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United States Government Accountability Office
Washington, DC 20548

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April 17, 2013

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

The Honorable Frank D. Lucas
Chairman
The Honorable Collin C. Peterson
Ranking Member
Committee on Agriculture
House of Representatives

Subject: *Department of Agriculture, Food and Nutrition Service: Supplemental Nutrition Assistance Program: Nutrition Education and Obesity Prevention Grant Program*

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 “Supplemental Nutrition Assistance Program: Nutrition Education and Obesity Prevention Grant Program” (RIN: 0584-AE07). We received the rule on April 5, 2013. It was published in the *Federal Register* as an interim rule on April 5, 2013. 78 Fed. Reg. 20,411.

The interim rule implements section 28 of the Food and Nutrition Act of 2008, as added by the Healthy, Hunger-Free Kids Act of 2010,¹ to award grants to states for provision of nutrition education and obesity prevention programs. These programs will provide services for eligible individuals that promote healthy food choices consistent with the current Dietary Guidelines for Americans. This interim rule informs state agencies of the requirements for awards under section 28 including the grant award process and describes the process for allocating the federal grant funds.

¹ 7 U.S.C. § 2036a.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). This interim rule was published and received on April 5, 2013. The stated effective date for this interim rule is April 5, 2013. Therefore, this notice does not have the required 60-day delay. However, notwithstanding the 60-day delay requirement, any rule that an agency for good cause finds that notice and comment are impractical, unnecessary, or contrary to the public interest is to take effect when the promulgating agency so determines. 5 U.S.C. §§ 553(d)(3), 808(2). FNS found for good cause that notice and comment procedures for this rule would be impractical due to the statutory implementation deadline. Therefore the 60-day delay in effective date is not required.

Enclosed is our assessment of FNS'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 of the procedural steps taken indicates that FNS complied with the applicable requirements.

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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Lynnette M. Williams
PRAB Branch Chief
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
"SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: NUTRITION
EDUCATION AND OBESITY PREVENTION GRANT PROGRAM"
(RIN: 0584-AE07)

(i) Cost-benefit analysis

The Food and Nutrition Service (FNS) analyzed the costs and benefits of this interim rule. FNS identified several benefits to this rule including reducing administrative and financial burdens for states and improving the likelihood that low-income persons eligible for the Supplemental Nutrition Assistance Program and other federal means-tested programs will make healthy lifestyle choices. FNS expects this rule to reduce federal costs by \$158 million in fiscal year 2013 and \$663 million in the 5-year period between fiscal years 2013 and 2017.

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

FNS determined that this interim rule will not have a significant 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

FNS determined that this interim rule contains no federal mandates for state, local, and 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.

FNS found for good cause that the use of prior notice and comment procedures for issuing this interim rule was impractical given the statutory deadline. FNS conducted nearly 25 consultative sessions with the Centers for Disease Control and Prevention, outside stakeholders, and experts. FNS invited public comments on this interim rule and stated that it will consider amendments to the rule based on comments submitted.

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

FNS determined that this interim rule contains no new information collection requirements under the Order as the two existing information collection requirements related to this interim rule will not change. Those two information collection requirements have been approved by the Office of Management and Budget (OMB) under OMB control numbers 0584-0083 and 0584-0542.

Statutory authorization for the rule

FNS promulgated this interim rule under the authority of sections 2011 to 2036 of title 7, United States Code.

Executive Order No. 12,866 (Regulatory Planning and Review)

FNS determined that this interim rule is economically significant under the Order and was therefore reviewed by OMB.

Executive Order No, 12,988 (Civil Justice Reform)

FNS determined that this interim 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 and timely implementation. FNS also determined that this rule is not intended to have retroactive effect.

Executive Order No. 13,132 (Federalism)

FNS determined that this interim rule does not have federalism implications and does not impose substantial or direct compliance costs on state and local governments under the Order.