Date: June 26, 2024

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Subject: Geographic Preference Option Questions & Answers

To: Regional Directors, Child Nutrition Programs, All Regions

State Directors, Child Nutrition Programs, All States

This memorandum provides updated guidance on the geographic preference option to reflect changes made by the final rule, *Child Nutrition Programs: Meal Patterns Consistent With the 2020-2025 Dietary Guidelines for Americans* (89 FR 31962, April 25, 2024). This memorandum complements *Geographic Preference Expansion Related to the Final Rule titled,* Child Nutrition Programs: Meal Patterns Consistent With the 2020-2025 Dietary Guidelines for Americans and rescinds and replaces SP 18-2011, *Procurement Geographic Preference Q&As* and SP 03-2013/CACFP 02-2013/SFSP 02-2013, *Procurement Geographic Preference Q&As – Part II.*

Notable changes include:

- The addition of questions and answers (Q&As) that address the use of local (e.g., locally grown, locally raised, or locally caught) as a specification for local unprocessed agricultural products.
- The use of the term “defined scoring advantage” rather than “geographic preference”; a defined scoring advantage is used to help differentiate between the concept of a geographic preference option and the two strategies that can be used to implement it.
- Reorganization of the Q&As into new categories for ease of use.

FNS reminds State agencies to distribute this information to Child Nutrition Program (CNP) operators immediately. CNP operators should direct any questions regarding this

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memorandum to the appropriate State agency. State agencies should direct questions to the appropriate FNS Regional Office.

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A. Applying the Geographic Preference Option

1. [*New*] What strategies does the geographic preference option include?

Starting July 1, 2024, the geographic preference option includes two strategies that may be used when procuring unprocessed locally grown, raised, or caught agricultural products:

i. Strategy 1: Using local as a specification (i.e., the written description of a product or service that a vendor must meet to be considered responsive to a solicitation). For more information, see question 5.

ii. Strategy 2: Using a defined scoring advantage while scoring bids in response to a solicitation. This means giving additional points or credit to bids for local unprocessed agricultural products that meet a Child Nutrition Program (CNP) operator's definition of local. For more information, see question 6.

Regulations for geographic preference, which include the two permitted strategies, can be found at 7 CFR 210.21(g)(1) for the National School Lunch Program (NSLP), 215.14a(e) for the Special Milk Program (SMP), 220.16(f)(1) for the School Breakfast Program (SBP), 225.17(e)(1) for the Summer Food Service Program (SFSP), and 226.22(c)(1) for the Child and Adult Care Food Program (CACFP).

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2. **[*Revised*] Does the geographic preference option apply to all CNPs?**

   Yes, it applies to all CNPs. Schools, sponsors, and institutions participating in any of the CNPs may use the geographic preference option, including using local as a specification and applying a defined scoring advantage, when procuring unprocessed locally grown, raised, or caught agricultural products. CNPs include the NSLP, Fresh Fruit and Vegetable Program (FFVP), SMP, SBP, SFSP, Seamless Summer Option (SSO), and CACFP. The geographic preference option also applies to purchases made for CNPs by State agencies or the United States Department of Agriculture (USDA) Department of Defense Fresh Fruit and Vegetable Program (USDA DoD Fresh).

3. **[*Revised*] May a State agency prohibit a CNP operator from using the geographic preference option in their solicitations?**

   No, State agencies may not prohibit CNP operators from using the geographic preference option. Section 9(j) of the Richard B. Russell National School Lunch Act (NSLA) grants the authority to apply the geographic preference option directly to schools, sponsors, and institutions participating in any of the CNPs. CNP operators may determine whether to use either, both, or no strategies available under the geographic preference option (the defined scoring advantage and/or local as a specification) when purchasing unprocessed locally grown, raised, or caught agricultural products.

4. **[*Revised*] Can a CNP operator issue a solicitation that includes "locally grown agricultural products from within the State" as a product specification?**

   Yes, starting July 1, 2024, the final rule allows schools, sponsors, and institutions participating in any of the CNPs to use local as a specification (e.g., locally grown, locally raised, or locally caught), when buying local unprocessed agricultural

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products. The CNP operator must define local in their solicitation, such as within a county, a State, or within a certain radius of the school, when using the geographic preference option. If a vendor submits a bid for a product that does not meet the local definition in the solicitation, the CNP operator can remove the products or bids from consideration. The CNP operator must define local in a manner that ensures full and open competition. For more information on competition, please see section C. Ensuring Full and Open Competition.

