



**United States
Department of
Agriculture**

Food and
Nutrition
Service

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DATE: April 17, 2014

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SUBJECT: Smart Snacks Nutrition Standards and Exempt Fundraisers

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

The purpose of this memorandum is to provide guidance regarding State agency responsibilities to establish limitations on the frequency of specially exempted fundraisers in schools. Section 10 of the Child Nutrition Act of 1966, 42 USC 1779, as amended by the Healthy, Hunger-Free Kids Act of 2010 (HHFKA), requires that all food sold outside of the school meal programs, on the school campus and at any time during the school day must meet the nutrition standards set forth in the interim final rule titled “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”. This interim final rule, also known as the “Smart Snacks” rule, was published on June 28, 2013 and is effective on July 1, 2014. As USDA continues to move forward with implementation of Smart Snacks, State agencies are reminded to advise their respective schools that these standards will take effect this coming school year.

The nutrition standards included in the interim final rule apply to all foods and beverages sold to students on the school campus during the school day. However, in recognition of the tradition of school fundraisers, the HHFKA provides flexibility for special exemptions for the purpose of conducting infrequent school-sponsored fundraisers during which foods that do not meet the nutrition standards for Smart Snacks may be sold. Section 210.11(b)(4) of the interim final rule specifies that such specially exempted fundraisers must not take place more often than the frequency specified by the State agency. As outlined in the interim final rule, if a State agency does not specify the exemption frequency, the State agency is electing to establish a policy that no fundraiser exemptions may be granted. As noted in the preamble to both the proposed and interim final rules, it is expected that State agencies will ensure that the frequency of such exempt fundraisers on school grounds during the school day does not reach a level which would impair the effectiveness of the Smart Snacks requirements.

The law requires that the State agency must set an upper limit on the number of fundraisers that would be allowed. If the State agency decides not to establish an upper

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limit, the State agency is electing to prohibit any exempt fundraisers from being held in schools. The State agency may not delegate the authority to specify exempt fundraiser frequency to local educational agencies (LEAs) or to school food authorities (SFAs). However, we would like to clarify that the State agency has the discretion and flexibility to establish a procedure by which an LEA may request approval for an exemption from the base fundraiser limit established by the State. All such requests must be reviewed and authorized by the State agency. For example, if a State agency sets a limit of three exempt fundraisers per year, the State agency has the discretion to permit LEAs to request approval for additional numbers of fundraisers to be held in their schools and to develop the method by which the State agency would approve or deny such requests. This approach supports the intent of the HHFKA and the Smart Snacks nutrition standards to ensure the development of a healthier school environment. State agencies are reminded that there are no frequency limits on fundraisers during which food items that meet the standards are sold, nor are there any limits on non-food fundraiser activities.

Information on implementation and guidance on Smart Snacks may be found at the Food and Nutrition Service website at <http://www.fns.usda.gov/school-meals/smart-snacks-school>. State agencies may direct any questions concerning this guidance to the appropriate Food and Nutrition Service Regional Office. We look forward to continuing to work with you on improving the nutrition of our Nation's children.

Original Signed

Cynthia Long

Deputy Administrator

Child Nutrition Programs