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February 15, 2012

The Honorable Debbie Stabenow
Chairwoman
The Honorable Pat Roberts
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: Nutrition Standards in the National School Lunch and School Breakfast Programs*

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 "Nutrition Standards in the National School Lunch and School Breakfast Programs" (RIN: 0584-AD59). We received the rule on January 31, 2012. It was published in the *Federal Register* as a final rule on January 26, 2012. 77 Fed. Reg. 4088.

This final rule updates the meal patterns and nutrition standards for the National School Lunch and School Breakfast Programs to align them with the Dietary Guidelines for Americans. This rule requires most schools to increase the availability of fruits, vegetables, whole grains, and fat-free and low-fat fluid milk in school meals; reduce the levels of sodium, saturated fat, and trans-fat in meals; and meet the nutrition needs of school children within their calorie requirements. These improvements to the school meal programs, largely based on recommendations made by the Institute of Medicine of the National Academies, are expected to enhance the diet and health of school children and help mitigate the childhood obesity trend.

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 final rule was published on January 26, 2012, and received on January 31, 2012. The rule has a stated effective date of March 26, 2012. However, the rule also states that compliance with the provisions of the rule must begin July 1, 2012, except as otherwise noted. Therefore, to the extent that this rule is effective on March 26, 2012, it does not have the required 60-day delay in effective date.

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: Sara Gold
Acting Chief, Planning &
Regulatory Affairs Branch
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
"NUTRITION STANDARDS IN THE NATIONAL SCHOOL LUNCH
AND SCHOOL BREAKFAST PROGRAMS"
(RIN: 0584-AD59)

(i) Cost-benefit analysis

The Food and Nutrition Service (FNS) analyzed the costs and benefits of this final rule. In discussing the benefits of the rule, FNS stated that because of the complexity of factors that contribute both to overall food consumption and to obesity, it is not able to define a level of disease or cost reduction that is attributable to the changes in meals expected to result from implementation of the rule. As the rule is projected to make substantial improvements in meals served to more than half of all school-aged children on an average school day, FNS judges that the likelihood is reasonable that the benefits of the rule exceed the costs, and that the final rule thus represents a cost-effective means of conforming to the statutory requirements for school meals. Beyond these changes FNS expects a number of qualitative benefits from this rule—including alignment between federal program benefits and national nutrition policy, improved confidence of parents and families in the nutritional quality of school meals, and the contribution that improved school meals can make to the overall school nutrition environment.

FNS also estimated the costs of this final rule. FNS estimates that food costs will increase by 2.5 cents per lunch served, as compared with prior requirements on initial implementation, and 5 cents per lunch served and 14 cents per breakfast served as compared with prior requirements once fully implemented. FNS estimates that total costs may increase by \$3.2 billion from fiscal year (FY) 2012 through fiscal year (FY) 2016, or roughly 8 percent when the rule's food group requirements are fully implemented in FY 2015. The estimated increases in food and labor costs are equivalent to about 10 cents for each reimbursable school lunch and about 27 cents for each reimbursable breakfast in FY 2015.

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

FNS determined that this final rule will have a significant impact on a substantial number of small entities as the requirements of the rule will apply to school districts that meet the definition of small governmental jurisdictions and small entities under

the Act. FNS performed a Regulatory Flexibility Analysis for this final rule including a discussion of the need for action, the benefits, the costs, and alternatives considered.

(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 final rule contains federal mandates that could result in costs to state, local, or tribal governments or to the private sector of \$100 million or more in any one year. FNS notes that the Healthy, Hunger-Free Kids Act of 2010 authorizes \$50 million over 2 years to help state agencies implement the new meal pattern requirements. FNS expects that these funds, combined with increases in State Administrative Expense funding, will assist states and local operators in implementing the requirements established by this final rule. FNS believes local program operators will need to optimize the use of USDA Foods and adopt other cost-savings strategies in various areas of the food service operation, including procurement, menu planning, and meal production to meet the rule requirements in a cost-effective manner.

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

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

FNS published a proposed rule on March 21, 2011. 76 Fed. Reg. 15,225. FNS received a total of 133,268 public comments during the comment period of January 13 to April 13, 2011. This total included several single submissions with thousands of comments. The types of comments received included 7,107 unique letters, 122,715 form letters from 159 mass mail campaigns, 3,353 non-germane letters, and 93 duplicates. The description and analysis in the final rule's preamble focused on the most frequent comments and those that influenced revisions to the proposed rule. Modifications as a result were discussed.

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

FNS determined that this final rule contains information collection requirements under the Act and has submitted them to the Office of Management and Budget (OMB) for review under the existing OMB control number 0584-0006. FNS estimates that 7,040 respondents will be required to provide 27,260 annual responses for a total annual burden of 73,849 additional hours under beyond the current OMB approved inventory.

Statutory authorization for the rule

FNS promulgated this rule under the authority of sections 1751 to 1760, 1773 and 1779 of title 42, United States Code.

Executive Order No. 12,866 and 13,563 (Regulatory Planning and Review)

FNS determined that this final rule is an economically significant rule under the Orders. OMB has reviewed the rule.

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

FNS determined that this final rule is intended to have preemptive effect with respect to state or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. FNS does not intend for this rule to have retroactive effect.

Executive Order No. 13,132 (Federalism)

Pursuant to the Order, FNS received informal input from various stakeholders while participating in various state, regional, national, and professional conferences. Various departments of education, boards of education, departments of health, and other state and local organizations provided input during the public comment period. The School Nutrition Association, School Food Industry Roundtable, National Alliance for Nutrition and Activity, Association of State and Territorial Public Health Nutrition Directors, and the Center for Science in the Public Interest shared their views about changes to the school meals. Numerous stakeholders also provided input at the public meetings held by the Institute of Medicine in connection with its school meals study. FNS discussed the nature of the concerns raised and the extent to which it met those concerns in the final rule.

Executive Order No. 13,372 (Intergovernmental Consultation)

FNS determined that the Order requires intergovernmental consultation with state and local officials for this final rule. Since the programs governed by this rule are state administered, federally funded programs, FNS headquarters staff and regional offices have formal and informal discussions with state and local officials on an ongoing basis regarding program requirements and operation. FNS believes that this structure allows FNS to receive regular input that contributes to the development of meaningful and feasible program requirements.