

## Attachment H. Additional Information for A.8

Public Comments: Over 400 public comments mentioned the word ‘burden’ with regards to the proposed rule. However, the vast majority pointed to the rule overall or certain provisions increasing burden or inconveniencing program operators. For example, respondents suggested that the Buy American provision documentation requirements and the added sugars weekly limit would increase burden for schools, as seen in Attachments I and J as examples.<sup>1</sup> However, these comments did not provide any specific hour burden information or cost shifts as a result. As a result, additional burden was added for the Buy American provision, menu planning option, and menu development as a result of nutrient requirement changes as part of the SBP, since burden was originally only considered for the NSLP in the proposed rule ICR.

Twenty-eight comments provided specific input on the Buy American exception documentation requirements. All 28 comments were unique, with 2 supporting the requirements,<sup>2</sup> 19 opposing the requirements,<sup>3</sup> and 3 providing mixed feedback. State agencies, school nutrition professionals, advocacy groups, industry respondents, school districts, dietitians, and individuals submitted comments on the Buy American exception documentation requirements.

One food industry respondent agreed with the exception documentation requirements and explained that food distributors should be more aware of the Buy American requirements and how to incorporate them into documentation (Attachment K). A State agency also supported the

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<sup>1</sup> Attachment I: <https://www.regulations.gov/comment/FNS-2022-0043-92016>; Attachment J: <https://www.regulations.gov/comment/FNS-2022-0043-81698>

<sup>2</sup> Attachment K: <https://www.regulations.gov/comment/FNS-2022-0043-33789>; Attachment L: <https://www.regulations.gov/comment/FNS-2022-0043-55305>

<sup>3</sup> Attachment M: <https://www.regulations.gov/comment/FNS-2022-0043-0122>; Attachment N: <https://www.regulations.gov/comment/FNS-2022-0043-36452>

requirements, stating that the proposed 5 percent limit was clear and that USDA should make specific documentation requirements clear and straightforward (Attachment L). Of those opposing the documentation requirements, multiple State agencies, school districts, dietitians and nutritionists, food service staff, individuals, one professional association, one advocacy group, and one food industry respondent suggested that the documentation requirements would cause undue burden and complications for SFAs (examples in Attachments M and N). One school food service professional believed that the proposed 5 percent threshold for Buy American “would be impossible to track” and add hours of time to each delivery day. Of the comments that provided mixed feedback on the documentation requirements, one State agency suggested using an exception list for items that would not require any additional documentation.<sup>4</sup> An individual suggested excluding fresh produce from the 5 percent threshold.

USDA Response: USDA considered these comments and altered the Buy American provision to include an exception list for documentation. When an SFA purchases a food item found on the Federal Acquisition Regulations (FAR) 25.104 Nonavailable articles list, no further documentation will be required. The nonavailable articles list is a list of items that have been deemed not available in the U.S. and excepted from the Buy American statute.<sup>5</sup> However, food products from the FAR nonavailable articles list must be included in the calculation of the cap, be it 10, 8 or 5% depending on the implementation timeline. USDA expects that the inclusion of the FAR 25.104 Nonavailable articles will reduce administrative burden. However, the burden expected for the proposed rule previously was 15 minutes per record for the Buy American SFA documentation to demonstrate compliance. This is likely still a reasonable estimation for

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<sup>4</sup> Attachment O: <https://www.regulations.gov/comment/FNS-2022-0043-92016>

<sup>5</sup> 41 U.S.C chapter 83 is the Buy American statute that requires public agencies to procure articles, materials, and supplies that were mined, produced, or manufactured in the United States, substantially all from domestic components. Available at: <https://www.acquisition.gov/far/part-25>.

calculating burden time for maintaining these records, even with use of the FAR 25.104 Nonavailable articles list.

Public Comments: For the substituting vegetables for grains in Tribal Communities provision, 13 public comments were submitted that discussed the need for reducing the administrative burden for implementing this change (nine of which were from a sponsor form letter). One of these comments was from a professional association that asked that USDA consider allowing this flexibility for all providers to be inclusive to other cultures and eliminate the qualification administrative burden.<sup>6</sup>

USDA Response: In response to the comment that the flexibility be inclusive to other cultures and eliminating the qualification administrative burden, USDA would like to provide additional detail behind the intent of this provision. USDA acknowledges that additional schools may benefit from this substitution provision and appreciates this feedback. However, as proposed, this provision was intended for certain schools only. With the exception of clarifying that this option may be applied at the school food authority level, this final rule does not expand this option to additional program operators, beyond those covered by the proposed rule. This final rule is intended to support American Indian or Alaska Native children participating in child nutrition programs and to uphold USDA's commitment to advancing equity, as detailed in the Department's Equity Action Plan.<sup>7</sup> In this plan, USDA outlines its commitment to advancing equity, including a focus on increasing Tribal trust. The Equity Action Plan highlights the

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<sup>6</sup> Attachment P: <https://www.regulations.gov/comment/FNS-2022-0043-73724>

<sup>7</sup> U.S. Department of Agriculture, USDA Equity Action Plan in Support of Executive Order (EO) 13985 Advancing Racial Equity and Support for Underserved Communities through the Federal Government, February 10, 2022. Available at: <https://www.usda.gov/equity/action-plan>.

importance of considering policy design and implementation to ensure Tribal communities have equitable access to Federal programs and services, including incorporating Indigenous values and perspectives in program design and delivery. While this final rule does not have as broad of a reach as some respondents requested, USDA remains committed to promoting equitable access to the child nutrition programs.

Within the overall burden comments, four comments were submitted that reference the Child Nutrition Reporting Burden Analysis Study.<sup>8</sup> One of these was a letter submitted three times from a professional association<sup>9</sup> (Attachment Q for example) and another is a unique letter from an advocacy group. This study was published in 2019 in response to a legislative requirement and was written as a report to Congress. Multiple key principles were considered from this report when determining documentation requirements for this final rule, including consolidating and minimizing duplication across recordkeeping requirements and streamlining documentation.

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<sup>8</sup> <https://www.USDA.usda.gov/child-nutrition-reporting-burden-analysis-study>

<sup>9</sup> Attachment Q: <https://www.regulations.gov/comment/FNS-2022-0043-93129>