

# Rules and Regulations

Federal Register

Vol. 73, No. 178

Friday, September 12, 2008

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Parts 210 and 220

[FNS–2007–0032]

RIN 0584–AD58

#### Fluid Milk Substitutions in the School Nutrition Programs

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule 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 nondairy beverage for fluid milk for children with medical or special dietary needs in the National School Lunch Program and the School Breakfast Program. Specifically, this final rule establishes nutrient standards for nondairy beverage alternatives to fluid milk, allows schools to accept a written substitution request from a parent or legal guardian, grants schools discretion to select the acceptable nondairy beverages, and continues to make school food authorities responsible for substitution expenses that exceed the Federal reimbursement. This rule ensures consistency of standards among milk substitutes offered in the school lunch and breakfast programs, and assures that students who consume nondairy beverage alternates receive important nutrients found in fluid milk.

**DATES:** *Effective Date:* October 14, 2008.

**FOR FURTHER INFORMATION CONTACT:** William Wagoner or Marisol Benesch, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service at (703) 305–2590.

#### SUPPLEMENTARY INFORMATION:

### I. Background

National School Lunch Program (NSLP) substitution regulations at 7 CFR 210.10(g) on meal variations require school food authorities (SFAs) to make food substitutions for children whose disabilities restrict their diet and give school food authorities discretion to make food substitutions for students with medical or other special dietary needs which do not constitute disabilities. Current regulations at 7 CFR 210.10(g) require that substitution requests be supported by a statement signed by a physician in the case of a student with a disability or by a recognized medical authority in the case of a student who is not disabled. The substitution regulations in the NSLP also apply to the School Breakfast Program (SBP) as a result of the requirements in 7 CFR 220.8(d) on meal variations.

Section 102 of the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108–265; June 30, 2004) amended section 9(a)(2) of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1758 (a)(2), to include provisions consistent with the above substitution regulations and to add requirements for the optional substitution of fluid milk for students with medical or other special dietary needs. Public Law 108–265 amended section 9(a)(2)(B)(i) to require that fluid milk substitutes be fortified with calcium, protein, vitamin A, and vitamin D to levels found in fluid milk, and authorized the Secretary to specify additional nutrients. As amended, section 9(a)(2)(B)(ii) allows SFAs to accept a written statement from a parent or legal guardian identifying the student's medical or special dietary needs, in lieu of a written statement from a recognized medical authority. The provision also allows SFAs to select the acceptable substitutes that meet the nutritional standards established by the Secretary. Furthermore, Public Law 108–265 requires that SFAs notify the State agency of the decision to offer fluid milk substitutes other than for students with a disability, and requires SFAs to pay for substitution expenses that exceed Federal reimbursements.

The Food and Nutrition Service (FNS) published a proposed rule on November 9, 2006 (71 FR 65753) seeking to establish nutrient standards for the milk substitutes and the other requirements established by Public Law 108–265, as

indicated above. The proposed rule was intended to accommodate individual students age two and older who are unable to consume cow's milk due to a medical or other special dietary need, but who do not have a disability as defined in 7 CFR 15b.3. Specifically, schools are required to provide milk substitutes for children who have a disability which substantially limits one or more life activities, and would be affected by the consumption of dairy milk, such as diabetes. However, schools are also given the option of providing milk substitutes for children with milk allergies, religious or ethical beliefs or other needs that preclude the consumption of milk but do not constitute a medical disability.

The proposed rule would have required that nondairy beverages be fortified with calcium, protein, vitamin A, and vitamin D, as stipulated by Public Law 108–265. Based on existing nutrition research, FNS proposed that nondairy beverages be fortified with riboflavin, vitamin B–12, magnesium, phosphorus and potassium, in addition to the nutrients stipulated by the Act. The proposed rule specified nutrient levels to ensure that a cup of a milk substitute is nutritionally equivalent to a cup of fluid cow's milk.

