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 Child and Adult Care Food Program (CACFP) and Summer Food Service Program (SFSP)?

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

5. If a school is operating a preschool or summer program and claiming meals under CACFP or SFSP, may the school follow the milk substitution rule?

Yes. Schools that participate in CACFP or SFSP may follow the milk substitution rule.

6. 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).

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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)

16. 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.

17. 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.

18. 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.

19. 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.
20. 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.

<table>
<thead>
<tr>
<th>Nutrient</th>
<th>Per Cup</th>
</tr>
</thead>
<tbody>
<tr>
<td>Calcium</td>
<td>276 mg</td>
</tr>
<tr>
<td>Protein</td>
<td>8 g</td>
</tr>
<tr>
<td>Vitamin A</td>
<td>500 IU</td>
</tr>
<tr>
<td>Vitamin D</td>
<td>100 IU</td>
</tr>
<tr>
<td>Magnesium</td>
<td>24 mg</td>
</tr>
<tr>
<td>Phosphorus</td>
<td>222 mg</td>
</tr>
<tr>
<td>Potassium</td>
<td>349 mg</td>
</tr>
<tr>
<td>Riboflavin</td>
<td>.44 mg</td>
</tr>
<tr>
<td>Vitamin B-12</td>
<td>1.1 mcg</td>
</tr>
</tbody>
</table>

21. 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.

22. Are the milk substitution requirements for the NSLP and the WIC food package 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.

23. 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.

24. May a school serve organic milk or milk with a label indicating it was produced from cows not treated with hormones?

Yes. Schools may routinely offer all students organic milk or milk with a label indicating it was produced from cows not treated with hormones. The requirement is for fluid milk, and milk labeled in this manner would meet the requirement.

25. Must a school honor a request to substitute milk with organic milk or milk with a label indicating it was produced from cows not treated with hormones?

No, the choice to purchase milk labeled in this manner is at the discretion of the school.
Accommodating Children with Special Dietary Needs in the School Nutrition Programs

<table>
<thead>
<tr>
<th>Accommodating Students with Disabling Special Dietary Needs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schools participating in a federal Child Nutrition Program (School Lunch, School Breakfast or After School Snack Program) are required to make accommodations for children who are unable to eat the school meals because of a disability* that restricts their diet. In order to make modifications or substitutions to the school meal, schools must have a written Medical Statement on file that is signed by a licensed physician. The statement must identify:</td>
</tr>
<tr>
<td>• The child’s disability</td>
</tr>
<tr>
<td>• An explanation of why the disability restricts the child’s diet</td>
</tr>
<tr>
<td>• The major life activity affected by the disability</td>
</tr>
<tr>
<td>• The food(s) to be omitted from the child’s diet</td>
</tr>
<tr>
<td>• The food or choice of foods that must be provided as the substitute</td>
</tr>
</tbody>
</table>

*Only a physician can declare if a student has a disability.

Accommodating Students with Non-Disabling Special Dietary Needs

Schools may, at their discretion, make substitutions for students who have a special dietary need, but do not meet the definition of disability. Examples include food intolerances or allergies that do not cause life-threatening reactions. The decision to accommodate a student’s special dietary need can be determined on a case-by-case basis, however, the school should remain consistent with accommodating special dietary needs. In order to make modifications or substitutions to the school meal, schools must have a written Medical Statement signed by a recognized medical authority identifying the following:

| • An identification of the medical or other special dietary condition which restricts the child’s diet |
| • The food or foods to be omitted from the child’s diet |
| • The food or choice of foods to be substituted |

In Pennsylvania, a recognized medical authority includes a physician, physician assistant, and nurse practitioner.

Milk Substitutions for Students with Non-Disabling Special Dietary Needs

For students with non-disabling special dietary needs which restrict their intake of fluid milk, the following applies.

