



Food and
Nutrition
Service

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March 25, 2023

Linda Schloer
Director, Child Nutrition and Food Distribution Programs
North Dakota Department of Public Instruction
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Linda Schloer:

This letter is in response to the North Dakota Department of Public Instruction (NDDPI) April 12, 2023, request to provide non-congregate meal service at certain Summer Food Service Program (SFSP) outdoor meal sites on days when the area is experiencing excessive heat. As discussed below, pursuant to the authority granted at Section 12(l) of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1760(l)), the Food and Nutrition Service (FNS) waives the SFSP congregate feeding requirement at certain NDDPI-approved SFSP sites effective immediately through September 30, 2023.

NDDPI requested to waive the provisions of the NSLA at 42 USC 1753(b)(1)(A), 42 USC 1761(a)(1)(D), and Program regulations at 7 CFR 225.6(i)(15) that require children to remain on site while they consume their meals. The flexibility will allow Program operators to safely provide meals to Program participants during times of excessive heat. NDDPI states that denial of this waiver and inability to use non-congregate meal service could reduce children's access to meals during periods of excessive heat.

FNS is approving this request, which will allow NDDPI to approve 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. Non-congregate meal service may be offered 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 meal site is located. 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.

Per 7 CFR 225.6(g)(1), State agencies must ensure that sponsors have made appropriate arrangements for food service during periods of inclement weather. For sites that may experience occasional excessive heat, this could include discontinuing the meal service if safety is a concern, using a tent to provide extra shade, or partnering with a housing community to use an air-conditioned lobby or community

room on extremely hot days.¹ However, when needed, this targeted waiver is intended to ensure continuity of the meal service at outdoor sites on days when excessive heat makes service of congregate meals impractical or dangerous. Accordingly, this waiver may only be used when high temperatures could not reasonably be planned for and may not be used to respond to high temperatures that are typical of the area in which a site is located. Approved outdoor sites must comply with congregate meal service requirements on all other days of operation. Outdoor sites with an available temperature-controlled alternative site may not use this waiver and should serve meals at the temperature-controlled alternative site if the area is experiencing excessive heat. Other program requirements, including those pertaining to the number and type of meals that may be served each day and meal service times, continue to apply unless the State has obtained a separate waiver for these requirements.

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, NDDPI must provide to the FNS Mountain Plains Regional Office, by December 31, 2023, a written report quantifying the impact of the waiver, as described below. In addition, the State must verify on monitoring reviews that sponsors utilizing this waiver maintain documentation sufficient to demonstrate compliance with the requirements of this waiver.

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;
- The number of program operators and sites that used the waiver to provide non-congregate meal service;
- The number of days that program operators used the waiver to provide non-congregate meal service;
- The total number of meals, by type, taken offsite, per site; and
- A summary of findings associated with the waiver.

FNS appreciates NDDPI's commitment to work with sponsors and Program operators to meet the nutritional needs of children during a challenging time. If you have questions, please contact the Mountain Plains Regional Office.

Sincerely,

J. Kevin Maskornick
Director
Community Meals Policy Division

¹ [Administration Guide, Summer Food Service Program](#), page 41