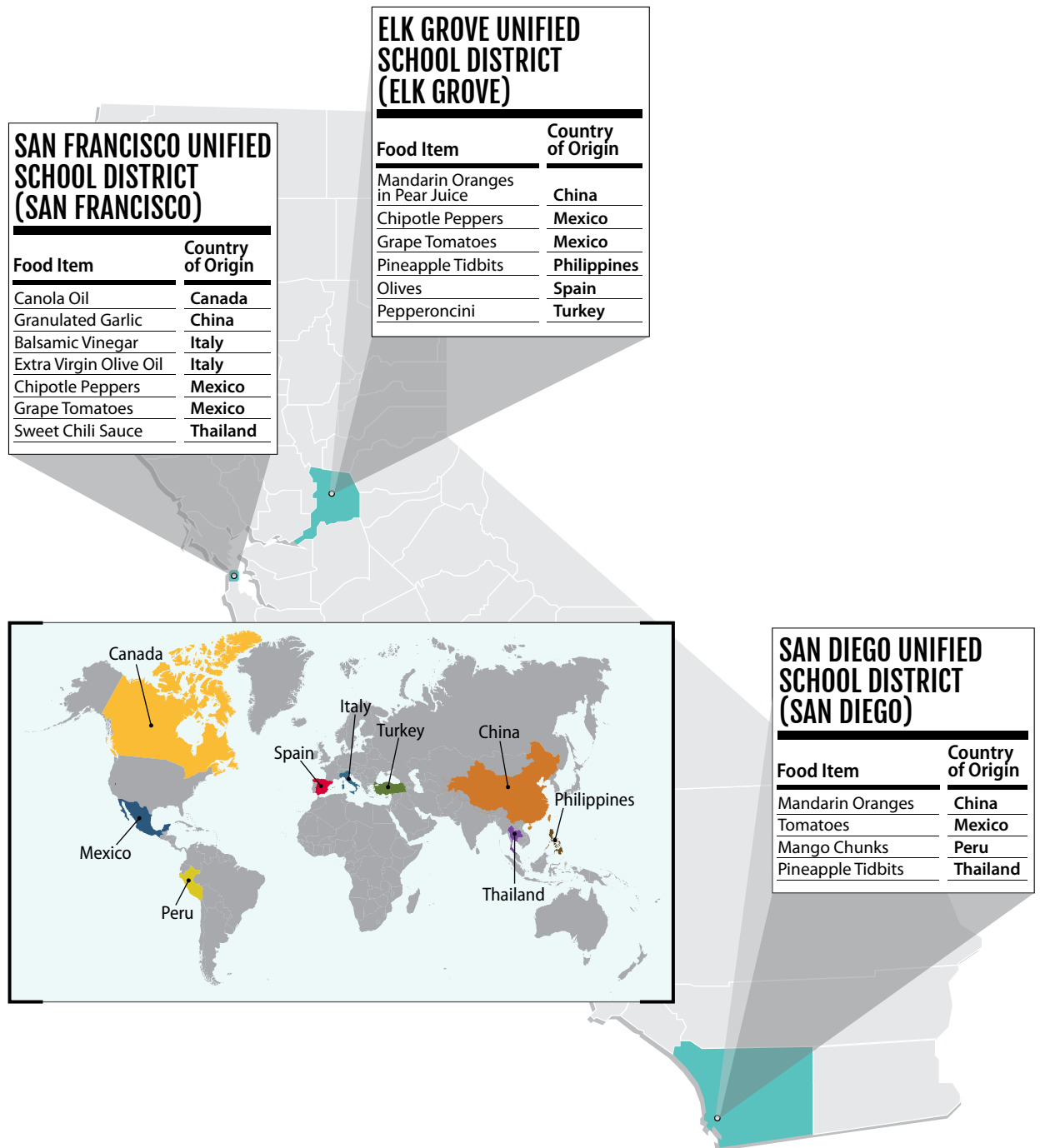
Education would increase the meal programs' transparency and accountability by obtaining and publishing data regarding school food authorities' purchases of foreign-sourced food.

not identify all foreign-sourced food items that the school food authority purchased. Therefore, to identify the magnitude of the foreign-sourced food items school food authorities procure annually, Education would need to go beyond these minimum requirements.

If Education obtained and published data regarding school food authorities' purchases of foreign-sourced food, it would increase the meal programs' transparency and accountability. For example, if Education required school food authorities to report their foreign-sourced food purchases, the school food authorities might consider purchasing more domestically grown products or be more likely to maintain evidence demonstrating that their purchases of foreign-sourced food met one of the two exceptions the USDA allows. In addition, stakeholders such as domestic agriculture companies, policymakers, and parents could evaluate the data to determine which school food authorities purchased foreign-sourced items. Having information about school food authorities' purchases of food products from various countries could provide local producers with opportunities to market to school food authorities. It would also enable policymakers to hold more informed discussions regarding food policy. Finally, it could better allow parents to make decisions regarding the food their children eat and to contact their school officials if they have concerns about the foreign-sourced items. Figure 1 shows the information Education could make available to these stakeholders through its website.

The six school districts we reviewed indicated that reporting data regarding the foreign-sourced food items they have purchased is possible and would not be a significant burden on their resources. In fact, Elk Grove began gathering this type of information for some products during the 2016–17 school year. Because school food authorities already must document any foreign-sourced food purchases to demonstrate that the items meet one of the two exceptions to the Buy American requirement, reporting these purchases to Education should not represent a significant burden on school food authorities. Although the associate director in the Nutrition Services Division stated that Education would need significant resources to be able to track and report foreign-sourced food purchases, she confirmed that Education has never studied the cost of such an effort. Of the 10 other states we researched, we did not identify any that make this type of information about foreign-sourced food purchases available to the public. If Education were to report this information annually on its website, we believe it would place California at the forefront of transparency with regard to the Buy American requirement as well as producing the other benefits already mentioned.

Figure 1
A Model for Presenting Centralized Information on Foreign-Sourced Food Purchases



Sources: California State Auditor's assessment of a selection of food items at food storage facilities at three of the school districts we reviewed.

The School Food Authorities We Reviewed Have Not Implemented Sufficient Measures to Ensure Compliance With the Buy American Requirement

None of the school food authorities we reviewed had adequate controls in place to ensure compliance with the Buy American requirement. We visited six school districts—Elk Grove, Fresno, Los Angeles, San Diego, San Francisco, and Stockton. As we described previously, school districts are the most common type of school food authority. Our review found that none of the six school districts we reviewed had sufficient policies or procedures for complying with the Buy American requirement. These same school districts also varied in the degree to which they included language related to the Buy American requirement in their food purchase bid solicitations and contracts. Finally, during our review of food items at the six school districts, we found that the school districts had not adequately documented their exceptions to the Buy American requirement for almost all—22 of the 23 foreign-sourced food items—we identified.

The School Districts We Reviewed Generally Did Not Have Adequate Policies and Procedures Related to the Buy American Requirement

Federal regulations require school food authorities to use documented procurement procedures that reflect applicable laws and regulations, which include the Buy American requirement. Additionally, the USDA's guidance outlines ways school food authorities can accomplish compliance with the Buy American requirement, such as monitoring food deliveries to ensure the food they receive is domestic and including Buy American-related language in bid solicitations and contracts. As a result, we expected that each school district we visited would have written policies and procedures that describe how staff will ensure compliance with the Buy American requirement. For example, we expected written guidance for deciding whether to purchase foreign-sourced food items and for documenting this rationale. However, none of the six school districts we reviewed had policies or procedures that addressed documenting purchases that were exceptions to the requirement. As we describe later in this report, we found instances in which each of the school districts in our review did not maintain USDA-required documentation describing the reasons for foreign-sourced food purchases.

None of the six school districts we reviewed had policies or procedures that addressed documenting purchases that were exceptions to the requirement.

