

Fluid Milk Substitution Rule

New Federal regulations have changed guidance for milk substitutions for students who do not have a disability.

The new regulations do **NOT** change guidance for:

- Substitutions for students with disabilities, and
- Substitutions other than milk for students that do not have a disability, but are unable to consume a food item because of medical or other special dietary needs.

The new regulations **DO** change guidance for:

- Milk substitutions for students with medical or other special dietary needs that do not rise to the level of a disability.

Following is a brief overview of both the existing and new guidance.

Student with a Disability is any person who has a physical or mental impairment, which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment. LEAs must make substitutions in meals for a student with a disability that restricts his/her diet. Substitutions must be made on a case by case basis and only when supported by a written statement signed by a licensed physician which explains the need for substitutions and includes recommended alternate foods.

Generally, a student with a food allergy or intolerance is not considered a student with a disability and LEAs are not required to make substitutions. However, when in the physician's assessment food allergies may result in severe, life-threatening reactions (anaphylactic reactions) the student then meets the definition of a student with a disability.

Student without a Disability is any person not considered disabled but unable to consume a food item because of medical or other special dietary needs. Substitutions may be made on a case by case basis when supported by a statement signed by a recognized medical authority.

- Substitutions for Foods other than Milk: **No Change** – LEAs may choose to provide substitutions on a case by case basis and only when supported by a written statement signed by a recognized medical authority which explains the need for substitutions and includes recommended alternate foods.
- Substitutions for Milk: **NEW REGULATIONS** - The only milk substitutions allowed under the new rule for students without disabilities are nondairy beverages that are nutritionally equivalent to fluid milk and provide specific levels of nutrients as listed in the following table:

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	0.44 mg.
Vitamin B-12	1.1 mcg.

- The new rule recognizes the valuable contributions of milk to a student's diet and, therefore, does not allow an LEA to offer other beverages, such as juice, as a milk substitute. However, this rule has no effect on offering 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 a reimbursable meal.

- Schools that elect to offer milk substitutions for students without a disability 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.
- LEAs have the discretion to select the acceptable substitutions that meet the nutritional standards established.
- LEAs are required to inform the State Agency when a school chooses to offer fluid milk substitutions other than for students with a disability.
- The approval for fluid milk substitutions must remain in effect until the medical authority or the student's parent or legal guardian revokes the request in writing, or until the LEA changes its substitution policy for students without a disability.
- Expenses to provide substitutions for fluid milk that exceed program reimbursements must be paid by the LEA.
- **IMPORTANT!** 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 without a disability with medical or special dietary needs. USDA will reconsider this policy in approximately six months and will issue further guidance then. USDA anticipates that allowable products will be available in the near future.