



April 2023

# SCHOOL MEAL PROGRAMS

## USDA Could Enhance Implementation of the Buy American Provision

# GAO Highlights

Highlights of [GAO-23-105884](#), a report to congressional requesters

## Why GAO Did This Study

FNS administers the school meal programs that provide nutritious, low-cost meals to about 30 million children each day, according to USDA fiscal year 2019 data. School food authorities participating in the National School Lunch Program or the School Breakfast Program must comply with the Buy American provision, which requires them to buy domestic foods and food products to the maximum extent practicable.

GAO was asked to review implementation of the Buy American provision in school meal programs. This report examines how school food authorities used exceptions from the Buy American provision and the extent to which USDA supported states and school food authorities in implementing the Buy American provision.

GAO reviewed FNS documents; FNS's school year 2017-18 nationally representative survey of school food authorities; and relevant federal laws and regulations. GAO also interviewed officials from FNS and a non-generalizable sample of four states and eight school food authorities. GAO selected states for diversity of program size and geography and randomly selected school food authorities. GAO also reviewed five state exception forms identified through interviews with states and FNS staff.

## What GAO Recommends

GAO recommends that FNS develop a standard form that school food authorities can use to document Buy American exceptions. FNS concurred with the recommendation.

View [GAO-23-105884](#). For more information, contact Kathryn A. Larin at (202) 512-7215 or [larink@gao.gov](mailto:larink@gao.gov).

April 2023

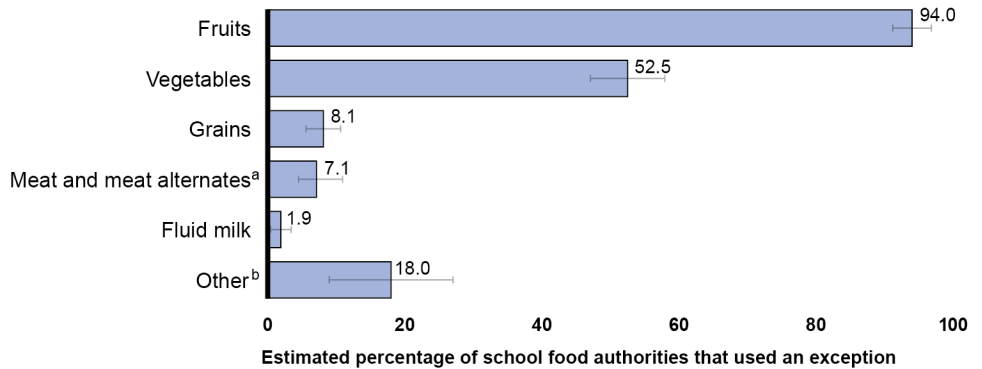
# SCHOOL MEAL PROGRAMS

## USDA Could Enhance Implementation of the Buy American Provision

### What GAO Found

School food authorities primarily used exceptions from the Buy American provision to purchase fruits they could not obtain domestically in sufficient quantities. An estimated 94 percent of school food authorities that used exceptions from the Buy American provision did so to purchase fruit, according to the U.S. Department of Agriculture (USDA) Food and Nutrition Service's (FNS) survey from school year 2017-18—the most recent nationally representative data available. FNS's survey found that school food authorities used exceptions less frequently to purchase other foods, like grains or meats. Officials from seven of the eight school food authorities GAO interviewed said they used Buy American exceptions each school year primarily to buy fruits, such as bananas, pineapples, and mandarin oranges.

**Non-domestic Foods Purchased Using a Buy American Provision Exception by School Food Authorities That Used Exceptions in School Year 2017-18**



Source: U.S. Department of Agriculture, Food and Nutrition Service data. | GAO-23-105884

Notes: The thin lines display the 95 percent confidence interval for each estimate. Percentages do not add to 100 percent because school food authorities may use multiple exceptions from the Buy American provision in a given school year.

<sup>a</sup>Meat and meat alternates included a variety of foods including beef, poultry, seafood, and nuts.

<sup>b</sup>Other products included yeast, oils, and spices.

FNS has provided some tools and assistance to states and school food authorities to implement the Buy American provision, but has not done so with regard to documenting exceptions. For example, FNS provides standard Buy American provision language for solicitations and contracts that school food authorities can use at their discretion. GAO found that some states are providing forms for school authorities to use to document their reasons for using exceptions to the Buy American provision. However, states do not consistently do this, and the forms they provide contain varying levels of guidance and collect different information. Officials from half of the school food authorities that GAO interviewed said having standardized exception forms would be helpful. Without providing a standard Buy American exception form that school food authorities could use, FNS may be missing an opportunity to help school food authorities fully understand their responsibilities to implement the provision.

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## Abbreviations

FNS	Food and Nutrition Service
SFA	school food authority
USDA	U.S. Department of Agriculture

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April 13, 2023

The Honorable Virginia Foxx  
Chairwoman  
Committee on Education and the Workforce  
House of Representatives

The Honorable Clay Higgins  
House of Representatives

The U.S. Department of Agriculture’s (USDA) National School Lunch Program and School Breakfast Program, which are administered by the Food and Nutrition Service (FNS), collectively provide low-cost or free meals to over 30 million children each school day, according to USDA fiscal year 2019 data. That year, spending for these programs totaled over \$18 billion. FNS’s mission for these school meal programs is to provide nutritious meals, while supporting U.S. agricultural markets.

