



Food and  
Nutrition  
Service

Braddock  
Metro Center

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Braddock  
Place  
Alexandria,  
VA, 22314

July 31, 2020

Mr. Benjamin Wetherbee  
Nutrition Programs Senior Consultant  
Colorado Department of Education School Nutrition Unit  
1580 Logan Street, Suite 760  
Denver, Colorado 80203

Dear Mr. Wetherbee:

This letter is in response to the Colorado Department of Education (CDE) School Nutrition Unit's July 28, 2020, request to waive the requirement that reimbursement for Provision 2 schools must be based on the number of meals served to children eligible for free and reduced price meals during the base year. The request would assist schools that were unable to complete a Provision 2 base year during school year (SY) 2019-2020 due to school closures as a result of the novel coronavirus (COVID-19).

Specifically, CDE requested a statewide waiver of the requirements of 7 C.F.R. 245.9(b)(3)(i) and 245.9(b)(3)(ii) to allow the State to approve schools that were conducting a Provision 2 base year in SY 2019-2020 to use data from months when schools were in full operation when determining reimbursement for non-base years. The Food and Nutrition Service (FNS) recognizes that in the public health emergency caused by COVID-19, schools conducting Provision 2 base years were unable to collect a complete set of base year data and would need to conduct an additional base year to participate in Provision 2 if a waiver is not granted.

To grant a Section 12(l) waiver, the Richard B. Russell National School Lunch Act (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 CDE'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 (42 U.S.C. 1760(l)), FNS approves CDE's waiver request through August 31, 2020. Therefore, effective immediately, through August 31, 2020, CDE may approve schools that were conducting a Provision 2 base year in SY 2019-2020 to develop their claiming percentage using data collected when school was in full operation.

Provision 2 schools are permitted to calculate an annual claiming percentage using the days the school was in full operation (prior to school closures due to COVID-19) and apply the annual percentage to all months during the non-base years. Provision 2 schools opting to use a monthly claiming percentage may calculate their percentage by using monthly claiming percentages for the months schools were open and in normal operation.

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For the months schools were closed due to the COVID-19 pandemic, these schools would use an annual claiming percentage based on the days they were in operation in SY 2019-2020.

The waiver authority at section 12(1) of the NSLA also requires FNS to periodically review the performance of any State or eligible service provider that was granted a waiver. Therefore, CDE must annually provide to the FNS Mountain Plains 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 children's access school meals;
- The number of SFAs that used the waiver; and
- A summary of findings associated with the waiver.

FNS appreciates CDE commitment to work with SFAs to meet the nutritional needs of children during a challenging time. If you have questions, please contact the Mountain Plains Regional Office.

Sincerely,

A handwritten signature in dark ink, appearing to read "Angela Kline". The signature is fluid and cursive, with the first name "Angela" written in a larger, more prominent script than the last name "Kline".

Angela Kline  
Director  
Policy and Program Development Division

cc: Diane Fulton, Mountain Plains Regional Office Branch Chief