



**Office of the General Counsel**

B-279357

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 Clay  
Ranking Minority Member  
Committee on Education and the Workforce  
House of Representatives

**Subject: Department of Agriculture, Food and Consumer Service: Child Nutrition and WIC Reauthorization Act Amendments**

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 Nutrition and WIC Reauthorization Act Amendments" (RIN: 0584-AC20). We received the rule on February 18, 1998. It was published in the Federal Register as an interim rule on February 26, 1998. 63 Fed. Reg. 9721.

The interim rule amends the Child and Adult Care Food Program (CACFP) to: (1) make administrative funds available to help eligible sponsoring organizations of family day care homes expand participation in CACFP in low-income and rural areas; (2) allow sponsors to use administrative funds to assist unlicensed day care homes in obtaining licensing; and (3) grant federally funded income-eligible Head Start children automatic eligibility for free CACFP meals, without further application or eligibility information. The rule implements changes required by the Child Nutrition and WIC Reauthorization Act of 1989 (Pub. L. 101-147) and the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103-448).

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 NUTRITION AND WIC REAUTHORIZATION ACT AMENDMENTS"  
(RIN: 0584-AC20)

(i) Cost-benefit analysis

The Department included a Regulatory Impact Analysis on the interim rule, not contained in the Federal Register notice, in its report to our Office.

The analysis attempts to estimate the costs and benefits of the interim rule over a 5-year period from 1997 to 2001.

Concerning the impact of the portion of the rule on the use of expansion funds, the analysis notes that an estimate of the budgetary effect is hindered by the unknown impact of a new two-tier reimbursement system for day care homes and limited information regarding the costs incurred to recruit low-income or rural day care homes. However, based on a limited demonstration program, the Department estimates the total budgetary impact to be \$57 million, of which \$26 million is accounted for in the President's fiscal year 1998 budget baselines. The incremental increase over 5 years would be \$31 million.

The analysis of the automatic free meal eligibility for certain low-income participants finds that for Head Start participants, the program costs would increase approximately \$1 million annually. For the Even Start program, there would be no effect on costs.

With a \$300 cap on expenditures per day care home, the Department estimates that the provision of the rule which permits the use of administrative funds to assist low-income providers in becoming licensed, will result in a 5-year increase in program costs of \$50 million.

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

The Under Secretary for Food, Nutrition, and Consumer Services has certified that the interim rule will not have a significant economic impact on a substantial number of small entities; and, therefore, a regulatory flexibility analysis was not prepared.

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

The interim rule does not contain a federal mandate, as defined under the regulatory provisions of title II of the act, for state, local, or tribal governments or the private sector of \$100 million or more in any one year. Therefore, the rule is not subject to section 202 or 205 of the act.

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

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

The interim rule was published with the prior notice and comment period required of a proposed rulemaking under 5 U.S.C. § 553. The Under Secretary determined that good cause existed to forgo a notice of proposed rulemaking because the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, required interim rules dealing with expansion funds and the use of administrative funds to assist day care home licensing be issued by January 1, 1997.

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

The interim rule contains a revision of a previously approved information collection. The preamble to the interim rule contains a description and the legal basis for the collection, the use of the information, and the estimated annual burden hours. The collection has been submitted to the Office of Management and Budget (OMB) for approval.

Because of the requirement that federally funded income-eligible Head Start participants are eligible for free meals under CACFP without further application, the total burden hours of the revised collection is 26,760, or 7,618 hours less than the current approved collection burden of 34,378.

Statutory authorization for the rule

Sections 9, 11, 14, 16, and 17 of the National School Lunch Act, as amended (42 U.S.C. §§ 1758, 1759a, 1762a, 1765, and 1766).

Executive Order No. 12866

This rule was reviewed by the Office of Management and Budget under Executive Order No. 12866 because it was determined to be a "significant regulatory action" and was approved by OMB as meeting the requirements of the order.

**Executive Order No. 12988**

The interim rule was reviewed by the Department under Executive Order No. 12988, Civil Justice Reform. 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. Prior to any judicial challenge, all applicable administrative procedures must be exhausted.