Of the six school districts we visited, only one had any written policies and procedures to ensure compliance with the Buy American requirement before our review began. Specifically, in November 2016, San Diego instituted a written procedure to include language related to the Buy American requirement in its bid solicitations and contracts for food products. However, this procedure was

not comprehensive and did not, for example, address how staff at the school district should ensure that vendors complied with the contract terms. Another school district, Elk Grove, drafted a policy that specified that all food-based bids include both a reference to the Buy American requirement and a request that vendors provide the origins of food items. However, during our visit in March 2017, Elk Grove had not yet implemented this policy because the district was waiting for Education to verify this policy during its visit to Elk Grove, which the district anticipated would occur in a few months. Elk Grove had not yet finalized this policy as of May 2017.

Most of the districts we reviewed explained that Education had only recently emphasized the requirement, which, we concluded, likely contributed to their lack of policies and procedures related to the Buy American requirement. However, after our site reviews, all of the school districts we evaluated indicated they would implement policies and procedures related to the Buy American requirement for the 2017–18 school year. Since our review, Fresno and Los Angeles have created policies specifying that district staff must include a reference to the Buy American requirement in food bid solicitations. Fresno’s policy also requires vendors to notify it in advance of delivering foreign-sourced food items. Los Angeles’s policy states that its staff should develop food product specifications with domestic products in mind and that exceptions to the Buy American requirement are allowed only if documentation is available to justify one of the two USDA exceptions, but its policy does not specify how staff should gather and maintain adequate exception documentation.

However, all six of the school districts are still missing policies and procedures that are critical to complying with federal regulations. Specifically, none of these school districts have adequate policies and procedures that address regularly verifying that vendors’ products are domestic or maintaining adequate documentation for allowable exceptions to the requirement. Further, only Los Angeles has drafted a policy related to identifying early in the procurement process the need for foreign-sourced items. Until each school district implements adequate policies and procedures, it will be at a higher risk for noncompliance with the Buy American requirement.

In addition to the school districts we visited, we surveyed a random selection of other school food authorities in the State and asked whether they maintained policies and associated procedures for compliance with the Buy American requirement. From those that responded that they had policies and procedures, we selected 19 school food authorities and asked them to provide us with copies of those documents. Only 15 of the 19 school food authorities responded to this request, and among those, only three could provide evidence that they had both policies and procedures. An additional two provided

Only Los Angeles has drafted a policy related to identifying early in the procurement process the need for foreign-sourced items.

a policy that related to the Buy American requirement but had no associated procedures, while another five school food authorities could only prove that they had procedures but no associated policies. These results, combined with our review of the six school districts, lead us to conclude that Education should do more to ensure that school food authorities have policies and procedures for complying with the Buy American requirement. Education could check for such policies and procedures in its planned procurement reviews or its administrative reviews. A manager in the Nutrition Services Division indicated that performing this check would be feasible.

Most School Districts We Reviewed Did Not Consistently Include the Buy American Requirement in Their Bid Solicitations or Contracts

Most of the six school districts we reviewed did not consistently include language related to the Buy American requirement in the bid solicitations or contracts that we selected to evaluate. According to the USDA's guidance, two ways school food authorities can accomplish compliance with the Buy American requirement are by including in all procurement documents—such as bid solicitations and contracts—language related to the Buy American requirement or by including a specification that they have approved only domestically grown and processed products for purchase. At each of the six school districts we visited, we reviewed up to four bid solicitations or contracts for each school year from 2013–14 through 2016–17. Table 2 shows that at four of the six school districts, either none or only some of the bid solicitations and contracts we reviewed had adequate language to address the requirement.

Only two school districts of the six we reviewed—San Diego and San Francisco—included adequate language related to the Buy American requirement in all of the bid solicitations and contracts we reviewed.

Only two school districts—San Diego and San Francisco—included adequate language related to the Buy American requirement in all of the bid solicitations and contracts we reviewed. Specifically, the contracts for both of these districts contained a description of the Buy American requirement or a statement that only domestic products were solicited. In addition, San Diego's contracts stated that vendors must provide food items' countries of origin upon request, and San Francisco's contracts assert that a prospective bidder must alert the district on its bid of the bidder's intent to provide any items produced or grown in foreign countries. This language provided both San Diego and San Francisco with a course of action to ensure that their vendors' products were domestic. A contract specialist at San Diego believed the school district has had language related to the Buy American requirement in its contracts since he began working with the district in 2003. However, he was not sure how the district first became aware of the importance of compliance with the Buy American requirement or when precisely San Diego began including this language in its contracts. The director

of Student Nutrition Services at San Francisco was new to her position at the time of our audit and did not know when or why the school district began to include Buy American language in its contracts.

Table 2
Most School Districts We Reviewed Did Not Consistently Include Adequate Language Related to the Buy American Requirement in Their Bid Solicitations and Contracts for Food Purchases

Do Bid Solicitations and Contracts Contain Adequate Language Related to the Buy American Requirement?

SCHOOL DISTRICT	SCHOOL YEAR			
	2013-14	2014-15	2015-16	2016-17
Elk Grove	■	✗	■	✓
Fresno	✗	✗	✓	✓
Los Angeles	✗	✗	✗	■
San Diego	✓	✓	✓	✓
San Francisco	✓	✓	✓	✓
Stockton	✗	✗	✗	✗

Source: California State Auditor's review of a selection of up to four bid solicitations and contracts obtained at each of the school district sites.

Note: In two instances—Fresno for 2014–15 and San Francisco for 2015–16—we present our conclusions regarding multi-year bid solicitations and contracts that were also reviewed for previous years because there were no other contracts to review for these years. In all other instances, we present our conclusions about bid solicitations or contracts only once.

✓ = Yes

✗ = No

■ = Not all

At Fresno we found that nearly all of the bid solicitations and contracts we reviewed contained adequate language related to the Buy American requirement. The only exception was the contract for juice and dairy products which we reviewed for school years 2013–14 and 2014–15. Fresno's food services director stated that Fresno had an informal practice of purchasing domestic food and indicated that Fresno was not primarily focused on the Buy American requirement as part of its procurement.

In contrast to Fresno, San Diego, and San Francisco's specific contract language, the bid solicitations and contracts we reviewed at Stockton broadly stated that each contract was subject to all applicable federal statutes and regulations. Stockton's purchasing manager asserted his belief that this broad statement addressed the Buy American requirement. However, we consider this language to be inadequate because the USDA recommends that school food authorities include in solicitations and contracts language related specifically to the Buy American requirement or the specification

Before school year 2016–17, the Buy American requirement was not a main consideration for food purchase contract awards at Elk Grove. Instead, price and availability were often higher priorities—albeit without sufficient exception documentation.

