



Food and
Nutrition
Service

February 24, 2023

Braddock
Metro Center

Bill Byford
State Nutrition Director
Tennessee Department of Education
710 James Robertson Pkwy
Andrew Johnson Tower, 10th Floor
Nashville, TN 37243

1320
Braddock
Place
Alexandria
VA 22314

Dear Bill Byford:

This letter is in response to Tennessee Department of Education's (TDOE) February 8, 2023, request to provide non-congregate meal service in the National School Lunch Program (NSLP), School Breakfast Program (SBP), 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 TDOE's waiver request satisfies these statutory requirements.

Specifically, TDOE 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 requirement 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, FNS waives the aforementioned requirement that limits the operation of SFSP during an unanticipated school closure 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(l) 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(l) 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(l) of the NSLA, FNS waives the requirement 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(l) of the NSLA, FNS waives the requirement 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 TDOE 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, TDOE **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 TDOE 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, TDOE 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. Kevin Maskornick
Director
Community Meals Policy Division