School food authorities (SFA), which generally correspond with school districts, administer the National School Lunch Program and School Breakfast Program locally under agreements with state agencies. SFAs are responsible for fulfilling certain program requirements, including the “Buy American” provision. The provision, added in 1998 to the Richard B. Russell National School Lunch Act, requires SFAs to purchase, to the maximum extent practicable, domestic commodities or products for their school meal programs.<sup>1</sup> In its guidance, USDA outlines limited exceptions to the Buy American provision—based on the availability, cost, and quality of domestic products—when SFAs may purchase non-domestic products. The Agriculture Improvement Act of 2018 requires USDA to enforce full compliance with the Buy American provision and to ensure that states and SFAs fully understand their responsibilities.<sup>2</sup>

You asked us to review implementation of the Buy American provision in school meal programs. This report examines (1) how SFAs used exceptions from the Buy American provision and (2) the extent to which

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<sup>1</sup>The William F. Goodling Child Nutrition Reauthorization Act of 1998 amended the Richard B. Russell National School Lunch Act and added the Buy American provision. Pub. L. No. 105-336, § 104(d), 112 Stat. 3143, 3147-48 (1998) (codified as amended at 42 U.S.C. § 1760(n)).

<sup>2</sup>Pub L. No. 115-334, § 4207, 132 Stat. 4490, 4666-67 (2018).

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USDA supported states and SFAs in implementing the Buy American provision.

To examine how SFAs used exceptions from the Buy American provision, we reviewed data from USDA's Child Nutrition Program Operations Study II for school year 2017-18.<sup>3</sup> This study provided the most recent nationally representative data available on SFAs' use of Buy American exceptions, including the types of foods for which SFAs used exceptions and the reasons for exceptions. We reviewed relevant survey documentation and interviewed knowledgeable FNS staff about these data; we determined the data were sufficiently reliable for the purposes of reporting overall trends in the use of Buy American exceptions.

To examine the extent to which USDA supported states and SFAs in implementing the Buy American provision, we interviewed FNS national office staff and staff from all seven FNS regional offices about their oversight roles and responsibilities, including their processes for addressing any issues they identify through their oversight activities. We analyzed eight management evaluations including at least one conducted by each FNS regional office, the agency's national and school meal program management evaluation guides, the fiscal year 2022 quality assurance review plan, and FNS guidance to its staff and state and SFA officials on the provision.<sup>4</sup> In addition, we reviewed five state-developed forms to document exceptions from the Buy American provision, which we identified through interviews with state officials and FNS regional office staff. We assessed the types of support USDA provided to states and SFAs against standards for internal control in the federal government and we reviewed requirements in the Agriculture Improvement Act of 2018.<sup>5</sup>

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<sup>3</sup>The Child Nutrition Program Operations Study II is a multiyear study designed to provide FNS with information on current state and SFA policies, practices, and needs related to various aspects of school nutrition operations. Data for school year 2017-18 were the most recent available at the time of our analysis. FNS published these data in November 2022. For more information on the Buy American findings from FNS's school year 2017-18 survey, see U.S. Department of Agriculture, Food and Nutrition Service, *Child Nutrition Operations Study (CN-OPS-II): SY 2017-18* (Alexandria, Va.: November 2022).

<sup>4</sup>The management evaluations that we analyzed were conducted from calendar years 2017 through 2021.

<sup>5</sup>GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 2014); Pub L. No. 115-334, § 4207, 132 Stat. at 4666-67.

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To address both objectives, we interviewed officials from a non-generalizable sample of four states (California, Illinois, Louisiana, and New Hampshire) and eight SFAs within those states. We selected states for variation in the size of their school meal programs and geographic diversity. In general, we randomly selected SFAs to represent a range of urbanicity within each state—for example, we included at least one large, urban SFA in addition to smaller, more rural SFAs. In interviews with officials from selected states and SFAs, we discussed the use of Buy American exceptions, guidance and training they provided or received on the Buy American provision, and oversight activities. For each selected state, we also collected and analyzed relevant administrative and procurement reviews for the selected SFAs. To provide additional context for both objectives, we interviewed representatives from national organizations that represent key stakeholders in federal school meal programs to understand their perspectives and insights on the Buy American provision and reviewed relevant federal laws and regulations.

We conducted this performance audit from April 2022 to April 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

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### Buy American Provision Requirements and FNS Guidance

Under the Buy American provision, SFAs in the contiguous states that participate in the National School Lunch Program or the School Breakfast Program must purchase domestic commodities or products for their school meal programs to the maximum extent practicable.<sup>6</sup> FNS defines domestic commodities as foods produced in one of the 50 states, the District of Columbia, Puerto Rico, or any U.S. territory. Domestic food products are processed food items that consist of more than 51 percent of domestically grown food by weight or volume.

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<sup>6</sup>42 U.S.C. § 1760(n). SFAs in Hawaii and Puerto Rico must purchase domestic commodities or products that are produced in Hawaii and Puerto Rico, respectively, in sufficient quantities to meet the needs of meals provided under the National School Lunch Program or the School Breakfast Program. The Buy American provision does not apply to SFAs in Alaska or other U.S. territories.

