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PUBLIC INSTRUCTION

STATE GUIDANCE

To: Special Nutrition Programs
From: Colleen Fillmore, Ph.D., R.D., L.D., Child Nutrition Programs Director
Date: August 13, 2009
Subject: Q&As: Milk Substitution for Children with Medical or Special Dietary Needs (Non-Disability) **Policy Memo SP-35-2009**

Schools in the National School Lunch Program and School Breakfast Program have the option to offer a nondairy milk substitute to a student with a medical or special dietary need other than a disability. The final rule *Fluid Milk Substitutions in the School Nutrition Programs* (73 FR 52903, September 12, 2008) addresses the substitution of fluid milk for children whose non-disabling allergies, culture, religion, or ethical beliefs preclude the consumption of cow's milk. The final rule sets nutrition standards for the nondairy milk substitutes that may be offered as part of the reimbursable meal. The attached Questions and Answers clarify various issues concerning the substitution of fluid milk in non-disability cases.

Note that this final rule does not apply in cases of disability. For a student with a recognized disability who cannot consume cow's milk, the school must omit or substitute fluid milk based on the written statement from a licensed physician.

For further information call the Child Nutrition Division at 208-332-6820

Q&As: Fluid Milk Substitutions in the School Nutrition Programs

(Final rule published September 12, 2008; 73 FR 52903)

1. What are the main changes prompted by the final rule?

The most significant changes made by the final rule are:

- Allows parents/guardians to request a fluid milk substitute for a child with medical or special dietary needs other than a disability
- Establishes nutrient standards for nondairy beverages offered as fluid milk substitutes in the school meal programs

2. Does the final fluid milk substitution rule apply to the NSLP, SBP, afterschool snack service, and the seamless summer option?

Yes, the milk substitution provision is applicable to all institutions participating in these school meals programs. If a school or institution chooses to offer a milk substitute for a child with a medical or special dietary need other than a disability, the nondairy product that is offered as part of the reimbursable meal must meet the nutrient standards established by the final rule.

3. Does the final fluid milk substitution rule apply to the Special Milk Program (SMP)?

Yes. Although the final milk substitution rule does not specifically refer to the SMP, we are extending the final rule to this Program. We want to ensure that school-age children who cannot consume cow's milk due to a medical or special dietary need have access to a nondairy beverage that supplies the important nutrients found in cow's milk. Therefore, if an SMP operator decides to offer a milk substitute to a child with a medical or special dietary need other than a disability, the program operators must provide a nondairy beverage that meets the nutrition standards in the final rule in order to receive Federal reimbursement. Juice, water, or other beverages no longer qualify as a milk substitute and no reimbursement will be provided for them as an alternate beverage.

4. Does the final milk substitution rule apply to the CACFP and SFSP?

No. Section 9(a)(2)(B) of the NSLA only addresses the substitution of milk in the school meals programs.

5. Is a meal without fluid milk or an acceptable milk substitute reimbursable?

Under Offer v. Serve (OvS), a meal without fluid milk is reimbursable. If there is no OvS, a reimbursable meal must include milk or an acceptable milk substitute as described in this rule, except for a student with a disability (in which case this rule does not apply because the school must follow the licensed physician's written statement).

6. Must the school offer a milk substitute for a child with a medical or special dietary need at the request of a medical authority or a parent?

No, a school has discretion to offer a milk substitute as part of the reimbursable meal to a child with a medical or special dietary need other than a disability. However, FNS is concerned about the ability of children making this request to obtain the key nutrients found in fluid milk through school meals programs. We encourage schools to try to meet the dietary needs of these children by offering a nondairy beverage that meets the requirements of the final rule. If the school

chooses to do so, it must accept a written request from a medical authority (as defined by the State) or a parent/legal guardian.

7. Must a school comply with a statement from a licensed physician or a medical authority indicating that a specific beverage (e.g., juice) must be provided in place of milk to a child with a medical or special dietary need other than a disability?

No, a school needs to comply with a statement from a licensed physician only when a milk substitution is necessary due to a disability. When the milk substitution request is due to a medical or special dietary need other than a disability, the school chooses whether to accommodate the student and selects the nondairy beverage(s) in accordance with the final milk substitution rule.

8. If a school chooses to offer milk substitutes for children with medical or special dietary needs, may it only accept written requests from medical authorities?

No, the school does not have the option to refuse a parent's request. Section 9(a)(2)(B) of the NSLA and program regulations at 7 CFR 210.10(g)(2)(ii)(B) allow a statement from a parent/guardian, as well as a medical authority.

9. What type of documentation must be submitted to the school to request a milk substitute for a child with a medical or special dietary need other than a disability?

The written request from the medical authority or the parent/guardian must identify the student's medical or other special dietary need that precludes the consumption of cow's milk. No other information is required.

10. Do the regulations prohibit a school food service operation from offering children with medical or special dietary needs a milk substitute that does not meet the nutrient standards in this rule?

The final milk substitution rule addresses the substitution of milk as part of the reimbursable school meal. However, if a meal includes a milk substitute that does not meet the requirements of this rule (e.g., juice) no reimbursement would be provided for that meal.

11. Is it necessary to offer a choice of acceptable milk substitutes?

No, a school may offer one or more acceptable milk substitutes for children with medical or special dietary needs.

