



Food and Nutrition Service

U.S. DEPARTMENT OF AGRICULTURE

October 3, 2024

Mary Anne Burghardt
Assistant Director
North Carolina Department of Health and Human Services
Division of Child and Family Well-Being
1914 Mail Service Center
Raleigh, NC 27699

Dear Mary Anne Burghardt:

This letter is in response to the North Carolina Department of Health and Human Services, Division of Child and Family Well-Being (NC DHHS) October 3, 2024, request for statewide administrative and operational flexibilities in the Child and Adult Care Food Program (CACFP). In order to support access to nutritious meals while NC DHHS mitigates the challenges caused by Hurricane Helene, the Food and Nutrition Service (FNS) recognizes that certain administrative and operational flexibilities may be necessary. FNS is in receipt of two additional waiver requests from NC DHHS unrelated to Hurricane Helene impacts and will respond to those under separate cover.

FNS has authority to issue waivers under Section 12(l) of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1760(l). To grant a Section 12(l) waiver, the NSLA requires that the waiver must facilitate the purpose of the Program, the public must receive notice and information regarding the proposed waiver, and the waiver will not increase the overall cost of the Program to the Federal Government. FNS acknowledges NC DHHS' intent to fulfill the public notification requirement and understands that NC DHHS will do so promptly at the soonest feasible opportunity. As such, FNS finds that the NC DHHS waiver request satisfies these statutory requirements. FNS expects that the requested flexibilities provided will only be implemented by Program operators when meal service is limited or negatively impacted due to Hurricane Helene.

CACFP Meal Service Flexibilities

These waivers are effective immediately through November 1, 2024, or until CACFP institutions and facilities reopen for in-person care, whichever is sooner.

Non-Congregate Meal Service

Under NSLA, 42 U.S.C. 1766(f)(1)(A) and Program regulations at 7 CFR 226.19(b)(6)(iii), CACFP meals must be served in a congregate setting and must be consumed by participants on site.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives the aforementioned requirements to serve meals through the CACFP in a congregate setting. Any other requirements referenced in these provisions remain in effect.

Parent and Guardian Meal Pick-Up

Under Program regulations at 7 CFR 226.2 (Meals), meals must be served to eligible children.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives the aforementioned requirements that CACFP meals may only be served directly to children. Any other requirements referenced in these provisions remain in effect. State agencies opting to use this flexibility must have a plan for ensuring that local operators are able to maintain accountability and program integrity. This includes putting in place processes to ensure that meals are distributed only to parents or guardians of eligible children, and that duplicate meals are not distributed to any child.

Meal Service Times

Under Program regulations at 7 CFR 226.20(k) meals served in the CACFP must follow meal service time requirements.

Pursuant to the waiver authority granted at Section 12(l) of the NSLA, FNS waives the aforementioned requirements that set meal time parameters for CACFP institutions and facilities. Any other requirements referenced in these provisions remain in effect.

Meal Pattern Requirements

NC DHHS requested to waive CACFP meal pattern requirements on a case-by-case basis when there is a disruption to the food supply in the aftermath of Hurricane Helene.

FNS does not have authority to waive meal pattern requirements. However, FNS recognizes that given the current disruptions in food supplies and the limited access to potable water, NC DHHS plans to maximize the support and flexibility they provide to their CACFP institutions. FNS also encourages NC DHHS to use its discretion and provide technical assistance in lieu of fiscal action when CACFP institutions are unable to meet meal patterns or provide potable water due to hurricane-related food supply disruptions.

In addition, CACFP regulations at 7 CFR 226.20(e) allow NC DHHS to approve on a temporary basis and when emergency conditions prevent deliveries, Program operators' requests to operate a meal service without milk during this emergency period. In general, FNS encourages Program operators to make creditable substitutions whenever possible. All technical assistance provided by NC DHHS should be documented and maintained on file.

CACFP operators may also utilize emergency procurement flexibilities at 2 CFR 200.320, which allow a noncompetitive procurement method when a “public exigency or emergency” prevents competitive procurement.

