

Buy American Requirement for the School Nutrition Programs

CONNECTICUT
Education

Connecticut State Department of Education
Bureau of Child Nutrition Programs

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Topics

- Requirements and legislation
- Two exceptions for non-domestic foods
- Required documentation for non-domestic foods
- Monitoring
- Recommended procurement practices for domestic foods
- Resources

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Introduction

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Buy American Applies to School Nutrition Programs

- National School Lunch Program (NSLP)
- School Breakfast Program (SBP)
- Seamless Summer Option (SSO) of NSLP
- Afterschool Snack Program (ASP) of NSLP
- Fresh Fruit and Vegetable Program (FFVP)

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Buy American Requirement

- Schools and institutions must purchase domestic commodities or products to the maximum extent practicable

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Domestic Commodity or Product

- An agricultural commodity that is produced in the U.S., and a food product that is processed in the U.S. substantially * using agricultural commodities that are produced in the U.S

* Over 51 percent of the final processed product consists of agricultural commodities that were grown domestically

Terms to Know

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Applies To All Foods Purchased with Nonprofit School Food Service Account (NSFSA) Funds

- Foods for reimbursable meals and afterschool snacks
- Competitive foods sold a la carte
 - Foods and beverages sold separately from reimbursable meals and afterschool snacks



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Nonprofit School Food Service Account (NSFSA)

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

Terms to Know

NSLP Regulations: [https://www.ecfr.gov/current/title-7/part-210#p-210.14\(a\)](https://www.ecfr.gov/current/title-7/part-210#p-210.14(a))
 SBP Regulations: [https://www.ecfr.gov/current/title-7/part-220#p-220.13\(i\)](https://www.ecfr.gov/current/title-7/part-220#p-220.13(i))



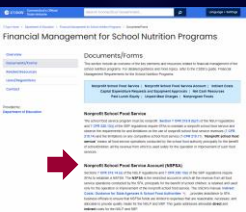
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Financial Management for School Nutrition Programs

- Nonprofit School Food Service Account (NSFSA) section



<https://portal.ct.gov/sde/nutrition/financial-management-for-school-nutrition-programs/documents/#NonprofitSchoolFoodServiceAccount>

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Buy American Legislation



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Buy American Regulations

- NSLP 7 CFR 210.21 (d)
- SBP 7 CFR 220.16 (d)

NSLP Regulations: [https://www.ecfr.gov/current/title-7/part-210#p-210.21\(d\)](https://www.ecfr.gov/current/title-7/part-210#p-210.21(d))
 SBP Regulations: [https://www.ecfr.gov/current/title-7/part-220#p-220.16\(d\)](https://www.ecfr.gov/current/title-7/part-220#p-220.16(d))



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USDA Final Rule April 2024

- Child Nutrition Programs: Meal Patterns Consistent with the 2020-2025 Dietary Guidelines for Americans
- Effective July 1, 2024

<https://www.federalregister.gov/documents/2024/04/25/2024-08098/child-nutrition-programs-meal-patterns-consistent-with-the-2020-2025-dietary-guidelines-for>



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Final Rule Buy American Changes

- Requires SFAs to include Buy American in all
 - procurement procedures
 - solicitations
 - contracts
- Clarifies limited exceptions

<https://www.federalregister.gov/documents/2024/04/25/2024-08098/child-nutrition-programs-meal-patterns-consistent-with-the-2020-2025-dietary-guidelines-for>

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Final Rule Buy American Changes

- Gradually phases in cap on non-domestic food purchases

<https://www.federalregister.gov/documents/2024/04/25/2024-08098/child-nutrition-programs-meal-patterns-consistent-with-the-2020-2025-dietary-guidelines-for>

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Final Rule 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

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Annual Cap on Non-domestic Food Purchases Includes

- All excepted non-domestic foods purchased with NSFSA funds
 - Non-domestic foods on Federal Acquisitions Regulations (FAR) Non-available Articles List
 - Non-domestic foods on each Buy American Justification Form for the School Nutrition Programs

