

May 1, 2023

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

North Dakota Department of Public Instruction
Melissa Anderson, SFSP Program Manager
mdanderson@nd.gov
701-328-2263

2. **Region:** Mountain Plains

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

This waiver is applicable state-wide for all approved sponsors 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 North Dakota Department of Public Instruction Child Nutrition and Food Distribution Office (State Agency) is requesting a state-wide waiver for the Summer Food Service Program (SFSP) requirement at CFR 225.16(f)(1)(ii) that only SFA sponsors may utilize the OVS option. The impact and challenges faced because of the rescinded flexibilities and policies to the sponsors are detailed below.

Offer versus Serve

The State Agency has consistently opted into waivers that allow more flexibility to our sponsors, including opting into the waivers provided by USDA prior to the pandemic. The State Agency had previously opted into the OVS waivers for our non-SFA sponsors. This allowed the sponsors to prevent plate waste, reduce food costs and allowed a choice in meal selection for children without impacting the nutritional integrity of the meals. The State Agency has not found any findings related to the implementation of the OVS waiver.

The goal of this waiver is to reinstate the rescinded flexibilities and policies to allow for efficient and cost-effective program management and reduce administrative burden for the non-SFA sponsors who participate in the SFSP program in North Dakota.

Approval of this waiver will allow all North Dakota sponsors to continue implementing streamlined measures for effective program management and operation. In addition, if approved, the State Agency will not be required to spend a significant amount of additional funds and staff time to update technology systems and revise state-wide training and review procedures.

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

Current regulation to be waived:

The requirement at CFR 225.16(f)(1)(ii) that only SFA sponsors may utilize the OVS option, consistent with the statute.

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

Alternative Procedures:

OVS will be extended to non-school food authority sponsors in good standing to simplify program administration and reduce food waste and costs while maintaining the nutritional integrity of the SFSP meals. All SFSP sites, regardless of location or type of sponsorship, may utilize OVS for breakfast, lunch, and supper meals. All non-school food authority sponsors electing to use OVS and school food authorities participating in SFSP and electing to follow the SFSP meal patterns must follow the SFSP OVS requirements outlined in SFSP 05-2016 Meal Service Requirements in the Summer Meal Programs, with Questions and Answers, Nov. 12, 2015.

Anticipated impact on Program operations, including technology, State systems, and monitoring:

This waiver will significantly decrease administrative burden, allow for efficient and effective oversight of program operations, reduce food costs and food waste, and allow sponsor organizations to meet the needs of their communities and participating children. The State Agency will continue to ensure program integrity through technical assistance visits, administrative reviews, and training. In addition, no change will need to be made to current technology systems because of this waiver. Approval of this waiver will be cost neutral for the State Agency.

If this waiver is not implemented, the following impact on program operations will likely occur:

- Increased costs to the State Agency to update software systems to comply with regulation changes. Updates to software will affect the application modules.
- Significant impact on the State Agency staff time and effort and increased cost to update training and technical assistance materials, re-train sponsor and site staff, and monitor compliance with rescinded flexibilities and policies.
- Increased food costs and food waste for non-school food authority sponsors that no longer have the option to implement offer versus serve.
- Loss of choice for children in meal selection, resulting in decreased participation and an increase in childhood hunger in North Dakota.

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

Previously, the State agency has not had to address any regulatory barriers as these flexibilities were in place.

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

The State agency does not anticipate that this waiver will present any challenges to the agency or SFSP sponsor organizations as these flexibilities have been made available in the past with a successful implementation.

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]:**

The State agency does not anticipate that these waivers will increase the overall cost of the Program to the Federal Government. This waiver will however continue to assist the SFSP sponsors, and the State agency streamline and control costs to their programs.

10. **Anticipated waiver implementation date and time period:**

To be effective with the start of the 2023 SFSP and approved for a period of 1 year.

11. **Proposed monitoring and review procedures:**

The State agency will provide individual sponsor technical assistance during pre-approval visits and annual application renewal; then continue to follow their standard SFSP review procedures.

Sponsors found to have noncompliance issues related to this waiver will work with the State agency on an individualized corrective agency plan and will have follow-up reviews scheduled as needed.

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

The State agency will report to FNS any compliance issues noted with these flexibilities during application approvals and reviews by October 1st each year.

13. **Link to or a copy of the public notice informing the public about the proposed waiver [Section 12(l)(1)(A)(ii) of the NSLA]:** The public notice is located at:

[Summer Food Service Program | North Dakota Department of Public Instruction \(nd.gov\)](#)

14. Signature and title of requesting official:

Date: 5/1/2023

Name: Linda Schloer

Title: Director, Child Nutrition and Food Distribution Programs

Requesting official's email address for transmission of response: lkschloer@nd.gov

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:**