

**CHILD NUTRITION PROGRAMS**  
**Kentucky State Waiver Request**

**Monitoring and Oversight for Child Nutrition Programs**  
**Date: December 21, 2020**

**1. State agency submitting waiver request and responsible State agency staff contact information:**

Lauren E. Moore, Director, School and Community Nutrition  
Kentucky Department of Education, Division of School and Community Nutrition  
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Frankfort, KY 40601  
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**2. Region:** Southeast

**3. Eligible service providers participating in waiver and affirmation that they are in good standing:**

**Summer Food Service Program:**

Summer Food Service Program (SFSP) sponsors in good standing in the SFSP (not seriously deficient) and National School Lunch Program (NSLP), to be verified with NSLP staff.

**National School Lunch Program:**

Kentucky School Food Authorities (SFAs) who were scheduled for an administrative review will participate in said waiver. All are in good standing.

**4. Description of the challenge the State agency is seeking to solve, the goal of the waiver to improve services under the Program, and the expected outcomes if the waiver is granted. [Section 12(l)(2)(A)(iii) and 12(l)(2)(A)(iv) of the NSLA]:**

**Summer Food Service Program:**

**7 CFR 225.7 (d)(2)(ii)(B) Requirement for Annual Review of Sponsors Whose Reimbursements Count as Half the Aggregate from the Previous Year**

During the pandemic, program operators may be operating different programs, at different times of the year, versus traditional operations. The participation in the SFSP for meals during the school year often differs significantly from what it would be in the traditional non-pandemic program during the summer. There are 181 sponsors participating in the SFSP in fiscal year 2020-2021. The use of the aggregate calculation with the high levels of reimbursement during school year participation

would result in a number of reviews that would be administratively burdensome for the State Agency (SA). If the waiver is not approved, 102 SFSP reviews would be required to meet the aggregate requirement. With waiver approval, this number would be 65 reviews, closer to the typical number of reviews during non-pandemic operation.

With the waiver of the aggregate calculation, the SFSP, in order to ensure compliance with regulation, proposes to review sponsors that have not been reviewed in the previous two years (in order to ensure that sponsors are reviewed at least once every three years), all new sponsors, and sponsors with continual non-compliance issues from prior years as well as sponsors identified from a risk analysis-generated claims verification to have systemic problems with program integrity. Risk analysis would include targeted claims validation for sponsors with high meal claim amounts under SFSP when compared to NSLP for the previous year, or high meal claim amounts when compared with sponsors having similar enrollment and/or participation. The SA will further ensure program integrity by providing webinars, presentations, technical assistance and training as needed, as well as weekly updates to sponsors.

### **National School Lunch Program:**

#### **7 CFR 210.10(h)(2) Requirement to Review Trans-fat**

Normally Kentucky reviews trans-fat as part of the Administrative Review (AR). With COVID-19, many Kentucky sponsors are operating the SFSP and will not receive an Administrative Review this year. To maintain program integrity, Kentucky will conduct Technical Assistance Consultations for all sponsors who were scheduled to receive an AR in SY 2020-2021. Also, since NSLP is currently not the operating program for those SFAs, the Technical Assistance Consultation will focus on providing NSLP guidance on the critical areas of operation such as meal pattern, meal counting and meal claiming for when NSLP operations resume. During the Technical Assistance Consultation, the SA staff will review nutrition fact labels to ensure zero trans-fat compliance. Staff will use varying technologies to interview and provide technical assistance to SFA staff to determine if the SFA is at risk of non-compliance. All Technical Assistance Consultations will be conducted remotely due to state agency travel restrictions.

#### **7 CFR 210.18(c) Administrative Review**

Kentucky has received a five-year waiver to their AR Cycle. The cycle will end in SY 2023-24. Many Kentucky sponsors are operating under SFSP due to COVID-19. For this reason, in SY 20-21, 39 out of the 40 scheduled Administrative Reviews are rescheduled to SY 21-22. If SCN can conduct all scheduled reviews in SY 21-22, compliance with the five-year cycle will be achieved. However, SY 21-22 is the last year of the five-year cycle for several sponsors. In the event of any unforeseen circumstances that would require such sponsors to be rescheduled to SY 22-23 or

beyond, SCN would be out of compliance with ensuring the frequency of reviews for the five-year review period. For this reason, SCN is specifically requesting to extend the frequency (or amount of time) between sponsor Administrative Reviews from the required five years to a maximum of seven. SCN is also requesting an extension to the review cycle. SCN is requesting to extend the current five-year review cycle (SY 19-20 to SY 23-24, currently in year 2) to include a sixth year of SY 24-25.

