



Food and
Nutrition
Service

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DATE: March 25, 2020

CODE: COVID-19: Child Nutrition Response #6

SUBJECT: Nationwide Waiver of Community Eligibility Provision Deadlines in the National School Lunch and School Breakfast Programs¹

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

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| Issuing Agency/Office: | FNS/Child Nutrition Programs |
| Title of Document: | Nationwide Waiver of Community Eligibility Provision Deadlines in the National School Lunch and School Breakfast Programs |
| Document ID: | |
| Z-RIN: | |
| Date of Issuance: | March 25, 2020 |
| Replaces: | N/A |
| Summary: | (1) FNS waives, for all States and LEAs, statutory and regulatory deadlines relating to Community Eligibility Provision reporting and election during the public health emergency due to COVID-19. (2) This waiver applies to State agencies administering and local organizations operating the: National School Lunch Program and the School Breakfast Program. (3) This document relates to: 42 U.S.C. 1759a(a)(1)(F)(iii)(I); 42 U.S.C. 1759a(a)(1)(F)(v)(I); 42 U.S.C. 1759a(a)(1)(F)(x)(I), (II) and (IV); 7 CFR 245.9(f)(3)(i); 7 CFR 245.9(f)(4)(i) and (iv); 7 CFR 245.9(f)(5) and (6); 245.9(f)(4)(i). |
| Disclaimer: | The contents of this guidance document have the force and effect of law as authorized by the Families First Coronavirus Response Act (the Act) (P.L. 116-127). |

Pursuant to the Families First Coronavirus Response Act (the Act) (P.L. 116-127) and based on the exceptional circumstances of this public health emergency, the Food and Nutrition Service (FNS) is establishing a nationwide waiver to support the Community Eligibility Provision (CEP) while schools are responding to the novel coronavirus (COVID-19). This waiver applies to State and local educational agencies (LEAs)

¹ Pursuant to the Congressional Review Act (5 U.S.C. §801 et seq.), the Office of Information and Regulatory Affairs designated this waiver as *not major*, as defined by 5 U.S.C. § 804(2).

administering the National School Lunch Program (NSLP), School Breakfast Program (SBP), and CEP.

Section 2202(a) of the Act permits the Secretary of Agriculture to establish a waiver for all States for the purposes of providing meals and meal supplements under the National School Lunch Program or School Breakfast Program, with appropriate safety measures with respect to COVID-19. This waiver shall remain in place until August 31, 2020.

Calculating Identified Student Percentages Using Data as of April 1

Under Sections 11(a)(1)(F)(iii)(I) and 11(a)(1)(F)(v)(I) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1759a, LEAs must calculate the CEP identified student percentage (ISP) using data as of April 1. FNS regulations further require at 7 CFR 245.9(f)(3)(i) and 7 CFR 245.9(f)(4)(i) that LEAs intending to elect CEP or conduct a grace year in the following year must submit to the State agency counts of identified and enrolled students as of April 1 of the prior school year (SY). However, FNS recognizes that in this public health emergency, alternative feeding operations are demanding State and local Program operators' resources, and additional time is necessary to meet upcoming CEP deadlines.

Therefore, FNS waives, for all States and LEAs, the above referenced statutory and regulatory requirements. Instead, for LEAs electing CEP or conducting a grace year in SY 2020-21, the ISP may be calculated using data drawn any time between April 1, 2020, and June 30, 2020.

Local Educational Agency Notification Requirements

Under Section 11(a)(1)(F)(x)(IV) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1759a, LEAs must submit to the State agency lists of schools that:

- Have an ISP of at least 40 percent (eligible for CEP);
- Have an ISP greater than or equal to 30 percent but less than 40 percent (near-eligible for CEP); and
- Are currently in the fourth year of CEP participation with an ISP greater than or equal to 30 percent but less than 40 percent (eligible for grace year).

Regulations at 7 CFR 245.9(f)(5) also require that LEAs submit the required lists to the State agency annually by April 15.

Based on this public health emergency, FNS waives, for all States and LEAs, the above referenced statutory and regulatory requirements. Instead, LEAs must submit the required lists to State agencies by June 15, 2020. As always, State agencies that already have access to school-level information may exempt LEAs from this requirement.