### II. Discussion of Public Comments

FNS received 107 comments on the proposal from associations (including dairy councils) (18), food companies (2), school districts (66), State and local agencies (16), and individuals (5). The comment period began November 9, 2006 and ended January 8, 2007. The response to various aspects of the proposal was mixed, as indicated in the following summary of public comments:

- *Nutrient Standards for Fluid Milk Substitutes*

FNS proposed that nondairy fluid milk substitutes be fortified with calcium, protein, vitamins A and D, riboflavin, vitamin B–12, magnesium, phosphorus, and potassium to the levels found in whole milk (3.25% milkfat). Whole milk was used as a benchmark for all nutrients (except vitamins A and D) because, based on the USDA Nutrient Database for Dietary Studies 1.0, it provides the lowest levels of several nutrients. The proposed levels for vitamins A and D reflect the milk fortification levels specified by the Food and Drug Administration.

The dairy councils supported the proposed nutrient standards for fluid milk substitutes. However, some dairy councils were concerned that fortified nondairy beverages may not provide the same health benefits as fluid milk because added nutrients settle in the bottom of beverage containers. A student would need to shake the beverage container vigorously prior to consumption to ensure full delivery of nutrients. The dairy councils recommended that FNS encourage SFAs to offer lactose-free milk, in place of nondairy beverages, for lactose-intolerant individuals, as recommended by the 2005 "Dietary Guidelines for Americans."

Manufacturers of fortified milk substitutes are responsible for labeling their products with important consumer information. SFAs should ask the beverage manufacturer for special instructions and other product information, such as nutrient content, storage instructions, and expiration date.

FNS wishes to emphasize that lactose-free milk is currently allowed as part of the reimbursable school meal pursuant to 7 CFR 210.10 and SFAs may offer it to children who have lactose intolerance without requiring documentation. There is no need to offer a fortified milk substitute to a student whose medical or special dietary need is lactose intolerance.

Food companies and associations representing the soy industry commented that no product currently on the market meets the proposed nutrient standards. They were concerned that product reformulation may increase costs and discourage the use of soy beverages as fluid milk substitutes. To encourage product availability, the commenters suggested that the proposed protein standard be reduced to 6.25 g of protein per 8 ounce serving and that the proposed potassium standard be reduced to 250 mg per 8 ounce serving. This change would allow SFAs to use soy beverages currently on the market as acceptable fluid milk substitutes. A medical association noted that protein consumption among children is already high and recommended that the proposed protein standard be reduced to 5 g per serving.

An association stated that nutritional standards for the nondairy milk substitutes should be based on critical nutrients such as calcium, vitamin A, and vitamin D. The commenter said that more recent data is needed to justify establishing requirements for protein, magnesium, potassium, phosphorus, riboflavin, and vitamin B-12.

Public Law 108-265 required that milk substitutes be fortified with calcium, protein, vitamin A, and vitamin D to levels found in fluid milk. It also authorized the Secretary to specify other nutrients in addition to those required statutorily. Recognizing that fluid milk is the primary food source of riboflavin, vitamin B-12, magnesium, phosphorus, and potassium for children, FNS proposed to extend the nutrient requirements to also include these additional vitamins and minerals. Requiring magnesium and potassium also supports the 2005 "Dietary Guidelines for Americans," which identifies these as nutrients of concern for children. Fortification with vitamin E, another nutrient of concern for children, was not proposed because fluid milk is not their primary food source of vitamin E. FNS anticipates that products that meet all of the proposed nutrient standards will become available in response to SFA demand.

FNS recognizes that some SFAs may need assistance to select acceptable products. We expect that the State Agencies will provide technical assistance to program operators that choose to offer nondairy milk substitutes for students with medical or other special dietary needs.

In light of the childhood overweight/obesity trend, a commenter stated that low-fat fluid milk should be used as the benchmark for the proposed nutrient standards, rather than whole milk (3.25% milkfat). It was also recommended that USDA set a maximum limit on the allowable energy-bearing nutrients, such as total fats and sugars, in the substitute beverages.

The Department used whole milk as a benchmark for nutrient standards because it provides the lowest levels of the proposed nutrients in comparison with other types of milk. This is consistent with the NSLP requirement at 7 CFR 210.10(b)(1) that school meals provide at least minimum nutrient levels that meet one-third of the nutritional needs of students. This approach is intended to facilitate an SFA's compliance with the nutrient requirements.

