

Implementation of COVID-19 meal pattern waivers: Best practices and comparisons by state

Background

In March 2020, the Families First Coronavirus Response Act (FFCRA)¹ established a meal pattern waiver² for child nutrition programs (e.g., the National School Lunch and Breakfast Programs) during the COVID-19 pandemic. The waiver allows local child nutrition program operators (typically “school districts,” or “Districts”) to waive specific aspects of the meal pattern (e.g., required amounts of fruit and vegetables). Examples for requesting the meal pattern waiver include:

- Supply chain disruptions due to COVID-19 caused a supplier to be unable to provide their usual variety of vegetables. The District could request a waiver for the vegetable subgroup requirements which require a minimum quantity of various types of vegetables to be offered weekly.
- The number of students picking up meals from each age group (K-5, 6-8, and 9-12) varied widely day to day, making meal forecasting challenging and resulting in waste. The District could request a waiver to offer a single meal pattern to all age groups to serve the same meals and portions to all students.
- The District bundled meals to last several days and requested a waiver to serve certain meal components in bulk (e.g., a bag of apples instead of individual apples, a gallon of milk instead of individual milk cartons).

The FFCRA made the waiver available to all states, but the U.S. Department of Agriculture (USDA) required that Districts request approval from their State Agency to implement the waiver. The waiver is currently available until June 30, 2021.

The FFCRA requires that Districts demonstrate supply chain hardship due to COVID-19 in order to use the waiver. However, in an August 2020 memo, USDA removed the requirement for Districts to demonstrate hardship, as required by the FFCRA law.³ USDA also explicitly stated that Districts may use the waiver to follow weaker standards that had been proposed by the Trump administration in January 2020.⁴ Districts could also waive requirements for sodium, whole grains, and flavored milk (i.e., “2018 rollback components”),⁵ which went back into effect as the result of a vacated 2018 federal district court rule.⁶ While flexibilities are undoubtedly needed to respond to the pandemic, USDA’s carte blanche to waive science-based nutrition standards in school meals without demonstration of supply chain hardship has the potential to harm children’s health.

CSPI conducted a nationwide survey of state-level implementation of the waiver as well as an informal sampling of schools and school districts to compile current and best practices for ongoing implementation of the meal pattern waiver.

Methodology

To understand state-level implementation of the waiver, CSPI administered an email survey containing the questions in the box to the right to school nutrition representatives at State Agencies (typically the state education or agriculture department that administers the state's school meals programs) in all 50 states and the District of Columbia (DC) between October 20, 2020 and January 19, 2021. At least two emails were sent to request confirmation of the data reported in Appendix A. All 50 states and DC responded to the initial survey and/or confirmed the contents of their applicable data in Appendix A.

Separately, to understand and identify best practices for District-level implementation of the waiver, CSPI recruited school nutrition representatives from schools and school districts across the 50 states and DC via email, listservs, Facebook, and partner networks to participate in a SurveyMonkey questionnaire between June 22 and November 2, 2020. 202 responses were received from schools and school districts, of which four were duplicates. Responses represent all states except Kentucky, Louisiana, New Jersey, and Rhode Island.

School District-Level Implementation of the Waiver

Themes cited by schools/school districts:

- Many school districts applied for the meal pattern waiver, and in our sample most that applied received the waiver.
- Some respondents did not know whether their District was required to demonstrate hardship to receive the waiver.
- Most Districts that applied for the waiver in the summer of 2020 planned to apply in the 2020-2021 school year, while most Districts that did not apply for the waiver in the summer of 2020 did not plan to apply for the 2020-2021 school year.

Common reasons schools/school districts cited for applying for the meal pattern waiver for SY 2020-2021:

- Sodium, whole grains, and flavored milk
- Fruit and vegetable portions and variety
- Unflavored milk (e.g., offering only fat-free or 1%, as opposed to both; reducing weekly amount when bulk)
- Using a single meal pattern (e.g., K-12, PK-12, or K-8)

Email Survey Sent to State Agencies

1. Has your agency provided guidance on the meal pattern waiver to school districts? If so, are you able to share it with us (e.g., attachment, email forward, etc.)?
2. Is your agency accepting individual waiver requests from school districts or have you issued a blanket waiver?
 - a. If you are issuing individual waivers, are you waiving the entire meal pattern, or, for instance, individual facets (e.g., sodium targets, milk requirement, etc.)?
3. Does your agency currently require that districts demonstrate hardship in order to receive a waiver?
4. Is your agency providing technical assistance to schools to meet operational challenges that they cite as reason for applying for the waiver?

