

## **Attachment H. Additional Information for A.8.**

### **A8. Comments to the Federal Register Notice and Efforts for Consultation.**

**If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

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 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. One comment addressed cost shifts resulting from burden that should be included in the Regulatory Impact Analysis (RIA), and that comment is addressed in the RIA portion of the final rule.

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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>

Twenty-eight comments provided specific input on the Buy American exception documentation and reporting 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 and reporting requirements.

One food industry respondent agreed with the exception documentation and reporting 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 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 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.

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<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>

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

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

Public Comments: There were no specific comments found on the hourly burden associated with the professional standards provision. 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>

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<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>.

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

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, sponsors, institutions, and facilities 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 participants 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 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

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<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>.

<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>

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.

Public Comments: There approximately 15 comments addressing start-up and maintenance type costs as a result of preparing for and implementing the rule. These costs included extra supplies, funding to implement the updated meal patterns, updating costs to update websites, materials, menus, recipes, meal planning databases, and start-up costs for implementing provisions over time. For example, one State agency advocated for increased meal reimbursements, investments in kitchen equipment and infrastructure, and more training opportunities for staff, including meal planning databases/websites (Attachment R).<sup>10</sup> Another suggested schools would need extra supplies or funding to implement the updated meal patterns (Attachment S).<sup>11</sup> A national association suggested that the timeline of the rule might prove challenging for there to be sufficient funding and support for the implementation of the new regulations, including time and costs of product reformulation, procurement, and menu planning (Attachment T).<sup>12</sup>

USDA Response: Annualized costs were added to this information collection to account for these maintenance and start-up costs, as detailed in A15.

Since this collection has documentation for Buy American provision as a requirement (OMB Control Number 0584-0006), a 60-Day Notice is embedded in the final rule to obtain comment on the Buy American provisions. Comments received for the Buy American provisions will be

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<sup>10</sup> Attachment R: <https://www.regulations.gov/comment/FNS-2022-0043-81697>

<sup>11</sup> Attachment S: <https://www.regulations.gov/comment/FNS-2022-0043-0264>

<sup>12</sup> Attachment T: <https://www.regulations.gov/comment/FNS-2022-0043-73819>

taken into consideration and any changes to the estimates provided here arising from those comments will be discussed in the PRA section of the final rule and in the corresponding information collection request.