



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

B-331168

July 8, 2019

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

The Honorable Collin Peterson
Chairman
The Honorable K. Michael Conaway
Ranking Member
Committee on Agriculture
House of Representatives

Subject: *Department of Agriculture, Farm Service Agency, Commodity Credit Corporation: Dairy Margin Coverage Program and Dairy Indemnity Payment 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 (USDA), Farm Service Agency (FSA), Commodity Credit Corporation (CCC) entitled “Dairy Margin Coverage Program and Dairy Indemnity Payment Program” (RIN: 0560-A137). We received the rule on June 21, 2019. It was published in the *Federal Register* as a final rule on June 18, 2019. 84 Fed. Reg. 28171. The effective date of the rule is June 18, 2019.

The final rule, according to USDA, implements the requirements of the dairy programs administered by FSA on behalf of CCC and the Dairy Margin Coverage program. According to USDA, the final rule also replaces the Margin Protection Program (MPP-Dairy) for dairy producers and retains much of the structure of MPP-Dairy. Additionally, this final rule extends the Dairy Indemnity Payment program (DIPP) through 2023 and amends the regulations to incorporate a specific period of time for which claims for the same loss will be eligible for indemnification under DIPP.

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). However, the 60-day delay in effective date can be waived 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). USDA stated that due to the nature of the rule, the mandatory requirements of the 2018 Farm Bill, and the need to implement regulations expeditiously to provide assistance to dairy producers, notice and public procedure are contrary to the public interest. Therefore, according to USDA, even though this rule is a major rule for

purposes of CRA, USDA is not required to delay the effective date for 60 days from the date of publication to allow for congressional review.

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 Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Mary Ann Ball
Management Analyst
Department of Agriculture

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF AGRICULTURE,
FARM SERVICE AGENCY,
COMMODITY CREDIT CORPORATION
ENTITLED
“DAIRY MARGIN COVERAGE PROGRAM AND
DAIRY INDEMNITY PAYMENT PROGRAM”
(RIN: 0560-A137)

(i) Cost-benefit analysis

The Department of Agriculture (USDA), Farm Service Agency (FSA), and Commodity Credit Corporation (CCC) determined that as a result of the change from the Margin Protection Program (MPP-Dairy) to Dairy Margin Coverage (DMC), payments to producers from the DMC program are expected to be greater than for MPP-Dairy. USDA stated that projections as of early 2019 indicate that, over the 10-year baseline period, DMC program payments will be triggered frequently. Additionally, USDA stated that with national feed costs expected to average about \$9.14 over the life of the DMC program, margins are expected to average \$8.50 per one hundred pounds (cwt) of milk. The “margin” is the difference between the average national price of one cwt of milk and the national average price of the feed components (corn, soymeal, and hay) needed to produce that milk. According to USDA, its modeling results indicate that the DMC program would trigger significant outlays under current baseline projections. Based on its modeling, USDA estimates average to \$1.3 billion per year and collection of \$89 million per year in fees and premiums paid by dairy program participants. For the 5-year life of the DMC program, USDA stated that net expenditures through 2023 are projected to average \$1.2 billion annually.

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

USDA stated that this rule is not subject to the Act because it was not required to publish a proposed rule for this final rule.

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

USDA determined that this final rule contains no federal mandates as defined by the Act for state, local, or tribal governments, or the private sector.

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

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

USDA stated that, as specified in 7 U.S.C. § 9091, regulations to implement certain provisions of the 2018 Farm Bill are exempt from the notice and public procedure.

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

USDA stated that, as specified in 7 U.S.C. § 9091, regulations to implement the provisions of the 2018 Farm Bill are exempt from the Act.

Statutory authorization for the rule

USDA stated that this final rule was promulgated pursuant to 7 U.S.C. §§ 4551-4553; 7 U.S.C. §§ 9051-9060; and 15 U.S.C. §§ 718B and 714c.

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

According to USDA, the Office of Management and Budget designated this final rule as economically significant under the Order and reviewed the rule.

Executive Order No. 13,132 (Federalism)

USDA stated that this final rule does not have any substantial direct effect on the states, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government.