

August 4, 2022

Diane Fulton,
Mountain Plains Regional Office
1244 Speer Blvd Suite 903
Denver, CO 80204-3581

Subject: Child Nutrition Program State Waiver Request for Flexibilities SY22-23

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
800 Governors Drive
Pierre, SD 57501-2235
605-773-3413
Cheriee.Watterson@state.sd.us

2. Region: Mountain Plains (MPRO)

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

This waiver would apply to all schools and sponsor agencies in South Dakota that are in good standing and have an approved application to operate a Child Nutrition Program.

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]:

As sponsors continue to respond to and recover from the COVID-19 pandemic, it is important to reduce administrative burden to the fullest extent possible. Sponsors are continuing to face extensive supply chain and staffing challenges as they work to transition back to normal operations. Our state agency desires to provide administrative and operational flexibility, where possible, while maintaining program integrity in providing nutritious meals.

South Dakota Department of Education has provided many summer training opportunities for schools and is planning to provide additional technical assistance and training over the 2022-23 school year on several regulatory and operational aspects of the meal programs. A relief of these regulatory requirements will help us to better meet the needs of our customers and facilitate feeding of children across the state.

Challenges Without the Waiver

- Sponsors continue to face uncertainty in how to best streamline operations while continuing to respond to pandemic related challenges, especially supply chain disruptions and staffing shortages. Without these waivers, sponsors will spend an extraordinary amount of time completing activities related to regulatory burden rather than focusing on properly servicing students and children.

- Decreased school and sponsor program participation due to lack of flexibility and challenging regulatory requirements.
- Children would be unable to participate in the program if schools close in various pockets across the state when new COVID variants arise.
- Food insecurity will continue to be an issue for students and children as the price of consumer goods has increased, and families will have to make tough decisions on how they spend money.

Goal of Waiver to Improve Services

- The goal is to decrease some administrative pressures for the sponsor for this next transitional year. Sponsors are working to transition back to normal operations, but the supply chain and labor shortages continue to plague their efforts. These waivers will allow for additional flexibility when needed during this next school year.
- By relieving administrative pressure, sponsors can focus on communicating changes to families, training staff to accept and approve meal applications, and navigate the ongoing COVID-19 related challenges.
- Continued flexibility of meal service options; non-congregate meal service, parent/guardian meal pickup, meal service times, and offer versus serve provide sponsors the flexibility needed to continue to provide meals in response to COVID-19.
- Maintain sponsor and site program participation and minimize hunger in the local communities.
- Allow SD DOE staff to focus on targeted technical assistance and training for sponsors as they navigate all the supply chain and labor shortage challenges.

Expected Outcome of Waiver

- Sponsors will have an opportunity to transition back to normal operations over a longer period, which helps to assure success.
- Sponsors will implement flexibilities, as needed, to minimize the negative impacts on program participation that are still caused by COVID-19 challenges.
- Simplify program administration for the sponsors, so they can focus on the highest priority needs of serving children and families.

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

See accompanying waiver checklist.

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 schools and sponsor agencies.

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:

The anticipated statewide implementation start date is upon approval from USDA and is to remain in effect through the dates identified on the accompanying waiver checklist.

11. Proposed monitoring and review procedures:

Monitoring of sponsors' performance under the requested waivers will follow administrative review regulations for each program. This practice will be consistent with 7 CFR 210, 215, 220, 225, and 226 review requirements.

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

SD DOE will report to FNS regional office one year after the approval date of this waiver.

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]:

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

14. Signature and title of requesting official:

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605-773-3413
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:

Recommend Approval Recommend Denial

Summer 2022 and SY 2022-23 Child Nutrition Programs 12(l) Waiver Checklist

State Agency:

Date:

**Longest effective dates are in italics; actual effective dates are contingent on date of approval*

Summer Food Service Program (SFSP) and Seamless Summer Option (SSO):

The waivers in this section apply to SFSP and SSO for summer 2022. However, FNS expects that flexibilities under the waivers in this section will only be implemented by Program operators when congregate meal service is limited by the COVID-19 pandemic.

