

# CLARIFICATION OF FEDERAL POLICY

In Texas, organizations contracting directly with the Texas Department of Agriculture (TDA) to operate nutrition programs federally funded through the United States Department of Agriculture (USDA) are called Contracting Entities, or CEs. The Summer Food Service Program (SFSP) is a federally funded nutrition program and, as such, sponsors are considered CEs.

Each year the USDA publishes the SFSP *Administrative Guidance for Sponsors* (AGS) which provides information and program guidance for all CEs that participate or plan to participate in SFSP. In order to facilitate program participation and compliance, TDA occasionally issues clarifications of federal policy found in the AGS.

## Demonstration Project for Non-Congregate Feeding for Outdoor Summer Feeding Sites Experiencing Excessive Heat

On February 15, 2013, the USDA released policy memorandum SP 24-2013 and SFSP 10-2013, *Demonstration Project for Non-Congregate Feeding for Outdoor Summer Sites Experiencing Excessive Heat*. On May 15, 2013, the USDA released policy memorandum SP 24-2013 and SFSP 10-2013 - REVISED, *Demonstration Project for Non-Congregate Feeding for Outdoor Summer Sites Experiencing Excessive Heat Revised Q & As*. For summer 2013, under this demonstration project, SFSP CEs operating approved outdoor feeding sites without temperature-controlled alternative sites may operate as non-congregate sites on days when the area is experiencing excessive heat.

Under this demonstration project, non-congregate meal service shall be permitted only on days when the National Weather Service (NWS) has issued a Heat Advisory, an Excessive Heat Warning, or an Excessive Heat Watch for the area in which an approved outdoor feeding site is located. Outdoor sites with available temperature-controlled alternative sites will not be included in this demonstration project, and should serve meals at the temperature-controlled alternative site when the area is experiencing excessive heat.

On days non-congregate feeding is utilized, CEs must continue to maintain compliance with all other program regulations. CEs must ensure food safety during meal preparation and delivery of meals consumed off site. Because meals will be consumed off site and possibly at a later time during that day, CEs must carefully consider all food safety issues and risks. Therefore, CEs participating in the demonstration project should prepare a food safety plan or alternate menu using non-perishable foods specifically for days when non-congregate meal service takes place, to ensure the meal service will be conducted safely.

On days non-congregate feeding is utilized, CEs must keep accurate records of meals served for each site and shall use the *Non-Congregate Feeding for Outdoor Summer Sites Report* form. Only one meal may be provided to each child present at the meal site during each approved meal service. CEs will not be reimbursed for second meals. Meals may not be provided to adults or other children to take to children not present at the site. All meal counting, claiming, and TDA and CE monitoring and oversight requirements will continue to apply. Note, CEs may not shorten or lengthen meal times on days when non-congregate feeding is utilized. CEs participating in this demonstration project must also maintain documentation of the official Heat

Advisory, Excessive Heat Warning, or Excessive Heat Watch issued by the NWS for the area in which the site is located for all days non-congregate feeding is utilized. CEs must print or obtain an electronic copy of the NWS notice on the public web found at <http://www.weather.gov/> for the day the Heat Advisory, Excessive Heat Warning or Excessive Heat Watch is issued.

Documentation of high temperatures or of a certain heat index does not replace the documentation of an official heat advisory, excessive heat warning or excessive heat watch issued from the NWS.

Effective May 2, 2013, all CEs already approved to operate mobile or outdoor feeding sites for summer 2013 have had their intent to participate in this demonstration project automatically declared by TDA. If a CE with an approved mobile or outdoor site does not wish to participate in this demonstration project, the CE may update both their CE and site applications in the Texas Unified Nutrition Programs System (TX-UNPS) to reflect their wish to not participate, or the CE can choose not to offer a non-congregate meal service. Declaration of intent to participate in this demonstration project gives a CE the option to offer non-congregate meal service on days which meet the above-stated NWS criteria for excessive heat, however it in no way obligates a CE to offer a non-congregate meal service.

CEs submitting applications for new sites on or after May 2, 2013 must indicate their intent to include the new site in the demonstration project as part of the application process in TX-UNPS, on both the CE application and the site application of the packet.

## Exceptional Circumstances

The USDA also may extend this demonstration project to other situations where exceptional circumstances make congregate feeding impractical at an approved meal site. Requests based on exceptional circumstances other than excessive heat will be considered on a case-by-case basis and must be approved in advance by USDA via TDA. CEs wishing to participate in this demonstration project due to exceptional circumstances other than excessive heat should submit their request, in writing, to the TDA Coordinator for Food and Nutrition Special Projects.

