



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

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May 8, 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: *Department of Agriculture, Food and Nutrition Service: Child Nutrition Programs: Meal Patterns Consistent With The 2020–2025 Dietary Guidelines for Americans*

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 “Child Nutrition Programs: Meal Patterns Consistent With The 2020–2025 Dietary Guidelines for Americans” (RIN: 0584-AE88). We received the rule on April 29, 2024. It was published in the *Federal Register* as a final rule on April 25, 2024. 89 Fed. Reg. 31962. The effective date of the rule is July 1, 2024.

According to FNS, this final rule finalizes long-term school nutrition requirements based on the goals of the *Dietary Guidelines for Americans, 2020–2025*, robust stakeholder input, and lessons learned from prior rulemakings. FNS stated that the rule: gradually phases in added sugars limits for the school lunch and breakfast programs and in the Child and Adult Care Food Program; updates total sugars limits for breakfast cereals and yogurt to added sugars limits; implements a single sodium reduction in the school lunch and breakfast programs and commits to studying the potential associations between sodium reduction and student participation in the school lunch and breakfast programs; addresses a variety of other school meal requirements, including establishing long-term milk and whole grain requirements; and includes provisions that strengthen Buy American requirements. FNS stated that while the rule takes effect school year 2024–2025, the agency is gradually phasing in required changes over time and program operators are not required to make any changes to their menus as a result of the rule until school year 2025–2026 at the earliest.

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 Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

A handwritten signature in cursive script that reads "Shirley A. Jones". The signature is written in black ink and is positioned above the typed name and title.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Maureen Lydon
Chief of Planning and Regulatory Affairs Office
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
“CHILD NUTRITION PROGRAMS: MEAL PATTERNS CONSISTENT
WITH THE 2020–2025 DIETARY GUIDELINES FOR AMERICANS”
(RIN: 0584-AE88)

(i) Cost-benefit analysis

The Department of Agriculture, Food and Nutrition Service (FNS) prepared a Regulatory Impact Analysis (RIA) for this final rule. FNS estimated that the rule would cost schools between \$0.02 and \$0.04 per meal or an average of \$206 million annually accounting for the fact that the requirements will be implemented gradually and adjusting for annual inflation. FNS stated that while some changes are estimated to reduce school food costs or have no cost impact, others are estimated to increase food costs.

FNS stated that this final rule can lead to improved health outcomes in the long-term because of sodium reductions and added sugars limits over time.

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

FNS determined that this final rule would have a significant impact on a substantial number of small entities. FNS discussed: (1) the requirements established by the rule; (2) the small entities subject to the rule; (3) significant alternatives considered; (4) issues raised by public comments; and (5) the agency’s actions in response to those comments.

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

FNS determined that this final rule will result in expenditures by state, local, or tribal governments, in the aggregate, or the private sector, of \$146 million or more in any one year. FNS discussed these impacts in the RIA, which includes a cost/benefit analysis and explains the options considered to update the school meal patterns based on the *Dietary Guidelines for Americans, 2020–2025*.

(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 this final rule. In its submission to us, FNS indicated that the Act does not apply 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 February 7, 2023, FNS published a proposed rule. 88 Fed. Reg. 8050. FNS stated in this final rule that it was also finalizing certain provisions included in a January 23, 2020, proposed rule. 85 Fed. Reg. 4094. FNS received more than 136,000 comments from state agencies, school nutrition professionals, advocacy groups, industry respondents, professional associations, school districts, Child and Adult Care Food Program sponsoring organizations, dietitians, and individuals, including students, parents and guardians, grandparents, and other caregivers. FNS stated that, of the total, about 125,000 were form letters from 46 form letter campaigns, and about 5,000 were unique submissions, while an additional 6,400 were duplicate or non-germane submissions. FNS responded to comments in the rule, including relevant comments received in response to the 2020 proposed rule.

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

FNS determined that this final rule contains new information collection requirements under the Act. FNS requested public comment on the information collection burden that will result from adoption of the new recordkeeping and reporting requirements. FNS stated that the establishment of the information requirements in the rule is contingent upon OMB approval, and when the information collection request is approved, the agency will publish a separate notice in the *Federal Register* announcing OMB's approval. The new requirements will be added to the following information collections: 7 C.F.R. part 210, "National School Lunch Program" (OMB Control Number 0584-0006); 7 C.F.R. part 220 (OMB Control Number 0584-0012); "Child and Adult Care Food Program" (OMB Control Number 0584-0055); and 7 C.F.R. part 225, "Summer Food Service Program" (OMB Control Number 0584-0280). FNS estimated that this rule will result in 635,196 burden hours.

Statutory authorization for the rule

FNS promulgated this final rule pursuant to sections 1751–1761, 1762a, 1765, 1766, 1772, 1773, and 1779 of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

FNS stated that this final rule had been determined to be significant under the Order and submitted the rule to OMB for review.

Executive Order No. 13132 (Federalism)

FNS determined that this final rule has federalism impacts. FNS stated that it received input from various stakeholders representing national, state, and local interests through listening sessions and public comments prior to drafting the proposed rule, as well as through comments on the proposed rule. FNS described the concerns raised and how the agency addressed those concerns.