



Washington, D.C. November 2, 2021.

Jessica Saracino
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

**Re: Buy American in the National School Lunch Program and School Breakfast Program.
Docket ID: FNS-2021-0027**

Dear Ms. Saracino,

We thank you for the opportunity to provide information on behalf of the National Family Farm Coalition (NFFC). The National Family Farm Coalition (NFFC) is a 35-year-old organization representing thousands of independent family farmers, ranchers, and fishermen throughout the United States.

Many of our members are certified organic growers, family farm operators, small-scale commercial fishermen, and multi-generation, multi-ethnic rural folk involved in the work of 32 organizations in over 40 states. We represent food producers who had provided, attempt to provided, or are frankly avoiding providing their production to school systems.

The reasons behind why each farmer has or does not have the opportunity to work with the school lunch program give us the vision to comment on the question put forward by your administration.

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

First, the priority should be local and seasonal products. Second, end the exception to products not grown or harvested in the USA. Third, the process and time to apply to sell to the school system should be simplified.

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

The notice for the production that is needed would help determine plantings for the season ahead.

3. Please describe any challenges or impediments identified in meetings or monitoring to Buy American provision

The annual application is a deterrent to maintaining contracts, and some of our BIPOC members have the sense that their white fellow farmers had an advantage when applying. As



the Urban School Food Alliance (2021) points out, “...there is great disparity in that states require different levels and types of documentation, some of which are quite redundant and burdensome. Better guidance or examples of best practices to help standardize the documentation requirements would be most helpful to SFAs. Ideally, the Alliance believes the repetitive requirement to document the reason for the procurement is unnecessary and should be replaced with a standardized list of allowed food items.”

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.

We have testimonies of BIPOC farmers who have to sell their products in neighboring southern states rather than their local schools because of the variability of requirements, as mentioned before. “Ideally, the Alliance believes the repetitive requirement to document the reason for the procurement is unnecessary and should be replaced with a standardized list of allowed food items. Such a practice is already in place under Federal Acquisition Regulations at 25.104(a) “...for articles not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality” (Urban School Food Alliance, 2021).

5. No comments

6. Does your SFA use small, minority, and/or woman-owned 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, local grown agricultural commodities into usable food products, need to operate the NSLP and SBP?

There is the need for standardize regulations, particularly in the southern states.

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

Small-scale certified organic growers, family farm operators, small-scale commercial fishermen, family ranchers, and cooperative producers are disincentivized to join the FNS because the requirements requested from them. One of the most challenging parts is the amount requested from them as well as year-round production.

We understand that dealing with multiple growers represents a challenge for the program, but in fairness the main beneficiaries of the system tend to be larger growers. Industrial agriculture is better positioned to provide food year-round to multiple areas. However, additional considerations, like the agricultural sustainability and contributions to conservation, should be considered.

Moreover, in locations where the school systems already see small populations small-scale producers may have the capacity to supply the local system.

Finally, as the National Food to School Network highlights in their comments that “many small producers, processors, and distributors, particularly businesspeople of color, face major barriers



to tapping into the school food market. USDA should enhance vendor participation in the school meal supply chain by addressing the regulatory and capital barriers to entry, such as food safety requirements, insurance, bonding requirements, credit to support scaling up to serve the wholesale market and providing targeted support to ensure racially equitable market access” (2021).

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.*

“The Food and Nutrition Service should rescind the regulatory exceptions that have allowed school food authorities to avoid compliance with existing statute. The solution is simple as it is straightforward: FNS Document #SP 38-2017 should be revised to eliminate the exception whereby “competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product” and replaced by an FNS standard that provides the assurance to which American growers, processors, and supply chain workers are entitled” (UFCW and Teamsters, 2021).

9. *No comments*

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

As a recurrent and chronic problem of USDA policies and regulations, Buy American provisions lack consistency, including at the vendor level. School food authorities across the country repeatedly include “Buy American” clauses in their contracts but cannot be certain that domestic product will be delivered. Food distributors too often offer foreign-sourced products sold in competition with ample supplies of domestic products or misrepresent foreign products as domestic because they are being sold by a domestic company. Food distributors need to be more aware of the Buy American requirements. Repeated violations, such as substituting foreign-sourced food products after indicating compliance with Buy American requirements, could, or perhaps should, be grounds for barring the distributor as a supplier in school feeding programs.

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*

The NFFC sides with the Urban School Food Alliance (2021), since “FNS does not offer any guidance on what is the ‘significantly higher cost’ that justifies use of the exception. For this reason, there is great disparity as to local policies. An SFA may believe that a penny per case difference is not sufficient to justify the purchase of a foreign product. But the purchasing agents in the school may look at the total price paid on a truckload basis and deem that total amount sufficiently significant to justify the foreign purchase, leaving the SFA no choice in the matter even though they are trying to comply with Buy American. Again, better guidance and examples of best practices would be helpful in this instance.”



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

NFFC rejects the notion that there are not ample options from local production and that it is necessary to look for imported vegetables and/or fruits. The problem of supplying the school system goes beyond the specifics of the program. Agriculture policy in the United States has pushed many farmers, ranchers, and small-scale fisheries out of business.

The weakness of our food system comes precisely from farm consolidation and industrial agriculture. NFFC supports the Good Food Purchasing program and NFS should adopt the program as it is already implemented in a few cities, like Austin, Los Angeles, Boston, Chicago, Cincinnati, Washington D.C., Gainesville, Oakland, and San Francisco (GFPP, 2021).

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References

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<https://www.regulations.gov/comment/FNS-2021-0027-0087>