

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 SFAs and CACFP 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otherwise identified as State agency is seeking to request a state-wide waiver for the SFSP flexibilities that were rescinded by FNS on October 11, 2018 as part of SFSP 01-2019.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 12-2011, SFSP 04-2013, and SFSP 06-2014.

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 additional administrative cost to the sponsors for the first week monitoring visit of sites in good standing, with no change in staff would increase. The need to hire more staff as monitors for sponsors with multiple sites is an administrative burden. The State Agency application software currently has the ability for each sponsor to request a site specific first week visit waiver. The State Agency staff act on each request with an approval or denial. A change would result in a costly software change request which also takes time. Rescinding these flexibilities will place undue burden on both the State agency and SFSP sponsors of sites in South Dakota.

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

First Week Site Visits

We are requesting the discretion to waive the first week site visit requirements for sites that have operated successfully in the previous year, for SFA sponsors in good standing, and for CACFP sponsors in good standing.

7 CFR 225.15(d)(2) Sponsors shall visit each of their sites at least once during the first week of operation under the Program and shall promptly take such actions as are necessary to correct any deficiencies.

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

First Week Site Visits:

The State agency will be able to waive the first week site visit requirement for sites that operated successfully during the previous summer (or other most recent period of operation) and had no serious deficiency findings. Sponsors will still be required to review the site within the first four weeks of operation.

The State agency will be able to waive the first week site visit requirements for SFA sponsors in good standing. The SFAs must ensure that each sponsored site is monitored as otherwise required during the period of operation, monitoring requirements of the SFSP sites may be aligned with those of NSLP.

The State agency will be able to waive the first week site visit requirement for SFSP and SSO sponsors in good standing in the CACFP and NSLP, respectively. Sponsors will still be required to ensure that their sites are monitored as otherwise required by Program regulations during the period of operation.

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 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 monitor staff in conducting the first week site visits, especially for the larger sponsoring organizations that are continuing meal service from one program to another.
- Percentage of Eligible Service Providers affected in South Dakota based on 2018 summer first week waiver requests included 41.7% of sites making a request. The percentage of SFAs included in the total number of all sponsors is 24.4%, and of the School Food Authorities, 37.5% of just the SFA sponsors on the summer program requested the first week waiver. In addition, 46.1% of just the CACFP sponsors participating in SFSP in our state requested the first week waiver.
 - Feedback from an eligible service provider included, "This makes little sense for those running a successful program. It's not necessary and not a good use of resources. It takes money away from the food budget and ultimately the kids."
 - Another provider said, "For those of us who like to be compliant it is an added burden, waste of time where we could be putting our resources to better things."

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:**