Less common, but other notable reasons schools and school districts cited for applying for the waiver:

- Calories (waiving required range)
- Potable water (waiving requirement for this to be available)
- Offer-versus-serve (waiving requirement to use this provision)
- Quantities of all meal components

State-Level Implementation of the Waiver

Key Observations from the 51 State Agency Responses:

(Please see Appendix A for full table of State Agency meal pattern implementation)

- 100 percent of State Agencies stated that they provided guidance to Districts on the implementation of the meal pattern waiver.
- The majority (75 percent) of State Agencies set up the waiver request form online. Others provided a form (Word document, Excel, PDF, etc.) for Districts to fill out and email to the State Agency.
- Nearly all State Agencies (94 percent) required individual Districts to submit a waiver application, which then had to be approved by the State Agency. **Only three states issued a statewide waiver which allowed Districts to use the meal pattern waiver without applying;** statewide waivers were limited in scope:
 - Minnesota, for the 2018 rollback components (sodium, whole grains, flavored milk) only; individual Districts must submit any other waiver requests
 - Missouri, from March – June 2020 only
 - Nevada, for the Children and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP) only
- **Nearly all State Agencies (96 percent) permitted the use of the waiver for specific meal components only.** Two states allowed waiving the entire meal pattern and were limited in scope:
 - Nevada, for the CACFP and SFSP programs only
 - Oklahoma, on a case-by-case basis if Districts exhausted all other options
- **Nearly all State Agencies (94 percent) required Districts to demonstrate hardship, or provide a reason or justification, to waive all or most meal components.** This is welcome news given USDA removed this requirement in August 2020. The only exceptions to this requirement were:
 - Illinois, Kansas, Massachusetts, and Wisconsin did not require Districts to demonstrate hardship for the 2018 rollback components
 - South Dakota did not require Districts to demonstrate hardship for the 2018 rollback components or grade group requirements
 - Alaska, Georgia, and Ohio did not require Districts to demonstrate hardship in any meal pattern waiver request
- Nearly all State Agencies (98 percent; we were unable to verify New Hampshire) stated that they provided technical assistance to Districts to meet challenges that they cited as the reason for applying for the meal pattern waiver.

TA Best Practices cited by the 51 State Agencies

CSPI identified best practices that State Agencies reported providing to support their schools/school districts:

- Engagement with Districts:
 - Calling each school District weekly to provide one-on-one TA and updates, followed up with email containing resource links (LA)
 - Encouraging Districts to connect with each other (DC, UT)
 - Creating open office hours for support (DC)
 - Holding town hall meetings and/or regular calls (AK, CA, CO, MI, MT, UT)
 - On calls in MT, schools shared their own best practices
 - Conducting trainings (AZ, TX, UT)
 - Holding webinars (CA, LA, MN, MT, VA, WA)
- Providing procurement support by:
 - Determining if there are USDA commodity foods available to fill gaps (UT)
 - Working closely with community and state partners to assist Districts with food supply issues (WA)
- Providing resources such as:
 - Newsletters (CO, MI, WA)
 - Toolkit (IN)

Technical Assistance (TA) best practices cited by schools/school districts:

Districts identified ways that the State Agencies supported them as they grappled with how to feed students and, in many instances, their families.

- Contacting suppliers on behalf of the school/school district
- Identifying shelf-stable options and/or alternate vendors when needed
- Providing cold storage

Waiver Best Practices Identified by CSPI

Requiring sufficient documentation.

Ohio's [waiver request form](#) states that CACFP operators must, "maintain food shortage documentation in the form of distributor emails, dated photographs of store shelves, screen shots from the food ordering system, etc. Indicate the substitutions on the production records and/or menu."

North Carolina, via email exchange with Director, School Nutrition and District Operations:

"If the waiver is granted, the [district] should continue to attempt to procure the item from alternative sources and notify NCDPI if the waiver is no longer needed. [Districts] must track the number of meals served that do not meet the meal pattern and will be required to document all meal component substitutions and any efforts to procure the missing component."

Providing good and bad examples of justification.

Mississippi provides the following examples in its [guidance](#):

"Bad example: My vendor is out of milk.

Good example: My vendor is out of milk. I also contacted two other vendors that service our area, and they cannot provide milk until May 1, 2020. All vendors' responses are in writing."