SCN completed one AR in SY 2020-21 for a program sponsor that opted to remain on the NSLP. The remaining sponsors who were scheduled for AR in SY 2020-2021 have been rescheduled to SY 2021-2022. A total of seventy-nine administrative reviews will be conducted in SY 2021-22. The schedule will include twenty sponsors whose last review will have been four years ago. In addition, the remaining fifty-nine will have been three or less years since their last review. Additionally, one follow-up review and twenty-seven technical assistance visits will be conducted for sponsors whose onsite AR was not conducted in SY 2019-20 due to school closures resulting from COVID-19. A total of forty ARs will be conducted in SY 2022-23. A total of thirty-one ARs will be conducted in SY 2023-24.

#### **7 CFR 245.11 (a)-(b) Notification of Second Review of Applications**

Due to the high number of SFAs in Kentucky operating SFSP and the reduction of ARs being conducted in SY 2020-2021, the SA does not have any sponsors that meet the criteria to be selected for a second review of applications for SY 2020-2021. Those remaining on NSLP operate under the Community Eligibility Provision or are a Residential Child Care Institution without day students. Kentucky uses the criteria of greater than or equal to 3% certification and benefit issuance errors identified on the AR. Due to COVID-19 many districts are operating under the SFSP, therefore Kentucky will not have any sponsors who meet the criteria.

#### **7 CFR 210.8(a)(1) On-site reviews of the National School Lunch Program (NSLP) and 220.11(d)(1) On-site reviews of the National School Breakfast Program (SBP)**

Many Kentucky sponsors continue to operate in a virtual setting due to the Pandemic. Sponsors of the NSLP have operated in a completely virtual setting since the start of the school year or have alternated between virtual and in person instruction on an inconsistent basis and often with short notice. Due to this, sponsors have been unable to access school level sites or have had little time to plan visits to conduct the required on-site monitoring review by February 1. Kentucky requests a waiver for the SFA on-site review requirement for sponsors. Sponsor Onsite Monitoring will occur in SY 2021-2022 provided operations of the NSLP resume. Sponsors operating the SBP will review a minimum of 50 percent of schools under its jurisdiction provided they are reviewing at least one every three years due to the pause in the SBP due to COVID-19.

## **7 CFR 210.9(c)(7) Afterschool Care Reviews**

Kentucky requests a waiver for the SFA on-site review requirement for districts operating the Afterschool Care Program. Due to circumstances, related to COVID-19 the SFA may not be able to meet the on-site monitoring timeline requirements. All Afterschool care reviews will resume in SY 2021-2022 provided operations of NSLP resume and it is safe to conduct reviews.

### **5. Specific Program requirements to be waived (include statutory and regulatory citations). [Section 12(l)(2)(A)(i) of the NSLA]:**

#### **Summer Food Service Program:**

This waiver requested is the requirement to annually review sponsors whose reimbursements count as half the aggregate from the previous year found in 7 CFR 225.7 (d)(2)(ii)(B).

#### **National School Lunch Program:**

This waiver requested is the requirement to review SFA's within a five-year cycle 7 CFR 210.18. The requirement to review trans-fat 7 CFR 210.10(h)(2). The requirement of notification of second review of applications 7 CFR 245.11 (a)-(b). The requirement of on-site monitoring reviews completed by SFA's by February 1 7 CFR 210.8(a)(1). The requirement of afterschool care reviews 7 CFR 210.9(c)(7).

#### **Child and Adult Care Food Program**

Kentucky is not asking for a waiver of CACFP regulations at this time and intend to monitor CACFP operations as required, per regulations, except for any Nationwide waivers Kentucky has elected to utilize.

### **6. Detailed description of alternative procedures and anticipated impact on Program operations, including technology, State systems, and monitoring:**

#### **Summer Food Service Program:**

Conducting targeted claim verification as a result of a risk analysis will not have a significant impact on program operations, technology, state systems or monitoring. This is the only alternative procedure anticipated with the waiver request. Risk analysis would include targeted claims validation for sponsors with high meal claim amounts under SFSP when compared to NSLP for the previous year, or high meal claim amounts when compared with sponsors having similar enrollment and/or participation.

