



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

B-334001

February 10, 2022

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

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

Subject: *Department of Agriculture, Food and Nutrition Service: Child Nutrition Programs:  
Transitional Standards for Milk, Whole Grains, and Sodium*

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 (USDA), Food and Nutrition Service entitled "Child Nutrition Programs: Transitional Standards for Milk, Whole Grains, and Sodium" (RIN: 0584-AE81). We received the rule on February 7, 2022. It was published in the *Federal Register* as a final rule on February 7, 2022. 87 Fed. Reg. 6984. The effective date is July 1, 2022.

According to USDA, the final rule establishes transitional standards to support the continued provision of nutritious school meals as schools respond to and recover from the pandemic and while USDA engages in notice-and-comment rulemaking to update the meal pattern standards to more comprehensively reflect the *Dietary Guidelines for Americans, 2020–2025*. USDA stated the final rule will provide immediate relief to schools during the return to traditional school meal service following extended use of COVID-19 meal pattern flexibilities. USDA further stated the final rule finalizes the proposed milk provision by allowing local operators of the National School Lunch Program and School Breakfast Program to offer flavored, low-fat milk (1 percent fat) for students in grades K through 12 and for sale as a competitive beverage. Additionally, USDA noted the final rule will allow flavored, low-fat milk in the Special Milk Program for Children and in the Child and Adult Care Food Program for participants ages 6 and older. Beginning in School Year (SY) 2022–2023, USDA noted the final rule will require at least 80 percent of the weekly grains in the school lunch and breakfast menus to be whole grain-rich. Lastly, USDA stated the final rule will modify the proposed sodium standards and establish Sodium Target 1 as the sodium limit for school lunch and breakfast in SY 2022–2023 as proposed, but implement a Sodium Interim Target 1A effective for school lunch beginning in SY 2023–2024.

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 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, flowing style.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Maureen Lydon  
Chief, 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: TRANSITIONAL STANDARDS  
FOR MILK, WHOLE GRAINS, AND SODIUM”  
(RIN: 0584-AE81)

(i) Cost-benefit analysis

The Department of Agriculture (USDA), Food and Nutrition Service estimated the final rule will save schools \$0.15 cent per meal or \$1.1 billion annually compared to directly moving to the 2012 standards for milk, whole grains, and sodium in School Year 2022–2023. Relative to current school year operations, USDA stated the final rule is estimated to potentially increase costs to schools by \$187 million annually or about \$0.03 per meal. USDA determined these are mostly driven by the move to the requirement that at least 80 percent of grains offered must be whole grain-rich and increases in food and labor costs for schools that still need to meet Sodium Target 1 and Target 1A.

USDA also determined the final rule builds on the major achievements schools have already made improving school meals to support healthy diets for school children. USDA stated the final rule will implement a modified Sodium Target 1A for the National School Lunch Program, which will support schools with a gradual transition to lower sodium meals. USDA stated it increased the percentage of whole grain-rich offerings required from 50 percent in the proposed rule to 80 percent in this final rule to recognize the need to continue progress in school meal nutrition. USDA additionally stated the final rule provides achievable standards while USDA engages in more comprehensive long-term rulemaking to further update the meal standards.

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

USDA certified the final rule would not have a significant economic 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 the final rule does not impose mandates on state, local, or tribal governments, or on the private sector of \$146 million or more in any one year, and is thus exempt from the requirements of the Act.

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

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

On November 25, 2020, USDA published a proposed rule. 85 Fed. Reg. 75241. USDA received a total of 7,493 comments, including 3 non-germane or duplicate comments. Of the

total, 7,041 comments were form letter copies from five form letter campaigns. USDA received 449 unique submissions, including 101 unique submissions that provided substantive comments on issues specific to the rule. USDA responded to the comments in the final rule.

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

USDA stated the final rule contains information collection requirements (ICRs) subject to PRA. The ICRs are associated with Office of Management and Budget (OMB) Control Number 0584-0006 (7 CFR part 210, National School Lunch Program); OMB Control Number 0584-0012 (7 CFR part 220, School Breakfast Program); OMB Control Number 0584-0005 (7 CFR part 215, Special Milk Program for Children); and OMB Control Number 0584-0055 (7 CFR part 226, Child and Adult Care Food Program). USDA stated the ICRs have been approved by OMB.

Statutory authorization for the rule

USDA promulgated the final rule pursuant to sections 1751–1760, 1762a, 1765, 1766, 1772, 1773, and 1779 of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

USDA determined the final rule was economically significant and stated it had been reviewed by OMB.

Executive Order No. 13132 (Federalism)

USDA stated it has considered the impact of the final rule on state and local governments and has determined that it does not have Federalism implications.