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In its guidance to states and SFAs, FNS identified two exceptions to the Buy American provision where SFAs may purchase non-domestic foods:

1. The food or food product is not produced or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality; or
2. competitive bids reveal the cost of a United States food or food product is significantly higher than the non-domestic product.

SFAs must make a case-by-case determination to purchase a non-domestic food or food product and are responsible for defining key terms related to Buy American exceptions, such as “significantly higher” cost, according to FNS.

SFAs do not need preapproval or a waiver from a state or FNS to use an exception from the Buy American provision.<sup>7</sup> However, SFAs must document when they use an exception to purchase non-domestic foods and must produce that documentation when asked by their state, such as during a review.

FNS encourages SFAs to consider alternatives before using a Buy American exception. For example, SFAs could substitute a different food that is available domestically, develop menus using only domestic foods or food products, or participate in other USDA programs and efforts to supply domestic foods for school meals, such as the USDA Foods in Schools program.

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## Oversight Structure

FNS has a multilayer oversight structure to monitor the Buy American provision, which includes roles for SFAs, states, and FNS’s regional offices and national office (see fig. 1). According to FNS policy, SFAs are responsible for ensuring all bids, solicitations, and contracts for foods and food products include language about the Buy American provision. SFAs are also responsible for ensuring that the foods they receive are either domestic or have a documented exception. States and FNS regional

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<sup>7</sup>In August 2021 FNS published a Request for Information on the Buy American provision in school meal programs. The purpose of the Request for Information was to understand how the Buy American provision is currently implemented and determine changes FNS can make. In February 2023, FNS issued a notice of proposed rulemaking that touches on several topics related to the Buy American provision, including the use of exceptions from the provision and documentation and reporting requirements. *Child Nutrition Programs: Revisions to Meal Patterns Consistent With the 2020 Dietary Guidelines for Americans*, 88 Fed. Reg. 8050 (Feb. 7, 2023).

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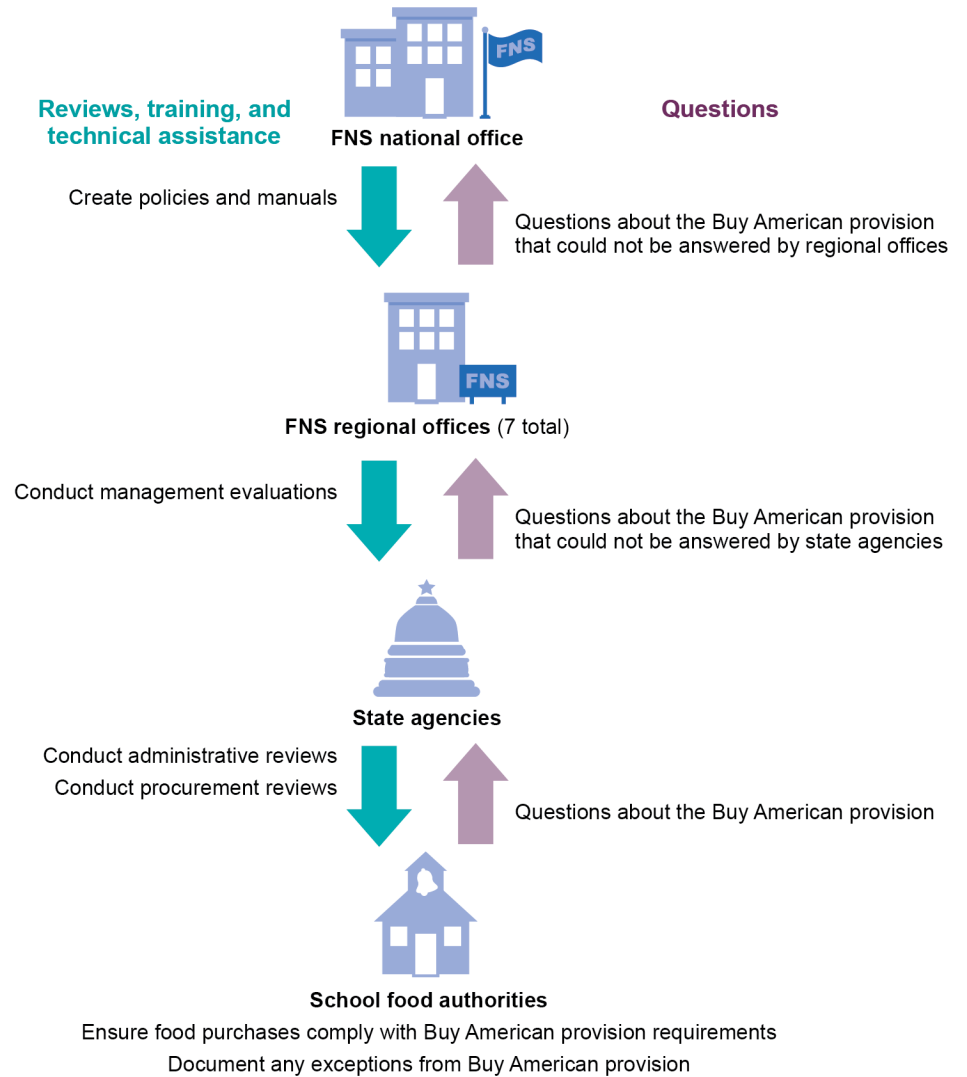
offices use reviews, technical assistance, and training to monitor and oversee the implementation of the Buy American provision. Oversight of the Buy American provision is one of several components of state and FNS-administered reviews.<sup>8</sup>

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<sup>8</sup>Both state-administered and FNS-administered reviews assess resource management and nine general compliance areas. For state-administered reviews, these include compliance with professional hiring and training standards for school officials and food safety, storage, and the Buy American provision.



