Ohio | Department of Education

John R. Kasich, Governor
Dr. Richard A. Ross, Superintendent of Public Instruction

To: Child and Adult Care Food Program Sponsors

From: Mary Kershaw, Assistant Director, CACFP
Office for Child Nutrition

Date: August 2011; revised May 2013

RE: Nutrition requirements for Fluid Milk and Fluid Milk Substitutions in the Child and Adult Care Food Program

The Healthy, Hunger-Free Kids Act of 2010 (the Act), Public Law 111-296, modified requirements for fluid milk and fluid milk substitutions in the Child and Adult Care Food Program (CACFP). The purpose of this memorandum is to provide guidance on the implementation of these provisions.

Fat-Free and Low-Fat Milk

Milk served in the CACFP must be consistent with the most recent version of the Dietary Guidelines for Americans. The 2010 Dietary Guidelines recommend that persons over two years of age consume fat-free (skim) or low-fat (1%) fluid milk. Therefore, fluid milk served in the CACFP to participants two years of age and older must be: fat-free or low-fat milk, fat-free or low-fat lactose reduced milk, fat-free or low-fat lactose free milk, fat-free or low-fat buttermilk, or fat-free or low-fat acidified milk. Milk served must be pasteurized fluid milk that meets State and local standards, and may be flavored or unflavored. Whole milk and reduced-fat (2%) **may not** be served to participants over two years of age. Requirements for children under the age of two have not changed.

Non-dairy Beverages

Children who cannot consume fluid milk due to medical or other special dietary needs, other than a disability, non-dairy beverages may be served in lieu of fluid milk. Non-dairy beverages must be nutritional equivalent to milk, and meet the nutritional standards for fortification of calcium, protein, vitamin A, vitamin D and other nutrients to levels found in cow's milk. Because the Nutrition Facts label on food products does not list all of the required nutrients as stated below, sponsors will need to request documentation from the product manufacturer to confirm and certify the presence of all required nutrients at the proper level in order to claim any meals containing a non-dairy milk substitute requested or provided by the parent/guardian.

25 South Front Street
Columbus, Ohio 43215
education.ohio.gov

(877) 644-6338
(888) 886-0181 (TTY)

Milk Substitution Nutrition Standards
A non-dairy beverage product must at a minimum contain the following nutrient levels per cup to qualify as an acceptable milk substitution:

a. **Calcium 276 mg**
b. **Protein 8 g**
c. **Vitamin A 500 IU**
d. **Vitamin D 100 IU**
e. **Magnesium 24 mg**
f. **Phosphorus 222 mg**
g. **Potassium 349 mg**
h. **Riboflavin .44 mg**
i. **Vitamin B-12 1.1 mcg**

Parents or guardians may now request in writing non-dairy milk substitutions, as described above, without providing a medical statement. As an example, if a parent has a child who follows a vegan diet, the parent can submit a written request to the child's caretaker asking that soy milk be served in lieu of cow's milk. **The written request must identify the medical or other special dietary need that restricts the diet of the child**. The attached prototype Parent/Guardian Request for Fluid Milk Substitution form should be used by parents and guardians.

Fluid milk substitutions requested by the parent/guardian are at the **option** and the **expense** of the facility/center. A meal containing a non-dairy milk substitution supplied by either the parent/guardian or the center can be claimed for reimbursement only when:

- a written request from the parent/guardian for the non-dairy substitute is on file,
- the center has documentation on file that the non-dairy substitute to be provided meets all of the nutrient levels as detailed above,
- and all other required meal components for children over I year of age are supplied by the center.

If a special diet form for a child with a medial or special dietary need (not a medical disability) that indicates a non-dairy beverage substitute for milk is signed by a recognized medical authority, the facility/center may choose to provide that substitute without any other documentation regarding nutrient levels of the product and that meal can be claimed for reimbursement.

The requirements related to milk or food substitutions for a child who has a medical disability must still submit a medical statement signed by a licensed physician identifying the medical condition and the required substitution. If requested, facilities/centers must provide the food/milk substitutions for a child with a medical disability. A medical disability is defined as any handicapped 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 an impairment.

All CACFP sponsors/facilities must adhere to this requirement by October 1, 2011.
Attachment: Fluid Milk Substitutions Questions and Answers

CACFP: FLUID MILK SUBSTITUTIONS QUESTIONS AND ANSWERS

1. What are the main changes in this new requirement?

A: The most significant changes allow parents or guardians to request a fluid milk substitute for a child with medical or special dietary needs other than a disability. However, it also provided nutrient standards that must be met if nondairy beverages are offered as fluid milk substitutes.

2. What are the acceptable reasons for requesting a milk substitute for a child who does not have a disability?

A: 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. If a request only states that a child does not like milk, the child can be offered flavored milk instead of a milk substitute that meets the requirements of this rule.

3. What is considered a medical disability?

From 7 Code of Federal Regulations 15b(3)
A: "Handicapped person" means 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.

"Physical or mental impairment" means (a) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (b) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairment; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; mental retardation; emotional illness; and drug addiction and alcoholism.

