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July 6, 2011

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

The Honorable John Kline
Chairman
The Honorable George Miller
Ranking Member
Committee on Education and the Workforce
House of Representatives

Subject: *Department of Agriculture, Food and Nutrition Service: National School Lunch Program: School Food Service Account Revenue Amendments Related to the Healthy, Hunger-Free Kids Act of 2010*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by Department of Agriculture, Food and Nutrition Service (FNS), entitled “National School Lunch Program: School Food Service Account Revenue Amendments Related to the Healthy, Hunger-Free Kids Act of 2010” (RIN: 0584-AE11). We received the rule on June 22, 2011. It was published in the *Federal Register* as an interim rule on June 17, 2011. 76 Fed. Reg. 35,301.

The interim rule amends National School Lunch Program (NSLP) regulations to conform to requirements contained in the Healthy, Hunger-Free Kids Act of 2010 (Pub. L. 111-296) regarding equity in school lunch pricing and revenue from nonprogram foods sold in schools. This rule requires school food authorities (SFAs) participating in the NSLP to provide the same level of financial support for lunches served to students who are not eligible for free or reduced price lunches as is provided for lunches served to students eligible for free lunches. This rule also requires that all food sold in a school and purchased with funds from the nonprofit school food service account, other than meals and supplements reimbursed by the Department of Agriculture, must generate revenue at least equal to the cost of such foods.

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 on June 17, 2011. It was received by GAO on June 22, 2011. The rule has a stated effective date of July 1, 2011. Therefore this interim rule does not have a 60-day delay in its effective date. However, notwithstanding the 60-day delay requirement, any rule that an agency for good cause finds that notice and public comment procedures are impractical, unnecessary, or contrary to the public interest is to take effect when the promulgating agency so determines. 5 U.S.C. § 808(2). FNS found that good cause existed under section 808(2) to make this regulatory action effective July 1, 2011, as required by the Healthy, Hunger-Free Kids Act of 2010.

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

Enclosure

cc: Kevin Kwon
Chief, Planning and Regulatory Branch
Food and Nutrition Service
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
"NATIONAL SCHOOL LUNCH PROGRAM:
SCHOOL FOOD SERVICE ACCOUNT REVENUE AMENDMENTS
RELATED TO THE HEALTHY, HUNGER-FREE KIDS ACT OF 2010"
(RIN: 0584-AE11)

(i) Cost-benefit analysis

FNS prepared a cost-benefit analysis in conjunction with the interim rule. FNS determined that the interim rule will have little or no direct impact on federal expenditures; however, it will require the contribution of additional funds to the nonprofit school meals program account of participating school food authorities (SFAs). Funds from section 205, which addresses the costs charged for paid lunches, could be derived from a combination of sources, including program participants who receive paid lunches and state and local governments. State agencies administering the National School Lunch Program (NSLP) will have flexibility to determine which of these sources will contribute revenues to meet the requirements and in what proportion. Section 206, which addresses à la carte foods, will derive funds from increased prices for à la carte foods, and thus those funds will be contributed by the families of school children who choose to purchase these products. SFAs will also face increased administrative costs.

FNS estimates that the total impact of the interim rule from 2011-2015 will be \$7.54 billion in net SFA revenues, and \$1.37 billion in federal costs.

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

FNS certified that the interim rule will have a significant economic impact on a substantial number of small entities. FNS prepared an initial regulatory flexibility analysis that is included in the interim rule, and FNS will be accepting comments on the interim rule and the analysis through September 15, 2011.

(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 the interim rule does not contain any federal mandates that impose costs on 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.

FNS found good cause in accordance with section 553(b) of title 5, United States Code, that use of prior notice and comment procedures for issuing this interim rule was impracticable. The Healthy, Hunger-Free Kids Act of 2010 (the Act), Pub. L. No. 111-296, was enacted on December 13, 2010, and requires that the provisions covered by this interim rule be effective as of July 1, 2011. In order to comply with the Act, FNS found it necessary to promulgate this interim rule.

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

The interim rule contains new information collection requirements which FNS has submitted to the Office of Management and Budget for approval. FNS is accepting comments on the information collections requirements through August 16, 2011. FNS estimates that the collection requirements in the interim rule will have 20,915 respondents (57 state agencies, and 20,858 school food authorities), that there will be 83,489 total annual responses, and that the total annual burden on respondents for the interim rule will be 322,827 hours.

Statutory authorization for the rule

The final rule is authorized by sections 205 and 206 of the Healthy, Hunger-Free Kids Act of 2010, Pub. L. No. 111-298.

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

FNS determined that the interim rule is economically significant under Executive Order 12,866, and the rule was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

FNS determined that the interim rule does not impose substantial or direct compliance costs on state and local governments.