United States Department of Agriculture

Food and Nutrition Service

Braddock Metro Center

1320 Braddock Place
Alexandria VA 22314

DATE: August 31, 2020

CODE: COVID-19: Child Nutrition Response #51

SUBJECT: Nationwide Waiver to Allow Offer Versus Serve Flexibilities in the Summer Food Service Program – EXTENSION[1]

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

Issuing Agency/Office:	FNS/Child Nutrition Programs
Title of Document:	Nationwide Waiver to Allow Offer Versus Serve Flexibilities in the Summer Food Service Program – EXTENSION
Document ID:	
Z-RIN:	
Date of Issuance:	August 31, 2020
Replaces:	N/A
Summary:	(1) During the public health emergency due to COVID-19, FNS waives, for all States, requirements that limit the use of Offer Versus Serve (OVS) to school food authorities and require sponsors to apply OVS under the rules followed for the National School Lunch Program. (2) This waiver applies to State agencies administering and local organizations operating the Summer Food Service Program. (3) This document relates to requirements at 42 U.S.C. 1761(f)(7) and 7 CFR 225.16(f)(1)(ii).
Disclaimer:	**The contents of this guidance document have the force and effect of law as authorized by the Families First Coronavirus Response Act (P.L. 116-127).**

Pursuant to the Families First Coronavirus Response Act (FFCRA) (P.L. 116-127), and based on the exceptional circumstances of this public health emergency, the Food and Nutrition Service (FNS) is extending a nationwide waiver to support access to

[1] Pursuant to the Congressional Review Act (5 U.S.C. §801 et seq.), the Office of Information and Regulatory Affairs designated this waiver as *not major*, as defined by 5 U.S.C. § 804(2).

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nutritious meals while minimizing potential exposure to the novel coronavirus (COVID-19). This waiver extends the *Nationwide Waiver to Allow Offer Versus Serve Flexibilities in the Summer Food Service Program* - granted on April 21, 2020, that expires on September 30, 2020 - through December 31, 2020, in conjunction with the *Nationwide Waiver to Allow Summer Food Service Program and Seamless Summer Option Operations through December 2020*. This waiver extension applies to the Summer Food Service Program (SFSP).

Section 2202(a) of the FFCRA permits the Secretary of Agriculture to establish waivers for all States for the purposes of providing meals under the Child Nutrition Programs, with appropriate safety measures, as determined by the Secretary.

Under the Richard B. Russell National School Lunch Act at 42 U.S.C. 1761(f)(7) and Program regulations at 7 CFR 225.16(f)(1)(ii), Offer Versus Serve (OVS) is a meal service option for school food authorities (SFAs) operating as SFSP sponsors that are required to apply OVS under the rules followed for the National School Lunch Program (NSLP). However, FNS recognizes that in this public health emergency, continuing the waiver of restrictions on the use of OVS in SFSP would reduce administrative burden on State agencies and sponsors by easing menu planning and food procurement and reducing food waste, which would help ensure appropriate safety measures for the purpose of providing meals and meal supplements.

Therefore, pursuant to the FFCRA authority cited above, FNS extends, for all States that elect to be subject to this waiver, the waiver of those requirements at 42 U.S.C. 1761(f)(7) and 7 CFR 225.16(f)(1)(ii), which limit the use of OVS to SFAs and require sponsors to apply OVS under the rules followed for the NSLP. This waiver is effective immediately, supersedes the previous extension, and remains in effect until December 31, 2020, in conjunction with the *Nationwide Waiver to Allow Summer Food Service Program and Seamless Summer Option Operations through December 2020*.

To implement OVS under this waiver during the current pandemic, sponsors must be able to follow the SFSP OVS meal service parameters in entirety as stipulated below. OVS is designed for congregate feeding and, if used in a non-congregate setting, must be done so with thoughtful planning and consideration. The conditions under which sponsors are operating and their ability to follow appropriate safety measures in providing meals are factors to consider. OVS is not intended to be a way to circumvent meal pattern requirements or eliminate specific components.

SFSP OVS meal service parameters:

- *Breakfast:* The following four food items must be offered:
    - One serving of fruit/vegetable,
    - One serving of bread/bread alternate,
    - One serving of fluid milk, and
    - One additional serving of fruit/vegetable, bread/bread alternate, or a serving of a meat/meat alternate.

  - All the food items offered must be different from each other.
  - A child must take at least three of any of the four food items offered and may choose to take all four items.

- *Lunch or Supper:* The following four food components must be offered through at least five different food items:
  - One serving of meat/meat alternate,
  - Two servings of fruit and/or vegetables (two different food items),
  - One serving of bread/bread alternate, and
  - One serving of fluid milk.
  - All the food items offered must be different from each other.
  - A child must take at least three food components and may choose to take all five items.

- Lunch or supper OVS requirements differ from breakfast in that a child must take at least three food components, rather than items, listed above from the five food items offered. Three food components are required for an adequate nutritious meal for children.

- Offering two servings of the same food item is not permissible under OVS in SFSP. All food items offered must be different from each other. For example, a breakfast menu that includes a serving of milk, a serving of fruit, and two servings of toast is not a reimbursable meal under OVS in SFSP because the toast is two of the same food item. Similarly, if the breakfast menu included two different kinds of cereal rather than toast, it would still not be a reimbursable meal because the cereals, although not identical, are the same food item. Additionally, a larger food item that is worth two servings in weight, such as a two-ounce muffin, counts as only one food item under OVS in SFSP, not two.

- Servings of all food items must adhere to the serving sizes in the SFSP meal patterns at 7 CFR 225.16(d).

Consistent with section 2202(a)(2) of the FFCRA, this waiver applies automatically to all States that elect to use it, without further application. State agencies must inform their Regional Office if they elect to be subject to the waiver. State agencies should inform local Program operators of the flexibilities provided by this waiver as quickly as possible, and work in partnership with local operators to provide meals to all participants in a safe and accessible manner.

Please note, State agencies that have already received a traditional SFSP waiver of the OVS requirements may elect to be covered by this nationwide waiver during the COVID-19 emergency, in place of their traditional waiver. As previously determined, the traditional SFSP OVS waivers will remain in effect through April 30, 2022, or until FNS publishes a final regulation that supersedes the approval, whichever comes first. Therefore, there is no need for State agencies to withdraw or resubmit those requests.

As required by section 2202(d) of the FFCRA, each State that elects to be subject to this waiver must submit a report to the Secretary not later than 1 year after the date such State received the waiver. The report must include:

- A summary of the use of this waiver by the State agency and local Program operators, and
- A description of whether and how this waiver resulted in improved services to Program participants.

FNS appreciates the exceptional effort of State agencies and local Program operators working to meet the nutritional needs of participants during a challenging time. State agencies should direct questions to the appropriate FNS Regional Office.

Sincerely,

Angela M. Kline
Director
Policy and Program Development Division