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United States General Accounting Office
Washington, DC 20548

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March 2, 2001

The Honorable Richard G. Lugar
Chairman
The Honorable Tom Harkin
Ranking Member
Committee on Agriculture, Nutrition, and Forestry
United States Senate

The Honorable Larry Combest
Chairman
The Honorable Charles W. Stenholm
Ranking Minority Member
Committee on Agriculture
House of Representatives

Subject: Department of Agriculture, Agricultural Marketing Service: National Organic 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 Department of Agriculture (USDA), Agricultural Marketing Service, entitled "National Organic Program" (RIN: 0581-AA40). We received the rule on February 20, 2001. It was published in the Federal Register as a final rule with request for comments on December 21, 2000. 65 Fed. Reg. 80548.

The final rule establishes the National Organic Program with national standards for the production and handling of organically produced products including, among other provisions, a national list of substances approved for and prohibited from use in organic production and handling.

The final rule has an announced effective date of February 20, 2001. While the rule was published in the Federal Register on December 21, 2000, it was not received by Congress until February 21, 2001. The Congressional Review Act 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). Therefore, the rule does not have the required 60-day delay in its effective date to permit congressional review.

Enclosed is our assessment of the USDA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that, with the exception of the effective date, the USDA complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Robert A. Robinson, Managing Director, Natural Resources and Environment. Mr. Robinson can be reached at (202) 512-3841.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Mr. Kenneth C. Clayton
Acting Administrator
Agricultural Marketing Service
Department of Agriculture

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF AGRICULTURE,
AGRICULTURAL MARKETING SERVICE
ENTITLED
"NATIONAL ORGANIC PROGRAM"
(RIN: 0581-AA40)

(i) Cost-benefit analysis

As part of its Regulatory Impact Analysis, the USDA performed a cost-benefit analysis of the final rule. USDA has quantified the costs of fees and recordkeeping but the anticipated benefits and other costs are not quantified because of limited market data.

The direct accreditation costs to an estimated 59 certifying agents during the first 18 months are estimated to be approximately \$92,000 to \$124,000 and are being subsidized with appropriated funds. In addition, \$270,000 to \$448,000 in hourly charges for site evaluation will be covered by appropriated funds. The cost of the recordkeeping, as submitted under the Paperwork Reduction Act, is estimated at \$13 million annually.

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

Because the National Organic Program will primarily affect small entities, the USDA prepared both an Initial Regulatory Flexibility Analysis and a Final Regulatory Flexibility Analysis in connection with the proposed rule and the final rule, respectively. The analyses satisfy the requirements of the Act and provide the needed information regarding the size and number of the entities affected and the steps taken to minimize the impact of the final rule on them.

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

The final rule does not contain either an intergovernmental or private sector mandate, as defined in title II, of more than \$100 million in any one year.

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

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

The final rule was issued using the notice and comment procedures contained at 5 U.S.C. 553. On March 13, 2000, USDA published a Notice of Proposed Rulemaking

in the Federal Register. 65 Fed. Reg. 13512. USDA received 40,774 comments in response to the Notice, which it considered in drafting the final rule. USDA discusses the changes in the preamble of the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains information collections that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The collections have been approved by OMB and assigned OMB Control No. 0581-0191.

Statutory authorization for the rule

The final rule was promulgated pursuant to the authority contained in 7 U.S.C. 6501-6522.

Executive Order No. 12866

The final rule was reviewed by OMB and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13132 (Federalism)

USDA has determined that the final rule will have federalism implications under the order because it establishes national standards that will preempt state statutes and regulations. Therefore, USDA has prepared a federalism impact statement, which is attached as an appendix to the final rule. The statement also includes a discussion of the steps taken to obtain input from the states in formulating the final rule.