

January 13, 2022

Diane Fulton  
United States Department of Agriculture  
Mountain Plains Regional Office  
1244 Speer Blvd Suite 903  
Denver, CO 80204-3581

Subject: Child Nutrition Program State Waiver Request for State Oversight Waivers for SNP and CACFP

**1. State agency submitting waiver request and responsible State agency staff contact information:**

SD Department of Education, Child and Adult Nutrition Services  
Cheriee Watterson, Division Director  
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**2. Region:** Mountain Plains (MPRO)

**3. Eligible service providers participating in waiver and affirmation that they are in good standing:**

This waiver request is applicable statewide for any Public or Private School Food Authorities (SFAs) or sponsor agencies that are in good standing with the South Dakota Department of Education (SD DOE) to operate the **School Nutrition Programs (SNP) (including the Seamless Summer Option)** and the **Child and Adult Care Food Program (CACFP)**. This waiver will apply to all SFAs and sponsor agencies that have an approved annual renewal with the SD DOE.

**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]:**

**CACFP and SNP Challenges:**

**Supply Chain Disruptions**

- Starting in mid-August 2021, SFAs and sponsor agencies began reporting supply chain issues as they began filling their storerooms in preparation for the 2021-22 school year. Some issues include: truck delays, backordered products (food and supplies), cancellation of planned products, price increases, and contract terminations. As a result, the following challenges emerged for our SFAs and sponsor agencies:
  - Unpredictable food supply due to cancellations or changes in what was ordered vs. what was delivered, causing countless last minute menu changes.
  - Quality of fresh fruit and vegetables, including cut and pre-packed, is declining as supply chain issues increase in our state. Fresh produce is delivered close to the use-by date, requiring

- SFAs and sponsor agencies to dedicate extra time to sort and remove produce, and trim portions of ready-to-use produce to improve customer satisfaction.
- Locating vendors with available meal packaging materials in adequate quantity, such as disposable trays, bowls, lidded cups, and bowls as well as personal protective equipment, cleaning supplies, and sanitizing chemicals is becoming increasingly difficult.
- Unexpected increases in food prices require SFAs and sponsor agencies to reevaluate budgets, evaluate food prices, and find cost-effective alternate products. Price increases in processed foods are pushing some schools to adopt additional scratch cooking recipes, which can further pressure labor shortage issues.
- One major food distributor in South Dakota cancelled contracts in early September with approximately 60 school districts in and around the Sioux Falls area. This is the most densely populated part of our state with the seven counties (Clay, Lincoln, McCook, Minnehaha, Turner, Union, and Yankton) accounting for 36.29% of the population.
- The USDA Food Distribution Program is also facing food order cancellations and contracted warehouse and distribution worker shortages. This decreases food availability and forces schools to purchase commercial products normally fulfilled by USDA Foods.
- At this time, the State Agency has not heard widespread reports of supply chain issues affecting CACFP agencies. However, with the increase of SFAs struggling to find alternative purchase methods and products including utilizing local grocery and club stores, we expect that it is only a matter of time until these issues start to impact our CACFP agencies.

#### **Staff Shortages**

- SFAs and sponsor agencies have also been facing staff shortages, as there are not enough staff available to cook, serve, and clean up in the program.
  - Many food service staff in South Dakota are elderly and at high risk of developing a severe illness from a COVID-19 infection.
  - Some of the state's highest-need schools were subject to tribal shelter-in-place orders in school year 2020-21. Food service staffing may have been downsized in these areas last year and finding staff to come back in SY2021-22 has been a challenge.
  - Due to the high staff turnover, finding qualified candidates is extremely difficult, especially when adhering to the professional standards hiring requirements. One of our largest school districts has reported an occasion of 15 open food service positions, that is 15% of their total staff and does not include an additional 6 people out daily due to illness.

