Attachment G. Additional Information for A.2

• How does the final rule differ from the proposed rule?

USDA received comments from the public concerning the reporting and recordkeeping requirements and their associated burden. Consequently, USDA has revised certain provisions in the rule, and therefore has updated the reporting and recordkeeping information requirement burden estimates from the estimates reported in the proposed rule. In response to public input, USDA made changes to the Buy American provision which could impact the information collection. The rule will now gradually phase in the proposed non-domestic food cap of 5 percent and is now an interim final rule. USDA will introduce a 10 percent cap in SY 2025-2026, an 8 percent cap in SY 2028-2029, and a 5 percent cap in SY 2031-2032. Additionally, USDA is including in this rule that when a school food authority purchases a food item found on the Federal Acquisition Regulations (FAR) 25.104 Nonavailable articles list, no further documentation is required. Food products from the FAR nonavailable articles list must be included in the non-domestic food cap calculation. Despite the changes to the Buy American provision, the hourly burden calculations are unlikely to decrease substantially from a quarter of an hour per record.

The estimated numbers of respondents, responses, and burden hours for the information collection requirements that were included in the February 7, 2023 proposed rule are being revised via this final/interim final rule. These revisions are based on updating existing information collections rather than creating a new collection as was requested in the proposed

rule. Between the publication of the proposed rule and the final rule (plus interim final rule), the approval of OMB Control Number 0584-0006 was scheduled to expire. Because this collection has since been renewed and updated with a new expiration date of September 30, 2026, the decision was made to switch to revisions of previous collections rather than a new information collection. The number of respondents now align with those in the four previous information collections. Burden was also added to account for the changes in the NSLP and SBP programs, instead of a combined estimate for both programs for the three applicable provisions. Additionally, burden was added to account for menu development, including the development resulting from the provisions in the new rule, which had not been considered in previous information collections. As a result, the number of responses and burden hours for this rule have increased over those estimated for the proposed rule.

USDA now estimates that this rule will have an estimated 19,705 respondents, 763,892 responses, and 635,196 burden hours. This is the same number of respondents, an increase of 549,934 responses, and an increase of 204,897 burden hours in comparison to the estimations included in the proposed rule.

• What information will be collected?

In accordance with the final rule, *Child Nutrition Programs: Meal Patterns Consistent With the 2020-2025 Dietary Guidelines for Americans* **(**RIN 0584-AE88) (Attachment C), the following information will be collected:

- Documentation to demonstrate compliance with the Buy American provision;

- Documentation that procurement procedures, solicitations, and contracts include language requiring compliance with Buy American;
- Documentation to demonstrate that SFAs and schools that implement the menu planning option to serve vegetables to meet the grains requirement are tribally operated, operated by the Bureau of Indian Education, or serve primarily American Indian or Alaska Native participants;
- Documentation of requests from SFAs to hire an individual to serve as the school nutrition program director who has 10 years of school nutrition program experience but who does not hold a bachelor's or associate's degree and documentation of the State agency's approval or denial of those requests.
- Documentation that nutrient specifications are being met, collected via regular administrative reviews.

- **Is the information collected via a report or public disclosure, or is it a record that must be maintained?**

  Information is not collected via a report or public disclosure. Some information collections that occur are in accordance with recordkeeping requirements and, therefore, information would be maintained as records. The final rule updates recordkeeping requirements for SFAs to maintain documentation demonstrating compliance with the Buy American provision. Specifically, SFAs will be required to maintain documentation showing use of one of the two limited exceptions to the provision and that no more than the specified percent (10 percent, 8 percent and 5 percent, gradually decreasing over time) of their total annual commercial food costs were for non-domestic foods. SFAs will also be required to include the

Buy American provision in documented procurement procedures, solicitations, and contracts for foods and food products procured using informal and formal procurement methods, and in awarded contracts.

SFAs will be responsible for maintaining documentation to demonstrate that SFAs and schools using the menu planning option to serve vegetables to meet the grains requirement are tribally operated, are operated by the Bureau of Indian Education, or serve primarily American Indian or Alaska Native students.

There are two reporting requirements included in the final collections for the professional standards hiring exception. SFAs will be required to submit requests to their respective State agencies to hire individuals to work in medium or large local educational agencies who have 10 years or more of school nutrition program experience but who do not hold a bachelor's or associate's degree. State agencies will approve or deny such requests. SFAs and State agencies have discretion to elect the method for how they meet the reporting requirements associated with the professional standards hiring exception. While State agencies and SFAs have discretion to meet these reporting requirements using paper copies and mail, it is expected that almost all of requests to hire individuals and State agency responses would be reported/communicated electronically. The burden associated with these reporting requirements is estimated at 30 minutes (.50 hours) each and serves as a mean time of the various methods that might be used to meet each of the reporting requirements associated with the exception to hiring criteria.

SFAs will also be responsible for developing new menu records that meet updated and new FNS specifications from the final rule, and for continuing regular menu maintenance.

