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November 12, 2019

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

The Honorable Collin C. Peterson
Chairman
The Honorable K. Michael Conaway
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 (USDA), Agricultural Marketing Service entitled “Establishment of a Domestic Hemp Production Program” (AMS-SC-19-0042; SC19-990-2 IR). We received the rule on October 31, 2019. It was published in the *Federal Register* as an interim final rule with request for comments on October 31, 2019. 84 Fed. Reg. 58522. The effective date of the rule is October 31, 2019, and is effective through November 1, 2021.

The interim final rule establishes new regulations governing the production of hemp. According to USDA, this action is mandated by the Agriculture Improvement Act of 2018, which amended the Agricultural Marketing Act of 1946. Aug. 14, 1946, ch. 966, title II, 60 Stat. 1087. This rule outlines provisions for USDA to approve plans submitted by states and Indian tribes for the domestic production of hemp. It also establishes a federal plan for producers in states or territories of Indian tribes that do not have their own USDA-approved plan. The program includes provisions for maintaining information on the land where hemp is produced, testing the levels of delta-9 tetrahydrocannabinol, disposing of plants not meeting necessary requirements, licensing requirements, and ensuring compliance with the new compliance.

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. §§ 553(b)(3)(B), 808(2). Here, although USDA did not specifically mention the CRA’s 60-day delay in effective date requirement, the agency found good cause to waive notice-and-comment procedures and incorporated a brief statement of

reasons. Specifically, USDA identified four factors justifying the waiver. First, Congress instructed USDA to promulgate regulations and guidelines as expeditiously as practicable in the authorizing legislation. 7 U.S.C. § 1639r(a)(1)(A). Second, the final rule provides critical guidance to numerous stakeholders that await the publication of the final rule. Third, USDA already solicited comments through listening sessions and a webinar that solicited the public participation consultations with state and tribal officials. Finally, there is public interest in expediting the ability of the nation's farmers to enter the new agricultural market presented by hemp.

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: 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”
(AMS-SC-19-0042; SC19-990-2 IR)

(i) Cost-benefit analysis

The Department of Agriculture, Agricultural Marketing Service (USDA) estimated the final rule would have an annualized benefit of \$65,810,000 and cost of \$19,016,000, leaving a net benefit of \$46,794,000 at a 3 percent discount rate. USDA further estimated an annualized benefit of \$62,440,000 and cost of \$18,053,000, leaving a net benefit of \$44,386,000 at a 7 percent discount rate.

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

USDA prepared a Regulatory Flexibility Analysis. The analysis included (1) a statement of the reasons action is being considered, (2) a description of potentially affected small entities, and (3) alternatives 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 address the Act in the final rule.

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

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

USDA waived the notice-and-comment process under 5 U.S.C. § 553(b)(3)(B). Specifically, USDA found four factors justifying the waiver. First, Congress instructed USDA to promulgate regulations and guidelines as expeditiously as practicable in the authorizing legislation. 7 U.S.C. § 1639r(a)(1)(A). Second, the final rule provides critical guidance to numerous stakeholders that await the publication of the final rule. Third, USDA already solicited comments through listening sessions and a webinar that solicited the public participation consultations with state and tribal officials. Finally, there is public interest in expediting the ability of the nation’s farmers to enter the new agricultural market presented by hemp. The agency stated there would be a 60-day comment period ending December 30, 2019.

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

USDA determined the final rule contains information collection requirements (ICRs) under the Act. USDA indicated the ICRs would be submitted to the Office of Management and Budget for approval under control number 0581-NEW. USDA estimated the total burden hours of all ICRs in the final rule will be 17,363.4 with a total cost of \$989,714.94.

Statutory authorization for the rule

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

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

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

Executive Order No. 13,132 (Federalism)

USDA concluded the final rule does have federalism implications because the rule has substantial 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 the federalism implications of the rule flow from and are consistent with the underlying statute. The agency further concluded the final 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. To reach these conclusions, USDA stated it consulted with state officials and held listening sessions.