

United States Senate

WASHINGTON, D.C. 20510
May 21, 2007

The Honorable Mike Johanns
Secretary
United States Department of Agriculture
Washington, D.C. 20250

Dear Secretary Johanns:

The Farm Security and Rural Investment Act of 2002, also known as the 2002 Farm Bill, directed the Secretary of Agriculture to “encourage institutions participating in the school lunch program . . . to purchase . . . locally produced foods for school meal programs, to the maximum extent practicable and appropriate” (Section 4303). We write today to encourage the Department to give further, prompt attention to this directive.

We are deeply concerned that, contrary to the statutory requirements laid out in legislation and contrary to your own statements of support for farm to school programs before the Senate Agriculture Appropriations Subcommittee, USDA’s Food and Nutrition Service (FNS) has instead been discouraging efforts by schools and other institutions to develop these important programs.

A USDA FNS memo dated January 23, 2007 (attached) states that regulations codified at 7 CFR 3016.60(c) “clearly prohibit” local food preferences by schools. However, the language at 7 CFR 3016.60(c) specifically states that a prohibition on local food purchasing preferences does *not* apply “as provided for in [7 CFR] §3016.36(c)(2).” Section 3016.36(c)(2), in turn, states that the prohibition on local procurement preferences does not apply “in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.” Since the 2002 Farm Bill Section 4303 uses the phrase “shall encourage,” the exception articulated in 7 CFR §3016.36(c)(2) is clearly satisfied.

Unfortunately, it appears that FNS continues to marginalize relevant provisions of the 2002 Farm Bill. By referring only to its own regulations, without making reference to the underlying statute, USDA has given guidance that is inconsistent with the clear language of the governing statute. Moreover, USDA’s interpretation refers to regulations that predate the statutory language noted in the 2002 Farm Bill. Taken together, these actions do a significant disservice to school districts and local governments that are trying to support farmers in their region and improve the nutritional status of children in their districts.

As you fully appreciate, people in charge of making school lunch purchasing decisions have to operate under limited financial resources and as such already have an

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incentive to make purchases that fit within their cost constraints. Encouraging local sourcing isn't going to change that reality, it simply emphasizes that they should try to make an effort to purchase locally if it's practicable and appropriate.

We anticipate local purchase issues to be an important element of the next farm bill debate. As we prepare for that discussion, we think it's critical to have a definitive interpretation from the department regarding regulations in place today and their practical conformity with underlying law. As such we would welcome, most preferably within the next 30 days, your thoughts on how prevailing regulatory guidance can be brought into compliance with existing statutes in a way that will encourage, where appropriate, local sourcing for school meal programs.

Sincerely,

Herb Kohl

Tom Harkin

Jack Reed

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Donald A. Feigert

Kent Conrad

Debbie Stabenow

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