



Food and
Nutrition
Service

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June 7, 2023

Linda Schloer
Director, Child Nutrition Programs
North Dakota Department of Public Instruction
600 East Boulevard Ave
Dept 201
Bismarck, ND 58505-0440

Dear Linda Schloer,

This letter is in response to the North Dakota Department of Public Instruction (NDDPI) May 1, 2023, request to waive the offer versus serve (OVS) restrictions for sponsors in the Summer Food Service Program (SFSP). NDDPI 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. As discussed below, under the waiver authority granted at Section 12(l) of the NSLA (42 U.S.C. 1760(l)), FNS approves NDDPI's waiver request effective immediately through September 30, 2023.

NDDPI requested this statewide waiver, which will expire on September 30, 2023, to allow SFSP sponsors that are not SFAs to use the OVS option. NDDPI reports that use of OVS helps sponsors streamline processes, control costs, reduce food waste, and improve meal satisfaction, which increases program participation. NDDPI anticipates that denial of the waiver would lead to an increase in food waste, an increase in costs for State systems, revision of sponsor or site applications, as well as monitoring or training materials, and a reduction in sponsor participation.

FNS has authority to issue statewide waivers under Section 12(l) of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1760(l). To grant a Section 12(l) waiver, the NSLA requires that the waiver must facilitate the purpose of the Program, the public must receive notice and information regarding the proposed waiver, and the waiver will not increase the overall cost of the Program to the Federal Government. FNS finds that NDDPI's waiver request satisfies these statutory requirements.

Accordingly, FNS approves NDDPI's request to allow use of SFSP OVS meal service parameters by non-SFA sponsors on a case-by case basis. NDDPI should only approve sponsors that are considered in good standing and can demonstrate administrative and operational capacity to effectively implement OVS. NDDPI may **not** approve non-SFAs to use OVS that are operating a rural non-congregate meal service as established by Sec. 13(a)(13) of the NSLA, 42 U.S.C. 1761, and further described in FNS Policy Memorandum SFSP 01-2023, SP 05-2023 *Implementation*

Guidance: Summer 2023 Non-Congregate Meal Service in Rural Areas - Revised.

Successful operation of OVS by sponsors offering non-congregate meal service requires strong planning and execution; therefore, FNS is limiting this option in 2023 to SFA sponsors, which are best positioned to correctly apply OVS to non-congregate operations.

When approving non-SFA sponsor to utilize OVS, the State agency must:

- Only approve OVS at sites that are offering a congregate meal service;
- Provide annual training and technical assistance on OVS to sponsors;
- Ensure that proper monitoring will be conducted by site monitors; and
- Ensure that the required OVS signage and visual aids are available at all sites using OVS.

This waiver is effective immediately through September 30, 2023. 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.

Therefore, to implement OVS under this waiver, sponsors must use the following meal service parameters:

- *Breakfast:* The following four food items must be offered:
 - o One serving of fruit/vegetable,
 - o One serving of bread/bread alternate,
 - o One serving of fluid milk, and
 - o One additional serving of fruit/vegetable, bread/bread alternate, or a serving of a meat/meat alternate.
 - o All the food items offered must be different from each other.
 - o 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:
 - o One serving of meat/meat alternate,
 - o Two servings of fruit and/or vegetables (two different food items),
 - o One serving of bread/bread alternate, and
 - o One serving of fluid milk.
 - o All the food items offered must be different from each other.
 - o 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 items. 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 December 31, 2023, NDDPI 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;
- A description of how the waiver reduced the quantity of paperwork necessary to administer the Program;
- The number of program operators that used the waiver; and
- A summary of benefits and challenges associated with the waiver.

FNS appreciates NDDPI'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,

J. Kevin Maskornick
Director
Community Meals Policy Division