



Georgia Department of Early Care and Learning

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MEMORANDUM

To: Sponsors Participating in the Summer Food Service Program (SFSP)

From: Sonja R. Adams, Director of Provider Services – Nutrition
(Original Signed)

Date: March 28, 2019 (v.3)

Subject: Summer Food Service Program Memoranda – Waiver Rescission

Legal Authority: USDA Policy Memorandum SFSP 01-2019 *(rescinding in its entirety SFSP 12-2011; rescinding in part SP 07-2013, SFSP 04-2013; rescinding in part SP 06-2014, SFSP 06-2014, CACFP 03-2014; rescinding in part SP 10-2017, SFSP 06-2017; and rescinding in its entirety USDA Policy Memorandum, Summer Food Service Program (SFSP) Waiver for Closed Enrolled Sites, Nov. 17, 2002).*

This memorandum was updated to provide notification of USDA's approval of two SFSP waiver requests submitted by DECAL and supersedes both versions of DECAL Policy Memorandum, Summer Food Service Program Memoranda – Waiver Rescission – originally dated November 30, 2018

This memorandum notifies participating sponsors that previous USDA policy memoranda which sought to waive various Summer Food Service Program (SFSP) requirements has been rescinded as result of USDA Policy Memorandum SFSP 01-2019.

However, DECAL requested two (2) statewide waivers to continue to provide flexibilities, previously approved in the USDA nationwide waivers which were rescinded.¹ The following waiver requests were granted by USDA:

- Meal Time Restrictions; and
- Area Eligibility in Closed Enrolled Sites.

¹ On December 31, 2018, DECAL submitted two SFSP waiver requests to USDA. Both submissions and public notice can be accessed on DECAL's website, located at <http://decal.ga.gov/Nutrition/SFSPWaiverRequests.aspx>.

Accordingly, **Part I** of this document will address which DECAL policies have either been revised or rescinded as a result of SFSP 01-2019. **Part II** will provide the relevant history behind SFSP 01-2019. **Part III** will list the current regulations in effect and **Part IV** will clarify the effect of the two DECAL waiver requests recently granted.

I. Policy Rescission and Revision

As a result of USDA Policy Memorandum SFSP 01-2019, DECAL has rescinded:

- DECAL Policy Memorandum, *Waiver for the First Week Monitoring Visit in the SFSP*, May 19, 2011; and
- DECAL Policy Memorandum, *Recent Changes to SFSP Regulatory Requirements*, April 14, 2011.

Additionally, DECAL has revised the following:

- DECAL Policy Memorandum, *Meal Service Requirements in the Summer Meals Programs, with Questions and Answers (Revised)*, January 10, 2017;
- DECAL Policy Memorandum, *Offer Versus Serve Guidance for SFA's Participating in the CACFP and the SFSP*, December 19, 2014;
- DECAL Policy Memorandum, *Transitioning from the Summer Food Service Program to Child and Adult Care Food Program (CACFP) At-Risk Afterschool Meals*, August 20, 2014;
- DECAL Policy Memorandum, *Streamlined SFSP Application Requirements for School Food Authorities (SFAs)*, February 28, 2013; and
- DECAL Policy Memorandum, *Bright from the Start's Policy Memo "Summer Feeding Options for School Authorities"*, January 23, 2013.

II. Background

In response to an Audit Report conducted by the USDA Office of Inspector General (OIG), the U.S. Department of Agriculture's Food and Nutrition Service (FNS) recently partnered with the USDA Office of the General Counsel (OGC) to determine whether current nationwide waivers issued through policy memoranda, complied with the statutory waiver authority requirements set forth in Section 12(1) of the Richard B. Russell National School Lunch Act (NSLA).² After further review, it was determined that indeed, they did not. USDA policy memoranda waived SFSP requirements in a manner inconsistent with the Act's requirements and were deemed not within the SFSP's best interest. (FNS will further identify those flexibilities and policies that should be incorporated into SFSP regulations through notice and comment rulemaking.) As a result, such waivers of SFSP statutory and regulatory requirements were rescinded and are no longer in effect.

² 42 U.S.C. § 1760(1)

III. Chart Comparison: Previous SFSP Waivers and Current Regulation Requirements

The chart below lists the SFSP waivers that have been rescinded by SFSP 01-2019, while providing the current regulations in effect.³

Previous Waiver of Regulation (no longer in effect)	Current Regulation
<ul style="list-style-type: none"> Previously, sponsors of returning sites which operated successfully during the previous summer and had no serious deficiency findings, were exempt from having to conduct site visits during the first week of Program operation. 	<ul style="list-style-type: none"> Sponsors must visit each of their sites at least once during the first week of Program operation and must promptly take such actions as are necessary to correct any deficiencies.⁴
<ul style="list-style-type: none"> Previously, DECAL could waive the requirement that School Food Authorities (SFAs) had to conduct a site visit during the first week of operation, if such SFA was in good standing with the SFSP. 	<ul style="list-style-type: none"> SFAs must visit each of their sites at least once during the first week of Program operation and must promptly take such actions as are necessary to correct any deficiencies.⁵
<ul style="list-style-type: none"> Previously, DECAL could waive the requirement to conduct site visits during the first week of operations for SFSP and SSO sponsors who were in good standing with the CACFP and the NSLP. 	<ul style="list-style-type: none"> SFSP and SSO sponsors must visit each of their sites at least once during the first week of Program operation and must promptly take such actions as are necessary to correct any deficiencies, regardless of their CACFP or NSLP standing.⁶
<ul style="list-style-type: none"> Previously, <u>all</u> SFSP sites, regardless of location or type of sponsorship, could utilize offer vs. serve. 	<ul style="list-style-type: none"> Currently, only SFA sponsors are allowed to utilize offer vs. serve. SFAs must apply the use of offer vs. serve under the rules followed for the NSLP as described in 7 CFR § 210.

IV. The Effect of Recent Waiver Request Approval

As previously mentioned in Part I of this memorandum, DECAL requested two (2) statewide waivers to continue to provide flexibilities, previously approved in USDA nationwide waivers which were rescinded by SFSP 01-2019. Both requests were granted. Accordingly, please see below.

1. Meal Service Time Restrictions

This waiver is applicable to 7 CFR § 225.16(c)(1) which places Federal limits on the amount of time that must elapse between the end of one meal and the beginning of the next, as well as 7 CFR § 225.16(c)(2) which places Federal limits on the duration of a meal service.

Notably, sponsors are still required to comply with application requirements at 7 CFR § 225.6(c)(2)(i)(B) and (c)(3)(i)(A) to establish meal service times for each site.

II. Closed Enrolled Sites

This waiver is applicable to 7 CFR § 225.15(f) and allows sponsors to operate closed enrolled sites in areas where at least 50 percent of children are eligible for free or reduced-price meals.

³ This chart reflects only those waiver rescissions which currently apply to participating sponsors in agreement with DECAL.

⁴ 7 CFR § 225.15(d)

⁵ See footnote 4.

⁶ See footnote 4.

For specific questions concerning this memorandum, please contact the Policy Administrator at (404) 651-8193.