

Timothy English,

Acting Administrator, Food and Nutrition Service.

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Request for Information: Buy American in the National School Lunch Program and School Breakfast Program

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice: Request for information.

SUMMARY: This is a Request for Information from stakeholders, including local operators, State administrators, industry and producers, about the Buy American provision in the National School Lunch Program (NSLP) and the School Breakfast Program (SBP). The NSLP and SBP, which are administered by the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS), play a critical role in ensuring that America's children have access to nutritious food they need to learn and succeed in the classroom, in addition to supporting American agriculture, and small, minority, and women's businesses and agricultural producers. In order to claim Federal reimbursement for meals served, school food authorities (SFAs) must follow Federal procurement and program regulations. These include the Buy American provision. The purpose of this Request for Information is to help FNS gather feedback from a wide variety of stakeholders on how the Buy American provision and guidance are currently implemented, changes FNS should make to current regulations and guidance and feedback on how FNS can better support local operators as they strive to purchase domestic foods and food products.

DATES: Written comments must be received on or before November 2, 2021.

ADDRESSES: USDA invites the submission of the requested information through one of the following methods:

- *Federal eRulemaking Portal (preferred method):* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Send written comments to the School Meals Monitoring Branch, Program Monitoring and Operational Support Division, Child Nutrition Programs, USDA Food and Nutrition Service, Braddock Metro Center II, 1320 Braddock Place, Alexandria, VA 22314.

All comments submitted in response to this Request for Information will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. USDA will make the comments publicly available via <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Jessica Saracino, School Meals Monitoring Branch, Program Monitoring and Operational Support Division, Child Nutrition Programs, USDA Food and Nutrition Service, 703-605-3223.

SUPPLEMENTARY INFORMATION: On January 25, 2021, President Biden signed the *Executive Order on Ensuring the Future is Made in All of America by All of America's Workers* (referred to as the Buy American Executive order hereafter) supporting the American economy by requiring terms and conditions of Federal financial assistance awards and Federal procurements to maximize the use of goods, products, and materials produced in, and services offered in, the United States. FNS is issuing this RFI in response to this Executive Order.

Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105-336) added a provision, Section 12(n) to the National School Lunch Act (NSLA) (42 U.S.C. 1760(n)), requiring school food authorities (SFAs) to purchase, to the maximum extent practicable, domestic commodities or products. This Buy American provision supports the mission of the Child Nutrition Programs, which is to serve children nutritious meals and support American agriculture. The existing regulatory provision stems directly from the statutory requirement.

The Buy American provision applies to SFAs located in the 48 contiguous United States and is one of the procurement standards these SFAs must comply with when purchasing commercial food and food products served in NSLP and SBP. Although Alaska, Hawaii, and the U.S. territories are exempt from the Buy American provision, SFAs in Hawaii are required to purchase food and food products produced in Hawaii in sufficient quantities, as determined by the SFA, to meet NSLP and SBP needs per 7 CFR 210.21(d)(3) and 7 CFR 220.16(d)(3). Likewise, SFAs in Puerto Rico are required to purchase food and food products produced in Puerto Rico in sufficient quantities, under 42 U.S.C. 1760(n)(4).

Section 12(n) of the NSLA defines "domestic commodity or product" as an agricultural commodity that is produced in the United States and a food product that is processed in the United States substantially using agricultural commodities produced in the United States. Report language accompanying the legislation noted that "substantially means over 51% from American products." Accordingly, FNS has established in guidance that over 51% of the final processed product must consist of agricultural commodities that were grown domestically. Thus, for foods that are unprocessed, agricultural commodities must be domestic, and for foods that are processed, they must be processed domestically using domestic agricultural food components that are comprised of over 51% domestically grown items, as determined by the SFA. Any processed product used must contain over 51% of the product's food component from United States origin. This definition of domestic product serves both the needs of schools and American agriculture. Foods and food products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are considered domestic products under this provision as these products are from the territories of the United States.

FNS has provided through guidance limited exceptions to the Buy American provision which allow for the purchase of foods not meeting the "domestic" standard as described above (*i.e.*, "non-domestic") in circumstances when use of domestic foods is truly not practicable. These exceptions, as determined by the SFA, are:

- The product is not produced or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality; or
- Competitive bids reveal the costs of a United States product are significantly higher than the non-domestic product.

It should be noted that FNS has not defined a dollar amount or percentage triggering possible use of an exception. It is each individual SFA's responsibility to determine what dollar amount or percentage constitutes a significantly higher price thus permitting the use of the exception. If an SFA is using one of the above exceptions, there is no requirement at this time to request a waiver from the State agency or FNS in order to purchase a non-domestic product. SFAs must, however, keep documentation justifying their use of exception(s). State agencies must ensure SFA compliance with the Buy American provision when conducting oversight processes.

