



Office for Prekindergarten through Grade 12 Education  
School Operations and Management  
Child Nutrition Program Administration  
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[www.nysed.gov/cn/cnms.htm](http://www.nysed.gov/cn/cnms.htm)

To: School Food Service Directors/Managers

From: Paula Tyner-Doyle, Coordinator

Date: December 2008

Subject: Fluid Milk Substitutions in the School Nutrition Programs

A new federal regulation, effective October 14, 2008, implements a legislative provision on milk substitutes that is consistent with current regulations on menu exceptions for students with disabilities and adds requirements for the optional substitution of a non-dairy beverage for fluid milk for children with medical or special dietary needs in the National School Lunch Program (NSLP) and School Breakfast Program (SBP). Specifically, this final regulation:

- establishes nutrient standards for non-dairy beverage alternatives to fluid milk for a child without a disability;
- allows schools to accept a written substitution request for a non-dairy beverage from a parent or legal guardian;
- grants schools discretion to select the acceptable non-dairy beverages;
- continues to make school food authorities (SFAs) responsible for substitution expenses that exceed the federal reimbursement;
- ensures consistency of standards among milk substitutes offered in the NSLP and SBP; and
- assures that students who consume non-dairy beverage alternates receive important nutrients found in fluid milk.

SFAs continue to be required to make food and beverage substitutions for children who have a disability which substantially limits one or more life activities and whose disabilities restrict their diet under 7 CFR 15b. The request must be signed by a physician, detail the nature of the disability that requires the substitution and specifically list the food items the child cannot consume and the substitutions that must be provided at no additional cost to the child. This regulation has not changed.

What has changed is that schools now have the option to substitute non-dairy beverages at their discretion for students unable to consume cow's milk due to medical or other special dietary needs, such as milk allergies which do not constitute disabilities if certain conditions are met. Requests could be based on ethnic, cultural, ethic, or religious reasons.

First, let me again clarify that providing a non-dairy substitution for students without a disability is an option- it is not required that the SFA make the accommodation.

Second, if the SFA decides to provide an alternative non-dairy substitute for students who cannot consume milk, there are certain requirements that must be followed. Specifically:

- SFAs must obtain a written statement from a parent or legal guardian identifying the student's medical or special dietary needs. SFAs are not required or expected to verify the reason for the request for the medical or special dietary need listed on the parent's statement;
- SFAs must absorb the costs for the non-dairy substitutes that exceed federal reimbursements;
- The SFA determines the non-dairy beverage of its choice provided the beverage meets certain nutrition standards
- The fluid milk substitutes must be fortified in accordance with fortification guidelines issued by the Food and Drug Administration; The product must be nutritionally equivalent to fluid milk and provide the following specific levels of nutrients:

Nutrient	Per 8 fluid oz.
Calcium.....	276 mg.
Protein.....	8 g.
Vitamin A.....	500 IU.
Vitamin D.....	100 IU.
Magnesium.....	24 mg.
Phosphorus.....	222 mg.
Potassium.....	349 mg.
Riboflavin.....	0.44 mg.
Vitamin B-12.....	1.1 mcg.

- The SFA must inform the State agency (Child Nutrition) if any of its schools choose to offer fluid milk substitutes other than for students with disabilities;
- The approval for fluid milk substitution must remain in effect until the students' parent or legal guardian revokes such request in writing or until such time as the school changes its substitution policy for non-disabled students; and
- This regulation is not intended to accommodate students who do not drink cow's milk due to taste preferences. The school meal programs already offer fluid milk in a variety to satisfy the taste preferences of students.

Additional guidance:

- If SFAs opt to provide alternative non-dairy beverages, we recommend they ask the beverage manufacturer for special instructions and other product information, such as nutrient content, storage instructions and expiration date.
- Lactose-free milk is currently allowed as part of the school meal pattern and SFAs may offer it to children who have lactose intolerance with required documentation

from a licensed medical authority. There is no need to offer a fortified milk substitute to a student whose medical or special dietary need is lactose intolerance.

- It is expected that non-dairy beverage products that meet all of the required nutrient standards will become available in response to SFA demand.
- SFAs that opt to offer non-dairy alternative beverages may notify me of their intent which specifies the product(s) you plan to purchase and the nutrition content of the products via email to [cn@mail.nysed.gov](mailto:cn@mail.nysed.gov) or fax to 518-473-0018.
- Offering substitutions is discretionary and cost implications may be a valid reason for an SFA not to exercise this option. An SFA may not charge a higher price for a school meal to cover the cost of providing a fluid milk substitute.
- An SFA that chooses to offer fluid milk substitutes has discretion to offer a variety of brands or to offer a specific brand name. The SFA does not have to provide the brand selected by the parent or guardian. An SFA may want to confirm with the household that the student will consume the non-dairy beverage selected by the SFA in order to control costs.
- SFAs are responsible for the overall food service operation, including evaluating and purchasing food products that are acceptable for the NSLP and SBP. Neither USDA nor New York State will endorse specific products.
- Non-dairy alternative beverages that do not meet the nutrition standards as well as those that do meet the nutrition standards can be available only a la carte and students can be charged appropriately for these products. The price of these products can be more than milk. If you offer products that do not meet the nutrition standards, just remember that the products cannot be a beverage choice for the NSLP or SBP.
- I strongly suggest you investigate the cost and nutrition content of non-dairy alternatives before you decide that your SFA will opt to provide this service to your school community.

### [Q&As: Milk Substitution for Children with Medical or Special Dietary Needs \(NonDisability\)](#)

### [Fluid Milk Substitutions in the School Nutrition Programs- Final Rule](#)

### [Milk Substitutions that Meet the Nutrition Standards Listed Above](#)

Questions on this regulation should be directed to your Child Nutrition Representative at 518-474-3326.

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