

118TH CONGRESS
1ST SESSION

S. 2301

To amend the Richard B. Russell National School Lunch Act to require a school food authority to make publicly available any waiver of the Buy American requirement, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 13, 2023

Mr. BRAUN (for himself and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To amend the Richard B. Russell National School Lunch Act to require a school food authority to make publicly available any waiver of the Buy American requirement, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “American Food for
5 American Schools Act of 2023”.

1 **SEC. 2. REQUIREMENTS FOR PURCHASE OF FOREIGN COM-**
 2 **MODITIES OR PRODUCTS.**

3 (a) DEFINITIONS.—Section 12(n) of the Richard B.
 4 Russell National School Lunch Act (42 U.S.C. 1760(n))
 5 is amended by striking paragraph (1) and inserting the
 6 following:

7 “(1) DEFINITIONS.—In this subsection:

8 “(A) DOMESTIC COMMODITY OR PROD-
 9 UCT.—The term ‘domestic commodity or prod-
 10 uct’ means—

11 “(i) an agricultural commodity that is
 12 produced in the United States;

13 “(ii) a food product that—

14 “(I) is processed in the United
 15 States; and

16 “(II) substantially contains agri-
 17 cultural commodities described in
 18 clause (i); and

19 “(iii) fish or seafood harvested—

20 “(I) within the Exclusive Eco-
 21 nomic Zone of the United States (as
 22 established by Presidential Proclama-
 23 tion Number 5030, dated March 10,
 24 1983) (16 U.S.C. 1453 note)); or

25 “(II) by a United States-flagged
 26 vessel.

1 “(B) FOREIGN COMMODITY OR PROD-
 2 UCT.—The term ‘foreign commodity or product’
 3 means a commodity or product other than a do-
 4 mestic commodity or product.”.

5 (b) REQUIREMENT.—Section 12(n)(2) of the Richard
 6 B. Russell National School Lunch Act (42 U.S.C.
 7 1760(n)(2)) is amended—

8 (1) in subparagraph (A)—

9 (A) by striking “subparagraph (B)” and
 10 inserting “subparagraphs (B) and (C)”; and

11 (B) by striking “purchase, to the max-
 12 imum extent practicable, domestic” and insert-
 13 ing “purchase domestic”;

14 (2) in subparagraph (B)(ii), by striking “for the
 15 school lunch program under this Act or the school
 16 breakfast program under section 4 of the Child Nu-
 17 trition Act of 1966 (42 U.S.C. 1773).” and inserting
 18 the following: “for—

19 “(I) the school lunch program
 20 under this Act, including any snacks
 21 served under that program;

22 “(II) the summer food service
 23 program for children under section
 24 13;

1 “(III) the child and adult care
2 food program under section 17;

3 “(IV) the special milk program
4 under section 3 of the Child Nutrition
5 Act of 1966 (42 U.S.C. 1772); and

6 “(V) the school breakfast pro-
7 gram under section 4 of the Child Nu-
8 trition Act of 1966 (42 U.S.C.
9 1773).”; and

10 (3) by adding at the end the following:

11 “(C) WAIVER.—

12 “(i) IN GENERAL.—Except as pro-
13 vided in clause (ii), a school food authority
14 shall be required to request from the Sec-
15 retary a waiver of subparagraph (A) before
16 purchasing foreign commodities or prod-
17 ucts.

18 “(ii) EXCEPTION.—A school food au-
19 thority may purchase foreign commodities
20 or products without a waiver under clause
21 (i) if the foreign commodities or prod-
22 ucts—

23 “(I) are not produced or proc-
24 essed domestically in sufficient quan-
25 tities and of satisfactory quality; or

1 “(II) are not reasonably available
 2 domestically in sufficient quantities
 3 and of satisfactory quality.

4 “(iii) LIMITATION.—Waivers may only
 5 be granted under clause (i) for up to 5
 6 percent of the total annual commercial
 7 food costs of a school food authority within
 8 each food component (as defined in section
 9 210.2 of title 7, Code of Federal Regula-
 10 tions (or successor regulations)).

