Q&As: Fluid Milk Substitutions in the School Nutrition Programs

1. **Question**: What are the main changes prompted by the final rule?

   **Answer**: 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; and
   - Establishes nutrient standards for nondairy beverages offered as fluid milk substitutes in the Child Nutrition Programs.

2. **Question**: Does the final fluid milk substitution rule apply to the Special Milk Program (SMP)?

   **Answer**: Yes. Although the final milk substitution rule does not specifically refer to the SMP, the rule has been extended to SMP. TDA wants 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 contractor decides to offer a milk substitute to a child with a medical or special dietary need other than a disability, SMP contractors must provide a nondairy beverage that meets the nutrition standards in the final rule (Item 4350 of the SMP Handbook) in order to receive 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.

3. **Question**: Must the SMP contractor offer a milk substitute for a child with a medical or special dietary need at the request of a medical authority or a parent?

   **Answer**: No, an SMP contractor has the 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, there is concern about the ability of children making this request to obtain the key nutrients found in fluid milk through the SMP. TDA encourages SMP contractors to try to meet the dietary needs of these children by offering a nondairy beverage that meets the nutrition requirements of milk substitutes as noted in Item 4350. If the SMP contractor chooses to do so, it must accept a written request from a medical authority or a parent/legal guardian.

4. **Question**: Must an SMP contractor 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?

   **Answer**: No, an SMP contractor 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 SMP contractor may choose whether to accommodate the child and provide the nondairy beverage(s).

5. **Question**: If a school or child care institution chooses to offer milk substitutes for children with medical or special dietary needs, may it only accept written requests from medical authorities?

   **Answer**: No, the SMP contractor does not have the option to refuse a parent’s request. Regulations allow a statement from the parent/guardian, as well as a medical authority.

6. **Question**: What type of documentation must be submitted to the SMP contractor to request a milk substitute for a child with a medical or special dietary need other than a disability?

   **Answer**: The 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.
7. **Question:** Do the regulations prohibit a milk service operation from offering children with medical or special dietary needs a milk substitute that does not meet the nutrient standards in the Final Rule?

   **Answer:** If a milk substitute is offered that does not meet the requirements of the rule (e.g., juice) no reimbursement would be provided for that milk.

8. **Question:** Is it necessary to offer a choice of acceptable milk substitutes?

   **Answer:** No, an SMP contractor may offer one or more acceptable milk substitutes for children with medical or special dietary needs.

9. **Question:** What are the acceptable reasons for requesting a milk substitute for a child who does not have a recognized disability?

   **Answer:** 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 the rule.

10. **Question:** 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?

    **Answer:** Water or juice can no longer be offered as a fluid milk substitute for a child with medical or special dietary needs. For practical reasons, lactose-free milk should be the first choice for a child who has lactose intolerance. Lactose-free milk provides the same key nutrients found in regular cow’s milk and is readily available nationwide. Furthermore, USDA Food and Nutrition Service (FNS) allows lactose-free milk to be provided in the SMP without documentation. A nondairy beverage meeting the requirements of the milk substitution rule could also be provided, but it is not necessary.

11. **Question:** Is water an allowable substitute for milk and does it need to be fortified?

    **Answer:** Water is not considered an acceptable substitute for fluid milk. Only a beverage meeting the nutrient standards at levels specified in Item 4350 of this Handbook may be substituted for fluid milk.

12. **Question:** May an SMP contractor decline to offer an acceptable milk substitute to children with medical or special dietary needs, other than disabilities, due to cost?

    **Answer:** Yes, an SMP contractor has the choice to accommodate a milk substitution request from a child with medical or special dietary needs other than a disability. However, the SMP seeks 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 school selects the acceptable nondairy beverage(s), TDA anticipates 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.

13. **Question:** Does an SMP contractor have to accept milk substitution requests even if it is not offering a milk substitution for children with medical or special dietary needs?
Answer: If an SMP contractor has decided not to offer a milk substitution for children with medical or special dietary needs, it should communicate this decision to all households to minimize the number of written requests. TDA does not expect schools or child care institutions to keep documentation of non-disability milk substitution requests that are not being implemented.

14. Question: Can an SMP contractor continue to honor milk substitution requests for children without disabilities that we approved prior to the publishing of the rule and, thus, offer juice in place of fluid milk?

Answer: No. In school year (SY) 2008-2009, FNS temporarily allowed SFAs to honor accommodations granted under previous regulations because at that time there were no acceptable milk substitutions in the market. Some acceptable products are currently available. Therefore, beginning in SY 2009-2010, SFAs that wish to offer a milk substitute for a child 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. The rule does not restrict the ability of SMP contractors to continue offering lactose-free milk as part of the reimbursable meal for children who have lactose intolerance.

15. Question: How can a school or a child care institution determine what products meet the requirements of the final rule?

Answer: Because the Nutrition Facts Label on food products does not list all the required nutrients, the milk service operation needs to request documentation from the product manufacturer to confirm the presence of all required nutrients at the proper level. SMP contractors needing guidance or assistance with product selection should contact TDA at (877) TEX-MEAL.

16. Question: Does USDA maintain a list of acceptable products?

Answer: No. SMP contractors are responsible for selecting and purchasing milk products to be offered as part of the SMP. USDA does not evaluate, approve or endorse any nondairy beverage intended to be offered as a milk substitute. It is understood that the availability of products meeting the nutrient standards in the rule varies across the country.

17. Question: Is FNS Instruction 783-2, Rev. 2, Meal Substitutions for Medical or Other Special Dietary Reasons still valid?

Answer: Yes. The Instruction, issued on October 14, 1994, is still current and applies to milk variations for children with and without disabilities. The milk substitution final rule established additional requirements that only apply to fluid milk substitutions for children without disabilities.

18. Question: May an SMP contractor serve organic milk or milk with a label indicating it was produced from cows not treated with hormones?

Answer: Yes. SMP contractors may routinely offer all children 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.

19. Question: Must an SMP contractor honor a request to substitute milk with organic milk or milk with a label indicating it was produced from cows not treated with hormones?

Answer: No. The choice to purchase milk labeled in this manner is at the discretion of the SMP contractor.