The Department refrained from limiting the fats and sugars in individual milk substitutes because this would be inconsistent with the current NLSP requirement in 7 CFR 210.10(a)(1)(i) to analyze the nutrients provided by the reimbursable meal (rather than individual food items) on average over the course of the week. In addition, regulatory action does not seem warranted because potential milk

substitutes in the market (e.g., typical chocolate-flavored, soy-based beverage) already provide a level of energy, total fat, saturated fat, and total sugars that is below the levels contained in some of the types of milk currently allowed in the NSLP, such as chocolate-flavored whole milk. It also seems unreasonable to establish a regulatory maximum level for sugars in fluid milk substitutes when one does not exist for fluid milk. The Department recommends, but does not require, that schools use the profile of unflavored milk with respect to calories, fats, and sugars as the guide for evaluating fluid milk substitutes. We also recommend that schools do not offer nondairy beverages that exceed the fats and sugar levels found in chocolate-flavored whole milk. The trans fats in milk substitutes should be minimal, as recommended by the 2005 "Dietary Guidelines for Americans."

The lack of a mechanism to validate the actual nutrient content of a fluid milk substitute was also a concern for the dairy industry and school districts. Some commenters argued that school districts should not be expected to evaluate the nutritional value of milk substitutes, and recommended that FNS take on that responsibility and issue a list of products that meet the required nutrient levels. Another commenter recommended that the Department issue information on fluid milk substitutes whose nutritional content has been verified by independent laboratories.

Public Law 108-265 does not reflect the intent for FNS to assume responsibility for evaluating the nutrient content of milk substitutes or endorse specific products. School food authorities are responsible for the overall food service operation, including evaluating and purchasing food products that are acceptable for the NSLP and SBP. SFAs may seek assistance from their State Agency to evaluate the nutrient content of fluid milk substitutes.

• *Written Statement from a Student's Parent or Legal Guardian*

In conformance with Public Law 108-265, FNS proposed to allow an SFA to accept a milk substitution request by written statement from a recognized medical authority or from the student's parent or legal guardian. As stated in the law, the substitution request by written statement must identify the student's medical or other special dietary need. FNS proposed that the written statement remain in effect until the parent or legal guardian revokes such statement or until the school discontinues the milk substitution option.

School districts in general opposed allowing a parent or legal guardian's

statement in lieu of a statement from a recognized medical authority. They expressed concern that a parent or legal guardian's statement may not be fact-based and may simply reflect a student's preference. SFAs believe that the requests from parents could create a financial burden for the foodservice operation. They argue that only recognized medical authorities should be allowed to request fluid milk substitutions for children with medical or special dietary needs.

Several associations and businesses were pleased that Congress simplified the process for requesting fluid milk substitutes for children with medical or special dietary needs. A commenter stated that the parent or legal guardian's written statement should include contact information for the physician who is treating the student's medical or special dietary need.

Section 102 of Public Law 108-265 specifies that parents and legal guardians may request milk substitutions and did not require or expect SFAs to verify the medical or other special dietary need listed on the parent's statement. Consequently, FNS is not adopting the recommendation to require contact information.

A commenter misunderstood the proposed regulatory language on meal variations and suggested revisions to allow a school to accept a parent or legal guardian's written statement. A correction is not necessary because the proposed regulatory text refers to meal variations, not to the fluid milk substitutions that may be requested by parents or legal guardians as allowed by Public Law 108-265.

- *State Agency Notification*

In accordance with Public Law 108-265, FNS proposed to require that an SFA notify the State Agency of a decision to offer fluid milk substitutes other than for children with a disability. Commenters did not see the value of such notification and stated that this information is already available through program reviews.

FNS has no discretion in the implementation of this statutory requirement established in section 102 of Public Law 108-265. This notification can be accomplished through electronic mail or other easy method specified by the State Agency. This notification requirement does not involve reporting data to FNS.

- *Expenses Related to Fluid Milk Substitutions*

Public Law 108-265 requires that SFAs pay for substitution expenses that exceed the Federal reimbursement. School districts are concerned that this requirement may have a detrimental

impact on school food service operations. A commenter expressed concern about the lack of a regulatory provision to pass the cost of providing fluid milk substitutes on to the student requesting the accommodation. Another commenter recommended that FNS stipulate that SFAs do not have to offer a substitute beverage if the cost of the product exceeds the cost of an 8 ounce serving of fluid milk.