State Agency Notification Requirements

Under Section 11(a)(1)(F)(x)(II) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1759a, State agencies must notify each LEA of district-wide eligibility for CEP in the following categories:

- LEAs with a district-wide ISP of at least 40 percent (eligible for CEP);
- LEAs with a district-wide ISP greater than or equal to 30 percent but less than 40 percent (near-eligible for CEP);
- LEAs currently participating in CEP; and
- LEAs in the fourth year of CEP participation with a district-wide ISP greater than or equal to 30 percent but less than 40 percent (eligible for grace year).

Regulations at 7 CFR 245.9(f)(6) also require that State agencies annually notify LEAs of the above-referenced eligibility categories by April 15.

In this public health emergency, FNS waives, for all States and LEAs, the above referenced statutory and regulatory requirements. Instead, State agencies must notify LEAs of CEP eligibility by June 15, 2020.

State Agency Publication Requirement

Section 11(a)(1)(F)(x)(III) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1759a, requires that, no later than May 1, State agencies submit to the Secretary lists of LEAs and schools identified above in State agency and LEA notification requirements. Regulations at 7 CFR 245.9(f)(7) also require that State agencies make the lists of LEAs and schools readily accessible on a State agency website.

In this public health emergency, FNS waives, for all States and LEAs, the above referenced statutory and regulatory requirements. Instead, State agencies must make the above-referenced lists publicly available on State agency websites by June 30, 2020. By June 30, 2020, State agencies must also submit the lists of CEP-eligible LEAs and schools to USDA by emailing a link to the lists posted on the State agency website; the email must be sent to sm.fn.cepnotification@usda.gov.

June 30 Election Deadline

Section 11(a)(1)(F)(x)(I) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1759a, requires that LEAs that intend to elect CEP in the following school year notify the State agency and submit ISP documentation by June 30. This requirement is codified in FNS regulations at 7 CFR 245.9(f)(4)(i).

In this public health emergency, FNS waives, for all States and LEAs, the above referenced statutory and regulatory requirements. Instead, LEAs that intend to elect CEP for SY 2020-2021 must notify the State agency by August 31, 2020.

Summary

In summary, this waiver makes the following adjustments to annual CEP deadlines.

| CEP Requirement | Annual Deadline | Waiver Deadline |
|----------------------------|------------------------|---------------------------------------|
| Data Used to Calculate ISP | April 1 | Anytime between April 1-June 30, 2020 |
| LEA Notification | April 15 | June 15, 2020 |
| State Agency Notification | April 15 | June 15, 2020 |
| State Agency Publication | May 1 | June 30, 2020 |
| Elect CEP for Following SY | June 30 | August 31, 2020 |

Please note, FNS will continue to monitor the needs of State agencies and LEAs during this challenging time and consider additional extensions of the deadlines if necessary.

Consistent with section 2202(a)(2) of the Act, this waiver applies automatically to all States that elect to use it, without further application. State agencies must inform their Regional Office if they elect to be subject to the waiver. State agencies should inform local Program operators of the flexibilities provided by this waiver as quickly as possible, and work in partnership with local operators to provide meals to all participants in a safe and accessible manner.

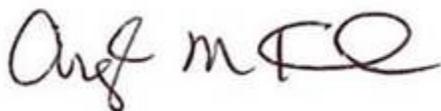
As required by section 2202(d), each State that elects to be subject to this waiver must submit a report to the Secretary not later than 1 year after the date such State received the waiver. The report must include:

- A summary of the use of this waiver by the State agency and local Program operators, and
- A description of whether and how this waiver resulted in improved services to Program participants.

FNS stands ready to provide assistance to areas impacted by COVID-19 and intends to continue supporting access to nutritious meals during this public health emergency.

FNS appreciates the exceptional effort of State agencies and local Program operators working to meet the nutritional needs of participants during a challenging time. State agencies should direct questions to the appropriate FNS Regional Office.

Sincerely,



Angela M. Kline
 Director
 Policy and Program Development Division