



On September 12, 2008, USDA's Food and Nutrition Service (FNS) published a final rule which implements the legislative provision on fluid milk substitutions in the school nutrition programs. Specifically, the rule establishes nutrient standards for nondairy beverage alternatives to fluid milk, allows schools to accept a written substitution request from a parent or legal guardian, grants schools discretion to select the acceptable nondairy beverages, and continues to make school food authorities responsible for substitution expenses that exceed the Federal reimbursement. The purpose of the rule is to ensure consistency of standards among milk substitutes offered in the school lunch and breakfast programs and assure that students who consume nondairy beverage alternates receive important nutrients found in fluid milk.

This final rule by FNS is in response to the Child Nutrition and WIC Reauthorization Act of 2004 and follows their proposed rule in November 2006.

The main points of the rule include:

- Substitute beverages can be offered in lieu of milk for non-disabled students who cannot consume fluid milk due to medical or special dietary needs. USDA emphasizes that this final rule is not intended to accommodate students who do not drink cow's milk due to taste preferences.
- Substitute beverages will have to provide specific levels of calcium, protein, vitamins A and D, magnesium, phosphorus, potassium, riboflavin and vitamin B-12. Previous regulations did not require these stringent levels of nutrients, aimed at achieving nutritional equivalence to milk, so in that sense this final rule sets a higher bar for substitute beverages than did the old regulations.
- A parent's or guardian's note specifying the medical or special dietary need for substitution will be sufficient instead of the previously required note from a medical professional.

This final rule does not change the milk requirement in the National School Lunch and Breakfast Programs, which currently allows for a variety of fat contents, plain or flavored milk and lactose-reduced or lactose-free milk. Milk will still be offered (by law) with all school meals because of its unique nutrient package and importance to children's health. Substitution is an exception to this requirement, not a replacement for it. Milk's nutritional package is highlighted as the gold standard to which all other substitute beverages will have to conform in their formulation efforts.

Since lactose-free milk is currently allowed as part of the reimbursable school meal program (thus not considered to be a “substitute beverage”), the USDA says there is no need to offer a fortified milk substitute to a student whose medical or special dietary need is lactose intolerance; furthermore, documentation of a medical or special dietary need is not required for lactose-free milk. In cases of lactose intolerance or sensitivity, lactose-reduced or lactose-free milk are recommended by leading national medical and health authorities, including the 2005 Dietary Guidelines and the American Academy of Pediatrics, as the best alternative to regular milk.

Schools make the decision about which substitute beverage is offered and they are expected to incur the costs.

The final rule may be accessed directly at the following link: <http://edocket.access.gpo.gov/2008/pdf/E8-21293.pdf>.