- Waiver 1: Non-Congregate Meal Service during Summer 2022 [42 U.S.C. 1753(b)(1)(A), 42 U.S.C. 1761(a)(1)(D), and 7 CFR 225.6(e)(15)] (*May 1, 2022-September 30, 2022*)
- Waiver 2: Parent/Guardian Meal Pickup during Summer 2022 [42 U.S.C. 1761(f)(3), 7 CFR 210.10(a), 7 CFR 220.2, 7 CFR 220.8(a), 7 CFR 225.2 (Meals), and 7 CFR 225.9(d)(7)] (*May 1, 2022-September 30, 2022*)

National School Lunch Program (NSLP) and School Breakfast Program (SBP):

The following waivers are intended to provide needed flexibility to support school food authorities (SFAs). FNS expects that flexibilities under the waivers in this section will only be implemented by Program operators when congregate meal service is limited by the COVID-19 pandemic.

- Waiver 3: Non-Congregate Meal Service [42 U.S.C. 1753(b)(1)(A) and 42 U.S.C. 1773(b)(1)(A)] (*July 1, 2022 – June 30, 2023*)
- Waiver 4: Parent/Guardian Meal Pickup [7 CFR 210.10(a), 220.2 (Breakfast), and 220.8(a)] (*July 1, 2022 – June 30, 2023*)
- Waiver 5: Meal Service Times [7 CFR 210.10(l) and 220.8(l)] (*July 1, 2022 – June 30, 2023*)
- Waiver 6: Offer Versus Serve [42 U.S.C. 1758(a)(3) and 7 CFR 210.10(e)] (*July 1, 2022 – June 30, 2023*)

School Year Administration (NSLP/SBP/SFSP):

The following waivers allow State and local Program operators to overcome administrative challenges resulting from COVID-19 and to appropriately allocate their limited staffing resources to ensure safe service of meals to children as they respond to and recover from the COVID-19 pandemic. FNS expects Program operators will only use these flexibilities for the duration and extent that they are needed.

- Waiver 7: Local School Wellness Policy Triennial Assessment [42 U.S.C. 1758b(b) and 7 CFR 210.31(e)(2)] (*July 1, 2022 – June 30, 2023*)
- Waiver 8: Food Service Management Company (FSMC) contract duration [7 CFR 210.16(d), 7 CFR 225.6(h)(7)] (*July 1, 2022 – June 30, 2023*)
- Waiver 9: Administrative Review Onsite Requirements [7 CFR 210.18] (*End of PHE** – June 30, 2023*)

- Onsite Requirement for SFA Onsite Reviews by February 1 [7 CFR 210.8(a)(1) and 220.11(d)(1)] (*End of PHE** – June 30, 2023*)
- Onsite Requirement for Afterschool Care Reviews [7 CFR 210.9(c)(7)] (*End of PHE** – June 30, 2023*)
- Onsite Requirement for Periodic Onsite Visits when Utilizing an FSMC [7 CFR 210.16(a)(3) and 220.7(d)(1)(iii)] (*End of PHE** – June 30, 2023*)

Reporting Requirements (NSLP):

The following waivers allow State and local Program operators to appropriately allocate their limited staffing resources to meal service to best ensure safe service of meals to children as they respond to and recover from the COVID-19 pandemic.

- Waiver 10: FNS-874 Second (Independent) Review of Applications [42 U.S.C. 1769(c)(b)(6)(E)(iii) and 7 CFR 245.11(b)(2)] (*July 1, 2022 – June 30, 2023*)
- Waiver 11: FNS-640 Administrative Review Data Report [42 U.S.C. 1769c(b)(1)(c)(iv) and 7 CFR 210.18(n)] (*July 1, 2022 – June 30, 2023*)

Special Milk Program (SMP):

The following waivers are intended to provide needed flexibility to support schools and institutions in continuing to offer milk. FNS expects that flexibilities under the waivers in this section will only be implemented by Program operators when congregate milk service is limited by the COVID-19 pandemic.