5. **[*Revised*] Is there one preferred method for applying a defined scoring advantage in a solicitation?**

   No, Federal regulations do not prescribe a specific or preferred method for applying a defined scoring advantage in a solicitation. CNP operators may determine the best approach and process for their program. Common methods for applying a defined scoring advantage include, but are not limited to:

   - giving a price or percentage reduction in the bid evaluation process, which does not affect the actual price paid to a bidder, and awarding the solicitation to the lowest bidder;
   - granting bonus points to bidders offering local products and awarding the solicitation to the bidder with the highest points; and
   - offering a sliding scale of bonus points or price reductions in the bid evaluation based on the percentage of local products the bidder could provide.

   With any method, CNP operators must clearly define and describe the method in the solicitation and ensure it does not unreasonably limit competition. For more information on competition, please see section C. Ensuring Full and Open Competition. For more examples of defined scoring advantage methods, please see the Procuring Local Foods for Child Nutrition Programs Guide.

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6. **[*Revised*] How many preference points can a CNP operator award to local unprocessed agricultural products when using a defined scoring advantage?**

   Federal regulations do not prescribe how much preference in the form of points or any other approach a CNP operator may assign to local products. A defined scoring advantage, by its very nature, impacts competition. However, it may have a greater or lesser impact on competition depending on the characteristics of the local market.

   CNP operators should conduct market research to ensure that the level of preference they give allows an appropriate number of qualified bidders to compete for the contract. Typically, quotes from three or more qualified vendors are considered sufficient competition. For more information on competition, please see section C. Ensuring Full and Open Competition.

7. **[*Revised*] If a CNP operator wishes to issue an invitation for bid (IFB), or competitive sealed bid, how would that CNP operator incorporate a defined scoring advantage into the IFB?**

   CNP operators may issue IFBs after developing complete and realistic specifications, technical requirements, and all other solicitation details. Program operators award IFBs to a responsible and responsive bidder(s) with the lowest price. There are a variety of ways that a defined scoring advantage can be used in an IFB. One approach is to give a price reduction for products produced in the area defined as local, giving them a potential advantage. CNP operators must clearly articulate their scoring criterion in the solicitation and how they will evaluate bids accordingly.

   After vendors submit bids in response to the IFB, the CNP operator determines which bidders offer local products, subtracts the predetermined amount (i.e., price reduction) from their bid prices, and awards the purchase to the bidder(s) with the lowest price (inclusive of any adjustments for offering local products). It is important

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to note that the price reduction calculated in evaluating bids only applies to deciding the winning bidder; it would not affect the actual price paid to a bidder.

B. Establishing Criteria for Local

8. [*Revised*] Does FNS define the term local for CNP operators when using the geographic preference option?

No, FNS does not define local for purposes of the geographic preference option. Federal regulations grant CNP operators the authority to define local, meaning they may determine the geographic area from which products must come when using local as a specification or applying a defined scoring advantage. CNP operators must still define local in a manner that upholds full and open competition. For more information on competition, see section C. Ensuring Full and Open Competition.

9. [*New*] Does a CNP operator need to use the same definition of local for all products in their solicitation(s)?

No, a CNP operator may vary the definition of local for unprocessed agricultural products within a solicitation. The definition of local may change with the product, the seasons, events, program values, and other factors. For example, a CNP operator in a State with many ranches and few fruit and vegetable farms may decide that local beef must come from within the State, and local vegetables must come from the State or neighboring States. Identifying a CNP's goals around local sourcing will help purchasers craft a definition that serves its goals. For more information on defining local, see *Procuring Local Foods for Child Nutrition Programs*.

10. [Revised] May a State or other local government entity require a CNP operator to use the geographic preference option in a certain way, including using a specific definition for local?

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No. Section 9(j) of the NSLA grants the authority to apply the geographic preference option directly to schools, sponsors, and institutions participating in any of the CNPs. This includes the authority to decide which geographic preference option strategies to use and how to define local for unprocessed agricultural products. CNP operators are not obligated to adopt any local definition established by a State, locality, nonprofit organization, or other entity, even if the definition is required by State or local regulations. However, CNP operators may voluntarily elect to use the State or local government's definition of local and/or strategy for applying the geographic preference option.

For example, many States have enacted incentive programs that provide funding for CNP operators for products grown, raised, or caught "within the State." CNP operators may use these State-established local definitions when using the geographic preference option to ensure their purchases are eligible for the additional reimbursement, but they are not obligated to do so.