FNS has already received feedback that stakeholders face difficulties in implementing and monitoring the Buy American provision and guidance. Additionally, stakeholders have reached out for assistance with interpreting and following the Buy American provision and have also requested help with understanding the exceptions. Feedback provided in response to this Request for Information will help inform future rulemaking and guidance around the Buy American provision.

Maximizing the Value of Public Feedback

This notice contains a list of questions, the answers to which will assist FNS in identifying those regulations, and/or policies that may benefit from modification, streamlining, expansion, or repeal in light of the Buy American Executive order. FNS encourages public comment on these questions and seeks any other data commenters believe are relevant to FNS's review efforts. The type of feedback that is most useful to the agency includes feedback that identifies specific regulations and/or policies that could benefit from reform; feedback that refers to specific barriers to participation; feedback that offers actionable data; and feedback that specifies viable alternatives to existing approaches that meet statutory obligations. For example, feedback that simply states that a stakeholder feels strongly that FNS should change a regulation or policy but does not contain specific information on how the proposed change would impact the costs and benefits of the regulation, is much less useful to FNS. FNS is looking for new information and new data to support any proposed changes. Highlighted below are a few of those points, noting comments that are most useful to FNS. Commenters should consider these principles as they answer and respond to the questions in this notice.

- Commenters should identify, with specificity, the program regulation and/or policy at issue, providing the Code of Federal Regulation (CFR) citation where appropriate.

- Commenters should identify, with specificity, administrative burdens, program requirements, or unnecessary complexity that may impose unjustified barriers in general, or that may have adverse effects on equity for all, including individuals who belong to underserved communities that have been denied equitable treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and

other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities, including learning disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.

- Commenters should provide, in as much detail as possible, an explanation why a program regulation and/or policy should be modified, streamlined, expanded, or repealed, as well as specific suggestions of ways the agency can better achieve its statutory and regulatory objectives in light of the Buy American Executive order.

- Commenters should provide specific data that document the costs, burdens, and benefits of existing requirements to the extent they are available.

List of Questions for Commenters

This Request for Information reflects the commitment of FNS to work with our stakeholders, including local operators, State administrators, industry and producers, to ensure that the Program-specific Buy American provision support the Administration's priorities, is practicable and that FNS provides adequate guidance.

The below non-exhaustive list of questions is meant to assist members of the public in the formulation of comments and is not intended to restrict the issues that commenters may address.

General

1. What changes, if any, to the Buy American provision and guidance would you recommend to FNS to support the Buy American executive order? Please describe in detail.

2. Please describe what works well for your organization when implementing and/or meeting the Buy American provision.

3. Please describe any challenges or impediments identified in meeting or monitoring the Buy American provision.

4. Do you have State-specific requirements to ensure SFAs comply with the Buy American provision (*e.g.*, recording every exception used, listing alternatives considered, etc.)? If so, please describe in detail.

5. Does your SFA use geographic preference when soliciting for unprocessed locally grown or locally raised agricultural products?

a. If not, what are the reason(s) your SFA does not use geographic preference to purchase locally grown or locally raised agricultural products?

6. Does your SFA use small, minority, and/or women's businesses, including Tribal businesses, and labor surplus firms to purchase or process foods from local producers such as farmers, ranchers, and other producers, or to process unprocessed, locally grown agricultural commodities into usable food products, needed to operate the NSLP and SBP? If yes, which of the above does your SFA use and how often? Please describe whether your SFA has experienced any additional benefits (other than obtaining affordable foods) by using local producers.

7. Please provide suggestions on how FNS can support stakeholders in meeting the Buy American provision or in connecting U.S. food producers to local schools.

Exceptions

8. FNS allows two limited exceptions to the Buy American provision: Costs of a United States product that are significantly higher than the non-domestic product, and insufficient domestic quality or quantity. List the foods and/or food products that most often require an exception.

(a.) Exceptions due to quantity or quality

(b.) Exceptions due to a significantly higher cost

9. If these currently available exceptions were more or less available, what impacts would this have?

10. Do you think FNS should establish additional detail in the regulations for the Buy American provision?

11. Do you think FNS should define what is considered a significantly higher cost? If so, how should FNS define "significant"? Please be as specific as possible.

12. What methodology do you use to determine a significantly higher cost to your SFA that will require the purchase of non-domestic foods or food products? Do you use a dollar value or percentage in your determination? If yes, list the dollar value or percentage you use.