Appendix A: State Agency Implementation of the Meal Pattern Waiver

State	Do Districts need to submit Meal Pattern Waiver requests or has a statewide waiver been issued so that Districts do NOT need to submit Meal Pattern Waiver requests?	Can Districts request to waive the entire meal pattern? (Yes/No)	Waiver submission protocol	Link to Meal Pattern Waiver request form	Does the Agency require Districts to demonstrate hardship (e.g., supply chain disruption) for the Meal Pattern Waiver request? (Yes/No)*	Does Agency provide TA to Districts to meet challenges that they cite as reason for applying for the Meal Pattern Waiver? (Yes/No)
AK	Each District must submit a request	No	District must email Meal Pattern Waiver request (Word document) to Agency	N/A	No	Yes
AL	Each District must submit a request	No	District must submit Meal Pattern Waiver request online (via Microsoft forms)	COVID-19 Flexibility Waiver Request - Other Meal Pattern Requirements	Yes	Yes
AR	Each District must submit a request	No	District must email Meal Pattern Waiver request (PDF) to Agency	Request for Waiver to Allow Meal Pattern Flexibility in National School Lunch and School Breakfast	Yes	Yes
AZ	Each District must submit a request	No	District must submit Meal Pattern Waiver request online (via Survey Monkey)	Meal Pattern Waiver Submission	Yes	Yes
CA	Each District must submit a request	No	District must submit Meal Pattern Waiver request online (embedded in webpage)	COVID-19 Child Nutrition Programs Meal Pattern Waiver	Yes	Yes
CO	Each District must submit a request	No	District must submit Meal Pattern Waiver request online (via Smartsheet)	SY 20-21 Meal Pattern Waiver	Yes	Yes
CT	Each District must submit a request	No	District must email Meal Pattern Waiver request (Word document) to Agency	Application for Meal Pattern Flexibility During School Year 2020-21	Yes	Yes
DC	Each District must submit a request	No	District must email Meal Pattern Waiver request (Excel document) to Agency	NSLP CACFP 2020-21 School Year SFA Waiver Request Form	Yes	Yes

DE	Each District must submit a request	No	District must email Meal Pattern Waiver request (Excel document) to Agency	DE COVID-19 School Meals Waiver Request	Yes	Yes
FL	Each District must submit a request	No	District must submit Meal Pattern Waiver request online (via Survey Monkey)	National School Lunch Program and Seamless Summer Option - School Flexibilities	Yes	Yes
GA	Each District must submit a request	No	Districts must submit requests online (via Constant Contact link(s))	2018 Meal Pattern Flexibility (Districts may request to participate in the waiver to allow flexibility to meet the 2018 meal pattern) Seamless Summer Waiver Series (Districts participating in SSO may request a waiver to serve only one type of milk to students)	No	Yes
HI	Each District must submit a request	No	District must email Meal Pattern Waiver request (Word and/or Excel document) to Agency	School Year 2020-2021 Meal Service Waiver Request Related to the Novel Coronavirus (COVID-19) Pandemic – Serving Meals Under the NSLP/SBP	Yes	Yes
IA	Each District must submit a request	No	District must submit Meal Pattern Waiver request online (via Google form)	NSLP/SBP Meal Pattern Flexibility Survey	Yes	Yes
ID	Each District must submit a request	No	District must email Meal Pattern Waiver request (PDF) to Agency	COVID-19 Nationwide USDA Waiver Request Form	Yes	Yes

IL	Each District must submit a request	No	District must submit Meal Pattern Waiver request online (via Microsoft forms)	School Nutrition Programs Meal Pattern Flexibility Survey (Districts fill out this survey to be eligible for rollback flexibilities) Child Nutrition Programs Meal Pattern Waiver Request (District requests for flexibilities outside of rollbacks will be considered based on justification)	No (for 2018 rollback components) Yes (for all other components)	Yes
IN	Each District must submit a request	No	Districts are instructed to contact their field specialist to request waiver	N/A	Yes	Yes
KS	Each District must submit a request	No	District must submit Meal Pattern Waiver request online (via Survey Monkey)	Waiver to Allow Meal Pattern Flexibilities in Child Nutrition Programs - Milk, Whole Grains, and Sodium Requirements Final Rule (opt in survey to be approved for rollback flexibilities, no justification required) Child Nutrition Program Meal Pattern Waiver (meal pattern waiver request for individual facets; requires justification)	No (for 2018 rollback components) Yes (for all other components)	Yes
KY	Each District must submit a request	No	District must submit Meal Pattern Waiver request online (via Survey Monkey)	Meal Pattern Flexibility Waiver Request	Yes	Yes
LA	Each District must submit a request	No	District must submit Meal Pattern Waiver request to online portal	COVID-19 Online Waiver Request Submission	Yes	Yes
MA	Each District must submit a request	No	District must email Meal Pattern Waiver request (Word document) to Agency	N/A	No (for 2018 rollback components) Yes (for all other components)	Yes

