

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

B-332899

February 5, 2021

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

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

Subject: *Department of Agriculture, Agricultural Marketing Service: Establishment of a Domestic Hemp Production Program*

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, Agricultural Marketing Service (USDA), entitled "Establishment of a Domestic Hemp Production Program" (SC19-990-2 FR). We received the rule on January 19, 2021. It was published in the *Federal Register* as a final rule on January 19, 2021. 86 Fed. Reg. 5596. The stated effective date of the rule is March 22, 2021.

According to USDA, this final rule supersedes the interim final rule that established the Domestic Hemp Production Program, as mandated by the Agriculture Improvement Act of 2018. Pub. L. No. 115-334, 132 Stat. 4490 (Dec. 20, 2018). USDA states that this rule includes regulations used by USDA to approve plans submitted by the states and Indian tribes for the domestic production of hemp. According to USDA, this rule also includes regulations on the federal hemp production plan for producers in the states or territories of Indian tribes that do not have their own USDA-approved plans. USDA states that the program provides requirements for maintaining records about the land where hemp is produced, testing the levels of total delta-9 tetrahydrocannabinol, disposing of noncompliant plants, licensing hemp producers, and ensuring compliance under the new program.

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 final rule was published on January 19, 2021. 86 Fed. Reg. 5596. The Congressional Record does not yet indicate that Congress received the final rule. However, on February 5, 2021, USDA confirmed it had not yet submitted the rule to Congress as of that date due to an oversight. The final rule has a stated effective date of March 22, 2021. 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. 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 style with a large initial 'S' and a long, sweeping tail on the 'J'.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Bruce Summers
Administrator
Agricultural Marketing Service
Department of Agriculture

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF AGRICULTURE,
AGRICULTURAL MARKETING SERVICE
ENTITLED
“ESTABLISHMENT OF A DOMESTIC HEMP PRODUCTION PROGRAM”
(SC19-990-2 FR)

(i) Cost-benefit analysis

The Department of Agriculture, Agricultural Marketing Service (USDA) estimated this final rule would have a benefit of \$49,050,000 for producers of domestic hemp; a cost of \$3,340,000 for states, Indian tribes, and USDA; and a cost of \$190,000 for laboratories in 2020, resulting in a net benefit of \$45,520,000. USDA estimated the annualized net benefit of the rule in 2020 to be \$45,520,000 at both 3 percent and 7 percent discount rates. USDA further estimated the rule would have an annualized net benefit of:

- \$84,060,000 at a 3 percent discount rate and \$80,920,000 at a 7 percent discount rate in 2021;
- \$126,950,000 at a 3 percent discount rate and \$117,630,000 at a 7 percent discount rate in 2022;
- \$173,660,000 at a 3 percent discount rate and \$154,900,000 at a 7 percent discount rate in 2023;
- \$200,450,000 at a 3 percent discount rate and \$172,120,000 at a 7 percent discount rate in 2024; and
- \$302,960,000 at a 3 percent discount rate and \$250,410,000 at a 7 percent discount rate in 2025.

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

USDA prepared a Final Regulatory Flexibility Analysis. The analysis included (1) a statement of the need for the rule, (2) an overview of the action, (3) a description of potentially affected small entities, and (4) a description of alternatives considered by the agency to minimize impacts of the rule.

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

USDA did not discuss the Act in this final rule. In its submission to us, the agency indicated that the Act is not applicable to this rule.

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

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

On October 31, 2019, USDA published an interim final rule requesting comments. 84 Fed. Reg. 58522. USDA received approximately 5,900 comments from states; Indian tribes; industry and agricultural organizations; private citizens; Members of Congress; the scientific community; agencies; and individuals involved in the growing, processing, transporting, and marketing of hemp. USDA summarized the comments and responded to them in this final rule.

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

USDA determined that this final rule contains updates to the information collection requirements (ICR) for which the Office of Management and Budget (OMB) granted a conditional emergency approval under the interim final rule published on October 31, 2019. USDA stated it will submit the updated ICRs to align new burden calculations in this rule with the approved ICR package under OMB Control Number 0581-0318. USDA estimated the total annual burden of all ICRs in this final rule will be 52,296 hours with a total cost of \$2,980,864 per year.

Statutory authorization for the rule

USDA promulgated this final rule pursuant to sections 1639o note, 1639p, 1639q, and 1639r of title 7, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

USDA determined that this final rule is economically significant under the Order.

Executive Order No. 13132 (Federalism)

USDA concluded that the final rule does have federalism implications because the rule has substantial and direct effects on states, on the relationship between the national government and states, and on the distribution of power and responsibilities among the various levels of government. USDA stated that the federalism implications of the rule flow from and are consistent with the underlying statute, section 297B of the Agricultural Marketing Act of 1946, which directs USDA to review and approve state plans that meet statutory requirements and to audit a state's compliance with its state plans. 7 U.S.C. § 1639p. USDA stated it has assessed the rule in light of the principles, criteria, and requirements in the Order and concluded that the rule is not inconsistent with the Order, will not impose significant additional costs and burdens on the states, and will not affect the ability of the states to discharge traditional state governmental functions.