

November 19, 2021

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Subject: Child Nutrition Program Waiver Request for State Agency Oversight of 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  
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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) and sponsor agencies that are in good standing with the South Dakota Department of Education (SD DOE) to operate the **School Nutrition Programs (including the Seamless Summer Option)** and the **Child and Adult Care Food Program**. This waiver will apply to all SFAs and sponsor agencies that have an approved annual renewal application 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(I)(2)(A)(iii) and 12(I)(2)(A)(iv) of the NSLA]:**

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

**Supply Chain Disruptions**

- In mid-August SFAs and sponsor agencies began reporting supply chain issues as they tried to fill their storerooms and return to normal operations for SY21-22. Some of these issues include truck delays, backordered products (food and supplies), cancellation of planned products, price increases, and contract termination. As a result, the following challenges have presented themselves for our SFAs and sponsor agencies:
  - An unpredictable food supply due to cancellations and/or changes in what was ordered vs. what was delivered has caused countless last minute menu changes.
  - The quality of pre-packed, cut, fresh fruit and vegetables is declining as supply chain issues increase in our state. Fresh produce is delivered close to the use-by date, which means SFAs

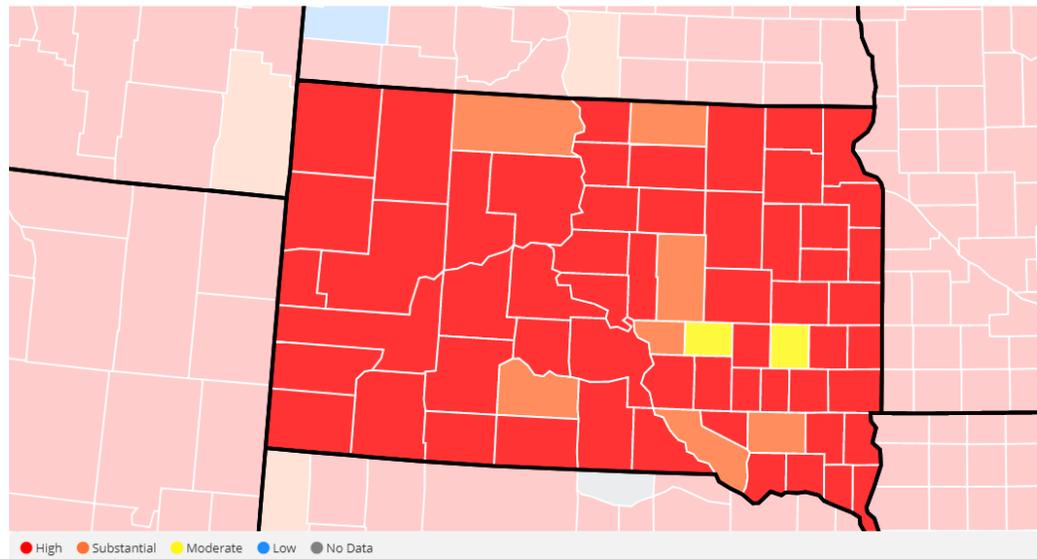
- and sponsor agencies must dedicate extra time to sort and remove produce or recut portions of ready-to-use produce to improve customer satisfaction.
- To continue to serve nutritious meals in the safest way possible SFAs and sponsor agencies are continuously overhauling their menus to accommodate a variety of meal service methods (i.e., socially distanced, meals in the classroom, grab and go meals, etc.).
  - Finding a vendor with enough available products for extra meal packaging materials such as disposable trays or boats, lidded cups, and bowls as well as personal protective equipment, cleaning supplies, and sanitizing chemicals has become increasingly difficult.
  - These disruptions have caused an increase in food prices and SFAs and sponsor agencies must evaluate if their program can afford the product.
  - This forces the agency to take time to evaluate pricing and find alternate products or reconfigure their menus or adopt scratch cooking processes, which can further pressure any labor shortage issues.
    - There is a steep learning curve for the SFAs and sponsor agencies as they work through these challenges and learn to cook unfamiliar products.
    - Student acceptance of alternate products is important to keep meal participation high, so SFAs and sponsor agencies work hard to update recipes, perform tests, and make changes necessary to find something that will be palatable.
    - Last minute, unplanned menu changes must be documented on production records and menus. Documenting multiple manufacturers used to provide alternate products increases the complexity of this documentation. This results in SFAs and sponsor agencies committing additional time ensure the appropriate documentation is on file i.e., production records, labels, evaluating special diet requests. If the State Agency must review this documentation for a compliance review, that would also add time demands to the SFA and sponsor agency for questions about unclear or incomplete documentation.
  - 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 Rapid City Area School District, which is the 2<sup>nd</sup> largest school district in our state, has also experienced major challenges due to the supply chain issues. They reported starting the school year with a 4-week cycle menu that has now reduced to a 2-week cycle menu. Even with the short cycle menu, the school faces daily menu or product changes.
  - Out of 192 SFAs, Rapid City Area School District and the Sioux Falls School District, make up 21% of all SNP meals served in South Dakota each year.
  - The 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 that normally would have been fulfilled by USDA Foods.
- At this time, the State Agency has not heard reports of supply chain issues directly affecting CACFP agencies. However, with the increase of SFAs struggling to find alternative purchase methods and