**Figure 1: Oversight Structure and Key Responsibilities for the Buy American Provision for School Meal Programs**



Source: GAO summary of Food and Nutrition Service (FNS) documents and interviews with FNS staff. | GAO-23-105884

**State-administered reviews.** FNS requires state agencies to conduct administrative and procurement reviews to ensure SFAs are meeting

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school meal program requirements.<sup>9</sup> For example, to review Buy American provision compliance during an administrative review, state officials review the foods and food products at a selected SFA's school-based or off-site storage facility to ensure all items are domestic. If the state finds non-domestic foods or food products, the SFA must provide the documentation supporting their use of an exception.<sup>10</sup> For a procurement review, a state only evaluates documentation—such as contracts, invoices, and receipts—and does not require a site visit.<sup>11</sup> FNS introduced questions about the Buy American provision as part of administrative reviews in school year 2016-17 and as part of procurement reviews beginning in school year 2015-16.

**FNS-administered review.** FNS regional office staff conduct management evaluations of a selection of states each year to review how states implement and monitor school meal program requirements.<sup>12</sup> Any issues of noncompliance with program regulations, FNS policy memoranda, or other authoritative documents result in a finding and required corrective action, such as updating state-developed contract language or providing training to state agency staff. FNS can also issue an observation about a program weakness and a suggestion to address

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<sup>9</sup>Administrative reviews must be conducted on a 3-year cycle. Within those 3 years, all SFAs in a state should have received at least one administrative review. A state can request a 1-year extension from FNS if the 3-year cycle conflicts with efficient state agency management of the programs. See 7 C.F.R. § 210.18.

<sup>10</sup>According to FNS's *Administrative Review Manual*, to assess compliance with the Buy American provision, state officials should assess foods and food products in school-based or off-site storage facilities, including freezers, refrigerators, and dry goods rooms. State officials must review a selection of foods from pre-determined categories, including dairy, canned fruits and vegetables, and frozen fruits and vegetables. State officials determine the number of foods to review based on the type or types of storage facilities an SFA uses. U.S. Department of Agriculture, Food and Nutrition Service, *Administrative Review Manual* (effective school year 2018-19).

<sup>11</sup>FNS policy established a 3-year cycle for states to conduct procurement reviews, and the agency encouraged states to conduct procurement reviews on the same 3-year cycle as administrative reviews. In 2017, FNS changed its policy to allow states discretion to set an alternate review cycle for conducting procurement reviews.

<sup>12</sup>The Buy American provision portion of a management evaluation for school meal programs reviews (1) whether states are conducting complete administrative reviews using the correct forms and guidance; (2) whether states are appropriately requiring corrective actions for all violations found; and (3) whether the administrative and procurement reviews evaluated show that state officials understand and are complying with oversight of the Buy American provision.

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that weakness.<sup>13</sup> Regional office staff conducted an average of 14 management evaluations of the National School Lunch Program each year from fiscal years 2017 through 2021, according to agency data.

FNS modified its oversight of states in response to the COVID-19 pandemic in three ways. First, FNS regional office staff increased their technical assistance to states, including on the Buy American provision. Second, in fiscal year 2022, FNS reviewed state administration of pandemic-related child nutrition waivers rather than conducting traditional management evaluations.<sup>14</sup> Finally, FNS approved states' requests to waive the on-site review of SFAs required for administrative reviews. Some states conducted these reviews virtually. FNS national office staff said that the agency's fiscal year 2023 management evaluations will cover child nutrition waivers and emergency funding, information collected from accompanying officials on local-level reviews, and some traditional management evaluation questions.

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## SFAs Primarily Used Exceptions from the Buy American Provision to Purchase Fruits That Were Unavailable Domestically

SFAs primarily used exceptions from the Buy American provision to purchase fruits, such as bananas, that they could not obtain in sufficient quantities from domestic sources. An estimated 94 percent of SFAs that used exceptions from the Buy American provision did so to purchase fruit, according to FNS's nationally representative survey data from school year 2017-18 (see fig. 2).<sup>15</sup> Officials from seven of the eight SFAs we interviewed said they used at least one Buy American exception every school year, primarily to purchase commonly served fruits such as

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<sup>13</sup>States must implement all of the required corrective actions and FNS regional offices must validate the implementation before closing a management evaluation. FNS regional offices conduct periodic follow-ups with states to ensure they implement the corrective actions in a timely manner. However, states are not required to implement FNS's suggestions related to observations in management evaluations.