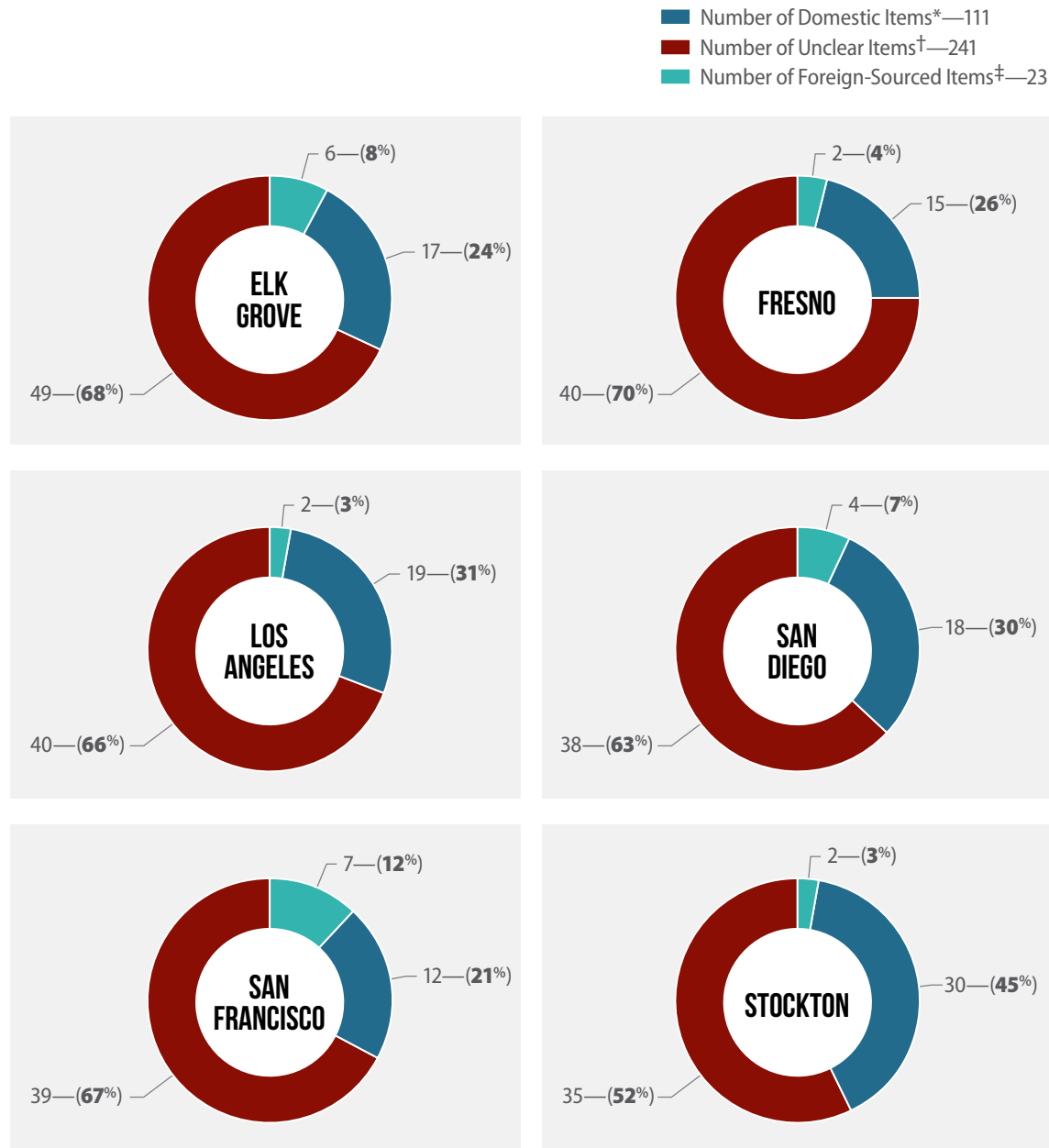
that only 100 percent domestically grown and processed products are approved for purchase. In April 2017, after we discussed the matter with its food service and procurement staff, Stockton released a frozen food solicitation for the 2017–18 school year that included a specific description of the Buy American requirement. This description states that the school district is required to purchase domestically grown and processed foods to the maximum extent practicable, that vendors must list any foreign-sourced food items in their bids, and that Stockton may decline to purchase foreign-sourced food items that vendors offer.

The other two school districts offered different reasons for omitting the Buy American requirement from their bid solicitations and contracts. Specifically, the chief procurement officer at Los Angeles stated that the Buy American language was removed by a previous chief procurement officer for unknown reasons and was inadvertently left out of some of the subsequent bid solicitation and contract documents. On the other hand, Elk Grove indicated that it had inadequate bid solicitation and contract language because, before school year 2016–17, the Buy American requirement was not a main consideration for food purchase contract awards. Instead, price and availability were often higher priorities—albeit without sufficient exception documentation, which we describe in more detail in the next section. Elk Grove explained that after it received training from Education, it ensured its 2016–17 bid solicitations and contracts included language related to the Buy American requirement. As the direct purchasers of food products, school food authorities such as the six school districts we reviewed are in a key position to notify food vendors about their purchasing preferences and to hold them to those preferences through the adoption of robust bid solicitation and contract language.

The School Districts We Reviewed Generally Did Not Document Exceptions to the Buy American Requirement

As Figure 2 shows, we reviewed 375 food items at six school districts, classifying their origins as domestic, foreign, or unclear, according to the labels on the food items. The majority of the items, a total of 241, fell into the unclear category—an issue that we discuss in greater detail in the next section. In its guidance, the USDA provides specific direction for reviewers when they encounter a food label that does not clearly identify the country of origin. Specifically, the reviewer is to check the procurement documents, such as solicitation and contract documents that the school food authority used to purchase the food item. If the procurement documents include language that requires the vendor to comply with the Buy American requirement, then the reviewer can conclude that the food item was compliant with the requirement.

Figure 2
Results of Our Review of 375 Food Items at Selected School Districts Between March and April 2017



Source: California State Auditor's review of food items that were stored at or distributed to the locations we visited.

Note: We attempted to review 81 items at each school district (nine items from each of the nine USDA food categories). However, none of the districts had nine items to review in all of the food categories.

* We identified items as *domestic* if their labels included language that clearly indicated the item originated from the United States. Common examples of these labels included: "product of USA," "produce of USA," and "USDA Further Processed Certification Program."

† We classified items as *unclear* if they either did not have labels or the labels did not clearly indicate the country of origin. Many unclear labels included language such as "packed in," "made in," or "distributed by."

‡ We classified items as *foreign-sourced* if their labels clearly indicated that the country of origin was other than the United States. An example is "product of Guatemala."

The districts could not provide us any documentation noting the exception to the Buy American requirement they used to justify 15 out of these 23 purchases.

Following this guidance, it is likely some of the food items we reviewed at two of the six school districts—Los Angeles and Stockton—would not be fully compliant with the Buy American requirement during the 2016–17 school year because some of the labels did not provide sufficient information about country of origin and those school districts did not include Buy American language in most or all of the bid and contract documents we reviewed for that year.

Further, although the USDA requires school food authorities to maintain documentation that foreign-sourced purchases were justified under one of the two exceptions to the Buy American requirement, none of the school districts we reviewed consistently maintained this type of exception documentation. As the Introduction explains, the USDA's guidance provides two exceptions that school food authorities may cite when purchasing foreign-sourced food items: either the product is not produced or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality or competitive bids reveal that the cost of a product from the United States is significantly higher than a nondomestic product. Our review identified that 23 food items were clearly marked as originating from foreign countries, including canola oil and extra virgin olive oil; fresh fruit items, such as bananas; and baking supplies, like yeast. Photos of some of the nondomestic items we reviewed are included in Figure 3. However, the districts could not provide us any documentation noting the exception to the Buy American requirement they used to justify 15 out of these 23 purchases. By not documenting their exceptions to the Buy American requirement, the school districts failed to follow the USDA's guidance.

Also, for the eight items for which school districts did provide exception documentation, we found only one case where the documentation was sufficient. Specifically, Elk Grove provided documentation for one of these eight items in the form of a review document in which it compared the quality of offerings from potential vendors as well as price during its formal bid review process, ultimately concluding that the product's cost was significantly lower from the foreign source. The remaining exception documentation that school districts provided was not sufficient. For example, two districts—Elk Grove and San Diego—provided documentation from a food producer stating that the types of food—mandarin oranges and pineapple—were not available in sufficient quantity in the United States. However, the food items we reviewed were produced by a different company than the one from which these districts obtained documentation. Although the USDA's guidance says that school food authorities may document exceptions with communications between them and their food supplier, we found this documentation was not sufficient because it did not pertain to the specific food items found during our review.

Figure 3
Examples of Food Labels That Clearly Identify a Foreign Country of Origin

PRODUCT OF MEXICO

Grape Tomatoes



PRODUCT OF THAILAND

Pineapple Tidbits



PRODUCT OF CHINA

Mandarin Oranges



Sources: California State Auditor's assessment of a selection of food items at food storage facilities at the school districts we reviewed.

School food authorities have multiple opportunities to identify foreign-sourced food items and document their reasoning for using the two exceptions to the Buy American requirement.

Additionally, Elk Grove had to ask its vendor for the documentation supporting that another item qualified as an exception to the Buy American requirement. We expected Elk Grove would have this documentation readily available so that it could demonstrate that it knew that the purchase met one of the exceptions rather than needing to contact the vendor for this information after receiving our request for it. Further, Elk Grove provided documentation that it chose another item based on the lowest price. However, this documentation did not identify the country of origin for any of the products Elk Grove considered purchasing, demonstrating that it did not identify or consider the origin country when it decided to purchase this item. As a result, we found this documentation inadequate.

