



DEPARTMENT OF EDUCATION


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Mark A. Holodick, Ed.D.
Secretary of Education
(302) 735-4000
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July 29, 2024

MEMORANDUM

TO: Summer Food Service Program (SFSP) Sponsors

FROM: Aimee F. Beam, MS, RD 
Director, Nutrition Programs Workgroup

RE: **2024 Operational Memo #18**
High Heat and Air Quality Waiver for Summer 2024

The Delaware Department of Education (DDOE) has received approval for an Excessive Heat and Air Quality waiver request, which allows sponsors with approved outdoor meal sites lacking temperature-controlled alternative sites the opportunity to provide non-congregate meals during excessive heat days or when air quality alerts are issued. 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, an Excessive Heat Watch, or an air quality alert for the area in which an approved outdoor meal site is located and not at the Sponsor and/or site location's discretion. The DDOE will send emails notifying Sponsors of alerts.

Sponsors interested in participating in either of these waivers for Summer 2024 must provide the following:

- Email your intent to participate and a list of identified approved sites with meal types to Stephanie Burks at stephanie.burks@doe.k12.de.us
- Use the attached spreadsheet to record and track the type and number of meals served on days the waivers are utilized. Email the completed spreadsheet within 10 days of the non-congregate meal service to Marianne Bernardi at marianne.bernardi@doe.k12.de.us; please cc Stephanie Burks.

Because meals served will be consumed off site:

- Sponsors should carefully consider all food safety issues and risks;
- Only one meal may be provided to each child present; and
- Meals may only be provided to adults to take home to their own children.

Outdoor sites with available temperature-controlled alternative sites cannot participate in the waiver and should serve meals at the temperature-controlled alternative site when the area is experiencing excessive heat or air quality alerts.

If you have any questions or need assistance, please contact us at 302-857-3356. A copy of the approved waiver is attached for your reference.

Attachments: 2024 SFSP Sponsor Heat and Air Quality Waiver Tracking Log
DDOE Prospective Waiver Response

cc: Nutrition Team



Food and Nutrition Service

U.S. DEPARTMENT OF AGRICULTURE

July 24, 2024

Aimee Beam
Director, Nutrition Programs
Delaware Department of Education
35 Commerce Way
Dover, DE 19904

Dear Aimee Beam,

This letter is in response to Delaware Department of Education's (DDOE) July 18, 2024, request to waive certain requirements in the Summer Food Service Program (SFSP) and the NSLP Seamless Summer Option (SSO) for summer 2024 operations and also when congregate meal service operations in schools 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 DDOE's waiver request satisfies these statutory requirements.

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

Summer Food Service Program (SFSP) and Seamless Summer Option (SSO) Operations During Periods of Excessive Heat

The waivers in the section allow SFSP and SSO sponsors, in good standing, to operate approved outdoor meal sites without temperature-controlled alternative sites as non-congregate sites on days when the area is experiencing excessive heat. These waivers may only be used 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 meal site is located. These waivers are effective *May 1, 2024, through September 30, 2024*.

Non-Congregate Meal Service (SFSP/SSO)

Food and Nutrition Service, Braddock Metro Center, 1320 Braddock Place, Alexandria, VA 22314

USDA is an Equal Opportunity Provider, Employer, and Lender

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. Please note that this waiver is not the same as the new option to provide a rural non-congregate meal service as described in Section 13(a)(13) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761). This waiver is not limited to sites in rural areas and may only be applied to sites approved for congregate meal service.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, 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 meal service flexibility to SSO for the duration of this waiver.

Parent and Guardian Meal Pick-Up (SFSP/SSO)

Under the NSLA, 42 U.S.C. 1761(f)(3), and program regulations at 7 CFR 225.2 (Meals), and 7 CFR 225.9(d)(7), SFSP 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. 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. FNS also extends the parent and guardian pick up flexibility to SSO for the duration of this waiver.

Meal Service Times (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.

If a sponsor wishes to use this meal service times waiver, additional requirements apply. The meal service times waiver requirements are intended to ensure that summer meal sites that change the time of their meal service provide adequate notice to the community to ensure there is no loss in program access.

To use this meal service times waiver, sponsors must:

- a) Not change meal service times less than 24 hours in advance of the previously scheduled meal service time,
- b) Put up a printed notice or poster at the site indicating the change in meal service times to attendees,
- c) Alert the community through appropriate channels (such as school or neighborhood listservs), and
- d) Comply with any additional requirement(s) requested by the State agency.

Summer Food Service Program (SFSP) and Seamless Summer Option (SSO) Operations During Periods of Air Quality Advisories

The waivers in this section allow SFSP and SSO sponsors, in good standing, to operate approved outdoor meal sites without alternative indoor sites as non-congregate sites on days when the area is experiencing certain air quality advisories. The threshold for determining when these waivers can be used is based on metrics developed by the Environmental Protection Agency (EPA) and the Center for Disease Control (CDC), which are designed to help determine when to move activities indoors. Using these metrics, which equate to very unhealthy or hazardous air quality, sites may be approved for non-congregate meal service on days when the site's zip code has an Air Quality Index (AQI) "purple" flag or higher, as indicated at <https://www.airnow.gov/>. For days when air quality is a concern, but the purple flag threshold is not met, FNS recommends sponsors with outdoor sites consider the outdoor activity guidance developed by the EPA and the CDC: <https://www.airnow.gov/activity-guides-publications/>. These waivers are effective *May 1, 2024, through September 30, 2024*.

Non-Congregate Meal Service (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. Please note that this waiver is not the same as the new option to provide a rural non-congregate meal service as described in Section 13(a)(13) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1761). This waiver is not limited to sites in rural areas and may only be applied to sites approved for congregate meal service.

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- d) Comply with any additional requirement(s) requested by the State agency.

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 December 31,

2024, DDOE must provide to the FNS MARO 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. FNS appreciates DDOE'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 Mid-Atlantic Regional Office.

Sincerely,

J
MASKORNICK

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J. Kevin Maskornick
Director
Community Meals Policy Division