#### **Increased Workload:**

- Due to the COVID-19 pandemic, SFAs and sponsor agencies have faced a significant increase in workload.
  - Completing the "routine paperwork" (annual application) has been delayed and on September 20, 25% of the annual School Nutrition Program application renewals were still not approved. Normally, at least 98% of applications are completed by the first part of October.
  - Due to new waiver flexibilities for school year 2021-22, the State Agency spent time developing and testing work-arounds in the Colyar application and claim system to ensure SSO and CACFP integrity, while still allowing flexibility to the SFAs and sponsor agencies. New work-arounds were determined and implemented from school year 2020-21. This change

- caused confusion at SFAs and sponsor agencies and resulted in delays with application approvals.
- SFAs and sponsor agencies using waiver flexibilities took additional time during application and waiver approval to ensure proper adherence to waiver flexibility requirements. This included time spent on conference calls and webinars hosted by the State Agency, as the SFA and sponsor agency worked to determine how these available flexibilities work for their program.
- Healthy meals provided to in-school and virtual students has increased workloads in SFAs and sponsors that are implementing multiple feeding methods while also maintaining sanitation requirements.
- SD DOE staff time shifted to providing a large amount of targeted technical assistance to nearly all SFAs and sponsor agencies that used one or more of the waiver flexibilities. Technical assistance focused on proper waiver implementation, which varies based on the type of SFA or sponsor agency. Additionally, the State Agency is tracking waiver requests and usage in an Excel spreadsheet in addition to the Colyar system to assist with monitoring and waiver reporting.
- Based on our experience in SY2020-21 with virtual compliance reviews conducted for CACFP and SFSP, we learned that virtual review visits require a great deal of SFA and sponsor agency time.
  - Often, SFAs and sponsor agencies needed to learn new forms of communication via video conferencing platforms for virtual visits. Many SFAs and sponsor agencies do not have laptops available for the food service department capable of video and microphone use.
  - Virtual compliance reviews require a significant increase in SFA and sponsor agency time to collect, scan, and submit a wide variety of review documents and information that, in a normal review, is done seamlessly and is unintrusive to the SFA and sponsor agency.

**Additional Information:**

- SNP: Adhering to the compliance review schedule would result in 32 compliance reviews and 24 procurement reviews assigned in SY2021-22; all assigned reviews currently operate the Seamless Summer Option.
- CACFP: Adhering to the normal compliance review schedule would result in 33 reviews assigned in program year 2021-22.
- SNP and CACFP Compliance reviews in South Dakota are currently transitioning to an online Colyar system that will require training for SFAs and sponsor agency staff. With the SY2021-22 waivers currently in use at all reviewed SFAs and sponsor agencies, State Agency staff will need to create several work-arounds to modify the standard SNP review to a modified review.

**All Child Nutrition Programs (SNP, CACFP) Goals:**

The SD DOE is requesting a waiver approval to add one additional year to the current South Dakota Administrative Review cycle in use for the **SNP** and **CACFP**.

With the approval of this waiver request, SD DOE will add one year to the AR cycle for SNP, CACFP. To explain further by program:

- **SNP:** This waiver flexibility will result in adding a seventh year to our previously approved waiver for a six-year review cycle. SNP ARs scheduled for SY2021-22 will be conducted in SY2022-23. Further, reviews originally scheduled in SY2022-23 would then be conducted during SY2023-24. Our current six-year AR waiver review cycle ends on June 30, 2024, after which we will begin a new review cycle.

- **CACFP:** This waiver flexibility will result in adding a fifth year to our current four-year review cycle. CACFP reviews scheduled for PY2021-22 will be conducted in PY2022-23. Further reviews originally scheduled for PY2022-23 would then be conducted during PY2023-24, and so on.

**All Child Nutrition Programs (SNP, CACFP) Outcomes:**

This flexibility will provide a much-needed burden reduction for the SFAs, sponsor agencies, and State Agency and allow food service directors time to work through issues they currently face at the local level. The State Agency plans to conduct Technical Assistance (TA) visits for SFAs/sponsor agencies that need additional assistance. The TA visits will allow the State Agency to focus on providing timely, focused technical assistance. SFAs and sponsor agencies will have the opportunity to discuss the specific challenges they face, and the State Agency can share strategies to overcome those challenges. Each TA visit will have a completed document that will include a summary of documents reviewed and technical assistance provided to the SFA or sponsor agency.

SD DOE will continue to offer additional opportunities for training and technical assistance, including increased time to spend on one-on-one targeted technical assistance with SFAs and sponsor agencies. The State Agency will check in and assist with the unique challenges of each SFA and sponsor agency, helping ensure program requirements are met.

The monthly conference calls and the bi-weekly *Crash Course with CANS* webinar trainings will continue. These conference calls and webinars are designed to help SFAs and sponsor agencies accommodate for the lost training that would have normally been conducted in the spring/summer of 2021 but was minimized due to COVID-19 restrictions.