<sup>14</sup>The Families First Coronavirus Response Act granted FNS authority to issue nationwide waivers in certain programs. Under this authority, FNS allowed states to waive traditional program monitoring requirements, though states had to submit alternative oversight plans. FNS regional office staff monitored states' implementation of these plans. See GAO, *COVID-19: Additional Actions Needed to Improve Accountability and Program Effectiveness of Federal Response*, [GAO-22-105051](#) (Washington, D.C.: Oct. 27, 2021).

<sup>15</sup>This estimate has a 95 percent confidence interval that extends from 91.1 to 96.9 percent.

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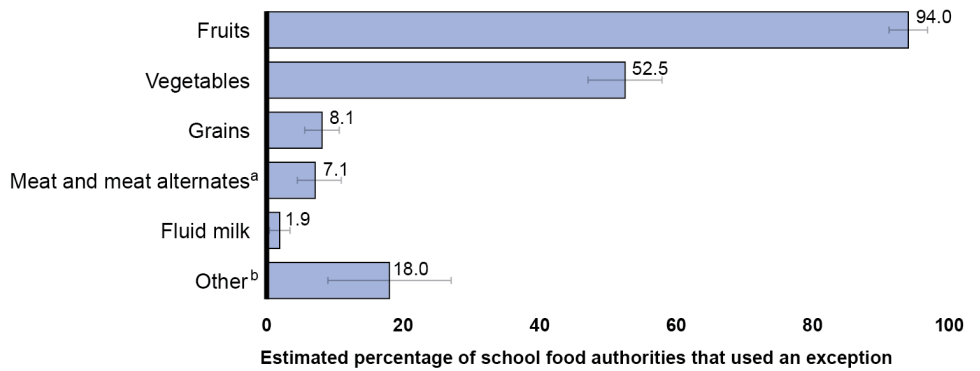
bananas, pineapples, and mandarin oranges.<sup>16</sup> FNS regional office staff and selected state officials generally cited the same three fruits when describing the foods for which SFAs commonly used exceptions. Selected SFA officials said they less frequently used Buy American provision exceptions to purchase other foods, like broccoli and jalapeños.<sup>17</sup>

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<sup>16</sup>Overall, FNS's nationally representative survey estimated that 26 percent of SFAs used at least one exception from the Buy American provision in school year 2017-18 (this estimate has a 95 percent confidence interval that extends from 23.0 to 28.4 percent). Further, SFAs that used exceptions from the Buy American provision reported that non-domestic products accounted for less than 10 percent of their total food purchase expenditures in school year 2017-18 (this estimate has a 95 percent confidence interval that extends from 6.3 to 10.6 percent). Since that time, FNS has taken several steps to help improve states' and SFAs' understanding of their Buy American responsibilities, including when SFAs should document Buy American exceptions. FNS staff said the agency plans to survey SFAs about their use of Buy American exceptions again as part of the School Meals Operations Study for school year 2022-23, which the agency will administer in fall 2023.

<sup>17</sup>We also asked SFAs about their use of Buy American exceptions for specific types of foods, such as seafood. Generally, SFA officials said that they do not serve seafood in their SFA at all or only serve domestic seafood, and therefore have not needed to use Buy American exceptions to purchase seafood. In November 2022, we reported on the limited quantity of seafood served in the National School Lunch Program and recommended ways for USDA to enhance its seafood-related assistance to states and SFAs. See GAO, *National School Lunch Program: USDA Could Enhance Assistance to States and Schools in Providing Seafood to Students*, [GAO-23-105179](#) (Washington, D.C.: Nov. 17, 2022).

**Figure 2: Non-domestic Foods Purchased Using an Exception from the Buy American Provision by School Food Authorities That Used Exceptions in School Year 2017-18**



Source: U.S. Department of Agriculture, Food and Nutrition Service data. | GAO-23-105884

Notes: The thin lines display the 95 percent confidence interval for each estimate. Percentages do not add to 100 percent because school food authorities may use multiple exceptions from the Buy American provision in a given school year.

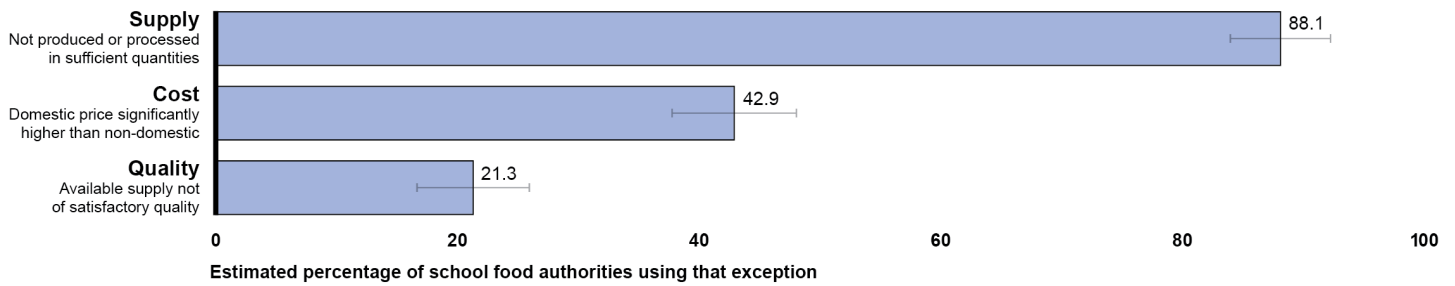
<sup>a</sup>Meat and meat alternates included a variety of foods including beef, poultry, seafood, and nuts.