MD	Each District must submit a request	No	Unknown	Unknown	Yes	Yes
ME	Each District must submit a request	No	District must submit Meal Pattern Waiver request online (via Microsoft forms)	Meal Pattern Flexibility in School Nutrition Programs SY '21	Yes	Yes
MI	Each District must submit a request	No	District must submit Meal Pattern Waiver request online (via Survey Monkey)	SY20-21 Meal Pattern Flexibility Waiver Requests	Yes	Yes
MN	A statewide waiver has been issued for the 2018 rollbacks on sodium, whole grains, and flavored milk (no request required). All other meal pattern waivers must be requested by the District.	No	District must submit Meal Pattern Waiver request online (Survey Gizmo)	Meal Pattern Flexibility Waiver Application Request Form	Yes	Yes
MO	A statewide waiver was issued from March through June 2020. Each District must submit a request after June 2020.	No	District must submit Meal Pattern Waiver request online (via Survey Monkey)	Waiver for Meal Pattern Flexibilities 20-21	Yes	Yes
MS	Each District must submit a request	No	Districts must upload Meal Pattern Waiver request (PDF) to online portal	Meal Pattern Flexibility Request	Yes	Yes
MT	Each District must submit a request	No	District must submit Meal Pattern Waiver request online (embedded in webpage)	School Nutrition Back to School Flexibilities Survey	Yes	Yes
NC	Each District must submit a request	No	District must email Meal Pattern Waiver request (PDF) to Agency	N/A	Yes	Yes
ND	Each District must submit a request	No	District must email Meal Pattern Waiver request (Word document or PDF) to Agency	NSLP/SFSP Missing Component Reporting Form	Yes	Yes

NE	Each District must submit a request	No	District must submit Meal Pattern Waiver request online (via Google form)	COVID-19 Meal Pattern Flexibilities Waiver Request	Yes	Yes
NH	Each District must submit a request	No	Unknown	Unknown	Yes	Unknown
NJ	Each District must submit a request	No	District must email Meal Pattern Waiver request (PDF) to Agency	Waiver to Request Meal Pattern Flexibility in the SSO, NSLP and SBP during School Year 2020-2021	Yes	Yes
NM	Each District must submit a request	No	District(s) must submit Meal Pattern Waiver request to NMPED assigned Health Educator for review and approvals.	Unknown	Yes	Yes
NV	Each District must submit a request (NSLP, SSO) A statewide waiver has been issued (CACFP, SFSP)	No (NSLP, SSO) Yes (CACFP, SFSP)	For NSLP, Districts must submit an opt in form online (via Microsoft forms) For SSO, Districts must submit the editable PDF Plan form to NDA SN for review and approval. District must submit a Waiver Participation Plan (Word document) via email (CACFP, SFSP)	USDA Nationwide and NDA State School Meals Waivers Opt-in Form: SY2020-21 (NSLP only) Not available online (CACFP, SFSP, SSO)	Yes	Yes
NY	Each District must submit a request	No	District must email Meal Pattern Waiver request (PDF) to Agency	Child Nutrition Waiver Request Form	Yes	Yes
OH	Each District must submit a request	No	District must submit Meal Pattern Waiver request online (via Survey Monkey)	Child and Adult Care Food Program Food Shortages During Coronavirus Office of Integrated Student Supports	No	Yes

