

## **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otherwise identified as State agency is seeking to request a state-wide waiver for the SFSP flexibilities that were rescinded by FNS on October 11, 2018 as part of SFSP 01-2019.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 which was a continuation of the SFSP 11-2011 addressing meal service times.

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. It has also allowed SFSP sponsor to align the SFSP meal service times more closely with the enrichment programs operating in their communities as they network with other partners. Meal service may be eliminated at certain sites because of the time restrictions.

The State Agency application software currently allows each sponsor a site application meal specific service time start and end. A modification would result in a costly software change request which also takes time. First the software vendor would need to determine if it is a camp, if so if there is a snack between lunch and supper, if not then must have 4 hours between the meals; yet happening by 7 pm and not extending past 8 pm. Non-camp sites, the software must determine if the sponsor meal start times are 3 hours apart. Then the meals can't exceed two hours for lunch and supper and one hour for any snack or breakfast. Rescinding these flexibilities will place undue burden on both the State agency and SFSP sponsors of sites currently scheduling based on the community norms, average participation numbers and activities.

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

Meal Time Restrictions:

We are requesting to waive the meal time restriction on the amount of time that must elapse between meal services, the time restrictions associated with supper, and the amount of time limited for each meal/snack service.

*7 CFR 225.16(c)(1) Three hours must elapse between the beginning of one meal service, including snacks, and the beginning of another, except that 4 hours must elapse between the service of a lunch and supper when no snack is served between lunch and supper. The service of supper shall begin no later than 7 p.m., unless the State agency has granted a waiver of this requirement due to extenuating circumstances. These waivers shall be granted only when the State agency and the sponsor ensure that special arrangements shall be made to monitor these sites. In no case may the service of supper extend beyond 8 p.m. The time restrictions in this paragraph shall not apply to residential camps.*

*7 CFR 225.16(c)(2) The duration of the meal service shall be limited to two hours for lunch or supper and one hour for all other meals.*

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

Meal Time Restrictions:

The State agency will place no time limits on the duration of a meal service and no requirements pertaining to the amount of time that must elapse between the beginning of one meal service and the beginning of the next. This will provide sponsors with greater flexibility to meet local needs. SFSP sponsors will be required to establish meal times for each site and provide this information to the State agency. Meals must be served within

the State-approved meal service times to be claimed for reimbursement and for the cost associated with such meals to be covered by Program funds.

**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.
- Loss of reimbursement revenues for meals and snacks as meal time restrictions may force SFSP sponsors to not operate meals/snacks that do not align with program activities in place.
- Increased operational labor costs for SFSP sponsors due to the amount of time that must be placed between meals/snacks and must be paid to sustain staff.
- Twelve percent of South Dakota Eligible Service Providers currently on SFSP would not be in compliance with the meal time restrictions without a waiver and 83% of the sponsors affected are private non-profit sponsors scheduling their meals around the activities and programs they offer.
  - Feedback from an eligible service provider that is a non-school included, "This will impact us greatly. The past 2 years we have served breakfast from 8:30-9:30 and lunch from 11:00-12:30 to best meet the needs of our community and reach the most amount of kids possible. This change would require us to change either the breakfast or lunch which would not work best with the programming we offer, and the activities youth participate in. I believe that this could negatively impact our outreach."

**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. 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, office of 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](mailto:Cheriee.Watterson@state.sd.us)

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**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:**