

MEMO CODE: SP 02-2009

DATE: October 16, 2008

SUBJECT: Final Fluid Milk Substitution Rule

TO: Child Nutrition Programs

The Food and Nutrition Service (FNS) issued the final rule *Fluid Milk Substitutions in the School Nutrition Program* (73 FR 52903) on September 12, 2008, to implement a provision of the Child Nutrition and WIC Reauthorization Act of 2004. This memorandum is intended to explain key requirements of the attached rule, which became effective October 14, 2008. In summary, this rule:

- Continues the current requirements on meal variations for students with disabilities in the National School Lunch Program and School Breakfast Program;
- Allows school food authorities (SFAs) discretion to offer fluid milk substitutes to students with medical or other special dietary needs that do not rise to the level of a disability;
- Requires that nondairy beverages offered as fluid milk substitutes be nutritionally equivalent to fluid milk and provide specific levels of calcium, protein, vitamins A and D, magnesium, phosphorus, potassium, riboflavin, and vitamin B-12; and
- Allows SFAs to accept a written statement from a parent/guardian or from a recognized medical authority. The supporting statement must identify the student's medical or other special dietary need that precludes cow's milk.

This final rule seeks to ensure that individual students who are provided a substitute for cow's milk for cultural, ethnic, religious or ethical reasons receive the important nutrients found in milk. The nutrients cited in this rule are not required to be present in the milk substitutes offered to students with disabilities, who must be provided a beverage as specified by a physician.

This rule recognizes the valuable contributions of milk to a child's diet and, therefore, does not allow a school to offer other beverages, such as juice, as milk substitutes. The only milk substitutes allowed under this rule for students without disabilities are nondairy beverages that meet the established nutrient standards. However, this rule has no effect on a school's ability to offer lactose-free milk to a student with a medical or special dietary need such as lactose intolerance. Lactose-free milk continues to be allowed as part of the reimbursable meal.

Schools that elect to offer milk substitutes for students without disabilities can now accept a statement from a parent/legal guardian or from a medical authority identifying the student's need. Prior to this rule, schools were only able to accept a statement signed by a recognized medical authority. Please note that a statement from a medical authority is still required for any meal variations, other than milk substitution, for a student with medical or other special dietary needs.

Because the nutrients found in milk are very important to the development and growth of students, schools should consider offering milk substitutes that meet the requirements of this rule when they become available in the market. We encourage schools to seek alternate funding sources if financial barriers are an impediment. Please see the potential funding sources listed in the guidance *Accommodating Children with Special Dietary Needs in the School Nutrition Programs*.

In recognition of the fact that no products are currently formulated to meet the rule's requirements, schools may continue to provide accommodations they have already agreed to under the prior program regulations for students with medical or special dietary needs. However, no new accommodations may be made under the old regulations. The Department will reevaluate this policy in six months and issue further guidance then. We anticipate that allowable products will be available in the near future.