***Child Nutrition Program Waiver Request***

***Maine Child Nutrition Department of Education***

***Waiver Request for SFSP Final Integrity Rule***

***Submitted January 18, 2023***

1. **State agency submitting waiver request and responsible State agency staff contact information:** Maine Department of Education Child Nutrition, Jane McLucas, Director of Child Nutrition, jane.mclucas@maine.gov, 207-624-6880, 136 State House Station, Augusta, Maine 04333
2. **Region:** Northeast
3. **Eligible service providers participating in waiver and affirmation that they are in good standing:** Maine is requesting a state-wide waiver for all Summer Food Service Program (SFSP) Sponsors 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 USDA Food and Nutrition Services published the final rule “Streamlining Program Requirements and Improving Integrity in the Summer Food Service Program (SFSP)” in September of 2022. While Maine Child Nutrition, in general, applauds the steps taken towards streamlining requirements across the Federally funded child nutrition programs and increasing integrity in the SFSP, we have concerns about our ability to effectively adapt our existing processes/systems and train our SFSP Sponsors on the new requirements outlined within this rule ahead of the upcoming 2023 summer season. Our concerns are only complicated by the recently released changes to SFSP in the Omnibus package signed in late 2022.

Maine Child Nutrition recently transitioned to a new platform for our claims management and reimbursement system across our CNPs. This system has allowed us to create more efficiency in many of our existing processes, including the SFSP application. Many of the new requirements outlined in the SFSP Final Integrity rule would require Maine Child Nutrition to modify portions of our existing application within our electronic system. It has been our experience with our technology vendor that system modifications, even those that we would consider to be “small”, require months of lead time and can cost thousands of dollars. Maine Child Nutrition’s technology vendor requested that all modifications related to SFSP 2023 be submitted prior to the end of the 2022 calendar year – less than 3 full months after the publication of the rule and prior to detailed guidance on implementation being released by the USDA.

Maine Child Nutrition, and our Sponsors, rely heavily on the guidance manuals that are released by the USDA for aid in the operation and administration of the SFSP. Without updated manuals to address the program changes required under the SFSP Final Integrity Rule, Maine Child Nutrition is concerned that we will spend substantial time and resources addressing the provisions of this rule but implemented changes will not fully align with anticipated guidance. Many of the changes outlined within the SFSP Final Integrity Rule will bring SFSP application requirements more closely in line with CACFP requirements. These same CACFP requirements have been an area of increased focus in recent years, however, even with detailed handbooks and additional training provided by the USDA, we have continued to devote significant resources to fully address CACFP’s financial viability requirements. We anticipate similar challenges under the SFSP and would like to be able to focus our efforts on providing increased training and technical assistance prior to making any systems changes to our application and claims management system. We believe that this approach will not only best serve our Sponsors by allowing us to avoid confusion with changing guidance/procedures as additional USDA guidance is released but we also feel that this approach will allow us to best focus our limited staffing resources while preventing us from spending our limited funding on systems updates that may later require additional revisions/updates.

In addition to the challenges related to lack of guidance, limited time, limited staffing resources, and limited funding as noted above, Maine Child Nutrition also recognizes that 2023 will be the first SFSP season in which Sponsors will be fully returned to pre-pandemic operating circumstances in 3 years. Summer 2022 was the first time since the start of the pandemic that Maine Child Nutrition staff were back in the field conducting on-site program reviews for the SFSP. While there were some operating flexibilities available to Sponsors during 2022, many Sponsors returned to a more ‘standard’ set of operating circumstances during 2022 and Maine Child Nutrition reviewers noted areas in which additional re-training and targeted technical assistance were necessary. Maine Child Nutrition staff feels strongly that additional focus on training and technical assistance is necessary ahead of the 2023 season. We feel that asking our staff to divide their attention between strengthening our training and technical assistance efforts to address the “return to normal” and the new requirements, including the development of written policies and procedures, as outlined under the SFSP Final Integrity Rule would result in inadequate efforts on both fronts. Similarly, we feel that asking our Sponsors to focus on strengthening program integrity under existing regulations while simultaneously asking them to learn new requirements (for which training resources are lacking), would decrease program compliance and integrity rather than increase it, as intended by the Final Rule.

As a result of the above, Maine Child Nutrition is requesting a waiver to allow for the delayed implementation of certain regulations outlined within the SFSP Final Integrity Rule. If granted, Maine Child Nutrition believes that the ability to delay implementation and instead focus efforts on training and technical assistance will result in increased compliance with existing SFSP regulations. Additionally, Maine Child Nutrition feels that we will be able to better bring our SFSP Sponsors into compliance with the newly added provisions of the SFSP Final Integrity Rule if we are able to thoughtfully plan our training and systems updates, in conjunction with USDA guidance, rather than implementing in a rushed and piecemeal fashion. Lastly, Maine Child Nutrition feels that approval of this waiver will serve to reduce cost to the Federal government by preventing wasted time and money spent on developing training, processes, and systems changes that may have to be revised when additional guidance is received.

Maine has already submitted an offer versus serve waiver for non-SFA sites, so is not including that in this request.

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

The State agency is seeking a waiver of the following requirements:

* 7 CFR 225.7(o) which requires state agencies to establish criteria for what constitutes operational problems in order to help Sponsors determine which of their returning sites are required to receive a visit
* 7 CFR 225.6(a)(2) which requires state agencies to establish criteria for approving closed enrolled sites to ensure operation of a site as closed enrolled does not limit program access in the area that the site is located
* 7 CFR 225.6(d) which outlines the standards that state agencies must assess in regards to a Sponsor’s viability, capability, and accountability prior to approving a Sponsor application
* 7 CFR 225.6(e)(1), (e)(2)(i)-(ii), (e)(3) which requires Sponsors to submit a management plan demonstrating compliance with the provisions outlined in 7 CFR 225.6(d) . Also listed under 7 CFR 225.6(c)(2)(i), 225.6(c)(3)(i).
* 7 CFR 225.6(e)(2)(i) which requires new sponsor and sponsors that have experience significant operational problems in the prior year to submit a full management plan as described in paragraph (e) of this section
* 7 CFR 225.6(c)(3)(i) which requires experienced sponsors to submit a simplified or full management plan, as described in paragraph (e) of this section
1. **Detailed description of alternative procedures and anticipated impact on Program operations, including technology, State systems, and monitoring:**

## There are no impacts on Program operations, State systems, or monitoring. Maine Child Nutrition would continue to use existing channels to develop and deliver training, collect and assess Sponsor applications, and monitor compliance with program requirements.

1. **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 no regulatory barriers at the state level.
2. **Anticipated challenges State or eligible service providers may face with the waiver implementation:** Maine does not anticipate any additional challenges due to this waiver.
3. **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]:**

This waiver will allow Maine Child Nutrition and our Sponsors to continue to operate the SFSP under existing regulations and will not require any changes to our systems, policies, or procedures and will therefore result in no additional cost to the Federal government.

1. **Anticipated waiver implementation date and time period:** October 1, 2022 through September 30, 2023
2. **Proposed monitoring and review procedures:** Maine will continue to review per federal regulations.
3. **Proposed reporting requirements (include type of data and due date(s) to FNS):** Maine will report the number of Sponsors affected by this waiver to the USDA by December 31, 2023
4. **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://www.maine.gov/doe/schools/nutrition/laws>
5. **Signature and title of requesting official:** Jane McLucas, Child Nutrition Director for Maine Department of Education

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Requesting official’s email address for transmission of response: jane.mclucas@maine.gov

**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:**