

Kentucky Department of Education
Waiver Request to Allow Flexibility for Breakfast Offer Vs. Serve to Allow for Pre-packaged Items
Date of Submission: October 27, 2020

Child Nutrition Programs are expected to be administered according to all statutory and regulatory requirements. However, Section 12(l) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1760(l), provides authority for USDA to waive requirements for State agencies or eligible service providers under certain circumstances.

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

Kentucky Department of Education
Division of School and Community Nutrition
300 Sower Boulevard,
Frankfort, KY 40601
502-564-5625

Lauren Moore, Director, Division of School and Community Nutrition
Lauren.Moore2@education.ky.gov

Cathy Gallagher, Program Manager, Summer Food Service Program
Cathy.Gallagher@education.ky.gov

2. Region: Southeast

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

Kentucky School Food Authorities (SFAs) in good standing will be able to participate in the waiver. SFAs and sponsoring organizations are in good standing if they have had no serious deficiencies declared in their most recent review cycle.

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]:

School districts in Kentucky have successfully implemented breakfast under the School Breakfast Program. Flexibilities extended to SFAs for the use of pre-bagged or bundled items have been incorporated for a “grab and go” style of breakfast, increasing student participation. With the waiver to allow districts to operate the SFSP during school year 2020-2021, nearly every Kentucky school district is currently utilizing the SFSP for school meals. Every participating district is serving breakfast. In the interest of safe practices and social distancing, and to reduce the administrative burden of school food service, there is a need to simplify the OVS process for breakfast. SP41-2015av2.pdf : “Offer Versus Serve Guidance for the National School Lunch Program and The School Breakfast Program” has

the following allowance: “If a school participates in OVS at breakfast and offers breakfasts where some or all of the components are bundled together, the operator should attempt to the extent possible to offer choices (such as a fruit basket) aside from the pre-bagged items. However, there is no requirement that all possible combinations of choices be made available to the student.”

To return to a strict definition and guidance for OVS in breakfasts represents a regression in practice that may inhibit the provision of breakfast in KY. SFAs are in the practice of providing grab and go breakfasts and students are also most familiar with this practice for school breakfast. The requirement for OVS breakfast that all possible combinations of choices be made available to the student is administratively burdensome and may require less social distancing as students choose or decline breakfast items.

Kentucky is seeking a waiver from the need to operate OVS for SFSP under the requirements that a child may decline any one item as long as they choose three different items with all possible combinations of choices being made available to the student. Kentucky is requesting to instead be able to operate under the NSLP flexibility allowing that when some of the components are bundled together, the operator should attempt to the extent possible to offer choices (such as a fruit basket) aside from the pre-bagged items.

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

Specific program requirements are found in 7 CFR 225.16 (f)(ii): “School Food Authorities that are sponsors may permit a child to refuse one or more items that the child does not intend to eat.” Further, FNS guidance for OVS in the SFSP is as follows:

SFSP OVS meal service parameters:

Breakfast: The following four food items must be offered:

- One serving of fruit/vegetable,
 - One serving of bread/bread alternate,
 - One serving of fluid milk, and
 - One additional serving of fruit/vegetable, bread/bread alternate, or a serving of a meat/meat alternate.
- All the food items offered must be different from each other.
- A child must take at least three of any of the four food items offered and may choose to take all four items.

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

The impact on program operations for the State Agency will be minimal. There will be no anticipated impact on technology for the State Agency or sponsors. The State Agency will continue to provide training and technical assistance to SFSP sponsors and will comply with any additional monitoring that may be required by USDA.

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]:

There are no regulatory barriers at the state level.

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

The Kentucky Department of Education does not anticipate any challenges with implementation of the waiver or waivers as SFA's are familiar with the OVS flexibility option under NSLP/SBP. This waiver will reduce confusion for SFA's serving breakfast under the SFSP.

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]:

An increase in the overall cost of the program to the federal government is not anticipated. This waiver streamlines the breakfast meal service and will not increase the overall cost of the Program.

10. Anticipated waiver implementation date and time period:

The Kentucky Department of Education respectfully requests expedited approval of this waiver request. This waiver will be implemented upon date of USDA approval through June 30, 2021.

11. Proposed monitoring and review procedures:

The Kentucky Department of Education will monitor program operations and sites during the application and administrative review process. All aspects of operation will be reviewed according to regulation and prevailing guidance. Sponsors will submit corrective action plans as necessary to ensure program integrity.

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

Reports will include the number of sponsors, sites and overall impact of the waiver and will be reported within one year of the waiver expiration date or when USDA requires the report.

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]:

[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)

14. Signature and title of requesting official:



Title: Director, Division of School and Community Nutrition

Requesting official's email address for transmission of response:

lauren.moore2@education.ky.gov

cathy.gallagher@education.ky.gov

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:**