

CHILD NUTRITION PROGRAM STATE WAIVER REQUEST TEMPLATE

Child Nutrition Programs are expected to be administered according to all statutory and regulatory requirements; waivers to the requirements are exceptions. However, Section 12(l) of the Richard B. Russell National School Lunch Act, 42 U.S.C. 1760(l), provides authority for USDA to waive requirements for State agencies or eligible service providers under certain circumstances. When requesting the waiver of statutory or regulatory requirements for the Child Nutrition Programs (CNPs), including the Child and Adult Care Food Program (CACFP), the Summer Food Service Program (SFSP), the National School Lunch Program (NSLP), the Fresh Fruit and Vegetable Program (FFVP), the Special Milk Program (SMP), and the School Breakfast Program (SBP), State agencies and eligible service providers should use this template. State agencies and eligible service providers should consult with their FNS Regional Offices when developing waiver requests to ensure a well-reasoned, thorough request is submitted. State agencies and eligible service providers are encouraged to submit complete waiver requests at least 60 calendar days prior to the anticipated implementation date. Requests submitted less than 60 calendar days prior to the anticipated implementation should be accompanied by an explanation of extenuating circumstances.

For more information on requests for waiving Program requirements, refer to SP 15-2018, CACFP 12-2018, SFSP 05-2018, *Child Nutrition Program Waiver Request Guidance and Protocol- Revised*, May 24, 2018.

1. State agency submitting waiver request and responsible State agency staff contact information:

Oregon Department of Education
Child Nutrition Programs
Lynne Reinoso
Manager, Community Nutrition Programs
255 Capitol Street NE
Salem, OR 97310
lynne.reinoso@state.or.us

2. Region: Western Region

3. Eligible service providers participating in waiver and affirmation that they are in good standing:

Statewide waiver request for all participating SFSP Sponsoring Organizations in good standing.

4. Description of the challenge the State agency is seeking to solve, the goal of the waiver to improve services under the Program, and the expected outcomes if the waiver is granted. [Section 12(l)(2)(A)(iii) and 12(l)(2)(A)(iv) of the NSLA]:

The Oregon Department of Education Child Nutrition Programs (ODE CNP) is requesting a statewide waiver for the SFSP flexibility that was rescinded by FNS on October 11, 2018 as part of SFSP 01-2019. The flexibility is included with SFSP 06-2017, Meal Service Requirements in the Summer Meal programs, with Questions and Answers-Revised, December 5, 2016.

The flexibility allows for the continuation of the extension of Offer Versus Serve (OVS) to non-school food authority sponsors as it was originally published in FNS memo SFSP 11-2011, *Waiver of Meal time requirements and Unitized Meal Requirements in the Summer Food Service Program*, dated October 21, 2011. The statutory and regulatory provisions authorize the OVS option for school food authority sponsors under Section 13(f)(6) of the NSLA, 42 USC 1761(f)(6), and 7 CFR 225.16(f)(1)(ii). While OVS has been shown to minimize food waste and help sponsors contain costs, statutory and regulatory provisions limit the use of OVS to school food authority sponsors.

In prior years, including FFY2019 this flexibility has benefitted Oregon SFSP sponsors by helping them efficiently operate the SFSP in a more cost effective manner by decreasing over production and reducing food waste. It also significantly increased satisfaction with the meal program from participants and helped to ensure children would take advantage of available summer meals.

Rescinding this flexibility will place undue burden on both the State agency and the SFSP sponsoring organizations. By allowing this flexibility, Sponsors are able to operate a more cost efficient program, reduce food waste and improve meal satisfaction, which increases participation. ODE CNP has integrated this option in the online site application and if the flexibility is not approved, it will be an undue cost and time burden on the SA to reprogram this feature and retrain sponsors.

5. Specific Program requirements to be waived (include statutory and regulatory citations). [Section 12(l)(2)(A)(i) of the NSLA]:

ODE CNP is requesting a waiver to extend Offer Versus Serve to non-school food authority sponsors, and to allow OVS with both the NSLP and SFSP meal patterns.

Section 13(f)(7) of the NSLA OFFER VERSUS SERVE.—A school food authority participating as a service institution may permit a child to refuse one or more items of a meal that the child does not intend to consume, under rules that the school uses for school meals programs. A refusal of an offered food item shall not affect the amount of payments made under this section to a school for the meal.