Offering fluid milk substitutions for children with medical or other special dietary needs is discretionary and cost implications may be a valid reason for an SFA not to exercise this option. SFAs should assess their ability to absorb fluid milk substitution costs that exceed the Federal reimbursement. An SFA may not charge a higher price for an individual school meal to cover the cost of providing a fluid milk substitute.

- *Selection of Acceptable Fluid Milk Substitutes by Schools*

The proposed rule would have allowed SFAs discretion to select acceptable nondairy beverages, as required by Public Law 108-265. One commenter expressed concern that a parent or legal guardian may request a particular product brand and also that a student may decline the acceptable nondairy beverage(s) selected by an SFA.

An SFA that chooses to offer fluid milk substitutes has discretion to offer a variety of brands or to offer a specific brand name. An SFA may want to confirm with the household requesting milk substitution that the student intends to consume daily the nondairy beverage selected by the SFA.

- *Clarification of the Term "Other Special Dietary Needs"*

Several commenters requested clarification of the term "other special dietary needs." Congress did not specify the conditions or situations that would merit fluid milk substitution. While the proposed rule was intended to provide accommodation in limited cases where medical or other special dietary needs preclude the consumption of cow's milk, such as a milk allergy or other physiological (but non-disabling) need, we realize that implementation of the proposal will result in requests for fluid milk substitutions based on ethnic/cultural, ethical, or religious reasons as well. If a school opts to offer fluid milk substitutes to non-disabled students under this provision, they will need to provide equal accommodations to students with a wide range of other dietary needs related to fluid milk substitution.

Currently, NSLP schools have flexibility to offer a variety of foods to meet the medical or special dietary

needs of students without disabilities. For example, the food-based meal patterns allow the use of many different meat/meat alternates such as cheese, dry beans, nuts, and alternate protein products. The nutrient-standard menu planning option allows even greater flexibility since specific foods are not required. Fluid milk is the only required food or menu item which SFAs have not been able to substitute without a supporting statement from a medical authority or a physician. This final rule simplifies the process of requesting fluid milk substitution for students without disabilities if the SFA opts to offer substitution to these students.

FNS emphasizes that this final rule 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 of fat content and flavors to satisfy the taste preferences of students.

This final rule does not impact the meal variations for ethnic and religious reasons currently allowed in 7 CFR 210.10(g) and 7 CFR 220.8(d) to benefit an entire institution, such as a faith-based school. However, this final rule amends these provisions to add the milk substitution requirements while ensuring the nutritional integrity of school meals.

### III. Conclusion

This final rule will amend 7 CFR 210.10(g) and 7 CFR 220.8(d) to reorganize the existing meal variation requirements according to disability and non-disability reasons, and to add a paragraph on fluid milk substitutions for non-disability reasons. The revisions and additions will:

- Continue the current requirements on meal variations for students with disabilities and for students with medical or other special dietary needs;
- Allow 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;
- Require 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;
- Allow SFAs to accept a written statement from a parent or guardian in lieu of a statement from a recognized medical authority. The supporting statement must identify the student's medical or other special dietary need that precludes cow's milk;
- Allow SFAs discretion to select the acceptable substitutes that meet the

nutritional standards established by this rule;

- Require SFAs to inform the State agency when a school chooses to offer fluid milk substitutes other than for students with a disability; and
- Require SFAs to pay for substitution expenses that exceed Federal meal reimbursements.

The regulatory text in this final rule differs slightly from the proposed rule. A few edits were made to enhance readability and clarity of the regulatory requirements. In 7 CFR 210.10(g) and 7 CFR 220.8(d), four sentences were edited to be consistent with current regulatory text. In addition, a table was added to list the required nutrients for fluid milk substitutes. The same nutrients were listed in a paragraph format in the proposed rule. A few sentences were reorganized to allow us to insert the new table.

