



**United States
Department of
Agriculture**

Food and
Nutrition
Service

3101 Park
Center Drive
Alexandria, VA
22302-1500

DATE: March 21, 2014

MEMO CODE: SP 29-2014

SUBJECT: Consolidated Appropriations Act Report Language on Waivers for School Breakfast and Smart Snacks

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

The purpose of this memorandum is to inform State agencies and School Food Authorities (SFAs) that the Department of Agriculture (USDA) will not be providing waivers for School Breakfast (SBP) and 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.

Regional Directors
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Therefore, States and local operators should continue preparing for a timely implementation of both the breakfast changes and Smart Snacks requirements. Although USDA cannot grant waivers for these requirements, we remain committed to providing training and technical assistance to schools to help ensure the continued successful implementation of the SBP and Smart Snacks standards.

State agencies are reminded to distribute this memo to program operators immediately. SFAs should contact their State agencies for additional information. State agencies may direct any questions concerning this guidance to the appropriate Regional office.

Sincerely,

Original Signed

Cynthia Long
Deputy Administrator
Child Nutrition Programs