

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Parts 210, 215, 220, 225, and 226

RIN 0584-AE03

#### Geographic Preference Option for the Procurement of Unprocessed Agricultural Products in Child Nutrition Programs

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The 2008 Farm Bill amended the Richard B. Russell National School Lunch Act to direct that the Secretary of Agriculture encourage institutions operating Child Nutrition Programs to purchase unprocessed locally grown and locally raised agricultural products. Effective October 1, 2008, institutions receiving funds through the Child Nutrition Programs may apply an optional geographic preference in the procurement of unprocessed locally grown or locally raised agricultural products. This provision applies to institutions in all of the Child Nutrition Programs, including the National School Lunch Program, School Breakfast Program, Fresh Fruit and Vegetable Program, Special Milk Program for Children, Child and Adult Care Food Program and Summer Food Service Program, as well as to purchases made for these programs by the Department of Defense Fresh Program. The provision also applies to State agencies making purchases on behalf of any of the aforementioned Child Nutrition Programs. The purpose of this rule is to finalize the geographic preference option in Child Nutrition Programs.

**DATES:** This rule is effective May 23, 2011.

**FOR FURTHER INFORMATION CONTACT:** Julie Brewer, Chief, Policy and Program

Development Branch, Child Nutrition Division, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302, or by telephone at (703) 305-2590.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 4302 of Public Law 110-246, the Food, Conservation, and Energy Act of 2008, amended section 9(j) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(j)) to require the Secretary of Agriculture to encourage institutions operating Child Nutrition Programs to purchase unprocessed locally grown and locally raised agricultural products. Pursuant to section 4407 of Public Law 110-246, beginning October 1, 2008, institutions receiving funds as participants in the Child Nutrition Programs may apply an optional geographic preference in the procurement of unprocessed locally grown or locally raised agricultural products. This provision applies to institutions operating all of the Child Nutrition Programs, including the National School Lunch Program, School Breakfast Program, Fresh Fruit and Vegetable Program, Special Milk Program, Child and Adult Care Food Program and Summer Food Service Program, as well as to purchases made for these programs by the Department of Defense Fresh Program. The provision does not apply to purchases made by the Department. However, the provision does also apply to State agencies making purchases on behalf of any of the aforementioned Child Nutrition Programs. The provisions were initially implemented through policy memoranda and explanatory question and answer communications dated January 9, 2009, July 22, 2009, and October 9, 2009.

The Department published a proposed rule on April 19, 2010, at 75 FR 20316 to solicit comments on the incorporation of this procurement option in Child Nutrition Program regulations. The rule also served to define the term “unprocessed locally grown or locally raised agricultural products” to ensure that both the intent of Congress in providing for such a procurement option was met and that any such definition would facilitate ease of implementation for institutions participating in the Child Nutrition Programs. The comment period ended

on June 18, 2010. The Department received 77 comments on the proposed rule. The following discussion provides information on the comments as well as a discussion of the clarifications and changes made to the proposal based on the comments received.

##### General Comments

In general, the comments received by the Department were very supportive of the regulation as proposed. Fifty-eight comments commended the Department for clarifying previous interpretations of the geographic preference option for procurement. Forty-four commenters stated that they believed the updated language of the rule more closely complied with the Congressional Conference Report language that indicated that there is no intent to preclude “de minimus handling and preparation such as necessary to present an agricultural product to a school food authority in a useable form.” Forty-seven comments supported the provision of the rule allowing the purchasing entity, such as local school food authorities, to determine the local area to which a geographic preference will be applied, indicating that they agreed with the Department’s view that individual circumstances and product availability leads to the most successful local and regional procurement programs.

