



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

B-336157

April 2, 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: *Department of Agriculture, Office of the Secretary; Farm Service Agency; Commodity Credit Corporation: Pandemic Assistance Programs and Agricultural Disaster Assistance Programs*

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; Farm Service Agency; and Commodity Credit Corporation (collectively, the Agencies) entitled “Pandemic Assistance Programs and Agricultural Disaster Assistance Programs” (RIN: 0503-AA75). We received the rule on March 19, 2024. It was published in the *Federal Register* as a final rule on January 11, 2023. 88 Fed. Reg. 1862. The effective date is January 11, 2023.

According to the Agencies, the final rule announces Phase 2 of the Emergency Relief Program, which provides assistance to producers who suffered crop losses due to wildfires, hurricanes, floods, derechos, excessive heat, winter storms, freeze (including a polar vortex), smoke exposure, excessive moisture, and qualifying droughts occurring in calendar years 2020 and 2021. The Agencies also stated the final rule also announces the Pandemic Assistance Revenue Program, a new program that provides support for agricultural producers impacted by the COVID-19 pandemic. In addition, the Agencies stated the final rule makes changes to the Coronavirus Food Assistance Program; the Emergency Conservation Program; the Emergency Forest Restoration Program; the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program; the Livestock Forage Disaster Program; the Livestock Indemnity Program; the Noninsured Crop Disaster Assistance Program; and general payment eligibility provisions. Finally, the Agencies stated the final rule also makes a technical correction to the Biomass Crop Assistance Program.

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. § 808(2). The Agencies determined they had good cause to waive the delay because the beneficiaries of this rule have been significantly impacted by the COVID-19 outbreak and disaster events, which has resulted in significant declines in demand and market disruptions, which makes notice and public procedure for this rule contrary to the public interest.

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 A. Ball  
USDA/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;  
FARM SERVICE AGENCY;  
COMMODITY CREDIT CORPORATION  
ENTITLED  
“PANDEMIC ASSISTANCE PROGRAMS AND AGRICULTURAL DISASTER PROGRAMS”  
(RIN: 0503-AA75)

(i) Cost-benefit analysis

The Department of Agriculture, Office of the Secretary; Farm Service Agency; and Commodity Credit Corporation (collectively, the Agencies) estimated the total gross outlays of all programs under the final rule to be \$4.54 billion.

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

The Agencies determined RFA was not applicable as a proposed rule was not issued before 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 the final rule contains no federal mandates for state, local, and tribal governments, or the private sector.

(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.

The Agencies did not address the Act in the final rule or in their submission to us.

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

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

The Agencies stated notice-and-comment procedures were not applicable because the final rule falls within the benefits exception.

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

The Agencies determined the final rule contained information collection requirements (ICRs) subject to PRA. Some existing ICRs are associated with OMB Control Number 0560-0082. The Agencies reported there would be no change to those ICRs. The Agencies reported two new ICRs. The first is entitled PARP and is estimated to have a total burden of 266,947 hours. The second is entitled ERP Phase 2 and is estimated to have a total burden of 54,992 hours.

Statutory authorization for the rule

The Agencies promulgated the final rule pursuant to sections 1308, 1308-1, 1308-2, 1308-3, 1308-3a, 1308-4, 1308-5, 1501–1508, 1531, 4501, 7333, and 8111 of title 7; sections 714–714m of title 15; sections 2201–2206, 3801 note of title 16; section 2497 of title 19; and section 1469a of title 48, United States Code as well as Public Laws 109-148, 109-234, 110-28, 111-80, 111-212, 113-79, 115-123, 115-141, 116-20, 116-94, 116-136, 116-260, and 117-43.

Executive Order No. 12866 (Regulatory Planning and Review)

The Agencies stated the final rule was determined to be a significant regulatory action and was reviewed by OMB.

Executive Order No. 13132 (Federalism)

The Agencies did not discuss the Order in the final rule or in their submission to us.