11. [*New*] Are CNP operators expected to align definitions of what is considered local with local food purchasing incentives?

A CNP operator may align its definition of local so that it can qualify for one of the growing numbers of local food purchasing incentives. (See the National Farm to School Network for more information on local food purchasing incentives.) However, under the geographic preference provision, CNP operators are not obligated to do so.

12. [*Revised*] When applying the defined scoring advantage, can a CNP operator award points to a bidder selling produce grown inside the State, if the bidder is incorporated outside of the State or with its principal place of business outside of the State?

Yes. Federal regulations do not preclude a bidder incorporated or with a principal place of business outside the geographic area defined as local from competing for or

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receiving the award. The geographic preference option is tied to where the unprocessed agricultural product is grown, raised, or caught; the bidder's principal place of business or State of incorporation is irrelevant for the purposes of the geographic preference option.

13. [*Revised*] When a State has "buy within the State" legislation, can a CN operator's solicitation apply the geographic preference option to in-State products and products from neighboring States?

Yes, a CNP operator can use a tiered definition of local or multiple local definitions within a single solicitation. They can also use a defined scoring advantage, local as a specification, or a mix of these strategies within a solicitation. For instance:

- A CNP operator may use a two-tiered defined scoring advantage for a single product; for example, awarding five extra points to bids offering lettuce grown within the State while awarding eight additional points to bids offering lettuce grown within 100 miles (which may incorporate other States).

- Alternatively, a CNP operator could require lettuce to be grown within their State (i.e., local as a specification), which, due to market research, they know grows in abundance and is carried by a variety of qualified vendors. They could also apply a defined scoring advantage to citrus grown within 100 miles, which includes their neighboring State and the only area of their own State that produces citrus.

- Or, a CNP operator may use another mix of definitions and strategies.

14. [*Revised*] When a CNP operator applies the geographic preference option in its solicitation, may they consider unprocessed agricultural products from

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producers in neighboring countries (i.e., Mexico or Canada) within their definition of local?

No. School food authorities (SFAs) that participate in the NSLP or SBP must adhere to the Buy American Provision, which requires SFAs to purchase domestically grown foods to the maximum extent practicable, when purchasing food for the NSLP and SBP. SFAs may purchase non-domestic foods only in two limited circumstances: (1) the product is listed on the Federal Acquisitions Regulations 25.104 Nonavailable articles list and/or is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or (2) competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product. The final rule also gradually phases in a 5 percent cap on non-domestic food purchases in the NSLP and SBP, beginning with a 10 percent cap which must be implemented by July 1, 2025. For more information on the Buy American Provision, see SP 23-2024, the Buy American Provisions Related to the Final Rule Titled, Child Nutrition Programs: Meal Patterns Consistent With the 2020-2025 Dietary Guidelines for Americans.

C. *Ensuring Full and Open Competition*

15. [*Revised*] What is considered an unreasonable limit on competition when using the geographic preference option to solicit local unprocessed agricultural products?

At 2 CFR 200.319(b), the Office of Management and Budget (OMB) provides a list of situations that are considered to limit competition, such as placing unreasonable requirements on a vendor, requiring unnecessary experience and excessive bonding, involving an organizational conflict of interest, including bid specifications that are too narrow, allowing potential contractors to write or influence bid specifications, or specifying only a brand name product instead of allowing an equal product to be offered. For example, defining local as within five miles when only one farm meets that definition may be considered an unreasonable limit on competition. Similarly,

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writing a specification for local products from a specific farm rather than allowing equal products from any farm within a geographic area with multiple growers would be considered an unreasonable limit on competition. CNP operators must use their best judgment and State agency guidance to procure the goods and services they desire without unfairly limiting competition, based on their market research. Noncompetitive procurements may only be awarded in exceptional circumstances, as described in 2 CFR 200.320(c).

16. [*New*] How does a CNP operator know when their specifications are written in a way that ensures an appropriate number of qualified bidders?

To ensure full and open competition, CNP operators must ensure that the way they write their specifications and technical requirements results in an appropriate number of qualified bidders that can meet the specifications and technical requirements of a solicitation. Each type of procurement has its own guidelines for an appropriate number of qualified bidders or vendors. As a best practice, FNS recommends that solicitations result in at least three qualified bidders or vendors. However:

- For micro-purchases, the purchase may be awarded without soliciting competitive quotations. The CNP operator must ensure the price they pay is reasonable based on research, experience, purchase history, or other information and document the purchase accordingly. The CNP operator also should distribute micro-purchases equitably among qualified suppliers. For more information, see OMB regulations at 2 CFR 200.320(a)(1).

