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March 9, 2010

The Honorable Blanche Lincoln
Chairman
The Honorable Saxby Chambliss
Ranking Minority Member
Committee on Agriculture, Nutrition, and Forestry
United States Senate

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

Subject: *Department of Agriculture, Food and Nutrition Service: Food Stamp Program: Eligibility and Certification Provisions of the Farm Security and Rural Investment Act of 2002*

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 (USDA), Food and Nutrition Service, entitled “Food Stamp Program: Eligibility and Certification Provisions of the Farm Security and Rural Investment Act of 2002” (RIN: 0584-AD30). We received the rule on February 22, 2010. It was published in the *Federal Register* as a final rule on January 29, 2010, with a stated effective date of April 1, 2010. 75 Fed. Reg. 4912.

The final rule establishes new eligibility and certification requirements for the receipt of food stamps. USDA expects this rule to simplify program administration, allow states greater flexibility, and provide enhanced access to eligible populations. Specifically, this rule allows states to (1) treat legally obligated child support payments to a non-household member as an income exclusion rather than a deduction; (2) exclude certain types of income and resources that are not counted under the State’s Temporary Assistance for Needy Families (TANF) cash assistance or Medicaid programs; (3) use a standard deduction from income of \$143 per month for homeless households with some shelter expenses; (4) disregard reported changes in deductions during certification periods with certain exceptions; (5) extend simplified reporting of changes to all households; and (6) extend the period of time

households may receive transitional food stamp benefits when they cease to receive TANF cash assistance. The rule also (1) replaces the current, fixed standard deduction with a deduction that varies according to household size and is adjusted annually for cost-of-living increases; (2) increases the resource limit for households with a disabled member from \$2,000 to \$3,000 consistent with the limit for households with an elderly member; (3) requires state agencies that have a Web site to post applications on these sites in the same languages that the state uses for its written applications; and (4) restores food stamp eligibility to certain qualified aliens.

The final rule has a stated effective date of April 1, 2010. The Congressional Review Act 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). The rule was published in the *Federal Register* on January 29, 2010, but was received by Congress on February 24, 2010. 75 Fed. Reg. 4912; 156 Cong. Rec. S942 (Mar. 2, 2010) (Executive and Other Communications). Therefore, the final rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of USDA'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, with the exception of the effective date, USDA 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: Anne Bartholomew
Chief, PRAB
Office of Research and Analysis
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
"FOOD STAMP PROGRAM: ELIGIBILITY AND CERTIFICATION
PROVISIONS OF THE FARM SECURITY AND
RURAL INVESTMENT ACT OF 2002"
(RIN: 0584-AD30)

(i) Cost-benefit analysis

The Department of Agriculture (USDA) analyzed the costs. USDA estimates that the total costs to the government of this rule to be \$2.669 billion in fiscal year 2010 and \$13.541 billion over the 5 years fiscal year 2010 through fiscal year 2014.

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

USDA determined that this 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

USDA determined that this rule contains no federal mandates under the Act that impose costs on state, local, or tribal governments, or on 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.*

USDA published a proposed rule on April 16, 2004. 69 Fed. Reg. 20,724. USDA received comments from 19 state and local agencies, 90 advocacy groups, and 6 individuals. USDA responded to the comments in the final rule but did not discuss comments supporting the proposed rule or comments concerned with technical corrections. 75 Fed. Reg. 4913–4940.

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

USDA determined that this final rule changes the burden for information collection requirements associated with three currently-approved collections and submitted

these information collection requirements to the Office of Management and Budget (OMB) for review. USDA estimates that as a result of this rulemaking, the overall information collection burden hours associated with OMB No. 0584–0064, No. 0584–0496, and No. 0584–0083 will decrease by about 1,150,423 hours annually (920,338 hours due to program changes and 230,085 hours due to adjustments). Of the total impact, USDA estimates the annual burden hours will decrease by 653,958 hours for food stamp households (523,166 hours due to program changes and 130,792 due to adjustments) and by 496,465 hours for states (397,172 hours due to program changes and 99,293 for adjustments).

Statutory authorization for the rule

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

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

USDA determined that this final rule is economically significant under the Order and the rule was reviewed by OMB.

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

USDA stated that this final rule is intended to have preemptive effect with respect to any state or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. USDA also stated that this rule is not intended to have retroactive effect unless so specified in the “Effective Date” paragraph of the rule.

Executive Order No. 13,132 (Federalism)

USDA examined the rule under the Order. USDA received input from state agencies at various times, including having formal and informal discussions on an ongoing basis, holding three conferences, and addressing comments from states on the proposed rule.

Civil Right Impact Analysis (USDA Regulation 4300-4)

USDA reviewed this rule in accordance with its Regulation 4300-4, “Civil Rights Impact Analysis,” to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. USDA determined that there is no way to soften the effect of this final rule on any protected classes. USDA explained that it has no discretion in implementing many of the changes in this rule because they are required by statute.