Finally, Fresno provided documentation that it used another item—yeast—as an ingredient in dinner rolls and that it constituted less than 51 percent of the final food product. However, we determined that this justification did not align with the exceptions to the Buy American requirement because the yeast itself was not made in the United States and the Buy American requirement makes no distinction between food products purchased for stand-alone consumption and food products purchased for use in recipes.

School food authorities have multiple opportunities to identify foreign-sourced food items and document their reasoning for using the two exceptions to the Buy American requirement. For example, we found that school districts could have identified and documented exceptions for some likely foreign-sourced items, such as bananas, as early as the meal-planning phase. School districts could have identified other foreign-sourced items during the solicitation or contracting phase, when they sometimes provided specific information on the items that they wanted to purchase. At this stage, school districts could request that vendors identify the country of origin of the products they offer during the bid process, and if applicable, the school districts could begin documenting why domestic food items would not meet their needs. However, based on the exception documentation we reviewed and the food items for which school districts could not provide any documentation, we found that only Elk Grove performed any of these steps in a manner that allowed it to maintain adequate exception documentation. However, the director of food and nutrition services at Elk Grove stated that before the 2016–17 school year, the district did not conduct or document any analysis of purchases of foreign-sourced food items, evidence that this is a relatively recent practice at this district. We believe that by taking steps to adequately document exceptions early in their food purchasing processes, school food authorities could better ensure that they are complying with the Buy American requirement.

Both Education and School Food Authorities Will Face Challenges as They Attempt to Verify Compliance With the Buy American Requirement

As we discuss throughout this report, our review of Education and six school districts identified significant shortcomings in the ways in which they have approached the Buy American requirement. Education and these school districts failed to follow USDA guidance and did not adequately prioritize the Buy American requirement as a component of the meal programs. Therefore, Education and the districts we reviewed can make significant improvements to their approach to the Buy American requirement. However, as school food authorities increase their efforts to purchase domestic food products and Education does more to verify compliance with the Buy American requirement, they will face challenges when using food product labels to verify compliance.

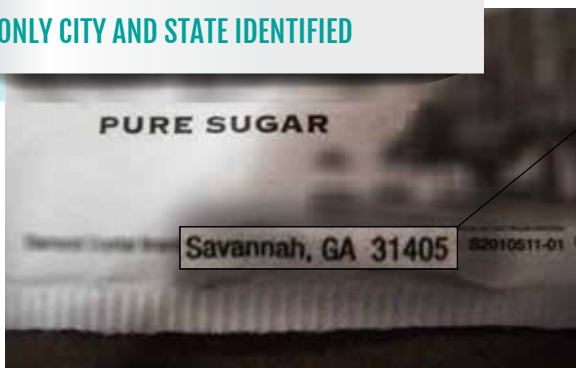
The USDA's guidance directs Education—and until June 30, 2017, directed school food authorities—to verify compliance with the Buy American requirement, in part, by ensuring that food product labels designate the United States or its territories as the country of origin. However, as we previously show, for the majority of the food items we reviewed at six school districts—241 of 375—the labels did not clearly indicate the country of origin. Many of these unclear food labels only identified where the items were distributed from or the location of the distributing company rather than where the items were grown or produced. Others identified that the items' ingredients could have come from multiple countries, including the United States. This type of labeling is not adequate for identifying items as domestic for the purpose of the Buy American requirement because the label does not indicate whether over 51 percent of the product consists of domestic agricultural commodities, which is the standard set by the USDA. Figure 4 on the following page shows examples of unclear labels that we found during our review and illustrates why they do not provide enough information to reach conclusions about compliance with the Buy American requirement.

Figure 4**Examples of Food Labels That Do Not Clearly Identify Food Items as Domestically Produced****UNLABELED FOOD ITEMS**

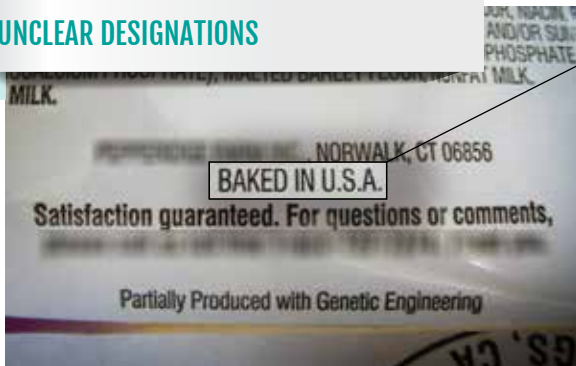
Packaging or box does not include a country-of-origin label.

MULTIPLE COUNTRIES IDENTIFIED

Food item's label includes multiple countries of origin but does not state whether more than 51 percent of the product consists of commodities that were grown domestically, which, according to USDA guidance, would comply with the Buy American requirement.

ONLY CITY AND STATE IDENTIFIED

Food item's label includes only a city and state but does not indicate the country where the item was actually grown or produced.

UNCLEAR DESIGNATIONS

Food item's label describes a process the food item went through but does not indicate where the item's ingredients were grown or produced. It also does not state whether more than 51 percent of the product consists of commodities that were grown domestically, which, according to USDA guidance, would comply with the Buy American requirement.

Other examples of unclear designations: "manufactured," "distributed," "packed," "crafted," etc.

As demonstrated in the previous paragraph, food labels, which are subject to federal law, do not always provide the information needed to enable Education or school food authorities to verify that a food item complies with the Buy American requirement. For example, one federal law requires imported items to contain a marking that indicates the country of origin of the item. However, this law exempts certain food items such as eggs, maple sugar, and livestock. In addition, a second federal law requires certain vendors to identify the origin of certain commodities, including chicken, fish, peanuts, and fresh fruit and vegetables. However, this second law does not apply to beef and pork, nor does it apply to all vendors. Yet another federal law does not require packaged foods to contain a label identifying the country of origin for those foods or their ingredients; instead, it requires the label of a food in packaged form to specify the name and place of business of the manufacturer, packer, or distributor. Although this information indicates where a food item was processed, it does not necessarily indicate the country of origin of the processed item's underlying ingredients. This is problematic since over 51 percent of a processed product must consist of agricultural commodities that were grown domestically in order for the processed food item to be compliant with the Buy American requirement.

Because the laws governing food labels do not always result in food labels that identify the country of origin, school food authorities will face difficulties if they use those labels to verify that items they purchase comply with the Buy American requirement. The USDA advises school food authorities that one method they can use to ensure compliance is to require vendors to certify the percentage of domestic content in food products during the bidding process. However, even if a school food authority were to obtain assurance from its vendor that the product it purchased was compliant, the current food labeling requirements make it impossible in many instances for the school food authority to verify that assertion. Moreover, because food labels may not contain information delineating where items or their ingredients originated, outside reviewers—such as Education—would not be able to determine in those instances whether school food authorities were purchasing domestic food as the Buy American requirement intends.

California's economy stands to gain from increased compliance with the Buy American requirement; accordingly, resolving the challenges created by these federal requirements is in the State's best interest. California lawmakers could work with their counterparts in the California congressional delegation to petition Congress for changes that would add clarity about the origins of food products that school food authorities purchase. For example, Congress could direct the USDA to develop a certification program that would indicate whether food products were compliant with

the Buy American requirement. Specifically, the USDA could develop a voluntary certification program that would allow vendors to submit information regarding the origin of food items. The USDA could then verify that information and certify food items as Buy American-compliant. Certified products could then carry a logo that marks them as certified compliant with the Buy American requirement.

A program of this nature would allow both school food authorities and review agencies, such as Education, to verify that meal programs are supporting the United States' agricultural industry as the Buy American requirement intends. The USDA already operates similar certification programs: for example, its Domestic Origin Verification Audit program establishes criteria that vendors from whom the USDA purchases food can use to demonstrate that the food commodities they intend to deliver to the USDA are 100 percent of United States origin. Further, products certified as meeting the USDA's requirements for organic production and handling may carry the USDA organic seal, providing an example of how Buy American certification could work.

