



Food and
Nutrition
Service

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Metro Center

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Alexandria
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May 25, 2023

Meghan Tschida
Manager, Community Nutrition Programs
Oregon Department of Education
255 Capitol Street Northeast
Salem, OR 97310

Dear Meghan Tschida:

This letter is in response to the Oregon Department of Education Child Nutrition Programs' (ODE CNP) May 5, 2023, request to provide non-congregate meal service at certain Summer Food Service Program (SFSP) and Seamless Summer Option (SSO) outdoor meal sites on days when the area is experiencing air quality advisories. As discussed below, pursuant to the waiver 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) approves ODE CNP's waiver request effective immediately through September 30, 2023. FNS also extends this flexibility to certain ODE CNP-approved SSO sites for the same time period.

ODE CNP requested to waive the provisions of the NSLA at 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. This waiver will allow Program operators to serve nutritious non-congregate meals to children on days when air quality is hazardous to health, which could provide both children and site staff with additional safety from prolonged exposure to smoke. ODE CNP that denial of this waiver could impede on children's access to meals in these areas.

FNS is approving this waiver, which will allow ODE CNP to approve 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. Under this waiver, the threshold for determining when non-congregate meal service is allowed will be 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.¹ 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 guidance¹ developed by the EPA and the CDC.

¹ <https://www.airnow.gov/activity-guides-publications/>

This targeted waiver is intended to ensure continuity of the meal service at outdoor sites on days when the daily AQI color is purple or higher and makes service of congregate meals impractical or dangerous. Approved outdoor sites must comply with congregate meal service requirements on all other days of operation. Outdoor sites with available alternative indoor sites may not use this waiver and should serve meals at the alternative site if the area is experiencing an AQI color of purple or higher. 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, ODE CNP must provide to the FNS Western Regional Office, by December 30, 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 off-site, per site; and
- A summary of findings associated with the waiver.

FNS appreciates ODE CNP'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 Western Regional Office.

Sincerely,

J. Kevin Maskornick
Director
Community Meals Policy Division