Buy American Requirement for the School Nutrition Programs

This document provides guidance on the U.S. Department of Agriculture's (USDA) Buy American requirement for the school nutrition programs, including the National School Lunch Program (NSLP), School Breakfast Program (SBP), Seamless Summer Option (SSO) of the NSLP, Afterschool Snack Program (ASP) of the NSLP, and Fresh Fruit and Vegetable Program (FFVP). The Buy American requirement applies to all procurement procedures, solicitations, and contracts for the school nutrition programs.

Contents

Introduction 2
Applicable Foods 2
Limited Exceptions 3
Required Documentation for Non-domestic Foods 3
Annual Limit for Non-domestic Food Purchases 4
Table 1. Annual cap on non-domestic food purchases by school year 4
State Agency Monitoring 4
Additional Recommended Procurement Practices for Domestic Foods 5
Resources 5



Buy American Requirement for the School Nutrition Programs

Introduction

All foods purchased using funds from the school food authority's (SFA) nonprofit school food service account (NSFSA) must comply with the Buy American requirement. This requirement is specified in the federal regulations for the NSLP (7 CFR 210.21 (d)) and SBP (7 CFR 220.16 (d)), and the USDA final rule, *Child Nutrition Programs: Meal Patterns Consistent with the 2020-2025 Dietary Guidelines for Americans*.

The Buy American requirement specifies that schools and institutions must purchase domestic commodities or products to the maximum extent practicable.

- A "domestic commodity or product" is an agricultural commodity that is produced in the United States (U.S.), and a food product that is processed in the U.S. substantially using agricultural commodities that are produced in the U.S.
- "Substantially" means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically.

SFAs are required to include language requiring the purchase of foods that meet the Buy American requirements in all procurement procedures, solicitations, and contracts.

Farmed fish must be harvested within the U.S. or any U.S. territory or possession. Wild-caught fish must be harvested within the Exclusive Economic Zone of the U.S. or by a U.S. flagged vessel.

Applicable Foods

The Buy American provision applies to all foods purchased using funds from the NSFSA. This includes foods that are part of reimbursable meals and competitive foods sold a la carte, i.e., foods and beverages sold separately from reimbursable meals and afterschool snacks.

> Section 7 CFR 210.14 (a) of the NSLP regulations and section 7 CFR 220.13(i) of the SBP regulations require SFAs to establish a NSFSA. The NSFSA is the restricted account in which all the revenue from all food service operations conducted by the SFA, principally for the benefit of school children, is retained and used only for the operation or improvement of the nonprofit school food service.

Buy American Requirement for the School Nutrition Programs

Limited Exceptions

The USDA allows only two limited exceptions to the requirement that SFAs must purchase domestic foods.

1. The product is listed on the Federal Acquisitions Regulations (FAR) Non-available Articles List (FAR 25.104) and/or is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality. The Nonavailable Articles List is a list of items that are considered by the federal government to be not available in the U.S. and are therefore excepted from the Buy American statute.

2. Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product. The definition of "significantly higher" is not defined by the USDA. The USDA allows SFAs the discretion to define "significantly higher" to provide the appropriate flexibility needed for purchases based on SFAs' diverse needs. The SFA is responsible for determining the dollar amount or percentage that constitutes a significantly higher cost for a domestic product, and therefore permits the use of an exception.

Purchases of non-domestic foods are not permitted unless one of these exceptions applies.

Required Documentation for Non-domestic Foods

Section 7 CFR 210.21(d)(5)(iii) of the NSLP regulations and section 7 CFR 220.16(d)(5)(iii) of the SBP regulations require SFAs to maintain documentation to demonstrate the use of these two limited exceptions. This documentation must indicate that any purchases of non-domestic foods meet one of the two exceptions (refer to "Limited Exceptions" above). Two types of documentation are permitted.

1. The product is listed on the FAR Non-available Articles List. Additional documentation is not required when SFAs purchase food items found on this list. SFAs must maintain a copy of the list on file with the applicable items highlighted.

2. The SFA has completed the Connecticut State Department of Education's (CSDE) *Buy American Justification Form for the School Nutrition Programs*. This form must be used to document the purchase of all non-domestic foods that are not on the FAR Non-available Articles List. SFAs must maintain this form on file with other required records in accordance with the NSLP and SBP regulations. For guidance on record retention requirements, refer to the CSDE's resource, *Records Retention Requirements for the School Nutrition Programs*.

Buy American Requirement for the School Nutrition Programs

The CSDE will evaluate the SFA's documentation and compliance with the Buy American requirement during the Administrative Review and Procurement Review of the school nutrition programs.

Annual Limit for Non-domestic Food Purchases

The USDA final rule, *Child Nutrition Programs: Meal Patterns Consistent with the 2020-2025 Dietary Guidelines for Americans*, requires SFAs to gradually reach an annual 5 percent cap for nondomestic food purchases by school year 2031-32. The table below summarizes the required annual cap by school year.

