



Office for Prekindergarten through Grade 12 Education
Child Nutrition Program Administration
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To: School Food Service Directors/Managers

From: Paula Tyner-Doyle, Coordinator

Date: March 25, 2014

Subject: Consolidated Appropriations Act Report Language on Waivers for School Breakfast and All Foods in Schools (Smart Snacks)

The purpose of this memorandum is to inform School Food Authorities (SFAs) that the Department of Agriculture (USDA) will not be providing waivers for School Breakfast (SBP) and All Foods in Schools (Smart Snacks) requirements that go into effect on July 1, 2014.

As you may know, the Consolidated Appropriations Act, 2014 (P.L. 113-76) included report language that directed USDA to establish a process, within 90 days of enactment, for States to grant waivers for the 2014-2015 School Year to any local educational agencies (LEAs) unable to operate their program without incurring increased costs if required to comply with the forthcoming Smart Snacks interim final rule and/or SBP requirements. USDA was further directed to provide such LEAs with technical assistance to help with implementation of the new nutrition standards in future years.

USDA's Office of the General Counsel has confirmed that USDA is prohibited by Federal law from waiving these regulations and is also prohibited from authorizing State agencies to do so. The Richard B. Russell National School Lunch Act limits waivers under section 12(1), and specifically prohibits granting a waiver that relates to the nutritional content of program meals served or the sale of competitive foods (42 U.S.C. 1760(1)(4)(A) and (J)). Since report language is non-binding in nature, and statutory prohibitions are binding, USDA is unable to comply with the directive to establish a waiver process.

Therefore, School Food Authorities should continue preparing for a timely implementation of both the breakfast changes and Smart Snacks requirements. Although USDA cannot grant waivers for these requirements, both USDA and the State remain committed to providing training and technical assistance to schools to help ensure the continued successful implementation of the SBP and Smart Snacks standards.

Below is a link to the letter sent by Secretary Vilsack addressing the Consolidated Appropriations Act request for this waiver.

<http://www.schoolnutrition.org/Blog.aspx?id=20094&blogid=145506>

Please contact your Child Nutrition Program representative with any questions regarding the full implementation of breakfast and Smart Snacks for the 2014-15 school year.

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