- Waiver 12: Non-Congregate Milk Service [42 U.S.C. 1772(a)(1) and 7 CFR 215.1] (*July 1, 2022 – June 30, 2023*)
- Waiver 13: Parent/Guardian Milk Pickup [42 U.S.C. 1772(a)(7), 7 CFR 215.7(d)(2)(i), and 7 CFR 215.13a(a)] (*July 1, 2022 – June 30, 2023*)

Fresh Fruit and Vegetable Program (FFVP):

The following waivers are intended to provide needed flexibility to support schools in continuing to participate in the FFVP. FNS expects that flexibilities under the waivers in this section will only be implemented by Program operators when the FFVP elementary school is closed for in-person instruction and congregate meal service is limited by the COVID-19 pandemic.

- Waiver 14: Parent/Guardian FFVP Pickup [42 U.S.C. 1769a] (*July 1, 2022 – June 30, 2023*)
- Waiver 15: Alternate Site [42 U.S.C. 1769a(a)] (*July 1, 2022 – June 30, 2023*)

Unanticipated School Closures:

The waivers in this section apply to SFSP and SSO during unanticipated school closures. FNS expects that flexibilities under these waivers will only be implemented by Program operators when congregate meal service is limited by the COVID-19 pandemic.

- Waiver 16: Non-Congregate Meal Service during Unanticipated School Closures in SY 2022-23 [42 U.S.C. 1753(b)(1)(A), 42 U.S.C. 1761(a)(1)(D), and 7 CFR 225.6(e)(15)] (*October 1, 2022 – April 30, 2023*)

- Waiver 17: Parent and Guardian Meal Pick-Up during Unanticipated School Closures (SFSP/SSO) [42 U.S.C. 1761(f)(3) and 7 CFR 210.10(a), 220.2 (Breakfast), 220.8(a), 225.2 (Meals), and 225.9(d)(7)] (*October 1, 2022 – April 30, 2023*)
- Waiver 18: Meal Service Times for Unanticipated School Closures in SY 2022-23 [7 CFR 225.16(c)(1) and 225.16(c)(2)] (*October 1, 2022 – April 30, 2023*)
- Waiver 19: Meals at School Sites for Unanticipated School Closures in SY 2022-23 [42 U.S.C. 1761(c)(1) and 7 CFR 225.6(d)(1)(iv)] (*October 1, 2022 – April 30, 2023*)

Child and Adult Care Food Program (CACFP):

The waivers in this section apply to CACFP. FNS expects that operational flexibilities under these waivers will only be implemented by Program operators when congregation is limited by the COVID-19 pandemic. FNS expects that monitoring flexibilities will only be implemented when pandemic conditions interfere with the ability of State agencies and sponsoring organizations to conduct reviews onsite.

- Waiver 20: Non-Congregate Meal Service [42 U.S.C 1753(b)(1)(A) and 7 CFR 226.19(b)(6)(iii)] (*July 1, 2022 – June 30, 2023*)
- Waiver 21: Parent/Guardian Meal Pick-Up [7 CFR 226.2 (Meals)] (*July 1, 2022 – June 30, 2023*)
- Waiver 22: Meal Service Times [7 CFR 226.20(k)] (*July 1, 2022 – June 30, 2023*)
- Waiver 23: State Agency Onsite Monitoring Visits [7 CFR 226.6(b)(1) and 226.6(m)(6)] (*End of PHE** – June 30, 2023*)
- Waiver 24: Sponsoring Organization Onsite Monitoring Visits [7 CFR 226.16(d)(4)(iii)] (*End of PHE** – June 30, 2023*)

Additional Flexibilities (NSLP/SBP):

The following waivers provide needed flexibility and allow State and local Program operators to overcome challenges resulting from COVID-19. FNS expects Program operators will only use these flexibilities for the duration and extent that they are needed.

- Waiver 25: Paid Lunch Equity [42 U.S.C. 1760(p)(2) and 7 CFR 210.14(e)] (*July 1, 2022 – June 30, 2023*)
- Waiver 26: Use of Prior Year Eligibility Determinations for School Year 2022-2023 Carryover [42 U.S.C. 1758(b)(C) and 7 CFR 245.6(c)(2)] (*July 1, 2022- June 30, 2023*)

** Current nationwide waivers of onsite monitoring for NSLP, SBP, and CACFP remain in effect until 30 days after the end of the Public Health Emergency (PHE). The end of the PHE will be declared by the U.S. Department of Health and Human Services.