Table 1. Annual cap on non-domestic food purchases by school year

School year	Annual cap
2025-26 (beginning July 1, 2025)	10 percent
2028-29 (beginning July 1, 2028)	8 percent
2031-32 (beginning July 1, 2031)	5 percent

SFAs must count all excepted non-domestic foods purchased with NSFSA funds toward the cap on non-domestic purchases. This includes non-domestic foods on the FAR Nonavailable Articles List and non-domestic foods on each *Buy American Justification Form for the School Nutrition Programs* completed by the SFA.

State Agency Monitoring

The September 2023 USDA final rule, Child Nutrition Program Integrity, added the review of Buy American requirements to the regulations that govern state agency reviews of SFAs. State agencies will review this requirement through the Administrative Review process. In addition, during the Procurement Review, the CSDE will determine if the appropriate language for the Buy American requirement is in all solicitations and contracts.

The USDA final rule, *Child Nutrition Programs: Meal Patterns Consistent with the 2020-2025 Dietary Guidelines for Americans* provides states with discretion to allow an accommodation for temporary relief from this requirement while the SFA works to increase their domestic food purchases (7 CFR 210.21(d)(8)). The USDA will closely monitor implementation of the cap and provide guidance as needed to state agencies that may need to use this accommodation.

Buy American Requirement for the School Nutrition Programs

Additional Recommended Procurement Practices for Domestic Foods

In addition to complying with the Buy American requirement, the USDA recommends some additional procurement practices for domestic foods. The USDA encourages SFAs to procure domestic foods from local, regional, small, women-owned, and/or minority business. The USDA also recommends that SFAs order USDA Foods. For additional information on USDA foods, visit the CSDE's Food Distribution Program (USDA Foods) webpage.

Resources

Buy American Factsheet (USDA):
https://www.fna.usda.gov/schoolmeals/buy-american-factsheet

Buy American Justification Form for the School Nutrition Programs (CSDE):
https://portal.ct.gov/-/media/sde/nutrition/nslp/procure/buy_american_form_snp.pdf

Buy American Requirement (CSDE's Procurement for School Nutrition Programs webpage):
https://portal.ct.gov/sde/nutrition/procurement-for-school-nutrition-programs/buy-american-requirement

Buy American Requirement for the School Nutrition Programs (CSDE training module):
https://portal.ct.gov/sde/nutrition/procurement-for-school-nutrition-programs/buy-american-requirement#Training

Federal Acquisitions Regulations (FAR) Non-available Articles List (FAR 25.104):
https://www.acquisition.gov/far/part-25#FAR_25_104

Records Retention Requirements for the School Nutrition Programs (CSDE):
https://portal.ct.gov/-/media/sde/nutrition/nslp/adminrev/records_retention_snp.pdf

USDA Buy American Regulations for the NSLP 7 CFR 210.21 (d):
https://www.ecfr.gov/current/title-7/part-210#p-210.21(d)

USDA Buy American Regulations for the SBP 7 CFR 220.16 (d):
https://www.ecfr.gov/current/title-7/subtitle-B/chapter-II/subchapter-A/part-220#p-220.16(d)

USDA Final Rule: Child Nutrition Program Integrity (88 FR 57792):
https://www.fna.usda.gov/cn/integrity-rule

Buy American Requirement for the School Nutrition Programs

USDA Final Rule: Child Nutrition Programs: Meal Patterns Consistent with the 2020-2025 Dietary Guidelines for Americans (89 FR 31962):
https://www.fna.usda.gov/cn/fr-042524

USDA Memo SP 09-2026: Buy American Accommodation Process for School Year 2026-2027:
https://www.fna.usda.gov/schoolmeals/buy-american-sy26-27

USDA Memo SP 19-2024, CACFP 07-2024, and SFSP 12-2024: Initial Implementation Memorandum: Child Nutrition Programs: Meal Patterns Consistent with the 2020-2025 Dietary Guidelines for Americans:
https://www.fna.usda.gov/cn/initial-implementation-meal-patterns-dga

USDA Memo SP 23-2024: Buy American Provisions Related to the Final Rule - CNP Meal Patterns Consistent with the 2020-25 DGAs:
https://www.fna.usda.gov/cn/buy-american-provisions

USDA Memo SP 32-2019: Buy American and the Agriculture Improvement Act of 2018:
https://www.fna.usda.gov/cn/buy-american-and-agriculture-improvement-act

USDA Memo SP 38-2017: Compliance with and Enforcement of the Buy American Provision in the NSLP:
https://www.fna.usda.gov/nslp/compliance-enforcement-buy-american

Buy American Requirement for the School Nutrition Programs

For more information, visit the "Buy American Requirement" section of the CSDE's Procurement for School Nutrition Programs webpage or contact the procurement staff at the Connecticut State Department of Education, Bureau of Child Nutrition Programs, 450 Columbus Boulevard, Suite 504, Hartford, CT 06103-1841. This document is available at https://portal.ct.gov/-/media/sde/nutrition/nslp/procure/buy_american_requirement_snp.pdf.

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Buy American Requirement for the School Nutrition Programs

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