OK	Each District must submit a request	Not unless they have exhausted all options to obtain the required food items and there have not been any shortages on food to this point. This would be handled on a case-by-case basis.	Districts must contact the Agency to request Meal Pattern Waiver	N/A	Yes	Yes
OR	Each District must submit a request	No	District must submit Meal Pattern Waiver request online (via Smartsheet)	Oregon Meal Pattern Waiver (September 2020-June 2021)	Yes	Yes
PA	Each District must submit a request	No	District must email Meal Pattern Waiver request (PDF) to Agency	N/A	Yes	Yes
RI	Each District must submit a request	No	Districts must contact the Agency to request Meal Pattern Waiver	N/A	Yes	Yes
SC	Each District must submit a request	No	District must submit Meal Pattern Waiver request online (via Survey Monkey)	Nationwide Waiver to Allow Meal Pattern Flexibility in the Child Nutrition Programs	Yes	Yes
SD	Each District must submit a request	No	District must email Meal Pattern Waiver request (Word document) to Agency	Waiver to Allow Meal Pattern Flexibility in the Child Nutrition Programs for School Year or Program Year 2020-2021	No (for 2018 rollback components and age/grade group flexibilities) Yes (for all other requests)	Yes
TN	Each District must submit a request	No	District must email Meal Pattern Waiver request (PDF) to Agency	2020-21 School Year COVID-19 Meal Pattern Flexibility Form	Yes	Yes
TX	Each District must submit a request	No	District must submit Meal Pattern Waiver request online (embedded in webpage)	COVID-19 Meal Pattern Flexibility Options	Yes	Yes
UT	Each District must submit a request	No	District must submit Meal Pattern Waiver request online (via Google form)	Emergency Meal Pattern Waiver Request	Yes	Yes

VA	Each District must submit a request	No	District must submit Meal Pattern Waiver request online (via Survey Monkey)	2020-2021 SFSP/SSO Waiver Survey 2020-2021 At-Risk CACFP Waiver Survey 2020-2021 School Nutrition Waiver Survey	Yes	Yes
VT	Each District must submit a request	No	Districts must contact the Agency to request Meal Pattern Waiver	N/A	Yes	Yes
WA	Each District must submit a request	No	Districts must complete optional opt-in for Meal Pattern Waiver (via Survey Gizmo) which is embedded in a required online meal distribution plan	SY 20-21 SFSP & SSO Meal Distribution Plan	Yes	Yes
WI	Each District must submit a request	No	District must submit Meal Pattern Waiver request online (via Google form)	Meal Pattern Flexibility Waiver for SY 2020-21	No (for 2018 rollback components) Yes (for all other components)	Yes
WV	Each District must submit a request	No	District must submit Meal Pattern Waiver request online via Teams. Teams link was provided to all SFA's via email from the OCN Staff.	N/A (only available internally through Microsoft Teams)	Yes	Yes
WY	Each District must submit a request	No	Districts must contact the Agency to request Meal Pattern Waiver	N/A	Yes	Yes

* Providing any reason or justification for a waiver was classified as demonstration of hardship.

CACFP = Child and Adult Care Food Program

NSLP = National School Lunch Program

SFSP = Summer Food Service Program

SSO = Seamless Summer Option

For more information, please contact the Center for Science in the Public Interest at policy@cspinet.org.

References

¹ Families First Coronavirus Response Act. P.L. 116-127.

² US Department of Agriculture. COVID-19 Nationwide Waiver to Allow Meal Pattern Flexibility in the Child Nutrition Programs. March 25, 2020.

<https://www.fns.usda.gov/cn/covid-19-meal-pattern-flexibility-waiver>. Accessed December 18, 2020.

³ See: “Previous versions of the COVID-19 meal pattern waiver required requests to be based upon disruptions to the availability of food products resulting from unprecedented impacts of COVID-19. For SY 2020-2021, State agencies are no longer required to link meal pattern waiver approvals to supply chain disruptions.” US Department of Agriculture. Questions and Answers for the Child Nutrition Programs during School Year 2020-2021 – #5. August 21, 2020. https://fns-prod.azureedge.net/sites/default/files/resource-files/SP24_CACFP13_SFSP13-2020s.pdf. Accessed January 17, 2021.

⁴ Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs (85 FR 4094)

⁵ See in same memo: “In an April 13, 2020, decision in the Center for Science in the Public Interest et al., v. Sonny Perdue, Secretary, et al., No. 8:19-cv-01004-GLS (D. Md. 2019), the U.S. District Court for the District of Maryland found a procedural error with the promulgation of the 2018 Final Rule, Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements (83 FR 63775, December 12, 2018), and therefore, vacated the regulation. For this reason, the flexibilities provided in the vacated rule are no longer available to States and local Program operators ... For SY 2020-2021 in the NSLP, SBP, and CACFP, flavored milk may be only non-fat; all grains served in the NSLP and SBP must be whole-grain rich; and school lunches and breakfasts offered through the NSLP and SBP must meet Target 2 weekly sodium levels as defined in 7 CFR 210.10(c) and 220.8(c) ... the use of the nationwide meal pattern waiver is allowable if the 2012 requirements cannot be met for SY 2020-2021.”

⁶ Center for Science in the Public Interest et al., v. Sonny Perdue, Secretary, et al., No. 8:19-cv-01004-GLS (D. Md. 2019)