products including utilizing local grocery and club stores it is only a matter of time until these issues start to impact our CACFP sponsors.

**Staff Shortages:**

- SFAs and sponsor agencies have also been facing extreme staff shortages as there are not enough staff available to cook, serve, and clean up in the program due to illness, quarantine, and an overall unstable workforce.
  - Many food service staff in South Dakota are elderly and at high risk of developing a severe illness from a COVID-19 infection.
  - South Dakota has a high level of community transmission of COVID-19 infection. Data reported on October 25, 2021 shows that 15-19.9% of individuals tested in the past 7 days are positive, while only 62.6% of the population is fully vaccinated. (CDC, <https://covid.cdc.gov/covid-data-tracker>)

Level of Community Transmission in South Dakota



- Some tribal lands are particularly hard hit with resulting quarantines. Currently, most SD tribal schools are operating 100% virtual or as a hybrid model.
  - Oglala Sioux Tribe quarantine: <https://indiancountrytoday.com/news/pine-ridge-shuts-down-schools-amid-covid-19-rise> and <https://www.keloland.com/keloland-com-original/rising-covid-19-cases-prompts-virtual-learning-vaccine-requirement-discussions-for-ogla-sioux-tribe-schools/>
    - [In addition, the OST has 11 CACFP Head Start sites that are also operating virtually.](#)
  - Cheyenne River Sioux Tribe quarantine, August 6 to September 13, 2021: <https://www.crstcoronavirusupdates.com/tribal-resolutions/>
- Due to the high staff turnover, finding qualified candidates is extremely difficult, especially when adhering to the professional standards hiring requirements.

- Douglas School district (enrollment of 2,727) had their food service director (FSD) quit unexpectedly 8 days before school started. They are struggling to find someone to hire that meets the requirements since they are a large SFA located in a remote, rural location.
- Isna Wica Owayawa (enrollment of 249) had their FSD unexpectedly go on medical leave in July and will not return until January. Another key food service staff person left abruptly before school started without training anyone to do her job of applications, reporting and claiming. The SFA was left with only 2 of their 4 food service staff to start the year. The Oglala Sioux Tribe was then ordered to shelter in place in mid-September 2021 due to an increase in COVID-19 cases. Because of this order, the food service staff had to begin delivering meals to student homes.
- Rapid City Area School District has reported 15 open food service positions, which is about 15% of their total staff and on any given day have up to 6 people out for 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<sup>th</sup>, 25% of the annual application renewals were still not approved. Normally 100% of applications are completed by the first part of October.
  - Due to new waiver flexibilities for school year 2021-22, the State Agency had to test 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. Due to lessons learned with the SY20-21 waivers, new work arounds were determined and implemented. The change in process has caused confusion at SFAs and sponsor agencies and resulted in delays with application approvals.
    - Modifications were made for SFAs to claim FFVP and afterschool snack.
    - SFAs and sponsor agencies that made mistakes in following the special application renewal instructions, which deviate from the normal annual application process, required extra time not only for the SFA and sponsor agencies, but also the State Agency.
  - Healthy meals provided to in-school and virtual students has increased workloads as SFAs and sponsors must implement multiple feeding methods while also maintaining sanitation requirements.
  - SFAs and sponsor agencies using waiver flexibilities take additional time to ensure proper adherence to waiver flexibility requirements. This includes time spent on conference calls and webinars hosted by the State Agency, as the SFA and sponsor agency works to determine if and how these available flexibilities would work for their current operation.
- In addition to increases note above, SD DOE staff time increased to provide targeted technical assistance to nearly all SFAs and sponsor agencies that used one or more waiver flexibility to ensure proper implementation which can vary dependent on the different types of SFAs and sponsor agencies in SD. Additionally, the State Agency is separately tracking waiver requests and usage to ensure proper monitoring and waiver reporting.