"Major life activities" means functions such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working. As of 4/26, 2013 and as amended by the ADA Amendments Act, major life activities now also includes "Major Bodily Functions" such as: "functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine and reproductive functions."

"Has a record of such impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

"Is regarded as having an impairment" means ((a)has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (b) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others towards such impairments; or (c) has none of the impairments defined in paragraph(j) of this sections but is treated by a recipient as having such an impairment.

It is important to point out that individuals who take mitigating measures to improve or control any of the conditions recognized as a disability, are still considered to have disability and require an accommodation.

4. Who determines if a child has a medical disability?

A: The determination of whether child has a disability, and whether the disability restricts the child's diet, is to be made by a licensed physician.

5. **Must a facility offer a milk substitute for a child with a medical or special dietary need at the request of a medical authority or a parent, if it isn't a disability?**

   A: No, a center has the choice to offer milk substitute as part of the reimbursable meal to a child with a medical or special dietary need other than a disability. However, we encourage facilities/centers to try to meet the dietary needs of these children by offering a milk substitute that meets the requirements. If your facility/center chooses to do so, you must accept a written request from medical authority <u>or</u> a parent/guardian.

6. **If our center chooses to offer milk substitutes for children with medical or special dietary needs, may we only accept written requests from medical authorities?**

   A: No, the center does not have the option to refuse a parent's request. The regulations allow a statement from a parent/guardian, as well as a medical authority.

7. **Must we comply with a statement from a licensed physician or a medical authority explaining that a specific beverage (e.g., juice) must be provided in place of milk to a child with a medical or special dietary need even though it is NOT a disability?**

   A: No, a facility/center 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 a medical or special dietary need other than a disability, the facility/center can choose whether or not to provide that milk substitution. However, we encourage facilities/center to meet the dietary needs of these children by offering a milk substitute when requested by a medial authority as no other documentation is needed regarding the nutrient level of that substitute is needed.

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

   A: A written request from the medical authority or the parent/guardian must identify the child's medical or other special dietary need that precludes the consumption of cow's milk. No other information is required to be submitted.

9. **A parent/guardian has submitted a request for a fluid milk substitute for a child with medical or special dietary needs and we provided a milk substitute that does not meet the nutrient standards in this rule, could we claim these meals for reimbursement?**

   A: No. If a meal includes a milk substitute that does not meet the requirement of this rule, then those meals would not qualify for reimbursement and should not be claimed.

10. **If a special diet form for a child with medical or special dietary needs (not a disability) is submitted by a medical authority and it has listed fluid milk to be substituted with a non-dairy beverage that doesn't meet the nutritional standards as specified in this rule, can those meals be claimed for reimbursement?**

    A: Yes. Whenever the special diet form is signed by a medical authority or licensed physician, the meal can be claimed for reimbursement.

11. **May a facility/center decline to provide an acceptable milk substitute to children with medical or special dietary needs, other than disabilities, due to cost?**

    A: Yes, a facility/center has the choice to provide a milk substitution request for a child with medical or special dietary needs other than a disability. However, the Child and Adult Care Food Program seek to safeguard the well-being of all children, including those with special needs. Because milk substitution requests are granted on a case-by-case basis and a facility/center selects the acceptable non-dairy beverage(s), 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.

12. **Does a facility/center have to accept milk substitution requests even if it is not offering a milk substitution for children with medical or special dietary needs?**

    A: If a facility/center has decided not to offer a milk substitution for children with medial or special dietary needs, it should communicate this decision (suggest that your policy be put in the parent handbook) to all families as soon as possible to minimize the number of written requests. The facility/center is not required to keep documentation on non-dairy milk substitution requests that are not provided.

13. **Does USDA or the State Agency maintain a list of acceptable non-dairy beverages?**

    A: No. Facilities/centers are responsible for selecting and purchasing food products to be offered as part of the CACFP. We do not evaluate, approve, or endorse any non-dairy beverage intended to be offered as a milk substitute. Available of products meeting the nutrient standards for non-dairy beverages as stated in this rule varies across the country.

5/2013

Q & A

A. NON-DAIRY MILK SUBSTITUTIONS

1. **Is a caregiver required to provide a non-dairy milk substitute if it is not related to a medical disability?**
   No. It is at the caregiver's discretion to provide a non-dairy milk substitute if it is not related to a medical disability.

2. **Will caregivers receive additional meal reimbursements if they provide a non-dairy milk substitution?**
   No. All non-dairy milk substitutions are at the expense of the caregiver and/or the child's parent or guardian.

3. **If a parent provides a creditable non-dairy milk substitute, can the caregiver serve it and still receive reimbursement?**
   Yes. If a parent provides a non-dairy milk substitute that meets the nutritional standards as outlined in 7 CFR 210.10(m)(3) and that has been approved by the State agency, the caregiver may serve the non-dairy milk substitute and still claim reimbursement for the meal.