**5. Specific Program requirements to be waived (include statutory and regulatory citations). [Section 12(1)(2)(A)(i) of the NSLA]:**

The South Dakota Department of Education (SD DOE) requests a waiver of regulations:

**SNP:**

- 7 CFR 210.18(c) Timing of administrative reviews and cycle.
- 7 CFR 210.19(a)(5) Food Service Management Company (FSMC) review cycle requirements.

**CACFP:**

- 7 CFR 226.6(m)(4) Review of sponsored facilities
- 7 CFR 226.6(m)(6) Frequency and number of required institution reviews. Annually review at least 33.3% of all institutions according to the schedule
  - (i) Review independent centers and sponsoring organizations of 1 to 100 facilities at least once every three years and include reviews of 10% of their facilities;
  - (ii) Review sponsoring organizations with more than 100 facilities at least once every two years and include reviews of 5 percent of the first 1,000 facilities and 2.5 percent of the facilities in excess of 1,000; and
  - (iii) Review new institutions that are sponsoring organizations of five or more facilities within the first 90 days of Program operations.

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

There are no impacts on technology or State systems for Child Nutrition Programs as a result of this waiver request.

**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]:**

There are currently no State level regulatory barriers related to this specific issue.

**8. Anticipated challenges State or eligible service providers may face with the waiver implementation:**

We anticipate this waiver will reduce challenges faced by SFAs and the State agency.

**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(l)(1)(A)(iii) of the NSLA]:**

Use of this waiver will not increase the overall cost of the Program to the Federal Government. There are no additional staff costs to implement this waiver.

**10. Anticipated waiver implementation date and time period:**

**SNP:** Implementation start date of immediately and is to remain in effect through the end of the seventh year of the AR cycle ending June 30, 2025.

**CACFP:** Implementation start date of immediately and is to remain in effect through the fifth year of the review cycle ending September 30, 2023.

**11. Proposed monitoring and review procedures:**

**All Child Nutrition Programs (SNP, CACFP):**

The SD DOE will continue to maintain a high level of program integrity through SY2021-22 through the following methods:

- Monthly check-in calls/webinars will be conducted. All schools and agencies on any Child Nutrition Program are invited to attend. Additional program specific calls are scheduled when necessary. The call structure includes updates and report outs from SNP and CACFP (including FFVP, USDA Foods in schools) and includes information regarding waiver flexibilities, new or updates to guidance, sharing resources from other partner agencies, sharing best practices between programs, and allowing time for questions and discussion from the SFAs/sponsor agencies.
- Bi-weekly live webinar training events are available to all schools/agencies on a child nutrition program. These webinars are recorded and placed on the SD DOE website for future reference and for SFAs/agencies that were unable to attend the training.
- A monthly nutrition bulletin with program updates, resources, trainings, reporting deadlines, etc. is created, emailed, and posted on the SD DOE website.
- Technical Assistance visits at targeted SFAs and sponsor agencies that need additional assistance
- Continue to provide high quality, rapid communication and technical assistance by:
  - Providing one-on-one communication (via video calls, emails), guidance, and program instruction for SFAs and sponsor agencies. As part of our submitted plan, SD DOE will focus these discussions on new sponsors and those with operational problems the previous year;
  - Providing targeted assistance in the completion of program agreements and renewals, to include updates for each waiver flexibility that each sponsor agency has selected to use;

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- Providing one-on-one communication with program operators to obtain procedures for meal service operation as it continues to evolve based on the pandemic and the needs of the local school or community;
- Maintenance of tracking documentation of waivers used by each SFA and sponsor agency;
- Providing targeted program and agreement training for SFAs and sponsor agencies transitioning to the Seamless Summer Option or Summer Food Service Program, many of whom have not previously operated either of these summer feeding options. Even experienced sponsors transitioning into SSO or SFSP require training to understand the flexibilities allowed by the various USDA waivers.

**12. Proposed reporting requirements (include type of data and due date(s) to FNS):**

The State Agency will report to FNS regional office one year after the approved implementation date of the waiver.

**13. Link to or a copy of the public notice informing the public about the proposed waiver [Section 12(l)(1)(A)(ii) of the NSLA]:**

<https://doe.sd.gov/cans/index.aspx> located under “Announcements” tab

**14. Signature and title of requesting official:**

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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(l)(1)(A)(ii) of the NSLA

**Regional Office Analysis and Recommendations:**

Recommend Approval                       Recommend Denial