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- The State Agency has 7 Program Specialists that are working with 192 different SFAs and 85 sponsor agencies. One specialist is new employee (less than two months on the job), one specialist is working with new job responsibilities, and one is taking long term medical leave starting November 2021.
- Based on our experience in SY20-21 with virtual compliance reviews conducted for CACFP and SFSP, we know that virtual review visits require a great deal of SFA and sponsor agency time.
  - SFAs and sponsor agencies will need to learn new forms of communication via video conferencing platforms for virtual visits. Most of our SFAs and sponsor agencies do not have dedicated work the equipment and or internet services to sustain a single virtual visit. Many SFAs and sponsor agencies do not have laptops available for the food service department capable of video and microphone use, resulting in the use of personal equipment.
  - Additionally, 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, if done well, is invisible to the SFA and sponsor agency.

**Additional Challenges Listed by Program:**

**SNP**

- Adhering to the compliance review schedule would result in 32 compliance reviews and 24 procurement reviews assigned in SY 21-22. All assigned reviews are currently operating the Seamless Summer Option.
- Compliance reviews in South Dakota are currently transitioning to an online Colyar system that would require additional training to SFAs and sponsor agency staff. With the use of waivers at all reviewed SFAs and sponsor agencies, State Agency staff would also need to review the new compliance system and make several work arounds to modify the standard review to a modified review due to allowed flexibilities and for SSO operation.

**CACFP**

- Adhering to the normal CACFP compliance review schedule would result in 33 reviews assigned in program year 2021-22.
- Compliance reviews in South Dakota are currently transitioning to an online Colyar system that would require additional training to sponsor agencies by a State Agency staff that is still learning as well.

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

The SD DOE is requesting that a compliance review waiver be approved to allow the State Agency to complete the school year 2021-2022 South Dakota compliance reviews in CACFP and SNP (including SNP procurement reviews) using a formal, documented technical assistance visit, completed either in person (when possible) or virtually and not the documented SNP Administrative Review and the CACFP compliance review. These reviews will not use SNP or CACFP compliance review materials. The State Agency has established technical assistance visit forms for CACFP, SNP, and SNP procurement to utilize during these visits to ensure that program integrity is met.

SD DOE is requesting a formal, documented technical assistance visit in lieu of a formal compliance review due to the following USDA FNS waivers and guidance:

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- Specific portions of the SNP Administrative Review due to SSO operation during SY21-22 (COVID-19: Child Nutrition Response #97, <https://www.fns.usda.gov/cn/covid-19-child-nutrition-response-97>)
- Due to the COVID-19 related supply chain challenges, fiscal action and corrective action have both been waived (COVID-19: Child Nutrition Response #100, <https://www.fns.usda.gov/cn/covid-19-child-nutrition-response-100>)
- Allowed flexibilities to the federal procurement requirements in USDA FNS memo SP23-2021, CACFP 18-2021: Questions and Answers for Child Nutrition Programs Emergency Procurement Due to Supply Chain Disruptions; and USDA FNS memo CACFP 02-2022: Child and Adult Care Food Program (CACFP) Flexibilities During COVID-19 Supply Chain Disruptions
- SNP Administrative Review reporting requirements on the FNS-640 have been waived (COVID-19: Child Nutrition Response #106, <https://www.fns.usda.gov/cn/covid-19-child-nutrition-response-106>)

A Sponsor Technical Assistance Administrative Review for SNP (STAR SNP) was developed to replace the SNP Administrative and procurement reviews. A Sponsors Technical Assistance Review for CACFP (STAR CACFP) was developed to replace the CACFP compliance review. Both STAR documents are comprised of questions taken from the offsite and onsite portions of the standard compliance review forms from CACFP and SNP. Then were further tailored to fit within the parameters of the sponsors operations during the COVID-19 pandemic for each Child Nutrition Program (Please see the attached STAR SNP and STAR CACFP documents). The STAR visit will be conducted in person when conditions allow and for SFAs or sponsor agencies that are under quarantine or lockdown STAR visits will be conducted virtually.

