

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

B-333849

December 22, 2021

The Honorable Debbie Stabenow  
Chairwoman  
The Honorable John Boozman  
Ranking Member  
Committee on Agriculture, Nutrition, and Forestry  
United States Senate

The Honorable David Scott  
Chairman  
The Honorable Glenn 'GT' Thompson  
Ranking Member  
Committee on Agriculture  
House of Representatives

Subject: *Department of Agriculture, Rural Business-Cooperative Service: Notice of Funding Opportunity for the Biofuel Producer Program for Fiscal Year 2021*

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), Rural Business-Cooperative Service entitled "Notice of Funding Opportunity for the Biofuel Producer Program for Fiscal Year 2021" (Docket Number: RBS-21-BUSINESS-0026). We received the rule on December 13, 2021. It was published in the *Federal Register* as a notice on December 13, 2021. 86 Fed. Reg. 70818. The effective date is February 11, 2022.

USDA stated this final rule announces the application window, application requirements, and the availability of up to \$700 million in payments to eligible biofuel producers for unexpected market losses as a result of COVID-19. USDA further stated the purpose of these payments is to maintain a viable and significant biofuels market for agricultural producers that supply biofuel producers.

Enclosed is our assessment of 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. 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: Michele Brooks  
Director, Regulations Management Division  
Rural Development Innovation Center

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF AGRICULTURE,  
RURAL BUSINESS-COOPERATIVE SERVICE  
ENTITLED  
“NOTICE OF FUNDING OPPORTUNITY FOR THE  
BIOFUEL PRODUCER PROGRAM FOR FISCAL YEAR 2021”  
(RBS-21-BUSINESS-0026)

(i) Cost-benefit analysis

The Department of Agriculture (USDA), Rural Business-Cooperative Service did not discuss the cost and benefits in the final rule. In its submission to us, USDA indicated that it considered preparation of an analysis of the costs and benefits of this rule to be not applicable.

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

USDA did not discuss the RFA in the final rule. In its submission to us, USDA indicated that a written statement under the RFA is not applicable to this rule.

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

USDA did not discuss the Act in the final rule. In its submission to us, USDA indicated that a written statement under the Act is not applicable to this rule.

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

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

USDA did not discuss the Act in the final rule.

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

USDA stated it requested the Office of Management and Budget conduct an emergency review by December 13, 2021, of a new information collection requirement (ICR) contained in this final rule. The ICR is entitled “Biofuel Producer Program” and its estimated total annual burden is 996 hours.

Statutory authorization for the rule

USDA promulgated this final rule pursuant to Public Law 116-136.

Executive Order No. 12866 (Regulatory Planning and Review)

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

Executive Order No. 13132 (Federalism)

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