13. Should FNS consider a defined list of Buy American "excepted" items for food or food products that have been determined as not produced in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality? If so, what criteria would you use to include items on this list, and which items would currently be included?

Collection of Information

Requirements: This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure

requirements. However, this document does contain a general solicitation of comments in the form of a request for information. In accordance with implementing regulations of the Paperwork Reduction Act of 1995 (PRA), specifically 5 CFR 1320.3(h)(4), this general solicitation is exempt from the PRA. Facts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register** or other publications, regardless of the form or format thereof, provided that no person is required to supply specific information pertaining to the commenter other than that necessary for self-identification, as a condition of the agency's full consideration, are not generally considered information collections and therefore not subject to the PRA.

Timothy English,

Acting Administrator, Food and Nutrition Service.

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection

Activities: WIC Nutrition Assessment and Tailoring Study—In-Person Data Collection

AGENCY: Food and Nutrition Service (FNS), Agriculture (USDA).

ACTION: 60-Day notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a revision of the currently approved collection for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Nutrition Assessment and Tailoring Study (WIC NATS) [OMB Control Number 0584-0663]. The revision adds data collection from in-person site visits, where the data collection activities planned for the currently approved remote site visits will be replicated for use with 30 WIC clinic sites for in-person site visits once WIC clinic sites safely resume in-person operations.

DATES: Written comments must be received on or before October 4, 2021.

ADDRESSES: Comments may be sent to: Alexander Bush, Office of Policy Support, Food and Nutrition Service, USDA, 1320 Braddock Place,

Alexandria, VA 22314. Comments may also be submitted via fax to the attention of Karen Castellanos-Brown at 703-305-2732 or via email to Karen.Castellanos-Brown@usda.gov. Comments will also be accepted through the Federal eRulemaking Portal. Go to <http://www.regulations.gov> and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information on or copies of this information collection should be directed to Karen Castellanos-Brown at Karen.Castellanos-Brown@usda.gov or Courtney Paolicelli at 571-302-6447.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: WIC Nutrition Assessment and Tailoring Study: In-Person Data Collection.

Form Number: Not applicable.

OMB Number: 0584-0663.

Expiration Date: 04/30/2024.

Type of Request: Revision of a currently approved collection.

Abstract: The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) provides supplemental foods, nutrition education and breastfeeding support, and referrals to health care and other social services to safeguard the health of low-income women, infants, and children up to 5 years of age who are at nutritional risk. As part of the certification and recertification process, WIC staff perform a comprehensive nutrition risk assessment with each participant to screen for certain nutrition risks and collect other relevant dietary and health information. Based on the nutrition risk assessment, WIC staff can individualize

the food package benefits, nutrition education, and referrals the participant receives to meet their unique nutritional needs. While guidelines for conducting a quality nutrition risk assessment are described in the Value Enhanced Nutrition Assessment (VENA) guidance,¹ there is flexibility in how WIC staff conduct the nutrition risk assessment, and specifics of the process may vary by WIC State Agency (SA) and by WIC Local Agency (LA). Through this study, FNS seeks to better understand the nutrition services process as it transpires at WIC clinics, and WIC staff and participants' satisfaction with the process. The findings from this study will be used to develop guidance for WIC staff to enhance service delivery to improve program satisfaction, retention, and participant health and nutrition outcomes.

The four study objectives are: (1) Provide in-depth descriptive information on how a large, diverse sample of local WIC agencies performs the WIC nutrition risk assessment; (2) Systematically describe how a national sample of diverse local WIC agencies uses the collection of nutrition risk assessment information to tailor program benefits, including food packages, nutrition education, breastfeeding promotion and support, and referrals to health and social services; (3) Investigate relationships between WIC nutrition risk services processes (to include the nutrition risk assessment and the associated tailoring of program benefits), and the clinic experience, participant and staff perceptions, and overall clinic flow and efficiency; and (4) Identify specific practices or features of nutrition risk service processes that facilitate the use of nutrition assessment information for providing tailored program benefits, and that are associated with participant and staff satisfaction.

Under the currently approved WIC NATS data collection [OMB Control Number 0584-0663], 30 clinic sites will be selected to participate in remote site visits—where the study team will observe remote nutrition assessment visits (*i.e.*, assessments done via telephone or video call) and then interview WIC participants and staff by telephone. Under this revision, 30 clinic sites will be recruited to participate in the same data collection activities—including direct observation of nutrition assessments and interviews with

¹ U.S. Department of Agriculture Food and Nutrition Service. *VENA Value Enhanced Nutrition Assessment*. Available at: <https://wicworks.fns.usda.gov/resources/value-enhanced-nutrition-assessment-vena-guidance>.