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DEPARTMENT OF EDUCATION



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MEMORANDUM

**TO: Dr. Lilly Bouie, Special Nutrition Programs
Director USDA Southeast Regional Office**

**FROM: Angelice Lowe, Director
Julie Autrey, Education Administrator
Child Nutrition Programs**

DATE: February 16, 2023

RE: Unanticipated School Closure School Year (SY) 2022-2023 Waiver Request

CHILD NUTRITION PROGRAM STATE WAIVER REQUEST TEMPLATE

Child Nutrition Programs (CNPs) are expected to be administered according to all statutory and regulatory requirements; waivers to the requirements are exceptions. However, Section 12(1) of the **Richard B. Russell National School Lunch Act (NSLA)**, 42 U.S.C. 1760(1), provides authority for U.S. Department of Agriculture (USDA) to waive requirements for state agencies or eligible service providers under certain circumstances. When requesting the waiver of statutory or regulatory requirements for the CNPs, including the Child and Adult Care Food Program (CACFP), the Summer Food Service Program (SFSP), the National School Lunch Program (NSLP), the Fresh Fruit and Vegetable Program (FFVP), the Special Milk Program (SMP), and the School Breakfast Program (SBP), state agencies (SAs) and eligible service providers should use this template. The SAs and eligible service providers should consult with their Food and Nutrition Service (FNS) Regional Offices when developing waiver requests to ensure that a well-reasoned, thorough request is submitted. State agencies and eligible service providers are encouraged to submit complete waiver requests at least 60 calendar days prior to the anticipated implementation date.

Requests submitted less than 60 calendar days prior to the anticipated implementation should be accompanied by an explanation of extenuating circumstances.

For more information on requests for waiving program requirements, refer to SP 15-2018, CACFP 12-2018, SFSP 05-2018, *Child Nutrition Program Waiver Request Guidance and Protocol-Revised*, May 24, 2018.

- 1. State agency submitting waiver request and responsible state agency staff contact information:** Angelice Lowe, Director, alowe@alsde.edu, and Julie Autrey, Education Administrator, Child Nutrition Programs julie.autrey@alsde.edu

2. **Region:** Southeast Region
3. **Eligible service provider participating in waiver and affirmation that they are in good standing:** Alabama State Department of Education (ALSDE) approved School Food Authorities (SFA) in good standing who are seeking to serve meals under the waiver.
4. **Description of the challenge the state agency is seeking to solve, the goal of the waiver to improve services under the program, and the expected outcomes if the waiver is granted. [Section 12(I)(2)(A)(iii) and 12(I)(2)(A)(iv) of the NSLA]:**

While schools are closed during unanticipated school closures due to the severe weather that may occur between now and June 30, 2023, children may need access to meals in a non-congregate setting. These waivers are to be used when schools are learning virtually during the unanticipated school closures. This waiver will allow, SFAs with approval of the SA, to implement non-congregate feeding models and parent pick-up models in the NSLP/SBP when the school building is unexpectedly closed. Sites utilizing this waiver must demonstrate to the satisfaction of the SA that they can serve safe meals despite the challenges created by severe weather.

This waiver will apply to either SFSP or SSO but would not necessarily apply to both at the same time. If a SFA reports a closure due to a situation classified as an unanticipated school closure and the school district is not requiring virtual education, the state agency may provide an unanticipated school closure waiver for that school(s) under the SFSP or SSO using the authority cited below.

5. **Specific program requirements to be waived (include statutory and regulatory citations). [Section 12(1)(2)(A)(i) of the NSLA]:**

SSO/SFSP Unanticipated School Closures

- Non-Congregate Meal Service during Unanticipated School Closures [42 U.S.C. 1753(b)(1)(A), 42 U.S.C. 1761(a)(1)(D), and 7 CFR 225.6(i)(15)]
- Parent and Guardian Meal Pick-Up: Parent and Guardian Meal Pick-Up during Unanticipated School Closures [42 U.S.C. 1761(f)(3) and 7 CFR 210.10(a), 220.2 (Breakfast), 220.8(a), 225.2 (Meals), and 225.9(d)(7)]
- Meal Service Times for Unanticipated School Closures [7 CFR 225.16(c)(1), (2), and (3)]
- Service of Meals at School Sites for Unanticipated School Closures [42 U.S.C. 1761(c)(1) and 7 CFR 225.6(h)(1)(iv)]

National School Lunch Program and School Breakfast Program

- (Non-Congregate Meal Service [NSLA, 42 U.S.C. 1753(b)(1)(A) and Child Nutrition Act, 42 U.S.C. 1773(b)(1)(A)]
- Meal Service Times [7 CFR 210.10(l) and 220.8(l)]
- Parent/Guardian Meal Pickup [7 CFR 210.10(a), 220.2 (Breakfast), and 220.8(a)]
- Offer Versus Serve [42 U.S.C. 1758(a)(3) and 7 CFR 210.10(e)]