##### Procurement Issues

As indicated in the proposed rule, traditionally, a geographic preference established for procurements provides bidders located in a specified geographic area additional points or credit calculated during the evaluation of the proposals or bids received in response to a solicitation. A geographic preference is not a procurement set-aside for bidders located in the specified geographic area, guaranteeing them a certain level or percentage of business. In addition, including a geographic preference in a procurement does not preclude a bidder from outside the specified geographic area from competing for, and possibly being awarded, the contract subject to the geographic preference. Rather, a geographic preference is a tool that gives bidders in a specified geographic area a specific, defined advantage in the procurement process. We received a number of comments specifically

requesting guidance on how to apply the geographic preference option in procurement specifications and procedures as well as questions on procurement processes in general. The Department published a policy memorandum for program cooperators on general procurement and geographic preference issues on February 1, 2011 and will be publishing additional guidance on procurement provisions associated with implementation of the geographic preference option included in this final rule as needed. Therefore, no changes have been made to the procurement-specific provisions included in the proposed rule and those procurement provisions are finalized as proposed.

### Geographic Area

By utilizing the statutorily established geographic preference option in Child Nutrition Programs, purchasing institutions, such as States, school food authorities, child care institutions and Summer Food Service Program (SFSP) sponsors, may specifically identify the geographic area within which unprocessed locally raised and locally grown agricultural products will originate. As indicated in the proposed rule, a responsive bidder would offer to provide unprocessed locally raised and locally grown agricultural products from the specifically identified geographic area. In most cases, we would expect that a bidder would be located in the identified geographic area, though it is possible for a responsive bidder to be located outside of that area. These procurements may be accomplished through informal or formal procurement procedures, as required by respective Child Nutrition Program regulations.

The proposed rule provided for allowing institutions operating the Child Nutrition Programs to specifically define geographic areas from which they will seek to procure unprocessed local agricultural products. It was proposed that each institution, whether it be a school food authority, a child care institution or an SFSP sponsor, determine how to define the geographic area. As indicated previously, 47 comments supported allowing the purchasing entity to define the local area in which the geographic preference option will be applied. No objections to this provision were received, therefore it is finalized in this rule as proposed.

One comment specifically recommended that the "Buy American" provisions of § 210.21 and § 220.16 of the National School Lunch Program and School Breakfast Program regulations be specifically noted in this amendment to those programs regulations. In response

to that comment, the Department reiterates that all other regulatory requirements of the Child Nutrition Programs must be complied with when implementing the geographic preference option. When specifying the local area from which items will be purchased using the geographic procurement option, purchasing entities must ensure that the "Buy American" requirements of the regulations are complied with and included in the procurement specifications. No change, however, has been made in the regulatory language of this final rule.

### Definition of Unprocessed Agricultural Products

As provided in the Joint Explanatory Statement of the Committee of Conference in House Report 110-627, the term "unprocessed" precludes the use of geographic preference in procuring agricultural products that have significant value added components. The Conference report also noted the acceptability of *de minimus* handling and preparation "such as may be necessary to present an agricultural product to a school food authority in a useable form, such as washing vegetables, bagging greens, butchering livestock and poultry, pasteurizing milk, and putting eggs in a carton."

For the purpose of implementing the geographic preference procurement option in the Child Nutrition Programs, the Department proposed a definition of "unprocessed agricultural products." The guiding principles in developing the definition were that the definition should:

- (1) Comply with the language and reflect the intent of the statute;
- (2) Ensure that any processing of agricultural products results in only minimal value added to such products; and
- (3) Facilitate ease of use of such products for institutions.

The definition of "unprocessed agricultural products" included in the proposed rule specifically prohibited any processing method that alters the inherent character of the agricultural product. To that end, we included in the proposed definition a list of acceptable food handling and preservation techniques for purposes of applying the geographic preference procurement option. Such techniques included: General heat transfer methods such as cooling, refrigerating and freezing; size adjustment through size reduction (peeling, slicing, dicing, cutting and grinding); drying/dehydration; washing; vacuum packing and bagging; pasteurization for milk; the application of high water pressure ("cold

pasteurization"); butchering of livestock and poultry and the cleaning of fish. The Department asserted that these handling and preservation techniques both complied with the intent of the statute and did not alter the inherent character of agricultural products subjected to them.

