



## SUMMER FOOD SERVICE PROGRAM

### 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. CEs operating the Seamless Summer Option (SSO) should reference the *Administrator's Reference Manual (ARM) Section 12, Seamless Summer Option*, for guidance.

Each year, the USDA publishes the SFSP *Administrative Guidance for Sponsors (AGS)* which provides federal policy, program guidance and information for all CEs that participate or plan to participate in SFSP. TDA occasionally issues a Clarification of Federal Policy, such as this one, to supplement and clarify federal policy set out in the AGS.

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

On December 11, 2014, USDA issued policy memorandum [SFSP 08-2015, Demonstration Project for Non-Congregate Feeding for Outdoor Summer Meal Sites Experiencing Excessive Heat with Q & As](#), which extends USDA's 2014 demonstration project, [effective summers 2015 and 2016](#). SFSP 08-2015 authorizes SFSP CEs to operate TDA-approved outdoor summer meal sites as non-congregate sites on days when the area is experiencing excessive heat and the CE does not have temperature-controlled alternative sites to serve congregate meals. "Congregate" meals are those served and consumed on-site, while "non-congregate" meals are those served to children who take the provided meals off-site. During a non-congregate meal service as permitted by TDA, children may take provided meals off-site, instead of consuming meals on-site (congregate).

Non-congregate meal service is permitted only on days when the National Weather Service (NWS) has issued one of the following for the area in which a TDA-approved outdoor meal site is located:

- a Heat Advisory,
- an Excessive Heat Warning, or
- an Excessive Heat Watch

CEs that operate outdoor sites with available temperature-controlled alternative sites are not eligible to be reimbursed for non-congregate meal service, and, to receive reimbursement under the SFSP, must serve meals at a temperature-controlled alternative site when the area is experiencing excessive heat.

### Applying for Participation in the Demonstration Project

CEs must notify TDA of their intent to participate in the demonstration project and must identify those outdoor and mobile meal sites lacking temperature-controlled alternative sites they intend to include in this demonstration project **prior to serving non-congregate meals**. A CE must declare intent to participate in the Texas Unified Nutrition Programs System (TX-UNPS) in the CE Application, Question #30, under the section titled "General Questions," and in the applicable Site Application, Question #39, Part 2, under the section titled "Site Operation."

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 but does not obligate a CE to offer a non-congregate meal service. **A CE must have intent declared and approved prior to operating non-congregate feeding.**

**NOTE: If a CE operates non-congregate feeding on any day, at any site that does not have intent declared and approved in TX-UNPS, all meals served on that day at that site will be disallowed.**

### Participation Requirements

CEs participating in non-congregate meal service must continue to maintain compliance with all other program regulations. CEs must ensure food safety during meal preparation and delivery of meals. Since 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.

CEs must keep accurate records of meals served for each site and 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, meal claiming, CE monitoring and oversight requirements, and TDA monitoring and oversight requirements apply to sites that serve non-congregate meals. CEs must ensure that caregivers, children, and parents are aware of the type of meal service available at each site, whether non-congregate or congregate, on each day of meal service. The CE may not shorten or lengthen meal times on days when non-congregate meal service is utilized.

CEs serving non-congregate meals at a site experiencing excessive heat 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.

### **Reporting Dates and Meal Counts by Site for Non-Congregate Feeding**

At the end of each month, for each site where non-congregate meals were served, CEs must report the total number of **non-congregate** meals served by using the Non-Congregate Feeding Data Submission Form found in TX-UNPS under "Download Forms." Information on this form must be reported for each individual site that served non-congregate meals on the reported date.

After completion of the Non-Congregate Feeding Data Submission Form, CEs should file claims in TX-UNPS in accordance with standard procedures, claiming ALL meals served, congregate and non-congregate, during the claiming period.

### **Process for Approval of Non-Congregate Feeding at Summer Meal Sites Experiencing 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. Exceptional circumstances based only on inconvenience or a CE's difficulty in serving congregate meals *will not be considered*. **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.**

This approval process is for obtaining permission to serve non-congregate meals at a site due to exceptional circumstances other than excessive heat. TDA and USDA may deny a request for service of non-congregate meals due to exceptional circumstances based on concerns related to health, safety, and integrity related to non-congregate feeding.

