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B-336085

March 14, 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: *U.S. Department of Agriculture, Commodity Credit Corporation and Farm Service Agency: Dairy Margin Coverage Production History Adjustment and Program Extension*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the U.S. Department of Agriculture, Commodity Credit Corporation and Farm Service Agency (Agencies), titled “Dairy Margin Coverage Production History Adjustment and Program Extension” (RIN: 0560-AI66). We received the rule on February 28, 2024. It was published in the *Federal Register* as a final rule on February 27, 2024. 89 Fed. Reg. 14372. The stated effective date is February 27, 2024.

According to the Agencies, this final rule revises the regulations for Dairy Margin Coverage (DMC) as required by the Further Continuing Appropriations and Other Extensions Act, 2024, which extends provisions of the Agriculture Improvement Act of 2018 (2018 Farm Bill) and amends the Agricultural Act of 2014 (2014 Farm Bill) to allow eligible dairy operations to make a one-time adjustment to established production history and extend DMC through 2024. See *generally* Pub. L. No. 118-22, 137 Stat. 112 (Nov. 23, 2024); Pub. L. No. 115-334, 132 Stat. 4490 (Dec. 20, 2018) (2018 Farm Bill); Pub. L. No. 113-79, 128 Stat. 649 (Feb. 7, 2014) (2014 Farm Bill). The Agencies stated that the rule also extends eligibility of multiyear (lock-in) contracts for an additional year until December 31, 2024, and applies the discounted DMC premium rate to the newly established adjusted base production history.

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 its findings in the rule issued. 5 U.S.C. §§ 553(b)(3)(B), 808(2). The Agencies determined that notice and public

procedure are contrary to the public interest because DMC is authorized through December 31, 2024, under the recently enacted Further Continuing Appropriations and Other Extensions Act, 2024, which also extends certain provisions of the 2018 Farm Bill through September 30, 2024. Therefore, according to the Agencies, even though this rule is a major rule for purposes of CRA, they are not required to delay the effective date. In addition, the Agencies stated that section 1601(c)(2) of subtitle F of title I of the 2014 Farm Bill (7 U.S.C. § 9091(c)(2)), exempts the regulations to implement and administer the DMC Program in this final rule from the notice and comment provisions of the Administration Procedure Act, 5 U.S.C. § 553. Therefore, the Agencies stated further that the final rule is effective on the date of publication in the *Federal Register*.

Enclosed is our assessment of the Agencies' 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, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Mary Ann Ball
USDA/FPAC-BC
U.S. Department of Agriculture

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
U.S. DEPARTMENT OF AGRICULTURE,
COMMODITY CREDIT CORPORATION,
FARM SERVICE AGENCY
TITLED
“DAIRY MARGIN COVERAGE PRODUCTION
HISTORY ADJUSTMENT AND PROGRAM EXTENSION”
(RIN: 0560-AI66)

(i) Cost-benefit analysis

The U.S. Department of Agriculture, Commodity Credit Corporation and Farm Service Agency (Agencies), indicated in their submission to us that they did not prepare a cost-benefit analysis for this final rule.

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

The Agencies did not address RFA in this final rule. In their submission to us, the Agencies indicated that RFA is not applicable to the final rule.

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

The Agencies determined that this final rule contains no federal mandates under the Act for state, local and tribal governments, or the private sector. Therefore, according to the Agencies, the rule is not subject to the requirements of the Act.

(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.

In their submission to us, the Agencies did not address the Act.

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

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

The Agencies stated that section 1601(c)(2) of subtitle F of title I of the 2014 Farm Bill (7 U.S.C. § 9091(c)(2)), exempts the regulations to implement and administer the Dairy Margin Coverage (DMC) Program in this final rule from the notice and comment provisions under the Act.

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

According to the Agencies, section 1601(c)(2) of subtitle F of title I of the 2014 Farm Bill (7 U.S.C. 9091(c)(2)), exempts the regulations to implement and administer the DMC Program in this final rule from PRA.

Statutory authorization for the rule

The Agencies promulgated this final rule pursuant to sections 9051–9060 and 9071 of title 7, and sections 714b and 714c of title 15, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

The Agencies stated that OMB designated this rule as not significant under the Order and, therefore, OMB has not reviewed this final rule.

Executive Order No. 13132 (Federalism)

In their submission to us, the Agencies indicated that they did not address the Order in this final rule.