- 6. Detailed description of alternative procedures and anticipated impact on program operations, including technology, state systems, and monitoring:**
The SA will validate that the SFA approved for this waiver will utilize appropriate collection procedures to ensure program integrity so that only enrolled students receive meals and that no duplicate meals are claimed.
- 7. Description of any steps the State has taken to address regulatory barriers at the State level. [Section 12(I)(2)(A)(ii) of the NSLA]:**
SA will take steps to address regulatory barriers by approving waiver requests on behalf of all SFA's within the state of Alabama operating in good standing.
- 8. Anticipated challenges state or eligible service providers may face with the waiver implementation:**
No challenges are anticipated for SFA's to implement this waiver.
- 9. Description of how the waiver will not increase the overall cost of the program to the Federal Government. If there are anticipated increases, confirm that the costs will be paid from non-Federal funds. [Section 12(I)(1)(A)(iii) of the NSLA]:**
Implementation of this waiver will not increase costs for the Federal Government. Students who currently participate in the program will be participating during the unanticipated school closure.
- 10. Anticipated waiver implementation date and time period:**
SSO and SFSP Unanticipated School Closures effective upon approval through April 30, 2023.

National School Lunch Program and School Breakfast Program effective upon approval through June 30, 2023.
- 11. Proposed monitoring and review procedures:**
The SA will provide training, technical assistance and complete compliance reviews as required by USDA requirements.
- 12. Proposed reporting requirements to FNS:**
The SA will retain all documentation related to the waiver and monitoring procedures and will provide it to USDA as required and upon request.
- 13. Link to or a copy of the public notice informing the public about the proposed waiver (Section 12(I)(1)(A)(ii) of the NSLA):**
We are waiting for a link, once the link is available, we will send USDA SERO a copy.

Dr. Lilly Bouie
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14. Signature and title of requesting official:



Angelica Lowe,
Child Nutrition Programs Director
Alowe@alsde.edu

TO BE COMPLETED BY FNS REGIONAL OFFICE:

FNS Regional Offices are requested to ensure the questions have been adequately addressed by the State agency and formulate an opinion and justification for a response to the waiver request based on their knowledge, experience, and work with the State.

Date request was received at Regional Office:

- Check this box to confirm that the State agency has provided public notice in accordance with Section 12(I)(A)(ii) of the NSLA

- **Regional Office Analysis and Recommendations:**

AL/JA/AF



Food and
Nutrition
Service

February 16, 2023

Braddock
Metro Center

Angelice Lowe
Director, Child Nutrition Programs
Alabama State Department of Education
50 North Ripley Street
Montgomery, AL 36130

1320
Braddock
Place
Alexandria
VA 22314

Dear Angelice Lowe:

This letter is in response to Alabama State Department of Education's (ALSDE) February 16, 2023, request to provide non-congregate meal service in the National School Lunch Program (NSLP), School Breakfast Program (SBP), Summer Food Service Program (SFSP) and the NSLP Seamless Summer Option (SSO) when congregate meal service operations are limited due to natural disasters, unscheduled major building repairs, court orders relating to school safety or other issues, labor-management disputes, or, when approved by the State agency, for a similar unanticipated cause. In order to support continued access to nutritious meals, the Food and Nutrition Service (FNS) recognizes that certain operational flexibilities may be necessary.

FNS has authority to issue statewide waivers under Section 12(l) of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1760(l). To grant a Section 12(l) waiver, the 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 ALSDE's waiver request satisfies these statutory requirements.

Specifically, ALSDE requested a statewide waiver of the requirements explained below.

Unanticipated School Closures (Schools are closed with no virtual learning)

The waivers in this section apply to the SFSP and the SSO during unanticipated school closures. This applies when school buildings are closed and virtual classes are not offered. These waivers are effective through April 30, 2023.

*Non-Congregate Meal Service during Unanticipated School Closures
(SFSP/SSO)*

Under NSLA, 42 U.S.C. 1753(b)(1)(A), 42 U.S.C. 1761(a)(1)(D), and program regulations at 7 CFR 225.6(i)(15), SFSP meals must be served in a congregate setting and must be consumed by participants on site.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, during an unanticipated school closure, FNS waives the aforementioned requirements to serve meals through the SFSP in a congregate setting. Any other requirements

referenced in these provisions remain in effect. FNS also extends the non-congregate feeding flexibility to SSO for the duration of this waiver.

Parent and Guardian Meal Pick-Up during Unanticipated School Closures (SFSP/SSO)

Under the NSLA, 42 U.S.C. 1761(f)(3), and program regulations at 7 CFR 210.10(a), 7 CFR 220.2 (Breakfast), 7 CFR 220.8(a), 7 CFR 225.2 (Meals), and 7 CFR 225.9(d)(7), meals must be served to eligible children.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives the aforementioned requirements that meals may only be served directly to children. Any other requirements referenced in these provisions remain in effect. FNS also extends the parent and guardian pick up flexibility to SSO for the duration of this waiver.