- **Is the collection voluntary, mandatory, or necessary to obtain benefits?**
    - The final recordkeeping requirement for SFAs to maintain documentation to demonstrate compliance with the Buy American provision and include language that identifies Buy American requirements in procurement procedures, solicitations, and contracts is mandatory. SFAs must purchase, to the maximum extent practical, domestic commodities or products.
    - Schools are not required to implement the menu planning option that allows SFAs and schools that are tribally operated, operated by the Bureau of Indian Education, and that serve primarily American Indian or Alaska Native participants to serve vegetables to meet the grains requirement. Although qualifying SFAs and schools are not required to use this option, SFAs that choose to use this option are responsible for maintaining documentation to demonstrate that the SFA or its schools are tribally operated, are operated by the Bureau of Indian Education, or serve primarily American Indian or Alaska Native students. The recordkeeping requirements associated with the menu planning option are required to implement the operational flexibility.
    - Use of the finalized hiring exemption, which allows State agencies to approve the hiring of individuals who have 10 years or more of school nutrition program

experience but who do not hold a bachelor's or associate's degree, is voluntary for state and local program operators. However, when this exemption is used, the development and maintenance of requests to hire individuals who do not meet educational criteria, and approval of such requests, is required.

- Under the finalized hiring exemption, reporting requirements in the form of SFAs submitting requests to hire a school nutrition director in a medium or large LEA that does not meet professional standards criteria, as well as the State Agency review of these requests, are required.
- Updating menus to demonstrate compliance with the updated nutrient specifications as they gradually go into effect is required in order to retain the continued benefit of being reimbursed for school meals, as applicable.

- **From whom will the information be collected and how will the information be used?**
  - SFAs will maintain documentation demonstrating compliance with the Buy American provision and include Buy American in documented procurement procedures, solicitations, and contracts to ensure vendors are aware of expectations at all stages of the procurement process, in addition to providing contractual protection for SFAs if vendors fail to meet Buy American obligations.
  - In NSLP, SFAs are responsible for maintaining documentation and records to demonstrate that the SFA or its schools are tribally operated, operated by the Bureau of Indian Education, or serve primarily American Indian or Alaska Native students. Maintaining this documentation is necessary to implement the menu planning option for schools to serve vegetables in place of grains in the NSLP and

will be used to demonstrate eligibility for the menu planning option during oversight activities.

- SFAs have the option to develop and submit requests to hire school nutrition program directors who have 10 years or more of school nutrition program experience but who do not hold a bachelor's or associate's degree. SFAs that choose to submit such requests to the State agency will maintain documentation of such requests and maintain documentation of the State agency's approval or denial. This reporting requirement is necessary to implement the professional standards hiring exemption. State agencies will collect and maintain records of requests submitted by SFAs to hire individuals to serve as a school nutrition program director in a medium or large local educational agency, for individuals who have 10 years or more of school nutrition program experience but who do not hold a bachelor's or associate's degree. State agencies will maintain records of such requests, would approve or deny such requests, and would maintain documentation of the approval or denial.
- SFAs are responsible for developing menu records that reflect the updated specifications in the final and interim final rule, including reduced added sugar and reduced sodium content of meals which will gradually be implemented over time. Menus are already regularly maintained at the school level to demonstrate compliance with standards, so this adds to that existing documentation in the form of menu development at the SFA level.

The respondents include State and local governments, which include State agencies (State governments) and SFAs (local governments).

- **How will the information be collected (e.g., forms, descriptive reports or plans, electronically, face-to- face, over the phone, over the Internet?**

  State agencies and local program operators may collect information in accordance with the final reporting and recordkeeping requirements as preferred. There are no specific requirements for how information must be collected. USDA estimates approximately 98% of the information collected in accordance with the information collection requirements would be collected electronically. Generally, State agencies and local program operators use computers and software to report, file, and maintain information.

- **How frequently will the information be collected?**

  Information will be collected in accordance with the final rule information collection requirements. Some collections of information addressed in the final rule will occur annually, such as an SFA's responsibility to document compliance with the Buy American provision by maintaining documentation to show that no more than the specified percent (gradually reduced) of their total annual commercial food costs were for non-domestic foods. The burden for each collection of information requirement included in the information collection request for the final rule is estimated based on the year, or annually.

  Some information collection requirements will occur on an as-needed basis. For example, the menu planning option to allow the substitution of vegetables for grains for program meals offered by schools that serve primarily American Indian and Alaska Native participants would only require Child Nutrition Program

operators that choose to implement the menu planning option to maintain documentation. In addition, the exemption to the professional standards hiring requirements would be implemented only as needed. To use the exemption, SFAs will submit requests to their respective State agency for approval.

SFA menu record information will be reviewed as needed through regular administrative reviews (generally once per three-year cycle) to verify ongoing compliance of menus with updated nutrient standards, definitions, and requirements.

• Will the information be shared with any other organization inside or outside USDA or the government?

The information collected would only be shared between USDA, State agencies, and SFAs, working together to administer the Child Nutrition Programs.