



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

B-336023

February 29, 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: *United States Department of Agriculture, Rural Business-Cooperative Service:
Fertilizer Production Expansion 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 United States Department of Agriculture (USDA), Rural Business-Cooperative Service (RBCS) entitled “Fertilizer Production Expansion Program.” We received the rule on August 22, 2023. On February 13, 2024, USDA informed us that this is a funding opportunity and will not be published in the *Federal Register*. Email from Acting Division Director, USDA, to Paralegal Specialist, GAO, Subject: *RE: Congressional Review Report for the Fertilizer Production Expansion Program* (Feb. 13, 2024). USDA’s submission to us indicated that the effective date is December 15, 2022, and that selections did not begin until that date.

USDA stated that RBCS requested applications for the Fertilizer Production Expansion Program (FPEP) in response to well-recognized challenges and concerns with market concentration and the need to provide United States farmers more domestic access to fertilizer and fertilizer alternatives for producing agricultural commodities. USDA further stated that FPEP provides at least \$500 million in grants to expand or bring into operation new, independent domestic production capacity; and up to \$100 million to eligible entities to expand capacity, improve competition, and increase supply chain resilience within the agricultural fertilizer and nutrient alternative sector, in connection with the production of agriculture commodities. Additionally, USDA stated it is interested in supporting projects that are in the later stages of development, technically feasible, financially viable, and that have already identified other sources of funding.

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). This rule was received by the House of Representatives on August 23, 2023, 169 Cong. Rec. H4852 (daily ed. Sept. 28, 2023), and by

the Senate on September 6, 2023, 169 Cong. Rec. S4386 (daily ed. Sept. 12, 2023). USDA's submission to us indicates that the rule's effective date is December 15, 2022. Therefore, the rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of RBCS'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, prominent "S" at the beginning.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Michelle L. Brooks
Director, Regulations Management Division
United States Department of Agriculture

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
UNITED STATES DEPARTMENT OF AGRICULTURE,
RURAL BUSINESS-COOPERATIVE SERVICE
ENTITLED
“FERTILIZER PRODUCTION EXPANSION PROGRAM”

(i) Cost-benefit analysis

The United States Department of Agriculture, Rural Business-Cooperative Service (RBCS), did not prepare a cost-benefit analysis for this rule. In its submission to us, RBCS indicated that the preparation of an analysis of costs and benefits was not applicable.

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

RBCS did not address RFA in the rule. In its submission to us, RBCS indicated that preparation of a final Regulatory Flexibility Analysis under RFA was not applicable.

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

RBCS did not address the Act in the rule. In its submission to us, RBCS indicated that preparation of a written statement under the Act was 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.

RBCS did not address the Act in the rule 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.*

RBCS did not address the Act in the rule or in its submission to us.

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

RBCS stated that the rule contains an information collection requirement within the meaning of PRA. RBCS further stated that the OMB Control Number is 0570-NEW, and that RBCS will be requesting an emergency clearance by OMB. RBCS explained that the time required to complete this information collection is estimated to average 10.42 hours per response, including the time for reviewing instructions, searching existing data sources, gathering, and maintaining the data needed, and completing and reviewing the collection of information.

Statutory authorization for the rule

RBCS stated that the Fertilizer Production Expansion Program is authorized by the Commodity Credit Corporation Charter Act, Pub. L. No. 80-806, 62 Stat. 1070 (June 29, 1948).

Executive Order No. 12866 (Regulatory Planning and Review)

RBCS did not address the Order in the rule. In its submission to us, RBCS indicated that discussion of the Order was not applicable.

Executive Order No. 13132 (Federalism)

RBCS did not address the Order in the rule. In its submission to us, RBCS indicated that discussion of the Order was not applicable.