12. What are the acceptable reasons for requesting a milk substitute for a student who does not have a recognized disability?

Section 9(a)(2)(B) of the National School Lunch Act does not specify the medical or special dietary needs that are covered by the milk substitution provision. Any reasonable request could be accepted. For example, a request due to a milk allergy, vegan diet, as well as religious, cultural or ethical reasons would be acceptable and could be accommodated. If a request only states that a child does not like milk, the student can be offered flavored milk instead of a milk substitute that meets the requirements of this rule.

Should lactose-free milk always be the substitute for a non-disabled student with lactose intolerance, even if the written statement indicates that water or juice should be provided?

Water or juice can no longer be offered as a fluid milk substitute for a student with medical or special dietary needs. For practical reasons, lactose-free milk should be the first choice for a student who has lactose intolerance. Lactose-free milk provides the same key nutrients found in

regular cow's milk and is readily available nationwide. Furthermore, FNS allows lactose-free milk to be provided as part of the reimbursable meal without documentation. A nondairy beverage meeting the requirements of the final milk substitution rule could also be offered, but it is not necessary.

13. Is water an allowable substitute for milk and does it need to be fortified?

Water is not considered an acceptable substitute for fluid milk. Only a beverage meeting the nutrient standards at levels specified in the final rule may be substituted for fluid milk. (See also question 18)

14. May a school decline to offer an acceptable milk substitute to children with medical or special dietary needs, other than disabilities, due to cost?

Yes, a school has the choice to accommodate a milk substitution request from a child with medical or special dietary needs other than a disability. However, the NSLP and SBP seek to safeguard the well-being of all children, including those with special needs. We believe that accommodating the medical or special dietary needs of children helps to maintain student participation in the school meals programs. Because milk substitution requests are granted on a case-by-case basis and a school selects the acceptable nondairy beverage(s), we anticipate that in most cases the substitution could be accommodated without undue financial hardship. However, in some situations, cost may be a legitimate reason for declining to offer a milk substitute to a child with a medical or special dietary need.

15. May a school claim a meal that includes four food components (other than fluid milk) and beverage brought from home, as indicated by a medical authority or a licensed physician?

Under OvS, a meal without fluid milk can be reimbursable. If there is no OvS, a reimbursable meal for a child with a medical or special dietary need must include milk or an acceptable milk substitute provided by the school as part of a reimbursable meal. If the school does not offer an acceptable milk substitute for students without disabilities, the student has to take the fluid milk for the meal to be reimbursable.

If the student has a disability, the school can omit or substitute fluid milk based on the written statement from a licensed physician. For a student with a recognized disability, the meal may consist of only four components and a beverage from home, if so prescribed by a licensed physician.

16. Does a school have to accept milk substitution requests even if it is not offering a milk substitution for children with medical or special dietary needs?

If a school has decided not to offer a milk substitution for students with medical or special dietary needs, it should communicate this decision to all households at the beginning of the school year to minimize the number of written requests. We do not expect schools to keep documentation of non-disability milk substitution requests that are not being implemented.

17. Can an SFA continue to honor milk substitution requests for children without disabilities that were approved prior to this final rule and, thus, offer juice in place of fluid milk?

No. In SY 2008-2009, FNS temporarily allowed SFAs to honor accommodations granted under previous meal variation regulations because at that time there were no acceptable milk substitutes in the market. We understand that some acceptable products are currently available. Therefore, beginning in SY 2009-2010, SFAs that wish to offer a milk substitute for a student with a medical or special dietary need other than a disability must offer a beverage that meets the nutrient standards established in the final rule. This rule does not restrict the ability of schools to continue offering lactose-free milk as part of the reimbursable meal for children who have lactose intolerance.

18. How can a school determine what products meet the requirements of this final rule?

Because the Nutrition Facts Label nutrition label on food products does not list all the required nutrients (see below), the food service operation needs to request documentation from the product manufacturer to confirm the presence of all required nutrients at the proper level. The State Agency can provide guidance or assist with product selection.

Milk Substitute Nutrition Standards

Nutrient	Per Cup
Calcium	276 mg
Protein	8 g
Vitamin A	500 IU
Vitamin D	100 IU
Magnesium	24 mg
Phosphorus	222 mg
Potassium	349 mg
Riboflavin	.44 mg
Vitamin B-12	1.1 mcg

19. Does USDA maintain a list of acceptable products?

No, school food authorities (SFAs) are responsible for selecting and purchasing food products to be offered as part of the school meals programs. USDA does not evaluate, approve, or endorse any nondairy beverage intended to be offered as a milk substitute. We understand that availability of products meeting the nutrient standards in this rule varies across the country. SFAs may want to seek help from their State Agency to identify acceptable products or potential manufacturers.

20. Are the milk substitution requirements for the NSLP and the WIC food packages the same?

Yes, the required nutrient standards are the same. Other requirements in the milk substitution rule, such as the written substitution request, do not apply to WIC.

21. Is FNS Instruction 783-2, Rev. 2, *Meal Substitutions for Medical or Other Special Dietary Reasons* still valid?

Yes, this Instruction, issued on October 14, 1994, is still current and applies to meal variations for children with and without disabilities. The final milk substitution rule establishes additional requirements that only apply to fluid milk substitution for children without disabilities.