Operational and Monitoring Flexibilities

Sponsoring Organization Reviews (CACFP)

Under program regulations at:

1. 7 CFR 226.16(d)(1) pre-approval visits;
2. 7 CFR 226.16(d)(4)(iii) frequency and type of required facility reviews – requirement to review each facility three times each year; and
3. 7 CFR 226.16(d)(4)(iii)(A) at least two of three reviews must be unannounced reviews, (B) at least one unannounced review must include observation of a meal service, (C) at least one review must be made during each new facility’s first four weeks of operation, (D) not more than six months may elapse between reviews, (E) the timing of unannounced reviews must be varied so that they are unpredictable to the facility, and (F) all types of meal service must be subject to review and sponsoring organizations must vary the meal service reviewed.

NC DHHS requested to waive these requirements due to the extenuating circumstances surrounding Hurricane Helene. In their waiver request, NC DHHS asked to allow all sponsoring organizations the option to waive pre-approval visits for the next 60 days, postpone the required 4-week review for new facilities for the next 60 days, and allow for more than 6-months to elapse between reviews of existing facilities for the next 60 days. Additionally, NC DHHS requested to waive the requirement for reviews to be conducted on-site and allow for desk reviews during this period.

FNS is approving a 12(l) waiver of the monitoring requirements included at 7 CFR 226.16(d)(1), 7 CFR 226.16(d)(4)(iii)(A), 7 CFR 226.16(d)(4)(iii)(B), 7 CFR 226.16(d)(4)(iii)(C), 7 CFR 226.16(d)(4)(iii)(D), 7 CFR 226.16(d)(4)(iii)(E), and 7 CFR 226.16(d)(4)(iii)(F). FNS is also allowing these sponsor onsite reviews to be conducted offsite, due to the extenuating circumstances surrounding Hurricane Helene. However, please note that FNS is only approving these waivers through November 1, 2024, at this time.

Program Payment Procedures (CACFP)

Under program regulations at 7 CFR 226.15(e), each institution shall establish procedures to collect and maintain all program records required under this part, as well as any records required by the State agency. NC DHHS requested to waive these requirements when all or part of the required documentation has been destroyed by this disaster event. FNS is waiving the above regulations when needed to facilitate recovery due to Hurricane Helene.

Under program regulations at 7 CFR 226.10(e) a final Claim for Reimbursement shall be postmarked and/or submitted to the State agency no later than 60 days following the last day of the full month covered by the claim. NC DHHS requested to waive this requirement for institutions, without using the one-time exception, in the event that claims for reimbursement are delayed due to extenuating circumstances related to Hurricane Helene. FNS is waiving the above regulations when needed to facilitate recovery due to Hurricane Helene. However, please note that FNS is only approving these waivers through November 1, 2024, at this time.

Sponsoring Organization Payment Procedures (CACFP)

Under program regulations at 7 CFR 226.16(g), each sponsoring organization shall disburse the full amount of reimbursement payments due to day care homes within five working days of receipt from the State agency; and 7 CFR 226.16(h) sponsoring organizations are required to make payments of program funds to sponsored facilities within five working days of the receipt of monthly reimbursement. NC DHHS has requested to waive these requirements due to the extenuating circumstances of Hurricane Helene which may delay timely distribution of funds. FNS is waiving the above regulations when needed to facilitate recovery due to Hurricane Helene. However, please note that FNS is only approving through November 1, 2024, at this time. FNS encourages sponsoring organizations who are able to disburse reimbursement payments within five working days to continue to do so.

FNS is granting the waivers and flexibilities specified above to allow NC DHHS and local Program operators to respond to the impacts of Hurricane Helene. Although NC DHHS requested for the waiver to be approved until January 15, 2024, FNS is currently limiting approval of these waivers through November 1, 2024. The FNS Southeast Regional Office (SERO) will work closely with the NC DHHS to determine if any further extensions of these waivers and flexibilities are needed and facilitate submission of any needed information to ensure timely response from FNS.

The waiver authority at Section 12(l) of the NSLA requires FNS to review the performance of any State or eligible service provider that was granted a waiver. Therefore, by March 31, 2025, NC DHHS must provide to the FNS SERO a report quantifying the impact of the waiver, as described below. The report must include the following:

- A description of how the waiver impacted meal service operations at participating sites;
- A description of whether the waiver resulted in improved services to children;
- A description of how the waiver reduced the quantity of paperwork necessary to administer the Program; and
- A summary of benefits and challenges associated with the waiver.

FNS appreciates NC DHHS's exceptional effort to meet the nutritional needs of children during this challenging time. If you have questions, please contact the FNS SERO.

Sincerely,

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Community Meals Policy Division

Megan Geiger
Acting Director
Program Monitoring and Operational
Support Division