During these visits, the State Agency will discuss program requirements and flexibilities each SFA or sponsor agency has been approved to operate and review vital documentation such as proper meal counts and current production records and menus to ensure program integrity is maintained. The current procurement plan and an abbreviated review of current procurements will be evaluated for compliance with normal federal competitive procurement rules or any emergency procurements in use. 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. The STAR visit will focus more on providing timely and focused technical assistance and will prevent excessive time spent gathering documentation for the normal full compliance review process. Each STAR visit will have a completed document that will include a summary of documents reviewed and technical assistance provided to the SFA or sponsor agency. This documentation will capture all areas of potential non-compliance that can be used to schedule a follow-up compliance review once the public health emergency has ended.

With the approval of this waiver request, SD DOE will complete the compliance review cycle for SY2021-22 in SNP and CACFP and the scheduled SNP procurement reviews for SY 2021-22 using the STAR visit forms.

If this waiver request is not approved, SD DOE intends to submit a waiver request to postpone the CACFP and SNP reviews for one additional year. This would put SNP SFAs on a 7-year review cycle and CACFP on a 5-year review cycle.

It is the belief of this State Agency that the time investment and intense documentation review required for a normal review is not feasible with the exceptional pressures that SFAs and sponsor agencies are dealing with this school year with supply chain disruptions and staffing shortages. The STAR visit allows the SFA and sponsor agency to focus their time on solutions to these program disruptions rather than collecting, organizing, and submitting documents. This will allow more time for evolving challenges due to the COVID-19

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pandemic. This option will allow State Agency staff to target several more SFAs and sponsor agencies to provide much needed technical assistance and sharing best practices.

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

This flexibility will provide a much-needed burden reduction for the SFAs, sponsor agencies, and State Agency staff during this public health emergency. The STAR visit will ensure SFA and sponsor agency operations are carried out with program integrity as well as guaranteeing that the goal of the CNPs are met, to ensure children are fed nutritious and consistent meals through this time of unprecedented circumstances.

During this time, the SD DOE will continue to offer extra opportunities for training and technical assistance. The State Agency will have 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 to for each specific SFA and sponsor agency and will help ensure program requirements are met.

SD DOE will continue to offer monthly conference calls with all SFAs and sponsor agencies. SD DOE will also continue our bi-weekly “Crash Course with CANS” webinar trainings focusing on important program requirements. These brief 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 shutdowns and restrictions. This waiver will also give the State Agency adequate time to continue publishing the monthly “*Child Nutrition Bulletin*,” our online newsletter.

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

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

SNP:

- 7 CFR 210.18(a) Programs covered and methodology
- 7 CFR 210.18(c) Timing of administrative reviews and cycle
- 7 CFR 210.18(f) Scope of review
- 7 CFR 210.18(h) General areas of review
- 7 CFR 210.18(m) Transparency requirement
- 7 CFR 210.19(a)(5) Food Service Management Company (FSMC) review cycle requirements
- 7 CFR 210.21, 215.14a, 220.16, and 2 CFR 200.318-326 Procurement

CACFP:

- 7 CFR 226.6(m)(3) Review content:
  - 7 CFR 226.6(m)(3)(i) Recordkeeping (including all records listed at [7 CFR 226.15(e)]);
  - 7 CFR 226.6(m)(3)(iv) Any applicable instructions and handbooks issued by FNS and the Department, and any instructions and handbooks issued by the State Agency which are not inconsistent with the provisions of this part;
  - 7 CFR 226.6(m)(3)(vi) Compliance with the requirements for annual updating of enrollment forms;
  - 7 CFR 226.6(m)(3)(vii) If an independent center, observation of a meal service;
  - 7 CFR 226.6(m)(3)(x) If a sponsoring organization, implementation of the household contact system;

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- 7 CFR 226.6(m)(3)(xi) If a sponsoring organization of day care homes, the requirements for classification of tier I and tier II day care homes; and
- 7 CFR 226.6(m)(4) Review of sponsored facilities
- 7 CFR 226.6(m)(5) Household contacts
- 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(I)(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 sponsor agencies and the State Agency due to ever changing challenges related to the public health emergency.

**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]:**

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:** Immediately through September 30, 2022. This waiver request will not change our previously approved six-year AR cycle ending June 30, 2024. The current State Agency procurement review cycle will also end June 30, 2024.

**CACFP:** Immediately through September 30, 2022. This waiver request will not change our previously approved four-year review cycle that ends September 30, 2022.

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

Please see attachments for copies of the STAAR SNP and STAAR CACFP visit documents.

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

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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