#### IV. Procedural Matters

##### *Executive Order 12866*

This rule has been determined to be significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

##### *Regulatory Impact Analysis*

###### Need for Action

This action is needed to establish nutrition standards and other requirements for the optional substitution of a nondairy beverage for fluid milk for students with medical or other special dietary needs in the National School Lunch Program (NSLP) and School Breakfast Program (SBP), as required by Public Law 108–265.

###### Benefits

This rule ensures that the nondairy milk substitutes used in the school meal programs are nutritionally equivalent to fluid milk, and achieves consistency among the milk substitutes offered by schools. It also makes it easier for parents/legal guardians to request milk substitutions for students with medical or special dietary needs, while retaining a school's discretion to offer substitutes for students without disabilities and to select the acceptable products.

###### Costs

The Regulatory Impact Analysis provides examples of an upper bound range of potential costs to the schools under varying assumptions. In order to give a range of potential costs, two variations of two different scenarios are analyzed, reflecting variations in participant behavior in response to the rule. These cost estimates all take into

account projected average daily participation, inflation of soy beverage prices, the number of school days in a year, a school meal take rate, and a four year phase-in period. The first-year estimated costs for schools range from about \$510,000 (an average of \$5 per school) to just under \$2 million (an average of \$19 per school); the five-year costs range from almost \$8 million (an average of \$79 per school) to almost \$31 million (an average of \$303 per school). The range of costs represents a departure from the point estimate provided for the proposed rule. These new estimates provide more information and use a more conservative approach in estimating the costs.

The cost scenarios are more likely to overstate (rather than understate) potential costs for two reasons. First, the assumptions made about participant behavior in response to this rule are meant to portray relatively high potential additional costs to schools. Second, the estimates assume that all schools choose to offer a fluid milk substitute. In reality, little cost is anticipated because offering milk substitutes for children without disabilities is completely optional for schools.

##### *Regulatory Flexibility Act*

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Nancy Montanez Johner, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. Schools have discretion to offer milk substitutes for students without disabilities and only a small number of schools are expected to initially offer this option once a suitable product becomes available. As more products are developed and more communities become aware of these products we expect that more schools will adopt this option.

##### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, the Department generally must prepare a written statement, including a cost/benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a

statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of \$100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

##### *Executive Order 12372*

The NSLP is listed in the Catalog of Federal Domestic Assistance under No. 10.555 and the SBP is listed under No. 10.553. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice [48 FR 29115, June 24, 1983], these Programs are included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Since the NSLP and SBP are State-administered, federally funded programs, FNS headquarters staff and regional offices have ongoing formal and informal discussions with State and local officials regarding program implementation and policy issues. This arrangement allows State and local agencies to provide feedback that forms the basis for any discretionary decisions made in this and other rules.

##### *Federalism Summary Impact Statement*

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement, for inclusion in the preamble to the regulations, describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have Federalism implications. This rule would not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

##### *Executive Order 12988*

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have

preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures under § 210.18(q) or § 235.11(f) must be exhausted.

*Civil Rights Impact Analysis*

FNS has reviewed this final rule in accordance with the Department Regulation 4300-4, "Civil Rights Impact Analysis," to identify any major civil rights impacts the rule might have on children on the basis of age, race, color, national origin, sex or disability. After a careful review of the rule's intent and provisions, FNS has determined that it does not affect the participation of protected individuals in the NSLP and SBP.

*Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. The recordkeeping and reporting burden contained in this rule is approved under OMB No. 0584-0006. This final rule does not contain any new information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

*E-Government Act Compliance*

The Food and Nutrition Service is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

**List of Subjects**

*7 CFR Part 210*

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

*7 CFR Part 220*

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping

requirements, School breakfast and lunch programs.

■ Accordingly, the Food and Nutrition Service amends 7 CFR Parts 210 and 220 as follows:

**PART 210—NATIONAL SCHOOL LUNCH PROGRAM**

■ 1. The authority citation for 7 CFR part 210 continues to read as follows:

**Authority:** 42 U.S.C. 1751-1760, 1779.

■ 2. In § 210.10:

■ a. Revise the heading for paragraph (g);

■ b. Revise paragraph (g)(1);

■ c. Redesignate paragraphs (g)(2) and (g)(3) as paragraphs (g)(3) and (g)(4), respectively, and add a new paragraph (g)(2); and

■ d. Redesignate paragraph (m)(3) as paragraph (m)(4) and add a new paragraph (m)(3).

