

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

B-333549

September 10, 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, Office of the Secretary: Coronavirus Food Assistance Program 2; Producers of Sale-Based Commodities and Contract Producers*

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, Office of the Secretary (USDA) entitled “Coronavirus Food Assistance Program 2; Producers of Sale-Based Commodities and Contract Producers” (RIN: 0503-AA71). We received the rule on August 30, 2021. It was published in the *Federal Register* as a final rule on August 27, 2021. 86 Fed. Reg. 48013. The effective date is August 27, 2021.

According to USDA, the final rule amends the Coronavirus Food Assistance Program 2 (CFAP 2) provisions related to assistance for producers of sales-based commodities and contract producers. USDA also stated the final rule announces the deadline for submitting CFAP 2 applications and clarifies general provisions related to equitable relief and refunds.

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 reason in the rule. 5 U.S.C. § 808(2). USDA determined it had good cause to waive the 60-day delay because the

beneficiaries of this rule have been significantly impacted by the COVID-19 outbreak, which has resulted in significant declines in demand and market disruptions.

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 'J'.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Mary Ann Ball
FPAC-BC
Department of Agriculture

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY
“CORONAVIRUS FOOD ASSISTANCE PROGRAM 2; PRODUCERS OF
SALE-BASED COMMODITIES AND CONTRACT PRODUCERS”
(RIN: 0503-AA71)

(i) Cost-benefit analysis

The Department of Agriculture, Office of the Secretary (USDA) stated the final rule provides authority for, but does not mandate, use of 2018 or 2019 revenue data in the calculation of payments for sales-based commodities. USDA stated this provision ensures that farmers who had lower sales in 2019 than in 2018—for example, those unable to plant a 2019 crop—would not be penalized in the payment calculation. USDA determined the expected cost associated with this change is estimated at \$207 million. USDA also stated the final rule clarifies that grass seed is now an eligible sales-based commodity which has an expected cost of \$41 million. Finally, USDA estimated the paperwork costs of the final rule would be \$1.5 million for contract producers, \$2.2 million for the use of 2018 versus 2019 revenue in the calculations for sales-based commodities, and \$0.1 million for grass seed.

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

USDA determined the final rule was not subject to RFA because the requirements for the regulatory flexibility analysis are specifically tied to the requirement for a proposed rule by the Administrative Procedure Act or any other law. USDA determined a proposed rule was not required for this rulemaking.

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

USDA determined the final rule contains no federal mandates for state, local, and 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 determined the final rule was exempt from notice and comment procedures because it stated the rule falls within the Act's exception for rules about benefits. 5 U.S.C. § 553(a)(2).

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

USDA determined the final rule contained information collection requirements (ICRs) subject to the PRA. The ICRs are associated with Office of Management and Budget (OMB) Control Numbers 0560-0297 and 0560-New. USDA estimated the total annual burden of the ICRs to be 1,892 hours.

Statutory authorization for the rule

USDA promulgated the final rule pursuant to sections 714b and 714c of title 15, United States Code as well as Public Laws 116-136 and 116-260.

Executive Order No. 12866 (Regulatory Planning and Review)

USDA stated the final rule had been reviewed by OMB and determined the final rule was economically significant.

Executive Order No. 13132 (Federalism)

In its submission to us, USDA indicated that it did not discuss the Order in the final rule.