4. **If a parent or adult participant can request a non-dairy milk substitute that is equivalent to cow's milk, can the parent or adult participant also request that their child or themselves be served whole or reduced-fat (2%) milk?**
   No. The Act requires that milk served to children and adults in the CACFP be aligned with the most recent version of the Dietary Guidelines for Americans. The 2010 Dietary Guidelines for Americans recommends that persons over the age of two consume low-fat (1%) or fat-free (skim) milk. Therefore, any request for higher fat milk must be made through a medical statement, related to a medical disability, and prescribed by a licensed physician.

B. COMPLIANCE

5. **What if the parent agrees to provide the non-dairy substitute, but brings in one that does not meet the USDA's nutritional standards; can the caregiver serve it and still receive reimbursement?**
   Caregivers should inform parents about the types of creditable non-dairy milk substitutes.
   If a non-dairy milk substitute is served that does not meet the nutritional standards outlined in 7 CFR 210.10(m)(3), then the meal is not reimbursable.
6. **When submitting menus for review, do caregivers need to document the type of milk that they serve?**
   No. Caregivers are not required to document the type of milk served on their menus. However, it is the responsibility of the State or sponsor, as applicable, to ensure that the correct type of milk is being served when conducting reviews.

7. **What type of milk may one-year-old children be served?**
   The milk requirements for children one year of age remain unchanged at this time. It is recommended, but not required, that children 12 through 23 months of age be served whole milk only.

8. **If one-year-old and two-year-old children sit together for the same meal, must they be served different types of milk?**
   Children older than two must be served low-fat (1%) or fat-free (skim) milk and it is recommended that children one year of age be served whole milk. Providers must ensure that children of various ages seated at the same meal receive the appropriate type of milk.

9. **What happens if a caregiver serves reduced-fat (2%) or whole milk on or after October 1, 2011?**
   Effective October 1, 2011, meals served to participants two years of age and older that include reduced-fat (2%) or whole milk are not reimbursable and must be disallowed. In addition, the provider should submit a corrective action plan and the State agency or sponsor should follow-up to ensure that it has been successfully implemented.

C. <u>ADULT PARTICIPANTS (Adult Day Care)</u>

10. **Must adults participating in the CACFP be served 1% or fat-free milk only?**
    Yes. The provision in the law [42 USC §1766(g)] requires all CACFP institutions to serve low-fat or fat-free milk, which includes adult day care facilities.

11. **Can adults submit a written request for a non-dairy milk substitution?**
    Yes. Adult participants, or their caregivers, may request in writing a non-dairy milk substitute that meets the nutritional standards as outlined in 7 CFR 210.10(m)(3) and that has been approved by the State agency.

PARENT/GUARDIAN REQUEST FOR FLUID MILK SUBSTITUTION

Parents or guardians may now request in writing that non-dairy beverages be substituted for fluid milk for their children with special dietary needs without providing statement from a recognized medical authority. However, fluid milk substitutions requested are at the **option** and expense of the facility/center.

The non-dairy beverage provided must be nutritionally equivalent to fluid milk and meet the nutritional standards set by the United States Department of Agriculture (USDA) for Child Nutrition Programs in order for the facility/center to claim reimbursement for the meal through the Child and Adult Care Food Program (CACFP).

A non-dairy beverage product must at a minimum contain the following nutrient levels per cup to qualify as an acceptable milk substitution:		
a. Calcium 276 mg	d. Vitamin D 100 IU	g. Potassium 349 mg
b. Protein 8 g	e. Magnesium 24 mg	h. Riboflavin .44 mg
c. Vitamin A 500 IU	f. Phosphorus 222 mg	i. Vitamin B-12 1.1 mcg

To be completed by Child Care Center/Provider prior to distribution of form	
Name of Child Care Center/Provider:	
	This child care center/provider will provide the following non-dairy beverage which meets the USDA approved nutrient standards for a milk substitute: (list substitute(s))
	This child care center/provider has chosen not to provide non-dairy beverages for the substitution of fluid milk.

To be completed by Parent/Guardian	
Child's Full Name:	
Identify the medical or other special dietary need that restricts the diet of your child (why your child needs a non-dairy beverage as a milk substitute):	
	I request that my child is served the non-dairy beverage which meets the USDA approved nutrient standards for a milk substitute that is provided by the center/provider as indicated above.
	I am aware that the center is not providing a non-dairy beverage for the substitution of fluid milk. I will provide a non-dairy beverage for my child that meets the meets the USDA approved nutrient standards for a milk substitute as stated above.
	I will provide a non-dairy beverage for my child that does **not** meet the USDA approved nutrient standards for the substitution of fluid milk. I understand that the center cannot claim meals that require milk unless I get written statement from a recognized medical authority.
Signature of Parent/Guardian:	**Date:**

NON-DISCRIMINATION STATEMENT: This explains what to do if you believe you have been treated unfairly. "In accordance with Federal Law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. To file a complaint of discrimination, write USDA, Director, Office of Adjudication, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call toll free (866) 632-9992 (Voice). Individuals who are hearing impaired or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339; or (800) 845-6136 (Spanish). USDA is an equal opportunity provider and employer."