- For small purchases, no minimum number of qualified bidders is required. The CNP operator may determine the adequate number of qualified sources from which to obtain price or rate quotations. For more information, see OMB regulations at 2 CFR 200.320(a)(2)(i).

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- For sealed bids (also called IFBs), two or more qualified vendors must be able to compete effectively for the contract. For more information, see OMB regulations at 2 CFR 200.320(b)(1)(i)(B).

- For proposals (also called requests for proposals), no minimum number of qualified bidders is required. The CNP operator may determine what constitutes an adequate number of qualified bidders. For more information, see OMB regulations at 2 CFR 200.320(b)(2)(i).

17. [*Revised*] What is a procurement agent's role in applying the geographic preference option?

A CNP operator may enter into a purchasing agreement with an agent (e.g., food service management company), third-party entity (e.g., State procurement agency agreements, interagency agreements, group purchasing organizations), or CNP operator-only and/or CNP State agency cooperative to purchase food and other products used in CNPs on behalf of the CNP operator. CNP operators must competitively procure purchasing agreements with procurement agents in accordance with 2 CFR Part 200.318.326 and applicable program regulations and guidance. Federal regulations require the procurement agent to include a clear statement in the solicitation and resulting contract requiring the entity to follow all Federal, State, and local procurement regulations. CNP operators that desire the agent to procure local foods on their behalf using the geographic preference option must clearly describe requirements for applying the method and their definition of local in the solicitation and contract for the procurement agent. The competitively selected procurement agent would act on behalf of the CNP operator in applying the geographic preference option for the school, sponsor, or institution's procurement.

18. [*New*] How should CNP operators address vendors that indicate they could source local unprocessed agricultural products in a bid to receive a defined scoring

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advantage or meet a local specification, but then offer only non-local products after they receive the contract?

As with all contracts, CNP operators should monitor the contractor's performance throughout the life of the contract to ensure that contract terms are being fulfilled. CNP operators should follow their procurement procedures as with any other vendor no longer fulfilling contractual requirements. In future solicitations requiring or preferencing local, they may also want to consider the vendor's capacity to source locally, including past performance and any improvements made in response to a noncompliance notice.

19. **[*Revised*] Can a CNP operator use AMS Market News to obtain quotes for a small purchase?**

    No. While AMS Market News may be used as a guide to determine if a bidder is selling their agriculture product at a fair price, these reports do not constitute a quoted price or volume from a particular bidder. Therefore, AMS Market News may not be used as a method for satisfying the informal procurement requirements. Some acceptable ways of obtaining quotes for small purchases are calling local producers, shopping at local farmers' markets, and participating in local food vendor fairs.

20. **[*Revised*] Can a CNP operator issue a solicitation that includes specifications related to qualitative factors (e.g., freshness, ripeness) in addition to preferences related to geographic location? Can the institution use other values-based specifications or preferences (e.g., fair labor, minority/women-owned, small business)?**

    Yes, product specifications (i.e., descriptions of the food items the CNP operator is looking to purchase) or technical requirements (i.e., criteria that ensure the bidder is "responsive and responsible" or able to perform the terms of the solicitation) may include a wide variety of qualitative factors as long as they are not overly restrictive.

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CNP operators should design their product specifications and technical requirements to ensure the goods and services purchased align with their needs, values, and desires. These factors may include, but are not limited to:

- product variety;
- production practices (e.g., organic certification, pesticide-free, cage-free, climate-smart conservation practices);
- farm ownership (e.g., veteran-owned businesses, small, women, and minority-owned businesses (See 2 CFR 200.321.));
- track record with local producers;
- origin labeling (e.g., State, region, farm identity); and
- farm visits or producer visits at CNP sites.

It is worth noting that these types of specifications or preferences *are not limited to unprocessed agricultural* products in the same way as preference and local specifications, and therefore could be applied to products that have been processed beyond their inherent form. Before issuing a solicitation, the entity should conduct market research to determine if specifications or technical requirements of this nature unreasonably limit competition.

D. Products Eligible for the Geographic Preference Option

21. [*Revised*] What types of products are eligible for the geographic preference option?

