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B-336248

May 3, 2024

The Honorable Debbie Stabenow
Chairwoman
The Honorable John Boozman
Ranking Member
Committee on Agriculture, Nutrition, and Forestry
United States Senate

The Honorable Glenn Thompson
Chairman
The Honorable David Scott
Ranking Member
Committee on Agriculture
House of Representatives

Subject: *U.S. Department of Agriculture, Food and Nutrition Service: Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the United States Department of Agriculture (USDA), Food and Nutrition Service titled "Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages" (RIN: 0584-AE82). We received the rule on April 11, 2024. It was published in the *Federal Register* as a final rule on April 18, 2024. 89 Fed. Reg. 28488. The effective date is June 17, 2024.

According to USDA, this final rule revises regulations to align the WIC food packages with the current Dietary Guidelines for Americans and to reflect recommendations from the National Academies of Science, Engineering, and Medicine, while promoting nutrition security and equity and considering program administration. USDA stated that the changes are intended to provide WIC participants with a wider variety of foods that align with the latest nutritional science; provide WIC state agencies with greater flexibility to prescribe and tailor food packages that accommodate participants' special dietary needs and personal and cultural food preferences; and address key nutritional needs to support healthy dietary patterns. USDA also stated that this rule provides foods in amounts that are more consistent with the supplemental nature of WIC; encourages fruit and vegetable consumption; and strengthens support for individual breastfeeding goals to help establish long-term breastfeeding.

Enclosed is our assessment of USDA'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 Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

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

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
U.S. DEPARTMENT OF AGRICULTURE,
FOOD AND NUTRITION SERVICE
TITLED
“SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS,
AND CHILDREN (WIC): REVISIONS IN THE WIC FOOD PACKAGES”
(RIN: 0584-AE82)

(i) Cost-benefit analysis

The United States Department of Agriculture (USDA), Food and Nutrition Service prepared an accounting statement showing the annualized estimates of benefits and transfers associated with the provisions of this rule. According to USDA, this final rule will result in better alignment of Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) food packages with the latest available science as described by the National Academies of Sciences, Engineering, and Medicine, the Dietary Guidelines for Americans, the American Academy of Pediatrics, and increased choice and flexibility for WIC participants. USDA provided a table summarizing its analysis of the costs and benefits of the final rule.

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

USDA certified that this final rule will not have a significant impact on a substantial number of small entities.

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

USDA determined that this final rule will not have an effect on state, local, or tribal governments, in the aggregate, or on the private sector, of \$100 million in 1995 dollars, updated annually for inflation.

(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.

USDA did not discuss the Act in this final rule. In its submission to us, USDA indicated that the Act is not applicable to the rule.

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

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

On November 21, 2022, USDA published a proposed rule. 87 Fed. Reg. 71090. USDA stated that it received 17,731 comments. USDA also stated that all comments were considered. USDA stated further that the comments came from a variety of sources, including WIC state and local agencies, professional organizations and associations, advocacy groups, health care professionals, universities, Members of Congress, the food industry, farmers, participants, and private citizens.

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

According to USDA, this final rule revises existing information collection requirements currently approved under OMB Control Number 0584-0043, “Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Program Regulations – Reporting and Recordkeeping Burden,” and contains new requirements for the same information collection. USDA estimates total burden hours imposed by the final rule to be 17,357,192 hours.

Statutory authorization for the rule

USDA promulgated this final rule pursuant to section 1786 of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

USDA stated that this final rule has been determined to be significant under the Order and submitted it to OMB for review.

Executive Order No. 13132 (Federalism)

USDA determined that this final rule does not have federalism implications.