In the meantime, we believe that Education would benefit from obtaining additional guidance from the USDA about how to understand food labels. As we mention earlier in this report, we found that Education's reviewers were inconsistent in how they interpreted food labels. We believe that as part of its effort to develop better guidance for its reviewers, Education would benefit from consulting with the USDA to establish appropriate guidelines for reviewing labels. Education could then develop a list of food label language that reviewers should view as clearly indicating a country of origin—such as *product of* or *grown in*—as well as those terms that reviewers should view as indicating items of unclear origin—such as *manufactured*, *packed*, or *crafted in*. The creation of this sort of list would promote consistency in Education's reviews while consulting with the USDA would ensure that Education aligns its monitoring with federal expectations. Managers from the Nutrition Services Division stated that working with the USDA to develop this type of guidance would be a reasonable step.

Recommendations

Legislature

To ensure effective oversight of the meal programs and to increase public transparency, the Legislature should require Education to track school food authorities' purchases of foreign-sourced food items and to post to its website the school food authorities that purchase foreign-sourced food items, the types of food items they purchase, and the countries of origin of the food items they purchase.

To address the challenges food labels present to ensuring that California's school food authorities purchase domestic food items, the Legislature should work with the California congressional delegation and request that Congress direct the USDA to establish a voluntary certification program through which the USDA could certify that food products are compliant with the Buy American requirement. This certification program should include an indicator, such as a certification logo, that would identify that products comply with the requirement.

Education

To strengthen its administrative reviews and help ensure that school food authorities comply with the Buy American requirement, Education should update its written procedures to include the following:

- A requirement that reviewers collect and retain evidence for all items they evaluate for compliance with the Buy American requirement. This update should occur no later than October 1, 2017.
- Guidance for how its reviewers should interpret common food labels with regard to compliance with the Buy American requirement. It should develop this guidance in consultation with the USDA and should begin working with the USDA by no later than October 1, 2017.

To comply with federal regulations and provide transparency to the public, Education should immediately post to its website a summary of the results of any administrative reviews that it has shared with the relevant school food authorities. Moving forward, it should comply with federal regulations by posting the results of administrative reviews to its website within 30 days of sharing them with school food authorities.

To ensure that school food authorities comply with the Buy American requirement, Education should develop, no later than December 31, 2017, a training course that explains to school food authorities how to comply with the Buy American requirement. Further, as soon as it develops this training, Education should make it available to all school food authorities.

To ensure that school food authorities comply with the Buy American requirement, Education should use procurement reviews or its administrative reviews to verify that school food authorities have policies and procedures that address the Buy American requirement. Further, Education should verify that these policies and procedures align with the USDA's guidance for including Buy American-related language in bid solicitations and contract documents and for maintaining exception documentation for foreign-sourced food purchases.

School Districts

To help ensure that they consistently comply with the Buy American requirement, the school districts we reviewed should establish written policies and procedures related to the Buy American requirement by October 1, 2017. At a minimum, those policies and procedures should include the following:

- An explanation of how each school district will ensure that it consistently includes language related to the Buy American requirement in its bid solicitation documents and contracts.
- A minimum expectation for how regularly the school district will verify that food items its vendors provide are domestic commodities or products.
- A requirement that its staff identify the need to purchase foreign-sourced items as early as possible in the food purchasing process and that they begin documenting the justification for such exceptions to the Buy American requirement at that time.
- Guidance for how it will maintain documentation showing that its purchases of foreign-sourced food items meet one of the two allowable exceptions.

We conducted this audit under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the Scope and Methodology section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

Date: July 27, 2017

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For questions regarding the contents of this report, please contact
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Appendix

ALTHOUGH SCHOOL FOOD AUTHORITIES WE SURVEYED REPORTED THEY HAD CERTAIN MEASURES IN PLACE TO HELP ENSURE COMPLIANCE WITH THE BUY AMERICAN REQUIREMENT, OUR FOLLOW-UP ANALYSIS PROVED OTHERWISE

In addition to reviewing six school districts, we surveyed a random selection of school food authorities throughout the State to determine the means they use to ensure their compliance with the Buy American requirement and the countries of origin of their food items purchased for school years 2014–15 through 2016–17. We asked these school food authorities a number of questions, including key questions about whether they maintain policies and related procedures pertaining to the Buy American requirement, whether they have included language in their procurement documents about the Buy American requirement, and whether they have ever used one of the exceptions to the Buy American requirement to purchase foreign-sourced food items. A significant majority of the school food authorities that responded to our survey stated that they had policies and related procedures pertaining to the Buy American requirement and that they included Buy American-related language in their procurement documents.

These survey results were markedly different from the results of our on-site reviews of six school districts. Because of this, we contacted 19 of the survey respondents to obtain support for their responses to key questions. All 19 of these respondents had attested to maintaining policies and procedures. However, we found that four—Burlingame Elementary School District, Da Vinci School, Heber Elementary School District, and Marin County Office of Education—did not respond to our requests for corroborating evidence, and an additional five school food authorities incorrectly stated that they had policies and procedures related to the Buy American requirement. Of the five who initially responded incorrectly, three—Downey Unified School District, Muroc Joint Unified School District, and San Jacinto Unified School District—were not able to provide policies and procedures related to the Buy American requirement, and two—Salinas City Elementary School District and Santa Paula Unified School District—confirmed that they only have draft policies and procedures that have not yet been approved by their boards and implemented.

For the remaining 10 school food authorities that responded to our follow-up request, only three could provide evidence that they had both policies and procedures for complying with the Buy American requirement. An additional two provided a policy that related to the Buy American requirement but had no associated procedures

for ensuring that they met the requirement, while five school food authorities could only prove that they had procedures related to the Buy American requirement, but no associated policies.

Further, 17 of the 19 respondents had attested to including Buy American language in their procurement documents. However, we found that four—as we described previously—did not respond to our requests for corroborating evidence, and another four of these school food authorities incorrectly stated that they had included language related to the Buy American requirement. All four who initially responded incorrectly—ASA Charter School, Bonita Unified School District, Pleasanton Unified School District, and Salinas City Elementary School District—did not provide evidence demonstrating that they included language related to the Buy American requirement in their bid solicitations and contracts. The remaining nine school food authorities that responded provided evidence to corroborate their claims that they had included language related to the Buy American requirement in their bid solicitations and contracts.

Based on the responses we received to our follow-up requests, we believe that the survey results depicted a more positive view of how formally school food authorities have approached the Buy American requirement than is warranted. Therefore, we do not present the results of our survey.

July 2017



CALIFORNIA
DEPARTMENT OF
EDUCATION

TOM TORLAKSON

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

July 10, 2017

Elaine M. Howle, State Auditor*
California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

Subject: *California Department of Education: It Has Not Ensured School Food Authorities Comply with the Federal Buy American Requirement*, Report Number 2016-139, July 2017

The California Department of Education (Education) appreciates the opportunity to comment and provide proposed corrective actions for the recommendations outlined in the California State Auditor's (CSA) Audit Report No. 2016-129 titled: *California Department of Education: It Has Not Ensured School Food Authorities Comply with the Federal Buy American Requirement*.

Perspective Comments

To provide better perspective to the CSA's audit report, Education has the following comments.

Education appreciates the CSA's work on this topic, which will assist Education going forward as it continues to monitor the compliance of California's school food authorities (SFAs) with the Buy American requirement. However, Education is concerned that the report is misleading regarding Education's obligations and compliance record over the years. Therefore, to provide context and balance, Education provides the following comments:

- The CSA began this audit at the same time that the United States Department of Agriculture (USDA) released its Administrative Review Manual (AR Manual) for the 2016-2017 school year. This was the first manual that required state agency monitoring of compliance with the Buy American provision. Accordingly, Education implemented this requirement for the 2016-17 monitoring reviews.
- The statutory and regulatory provisions containing the Buy American requirement are notable for their generality and essentially state that the USDA shall require SFAs to purchase domestic commodities or products "to the maximum extent practicable." 42 U.S.C. § 1760 and 7 C.F.R. § 210.21(d) and § 220.16(d). The regulations perfectly mirror the statute and add no additional information. There is no legal definition for "extent practicable." Moreover, the Buy American requirement does not override

* California State Auditor's comments begin on page 49.