<sup>b</sup>Other products included yeast, oils, and spices.

SFAs mainly cited issues with the domestic supply when using a Buy American provision exception, such as foods that were not produced or processed domestically in sufficient quantities to meet the demand of school meal programs. According to FNS’s nationally representative survey, an estimated 88 percent of the SFAs that used Buy American exceptions in school year 2017-18 did so due to an issue with the domestic supply (see fig. 3).<sup>18</sup> SFA officials we interviewed described products that they cannot obtain domestically at any time of the year, such as bananas, as well as products that are not available domestically during certain seasons, such as grapes. Officials from two SFAs also described the role of food service distributors in determining when to use a Buy American exception. For example, officials from one SFA said that their distributor sends a monthly newsletter outlining the products that are not available domestically that month.

<sup>18</sup>This estimate has a 95 percent confidence interval that extends from 83.9 to 92.3 percent.

**Figure 3: Reasons That School Food Authorities Used Exceptions from the Buy American Provision in School Year 2017-18**



Source: U.S. Department of Agriculture, Food and Nutrition Service data. | GAO-23-105884

Notes: The thin lines display the 95 percent confidence interval for each estimate. Percentages do not add to 100 percent because school food authorities may use multiple exceptions from the Buy American provision in a given school year.

As shown in figure 3, an estimated 43 percent of SFAs that used a Buy American exception reported doing so due to domestic products being significantly more expensive than non-domestic products, and an estimated 21 percent of SFAs that used an exception reported doing so due to domestic products being of unsatisfactory quality.<sup>19</sup> However, SFA and state officials we interviewed infrequently cited cost or quality as reasons for using Buy American exceptions. Officials from one SFA said they sometimes used Buy American provision exceptions due to the cost of domestic products. In contrast, officials from three SFAs said that they purchased domestic products for school meal programs when available, even in instances where the cost is higher than a non-domestic alternative, in order to support domestic producers. Officials from three SFAs also described substituting a different domestic product when the cost was too high, rather than purchasing a non-domestic product, which is consistent with FNS’s Buy American guidance. For example, officials from one SFA described a recent instance when the SFA could not obtain

<sup>19</sup>These estimates have 95 percent confidence intervals that extend from 37.7 to 48.1 percent and from 16.6 to 26.0 percent, respectively. As noted, SFAs are responsible for defining terms, such as “significantly higher cost” as they relate to justifying Buy American provision exceptions and generally determine when to use Buy American exceptions, according to FNS. At the time of our interviews, none of the selected SFAs or states reported that they had set specific definitions or thresholds for Buy American exceptions. FNS regional office staff said this was generally true in other states as well. In September 2022, California enacted a law that, among other things, defined the cost threshold for using a Buy American provision exception as instances where the bid or price of the non-domestic agricultural food product is more than 25 percent lower than the bid or price of the domestic agricultural food product. For nonexempt SFAs, the law goes into effect on January 1, 2024 and will remain in effect until January 1, 2029.

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domestic romaine lettuce. Rather than purchase non-domestic romaine lettuce, the SFA purchased domestic spinach.

Officials from only one SFA we spoke with provided a specific example of using a Buy American provision exception due to the unsatisfactory quality of a domestic product. Officials from that SFA explained that they purchase non-domestic jicama at certain times of the year when the domestic jicama available to them spoils quickly and is unappealing to students.

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## FNS Provides Several Types of Support for the Buy American Provision, but Opportunities Exist to Enhance Assistance on Documenting Exceptions

### FNS Provides Assistance to Its Regional Offices, States, and SFAs to Help Implement and Oversee the Buy American Provision

FNS provides different types of assistance to help its regional office staff, states, and SFAs implement and oversee the Buy American provision. For example, it provides guidance and support to its regional offices; tools, technical assistance, and training to states; and some support to SFAs.

### Assistance to FNS Regional Offices

FNS national office staff provide guidance and support for regional offices to conduct management evaluations—the agency’s primary oversight mechanism—in a consistent manner. FNS’s national management evaluation guide outlines how regional office staff should conduct a management evaluation across all 15 nutrition assistance programs. For example, the agency’s fiscal year 2023 national guide provides detailed information on how staff should document information and determine findings and corrective actions. To support consistency in how FNS staff conduct management evaluations across all child nutrition programs and all seven regional offices, FNS national office staff said they provide

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annual training on the national management evaluation process and conduct quality assurance reviews each fiscal year.<sup>20</sup>

FNS school meal program staff use the national guide to develop additional guidance specific to evaluating compliance with school meal program requirements. For example, using program-specific guidance, FNS regional office staff must assess whether state officials understand and are complying with oversight of the Buy American provision.<sup>21</sup> FNS national office staff said they had not found persistent issues related to state oversight of the Buy American provision in the management evaluations staff conducted over the past 5 years. Of the eight management evaluations we reviewed, four noted an issue related to state oversight of the Buy American provision, typically that state-developed documents had an incorrect citation for the provision.