11 “(iv) NOTIFICATION REQUIREMENT.—
 12 A school food authority that purchases for-
 13 eign commodities or products under this
 14 subparagraph shall be required, not less
 15 than once each school year, to notify par-
 16 ents or guardians of students of the for-
 17 eign commodities or products purchased.

18 “(v) PUBLICLY AVAILABLE LIST OF
 19 WAIVERS.—

20 “(I) IN GENERAL.—Not later
 21 than 1 year after the first waiver is
 22 provided under this subparagraph, the
 23 Secretary shall establish and maintain
 24 on the website of the Department of
 25 Agriculture a publicly available list of

1 each waiver provided under this sub-
2 paragraph, which shall include infor-
3 mation—

4 “(aa)(AA) on each school
5 food authority that has received a
6 waiver under this subparagraph;
7 and

8 “(BB) on each food product
9 for which that school food au-
10 thority received the waiver; and

11 “(bb) contained in each re-
12 port submitted under clause
13 (vi)(II).

14 “(II) MAINTENANCE.—The Sec-
15 retary shall update the list established
16 in subclause (I)—

17 “(aa) with respect to item
18 (aa) of that subclause, not later
19 than 90 days after a waiver is
20 granted under this subparagraph;
21 and

22 “(bb) with respect to item
23 (bb) of that subclause, on an an-
24 nual basis.

25 “(vi) REPORTS.—

1 “(I) REPORT TO STATE EDU-
 2 CATIONAL AGENCY.—A school food
 3 authority shall submit to the State
 4 educational agency that serves the
 5 school food authority, on an annual
 6 basis, a report detailing the categories
 7 of foreign commodities or products
 8 purchased without a waiver under
 9 clause (ii).

10 “(II) REPORT TO SECRETARY.—
 11 The State educational agency shall
 12 submit to the Secretary, on an annual
 13 basis, a report containing a compila-
 14 tion of the information reported to the
 15 State educational agency under sub-
 16 clause (I).”.

17 (c) CONFORMING AMENDMENTS.—Section 12(n) of
 18 the Richard B. Russell National School Lunch Act (42
 19 U.S.C. 1760(n)) is amended—

20 (1) in paragraph (3), by striking “Paragraph
 21 (2)(A)” and inserting “Subparagraphs (A) and (C)
 22 of paragraph (2)”; and

23 (2) in paragraph (4), by striking “Paragraph
 24 (2)(A)” and inserting “Subparagraphs (A) and (C)
 25 of paragraph (2)”.

1 **SEC. 3. BUY AMERICAN CONTRACT REQUIREMENTS.**

2 Section 12(n) of the Richard B. Russell National
3 School Lunch Act (42 U.S.C. 1760(n)) is amended by
4 adding at the end the following:

5 “(5) CONTRACTS.—

6 “(A) IN GENERAL.—Any contract entered
7 into between a school food authority and a sup-
8 plier for a commodity or food product for pro-
9 grams under this Act or the Child Nutrition
10 Act of 1966 (42 U.S.C. 1771 et seq.) after the
11 date of enactment of this paragraph shall in-
12 clude a provision (referred to in this paragraph
13 as the ‘covered provision’) that requires the
14 supplier to comply with the requirements of this
15 subsection.

16 “(B) REIMBURSEMENT IN THE CASE OF
17 NONCOMPLIANCE.—

18 “(i) IN GENERAL.—A supplier that
19 enters into a contract described in sub-
20 paragraph (A) that does not comply with
21 the covered provision in the contract shall
22 be required to pay to the Secretary an
23 amount equal to the amount of Federal
24 funds the supplier used to purchase foreign
25 commodities or products in noncompliance
26 of the covered provision.

1 “(ii) LIMITATION.—Funds paid to the
 2 Secretary under clause (i) shall be avail-
 3 able to the Secretary, without further ap-
 4 propriation or fiscal year limitation, to
 5 carry out subsection (m).

6 “(C) USE OF NONCOMPLIANT GOODS.—A
 7 school food authority that receives foreign com-
 8 modities or products that were obtained in non-
 9 compliance with the covered provision in the
 10 contract of the school food authority may use
 11 those foreign commodities or products without
 12 requesting a waiver under paragraph (2)(C).

