



Food and  
Nutrition  
Service

September 4, 2020

Braddock  
Metro Center

Lauren E. Moore, Director,  
School and Community Nutrition  
Kentucky Department of Education  
300 Sower Boulevard  
Frankfort, KY 40601

1320  
Braddock  
Place  
Alexandria  
VA 22314

Dear Ms. Moore:

This letter is in response to the Kentucky Department of Education's (KYDOE), August 26, 2020, request for a waiver under Section 12(l) of the Richard B. Russell National School Lunch Act (NSLA) (42 USC 1760(l)) to permit Fresh Fruit and Vegetable Program (FFVP) operations at sites that are not elementary schools during COVID-19 related school building closures. Under current requirements, Program operators may offer FFVP foods only at elementary schools.

Specifically, the KYDOE requests a statewide waiver of the FFVP requirement at Section 19(a) of the NSLA (42 USC 1769a(a)), which limits availability of FFVP foods to elementary schools. The Food and Nutrition Service (FNS) recognizes that in this continued public health emergency caused by COVID-19, some FFVP elementary school buildings are closed, and children that normally attend those schools are receiving meals at other locations. To maintain children's access to FFVP foods, KYDOE's is requesting that school food authorities (SFAs) be permitted to offer FFVP foods from elementary schools closed due to COVID-19 at sites operating during school building closures associated with COVID-19.

To grant a Section 12(l) waiver, the NSLA requires that the waiver must facilitate the purpose of the program, the public must receive notice and information regarding the proposed waiver, and the waiver will not increase the overall cost of the program to the Federal Government. FNS finds that KYDOE's waiver request satisfies these statutory requirements.

Based on the exceptional circumstances relating to COVID-19, and pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS approves KYDOE's waiver request through June 30, 2021.

Therefore, effective immediately, this waiver allows State agencies to approve SFAs participating in FFVP to serve FFVP foods at sites that are not elementary schools through June 30, 2021. This may be used in combination with the parent pickup waiver approved on August 28, 2020, to allow parent pickup of FFVP foods at sites that are not elementary schools. SFAs may begin distributing FFVP foods when classes officially begin.

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The waiver authority at section 12(l) of the NSLA also requires FNS to periodically review the performance of any State or eligible service provider that was granted a waiver. Therefore, KYDOE must provide to the FNS Southeast Regional Office a written report quantifying the impact of the waiver, as described below.

The report must include the following:

- A description of how the waiver impacted FFVP food service operations, children's access to FFVP foods, and participation in FFVP;
- The number of SFAs that used the waiver;
- The number of approved alternate sites that used the waiver;
- The FFVP funds provided during the SY 2020-2021 COVID-19-related operations, demonstrating that the waiver has not resulted in an increase to the overall cost of the program; and,
- A summary of findings associated with the waiver.

FNS appreciates KYDOE's commitment to work with SFAs to meet the nutritional needs of children during a challenging time. If you have questions, please contact the Southeast Regional Office.

Sincerely,

A handwritten signature in black ink, appearing to read "Angela M. Kline". The signature is fluid and cursive, with the first name being the most prominent.

Angela M. Kline  
Director  
Policy and Program Development Division

Electronic Copy: Kirk Farquharson, Southeast Regional Office