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Final Rule Buy American Changes

- Clarifies requirements for harvested, farmed, and wild caught fish
 - Farmed fish must be harvested within U.S. or any U.S. territory or possession
 - Wild-caught fish must be harvested within Exclusive Economic Zone of U.S. or by a U.S. flagged vessel

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Exceptions to Buy American Requirement

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Two Limited Exceptions to Buy American

- Non-domestic foods permitted only when one of these exceptions applies



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Buy American Exception 1: FAR Non-available Articles List

- Product listed on FAR Non-available Articles List and/or not produced or manufactured in U.S. in sufficient and reasonably available quantities of satisfactory quality



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Nonavailable Articles List (FAR 25.104)

Items considered by the federal government to be not available in the U.S. and are therefore excepted from the Buy American statute

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FAR Non-available Articles List

- Department of Defense (DoD)
- General Services Administration (GSA)
- National Aeronautics and Space Administration (NASA)



https://www.acquisition.gov/far/part-25#FAR_25_104

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Buy American Exception 2: Higher Bid Costs

- Competitive bids reveal costs of U.S. product are significantly higher than non-domestic product
 - Not defined by USDA
 - At SFA's discretion
 - SFA determines dollar amount or percentage for exception



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Required Documentation for Buy American Exceptions

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Allowable Documentation for Non-domestic Foods

1. Product is listed on FAR Non-available Articles List
 - Additional documentation not required
 - Maintain copy of list with applicable items highlighted



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Allowable Documentation for Non-domestic Foods

2. CSDE's Buy American Justification Form for the School Nutrition Programs
 - If product not on FAR Non-available Articles List
 - Complete annually for each non-domestic product purchased with NSFSFA funds
 - Maintain on file




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Records Retention Requirements for the School Nutrition Programs



https://portal.ct.gov/-/media/sde/nutrition/nslp/adminrev/records_retention_snp.pdf

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Monitoring of Buy American Compliance and Documentation

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Monitoring of Buy American Compliance and Documentation

- CSDE will evaluate during
 - Administrative Review
 - Procurement Review



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Recommended Procurement Practices for Domestic Foods

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Recommended Procurement Practices for Domestic Foods

- Procure domestic foods from local, regional, small, women-owned, and/or minority business



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Recommended Procurement Practices for Domestic Foods

- Order USDA Foods
 - 100 percent American-grown and -produced foods

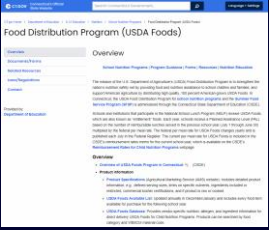


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Food Distribution Program (USDA Foods)



<https://portal.ct.gov/sde/nutrition/food-distribution-program-usda-foods>

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Resources




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USDA Resource

USDA Memo SP 23-2024: Buy American Provisions Related to the Final Rule Titled, Child Nutrition Programs: Meal Patterns Consistent with the 2020-25 Dietary Guidelines for Americans




<https://www.fns.usda.gov/cn/buy-american-provisions>

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USDA Resource

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://fns-prod.azureedge.us/sites/default/files/resource-files/SP19_CACFP07_SFSP12-2024os.pdf

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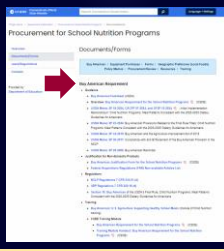
https://portal.ct.gov/-/media/sde/nutrition/nsfp/procure/buy_american_requirement_snp.pdf

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Procurement for School Nutrition Programs



<https://portal.ct.gov/sde/nutrition/procurement-for-school-nutrition-programs/documents#BuyAmerican>

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Questions?

- Contact CSDE's school nutrition programs staff

<https://portal.ct.gov/-/media/sde/nutrition/cnstaff/countassign.pdf>

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- mail: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410; or
- fax: (833) 256-1665 or (202) 690-7442; or
- email: program.intake@usda.gov

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