13 “(D) REPORTING.—

14 “(i) REPORT TO STATE EDUCATIONAL
 15 AGENCY.—A school food authority shall
 16 submit to the State educational agency
 17 that serves the school food authority an
 18 annual report describing any noncompli-
 19 ance of a covered provision in any contract
 20 described in subparagraph (A).

21 “(ii) REPORT TO SECRETARY.—A
 22 State educational agency shall submit to
 23 the Secretary an annual report containing
 24 a compilation of each instance of non-

1 compliance reported to the State edu-
 2 cational agency under clause (i).

3 “(E) PUBLICATION.—The Secretary shall
 4 make publicly available on the website of the
 5 Department of Agriculture a list of each in-
 6 stance of noncompliance reported to the Sec-
 7 retary under subparagraph (D)(ii).”.

8 **SEC. 4. TECHNICAL AMENDMENTS.**

9 (a) RICHARD B. RUSSELL NATIONAL SCHOOL
 10 LUNCH ACT.—

11 (1) Section 9(b) of the Richard B. Russell Na-
 12 tional School Lunch Act (42 U.S.C. 1758(b)) is
 13 amended—

14 (A) in paragraph (3)(E)(iii), in each of
 15 subclauses (III) and (IV), by striking “reduced-
 16 price” each place it appears and inserting “re-
 17 duced price”; and

18 (B) in paragraph (15)(A)(i)(II), by strik-
 19 ing “regulations)” and inserting “regula-
 20 tions))”.

21 (2) Section 11(e) of the Richard B. Russell Na-
 22 tional School Lunch Act (42 U.S.C. 1759a(e)) is
 23 amended by striking “reduced-priced” and inserting
 24 “reduced price”.

1 (3) Section 13(a)(7)(A)(iv) of the Richard B.
 2 Russell National School Lunch Act (42 U.S.C.
 3 1761(a)(7)(A)(iv)) is amended by inserting “sec-
 4 tion” after “under”.

5 (4) Section 17(o)(3)(A) of the Richard B. Rus-
 6 sell National School Lunch Act (42 U.S.C.
 7 1766(o)(3)(A)) is amended by striking “consulation”
 8 and inserting “consultation”.

9 (5) Section 22 of the Richard B. Russell Na-
 10 tional School Lunch Act (42 U.S.C. 1769c) is
 11 amended—

12 (A) in subsection (a)—

13 (i) by striking the subsection designa-
 14 tion and heading and all that follows
 15 through “There” in paragraph (1) in the
 16 matter preceding subparagraph (A) and in-
 17 serting the following:

18 “(a) UNIFIED ACCOUNTABILITY SYSTEM.—There”;

19 and

20 (ii) by redesignating subparagraphs
 21 (A) and (B) as paragraphs (1) and (2), re-
 22 spectively, and indenting appropriately;
 23 and

24 (B) in subsection (b)(1)(A), by striking “in
 25 subparagraphs (A) and (B) of paragraph (1)”

1 and inserting “in paragraphs (1) and (2) of
2 subsection (a)”.

3 (b) CHILD NUTRITION ACT OF 1966.—

4 (1) Section 7(a)(2)(B)(i) of the Child Nutrition
5 Act of 1966 (42 U.S.C. 1776(a)(2)(B)(i)) is amend-
6 ed by striking “clause (ii)” and inserting “clause
7 (ii))”.

8 (2) Section 17(h)(4) of the Child Nutrition Act
9 of 1966 (7 U.S.C. 1786(h)(4)) is amended—

10 (A) in subparagraph (A)(vi), by striking
11 “and” at the end; and

12 (B) in subparagraph (C)(iv), by striking “;
13 and” and inserting a period.

14 **SEC. 5. RULE OF CONSTRUCTION.**

15 Nothing in this Act or the amendments made by this
16 Act shall affect the requirements under section 4207 of
17 the Agriculture Improvement Act of 2018 (42 U.S.C.
18 1760 note; Public Law 115–334).

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