42 USC 1761(f)(7) OFFER VERSUS SERVE.—A school food authority participating as a service institution may permit a child to refuse one or more items of a meal that the child does not intend to consume, under rules that the school uses for school meals programs. A refusal of an offered food item shall not affect the amount of payments

made under this section to a school for the meal.

7 CFR 225.16(f)(1)(ii) Offer versus serve. School food authorities that are Program sponsors may permit a child to refuse one or more items that the child does not intend to eat. The school food authority must apply this “offer versus serve” option under the rules followed for the National School Lunch Program, as described in part 210 of this chapter. The reimbursements to school food authorities for Program meals served under the “offer versus serve” must not be reduced because children choose not to take all components of the meals that are offered.

6. Detailed description of alternative procedures and anticipated impact on Program operations, including technology, State systems, and monitoring:

SP 10-2017, SFSP 06-2017 All SFSP sites, regardless of location or type of sponsorship, may utilize OVS. Use of OVS will be extended to non-school food authority sponsors. All non-school sponsors electing to use OVS and schools participating in SFSP electing to follow the SFSP meal pattern will be required to follow the SFSP OVS requirements as outlined in SFSP 06-2017. Sponsors must indicate their intention to utilize OVS on the online site application. School sponsors that elect to use the NSLP or SPB patterns and SFAs operating SSO will be required to follow the OVS requirements of NSLP and SBP.

The ODE CNP online site application currently includes the option for sponsors to report the meal pattern and the option to use OVS. (See answer to Question 4)

7. Description of any steps the State has taken to address regulatory barriers at the State level. [Section 12(I)(2)(A)(ii) of the NSLA]:

Prior to this time, ODE CNP has not needed to address any regulatory barriers as these flexibilities were in place through FFY2019.

8. Anticipated challenges State or eligible service providers may face with the waiver implementation:

ODE CNP does not anticipate these waivers will present any challenges to the SA or SFSP sponsors because these flexibilities have already been implemented and are in place. In fact, this waiver will decrease the challenges faced by SFSP sponsors.

The challenges ODE CNP and SFSP sponsors may face if the waiver is not approved include:

- Increased costs to ODE CNP to update the online software system to bring it into compliance with the waiver rescission
- Increased burden to update training materials, monitoring materials re-train sponsors and staff, and monitor compliance for the rescinded flexibility
- Increased food costs and food waste for SFSP sponsors not allowed to implement OVS with the potential to close the program due to increased costs

- Decreased child satisfaction with meal selection requirement resulting in potentially decreased participation at the site.

9. Description of how the waiver will not increase the overall cost of the Program to the Federal Government. If there are anticipated increases, confirm that the costs will be paid from non-Federal funds. [Section 12(l)(1)(A)(iii) of the NSLA]:

ODE CNP does not anticipate this waiver will increase the overall cost of the program to the Federal government because the prior waiver has been in practice for a number of years. The waiver will continue to assist the SFSP sponsors and ODE CNP to streamline and control SFSP costs.

10. Anticipated waiver implementation date and time period:

To be effective with the start of FY 2020.

11. Proposed monitoring and review procedures:

ODE CNP will continue to follow standard SFSP review procedures. Sponsors found to have non-compliance issues as related to this waiver will work with the state agency on an individualized corrective action plan and will have follow-up reviews scheduled as needed.

12. Proposed reporting requirements (include type of data and due date(s) to FNS);

ODE CNP will report to FNS any compliance issues noted with this flexibility during the approvals and reviews by October 1 each year.

13. Link to or copy of the public notice informing the public about the proposed waiver [Section 12(l)(1)(A)(ii) of the NSLA]: To be posted by 12/27/19

<https://www.oregon.gov/ode/students-and-family/childnutrition/sfsp/Pages/default.aspx>

14. Signature and Title of requesting official:



Name: Lynne Reinoso

Title: Manager, Community Nutrition Programs, ODE CNP

Email address for transmission of response: lynne.reinoso@state.or.us

TO BE COMPLETED BY FNS REGIONAL OFFICE:

FNS Regional Offices are requested to ensure the questions have been adequately addressed by the State agency and formulate an opinion and justification for a response to the waiver request based on their knowledge, experience and work with the State.

Date request was received at Regional Office:

- Check this box to confirm that the State agency has provided public notice in accordance with Section 12(l)(1)(A)(ii) of the NSLA**

- **Regional Office Analysis and Recommendations:**