#### Assistance to State Agencies

FNS provides tools, technical assistance, and training to help states monitor SFAs' implementation of the Buy American provision. For example, FNS developed a Local Agency Procurement Tool, which states can use as needed, to ensure SFAs include the appropriate Buy American provision language in solicitations and contracts. FNS also developed a flow chart that states could share with SFAs to help determine when the Buy American provision applies to purchased foods and food products.

FNS national office staff said technical assistance provides an opportunity for FNS regional office staff to help prevent noncompliance with the Buy American provision. For example, FNS regional office staff typically accompany state officials on selected administrative reviews, which are one of the few opportunities for FNS staff to communicate directly with SFA officials. These accompanied administrative reviews also provide opportunities for FNS staff to answer SFA and state officials' questions and to check state officials' understanding of the provision. In addition,

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<sup>20</sup>According to FNS's fiscal year 2022 *Management Evaluation and Financial Management Review Quality Assurance Review Plan*, the scope of the quality assurance review includes 10 FNS programs—including the National School Lunch Program—and Financial Management. FNS selects approximately one-half of all management evaluations conducted the prior fiscal year for a quality assurance review. U.S. Department of Agriculture, Food and Nutrition Service, *Management Evaluation and Financial Management Review Quality Assurance Review Plan* (November 2021).

<sup>21</sup>As mentioned above, FNS's review of state oversight of the Buy American provision is one of several components of a management evaluation.



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staff at six FNS regional offices said they hold periodic calls with states to answer questions. For example, staff at one regional office said they recently received questions about whether oils and spices are subject to the Buy American provision.

FNS regional office staff said they typically conduct Buy American provision trainings at the request of state officials, if staff identify particular issues in management evaluations, or as part of broader procurement training for states.<sup>22</sup> For example, staff from three regional offices said states tend to have more interest in training on the Buy American provision when FNS issues new guidance or policy memoranda.

#### Assistance to SFAs

Unlike states, FNS staff typically do not interact directly with SFAs. Staff at all seven FNS regional offices said they generally do not provide direct, in person assistance to SFAs unless specifically asked to by state officials. FNS national office staff said that the agency's role is to monitor how states oversee SFAs' implementation of the Buy American provision rather than ensuring that SFAs are using and documenting exceptions correctly. However, FNS has provided some tools through its policy memoranda to help states and SFAs comply with the Buy American provision, such as standard language SFAs can use in solicitations and contracts. Further, SFAs can search for publicly available information on FNS's website, such as a Buy American webinar and the Buy American flow chart.

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<sup>22</sup>FNS also makes a Buy American provision course available through the Institute of Child Nutrition. The Institute is part of the University of Mississippi and funded by FNS. The Institute provides information and services to help improve child nutrition programs, including training to states and SFAs.

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## Lack of a Standardized Form Has Led to Inconsistent Documentation of Buy American Exceptions by SFAs

### Documenting the Use of Buy American Exceptions

Officials from two SFAs we spoke with are part of a collaborative of SFAs that pool resources to make commercial food purchases. The collaborative helps to ensure that the member SFAs comply with the Buy American provision. For example, the collaborative approves the purchase of non-domestic foods and food products and works with vendors to obtain the appropriate documentation, which it submits to the state on behalf of its member SFAs. The collaborative also developed its own standard exception form, which member SFAs can download and retain for their records.

Source: GAO summary of school food authority (SFA) and state interviews and information on the collaborative's website. | GAO-23-105884

While FNS has provided SFAs with some tools to help them implement the Buy American provision, the agency has not done so with regard to documenting exceptions. Some states provide tools, such as forms for SFAs to document their reasons for using exceptions from the Buy American provision, but this is not consistent across all states. For example, two of our four selected states provide standard exception forms for SFAs in the state. Similarly, staff from four FNS regional offices said some states in their region provide standard forms that SFAs can use to document exceptions.

Further, we identified differences in the amount of information included and explanations about the Buy American provision in the five states' exception forms that we reviewed. In some instances, these differences could make it difficult for states to oversee the use of exceptions or result in SFAs spending more time documenting exceptions than is necessary, highlighting the need for clarification from FNS. For example:

- Most of the forms varied in the amount of information they provided about the provision and how to use the form. Two forms provided detailed instructions, descriptions of the provision and exceptions, and definitions of terms. In contrast, two other forms did not provide such details, descriptions, or definitions other than citing FNS's Buy American regulations or policy memorandum.
- All five state-provided forms required SFAs to document the country of origin for each non-domestic food or food product—though FNS does not require such information. Staff from four FNS regional offices and officials from all four selected states said that determining the country of origin can be a challenge as the information is not always readily available.
- All of the forms varied in the reasons SFAs could give for exceptions. For example, one form allowed SFAs to use different types of exceptions based on the product. Specifically, it allowed SFAs to document annual exceptions for fruits such as bananas that are not domestically available in sufficient quantities at any time of year, and seasonal exceptions for foods such as grapes that are unavailable seasonally. Another form listed cost and seasonal availability as the only options, even though SFAs can also use exceptions from the Buy American provision for insufficient quantity or quality. In addition, one FNS management evaluation we reviewed found that a state-developed exception form incorrectly provided universal exceptions for some foods, which is not allowed according to FNS policy.