Elaine M. Howle, State Auditor
 July 10, 2017
 Page 2

- ③ applicable competitive procurement rules.¹ As a result, it is unclear how a state agency should have monitored such a vague standard in the absence of regulations (or at least USDA guidance) regarding monitoring to settle national policy questions inherent in the matter and create a standardized process.
- ② • The USDA did not expressly state the need for state agency monitoring of the Buy American provision until 2016. Prior to 2016, the USDA distributed an AR Manual that expressly purported to provide state agencies with a “comprehensive evaluation” tool for monitoring that was silent regarding the Buy American provision.
- ③ • The USDA’s pre-2016 silence regarding state agency monitoring of compliance with the Buy American requirement is also reflected in its minimally infrequent guidance on the requirement (*i.e.*, the letters and memorandums issued on September 24, 2001, April 17, 2006, August 9, 2006 and February 13, 2012), which focused on steps that local SFAs could take to comply, but did not expressly state the need for state agency monitoring.
- ④ • CSA’s assertion that Education has always had a legal obligation to perform on-site monitoring of local SFAs’ compliance with the Buy American requirement is based on general provisions that state agencies shall require or ensure compliance with *all* requirements imposed by the National School Lunch Program and School Breakfast Program (*e.g.*, eligibility, meal counting and reporting, nutritional components, food safety, resource management, etc.). See 7 C.F.R. § 210.3(d) and § 220.13(k). However, the obligation is stated generally with respect to all program requirements, and there is no “ensure compliance” provision specific to the Buy American requirement.
- ⑤ • In prior year contracts, Education included provisions contractually obligating SFAs to comply with all program requirements, including the Buy American provision.
- ⑥ • Education has taken additional steps to ensure compliance with the Buy American provision, including: (1) providing training to SFAs that covered the Buy American provision; (2) routinely and timely communicating USDA guidance concerning the Buy American provision to SFAs; (3) investigating public notices regarding alleged non-compliance; and (4) providing technical assistance as necessary.

As previously mentioned, Education appreciates the CSA’s work on this topic and provides the following responses to the recommendations below.

¹See, *e.g.*, USDA’s April 17, 2006 Memo, stating: “Purchases made in accordance with the Buy American provision must still follow the applicable procurement rules calling for free and open competition.”

Elaine M. Howle, State Auditor
July 10, 2017
Page 3

Recommendation 1

To strengthen its administrative reviews and help ensure school food authorities comply with the Buy American requirement, Education should update its written procedures to include the following:

- A requirement that reviewers collect and retain evidence for all items they evaluate for compliance with the Buy American requirement. This update should occur no later than October 1, 2017.

Education's Comments and Corrective Actions

Education does not concur with the recommendation. The level of evidence recommended to be collected and retained significantly exceeds the evidence required by the USDA's AR Manual. Specifically, the USDA requires deficiencies be recorded on the assessment tools in the applicable comments section, which is consistent with the level of assurance expected from an administrative review. Further, the recommendation exceeds the evidence required to be collected and retained for performance audits conducted in accordance with Generally Accepted Government Auditing Standards, which are designed to provide a higher level of assurance than that of administrative reviews.

⑦

Education's administrative review procedures are based on the most recent AR Manual issued by the USDA. The AR Manual specifies requirements for administrative review of the Buy American provision, and Education complies with the requirements in accordance with its agreement with the USDA. Education collects and retains documentation reflecting non-compliance with the Buy American provision. However, Education does not, and is not required to, collect and retain evidence for *all* items that it evaluates.

- Guidance for how its reviewers should interpret common food labels with regard to compliance with the Buy American requirement. It should develop this guidance in consultation with the USDA and should begin working with the USDA by no later than October 1, 2017.

Education's Comments and Corrective Actions

Education concurs with the recommendation. Education provided training and guidance to staff. However, in response to challenges experienced during the first year of

Elaine M. Howle, State Auditor
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implementation, Education will strengthen training and guidance to its staff regarding reviewing common food labels for compliance with the Buy American requirement beginning in September 2017. In addition, Education will work with the USDA in an effort to revise the current Buy American guidance in order to provide more specific information regarding product label evaluation, ensuring compliance with all Buy American requirements.

Recommendation 2

To comply with federal regulations and provide transparency to the public, Education should immediately post to its website a summary of the results of any administrative reviews that it has shared with the relevant school food authorities. Moving forward, it should comply with federal regulations by posting the results of administrative reviews to its website within 30 days of sharing them with school food authorities.

Education's Comments and Corrective Actions

Education concurs with the recommendation. Education drafted a change request to its technology contractor to post the administrative review results on the Child Nutrition Information and Payment System (CNIPS) website. Posting administrative review results can be implemented once the request is approved and submitted to the technology contractor, and all changes are finalized on the CNIPS website.

Recommendation 3

To ensure school food authorities comply with the Buy American requirement, Education should develop, no later than December 31, 2017, a training course that explains to school food authorities how to comply with the Buy American requirement. Further, as soon as it develops this training, Education should make it available to all school food authorities.

Education's Comments and Corrective Actions

Education concurs with the recommendation. Education was already in the process of developing a Buy American online training for SFAs at the time of the audit. The online training is based on the USDA's regulations and guidance, and explains the Buy American requirement and exceptions, necessary documentation, and review elements. Education will make the online training available to all SFAs by December 30, 2017, and will notify the SFAs of its availability. In addition, Education will promote the training at conferences, meetings, and other training venues.

Elaine M. Howle, State Auditor
July 10, 2017
Page 5

Recommendation 4

To ensure school food authorities comply with the Buy American requirement, Education should use procurement reviews or its administrative reviews to verify that school food authorities have policies and procedures that address the Buy American requirement. Further, Education should verify that these policies and procedures align with the USDA's guidance for including Buy American-related language in bid solicitations and contract documents and for maintaining exception documentation for foreign-sourced food purchases.

Education's Comments and Corrective Actions:

Education concurs with the recommendation. Education will perform Local Agency Procurement Reviews (Reviews) of approximately one-third of its School Nutrition Program (SNP) operators in Fiscal Year 2017–18, with the remaining SNP operators reviewed during the remaining procurement review cycle, as approved by the USDA.

The Reviews determine whether the SNP operator's contracts contain: (1) Buy American language for small purchases; (2) formal procurements; (3) Food Service Management Company (FSMC) contracts; and (4) processing contracts. Additionally, as required by the USDA, Education will ensure through the Reviews that SNP operators maintain exception documentation for formal procurements and FSMC contracts. As part of the Reviews the USDA requires Education to use a spreadsheet based procurement tool (USDA Review Tool). Specifically, the USDA Review Tool requires the review of the following:

- The SNP operator's procurement procedures for compliance with all applicable federal regulations (including an SNP operator using Buy American provisions in solicitations and contracts), and
- The SNP operator's procurement for various types of procurement methods.

For additional information of the USDA Review requirements, please refer to the USDA Policy Memorandum SP 03–2017 located at <https://www.fns.usda.gov/draft-tool-local-agency-procurement-reviews-school-food-authorities-sy2016-2017-revised>.

Recommendation to the Legislature

To ensure effective oversight of the meal programs and to increase public transparency, the Legislature should require Education to track school food authorities' purchases of

Elaine M. Howle, State Auditor
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foreign-sourced food items and to post to its website the school food authorities that purchase foreign-sourced food items, the types of food items they purchased, and the countries of origin of the food items they purchased.

Education's Comments

This recommendation, addressed to the Legislature, will require significant resources to collect, track, and post all individual purchases of foreign-sourced food items for 1,313 SFAs at over 10,000 sites.

- ⑧ Education will need significant and ongoing state general funds to support the costs and staffing resources required to design, develop, implement, and maintain a statewide information technology (IT) solution to track the food purchases of SFAs. Also, state laws must be developed to mandate the use of the IT system by the SFAs. Developing a statewide IT system to support this recommendation also creates redundancy since
- ⑨ local SFAs are already required to track and maintain their own records and documentation of food purchases.

