



Office of the General Counsel

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January 22, 1997

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

The Honorable Robert Smith
Chairman
The Honorable Charles Stenholm
Ranking Minority Member
Committee on Agriculture
House of Representatives

Subject: Department of Agriculture, Food and Consumer Service: Child and Adult Care Food Program: Improved Targeting of Day Care Home Reimbursements

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 Consumer Service, entitled "Child and Adult Care Food Program: Improved Targeting of Day Care Home Reimbursements" (RIN: 0584-AC42). We received the rule on January 2, 1997. It was published in the Federal Register as an interim rule on January 7, 1997. 62 Fed. Reg. 889.

The interim rule is intended to implement the provision of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, that establishes a two-tiered reimbursement system for day care homes participating in the Child and Adult Care Food Program. Under the two-tier structure, the level of reimbursement for day care homes will be determined by assessing economic need on the basis of location of the day care home or income of the day care provider or on the basis of the household income of each participating child. The Food and Consumer Service estimates that implementation of this two-tier rate structure will

result in a \$2.2 billion savings in federal expenditures in fiscal year 1997 through 2002.

Enclosed is our assessment of the Department of Agriculture's 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 Department of Agriculture complied with the applicable requirements.

If you have any questions about this report, please contact Kathleen E. Wannisky, Associate General Counsel for Operations, at (202) 512-5207. The official responsible for GAO evaluation work relating to the subject matter of the rule is Robert A. Robinson, Director, Food and Agricultural Issues, Resources, Community, and Economic Development Division. Mr. Robinson can be reached at (202) 512-5138.

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Enclosure

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ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF AGRICULTURE, FOOD AND CONSUMER SERVICE
ENTITLED
"CHILD AND ADULT CARE FOOD PROGRAM:
IMPROVED TARGETING OF DAY CARE HOME REIMBURSEMENTS"
(RIN: 0584-AC42)

Background

This interim rule amends the Child and Adult Care Food Program (CACFP) regulations governing reimbursement rates for meals served in family or group day care homes by incorporating provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193); these provisions reduce the reimbursement rates for meals served to children who do not qualify for low-income subsidies. Specifically, this rule develops a two-tier reimbursement structure for meals served to children enrolled in family or group day care homes. Under this structure, the level of reimbursement for meals served to enrolled children will be determined by: (1) the location of the day care home, (2) the income of the day care provider, or (3) the income of each enrolled child's household. This interim rule retains near-current reimbursement rates for meals served to children by providers residing in low-income areas or served by providers who are low-income. Near-current reimbursements will also be retained for meals served to children who are identified as low-income even if the provider neither resides in a low-income area nor is low-income. Meals served to all other children will be reimbursed at the lower rates. These changes will be effective July 1, 1997.

(i) Cost-benefit analysis

The Food and Consumer Service (FCS), Department of Agriculture, prepared a cost/benefit assessment as part of its economic impact analysis of the potential effects of this interim rule. FCS estimates that the two-tier reimbursement rate structure will result in a \$2.2 billion savings in federal expenditures in fiscal years 1997 through 2002. The savings, according to FCS, will result from (1) a reduction in the reimbursement rates for meals served in tier II (non-low-income) day care homes and (2) a decrease in the rate of growth of day care home participation in the Child and Adult Care Food Program.

FCS also assessed the effects of the regulation on day care providers and concluded that the primary effect will be a significant decrease in revenues to tier II providers. FCS projects that the providers of tier II homes will most likely respond to this decrease in revenues through some combination of raising fees, absorbing the loss,

providing care for more children and reducing operating costs. FCS also acknowledges and discusses the administrative burden which some providers will encounter in implementing the meal count system required under the interim rule.

FCS also assessed the effects of the rule on families who utilize the covered day care services and concluded that low-income families will generally not be affected by the tiering arrangement. Non-low-income families, however, will likely experience an increase in day care costs due to the decrease in cost subsidies to these program participants. FCS points out that the intent of Public Law 104-193 was to decrease child care subsidies for non-low-income families.

FCS's analysis further found that tiering would place new administrative burdens on sponsors, state Child and Adult Care Food Program and National School Lunch Program agencies, and National School Lunch Program school food authorities. FCS concluded, however, that these burdens would be relatively modest.

