

KENTUCKY DEPARTMENT OF EDUCATION

STAFF NOTE

Action/Discussion Item:

Waiver Request of Section 2 (1-9) of 702 KAR 6:090, for All School Districts

Commissioner's Recommendation:

It is recommended that the Kentucky Board of Education (KBE) approve the request for waiver from Section 2, (1-9) of 702 KAR 6:090 for all school districts for one calendar year.

Rationale:

This request does not include a waiver from the time period during which competitive foods may be offered for sale through a vending machine, school store, canteen, or fundraiser on school property. It allows districts to follow less restrictive federal requirements on fat, sugar and sodium and be able to find products for purchase without experiencing significant difficulties. This waiver has been previously approved by the board.

Applicable Statute or Regulation:

KRS 158.854, 702 KAR 6:090

Action Question:

Should the KBE grant a one-year waiver from 702 KAR 6:090 Section 2, (1-9) for all school districts?

History/Background:

Existing Policy: The United States Department of Agriculture administers and sets standards for school nutrition programs. 702 KAR 6:090 sets Kentucky's minimum nutritional standards for foods and beverages available on public school campuses during the school day. The KBE granted a waiver from state requirements in 2014 due to proposed federal rulemaking and this request asks for another one-year waiver. There is currently an Interim Final Rule but the Final Rule has not been issued.

Summary of Issue: The Kentucky Department of Education (KDE), Division of School and Community Nutrition, is requesting a waiver on behalf of all school districts to waive certain requirements contained in 702 KAR 6:090, Section 2, (1-9). This request does not include a waiver from the time period during which competitive foods may be offered for sale through a vending machine, school store, canteen, or fundraiser on school property.

The state regulation is more restrictive with fat, sugar and sodium than federal requirements. If this waiver is not granted, program sponsors will experience significant difficulty finding products to meet Kentucky's regulatory requirements. Allowing sponsors to follow the federal requirements will enable the use of the Alliance for a Healthier Generation Smart Snacks Product Calculator, which will benefit the sponsor by allowing for more products and more availability.

The specific items for which a waiver is being requested are as follows:

- (1) Calories from fat shall not exceed 30 percent, excluding reduced fat (two percent milk-fat or less), cheese, nuts, seeds, and nut butters.
 - (a) This shall be determined by dividing the calories from total fat by the total calories and multiplying by 100.
 - (b) If the calories from fat are not available, the grams of fat shall be multiplied by 9 to equal calories from fat.
- (2) Calories from saturated fat shall not exceed 10 percent.
 - (a) This shall be determined by dividing the calories from saturated fat by the total calories and multiplying by 100.
 - (b) If calories from saturated fat are not available, the grams of saturated fat shall be multiplied by 9 to equal calories from saturated fat.
- (3) Calories from sugar shall not exceed 32 percent by weight.
 - (a) This shall be determined by dividing the grams of sugar by the gram weight of the product and multiplying by 100. This shall include both naturally-occurring and added sugars.
 - (b) The grams of sugar shall not exceed 14 grams.
- (c) The limit established in this subsection shall not apply to fresh, frozen, canned or dried fruits and vegetables.
- (4)(a) Chips, cereals, crackers, baked goods, and other snack items shall not contain more than 300 milligrams of sodium per serving.
- (b) Pastas, meats, and soups shall not contain more than 450 milligrams of sodium per serving.
- (c) Pizza, sandwiches, and main dishes shall not contain more than 600 milligrams of sodium per serving.
- (5) The portion or pack size for chips, crackers, popcorn, cereal, trail mix, nuts, seeds, or jerky shall not exceed 2 ounces.
- (6) The portion or pack size for cookies shall not exceed 1 ounce.
- (7) The portion or pack size for cereal bars, granola bars, pastries, muffins, doughnuts, bagels, or other bakery-type items shall not exceed 2 ounces.
- (8) The portion or pack size for nonfrozen yogurt shall not exceed 8 ounces.
- (9) The portion or pack size for frozen dessert items, including low-fat or fat free ice cream, frozen fruit juice bars, or frozen real fruit items, shall not exceed 4 ounces.

Budget Impact: There is no significant KDE budget impact.

Groups Consulted and Brief Summary of Responses:

School Food Services Directors were consulted and are supportive of this waiver.

Contact Persons:

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Commissioner of Education

Date:

December 2015