



Office of the General Counsel

B-279325

March 11, 1998

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 L. Clay
Ranking Minority Member
Committee on Education and the Workforce
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 February 18, 1998. It was published in the Federal Register as a final rule on February 24, 1998. 63 Fed. Reg. 9087.

The final rule amends the Child and Adult Care Food Program regulations governing reimbursement for meals served in family day care homes by incorporating changes resulting from the Department's review of comments it received on a January 7, 1997, interim rule.¹ The changes in the final rule involve the appropriate use of school and census data for making tier I day care home determinations; documentation requirements for tier I classifications; tier II day care home options

¹This interim rule was the subject of our Office's major rule report, Department of Agriculture, Food and Consumer Services: Child and Adult Care Food Program: Improved Targeting of Day Care Home Reimbursements, GAO/OGC-97-15, B-275874, January 22, 1997.

for reimbursement, including use of child care vouchers; calculating claiming percentages/blended rates using attendance and enrollment lists; and procedures for verifying household applications of children enrolled in day care homes.

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

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

Robert P. Murphy
General Counsel

Enclosure

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

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)

(i) Cost-benefit analysis

The Department conducted a final economic impact analysis based on new Child and Adult Care Food Program (CACFP) data, a recently completed study of the CACFP, and comments received in connection with the analysis performed for the interim rule.

The final analysis found that, based on the above, the expected total federal savings for the 6 years covering fiscal years 1997-2002 will decline from the predicted \$2.2 billion in the interim analysis to \$1.7 billion.

The effects of the final rule are that non-low-income providers (tier II) and non-low-income families with children in tier II day care homes will bear most of the costs resulting from the government's savings. Non-low-income households served by tier I day care homes will be unaffected by tiering. The Department finds it is possible that some low-income families with children in tier II day care homes may bear some of the costs, but states may offset them by opting to increase child care subsidies.

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

The Department prepared an Initial Regulatory Flexibility Analysis in connection with the interim rule (62 Fed. Reg. 889, January 7, 1997), which we found in our earlier report complied with the requirements of the act.

In the preamble to the final rule, the Final Regulatory Flexibility Analysis is discussed and the Department has found that the final rule will have a significant economic impact on a substantial number of small entities. The small entities are composed of tier II day care home providers who will experience a large decrease in reimbursement rates for meals served.

The analysis discusses the comments received in response to the initial analysis and the actions taken by the Department in response. The Department points out that due to the programmatic changes mandated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, there were no significant alternatives available that would both accomplish the objectives of the act and minimize any significant economic impact on the 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 final rule does not impose a federal mandate, as defined by title II of the act, on either state, local, or tribal governments or the private sector of \$100 million or more in any one year.

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

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

This final rule follows the Department's publication of an interim rule on January 7, 1997. 62 Fed. Reg. 889. The interim rule was issued without use of the notice and comment procedures of 5 U.S.C. § 553 because the Administrator of the Food and Consumer Service had determined it was impracticable to obtain public comments because of the statutory deadline imposed by Public Law 104-193.

The final rule has been issued after considering the 713 comments which were received in response to the interim rule. The preamble to the final rule discusses the response of the Department to the comments.

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

The final rule contains information collection requirements which have been changed from the requirements of the interim rule information collections. The preamble to the final rule discusses these changes and the reasons they were made and the changes in the estimated annual burden hours.

Based on new data being considered involving the numbers of National School Lunch Program State Agencies, sponsoring organizations of family day care homes, and the annual frequency of sponsoring organizations' recordkeeping requirements, the burden hours are reduced by 23,813 reporting hours and 12,208 recordkeeping hours are added. In addition, the collection of elementary school attendance area information will result in an additional 39,752 burden hours.

The revised information collections have been forwarded to the Office of Management and Budget (OMB) for review and will not require compliance until approved.

Statutory authorization for the rule

The final rule was issued pursuant to the authority of sections 708(e)(1) and (3) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, August 22, 1996.

Executive Order No. 12866

The final rule has been determined to be an "economically significant" regulatory action by the Office of Management and Budget and was reviewed by OMB in accordance with the order.

Executive Order No. 12988 (Civil Justice Reform)

The final rule has been reviewed under Executive Order No. 12988 and the Department states that the 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. Also, the final rule is not intended to have any retroactive effect and administrative procedures must be exhausted prior to any judicial challenge to the provisions of the rule.

Executive Order No. 12372 (Intergovernmental Cooperation)

The preamble to the final rule notes that the rule has been reviewed in accordance with the provisions of Executive Order No. 12372 and the interim rule had discussed the numerous meetings held with state officials and national sponsoring organizations and the attendance of Food and Consumer Service officials at conferences held on the subject to discuss the rule.