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

Section 603: Initial Regulatory Flexibility Analysis

In its publication of this interim rule (62 Fed. Reg. 889, January 7, 1997), FCS included a discussion of the Initial Regulatory Flexibility Analysis prepared in relation to this rule. In accordance with sections 603(b)(1) and (2), the FCS describes the reasons for the interim rule and the legal basis for it. The analysis, in accordance with sections 603(b)(3) and (4), also provides descriptions and estimates of the numbers of small entities affected by the rule; a discussion of the projected recordkeeping, reporting, and other compliance requirements; and a discussion of the types of professional skills necessary to fulfill the reporting and recordkeeping requirements.

Section 604: Final Regulatory Flexibility Analysis

FCS plans to prepare a Final Regulatory Flexibility Analysis in connection with the promulgation of the final rule. FCS believes that there are no significant alternatives available that would minimize the economic impact of this rule that also accomplish the stated objectives of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub.L. 104-193). However, FCS is soliciting comments on the less economically significant, burden-related provisions of the rule and plans to consider all received comments when crafting the final rule and revising the final economic impact analysis.

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

According to Food and Consumer Service officials, this interim rule contains no unfunded mandates subject to review under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. §§ 1532-1535).

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

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

This interim rule was promulgated without use of the notice and comment procedures of 5 U.S.C. § 553. The Administrator, FCS, determined that, in accordance with 5 U.S.C. § 553 (b)(3)(B), it was impractical and contrary to the public interest to take prior public comment before publishing the interim rule because the statutory deadline for publication of the interim rule did not allow time for a public comment period. According to FCS, this rule implements the amendments set forth under sections 708(e)(1) and (3) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub.L. 104-193, which was enacted on August 22, 1996. The act changed reimbursement provided for meals served in family or group day care homes under the Child and Adult Care Food Program. Section 708(k)(3) of Pub.L. 104-193 required that interim regulations implementing these amendments be issued by January 1, 1997.

FCS is soliciting comments on the interim rule. It will accept comments until April 7, 1997, and states that it will carefully consider all comments received prior to the final rulemaking.

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

The interim rule contains revisions to information collections which are subject to the Paperwork Reduction Act and review by the Office of Management and Budget. In the preamble to the rule, FCS explains the need for the information and the burden estimates related to each portion of the rule. FCS invites comments on the necessity for and usefulness of the information; the accuracy of its estimate of the burden; ways to enhance the quality, utility, and clarity of the information; and ways to minimize the burden. According to FCS, comments regarding the information collection will be summarized and sent to OMB with the request for approval of the revision to existing information collections (OMB Nos. 0584-0055 and 0584-0006).

Statutory authorization for the rule

This interim rule is promulgated under Public Law 104-193, Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Executive Order No. 12866

This interim rule was reviewed by the Office of Management and Budget under the executive order as an economically significant regulatory action. The Office of Information and Regulatory Affairs of OMB approved the interim rule as complying with the requirements of the order based on the information supplied by the Food and Consumer Service on December 26, 1996.

Executive Order No. 12778 (12988)

The preamble to the interim rule states that the rule was reviewed pursuant to Executive Order 12778 (Civil Justice Reform). However, that executive order has been replaced by Executive Order 12988, effective May 5, 1996. The prior executive order contained a similar requirement now found at section 3(b)(2)(A) of the newly effective order requiring that the preemptive effects of the rule be specified. FCS states that this rule is intended to have preemptive effect with respect to any state or local laws, regulations or policies which conflict with its provisions, or which would otherwise impede its full implementation. FCS also discusses the limited retroactive effect of the rule and the applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of the rule.

Executive Order 12372

The preamble to the interim rule states that the rule has been reviewed under Executive Order 12372 (Intergovernmental Cooperation) because both the Child and Adult Care Food Program and the National School Lunch Program are listed in the Catalog of Federal Domestic Assistance under Numbers 10.559 and 10.555, respectively, and are subject to the provisions of the executive order.

FCS officials stated that they held several meetings with affected parties to discuss the interim rule. At the national CACFP meeting, they met with state CACFP agencies and large sponsoring organizations. They also held discussions at the Sponsor's Association Annual Conference, at the Save the Children Conference, and at the National Department of Health and Human Services Child Care Bureau Conference. FCS officials also stated that they intend to hold additional discussions during the interim rule comment period to allow parties to react to specific provisions of the regulation.

Other statutes or executive orders

In its submission to GAO, FCS did not identify any other statute or executive order imposing procedural requirements relevant to the rule.