



Food and
Nutrition
Service

December 27, 2022

Braddock
Metro Center

Bill Byford
Interim State Director, School Nutrition
Tennessee Department of Education
710 James Robertson Pkwy
Nashville, TN 37243

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Dear Bill Byford:

This letter is in response to the Tennessee Department of Education's (TDOE) October 20, 2022, request to waive the requirement that, during unanticipated school closures, National School Lunch Program Seamless Summer Option (SSO) meals must be served at non-school sites. Specifically, TDOE requested a statewide waiver of Section 13(c)(1) of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1761(c)(1)) codified at 7 CFR 225.6(h)(1)(iv), which would allow the State to approve the operation of Summer Food Service Program (SFSP) meal service at school sites during unanticipated school closures. Pursuant to the waiver authority granted at section 12(l) of the NSLA, FNS approves TDOE's waiver request through April 30, 2023. This waiver applies to the SFSP and FNS is extending this flexibility to the SSO.

Section 13(c)(1) of the NSLA and program regulation at 7 CFR 225.6(h)(1)(iv) require State agencies to only approve meal service operations at non-school sites during unanticipated school closures. Section 13(c)(1) also provides that unanticipated school closures only occur when children are not in school. If a school offers virtual learning or a mix of in-person classes and virtual learning, the school is considered open and any meals provided to children must be offered through the National School Lunch Program (NSLP) and the School Breakfast Program (SBP). TDOE requested a waiver effective October 17, 2022 through December 2027. This waiver would allow TDOE to approve sponsors to operate SSO during unanticipated school closures at a school site. In its request, TDOE described that without a waiver approval, program participants are at risk for food insecurity during unanticipated school closures as there will be fewer sites available for meal service.

FNS approves TDOE's request to waive the requirement that State agencies may only approve non-school sites to operate SSO during unanticipated school closures. TDOE may approve school sites in good standing to serve meals during unanticipated school closures, unless doing so would present a safety concern. While TDOE requested this waiver through December 2027, FNS is limiting the duration of the waiver to assess its impact and the State's ability to report the required data elements outlined below. This waiver is effective immediately and valid through April 30, 2023. This waiver is applicable to Section 13(c)(1) of the NSLA and regulation at 7 CFR 225.6(h)(1)(iv), which require State agencies to only approve a site proposing to operate during an unanticipated school closure if it is a non-school site.

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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 Southeast 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 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
- The number of program operators that used the waiver.

FNS appreciates TDOE's commitment to work with sponsors to find efficiencies that balance the needs of local communities with cost-effective program management and integrity. If you have questions, please contact the Southeast Regional Office.

Sincerely,

For J. Kevin Maskornick
Director
Community Meals Policy Division

Electronic Copy: Rosie Daugherty, SERO