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7 CFR 210.21 State Agency and School Food Authority Responsibilities

210.21 Procurement.

210.21.a General. State agencies and school food authorities shall comply with the requirements of this part and 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415, as applicable, which implement the applicable requirements, concerning the procurement of all goods and services with nonprofit school food service account funds.

210.21.b Contractual responsibilities. The standards contained in this part and 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415, as applicable, do not relieve the State agency or school food authority of any contractual responsibilities under its contracts. The State agency or school food authority is the responsible authority, without recourse to FNS, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the Program. This includes, but is not limited to source evaluation, protests, disputes, claims, or other matters of a contractual nature. Matters concerning violation of law are to be referred to the local, State, or Federal authority that has proper jurisdiction.

210.21.c Procedures. The State agency may elect to follow either the State laws, policies and procedures as authorized by 2 CFR 200.317, or the procurement standards for other governmental grantees and all governmental subgrantees in accordance with 2 CFR 200.318 through 2 CFR 200.326. Regardless of the option selected, States must ensure that all contracts include any clauses required by Federal statutes and executive orders and that the requirements 2 CFR 200.236 and Appendix II, Contract Provisions for Non-Federal Entity Contracts Under Federal Award are followed. A school food authority may use its own procurement procedures which reflect applicable State and local laws and regulations, provided that procurements made with nonprofit school food service account funds adhere to the standards set forth in this part and in 2 CFR part 200, subpart D, as applicable. School food authority procedures must include a written code of standards of conduct meeting the minimum standards of 2 CFR 200.318, as applicable.

210.21.d Buy American.--

210.21.d.1 Definition of domestic commodity or product. In this paragraph (d), the term 'domestic commodity or product' means -- (i) An agricultural commodity that is produced in the United States; and (ii) A food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

210.21.2 Requirement. (i) In general. Subject to paragraph (d)(2)(ii) of this section, the Department shall require that a school food authority purchase, to the maximum extent practicable, domestic commodities or products. (ii) Limitations. Paragraph (d)(2)(i) of this section shall apply only to -- (A) A school food authority located in the contiguous United States; and (B) A purchase of domestic commodity or product for the school lunch program under this part.

210.21.3 Applicability to Hawaii. Paragraph (d)(2)(i) of this section shall apply to a school food authority in Hawaii with respect to domestic commodities or products that are produced in Hawaii in sufficient quantities to meet the needs of meals provided under the school lunch program under this part.

210.21.e Restrictions on the sale of milk. A school food authority participating in the Program, or a person approved by a school participating in the Program, must not directly or indirectly restrict the sale or marketing of fluid milk (as described in § 210.10(d)(4) of this chapter) at any time or in any place on school premises or at any school-sponsored event.

210.21.f

210.21.g Geographic preference.

210.21.g.1 A school food authority participating in the Program, as well as State agencies making purchases on

behalf of such school food authorities, may apply a geographic preference when procuring unprocessed locally grown or locally raised agricultural products. When utilizing the geographic preference to procure such products, the school food authority making the purchase or the State agency making purchases on behalf of such school food authorities have the discretion to determine the local area to which the geographic preference option will be applied;

210.21.g.2 For the purpose of applying the optional geographic procurement preference in paragraph (g)(1) of this section, "unprocessed locally grown or locally raised agricultural products" means only those agricultural products that retain their inherent character. The effects of the following food handling and preservation techniques shall not be considered as changing an agricultural product into a product of a different kind or character: Cooling; refrigerating; freezing; size adjustment made by peeling, slicing, dicing, cutting, chopping, shucking, and grinding; forming ground products into patties without any additives or fillers; drying/dehydration; washing; packaging (such as placing eggs in cartons), vacuum packing and bagging (such as placing vegetables in bags or combining two or more types of vegetables or fruits in a single package); the addition of ascorbic acid or other preservatives to prevent oxidation of produce; butchering livestock and poultry; cleaning fish; and the pasteurization of milk.

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