While two commentors supported the definition as proposed, a number of comments regarding the food handling and preservation techniques included in the definition were received. The following discussion outlines those comments by issue and the decisions made by the Department in response to the comments in this final rule.

### Combination Packages of Vegetables and Fruits

Fifty comments were received expressing support for the addition of combination packages of local, frozen, bagged vegetables such as zucchini and summer squash or fresh vegetable roast packages such as winter squash, turnips and beets. The commentors indicated that the "inherent character" of the vegetables is not being altered in any way when packaged in such a manner and fits within the "de minimus" handling and preparation requirements intended by Congress. In addition, such packaging conforms with the language of the statute with regard to presenting the product in usable form. The Department agrees with the comments and, therefore, has revised the definition of "unprocessed agricultural products" to include such combination packaged items in this final rule.

### Frozen Products

One commentor indicated that frozen products should be included in the definition. The proposed rule included frozen products and the final rule retains frozen products as acceptable as a preservation technique. Two comments were received requesting that, in order to ensure that flash frozen products are included in the definition, the Department specify Individually Quick Frozen (IQF) as an acceptable preservation technique. The final rule retains inclusion of frozen products as acceptable but the Department does not wish to include specific techniques for freezing since technology changes over time and such specific references to technique may necessitate future amendments to the regulation in response to changes in technology.

### Canned and Other Heat Preserved Products

Three comments were received requesting that canned products be included in the definition of

“unprocessed agricultural products.” One commentor wanted to allow pasteurized cider and pickled products to be considered “unprocessed” for purposes of specifying a geographic preference for procurement. While canned, pickled and pasteurized products are acceptable for service in the Child Nutrition Programs, such products would not be considered to be subject to a geographic procurement preference because heat processing does not meet the “de minimus” standard of processing established by Congress as assessed by the Department. Therefore, no change in this regulation has been made in response to these comments.

#### **Formed Products**

Fifty comments were received supporting allowing foods such as ground beef and other meat patties to be included in the definition of “unprocessed agricultural products”. Those comments assert that such products have been handled in a manner consistent with “de minimus” exceptions in that they are ground then formed similar to cutting carrots into sticks or coin shapes. The commentors indicated that contracting separately for further processing of ground meat products which does not change the inherent character of that product would be costly and time consuming for the purchasing entities. Five other commentors recommended allowing meat patties made with pure meat and containing no fillers or additives as meeting the criteria for geographic preference procurement. The Department agrees with these commentors and has revised the definition to include formed products that contain no additives or fillers as acceptable for purchase using the geographic preference procurement option.

#### **Other Products**

Forty-one comments were received recommending that cutting chicken or other meat into fajita strips and filleting fish be allowed as acceptable as meeting the definition of “unprocessed agricultural products”. The Department wishes to point out that fish filets would be considered to be “cleaned” and cut, and slicing products into strips would be considered to be “cut”, both of which are included in the definition as proposed. One commentor requested that ground flour be allowed to be considered as acceptable. The Department wishes to clarify that ground products are allowed and that the grinding of grain into flour would be considered to be acceptable as a ground product subject to the geographic

preference procurement option. Therefore, there is no change to the definition in response to these comments.

#### **Preservatives**

Forty-six comments were received requesting clarification as to whether or not preservatives were allowed in products subject to the geographic preference procurement option. Specifically, they requested clarification as to whether or not ascorbic acid to hold color or prevent oxidation once a fruit or vegetable product was cut or chopped was acceptable. The Department agrees that this should be addressed and has provided for the addition of ascorbic acid and/or other preservatives that retain the color of a product or prevent oxidation to the definition of “unprocessed agricultural products”. However, no other preservatives used for any other purpose are considered to be acceptable.

#### **Packaging**

One commentor requested that portion packaging be explicitly recognized as meeting the requirements of the rule. The Department wishes to point out that packaging is recognized as allowable with regard to the definition of “unprocessed agricultural products”. The size of such packaging included in the procurement specifications is made at the discretion of the purchasing entity. Therefore, no change in response to this comment has been made in this final rule.