If you have any questions regarding Education's comments or corrective actions, please contact Sandip Kaur, Director, Nutrition Services Division, by e-mail at skaur@cde.ca.gov.

Sincerely,



Michelle Zumot
Chief Deputy Superintendent of Public Instruction

MZ:kl

Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM EDUCATION

To provide clarity and perspective, we are commenting on Education's response to our audit. The numbers below correspond to the numbers we have placed in the margin of Education's response.

We disagree with Education's assertion that our report is misleading and do not believe that any additional context or balance is necessary. We shared our conclusions with Education on multiple occasions during our audit and include its perspective related to our conclusions throughout our report.

①

On page 14, we acknowledge Education's perspective that it was not until June 2016 when the USDA issued an updated administrative review manual that it believed it was required to monitor this area. However, it is important to note, as we do on page 14, that federal regulations and its contractual obligation to the USDA have called for Education to ensure compliance with this requirement since 1998. Further, as we indicate on the same page, guidance the USDA issued in August 2006 reiterated state agencies' obligation to ensure compliance. Finally, as we state on page 13, an essential component of ensuring compliance is monitoring activities to verify that processes are working as required.

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It is disappointing to see that Education believes it lacked sufficient guidance for monitoring compliance with the Buy American requirement despite the guidance memos the USDA issued about the requirement—memos that Education acknowledges in its response the USDA issued well in advance of its 2016 review manual. These memos provide suggestions for how school food authorities can comply with the Buy American requirement, including providing example contract language and suggesting steps that the school food authorities can take to verify that vendors provide compliant products. Therefore, for years Education had guidance for what steps the school food authorities it oversees should be taking to comply with the Buy American requirement. It is unclear to us what additional direction Education needed to verify whether school food authorities were taking those steps. Further, Education states that none of the USDA guidance memos expressly state the need for state agency monitoring. As we describe on page 14, the August 2006 USDA guidance—which Education refers to in its response—explicitly stated that state agencies have an obligation to ensure school food authorities comply with the Buy American requirement to the maximum extent practicable. As we state on page 13, monitoring is an essential component

③

of ensuring compliance. Therefore, to fulfill the USDA's stated expectations, Education would need to have performed some verification that school food authorities were complying with the Buy American requirement, which it did not.

- ④ Education's response acknowledges that federal regulations require it to ensure compliance with all federal meal program requirements. As we indicate throughout our report, the Buy American requirement is a federal requirement under the meal programs. Therefore, we question the relevance of Education's assertion that there is no specific provision that directs it to ensure compliance with the Buy American requirement. It is unclear to us why such a specific provision would be needed.
- ⑤ Education asserts it included provisions in contracts that obligated school food authorities to comply with all program requirements. We explain on page 15 that Education deferred to school food authorities the responsibility to ensure statewide compliance. However, as we note on that same page, although school food authorities must take steps to comply with the Buy American requirement, Education is responsible for statewide compliance. Therefore, because it did not actively monitor school food authorities' compliance, Education did not meet the USDA's expectations or ensure statewide compliance with federal law.
- ⑥ Education largely reiterates perspective we have included in our report. On page 14, we provide Education's assertion that it ensured compliance by forwarding the USDA's guidance to school food authorities, by investigating complaints regarding violations of the Buy American requirement, and by offering training to school food authorities about the requirement. However, we explain in our report why these steps are inadequate for ensuring compliance. Specifically, on page 20 we present our conclusion that Education offered inadequate training related to the Buy American requirement. Further, on page 14, we provide the assertion from a manager in Education's Nutrition Services Division, who stated that Education has received only three complaints related to the Buy American requirement. Finally, although Education indicates that it communicates USDA guidance concerning the Buy American requirement to the school food authorities, as we describe on pages 14 and 15, without monitoring, Education could not know whether school food authorities statewide were following the guidance it distributed.
- ⑦ Our report describes clear reasons why we recommend that Education's reviewers collect and retain evidence for all items they evaluate for compliance with the Buy American requirement. On page 17, we explain that, without such evidence, Education's managers have to accept the work of the reviewers

without verifying the accuracy of their compliance judgments. Additionally, on page 18 we conclude that because of limited supporting evidence Education would fail to identify instances of noncompliance that reviewers may have overlooked or misjudged. Our audit demonstrates that the lack of evidence has resulted in inconsistent reviews. Also, on page 18, we describe how two separate administrative reviews reached different conclusions about the same food item. On that same page, we also note that because of the limited supporting evidence they are given to examine, the managers who monitor these reviewers are not in a position to know such a difference exists. Further, Education asserts that our recommendation would have it keep a level of evidence that exceeds the level of evidence required by generally accepted government auditing standards (audit standards). The audit standards direct auditors to document the evidence obtained to support significant judgments and conclusions and note that auditors must obtain sufficient, appropriate evidence to provide a reasonable basis for their findings and conclusions. The audit standards describe that, in assessing the sufficiency of evidence, auditors should determine whether enough evidence has been obtained to persuade a knowledgeable person that the findings and conclusions are reasonable. Further, the audit standards state that the quantity, type, and content of audit documentation are a matter of professional judgment. Because the audit standards indicate that professional judgment should guide the level of documentation, it is unclear to us how Education can claim our recommendation exceeds the level of evidence these standards require.

On page 22, we include Education's perspective about the level of resources it believes our legislative recommendation would require. However, on the same page we also note that an Education official confirmed that Education has never studied the cost of tracking and reporting foreign-sourced food purchases. Therefore, it is unclear to us how Education can be so confident of the level of effort that would be required to implement this recommendation.

We disagree with Education's assertion that our recommendation creates redundancy. Specifically, there is no central location for information about school food authorities' foreign-sourced food purchases that would be easily accessible to stakeholders such as local food producers, policymakers, and parents. If implemented, our recommendation would create such a resource.

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July 2017

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July 10, 2017

California State Auditor
 Attention: Elaine M. Howle
 621 Capitol Mall, Suite 1200
 Sacramento, CA 95814

Subject: Response to the California State Auditors report regarding compliance with the federal Buy American Provision.

Dear Ms. Howle,

On behalf of Superintendent Hoffman, the Elk Grove Unified School District is in receipt of the California State Auditor's draft report regarding compliance with the federal Buy American Provision. The draft report was received on July 3, 2017 requesting response within five business days, an opportunity the district appreciates.

The district recognizes that its policies and procedures related to the Buy American Provision needed to be refined and strengthened to ensure compliance. Previous to the audit and based on recent trainings by California Department of Education (CDE) Nutrition Services Division the Food and Nutrition Services (FNS) department has been working towards improved policies and procedures. This is important and critical work for the district, work we take very seriously.

The district is committed to buying its food products locally, in concert with the Buy American Provision. This commitment includes the formation of a "Farm to School" presence throughout our nutrition education program. The commitment includes a goal is to procure more of our produce from local farms within 250 miles of Elk Grove. Currently approximately 40% of our fresh fruits and vegetables are sourced from local farms and many other products are sourced from California's vast resources. Our district was one of the first innovative districts that focused on California Foods to California Kids. The district offers a robust Food Literacy program, teaching students where their food comes from and how it is grown, thereby establishing a connection between the cafeteria and the classroom. This includes a monthly Harvest of the Month produce item highlighting and promoting where in California the item is grown. These are just a few examples of our commitment, which can be found throughout the district's FNS literature, website, and programs.

In February 2016, the district's FNS Buyer attended training by the CDE Nutrition Services Division, titled Procurement in the 21st Century. After attending the training, the Buyer discovered that FNS would need to be more detailed relative to the Buy American Provision. For the 2016-17 general food bid, FNS ensured that more detailed language was included in the bid documents and also requested that vendors supply county of origin as part of their bid response.

**Members of the Board**

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In May 2016, the district's FNS Director also attended the Procurement in the 21st Century training. As a result the district FNS department has been working on procurement policies and procedures to better comply with the Buy American Provision. The district's FNS department will ensure more comprehensive documentation for all food products and will address the ability to collect and provide the documentation in an efficient manner.

