



Food and
Nutrition
Service

DATE: April 24, 2020

Braddock
Metro Center

CODE: COVID-19: Child Nutrition Response # 19

1320
Braddock
Place
Alexandria
VA 22314

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

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
Document ID:	
Z-RIN:	
Date of Issuance:	April 24, 2020
Replaces:	N/A
Summary:	(1) FNS waives, 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). FSMC contracts that may expire by or around June 30, 2020, may be extended through school year 2020-2021 (June 30, 2021). To ensure Program integrity during this time, extended food service management company 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) waives:

- 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 companies (FSMC) contracts that would not otherwise be eligible for extension through SY 2020-2021 or June 30, 2021.

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 may, pursuant to 2 CFR 200.320(f)(2), use emergency noncompetitive procurement to negotiate a one-year FSMC extension or new contract for SY 2020-2021. To ensure program integrity moving forward, contracts resulting from 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 is effective immediately, and remains in effect through September 30, 2020, or until expiration of the federally declared public health emergency, whichever is earlier.

Consistent with section 2202(a)(2) of the Act, this waiver 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 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 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, reading "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