#### **High Water Pressure Cold Pasteurization**

One commentor expressed concern that the term “high water pressure cold pasteurization” included in the definition of “unprocessed agricultural product” could be interpreted to mean irradiation. The Department’s intent was to use this term in the definition to reference a washing technique. Since “washing” is already included in the definition of “unprocessed locally grown or locally raised agricultural products” and in response to this comment, the term “high water pressure (cold pasteurization)” is removed from the definition.

This final rule prohibits the application of the geographic preference procurement option for products subjected to processing methods not included in the definition of “unprocessed agricultural products”.

This final rule adds new paragraphs to §§ 210.21, 215.14a, 220.16, 225.17 and 226.22 of Title 7, CFR, to include the geographic preference procurement option and define the term

“unprocessed locally grown or locally raised agricultural products”.

#### **Applicability to the Fresh Fruit and Vegetable Program**

The geographic preference procurement option is applicable to purchases made in the Fresh Fruit and Vegetable Program, 42 U.S.C. 1769a (FFVP). However, this provision shall only be applied within the context of the FFVP’s requirement that produce utilized in the program be fresh. The definition of “unprocessed locally grown or locally raised agricultural products” does not change the basic statutory requirement that only fresh produce may be purchased using funds for the Fresh Fruit and Vegetable Program. Development of regulations pertaining to the requirements for the Fresh Fruit and Vegetable Program are currently in process and the provisions relating to the geographic preference procurement option will be included in that proposed rule, as appropriate.

#### **Executive Order 12866**

This rule has been determined to be not significant and was not reviewed by the Office Management and Budget in conformance with Executive Order 12866.

#### **Regulatory Flexibility Act**

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). It has been certified that this rule will not have a significant economic impact on a substantial number of small entities.

#### **Unfunded Mandates Reform Act**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under Section 202 of the UMRA, the Department generally must prepare a written statement, including a cost/benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, or Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) that

impose costs on State, local, or Tribal governments or to the private sector of \$100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

#### **Executive Order 12372**

The National School Lunch Program and the School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under No. 10.555 and 10.553, respectively. The Special Milk Program is listed under No. 10.556. The Child and Adult Care Food Program is listed under No. 10.558 and the Summer Food Service Program for Children is listed under No. 10.559. For the reasons set forth in the final rule in 7 CFR Part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), these programs are included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

#### **Executive Order 13132**

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. The Food and Nutrition Service (FNS) has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

#### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless specified in the **DATES** section of the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

#### **Civil Rights Impact Analysis**

FNS has reviewed this rule in accordance with Departmental Regulations 4300-4, "Civil Rights Impact Analysis," and 1512-1, "Regulatory Decision Making Requirements." After a careful review of the rule's intent and provisions, FNS has determined that this rule is not intended to limit or reduce in any way the ability of protected classes of individuals to receive benefits on the basis of their race, color, national origin, sex, age or disability nor is it intended to have a differential impact on minority owned or operated business establishments, and woman-owned or operated business establishments that participate in the Child Nutrition Programs. This rule simply allows institutions that participate in the Child Nutrition Programs the option to apply a geographic preference should such institutions wish to procure unprocessed locally grown or locally raised agricultural products.

#### **Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

#### **E-Government Act Compliance**

The Food and Nutrition Service is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

#### **Executive Order 13175**

E.O. 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. In late 2010 and early 2011, USDA engaged in a series of consultative

sessions to obtain input by Tribal officials or their designees concerning the impact of this rule on the Tribe or Indian Tribal governments, or whether this rule may preempt Tribal law. Reports from these consultations will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal officials or their designees concerning ways to improve this rule in Indian country.

We are unaware of any current Tribal laws that could be in conflict with this final rule.

#### **List of Subjects**

##### *7 CFR Part 210*

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

##### *7 CFR Part 215*

Food assistance programs, Grant programs—education, Grant programs—health, Infants and children, Milk, Reporting and recordkeeping requirements.

