



441 G St. N.W.  
Washington, DC 20548

B-335858

January 11, 2024

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

The Honorable Glenn Thompson  
Chairman  
The Honorable David Scott  
Ranking Member  
Committee on Agriculture  
House of Representatives

Subject: *Department of Agriculture, Food and Nutrition Service: Establishing the Summer EBT Program and Rural Non-Congregate Option in the Summer Meal 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 “Establishing the Summer EBT Program and Rural Non-Congregate Option in the Summer Meal Programs” (RIN: 0584-AE96). We received the rule on December 29, 2023. It was published in the *Federal Register* as an interim final rule on December 29, 2023. 88 Fed. Reg. 90230. The effective date is December 29, 2023.

According to FNS, the interim final rule amends the Summer Food Service Program (SFSP) and the National School Lunch Program’s Seamless Summer Option (SSO) regulations to codify the flexibility for rural program operators to provide non-congregate meal service in the SFSP and SSO. This interim final rule also establishes regulations and codifies the Summer EBT Program in the *Code of Federal Regulations*.

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). The 60-day delay in effective date can be waived, however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary, to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. § 808(2). FNS determined it had good cause to waive the 60-day delay because of a congressional direction to issue the rule by December 29, 2023. FNS also stated the final rule does not compel immediate action but rather provides certainty that program stakeholders need to timely implement the regulatory provisions by Summer 2024.

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. 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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in cursive script that reads "Shirley A. Jones".

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Maureen Lydon  
Chief of Planning and Regulatory Affairs Office  
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  
“ESTABLISHING THE SUMMER EBT PROGRAM  
AND RURAL NON-CONGREGATE OPTION IN THE SUMMER MEAL PROGRAMS”  
(RIN: 0584-AE96)

(i) Cost-benefit analysis

The Department of Agriculture, Food and Nutrition Service (FNS) stated the interim final rule may result in potential benefits such as reductions in food insecurity, improvements in diet quality, and economic activity generated through increased retail transactions.

FNS estimated the interim final rule would lead to costs of \$486.8 million per year from 2023 to 2032 at a seven percent discount rate and \$478.6 million per year at a three percent discount rate. FNS attributed these costs to administrative and implementation costs. FNS also estimated transfers from federal reimbursements for meals served in non-congregate settings due to the interim final rule and Summer EBT benefit payments.

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

FNS certified the interim final rule would 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

FNS stated the interim final rule does not contain federal mandates for state, local, and tribal governments or the private sector of \$177 million (\$100 million, adjusted for inflation) or more in any one year.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive*

*Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

In its submission to us, FNS did not discuss the Act.

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

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

FNS waived notice-and-comment procedures for good cause. FNS determined it had good cause to waive the 60-day delay because of a congressional direction to issue the rule by December 29, 2023. FNS also stated the final rule does not compel immediate action but rather provides certainty that program stakeholders need to timely implement the regulatory provisions by Summer 2024. FNS stated the comment period on the interim final rule would end April 29, 2024.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

FNS determined the final rule contained information collection requirements (ICRs) subject to PRA. The ICRs are associated with “7 CFR Part 210 National School Lunch Program”, OMB Control Number 0584-0006, as well as “7 CFR Part 225 Summer Food Service Program”, OMB Control Number 0584-0280. FNS discussed how the burden and reporting requirements of the ICRs impact various effected groups.

Statutory authorization for the rule

FNS promulgated the final rule pursuant to sections 1751–1760, 1761, 1762, 1762a, 1773, and 1779 of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

FNS stated OMB determined the final rule was significant under the Order and that OMB reviewed the rule.

Executive Order No. 13132 (Federalism)

FNS stated the interim final rule has federalism impacts. To address these implications, FNS discussed its prior consultation with state and local agencies, the nature of the concerns and need to issue the interim final rule, and the extent to which FNS met these concerns.