



Food and
Nutrition
Service

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DATE: January 6, 2021

CODE: COVID-19: Child Nutrition Response # 71

SUBJECT: Nationwide Waiver of Food Service Management Contract Duration in the National School Lunch Program and Summer Food Service Program EXTENSION¹

TO: Regional Directors
Special Nutrition Programs
All Regions
State Directors
Child Nutrition Programs
All States

Issuing Agency/Office:	FNS/Child Nutrition Programs
Title of Document:	Nationwide Waiver of Food Service Management Contract Duration in the National School Lunch Program and Summer Food Service Program EXTENSION
Document ID:	
Z-RIN:	
Date of Issuance:	January 6, 2021
Replaces:	N/A
Summary:	(1) FNS extends the waiver, for all State agencies, school food authorities, and SFSP sponsors the food service management company contracts duration requirements at 7 CFR 210.16(d) and 225.6(h)(7). This waiver allows food service management company (FSMC) contracts that may expire by or around June 30, 2021, and have not been extended for SY2020-2021 to be extended through school year 2021-2022 (June 30, 2022). To ensure Program integrity during this time, extended FSMC contracts are limited to one-year only. (2) This waiver applies to State agencies administering the National School Lunch Program and Summer Food Service Program.
Disclaimer:	The contents of this guidance document have the force and effect of law as authorized by the Families First Coronavirus Response Act (the Act) (P.L. 116-127).

As authorized by section 2202(a) of the Families First Coronavirus Response Act (the Act) (P.L. 116-127), Food and Nutrition Service (FNS) extends the waiver of:

- 7 CFR 210.16(d) and 7 CFR 225.6(h)(7) to permit school food authorities (SFAs) and summer food service program (SFSP) sponsors to extend existing food service management company (FSMC) contracts that would not otherwise be eligible for extension through SY 2021-2022 or June 30, 2022.

¹ Pursuant to the Congressional Review Act (5 U.S.C. §801 et seq.), the Office of Information and Regulatory Affairs designated this waiver as *not major*, as defined by 5 U.S.C. § 804(2).

Due to the need to secure contracts without delay, SFAs and SFSP sponsors with FSMC contracts expiring in SY2020-2021 may, pursuant to 2 CFR 200.320(c)(3), use the emergency noncompetitive proposal procurement method to negotiate a new one-year FSMC contract for SY 2021-2022. To ensure program integrity moving forward, contracts resulting from such noncompetitive proposals may not exercise renewal options.

Section 2202(a) of the Act permits the Secretary of Agriculture to establish a waiver for all States for the purposes of providing meals under the Child Nutrition Programs, with appropriate safety measures while providing meals, as determined by the Secretary.

Under Program regulations at 7 CFR 210.16(d) and 225.6(h)(7), SFAs and SFSP sponsors with a FSMC may contract for no longer than one year, with options for a yearly renewal not to exceed four additional years. Many SFAs and SFSP sponsor FSMC contracts may be nearing the end of their fourth and last renewal year. However, FNS recognizes that in this public health emergency, many SFAs, sponsors, and FSMCs may be closed or otherwise unable to conduct a competitive procurement process for a new FSMC contract to provide safe and nutritious meals.

This waiver extension is effective immediately, and remains in effect through June 30, 2021, or until expiration of the federally declared public health emergency, whichever is earlier.

Consistent with section 2202(a)(2) of the Act, this waiver extension applies automatically to all States that elect to use it, without further application. If the State agency elects to implement these flexibilities, it must notify its respective FNS Regional Office who will acknowledge receipt. State responses will be relayed to the FNS State Administration Branch. State agencies should inform SFAs and SFSP sponsors of the flexibilities provided by this waiver extension as quickly as possible, and work in partnership with local operators.

As required by section 2202(d), each State that elects to be subject to this waiver extension must submit a report to the Secretary not later than 1 year after the date such State implemented the waiver that includes:

- A summary of the use of this waiver by the State agency and local program operators, and
- A description of whether this waiver resulted in improved services to children.

FNS stands ready to provide assistance to areas impacted by COVID-19, and intends to continue supporting access to nutritious meals during this public health emergency.

FNS appreciates the exceptional effort of State agencies and local Program operators working to meet the nutritional needs of child and adult participants during a challenging time. State agencies should direct questions to the appropriate FNS Regional Office.

Sincerely,

A handwritten signature in black ink that reads "Sarah E. Smith-Holmes". The signature is written in a cursive style with a large initial 'S'.

Sarah Smith-Holmes

Director

Program Monitoring and Operational Support Division