The district also recognizes that Table 2 in the report provides confirmation of the district's efforts to strengthen and ensure compliance with the Buy American Provision as a result of the relatively recent CDE training. This is evidenced in the fact that all bid solicitations and contracts audited for the 2016-17 school year contained adequate language related to the Buy American Provision. Again these efforts will continue and will also be strengthened as a result of the audit.

The district sincerely appreciates the time and efforts of the audit team and will work diligently and with fidelity to continue the work it has already begun to ensure that its policies and procedures address the findings of the audit. Like all audits the district views the findings of this audit as an opportunity to improve its work and services to students.

Please do not hesitate to contact me or Mrs. Drake with any questions.

Sincerely,

Robert Pierce
Deputy Superintendent, Business Services and Facilities

cc: Christopher R. Hoffman, Superintendent
Michelle Drake, Director, Food & Nutrition Services

July 2017

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July 6, 2017

Elaine M. Howle, CPA
California State Auditor
621 Capital Mall, Suite 1200
Sacramento, CA 95814

Dear Ms. Howle,

The California State Auditor's office recently conducted an on-site audit of Fresno Unified School District's compliance with the Buy American provisions of the federal William F. Goodling Child Nutrition Reauthorization Act of 1998.

During the on-site review state auditors reviewed various records, files, procurement practices related to the Buy American provision, and conducted a physical review of the Food Services warehouse.

On July 3, 2017 Fresno Unified School District received and examined the draft final report. The District agrees to comply with the recommendations made by the State Auditor's Office. In addition, effective May 9, 2017 Fresno Unified School District began strengthening the internal procurement policies and procedures regarding the Buy American requirements in all food bid solicitations.

The District will continue to monitor and enforce the Buy American provisions of the federal William F. Goodling Child Nutrition Reauthorization Act of 1998 to ensure continued compliance.

Please feel free to contact me if you have any questions or require any additional information.

Sincerely,

Karin Temple,
Chief Operations Officer

Cc: Robert G. Nelson, Interim Superintendent
Ruthie F. Quinto, Deputy Superintendent/Chief Financial Officer
Paul Rosecrans, Executive Director, Purchasing
Kim Kelstrom, Director, Fiscal Services
Jose Alvarado, Director, Food Services

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July 2017

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MICHELLE KING, Ed.D.
Superintendent of Schools

July 10, 2017

Elaine M. Howle, CPA
California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814
VIA EMAIL to Katrina Solorio, Team Leader: KatrinaS@auditor.ca.gov

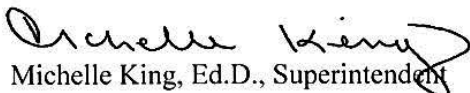
Ms. Howle:

In response to the July 3, 2017 California State Auditor's correspondence and enclosure of two redacted draft copies of audit report on the Buy American provision of the William F. Goodling Child Nutrition Reauthorization Act of 1998 requested by the Joint Legislative Audit Committee, this letter signifies the Los Angeles Unified School District's response.

LAUSD agrees with the findings and recommendations and we will establish written policies and procedures related to the "Buy American" requirements as specified by the state auditor.

If you have any questions, please contact George Silva, Chief Procurement Officer, at george.silva@lausd.net 213-241-3087 or Joseph Vaughn at joseph.vaughn1@lausd.net 213-241-2993.

Sincerely,


Michelle King, Ed.D., Superintendent

c: Thelma Melendez de Santa Ana
George Silva
Joseph Vaughn
Katrina Solorio

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July 2017

**San Diego Unified**
SCHOOL DISTRICT**Gary B. Petill,**
Director

Food and Nutrition Services Department

P – 858.627.7301

F – 858.565.6378

gpetill@sandi.net

Elaine M. Howle, CPA
California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

The San Diego Unified School District Food & Nutrition Services department will establish written policies and procedures as it relates to the Buy American requirements. The policies and procedures developed will include language that addresses the following four topics that are outlined in the report:

The District currently has language in all food bid documents related to the Buy American requirement. To ensure that the Buy American requirements continue to be consistently included in all food contracts and food bid solicitations, the District's Strategic Sourcing and Contracts desk guide for Food & Nutrition Services will be updated. The update will note that the Buy American language is required to be included in all food contracts and food bid solicitations.

Food & Nutrition Services will develop a process which results in regular inspections of food products received by Food & Nutrition Services to ensure that the items are domestic products. Food products delivered to the various cafeteria sites in the District are currently inspected on a daily basis. The current inspection process ensures that products received are of good quality and that the products received match what was ordered by the site. To address the Buy American requirement, Food & Nutrition Services will develop a schedule which will result in periodic inspections from central office staff, to further inspect the food products received from vendors to ensure that they are domestic products.

Food & Nutrition Services will identify any potential foreign-sourced products as early as possible in the menu planning process so that justification for such exceptions can be noted. The Food & Nutrition Services department takes great pride in its use of not only domestic products, but of the many local products sourced within the State of California and also San Diego County. There are currently only a few food products used within the District that are known to be import products and these items are products that we cannot source domestically or cannot obtain in sufficient quantities to meet our demand. The new procedures that are developed will result in department staff addressing possible exceptions to the Buy American requirement during the menu planning process.

Food & Nutrition Services will develop a procedure to maintain proper documentation for any foreign-sourced food products purchased. The procedure will ensure that any foreign-sourced products purchased meet one of the two allowable exceptions and the documentation will include the reason and justification as to why these items are purchased.

Sincerely,

Gary Petill
Director of Food and Nutrition Services

Auxiliary Services: ✨ Trust ✨ Empower ✨ Professionalism ✨ Teamwork ✨ Integrity

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**SFUSD** SAN FRANCISCO
PUBLIC SCHOOLS**Vincent Matthews, Ed.D.**
Superintendent of Schools555 Franklin Street, Room 301 | San Francisco, CA 94102
PH: (415) 241-6121 | Email: matthewsv@sfusd.edu

July 6, 2017

Elaine M. Howle, CPA
California State Auditor
621 Capitol Mall
Sacramento, CA 95814

Dear Ms. Howle,

We received the draft report from the State Auditor related to the federal Buy American requirement. We are in agreement with the findings specific to San Francisco Unified School District (SFUSD), and we will establish written policies and procedures that include the following:

- An explanation of how SFUSD will ensure it consistently includes language related to the Buy American requirement in its bid solicitation documents and contract,
- A minimum expectation for how regularly SFUSD will verify that food items its vendors provide are domestic commodities or products, and
- A requirement that its staff identify the need to purchase foreign-sourced items as early as possible in the meal-planning phase and that they begin documenting the justification for such exceptions to the Buy American requirement at that time.
- Guidance for how it will maintain documentation showing that its purchases of nondomestic food meet one of the two allowable exceptions.

We would like to thank your staff for the assistance they have provided to SFUSD to help us become more compliant in our operation of the National School Lunch Program. Please direct your questions to Libby Albert, Director of Student Nutrition Services (alberte1@sfusd.edu) .

Sincerely,

Vincent Matthews, Ed.D.
SuperintendentCc: Orla O'Keeffe, Chief, Policy and Operations
Libby Albert, Director, Student Nutrition Services

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July 2017

**BUSINESS SERVICES**

Lisa Grant-Dawson
Chief Business Official
701 North Madison Street
Stockton, CA 95202-1687
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July 10, 2017

Elaine M. Howle, CPA*

California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

Ms. Howle,

The Stockton Unified School District has reviewed the draft report of the Federal Buy American Requirement and has no comments nor amendments to the summary you have presented.

①

Please advise if you have any further requirements or requests. There are no attachments to this document and the District will also shred the two copies sent to us in support of your confidentiality requirements.

Sincerely,

Lisa Grant-Dawson

* California State Auditor's comment appears on page 65.

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Comment

CALIFORNIA STATE AUDITOR'S COMMENT ON THE RESPONSE FROM STOCKTON

To provide clarity and perspective, we are commenting on Stockton's response to our audit. The number below corresponds to the number we have placed in the margin of Stockton's response.

Stockton did not indicate whether it agreed with our recommendation that it should establish written policies and procedures to ensure its compliance with the Buy American requirement. Therefore, we look forward to reviewing its effort to address our recommendation in its 60-day response to the audit.

①