##### *7 CFR Part 220*

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs.

##### *7 CFR Part 225*

Food assistance programs, Grant programs—health, Infants and children, Labeling, Reporting and recordkeeping requirements.

##### *7 CFR Part 226*

Accounting, Aged, Day care, Food assistance programs, Grant programs, Grant programs—health, Indians, Individuals with disabilities, Infants and children, Intergovernmental relations, Loan programs, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Parts 210, 215, 220, 225, and 226 are amended as follows:

#### **PART 210—NATIONAL SCHOOL LUNCH PROGRAM**

- 1. The authority citation for 7 CFR Part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

### Subpart E—State Agency and School Food Authority Responsibilities

■ 2. In § 210.21, paragraph (g) is added to read as follows:

#### § 210.21 Procurement.

\* \* \* \* \*

(g) *Geographic preference.* (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;

(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.

### PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

■ 3. The authority citation for 7 CFR Part 215 continues to read as follows:

Authority: 42 U.S.C. 1772 and 1779.

■ 4. In § 215.14a, paragraph (e) is added to read as follows:

#### § 215.14a Procurement standards.

\* \* \* \* \*

(e) *Geographic preference.* A school food authority participating in the Program may apply a geographic preference when procuring milk. When

utilizing the geographic preference to procure milk, the school food authority making the purchase has the discretion to determine the local area to which the geographic preference option will be applied.

\* \* \* \* \*

### PART 220—SCHOOL BREAKFAST PROGRAM

■ 5. The authority citation for 7 CFR Part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

■ 6. In § 220.16, paragraph (f) is added to read as follows:

#### § 220.16 Procurement.

\* \* \* \* \*

(f) *Geographic preference.* (1) School food authorities 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;

(2) For the purpose of applying the optional geographic preference in paragraph (f)(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); addition of ascorbic acid or other preservatives to prevent oxidation of produce; butchering livestock and poultry; cleaning fish; and the pasteurization of milk.

\* \* \* \* \*

### PART 225—SUMMER FOOD SERVICE PROGRAM

■ 7. The authority citation for 7 CFR Part 225 continues to read as follows:

Authority: Secs. 9, 13 and 14, Richard B. Russell National School Lunch Act, as amended, (42 U.S.C. 1758, 1761 and 1762a).

■ 8. In § 225.17, paragraph (e) is added to read as follows:

#### § 225.17 Procurement standards.

\* \* \* \* \*

(e) *Geographic preference.* (1) Sponsors participating in the Program 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 sponsor making the purchase has the discretion to determine the local area to which the geographic preference option will be applied;

(2) For the purpose of applying the optional geographic preference in paragraph (e)(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); addition of ascorbic acid or other preservatives to prevent oxidation of produce; butchering livestock and poultry; cleaning fish; and the pasteurization of milk.

### PART 226—CHILD AND ADULT CARE FOOD PROGRAM

■ 9. The authority citation for 7 CFR Part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, 17, Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

■ 10. In § 226.22, paragraph (n) is added to read as follows:

#### § 226.22 Procurement standards.

\* \* \* \* \*

(n) *Geographic preference.* (1) Institutions participating in the Program

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 institution making the purchase has the discretion to determine the local area to which the geographic preference option will be applied;

(2) For the purpose of applying the optional geographic preference in paragraph (n)(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); addition of ascorbic acid or other preservatives to prevent oxidation of produce; butchering livestock and poultry; cleaning fish; and the pasteurization of milk.

Dated: April 18, 2011.

**Audrey Rowe,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 2011-9843 Filed 4-21-11; 8:45 am]

**BILLING CODE 3410-30-P**

## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

#### 7 CFR Part 4280

#### Notice of a Public Meeting on the Rural Energy for America Program

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Rural Business-Cooperative Service (RBS) will hold two informational Webinars for the Rural Energy for America Program (REAP) associated with the recently published REAP interim rule and Notice of Funds Availability (NOFA). Participation will be limited for each Webinar to the first two hundred registrants.