- Email to:  
[Crystal.Lloyd@TexasAgriculture.gov](mailto:Crystal.Lloyd@TexasAgriculture.gov)  
Subject: Non-Congregate Feeding (CE name)
- Fax to:  
(888) 268-6593  
ATTN: Coordinator for Food and Nutrition Special Projects – Crystal Lloyd  
Subject: Non-Congregate Feeding (CE name)
- Mail to:  
Texas Department of Agriculture  
Food and Nutrition  
ATTN: Coordinator for Food and Nutrition Special Projects – Crystal Lloyd  
P.O. Box 12847  
Austin, Texas 78711
- Overnight to:  
Texas Department of Agriculture  
Food and Nutrition  
ATTN: Coordinator for Food and Nutrition Special Projects – Crystal Lloyd  
1700 North Congress Avenue  
Austin, Texas 78701

Please note, this approval process is for exceptional circumstances other than excessive heat. TDA may deny participation in this demonstration project by an otherwise approved site based on concerns related to health, safety, and integrity related to non-congregate feeding.

CE requests based on exceptional circumstances other than excessive heat should, at a minimum, provide the following information:

- A list of total number of overall sites sponsored.
- A list of specific sites (including the names and addresses) the CE would like included in the demonstration project due to exceptional circumstances other than excessive heat.
- A detailed description of the exceptional circumstance that has created the need for non-congregate feeding.
- Justification of the need for the exemption from the congregate feeding requirement.
- A detailed description of how operations will change on days when non-congregate feeding is used, including the meal delivery plan for each site included in the request.
- The exemption periods (provide specific dates) for which non-congregate feeding is being requested at each site. Include a detailed justification for each exemption period longer than one day in duration. Exemption periods longer than one day in duration will be considered, but must be clearly justified.
- A detailed description of how, for each site requested, the utilization of non-congregate feeding and the proposed changes in operations will resolve the exceptional circumstances which created the need for non-congregate feeding.
- A detailed description of the documentation the CE intends to use to demonstrate that the exceptional circumstances existed on days non-congregate feeding was utilized, including where that documentation will be kept for record-keeping purposes.
- A detailed description of how the CE will ensure only one meal is received by each eligible child.

For CEs requesting participation in the demonstration project due to exceptional circumstances related to safety concerns, the USDA has requested evidence of consultation with law enforcement and documentation of their recommendation for the safe provision of meals. The consultation with the law enforcement agency should include discussion addressing whether or not they can provide security at the meal sites to allow for the safe provision of meals to children in a congregate fashion, or whether the law enforcement agency feels that congregate feeding is not safe even with a security presence. In order for TDA to be able to consider exceptional requests and to ensure the consultation with local law enforcement takes place, in addition to the information listed above, CE requests must also include:

- Documentation from a state, county, or local law enforcement agency having jurisdiction over the address at which the requested site is located, for each site a CE is requesting to include in this demonstration project for non-congregate feeding. Documentation from the responsible local law enforcement agency must:
  1. List the name of the CE making the request.
  2. List the name of the state, county, or local law enforcement agency.
  3. List all requested sites, including the names and physical addresses, which are in that law enforcement agency's jurisdiction.
  4. Include an attestation from a duly authorized representative of a state, county, or local law enforcement agency that the sites listed meeting ALL of the following criteria:

- a. The law enforcement agency deems the listed sites UNSAFE for the congregate feeding of children.
  - b. The law enforcement agency believes it is possible to safely distribute meals outdoors to children in a non-congregate fashion.
  - c. A list of sites, if any, at which the law enforcement agency deems UNSAFE for the congregate feeding of children AND at which the law enforcement agency believes it is NOT possible to safely distribute meals outdoors, along with the law enforcement agency's recommendations regarding safe alternative meal delivery plans (e.g. indoors, door-to-door).
5. Include the name, rank, title/official position, badge number (if applicable), and contact information of the state, county, or local law enforcement agency official who composed the correspondence.
  6. Be signed and dated by the state, county, or local law enforcement agency official who composed the correspondence.

A template of the law enforcement agency declaration is available on our website at [www.squaremeals.org/NonCongregateFeeding](http://www.squaremeals.org/NonCongregateFeeding) in the section titled *Non-Congregate Feeding for Circumstances Other Than Excessive Heat* under the heading "Additional Information for Requests for Participation Due to Safety Concerns."

TDA or the USDA may determine that more information than that listed above is required to process requests for inclusion in this demonstration project based on exceptional circumstances other than excessive heat. If more information is required, TDA will request the information from the CE and once the CE has provided the requested information to TDA, the information will be considered in the application process.

Guidance on documentation and record-keeping requirements will be provided by USDA on a case-by-case basis once a request to participate in this demonstration project due to exceptional circumstances other than excessive heat is approved. In addition to special documentation and record-keeping requirements dictated by USDA specific to any exceptional circumstances, on days non-congregate feeding is utilized CEs must also ensure that compliance with all other program regulations is maintained. Also, CEs are expected to keep accurate records of meals served. For each site approved to utilize non-congregate feeding due to exceptional circumstances other than excessive heat, CEs must document and report to TDA the dates non-congregate feeding is utilized at each site, as well as the number of meals taken off site each day non-congregate feeding is utilized. Only one meal may be provided to each child present at the meal site for each approved meal service. CEs will not be reimbursed for second meals. Meals may not be provided to adults or other children to take to children not present at the site. CEs may not shorten or lengthen approved meal times. All meal counting, claiming, and TDA and CE monitoring and oversight requirements will continue to apply to these sites.