The revisions and additions read as follows:

**§ 210.10 Nutrition standards and menu planning approaches for lunches and requirements for afterschool snacks.**

(g) *Exceptions and variations allowed in reimbursable meals*—(1) *Exceptions for disability reasons.* Schools must make substitutions in lunches and afterschool snacks for students who are considered to have a disability under 7 CFR 15b.3 and whose disability restricts their diet. Substitutions must be made on a case by case basis only when supported by a written statement of the need for substitutions that includes recommended alternate foods, unless otherwise exempted by FNS. Such statement must be signed by a licensed physician.

(2) *Exceptions for non-disability reasons.* Schools may make substitutions for students without disabilities who cannot consume the regular lunch or afterschool snack because of medical or other special dietary needs. Substitutions must be made on a case by case basis only when supported by a written statement of the need for substitutions that includes recommended alternate foods, unless otherwise exempted by FNS. Except with respect to substitutions for fluid milk, such a statement must be signed by a recognized medical authority.

(i) *Milk substitutions for non-disability reasons.* Schools may make substitutions for fluid milk for non-disabled students who cannot consume fluid milk due to medical or special dietary needs. A school that selects this option may offer the nondairy beverage(s) of its choice, provided the beverage(s) meets the nutritional

standards established under paragraph (m) of this section. Expenses incurred when providing substitutions for fluid milk that exceed program reimbursements must be paid by the school food authority.

(ii) *Requisites for milk substitutions.* (A) A school food authority must inform the State agency if any of its schools choose to offer fluid milk substitutes other than for students with disabilities; and

(B) A medical authority or the student's parent or legal guardian must submit a written request for a fluid milk substitute identifying the medical or other special dietary need that restricts the student's diet.

(iii) *Substitution approval.* The approval for fluid milk substitution must remain in effect until the medical authority or the student's parent or legal guardian revokes such request in writing, or until such time as the school changes its substitution policy for non-disabled students.

\* \* \* \* \*

(m) \* \* \*

(3) *Milk substitutes.* If a school chooses to offer one or more substitutes for fluid milk for non-disabled students with medical or special dietary needs, the nondairy beverage(s) must provide the nutrients listed in the following table. Milk substitutes must be fortified in accordance with fortification guidelines issued by the Food and Drug Administration. A school need only offer the nondairy beverage(s) that it has identified as allowable fluid milk substitutes according to this paragraph (m)(3).

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.

\* \* \* \* \*

**PART 220—SCHOOL BREAKFAST PROGRAM**

■ 1. The authority citation for 7 CFR part 220 continues to read as follows:

**Authority:** 42 U.S.C. 1773, 1779, unless otherwise noted.

■ 2. In § 220.8:

■ a. Revise the section heading;

■ b. Revise the heading for paragraph (d);

■ c. Revise paragraph (d)(1);

■ d. Redesignate paragraphs (d)(2) and (d)(3) as paragraphs (d)(3) and (d)(4), respectively, and add a new paragraph (d)(2); and

■ e. Add a new paragraph (i)(3).

The revisions and additions read as follows:

**§ 220.8 Nutrition standards and menu planning approaches for breakfasts.**

\* \* \* \* \*

(d) *Exceptions and variations allowed in reimbursable breakfasts—(1) Exceptions for disability reasons.* Schools must make substitutions in breakfasts for students who are considered to have a disability under 7 CFR part 15b.3 and whose disability restricts their diet. Substitutions must be made on a case by case basis only when supported by a written statement of the need for substitutions that includes recommended alternate foods, unless otherwise exempted by FNS. Such statement must be signed by a licensed physician.

(2) *Exceptions for non-disability reasons.* Schools may make substitutions for students without disabilities who cannot consume the breakfast because of medical or other special dietary needs. Substitutions must be made on a case by case basis only when supported by a written statement of the need for substitutions that includes recommended alternate foods, unless otherwise exempted by FNS. Except with respect to substitutions for fluid milk, such statement must be signed by a recognized medical authority.

