

USDA FNS CHILD NUTRITION PROGRAM STATE WAIVER REQUEST

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 (CNP), 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.

SUBMITTING TO: Mountain Plains Regional USDA Office

- 1. State Agency:** South Dakota
Contact Person and Title: Cheriee Watterson, Office Administrator
Date: November 30, 2018
- 2. Region:** Mountain Plains
- 3. Eligible service providers participating in waiver and affirmation that they are in good standing:**
State-wide waiver request for all participating SFSP sponsor organizations and potential sponsors and sites 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 South Dakota Department of Education otherwise identified as State agency is seeking to request a state-wide waiver for the SFSP flexibilities that were rescinded by FNS on October 11, 2018 as part of SFSP 01-2019. These include flexibilities within SFSP 06-2017.

These FNS waivers have benefitted both our South Dakota State Agency and SFSP sponsors by helping them efficiently operate the SFSP in a more cost-effective manner. The SFSP offer versus serve allows sites of both schools and non-schools to create a welcoming environment and save on food waste. The sponsors currently prepare enough food for all the participants to take all components, the offer versus serve allows them to curb the food waste and adjust preparation based on trends of student choices. The limitation of offer versus serve only to SFAs on NSLP impacts many sponsors. The elimination of offer versus serve may require additional share tables and additional staff to monitor and manage them.

The State Agency application software currently allows each sponsor a site application meal specific option for offer versus serve on each meal except snack. A modification would result in a costly software change request which also takes time. First it would require the software vendor to determine if the sponsor is a SFA, whether the sponsor selected a NSLP meal pattern, then giving them access to the offer versus serve option. Rescinding these flexibilities will place undue burden on both the State agency and SFSP sponsors of sites currently using the SFSP meal pattern for breakfast, lunch or supper by eliminating the offer versus serve option, along with reducing student choices which are allowed during the school year.

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

Offer Versus Serve:

We are requesting a waiver to extend Offer Versus Serve OVS to non-school food authority sponsors and to allow OVS with use of both the NSLP and SFSP meal patterns for the School Food Authorities SFAs.

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:

Offer Versus Serve:

All SFSP sites, regardless of location or type of sponsorship, may utilize OVS. Use of OVS will be extended to non-school sponsors. All non-school sponsors electing to use OVS and schools participating in SFSP and 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 iCAN site application. School sponsors that elect to use the NSLP or SBP patterns and SFAs operating SSO will be required to follow the OVS requirements of NSLP and SBP.

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]:

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 these waivers will present any challenges to the agency or SFSP sponsor organizations as these flexibilities have already been implemented and in place.

The challenges that the State Agency and SFSP sponsor organizations may face if the waiver is **NOT** approved include:

- Increased costs to State agency to update software systems to bring into compliance with regulation changes, including application modules change requests.
- Additional time (6 months to 1 year) needed to meet the compliance changes for the software system changes to be implemented depending upon funds availability. The process includes a written request for the change, evaluation from the vendor developers for time estimate, change request from the vendor, state agency must secure funds for the cost of the change request, vendor contract amendment, then authorization to begin development, schedule of the development, UAT (User Acceptance Testing), then new coding must pass the security scan of the State Agency BIT (Bureau of Information and Telecommunications) and finally schedule release to production.
- Increased burden to State agency to update training materials, re-train SFSP sponsors, and monitor compliance regarding rescinded flexibilities.
- Increased administrative labor costs for SFSP sponsor for staff handling the waste, share table monitoring and storage of food items students return to the share table to be appropriately stored for later service.
- Increased cost of sponsors training staff in the management of the share table according to state and local health and safety codes.
- Increased cost of sponsor Menu option being chosen or packaged for 'recycling' at a share table along with additional food documentation for the storage of these food items when it occurs.

- Increased operational budget expenses of food costs, food waste resulting in disposal costs of unwanted foods by participants for SFSP sponsors not allowed to implement OVS.
- Increased disposal costs affecting the sponsor operational budget.
- Decreased child satisfaction with tray selection requirements potentially decreasing participation at sites.
- Percentage of Eligible Service Providers affected in South Dakota based on 2018 summer offer versus serve past implementation show 47.5% of sites used SFSP OVS. The percentage of sites using NSLP OVS was 1.9 %.
- Ninety percent of South Dakota SFA's currently on SFSP have not chosen to use the NSLP meal pattern since the option is not as cost efficient for them in the summer.
 - Feedback from an eligible service provider that is a non-school included, "We have utilized Offer Vs Serve and it has reduced food waste, especially regarding dairy. Due to a lot of dietary restrictions, we have a lot of students who cannot or do not enjoy dairy products and having it available but not requiring it has been incredibly helpful to avoid a lot of dumped milk and thrown away yogurt or pizza. We use a food vendor and they pay attention to how much food waste we have and having to require each student to take food that they know they cannot or will not consume will actively upset the food vendor."
 - Another non-school sponsor responded, "This will cause us to waste more food, as kids throw away items they do not like. This will, in effect, limit the amount of money we can spend on things that benefit the kids, like more options of fruits and vegetables. It will result in increased food waste, which is bad both for the environment, our dumpster and our budget."
 - A school provider said, "Kids like (and deserve) choice. We do not want to make them takes things they do not want. If we are going to make them take things they don't like, that could affect participation rates. Also, a major objective of OVS is to decrease waste, forcing kids to take food they do not want would result in increased waste."
 - Another SFA stated, "This will create even more waste. After being used to Offer vs. Serve in school year this will now confuse children both for summer taking everything and then again during school time being allowed to refuse. "

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(I)(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.

10. Anticipated waiver implementation date and time period:

To be effective with the start of the 2019 SFSP, by February 2019, since registration for trainings begins in February and training materials are being prepared for March training along with the Management and Administrative Plan due in February needs to include information impacted. The State Agency would like the time period to be approved for five (5) years.

11. Proposed monitoring and review procedures:

The State agency will do individual sponsor technical assistance during preapproval visits and annual application renewal; then continue to follow our standard SFSP review procedures. Sponsors in good standing found to have noncompliance issues as related to the first week visit monitoring waiver will work with the State agency on an individualized corrective action plan.

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 each year.

13. Link to or a copy of the public notice informing the public about the proposed waiver

[Section 12(I)(1)(A)(ii) of the NSLA]: The public notice is located at: The South Dakota Department of Education Child and Adult Nutrition Services
<https://doe.sd.gov/cans/index.aspx> under Announcements.

14. Signature and title of requesting official:

Name: Cheriee Watterson Date: November 30, 2018

Title: Office Administrator

Requesting official's email address for transmission of response: Cheriee.Watterson@state.sd.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(I)(1)(A)(ii) of the NSLA

• **Regional Office Analysis and Recommendations:**