

## **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otherwise identified as State agency is seeking to request a state-wide waiver for the SFSP flexibilities that were rescinded by FNS on October 11, 2018 as part of SFSP 01-2019.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 of November 17, 2002 Waiver for Closed Enrolled Sites.

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 take part in the SFSP with less paperwork and a more efficient meal count since they aren't tracking participants by name. The administrative burden of determining eligibility of each participant for the large number of students they serve will impact the sponsor's decision to take part in the Program.

The State Agency application software currently allows each sponsor a site application option for closed enrolled sites in a needy area. A modification 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.

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

Use of Area Eligibility with Closed, Enrolled Sites:

We are requesting a waiver to extend the use of area eligibility to closed enrolled sites operating in needy areas where 50% or more of the children residing in the area are eligible for free and reduced-price meals under the National School Lunch Program and School Breakfast Program, thereby waiving the requirement that individual eligibility determinations be made by submitting applications.

*Section 13(a)(1)(A)(i)(III) of the NSLA an area— (aa) for which the program food service site documents the eligibility of enrolled children through the collection of income eligibility statements from the families of enrolled children or other means; and (bb) at least 50 percent of the children enrolled at the program food service site meet the income standards for free or reduced price school meals under this Act and the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq.);*

*42 USC 1761(a)(1)(A)(i)(III) an area— (aa) for which the [program](#) food service site documents the eligibility of enrolled [children](#) through the collection of income eligibility statements from the families of enrolled [children](#) or other means; and (bb) at least 50 percent of the [children](#) enrolled at the program food service site meet the income standards for free or reduced price school meals under this chapter and the Child Nutrition Act of 1966 ([42 U.S.C. 1771](#) et seq.);*

*7 CFR 225.15(f) Application for free Program meals— (1) Purpose of application form. The application is used to determine the eligibility of children attending camps and the eligibility of sites that are not open sites as defined in paragraph (a) of the definition of "areas in which poor economic conditions exist", in §225.2. In these situations, parents or guardians of children enrolled in camps or these other sites must be given application forms to provide information described in paragraph (f)(2) or (f)(3) of this section, as applicable. Applications are not necessary if other information sources are available and can be used to determine eligibility of individual children in camps or sites.*

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

Closed Enrolled Sites:

Any site located in an area in which at least 50% of the children are from households eligible for free/reduced price meals will be eligible for SFSP reimbursement for all meals served to eligible children, regardless of whether the site serves an identified group of children or is open to the community.

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 in collecting and/or making income eligibility determinations for children located in areas already deemed needy based on area eligibility.
- Loss of program sponsors and sites resulting in less meals served to children.
- Percentage of Eligible Service Providers affected in South Dakota based on summer of 2018, is 18% of total SFSP Sponsors, but 67% of the Closed Enrolled sites are currently using the area eligibility and if they cannot continue using the area eligibility they may choose to discontinue the program.
  - Feedback from an eligible service provider that is a non-school included, "We served 3,477 participants over the course of 10 weeks in 2018
    - Approximately 650 of those participants currently qualify for Free or Reduced Lunch (self-reported data during the registration process). This represents approximately 6,500 lunches and 6,500 snacks over the course of the summer (Participants typically attend for 10 days).

- We had 375 participants who applied for Financial Aid (meet the requirements for Free or Reduced Lunch) \$111,646 in 2018, was granted for financial aid and (434 participants, \$127,824 in 2017)
- We received approximately \$123,000 in meal reimbursements in 2018 and had approximately \$200,000 in overall Food Costs. With the loss of the SFSP program, we will be forced to either offer a drastically scaled back food program (perhaps even begin to require participants to bring their own meals) or reduce our Financial Aid program in order to meet budget for 2019. Either way, the campers that fall within the Free and Reduced Lunch program guidelines are going to be adversely affected. The SFSP is a critical part of our overall program that allows us to provide healthy meals to our campers who would often not have access to meals during this time frame."
  - Another non-profit stated, "Using area eligibility keeps things simple and keeps paperwork to a minimum which also eliminates the chances of making a processing error on a free or reduced-price meal."

**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  
Title: Office Administrator

Date: November 30, 2018

Requesting official's email address for transmission of response:  
[Cherree.Watterson@state.sd.us](mailto:Cherree.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:**