**NOTE:** CEs should allow for sufficient time for TDA and USDA to review a request for non-congregate feeding due to exceptional circumstances. TDA recommends CEs submit requests at least 60 days prior to the desired approved start date of non-congregate feeding at a site due to exceptional circumstances.

A CE's request based on exceptional circumstances other than excessive heat submitted to TDA should, at a minimum, provide the following information:

1. A thorough explanation of the exceptional circumstance imposing a barrier to congregate feeding.
2. The sites to be included in the demonstration project due to exceptional circumstances.
3. The exemption periods (with specific dates) for which non-congregate feeding is being requested at each site. NOTE: Exemption periods longer than one day will be considered, but must be clearly justified.
4. The justification for the need of the congregate feeding exception at each site.
5. Detailed explanation of how the CE's operations will change.
6. Detailed plan on how meals will be provided and delivered at the site.
7. Detailed description of how, for each site requested, the utilization of non-congregate feeding and the proposed changes in operations will address the problem which created the need for non-congregate feeding.
8. Detailed description of the documentation the CE intends to use to demonstrate that the exceptional circumstance(s) existed on days non-congregate feeding was utilized, including where that documentation will be retained for record-keeping purposes.
9. Detailed description of how the CE will ensure only one meal is served to each eligible child.
10. Detailed description of monitoring plan to ensure adequate oversight of non-congregate feeding

For a CE requesting permission to serve non-congregate meals at a site due to exceptional circumstances related to safety concerns, the USDA requires evidence that the CE consulted with law enforcement authorities regarding the safety concern. The CE must obtain and submit documentation of law enforcement's recommendation(s) for the safe provision of meals at the site.

In addition to the information listed above, a CE's request for non-congregate feeding due to exceptional circumstances related to safety concerns must also include documentation from a state, county, or local law enforcement agency having jurisdiction over the address at which each site subject to the request is located. The documentation must contain the following information:

1. The name of the CE making the request.
2. The name of the state, county, or local law enforcement agency.
3. The name, rank, title/official position, badge number (if applicable) of the applicable state, county, or local law enforcement agency official who composed the correspondence;
4. The contact information (phone number, email) of the applicable state, county, or local law enforcement agency official who composed the correspondence;
5. A list of all requested sites, including the names and physical addresses, which are in that law enforcement agency's jurisdiction.

6. An attestation, or signed letter or statement, from a duly authorized representative of the applicable state, county, or local law enforcement agency that the sites listed meet 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. *If applicable*: A list of sites 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).
7. Signature and date of signature of the state, county, or local law enforcement agency official who composed the correspondence.

CEs wishing to serve non-congregate meals at a site due to exceptional circumstances other than excessive heat should submit their written request to TDA as follows:

*Email to:*            [SNPWaivers@TexasAgriculture.gov](mailto:SNPWaivers@TexasAgriculture.gov)  
Subject: Non-Congregate Feeding (CE name)

*Fax to:*                (888) 203-6593  
ATTN: Coordinator for Food and Nutrition Special Projects  
Subject: Non-Congregate Feeding (CE name)

*Mail to:*              Texas Department of Agriculture  
Food and Nutrition  
ATTN: Coordinator for Food & Nutrition Special Projects  
P.O. Box 12847  
Austin, Texas 78711

*Overnight to:*      Texas Department of Agriculture  
Food and Nutrition  
ATTN Coordinator for Food and Nutrition Special Projects  
1700 North Congress Avenue  
Austin, Texas 78701

TDA or the USDA may determine that more information is required before a request to serve non-congregate meals at a site based on exceptional circumstances other than excessive heat can be processed. 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.

TDA will notify CEs of approval or denial of request to serve non-congregate meals based on exceptional circumstances. Guidance on documentation and record-keeping requirements will be provided by USDA on a case-by-case basis upon approval of a request to serve non-congregate meals at a site due to exceptional circumstances other than excessive heat.

**NOTE: If a CE serves non-congregate meals based on exceptional circumstances prior to approval by USDA, all non-congregate meals served will be disallowed.**