Meal Service Times for Unanticipated School Closures (SFSP/SSO)

Under program regulations at 7 CFR 225.16(c)(1), (2), and (3), meals served in the SFSP must follow meal service time requirements.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives the aforementioned requirements that set meal time parameters for SFSP sites. Any other requirements referenced in these provisions remain in effect. FNS also extends the meal service times flexibility to SSO for the duration of this waiver.

Service of Meals at School Sites during Unanticipated School Closures (SFSP/SSO)

Under the NSLA, 42 U.S.C. 1761(c)(1) and program regulations at 7 CFR 225.6(h)(1)(iv), State agencies may approve meal service operations only at non-school sites during unanticipated school closures.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, during an unanticipated school closure, FNS waives the aforementioned requirements that limit the operation of SFSP to non-school sites. FNS also extends the service of meals at school sites during unanticipated school closures flexibility to SSO for the duration of this waiver.

National School Lunch and School Breakfast Programs (School buildings are closed with virtual learning)

The waivers in this section are intended to provide needed flexibility to support school food authorities (SFAs) in continuing to offer nutritious meals during unanticipated school building closures when virtual classes are offered. These waivers are effective through June 30, 2023.

Non-Congregate Meal Service (NSLP and SBP)

Under the NSLA, 42 U.S.C. 1753(b)(1)(A), and the Child Nutrition Act, 42 U.S.C. 1773(b)(1)(A), NSLP and SBP meals must be served in a congregate setting and must be consumed by participants on site.

Pursuant to the waiver authority granted at Section 12(1) of the NSLA, FNS waives the aforementioned requirements to serve meals through the NSLP and SBP in a congregate setting. Any other requirements referenced in these provisions remain in effect.

Meal Service Times (NSLP and SBP)

Under program regulations at 7 CFR 210.10(l) and 7 CFR 220.8(l), meals served in the NSLP and SBP must follow meal service time requirements.

Pursuant to the waiver authority granted at Section 12(1) of the NSLA, FNS waives the aforementioned requirements that set meal time parameters for school lunch and breakfast.

Parent and Guardian Meal Pick Up (NSLP and SBP)

Under program regulations at 7 CFR 210.10(a), 7 CFR 220.2 (Breakfast), and 7 CFR 220.8(a), meals must be served to eligible children.

Pursuant to the waiver authority granted at Section 12(1) of the NSLA, FNS waives the requirements that meals may only be served directly to children. Any other requirements referenced in these provisions remain in effect. State agencies opting to use this flexibility must have a plan for ensuring that local operators are able to maintain accountability and program integrity. This includes putting in place processes to ensure that meals are distributed only to parents or guardians of eligible children, and that duplicate meals are not distributed to any child.

Offer Versus Serve (NSLP)

Under the NSLA, 42 U.S.C. 1758(a)(3), and program regulations at 7 CFR 210.10(e), Program operators of senior high schools (as defined by the State education agency) must participate in offer versus serve at lunch.

Pursuant to the waiver authority granted at Section 12(1) of the NSLA, FNS waives the requirements to serve school lunches to senior high school students using offer versus serve. FNS also extends the offer versus serve flexibility to SSO for the duration of this waiver when there is an unanticipated school closure during the school year.

As a reminder, schools that are not participating in a Special Provision Option, such as the Community Eligibility Provision or Provision 2, must continue to count and claim meals by type (free, reduced price, or paid) when operating the NSLP or SBP under this

approval. Schools participating in a Special Provision Option must continue to claim meals according to the requirements of that Provision when operating NSLP or SBP under this approval.

FNS is granting these waivers to allow ALSDE and local Program operators to more quickly respond to those occasions when congregate meal service is limited or negatively impacted by unanticipated school building closures caused by natural disasters, unscheduled major building repairs, court orders relating to school safety or other issues, labor-management disputes, or, when approved by the State agency, for a similar unanticipated cause. However, ALSDE **may not** approve a waiver for a local Program operator for more than 10 consecutive operating days without approval from FNS. In situations that may warrant longer approval periods, the FNS Southeast Regional Office (SERO) will work closely with the ALSDE to determine if an extension is needed.

The waiver authority at Section 12(l) of the NSLA requires FNS to review the performance of any State or eligible service provider that was granted a waiver. Therefore, by September 30, 2023, ALSDE must provide to the FNS SERO a report quantifying the impact of the waiver, as described below. The report must include the following:

- A description of how the waiver impacted meal service operations at participating sites;
- A description of whether the waiver resulted in improved services to children;
- 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.

In addition, FNS may request information on the use of the waiver on a more frequent basis.

If you have questions, please contact the FNS SERO.

Sincerely,

J
MASKORNICK

Digitally signed by J
MASKORNICK
Date: 2023.02.16
21:39:52 -05'00'

J. Kevin Maskornick
Director
Community Meals Policy Division