



Food and
Nutrition
Service

May 13, 2022

Braddock
Metro Center

Damasita Sanchez
Manager, School Nutrition Programs
Oregon Department of Education
225 Capitol Street Northeast
Salem, Oregon 97310

1320
Braddock
Place
Alexandria
VA 22314

Dear Damasita Sanchez:

This letter is in response to the Oregon Department of Education's (ODE) May 5, 2022, revised request to waive the requirement to meet the annual Community Eligibility Provision (CEP) election deadline for school year (SY) 2022-2023. Local educational agencies (LEAs) continue to respond to and recover from the COVID-19 pandemic, including managing challenges related to supply chain and staffing issues, which are demanding significant LEA resources. In order to facilitate the adoption of CEP for SY 2022-2023, the Food and Nutrition Service (FNS) acknowledges additional time is necessary to gather accurate identified student data.

FNS did not receive authorization to extend Child Nutrition Response #82, the *Nationwide Waiver of Community Eligibility Provision Deadlines in the National School Lunch and School Breakfast Programs*, provided under the Families First Coronavirus Response Act (the FFCRA) (P.L. 116-127), as extended by the Continuing Appropriations Act, 2021 and Other Extensions Act (P.L. 116-159). Therefore, State agencies must request a statewide waiver under Section 12(l) of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1760(l), to extend the CEP deadlines previously provided under the nationwide waiver authority.

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

Specifically, ODE requested a statewide waiver of the following CEP deadline:

June 30 Election Deadline

Under Section 11(a)(1)(F)(x)(I) of the NSLA, 42 U.S.C. 1759a, LEAs that intend to elect CEP in the following school year must notify the State agency and submit ISP documentation not later than June 30 of the current school year. This requirement is codified in FNS regulations at 7 CFR 245.9(f)(4)(i).

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives, for ODE, the statutory requirement that LEAs intending to elect CEP for SY 2022-2023 must

submit ISP documentation by “Not later than June 30 of the current school year,” and the corresponding regulatory requirement that such documentation must be submitted “no later than June 30.” Instead, LEAs that intend to elect CEP for SY 2022-2023 must submit ISP documentation to the State agency by September 30, 2022.

Summary

This waiver allows ODE and LEAs under its jurisdiction to make the following adjustment to the annual CEP election deadline for SY 2022-2023.

CEP Requirement	Annual Deadline	Waiver Deadline
Elect CEP for SY 2022-2023	June 30	September 30, 2022

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS approves ODE’s waiver request through September 30, 2022. The State agency should inform LEAs implementing CEP of the flexibility provided by this waiver as quickly as possible.

The waiver authority at Section 12(l) of the NSLA requires FNS to periodically review the performance of any State or eligible service provider that was granted a waiver. Compliance with the updated date is necessary to justify a continuation of the waiver. Therefore, ODE must provide to the FNS Western Regional Office a written report, not later than 1 year after receiving the waiver, quantifying the impact of the waiver, as described below.

The report must include the following:

- A description of how the waiver impacted NSLP and SBP operations in CEP participating schools;
- A description of whether the waiver resulted in improved services to children; and
- The number of LEAs that used the waiver.

FNS appreciates ODE’s exceptional effort to meet the nutritional needs of children during this challenging time. If you have questions, please contact the FNS Western Regional Office.

Sincerely,

J. Kevin Maskornick
Acting Director
Policy and Program Development Division