(i) *Milk substitutions for non-disability reasons.* Schools may make substitutions for fluid milk for non-disabled students who cannot consume fluid milk due to medical or special dietary needs. A school that selects this option may offer the nondairy beverage(s) of its choice, provided the beverage(s) meet the nutritional standards established in paragraph (i)(3) of this section. Expenses incurred in providing substitutions for fluid milk that exceed program reimbursements must be paid by the school food authority.

(ii) *Requisites for milk substitutions.* (A) A school food authority must inform the State agency if any of its schools choose to offer fluid milk substitutes other than for students with disabilities; and

(B) A medical authority or the student's parent or legal guardian must submit a written request for a fluid milk substitute, identifying the medical or other special dietary need that restricts the student's diet.

(iii) *Substitution approval.* The approval for fluid milk substitution must remain in effect until the medical authority or the student's parent or legal guardian revokes such request in writing, or until such time as the school changes its substitution policy for non-disabled students.

\* \* \* \* \*

(i) \* \* \*

(3) *Milk substitutes.* If a school chooses to offer one or more substitutes for fluid milk for non-disabled students with medical or special dietary needs, the nondairy beverage(s) must provide the nutrients listed in the following table. Milk substitutes must be fortified in accordance with fortification guidelines issued by the Food and Drug Administration. A school need only offer the nondairy beverage(s) that it has identified as allowable fluid milk substitutes according to this paragraph (i)(3).

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.

\* \* \* \* \*

Dated: September 3, 2008.

**Nancy Montanez Johner,**

*Under Secretary, Food, Nutrition, and Consumer Services.*

[FR Doc. E8-21293 Filed 9-11-08; 8:45 am]

**BILLING CODE 3410-30-P**

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 229**

**[Regulation CC; Docket No. R-1326]**

**Availability of Funds and Collection of Checks**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Board of Governors (Board) is amending appendix A of Regulation CC to delete the reference to the Jacksonville branch office of the Federal Reserve Bank of Atlanta and to reassign the Federal Reserve routing symbols currently listed under that office to the head office of the Federal Reserve Bank of Atlanta. These amendments reflect the restructuring of

check-processing operations within the Federal Reserve System.

**DATES:** The final rule will become effective on November 15, 2008.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey S. H. Yeganeh, Financial Services Manager (202-728-5801), or Joseph P. Baressi, Financial Services Project Leader (202-452-3959), Division of Reserve Bank Operations and Payment Systems; or Sophia H. Allison, Senior Counsel (202-452-3565), Legal Division. For users of Telecommunications Devices for the Deaf (TDD) only, contact 202-263-4869.

**SUPPLEMENTARY INFORMATION:** Regulation CC establishes the maximum period a depository bank may wait between receiving a deposit and making the deposited funds available for withdrawal.<sup>1</sup> A depository bank generally must provide faster availability for funds deposited by a "local check" than by a "nonlocal check." A check is considered local if it is payable by or at or through a bank located in the same Federal Reserve check-processing region as the depository bank.

Appendix A to Regulation CC contains a routing number guide that assists banks in identifying local and nonlocal banks and thereby determining the maximum permissible hold periods for most deposited checks. The appendix includes a list of each Federal Reserve check-processing office and the first four digits of the routing number, known as the Federal Reserve routing symbol, of each bank that is served by that office for check-processing purposes. Banks whose Federal Reserve routing symbols are grouped under the same office are in the same check-processing region and thus are local to one another.

On November 15, 2008, the Reserve Banks will transfer the check-processing operations of the Jacksonville branch office of the Federal Reserve Bank of Atlanta to the head office of the Federal Reserve Bank of Atlanta. As a result of this change, some checks that are drawn on and deposited at banks located in the Jacksonville and Atlanta check-processing regions and that currently are nonlocal checks will become local checks subject to faster availability schedules. To assist banks in identifying local and nonlocal checks and making funds availability decisions, the Board is amending the list of routing symbols in appendix A associated with the Federal Reserve Bank of Atlanta to

<sup>1</sup> For purposes of Regulation CC, the term "bank" refers to any depository institution, including commercial banks, savings institutions, and credit unions.