



441 G St. N.W.  
Washington, DC 20548

B-336032

March 4, 2024

The Honorable Bernard Sanders  
Chairman  
The Honorable Bill Cassidy  
Ranking Member  
Committee on Health, Education, Labor, and Pensions  
United States Senate

The Honorable Virginia Foxx  
Chairwoman  
The Honorable Bobby Scott  
Ranking Member  
Committee on Education and the Workforce  
House of Representatives

Subject: *Department of Agriculture, Food and Nutrition Service: Fourth Allocation of Supply Chain Assistance (SCA) Funds to Alleviate Supply Chain Disruptions in the School Meal Programs*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Agriculture, Food and Nutrition Service (FNS) entitled “Fourth Allocation of Supply Chain Assistance (SCA) Funds to Alleviate Supply Chain Disruptions in the School Meal Programs.” We received the rule on August 7, 2023. On February 14, 2024, FNS informed us that this memorandum will not be published in the *Federal Register* but is available on their public website. Email from Chief of Planning & Regulatory Affairs Office, FNS, to Paralegal Specialist, GAO, *Subject: FW: For GAO – FNS Memo and CRA form on Fourth Allocation of SCA Funds* (Feb. 14, 2024). FNS’s submission to us indicated that funding allocations were awarded beginning December 17, 2021.

According to FNS, the memorandum provides updated guidance to state agencies on the allocation and use of fourth round SCA funds, as well as oversight and recordkeeping expectations. FNS explained in its submission to us that the SCA funds are issued through multiple allocations to address supply chain issues and assist school programs in providing consistent and nutritious school meals to children.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). FNS sent us correspondence stating that it was not planning to publish the rule in the *Federal Register*, but that the rule is available on its public website at <https://www.fns.usda.gov/cn/fourth-allocation-supply-chain-assistance-sca-funds>. Email from Chief of the Planning and Regulatory Affairs Office, Food and Nutrition Services/USDA, to Paralegal Specialist, GAO, *Subject: FW: For GAO – FNS Memo and CRA form on Fourth Allocation of SCA Funds* (Feb. 14, 2024). In its initial submission to us on

August 7, 2023, FNS confirmed that the rule was delivered to both houses of Congress. Email from Chief of the Planning and Regulatory Affairs Office, Food and Nutrition Services/USDA, to CRA Rules, GAO, *Subject: For GAO – FNS Memo and CRA form on Fourth Allocation of SCA Funds* (Aug. 7, 2023). FNS stated in its submission that funding allocations were awarded under the rule beginning on December 17, 2021. Therefore, the rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of FNS's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive style with a large initial 'S' and 'J'.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Maureen Lydon  
Chief of Planning & Regulatory Affairs Office  
Food and Nutrition Service  
Department of Agriculture

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF AGRICULTURE,  
FOOD AND NUTRITION SERVICE  
ENTITLED  
“FOURTH ALLOCATION OF SUPPLY CHAIN ASSISTANCE (SCA) FUNDS  
TO ALLEVIATE SUPPLY CHAIN DISRUPTIONS IN THE SCHOOL MEAL PROGRAMS”

(i) Cost-benefit analysis

The Department of Agriculture, Food and Nutrition Service (FNS) did not prepare a cost-benefit analysis for this rule. In its submission to us, FNS indicated that it considered preparation of an analysis of the costs and benefits of this final rule to be not applicable.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

FNS did not address RFA in the rule. In its submission to us, FNS indicated that it considered the requirement to prepare a final Regulatory Flexibility Analysis under the Act to be not applicable.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

FNS did not address the Act in the rule. In its submission to us, FNS indicated that it considered the requirement to prepare a written statement under the Act to be not applicable.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

FNS did not discuss the Act in the rule or in its submission to us.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

FNS did not discuss the Act in the rule or in its submission to us.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

FNS did not discuss PRA in the rule. In its submission to us, FNS indicated that it considered the Act to be not applicable to the rule.

Statutory authorization for the rule

FNS stated in the rule that it is providing funds pursuant to section 714c(c) of title 15, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

FNS did not address the Order in the rule. In its submission to us, FNS indicated that it considered the Order to be not applicable to the rule.

Executive Order No. 13132 (Federalism)

FNS did not address the Order in the rule. In its submission to us, FNS indicated that it considered the Order to be not applicable to the rule.