| • Parents/guardians or a recognized medical authority (physician, physician assistant, or nurse practitioner) may request a fluid milk substitute for a student with a non-disabling medical dietary need, such as milk intolerance, or due to cultural, religious or ethnic beliefs. The request must be made in writing. |
| • The written request from a parent/guardian or medical authority must identify the student’s medical or special dietary need that prevents them from consuming cow’s milk. Specifically referring to milk substitutions, a “special dietary need” can refer to cultural, ethnic, or religious needs, as well as medical needs. |
| • Nondairy beverages offered as a fluid milk substitute must meet the established nutrient standards, as indicated in Question 20 in USDA memo SP07-2010, available on PEARs Form Download, under Feeding Students with Disabilities and Special Dietary Needs Section. |
| • Juice and water cannot be substituted for fluid milk as part of the reimbursable meal even when requested by a physician. When fruit juice is merchandised as an option for a fruit/vegetable component, it can contribute up to 3/8 cup of the fruit/vegetable component. It cannot be offered in place of milk and it must be available to all students as an option. |

Responsibility of Parents

| • Notify the school of any food allergy, disability or special dietary need. |
| • Provide Medical Statement completed by a physician (disability), a recognized medical authority (non-disabling special dietary need), or the parent (non-disabling special dietary needs for milk only). |
| • Participate in any meetings or discussions regarding the student’s meal plan. Maintain a healthy line of communication with the school. |
| • Notify the school of any changes relating to the special dietary need (a new Medical Statement is required if the diet changes). |
**School Food Service Responsibility**

- Provide food substitutions for students according to Medical Statement. The school food service staff may not revise or change a diet prescription or medical order.
- Provide training to cafeteria personnel on how to properly accommodate students with special dietary needs. Maintain documentation of this training.
- Communicate with parents, staff, and medical authorities regarding diet modifications.
- Maintain Medical Statement on each student with a special dietary need. Diet orders are not required to be renewed on a yearly basis, however, PDE recommends that you confirm, on a yearly basis, the diet order has not changed. If there are any changes to the diet, a new Medical Statement is required.
- If the school is opting to make a milk substitute available for non-disabling dietary needs, research products to ensure they meet the USDA nutrient standards for a milk substitute. Notify the Division of Food and Nutrition if you are making milk substitutes available for non-disabling special needs.

**School Nurse Responsibility**

- Collaborate with food service director, school staff, parents, and physician to appropriately share pertinent information, obtain a copy of Medical Statement, and accommodate students with special dietary needs.
- Develop medical plan of care as appropriate (Individualized Healthcare Plan).

**Other Federal regulations**

Based upon Federal laws that prohibit discrimination and ensure equal access to education, some students may have instructions for accommodating their special need written into a 504 Plan or an Individualized Education Plan (IEP). Typically, a team consisting of the school professionals and the parents collaborate to develop these plans. If the 504 Plan or IEP involves special dietary needs, the food service director should be involved.

**Additional Resources:**

- USDA Memo SP07-2010: *Q & As: Milk Substitution for Children with Medical or Special Dietary Needs*: [http://www.pearls.ed.state.pa.us/](http://www.pearls.ed.state.pa.us/).
- Food Allergy and Anaphylaxis Network: [http://www.foodallergy.org/](http://www.foodallergy.org/)

**Additional Contact Information:**

- Contact the Pennsylvania Department of Education, Division of Food and Nutrition, with questions regarding accommodating students with special dietary needs in the School Meals Programs at 1-800-331-0129, Extension 62374657.
- For questions about developing a 504 plan for a student with special needs, please contact the Pennsylvania Department of Education, Bureau of Special Education, at (717) 783-6913.
- For questions regarding the roles and responsibilities of the school nurse in providing services for a student with special needs outside of the School Meals Programs, please contact the local PA School Health Consultant in your area. Contact information is available at [http://www.dsf.health.state.pa.us/health/lib/health/SHConsultantList.pdf](http://www.dsf.health.state.pa.us/health/lib/health/SHConsultantList.pdf) or by calling 877-PAHEALTH.
### Medical Plan of Care for School Food Service

**(Students with Disabilities and Non-Disabling Special Dietary Needs)**

The following child is a participant in one of the United States Department of Agriculture (USDA) school nutrition programs.

- USDA regulations 7CFR Part 15B require substitutions or modifications in school program meals for children whose **disability** restricts their diet and is supported by a statement signed by a **licensed physician**. Food allergies which may result in a severe, life-threatening (anaphylactic) reaction may meet the definition of “disability.”
- The school may choose to accommodate a student with a **non-disabling special dietary need** that is supported by a statement signed by a **recognized medical authority** (physician, physician assistant or nurse practitioner).
- The school food authority may choose to make a milk substitution available for students with a **non-disabling special dietary need**, such as milk intolerance or for cultural or religious beliefs. If the school food authority makes these substitutions available, the milk substitute must meet nutrient standards identified in regulations. If available, this will be indicated in Part 2. A parent/guardian or **recognized medical authority** (physician, physician assistant, or nurse practitioner) may complete this section. If this is the only substitution being requested, complete Part 1 and 2 only.

