



United States General Accounting Office
Washington, DC 20548

Office of the General Counsel

B-286231

September 18, 2000

The Honorable Richard G. Lugar
Chairman
The Honorable Tom Harkin
Ranking Minority Member
Committee on Agriculture, Nutrition, and Forestry
United States Senate

The Honorable William F. Goodling
Chairman
The Honorable William Clay
Ranking Minority Member
Committee on Education and the Workforce
House of Representatives

Subject: Department of Agriculture, Food and Nutrition Service: Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Requirements for and Evaluation of WIC Program Bid Solicitations for Infant Formula Rebate Contracts

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 "Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Requirements for and Evaluation of WIC Program Bid Solicitations for Infant Formula Rebate Contracts" (RIN: 0584-AB52). We received the rule on September 1, 2000. It was published in the Federal Register as an interim rule on August 23, 2000.

The interim rule strengthens and simplifies current bidding requirements for using a single-supplier competitive system to provide a rebate for infant formulas. The rule also requires Women, Infant and Children (WIC) state agencies to award infant formula rebate contracts based on the lowest net price, allowing the highest rebate as a basis of award only when the weighted average retail prices of the different brands of infant formula vary by 5 percent or less.

Enclosed is our assessment of the FNS' compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the FNS complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Larry Dyckman, Director, Food and Agriculture Issues. Mr. Dyckman can be reached at (202) 512-5138.

Anthony H. Gamboa
Acting General Counsel

Enclosure

cc: The Honorable Shirley R. Watkins
Under Secretary
Food, Nutrition, and Consumer Services
Department of Agriculture

ENCLOSURE

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF AGRICULTURE,
FOOD AND NUTRITION SERVICE
ENTITLED
"SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR
WOMEN, INFANTS AND CHILDREN (WIC): REQUIREMENTS FOR
AND EVALUATION OF WIC PROGRAM BID SOLICITATIONS FOR
INFANT FORMULA REBATE CONTRACTS"
(RIN: 0584-AB52)

(i) Cost-benefit analysis

The Food and Nutrition Service submission to our Office does not indicate that a cost-benefit analysis was performed.

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

The Undersecretary has certified that the final rule will 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

The FNS states that the final rule does not impose a mandate, as defined in title II, of over \$100 million in any one year on either state, local or tribal governments or the private sector.

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

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

The final rule was issued using the notice and comment procedures contained at 5 U.S.C. 553.

On July 16, 1998, the FNS published a Notice of Proposed Rulemaking in the Federal Register. 63 Fed. Reg. 38343. Twenty-nine comments were received which are responded to in the preamble to the interim rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains an information collection that has been reviewed and approved by the Office of Management and Budget and assigned Control No. 0584-0043.

Statutory authorization for the rule

The interim rule is promulgated under the authority of 42 U.S.C. 1786.

Executive Order No. 12866

The final rule was reviewed by the Office of Management and Budget and found to be an “economically significant” regulatory action.