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April 15, 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, Natural Resources Conservation Service: Conservation Stewardship Program (CSP)*

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 Natural Resources Conservation Service (collectively, the Agencies) titled “Conservation Stewardship Program (CSP)” (RIN: 0578-AA67). We received the rule on March 20, 2024. It was published in the *Federal Register* as a final rule on October 9, 2020. 85 Fed. Reg. 63993. The stated effective date is October 9, 2020.

According to the Agencies, this final rule adopts an interim rule published in the *Federal Register* on November 12, 2019. See 84 Fed. Reg. 60883. The Agencies stated that the interim rule implemented changes to the Conservation Stewardship Program that were necessitated by enactment of the Agriculture Improvement Act of 2018 (2018 Farm Bill) or that were required to implement administrative improvements and clarifications. See generally 2018 Farm Bill, Pub. L. No. 115-334, 132 Stat. 4490 (Dec. 20, 2018). The Agencies also stated that the final rule makes permanent those changes appearing in the interim rule, responds to comments about the interim rule, and makes further adjustments in response to some of the comments received. The Agencies stated further that the final rule makes some minor technical corrections.

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 stated that 16 U.S.C. § 3846 provides that the program regulations implicated here are to be made as an interim rule

effective upon publication and are to be administered using the authority provided under section 808 of title 5 of CRA to determine the effective date of such regulations. Consistent with section 808 of title 5, the Agencies stated further that the final rule is effective on the date of publication in the *Federal Register*. The agencies also stated that the rule involves matters relating to benefits and is, therefore, exempt from Administrative Procedure Act requirements.¹

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.



Shirley A. Jones
Managing Associate General Counsel

Enclosure

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

¹ Although the Agencies waived CRA's 60-day delay in effective date requirement we note that the Agencies did not deliver the rule to Congress until April 5, 2024. See Email from Branch Chief Regulatory Analysis & PRA Requirements Branch, USDA, to Senior Staff Attorney, GAO, *Subject: RE: CRA -- Supplemental Dairy Margin Coverage Payment; Conservation Reserve Program; Dairy Indemnity Payment Program; Marketing Assistance Loans, Loan Deficiency Payments; Sugar Loans; and Oriental Fruit Fly Program (RIN 0560-A159) - December 13, 2021* (Apr. 9, 2024).

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
U.S. DEPARTMENT AGRICULTURE,
COMMODITY CREDIT CORPORATION,
NATURAL RESOURCES CONSERVATION SERVICE
TITLED
“CONSERVATION STEWARDSHIP PROGRAM (CSP)”
(RIN: 0578-AA67)

(i) Cost-benefit analysis

The U.S. Department of Agriculture, Commodity Credit Corporation, and Natural Resources Conservation Service (collectively, the Agencies) stated that conservation activities funded through the Conservation Stewardship Program (CSP) contribute to improvements in soil health and reductions in water and wind erosion on cropland, pasture, forest and rangeland; reduce nutrient losses to streams, rivers, lakes and estuaries; increase wildlife habitat, including providing habitat for pollinators; and provide other environmental benefits. The Agencies also stated that the environmental benefits resulting from CSP’s conservation activities are difficult to quantify at this time. The Agencies stated further that partial estimates presented in a separate document, which provides a more detailed analysis of the cost and benefits, indicate the positive benefits of CSP. The Agencies noted that participation in CSP is voluntary. Hence, according to the Agencies, participation is not expected to negatively impact CSP participants and nonparticipants. The Agencies estimate that the total cost of accessing the program over 5 years is \$2.5 million with total transfers over 5 years equaling \$3.795 billion. The Agencies explained that given a 3 percent discount rate, this translates into a projected annualized cost to producers of accessing CSP of \$414.4 thousand in constant 2019 dollars and projected annualized transfers (Natural Resources Conservation Service funds) of \$759 million in constant 2019 dollars.

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

The Agencies stated that this rule is not subject to RFA because the rule is exempt from notice and comment rulemaking requirements of the Administrative Procedure Act and no other law requires that a proposed rule be published for this rulemaking initiative.

(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 rule contains no federal mandates under the Act for state, local, and tribal governments, or the private sector. Therefore, the Agencies stated, this 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.

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

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

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

On November 12, 2019, the Agencies published an interim rule with request for comments in the *Federal Register*. 84 Fed. Reg. 60883. The Agencies stated that the interim rule implemented mandatory changes made by the 2018 Farm Bill or that were required to implement administrative improvements and clarifications. 84 Fed. Reg. 60883; *see generally* 2018 Farm Bill, Pub. L. No. 115-334, 132 Stat. 4490 (Dec. 20, 2018). The Agencies stated further that they received input from 110 commenters who provided 615 comments in response to the interim rule and that this final rule responds to comments and makes further adjustments in response to some of the comments received.

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

According to the Agencies, section 3846 of title 16, United States Code, exempts the regulations to implement CSP from Act.

Statutory authorization for the rule

The Agencies promulgated this final rule pursuant to sections 3839aa-21 to 3839aa-25 of title 16, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

The Agencies stated that OMB designated this final rule as economically significant under Order, and that OMB has reviewed this rule.

Executive Order No. 13132 (Federalism)

According to the Agencies, the policies contained in this rule do not have any substantial direct effects on states, on the relationship between the federal government and the states, or on the

distribution of power and responsibilities among the various levels of government, except as required by law. Further, the Agencies stated the rule does not impose substantial direct compliance costs on state and local governments and that consultation with the states is not required.