**DATES:** The Webinars will be held on Friday, April 29, 2011, and on Monday, May 2, 2011, from 2 p.m. to 4 p.m. EDT both days. You must register, as

described in the **ADDRESSES** section, by noon EDT April 27, 2011, for the April 29, 2011, Webinar and by noon EDT April 28, 2011, for the May 2, 2011, Webinar.

**ADDRESSES:** To participate in one of the Webinars, you must register for one of the Webinars by sending an e-mail to: *energydivision@wdc.usda.gov*. You must include in the SUBJECT line the date of the Webinar for which you wish to participate, and in the body of the e-mail, please provide the participant's name, e-mail address, mailing address, and telephone number. You must submit your e-mail by the applicable deadline listed in the **DATES** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Donnetta Rigney, Rural Business-Cooperative Service, U.S. Department of Agriculture, Stop 3225, 1400 Independence Avenue, SW., Washington, DC 20250-3221, Telephone: (202) 720-9812.

**SUPPLEMENTARY INFORMATION:** The REAP interim rule and the NOFA were published in the **Federal Register** on April 14, 2011. In order to familiarize the public with the content of the REAP interim rule, representatives of the Department of Agriculture are conducting the two Webinars. The purpose of these Webinars is to provide information on the interim rule for the Rural Energy for America Program, focusing on the provisions associated with flexible fuel pumps and other significant changes being implemented through the interim rule. Participants will be afforded the opportunity to ask questions on the material included in the presentation.

Please note that formal comments on the interim rule will not be accepted during the Webinar. Instead, the public has an opportunity to comment formally on the interim rule as provided in the interim rule published in the **Federal Register** on April 14, 2011 (76 FR 21110).

All prospective registrants will be notified by the Agency via e-mail if they are or are not among the first two hundred registrants for one of the two Webinars.

Participants are responsible for ensuring their systems are compatible with the Webinar software.

Dated: April 18, 2011.

**Judith A. Canales,**

*Administrator, Rural Business-Cooperative Service.*

[FR Doc. 2011-9725 Filed 4-21-11; 8:45 am]

**BILLING CODE 3410-XY-P**

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1610

[CPSC Docket No. CPSC-2010-0086]

#### Third Party Testing for Certain Children's Products; Clothing Textiles: Revisions to Terms of Acceptance of Children's Product Certifications Based on Third Party Conformity Assessment Body Testing Prior to Commission's Acceptance of Accreditation

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of requirements; revision of retrospective testing terms.

**SUMMARY:** The U.S. Consumer Product Safety Commission (“CPSC,” “Commission,” or “we”) issues this notice amending the terms under which it will accept certifications for children's products based on third party conformity assessment body (laboratory) testing to the flammability regulations at 16 CFR part 1610 that occurred before the Commission's acceptance of the accreditation of the third party conformity assessment body.<sup>1</sup> We are taking this action in response to a request from certain members of the clothing textile industry to reduce unnecessary retesting of clothing textiles that have been tested already and found to be in compliance with CPSC regulations.

**DATES:** *Effective Date:* The revision announced in this document is effective April 22, 2011.

**FOR FURTHER INFORMATION CONTACT:** Robert “Jay” Howell, Assistant Executive Director for the Office of Hazard Identification and Reduction, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; e-mail: *rhowell@cpsc.gov*.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Section 14(a)(3)(B)(vi) of the CPSA, as added by section 102(a)(2) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110-314, directs the CPSC to publish a notice of requirements for accreditation of third party conformity assessment bodies to assess children's products for conformity with “other children's product safety rules.” Section 14(f)(1) of

<sup>1</sup> The Commission voted 4-0-1 to publish this revision to the notice of requirements for clothing textiles. Commissioners Nancy A. Nord and Anne M. Northup each issued a statement, and the statements can be found at <http://www.cpsc.gov/pr/statements.html>.