



Food and
Nutrition
Service

March 27, 2022

Braddock
Metro
Center

Linda Schloer
Director, Child Nutrition Programs
North Dakota Department of Public Instruction
600 East Boulevard Avenue, Dept. 201
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Dear Ms. Schloer:

This letter is in response to the North Dakota Department of Public Instruction's (ND DPI) March 10, 2022, request to waive the offer versus serve (OVS) restrictions for sponsors in the Summer Food Service Program (SFSP). ND DPI requested a statewide waiver of SFSP requirements under the Richard B. Russell National School Lunch Act (NSLA) at 42 U.S.C. 1761(f)(7) and Program regulations at 7 CFR 225.16(f)(1)(ii) to allow non-school food authority (SFA) sponsors to utilize OVS, which allows children to decline some of the foods offered in a reimbursable breakfast, lunch, or supper. ND DPI also requested to allow SFA sponsors operating SFSP to use the OVS meal service parameters for the SFSP, described below. As discussed below, under the waiver authority granted at section 12(l) of the NSLA (42 U.S.C. 1760(l)), FNS approves ND DPI's waiver request effective May 1, 2022, through April 30, 2023.

ND DPI requested this statewide waiver that will expire on April 30, 2023, to provide a waiver of OVS requirements. ND DPI reports that use of OVS helps sponsors control costs, reduce food waste, and improve meal satisfaction, which increases program participation. ND DPI anticipates that denial of the waiver would lead to an increase in food waste.

To grant a waiver under Section 12(l) of the NSLA (42 U.S.C. 1760(l)), the waiver must facilitate the purpose of the Program, the State or eligible service provider must provide notice and information to the public regarding the proposed waiver, and the waiver must not increase the overall cost of the Program to the Federal Government. FNS finds that ND DPI's waiver request does satisfy these statutory requirements.

Accordingly, FNS approves ND DPI's request to allow use of SFSP OVS meal service parameters by both non-SFA and SFA sponsors in good standing, as determined and documented by ND DPI; this waiver is effective May 1, 2022, through April 30, 2023. Please note that while this waiver extends through part of the 2022-2023 school year, during the school year, SFSP operations are authorized only during unanticipated school closures. This waiver is applicable to the NSLA at 42 U.S.C. 1761(f)(7) and regulations at 7 CFR 225.16(f)(1)(ii), which limit use of OVS to SFAs and require sponsors to apply OVS under the rules followed for the National School Lunch Program.

Therefore, to implement OVS under this waiver, sponsors must use the following 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).

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, by September 30, 2023, ND DPI must provide to the FNS Mountain Plains Regional Office a written report quantifying the impact of the waiver for the respective Program year, as described below.

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;

Linda Schloer

Page 3

- A description of how the waiver impacted the quantity of paperwork necessary to administer the Program; and
- The number of program operators that used the waiver.

FNS appreciates ND DPI's commitment to work with sponsors to find efficiencies that balance the needs of local communities with cost-effective program management and integrity. If you have questions, please contact the Mountain Plains Regional Office.

Sincerely,

Tina Namian
Acting Director
Policy and Program Development Division

Electronic Copy: Sabina Velasco, MPRO