



United States Department of Agriculture

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Office of the Secretary
Washington, D.C. 20250

The Honorable Robert B. Aderholt
Chairman, Subcommittee on Agriculture, Rural Development,
Food and Drug Administration, and Related Agencies
Committee on Appropriations
U.S. House of Representatives
2362A Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of February 5, 2014, cosigned by Congressman John Kline, regarding the establishment of a waiver process to allow schools to delay implementing the new School Breakfast Program and Smart Snacks standards.

Your letter references report language included in the Explanatory Statement that accompanied the Consolidated Appropriations Act, 2014, P.L. 113-76. The report language directs the Department of Agriculture (USDA) to establish, within 90 days of enactment, a waiver approval process for State agencies to grant waivers for the 2014-2015 school year to any local educational agency (LEA) that certifies it cannot operate a food service program without incurring increased costs if required to comply with the interim final rule, "National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010," and/or comply with 7 CFR Part 220, related to establishing new nutrition standards for the School Breakfast Program. USDA is further directed to provide such LEAs with technical assistance to help with implementation of the new nutrition standards in future years.

Our 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(l), and specifically prohibits me from 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 respectfully unable to comply with the directive to establish a waiver process.

Although USDA cannot grant waivers for these requirements, USDA remains committed to providing training and technical assistance to schools to help ensure the continued successful implementation of the School Breakfast Program and Smart Snacks standards. Early in the implementation process for school meals, when schools asked for flexibility to serve larger servings of grains and meats within the overall calorie caps, USDA responded. In January of this year, that flexibility was made permanent. We will continue to listen to stakeholders and provide guidance and flexibilities, as appropriate, to help schools and students adapt to the new requirements.

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These efforts have yielded positive results, as evidenced by the fact that nearly 90 percent of schools are successfully meeting the new standards. Continuing this progress remains a top priority for USDA. Successful, long-term change takes time to implement, and we will continue to be a strong partner with States and schools as they implement the phased-in breakfast requirements. Most recently, USDA announced \$5.5 million in new grants to help support schools by providing simple, actionable, low-cost steps that they can take that will increase consumption of healthier foods and decrease plate waste.

USDA also has plans in place to support schools in implementing the new Smart Snacks requirements, which will work in concert with recent improvements in school meals to support and promote diets that contribute to students' long-term health and well-being. Among other actions, we are partnering with the Alliance for a Healthier Generation to provide an online nutrition calculator to schools that will help them easily identify food and beverage products that meet the new standards.

Throughout the coming school year, our first priority will be to work with our State and local partners to provide the technical assistance schools need to learn about the new requirements and what they need to do in order to meet them. As our track record on school meals demonstrates, USDA will pay careful attention to issues that come up during the Smart Snacks implementation and work with stakeholders to resolve them.

Again, thank you for your strong support of our programs and for your shared vision and commitment to helping communities improve the health and well-being of our Nation's children. Please have your staff contact Ann Wright, Acting Assistant Secretary for Congressional Relations, at (202) 720-7095, if you have any questions. A similar letter is being sent to Congressman Kline.

Sincerely,



Thomas J. Vilsack
Secretary