

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 101, 207, and 305 of the Education Law, and section 103 of the General Municipal Law, and Part OO of Chapter 58 of the laws of 2023.

1. Section 114.3 of the Regulations of the Commissioner of Education is amended to read as follows:

114.3 Bidding exemption for [direct] purchasing New York State food.

(a) For use in its school food service program, a board of education on behalf of its school district, or a board of cooperative educational services, may separately purchase eggs, livestock, fish, species of fresh fruits and vegetables, juices, grains, and dairy products, excluding milk, [directly from producers or growers, or from associations of producers or growers] grown, produced or harvested, in New York State exempt from the bidding provisions of subdivisions 1 through 8 of section 103 of the General Municipal Law. All such purchases shall be subject to the provisions of this section.

(b) Definitions.

For the purposes of this section:

(1) *Producer* shall mean the owner of the hens from whom eggs are gathered, the person who owns and raises the livestock, the person who harvests the fish, the person who processes the dairy products, excluding milk, from animals he or she owns and the person who processes juice from fruit he or she owns.

(2) *Grower* shall mean the planter, cultivator, and harvester of the crops to be sold.

(3) Grown in New York State shall mean food products planted, cultivated, and harvested in the state, including eggs gathered from hens located in the state, livestock raised in the state, and fish harvested in the state.

(4) Produced in New York State shall mean any food or dairy product (excluding milk) meeting the definition of “processed products” in Agriculture and Markets Law §451(3).

[(3)] (5) *Quality* shall be determined by the same market standards of the New York State Department of Agriculture and Markets as apply to products sold at the wholesale markets throughout New York State.

[(4) *Directly* shall mean without an intermediary between the producer and/or grower and the board of education.

(5) *Association of producers or growers* shall mean an association or other unincorporated organized group comprised of 10 or fewer producers or growers who own and operate their farms and who have combined to sell products to a board of education in accordance with this section.]

(c) Vendor limitation. [Exempt purchases by a school district from any single producer and/or grower, and/or association of growers or producers are limited to an annual maximum of \$50,000.] An exempt order must be for one hundred fifty thousand dollars or less. A school district or board of cooperative educational services may apply to the commissioner of education for permission to purchase orders of more than one hundred fifty thousand dollars from an association of owners of such farms when no other producers or growers have offered to sell to such school.

(d) *Prices paid.* It shall be the responsibility of the board of education or BOCES to ensure that the prices paid for items purchased pursuant to this exemption do not exceed the wholesale prices in effect on the date of purchase. Such wholesale prices shall be ascertained by the school district or BOCES, prior to the finalization of the actual purchase agreement, either by telephone solicitation from local wholesalers or by referring to the most current issue of the *Fruit and Vegetable Market News* published by the Division of Market Services, New York State Department of Agriculture and Markets. Records of such price determination shall be kept on file for audit for at least six years.

(e) *Public notice.* The board of education or BOCES shall give public notice of its intent to purchase eggs, fruits, vegetables, livestock, fish, juices, grains and dairy products, excluding milk, without competitive bidding. Such notice shall be given in a manner which will provide all producers and growers [and associations of producers and growers] who desire to sell to a school district or BOCES, pursuant to subdivision 9 of section 103 of the General Municipal Law and this section, an equal opportunity to do so. As a minimum, all producers and/or growers, whose products are grown or produced upon land taxed by the school district, or in the case of a BOCES, all producers and/or growers, whose products are grown or produced upon land taxed by a component school district, shall receive such notice of intent to purchase issued by such school district, or BOCES. Records of such compliance with this subdivision shall be kept on file for audit for at least six years.

(f) *Equal opportunity for producers and growers.* When more than one eligible producer and/or grower proposes to sell at the same price similar products of equivalent quality, and the total value of these products to be purchased exceeds \$1,000, the

board of education or BOCES shall divide its purchase equally among all such producers and/or growers. [For purposes of this subdivision, each association of producers or growers shall be considered a single eligible producer or grower.]

2. Section 114.4 of the Regulations of the Commissioner of Education is amended to read as follows:

114.4 Bidding exemption for the direct purchasing of milk.

(a) For use in its school food service program(s), a board of education may, on behalf of its school district, separately purchase fluid milk produced in New York State, directly from a licensed milk processor or processors exempt from the bidding provisions of subdivisions 1 through 8 of section 103 of the General Municipal Law, subject to the maximum allowable expenditure set forth in subdivision 10 of such section. All such purchases shall be subject to the provisions of this section.

(b) [~~Definition~~]Definitions. For the purpose of this section[, licensed];

(1) Licensed milk processor shall mean a processor of milk who is licensed by the New York State Department of Agriculture and Markets at the time the milk is supplied to the school district [and who employs less than 40 people at that time].

(2) Produced in New York State shall mean milk meeting the definition of “processed products” in Agriculture and Markets Law §451(3), with the exception that it must be from a licensed milk processor.

(c) ...

(d) ...

(e) ...

(f) ...

