



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

B-336035

March 4, 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: Memorandum on Commodity Credit Corporation (CCC) The Emergency Food Assistance Program (TEFAP) Funding*

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 “Memorandum on Commodity Credit Corporation (CCC) The Emergency Food Assistance Program (TEFAP) Funding.” We received the rule on November 30, 2023. On February 15, 2024, FNS informed us that this memorandum will not be published in the *Federal Register* but is available on their public website. Email from Chief of Planning and Regulatory Affairs Office, FNS, to Paralegal Specialist, GAO, Subject: *For GAO - CCC TEFAP Funding Memo, CRA Form and Receipts for Delivery to Capitol Hill* (Feb. 15, 2024). FNS’s submission to us indicated that the first deadline for the fiscal year 2024 application process was December 8, 2023.

According to FNS, the memorandum provides information about the approximately \$943 million in additional support for emergency food programs that FNS is providing in fiscal year 2024 under the statutory authority of the Commodity Credit Corporation Charter Act, 15 U.S.C. § 714 *et seq.*, for distribution through TEFAP. FNS stated that CCC funding will help emergency food organizations as they continue to deal with supply chain challenges and elevated food costs by supporting food purchases and TEFAP eligible recipient agencies’ operational costs for the storage and distribution of the additional food purchases. FNS also stated the CCC funds are being offered in addition to TEFAP entitlement foods, bonus foods, and TEFAP administrative funds.

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 *Congressional Record* indicates the Senate received the memorandum on December 6, 2023, but it does not indicate when it was received

by the House. 169 Cong. Rec. S5896 (daily ed. Dec. 11, 2023). FNS provided documentation showing the memorandum was delivered to both chambers on November 30, 2023. Email from Chief of Planning and Regulatory Affairs Office, FNS, to Paralegal Specialist, GAO, Subject: *For GAO - CCC TEFAP Funding Memo, CRA Form and Receipts for Delivery to Capitol Hill* (Nov. 30, 2023). FNS informed us the rule would not be published in the *Federal Register*. Email from Chief of Planning and Regulatory Affairs Office, FNS, to Paralegal Specialist, GAO, Subject: *For GAO - CCC TEFAP Funding Memo, CRA Form and Receipts for Delivery to Capitol Hill* (Feb. 15, 2024). FNS's submission to us indicated that the first deadline for the fiscal year 2024 application process was December 8, 2023. Therefore, the memorandum 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. 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 black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Maureen Lydon  
Chief, 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  
“MEMORANDUM ON COMMODITY CREDIT CORPORATION (CCC)  
THE EMERGENCY FOOD ASSISTANCE PROGRAM (TEFAP) FUNDING”

(i) Cost-benefit analysis

The Department of Agriculture, Food and Nutrition Service (FNS) did not prepare a cost-benefit analysis for this memorandum. In its submission to us, FNS indicated that it considered preparation of an analysis of the costs and benefits of this memorandum to be not applicable.

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

FNS did not address RFA in the memorandum. In its submission to us, FNS indicated it determined the requirements of RFA to be not applicable.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

FNS did not address the Act in the memorandum. In its submission to us, FNS indicated it determined the requirements of the Act to be not applicable.

(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.

FNS did not address the Act in the memorandum or in its submission to us.

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

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

FNS did not address the Act in the memorandum or in its submission to us.

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

FNS did not address PRA in the memorandum. In its submission to us, FNS indicated it determined the requirements of PRA to be not applicable.

Statutory authorization for the rule

In its submission to us, FNS indicated the funding described in the memorandum were authorized by sections 714 *et seq.* of title 15, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

FNS did not address the Order in the memorandum. In its submission to us, FNS indicated it determined the requirements of the Order to be not applicable.

Executive Order No. 13132 (Federalism)

FNS did not address the Order in the memorandum. In its submission to us, FNS indicated it determined the requirements of the Order to be not applicable.