#### Part 1: To be completed by Parent/Guardian (all requests for special dietary needs)

<table>
<thead>
<tr>
<th>Child’s Name</th>
<th>Date of Birth</th>
<th>M</th>
<th>F</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of School/Center/Program</td>
<td>Grade Level/Classroom</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parent’s/Guardian’s Name</td>
<td>Address, City, State, Zip Code</td>
<td></td>
<td></td>
</tr>
<tr>
<td>( )</td>
<td>( )</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Home Phone</td>
<td>Work Phone</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Part 2: Request for milk substitution for non-disabling special dietary needs only

- [ ] School/school district does not make milk substitutes available to students with non-disabling special dietary needs. Do not complete Part 2.
- [ ] School/school district provides __________________________________ as a milk substitute to students with non-disabling or other special dietary needs when Part 2 is completed by Medical Authority or Parent/Guardian and approved by the school/school district.

Does the child have a non-disabling medical or special dietary need that restricts intake of fluid milk?  
- [ ] Yes  
- [ ] No

List medical or special dietary need (e.g., lactose intolerance or for cultural or religious beliefs):

**Medical Authority or Parent/Guardian Signature:** ___________________________  **Date:** __________

#### Part 3: To be completed by Physician/Medical Authority

**Disability/Special Dietary Needs**

Does the child have a **disability**?  
- [ ] Yes  
- [ ] No

If Yes,  
Please describe the major life activities affected by the disability.

Does the child’s disability affect their nutritional or feeding needs?  
- [ ] Yes  
- [ ] No

If the child **does not have a disability**, does the child have special nutritional or feeding needs?  
- [ ] Yes  
- [ ] No

(*These accommodations are optional for schools to make*)

If the child **has a disability or special dietary/feeding need**, please complete Part 4 of this form and have it signed and stamped with the office name and address of a licensed physician/recognized medical authority.

#### Part 4: To be completed by Physician/Medical Authority

**Diet Order**

List any dietary restrictions, such as food allergies, intolerances or restrictions:
List specific foods to be substituted (Substitution cannot be made unless section is completed):

List foods that need the following change in texture. If all foods need to be prepared in this manner, indicate “All.”

Cut up/chopped into bite sized pieces:

Finely Ground:

Pureed:

List any special equipment or utensils needed:

Indicate any other comments about the child’s eating or feeding patterns:

Physician’s Name and Office Phone Number

Office Stamp

Physician/Medical Authority’s Signature

Date

Part 5: Parent Signature

Date

Part 6: School Nutrition Program Signature

Date

Health Insurance Portability and Accountability Act Waiver

In accordance with the provisions of the Health Insurance Portability and Accountability Act of 1996 and the Family Educational Rights and Privacy Act, I hereby authorize _________________________________ (medical authority) to release such protected health information of my child as is necessary for the specific purpose of Special Diet information to _____________________________(school/program) and I consent to allow the physician/medical authority to freely exchange the information listed on this form and in their records concerning my child with the school program as necessary. I understand that I may refuse to sign this authorization without impact on the eligibility of my request for a special diet for my child. I understand that permission to release this information may be rescinded at any time except when the information has already been released. My permission to release this information will expire on __________________ (date). This information is to be released for the specific purpose of Special Diet information.

The undersigned certifies that he/she is the parent, guardian or representative of the person listed on this document and has the legal authority to sign on behalf of that person.

Parent/Guardian Signature: ___________________________________________ Date:____________________

(Signing this section is optional, but may prevent delays by allowing us to speak with the physician)

Please have parent/guardian review form annually and initial/date if no changes are required. Any changes require submission of a new form signed by the Physician/Medical Authority.

Parent confirmed no change in diet order. ____ Date _______  ____ Date _______  ____ Date _______  ____ Date _______  ____ Date _______

A copy of this form should be kept by the School Food Service and the Nurse. FERPA allows school nurses to share student’s medical information regarding dietary needs with school food service.

Special Dietary Needs  January 2010