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B-336184

April 12, 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, Agricultural Marketing Service: Local Food for Schools Cooperative Agreement Program; Request for Applications*

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, Agricultural Marketing Service (AMS) entitled “Local Food for Schools Cooperative Agreement Program; Request for Applications” (USDA-AMS-10185-CPLFS000-22-0001). We received the rule on January 31, 2024. On February 7, 2024, AMS stated that this request for applications (RFA) will not be published in the *Federal Register* but was published on the Grants.gov website in 2022. Email from Legislative & Regulatory Review Officer, AMS, to Senior Staff Attorney, GAO, *Subject: RE: CRA Submission: SC, MDD, Walnuts Grown in California; Decreased Assessment Rate – AMS-SC-23-0030; Final Rule* (Feb. 7, 2024). The application due date was August 31, 2022.

In the final rule, AMS requests applications from state governments for the Local Food for Schools (LFS) Program. According to AMS, the goal of the RFA is to establish cooperative agreements with state governments for the purposes of purchasing domestic, locally grown foods from local producers, small businesses, and socially disadvantaged farmers/producers for distribution to schools. AMS states that it will make only one award per state government, that agencies within a state must coordinate if more than one agency wishes to implement a program, and that state governments can also partner with local organizations. AMS further states that up to \$200 million is available through the RFA from funds authorized under section 5(c) of the Commodity Credit Corporation Charter Act, 15 U.S.C. §§ 714 *et seq.*

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). As referenced above, AMS has stated that it will not publish the RFA in the *Federal Register*. At the time of writing, the *Congressional Record*

does not yet reflect receipt by either the House or the Senate, but AMS provided documentation showing that the final rule was delivered to the House and Senate on April 5, 2024. Email from Director, Legislative & Regulatory Review Staff, AMS, to Senior Attorney, GAO, *Subject: FW: Question re: CRA Submission: Local Food for Schools Cooperative Agreement Program; Request for Applications (USDA-AMS-10185-CPLFS000-22-0001)* (Apr. 10, 2024). The rule includes a stated due date of August 31, 2022. Therefore, the final rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of AMS'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 cursive script that reads "Shirley A. Jones".

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Erin Morris
Associate Administrator
Agricultural Marketing Service
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,
AGRICULTURAL MARKETING SERVICE
ENTITLED
“LOCAL FOOD FOR SCHOOLS COOPERATIVE AGREEMENT PROGRAM;
REQUEST FOR APPLICATIONS”
(USDA-AMS-10185-CPLFS000-22-0001)

(i) Cost-benefit analysis

The U.S. Department of Agriculture, Agricultural Marketing Service (AMS) did not provide a cost-benefit analysis in the rule. In its submission to us, AMS indicated that the requirement to prepare an analysis of costs and benefits is not applicable to the rule.

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

AMS did not discuss the Act in the rule. In its submission to us, AMS indicated that the Act is not applicable to the rule.

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

AMS did not discuss the Act in the rule. In its submission to us, AMS indicated that the Act is not applicable to the rule.

(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.

AMS did not discuss 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.*

AMS did not discuss the Act in the rule. In its submission to us, AMS indicated generally that statutes and executive orders concerning the rulemaking process are not applicable to the rule.

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

AMS stated that the rule contains information collection requirements covered under OMB Control Number 0581-0334. AMS estimated that the time required to complete this information collection is 4 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

AMS promulgated the rule pursuant to section 714c of title 15, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

AMS did not discuss the Order in the rule. In its submission to us, AMS indicated that the Order is not applicable to the rule.

Executive Order No. 13132 (Federalism)

AMS did not discuss the Order in the rule. In its submission to us, AMS indicated that the Order is not applicable to the rule.