



Food and
Nutrition
Service

June 12, 2020

Braddock
Metro
Center

Benjamin Wetherbee
Senior Consultant
Colorado Department of Education
1580 Logan Street
Suite 750
Denver, Colorado 80203

1320
Braddock
Place
Alexandria
VA 22314

Dear Mr. Wetherbee,

This letter is in response to the May 1, 2020, waiver request from the Colorado Department of Education (CDE). During the novel coronavirus (COVID-19) pandemic, CDE requests to allow local educational agencies (LEAs) operating the Community Eligibility Provision (CEP) to:

- Use data from school year (SY) 2018-19 to fulfill annual notification requirements; and
- Allow LEAs in the 4th year of a CEP cycle in SY 2019-20 to use existing identified student percentages (ISPs) to operate CEP for an additional 5th year.

CDE seeks to waive statutory requirements at Sections 11(a)(1)(F)(v)(I) and 11(a)(I)(F)(x)(IV) of the Richard B. Russell National School Lunch Act (NSLA) [42 U.S.C. 1759a] and corresponding regulations at 7 CFR 245.9(f)(4)(viii-ix), (5)(i-iii), (6)(iv), and (7)(i) and (iii) that detail annual notification requirements, and requirements for operating CEP for an additional year. Although the Food and Nutrition Service has already provided extensions of these requirements through the *Nationwide Waiver of Community Eligibility Provision Deadlines in the National School Lunch and School Breakfast Programs*, CDE's waiver would provide additional flexibility for LEAs that are unable to obtain updated school-level data due to school closures during the COVID-19 pandemic.

CDE reports that schools are closed statewide for the remainder of SY 2019-20 due to COVID-19 and that implementation of the waiver will allow them to fulfill State-level notification and publication requirements where LEA-level data is not available. CDE further reports that, due to school closures and furloughs, LEA staff who typically run required data reports are consumed with emergency feeding operations and/or unable to safely enter school buildings or access systems remotely. Rural LEAs in Colorado are struggling with administrative duties for remote emergency feeding that is further compromised by insufficient technology. In Colorado, roughly 13% of rural Colorado districts do not have a web-based Student Information System to easily aggregate and export data.

To alleviate administrative burden and allow LEAs to focus on feeding children and keeping staff safe, CDE requests to waive the requirements at 7 CFR 245.9(f)(4)(viii-ix),

New 4-year cycle and Grace Year; 245.9(f)(5)(i)-(iii), Identification of potential community eligibility schools; 245.9(f)(6)(iv), State agency notification requirements; and, 245.9(f)(7)(i) and (iii), Public notification requirements. The waiver would allow CDE to efficiently use the best-available data to fulfill requirements, while reducing administrative burden for closed LEAs.

Pursuant to section 12(l) of the NSLA, The Food and Nutrition Service (FNS) is providing partial approval for CDE to waive:

- *Identification of potential community eligibility schools (7 CFR 245.9(f)(5))*: This requires that LEAs submit school-level data regarding CEP eligibility to the State agency no later than April 15 (the Nationwide Waiver extended the deadline to June 15 for SY 2020); and
- *Public notification requirements (7 CFR 245.9(f)(7)(i) and (iii))*: This requires State agencies to publicly post and maintain lists of eligible schools.

Section 12(l) of the NSLA does not allow approval of waivers that may increase costs to the Federal Government. Therefore, FNS is not approving CDE's request to allow LEAs in the 4th year of a CEP cycle to use their existing ISPs to conduct an additional 5th year of CEP in SY 2020-21, since such an allowance could potentially increase costs and could result in participation of ineligible schools. However, the *Nationwide Waiver of the Community Eligibility Provision Deadlines in the National School Lunch and Breakfast Programs* (<https://www.fns.usda.gov/cn/covid-19-cep-deadlines-waiver>), allows LEAs to calculate their ISPs through June 30, 2020, and the CEP election deadline for SY 2020-21 is extended to August 31.

The waiver authority at section 12(l) of the NSLA requires that FNS review the performance of any State agency or eligible service provider that is granted a waiver. Therefore, CDE must provide the Mountain Plains Regional Office a written report by December 31, 2021. The report must provide information quantifying the impact of the waiver for the respective program year, as described below, in order to help inform national policy. The report must include:

- A description of how the waiver impacted meal service operations, children's access to nutritious meals, and participation in the NSLP;
- A description of how the waiver reduced the quantity of paperwork necessary to administer the program; and
- A summary of benefits and challenges associated with the waiver.

FNS appreciates CDE's commitment to work with SFAs to meet the nutritional needs of children during a challenging time. As the situation for schools and school meal operations evolves, FNS stands ready to assist CDE in resolving further challenges it faces in providing school meals. If you have questions, please contact the FNS Mountain Plains Regional Office.

Sincerely,

A handwritten signature in black ink, appearing to read "Angela Kline". The signature is written in a cursive style with a large initial "A" and a stylized "K".

Angela Kline
Director
Policy and Program Development Division