#### **National School Lunch Program:**

The allowance of said waiver request would provide the flexibility to adjust monitoring activities while maintaining the integrity of the program. See additional information provided in #4 above.

**7. Description of any steps the State has taken to address regulatory barriers at the State level. [Section 12(l)(2)(A)(ii) of the NSLA]:**

**Summer Food Service Program:**

There are no anticipated state level regulatory barriers.

**National School Lunch Program:**

There are no anticipated state level regulatory barriers.

**8. Anticipated challenges State or eligible service providers may face with the waiver implementation:**

**Summer Food Service Program:**

No additional challenges are anticipated by the state or with sponsors.

**National School Lunch Program:**

No additional challenges are anticipated at the state level or at the eligible service provider level.

**9. Description of how the waiver will not increase the overall cost of the Program to the Federal Government. If there are anticipated increases, confirm that the costs will be paid from non-Federal funds. [Section 12(l)(1)(A)(iii) of the NSLA]:**

**Summer Food Service Program:**

There is no anticipated increased cost to the Federal Government upon approval of the said waiver request. There is an anticipated reduction in the cost of conducting sponsor reviews by the SA since there will be a smaller number of reviews conducted.

**National School Lunch Program:**

There is no anticipated increased cost to the Federal Government due to approval of waiver.

**10. Anticipated waiver implementation date and time period:**

**Summer Food Service Program:**

Implementation date: January 1, 2021

Time period: January 1, 2021 through December 31, 2021

**National School Lunch Program:**

Implementation Date: July 1, 2020

Waiver Request End Date: June 30, 2024

**11. Proposed monitoring and review procedures:**

**Summer Food Service Program:**

The SA will review sponsors that have not been reviewed in the previous two years (to ensure that sponsors are reviewed at least once every three years), all new sponsors, and sponsors with continual non-compliance issues from prior years as well as sponsors identified from risk analysis-generated claims verification that reveal systemic problems with program integrity.

**National School Lunch Program:**

The SA will follow the review procedures in accordance with 7 CFR 210.18. Training/technical assistance/site visits will be conducted in accordance with USDA regulations. One district will receive an AR in SY2020-21. Procurement Reviews will continue as planned for all districts scheduled. Technical Assistance Meetings will be conducted for reviews postponed to SY 2021-22 due to COVID-19.

**12. Proposed reporting requirements (include type of data and due date(s) to FNS):**

**Summer Food Service Program:**

All FNS required reports will be submitted in a timely manner as governed by USDA requirements. The SA will also provide all additional reporting requirements that might be needed as a result of approval of this waiver request.

Suggested data to report:

- number of sponsor reviews completed for FY 2020-2021
- number of reviews completed as a result of risk-analysis

**National School Lunch Program:**

All FNS required reports will be submitted in a timely manner as governed by USDA requirements. Kentucky SCN will also provide all additional reporting requirements that might be needed as a result of approval of this waiver request.

**13. Link to or a copy of the public notice informing the public about the proposed waiver [Section 12(l)(1)(A)(ii) of the NSLA]:**

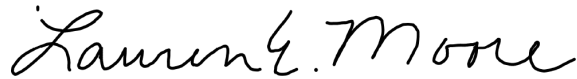
**Summer Food Service Program:**

[https://education.ky.gov/federal/SCN/Pages/Summer-Food-Service-Program-\(SFSP\).aspx](https://education.ky.gov/federal/SCN/Pages/Summer-Food-Service-Program-(SFSP).aspx)

**National School Lunch Program:**

<https://education.ky.gov/federal/SCN/Pages/USDARequiredReports.aspx>

**14. Signature and title of requesting official:**



Title: Lauren E. Moore, Director, School and Community Nutrition

Requesting official's email address for transmission of response:

[Lauren.moore2@education.ky.gov](mailto:Lauren.moore2@education.ky.gov)

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**TO BE COMPLETED BY FNS REGIONAL OFFICE:**

*FNS Regional Offices are requested to ensure the questions have been adequately addressed by the State agency and formulate an opinion and justification for a response to the waiver request based on their knowledge, experience and work with the State.*

**Date request was received at Regional Office:**

- Check this box to confirm that the State agency has provided public notice in accordance with Section 12(l)(1)(A)(ii) of the NSLA**

**• Regional Office Analysis and Recommendations:**