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Even though the forms we reviewed varied, officials from four of the eight SFAs we spoke with said having state templates—such as standard forms—on the Buy American provision would be helpful. For example, one SFA official said that because implementing the Buy American provision can be complicated and confusing, having a standard form with concise information would help clarify the provision requirements. Similarly, staff from one FNS regional office said that tools, such as standard exception forms, could provide a roadmap to help SFAs comply with the Buy American provision and that SFAs in their region that used state-developed tools tended to have fewer issues with Buy American compliance during reviews.

In addition, the majority of FNS regional office staff and state officials we interviewed said that staff turnover at SFAs or state agencies has been a challenge to implementing the Buy American provision. This is because staff need to learn the many program requirements for school meal programs, including documenting Buy American exceptions, in addition to providing meals to children. Providing one standard form to document Buy American exceptions could assist with knowledge transfer and help alleviate this challenge to implementing school meal programs.

FNS national office staff said the agency has not considered developing a standard form because SFAs implement the Buy American provision locally and no standardized documentation is required. Further, FNS staff said providing a template to be used at an SFA's discretion could seem like a requirement to SFAs and states, and result in administrative burden. However, FNS provides SFAs with discretionary tools to help them comply with the Buy American provision in other ways. For example, FNS provides standard Buy American provision language for solicitations and contracts that SFAs can use at their discretion.

The Agriculture Improvement Act of 2018 requires FNS to enforce full compliance with the requirements of the Buy American provision.<sup>23</sup> Standards for internal control in the federal government state that management should externally communicate the necessary quality information to achieve the entity's objectives.<sup>24</sup> According to its June 2019 Report to Congress, the main tenet of FNS's approach to meeting its requirements under the Agriculture Improvement Act is to ensure states

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<sup>23</sup>Pub L. No. 115-334, § 4207, 132 Stat. 4490, 4666-67 (2018).

<sup>24</sup>[GAO-14-704G](#).

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and SFAs have the tools they need to reliably implement the provision.<sup>25</sup> Without providing a standard Buy American exception form that SFAs could use at their discretion, FNS may miss opportunities to enhance its oversight of states, to aid state oversight of SFAs, and to help SFAs fully understand their responsibilities to implement the Buy American provision.

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## Conclusions

SFAs have a critical role in providing nutritious meals to children and supporting domestic agricultural markets, while ensuring school meal programs meet a number of federal requirements, including the Buy American provision. FNS has established a multilayered Buy American monitoring structure, including some tools to help SFAs implement and comply with the Buy American provision. However, FNS has not provided a standard form that SFAs can use to document Buy American exceptions as needed. The absence of one nationwide form has led to a lack of clarity about documenting Buy American exceptions, including the information that SFAs are required to include. By developing and disseminating a standard form that SFAs could use as needed to document reasons for taking exceptions from the Buy American provision, FNS could ensure that states and SFAs fully understand their responsibilities.

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## Recommendation for Executive Action

The Secretary of Agriculture should ensure that the Administrator of FNS develops a standard form that school food authorities can use to document their reasons for using exceptions from the Buy American provision, and disseminates that form through state agencies. (Recommendation 1)

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## Agency Comments

We provided a draft of this report to USDA FNS for review and comment. FNS concurred with our recommendation and stated that it will develop a standard template that school food authorities can use to document information related to the Buy American provision when utilizing exceptions. Further, FNS noted that in developing the template, it will consider topical comments on the Buy American provision included in the proposed rule, *Child Nutrition Programs: Revisions to Meal Patterns Consistent with the 2020 Dietary Guidelines for Americans*, published February 7, 2023. FNS also provided technical comments, which we incorporated as appropriate.

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<sup>25</sup>FNS was required to submit a report to Congress on actions the agency had taken and plans to take to ensure compliance with the act.

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We are sending copies of this report to the appropriate congressional committees, the Secretary of Agriculture, and other interested parties. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-7215 or [larink@gao.gov](mailto:larink@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix I.

A handwritten signature in black ink that reads "Kathryn A. Larin". The signature is written in a cursive style with a large, prominent initial "K".

Kathryn A. Larin, Director  
Education, Workforce, and Income Security Issues

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# Appendix I: GAO Contact and Staff Acknowledgments

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## GAO Contact

Kathryn A. Larin, (202) 512-7215 or [larink@gao.gov](mailto:larink@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Scott Spicer (Assistant Director), David Watsula (Analyst in Charge), Swati Deo, James Bennett, Charlotte Cable, Elizabeth Calderon, Lily Folkerts, Jean McSween, Joy Solmonson, and Bobby Younce II made key contributions to this report. Lilia Chaidez, Jennifer Dougherty, Anne Johnson, Rebecca Sero, Amy Sweet, and Tatiana Winger also contributed to this report.

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Washington, DC 20548

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Stephen J. Sanford, Managing Director, [spel@gao.gov](mailto:spel@gao.gov), (202) 512-4707  
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Washington, DC 20548