A CNP operator may apply the geographic preference option to unprocessed agricultural products that retain their inherent character. The definition for unprocessed agricultural products, and the food handling and processing techniques

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within it, are found in regulations for each program as defined in 7 CFR Part 210.21(g)(2) for NSLP, 220.16(f)(2) for SBP, 225.17(e)(2) for SFSP, and 226.22(c)(2) for CACFP. Examples of allowable products include, but are not limited to:

a. Fruits (including sliced, diced, whole raw, dried, or frozen products);

b. Vegetables (including sliced, diced, whole raw, dried, or frozen products);

c. Grains (including quinoa, rice, barley, etc., in whole form and other grains in ground form such as flour);

d. Eggs (including whole, shell);

e. Fish (including whole, form, fillets, or nuggets that contain no additives or fillers);

f. Meats (including fresh or unprocessed frozen products and formed products, such as patties, that contain no additives or fillers);

g. Poultry (including whole, form, or various cuts); and

h. Dairy (includes pasteurized, unflavored).

22. [*Revised*] Can the geographic preference option be applied to ground beef?

Yes, CNP operators may use a geographic preference option when purchasing local beef if it contains no additives, binders or extenders, preservatives, or seasoning to alter its inherent character as outlined in 7 CFR Part 210.21 (g)(2) for NSLP, 220.16(f)(2) for SBP, 225.17(e)(2) for SFSP, and 226.22(c)(2) for CACFP). Grinding and forming beef into patties does not change its intrinsic character, just as chopping or refrigerating a carrot does not alter its inherent character. However, CNP operators cannot use the geographic preference option when purchasing seasoned, heated, cooked, or canned ground beef because these techniques change the inherent character of the product.

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23. [*New*] Can the geographic preference option be applied to flavored milk?

No, the geographic preference option does not apply to fluid milk products that contain additives, such as chocolate or strawberry-flavored milk, nor to any processed dairy products such as cheese, yogurt, etc.

24. [*New*] Can the geographic preference option be applied to fish?

Yes, CNP operators may use a geographic preference option when buying fresh or frozen fish and seafood. However, a CNP operator cannot apply the geographic preference option to cooked, heated, or canned fish or seafood, nor fish or seafood containing any additives or fillers.

25. [*Revised*] Can the geographic preference option be applied to a frozen bag of combination vegetables (e.g., broccoli, cauliflower, and carrots)?

Yes, freezing or combining vegetables in a bag does not change the inherent character of the vegetables.

26. [*Revised*] Can the geographic preference option be applied to fresh, local vegetables in portion-sized or single-serving bags (e.g., small bags of carrots)?

Yes, placing vegetables in portion-sized or single-serving bags does not change the inherent character of the vegetables.

27. [*Revised*] Can the geographic preference option be applied to canned vegetables?

No, the heating process involved in canning changes the inherent character of an agricultural product, including vegetables.

28. [*Revised*] Can the geographic preference option be applied to "value-added" items, such as chili, salsa, and soup?

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A CNP operator may not apply a defined scoring advantage to or use local as a specification for value-added products that include processed agricultural products. However, they may use a defined scoring advantage or local specification when sourcing the raw ingredients, as long as the ingredients are unprocessed agricultural products. For example, a CNP operator could indicate a preference for local or use a local specification to procure whole, local tomatoes and onions for tomato sauce. The CNP operator could make the tomato sauce or procure a processor to make the tomato sauce for them. A defined scoring advantage or local requirement may not be used in procuring processing services, as the program operator can only apply the geographic preference option to unprocessed agricultural products. However, a CNP operator may, in solicitation for processing services, require that the processor use only raw ingredients procured by the CNP operator using a defined scoring advantage or local specification.

29. [*New*] Can the geographic preference option be applied to items processed, but not produced, within a defined geographic area?

No, CNP operators may only apply the geographic preference option to raw food products that retain their original character (e.g., chopped raw carrots, ground beef, chicken leg quarters, etc.) *and* are produced (i.e., grown, raised, or caught) within a defined region. CNP operators cannot require or establish a defined scoring advantage for local processing; the use of the geographic preference option is tied only to where the unprocessed agricultural product is grown, raised, or caught. However, a CNP operator can use the geographic preference option to purchase raw unprocessed agricultural products (e.g., washed, cut, diced, sliced, frozen, packed) grown in the area the program operator defines as local and have the ingredients further processed.

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