



Food and  
Nutrition  
Service

DATE: October 11, 2018

Park  
Office  
Center

MEMO CODE: SFSP 01-2019

SUBJECT: Summer Food Service Program Memoranda Rescission

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TO: All Regional Directors  
Special Nutrition Programs  
All Regions

State Directors  
Child Nutrition Programs  
All States

The purpose of this memorandum is to provide guidance for State agencies and Program operators on the status of nationwide waivers of statutory and regulatory requirements in the Summer Food Service Program (SFSP).

In 2017, the USDA Office of Inspector General (OIG) conducted a review of USDA Food and Nutrition Service's (FNS) controls over SFSP. In response to the OIG Audit Report "FNS Controls Over Summer Food Service Program" (27601-0004-41) published on March 27, 2018, FNS agreed to work with the USDA Office of the General Counsel (OGC) to assess whether current nationwide waivers issued through policy memoranda are in compliance with the statutory waiver authority requirements set forth in Section 12(l) of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1760(1).

As part of this ongoing review, FNS concluded that the following policy memoranda waived SFSP requirements in a manner not fully consistent with all requirements as outlined in section 12(l) of the NSLA and thus maintaining these policies as national waivers is not in the best interest of the SFSP. FNS will identify those flexibilities and policies that should be incorporated into SFSP regulations through notice and comment rulemaking. In the interim, to strengthen integrity in SFSP, FNS is rescinding the specified waivers of SFSP statutory and regulatory requirements contained in the following memoranda, effective immediately:

1. [SFSP 12-2011](#), *Waiver of Site Monitoring Requirements in the Summer Food Service Program*, April 5, 2011
  - Waived regulatory requirement at 7 CFR 225.15(d) for sponsors to conduct site visits during the first week of program operations for returning sites that operated successfully during the previous summer and had no serious deficiency findings.
2. [SP 07-2013, SFSP 04-2013 - REVISED](#), *Summer Feeding Options for School Food Authorities*, November 23, 2012

- Provided State agencies the discretion to waive the first week of operation site visit requirement at 7 CFR 225.15(d) for school food authority sponsors in good standing in the SFSP.
3. [SP 06-2014, SFSP 06-2014, CACFP 03-2014](#), *Available Flexibilities for CACFP At-risk Sponsors and Centers Transitioning to Summer Food Service Program (SFSP)*, November 12, 2013
    - After Section 122 of the Heathy, Hunger-Free Kids Act of 2010, P.L. 111-296, extended the CACFP at-risk provision to all States, FNS provided State agencies with the discretion to waive the regulatory requirement at 7 CFR 225.15(d) for SFSP and SSO sponsors in good standing in CACFP and NSLP, respectively, to conduct site visits during the first week of program operations.
  4. [SP 10-2017, SFSP 06-2017](#), *Meal Service Requirements in the Summer Meal Programs, with Questions and Answers – Revised*, December 5, 2016
    - Continued extension of Offer Versus Serve (OVS) to non-school food authority sponsors as originally published in SFSP 11-2011, *Waiver of Meal time Requirements and Unitized Meal Requirements in the Summer Food Service Program*, October 21, 2011. The statutory and regulatory provisions authorize the OVS option for school food authority sponsors under Section 13(f)(6) of the NSLA, 42 USC 1761(f)(6), and 7 CFR 225.16(f)(1)(ii). While OVS has been shown to minimize food waste and help sponsors contain costs, statutory and regulatory provisions limit the use of OVS to school food authority sponsors.
  5. [SP 10-2017, SFSP 06-2017](#), *Meal Service Requirements in the Summer Meal Programs, with Questions and Answers – Revised*, December 5, 2016
    - Continued waiver of program regulations at 7 CFR 225.16(c)(1) for meal times as originally published in SFSP 11-2011, *Waiver of Meal Time Restrictions and Unitized Meal Requirements in the Summer Food Service Program*, October 31, 2011. Regulations require that three hours must elapse between the beginning of one meal service, including snacks, and the beginning of another meal service, except that four hours must elapse between lunch and supper if no snack is served. This policy waived these requirements, but maintained that sponsors must continue to establish meal service times.
  6. [Summer Food Service Program \(SFSP\) Waiver for Closed Enrolled Sites](#), November 17, 2002
    - Extended area eligibility to closed enrolled sites. This waived the statutory provision of Section 13(a)(1)(A)(i)(III) of the NSLA, 42 USC 1761(a)(1)(A)(i)(III), and the regulatory definition of closed enrolled sites, which required eligibility determinations to be made by submitting applications in accordance with 7 CFR 225.15(f). Under this waiver, closed enrolled sites could be determined eligible if located in areas where

50 percent 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.

Please note that any flexibilities contained in the memoranda listed above that are not waivers continue to be in effect through other policy memoranda and guidance that have not been rescinded. Also, as noted above, FNS will identify those flexibilities and policies that should be incorporated into SFSP regulations through notice and comment rulemaking. The goal of any rulemaking would be to provide administrative flexibilities to State agencies and sponsors that operate SFSP while continuing to ensure Program integrity.

FNS recognizes that the rescinded waivers contained in these memoranda may have benefited State agencies and SFSP sponsors by helping them efficiently operate the SFSP. With the rescission of these waivers, if a State agency determines that waiving these statutory and regulatory requirements would benefit the SFSP in their State, they must now follow the *Child Nutrition Program Waiver Request Guidance and Protocol – Revised*, SP 15-2018, CACFP 12-2018, SFSP 05-2018, dated May 24, 2018. Using that protocol, State agencies may submit individual waiver requests for all or part of their State for any of the waivers that have been rescinded by this memorandum. FNS will consider all complete waiver requests and will make determinations based on relevant statutory and regulatory requirements and authorities. Complete waiver requests must demonstrate how the requested waiver will further Program priorities and meet the needs of the SFSP.

In order to process State agency waiver requests in time for summer 2019 operations, FNS encourages State agencies to submit any individual waiver requests as soon as possible. Under the waiver protocol, FNS recommends that waiver requests be submitted at least 60 days prior to the anticipated implementation date; however, a large influx of requests may add to FNS' response time. Therefore, the sooner FNS receives waiver requests for summer 2019, the more timely FNS will be able to respond.

State agencies are reminded to distribute this memorandum to Program operators. Program operators should direct any questions concerning this guidance to their State agency. State agencies with questions should contact the appropriate FNS Regional Office.

**Original Signed**

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Director  
Policy and Program Development Division