

November 1, 2021

Mr. Robert Ibarra
Commodity Credit Corporation
United States Department of Agriculture

Submitted via Regulations.gov

RE: Docket ID: USDA-2021-0010, “Climate-Smart Agriculture and Forestry Partnership Program”

Mr. Ibarra:

I appreciate this opportunity to provide comments¹ to the Commodity Credit Corporation (CCC) regarding your request for information on a Climate-Smart Agriculture and Forestry (CSAF) Partnership Program.

The CCC states that “The Climate-Smart Agriculture and Forestry Partnership Program *could* be developed under the authority of the Commodity Credit Corporation Charter Act of 1933 (15 U.S.C. 714 Section 5(e).” [Emphasis added]. This claim regarding 5(e) is incorrect. Therefore, the focus of my comments is not on what a program should look like, but whether the agency can go around Congress to create this program in the first place, pursuant to Section 5, and specifically 5(e).

The CCC Does not Have Statutory Authority Under Section 5 to Create the CSAF Program

There is no question that the Agriculture Secretary, under section 5 of the Charter Act, has broad discretionary power to use the CCC in support of U.S. agriculture. Even so, this authority is not without its limits based on the plain language of the statute itself.

The question at hand is whether Section 5 can authorize this new environmental program. Fortunately, one does not have to look hard to get an answer. Section 5, under 5(g), includes specific and express language that deals with environmental programs, explaining that the CCC can be used to “[c]arry out conservation or environmental programs *authorized* by law.”² [Emphasis added]. Based on this language, Section 5 would not authorize the CSAF program because it has not been authorized by Congress.

¹ The views I have expressed in this comment are my own and should not be construed as representing any official position of The Heritage Foundation.

² 15 U.S. Code § 714c, <https://www.law.cornell.edu/uscode/text/15/714c> (accessed November 1, 2021). Further, Section 5 is an exhaustive list. The CCC can “use its general powers only to” engage in the activities listed. When it comes to carrying out environmental programs, the CCC can *only* use its power for *authorized* programs. [Emphasis added].

The CCC apparently recognizes this problem because it does not point to the one and only provision dealing with environmental programs, 5(g), for its authority and does not mention it at all throughout the notice, presumably because to do so would be fatal to its statutory authority claim. Instead, the CCC argues that the CSAF program *could* be authorized under 5(e). This provision allows the CCC to:

Increase the domestic consumption of agricultural commodities (other than tobacco) by expanding or aiding in the expansion of domestic markets or by developing or aiding in the development of new and additional markets, marketing facilities, and uses for such commodities.

Using 5(e) as authority for the CSAF program would render the environmental provision, 5(g), superfluous. The CCC would be ignoring the plain language of 5(g), the express will of Congress, and basic statutory interpretation.

The CCC apparently recognizes that the environmental purpose of the program would be insufficient to rely on 5(e). Therefore, it is using a new term “climate-smart commodity” that creates a new type of commodity that never existed before, and the CCC is allegedly going to help market these new commodities. Through this “creative” way to get around the plain language of the statute, the CCC is effectively saying that it can create an unauthorized environmental program, ignoring 5(g), so long as it can claim an environmental program will somehow help market commodities.

The reality is that there are not new types of commodities and the CCC would not be using money to help market these “new commodities,” but would be using money so that farmers adopt environmental practices to farm *existing* commodities the way the CCC would prefer. The CSAF program is an environmental program (and an unauthorized program) to push certain environmental practices and all this “creativity” does not change these simple facts.³ This commodity angle is just a pretext for claiming the CCC could use Section 5(e) and therefore be able to get around Congress.

³ At best, any marketing purpose is incidental to the environmental purpose of the program. The March 16, 2021 notice that preceded this new notice made no mention of marketing of commodities or the CSAF program. It was focused on the environment. For example, the CCC stated “This public input will be considered as USDA prepares recommendations to expand climate-smart agriculture and forestry practices and systems.” Further, the March 16, 2021 notice itself was issued in response to Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad.” Quite simply, the CSAF program is first and foremost (and probably only) an environmental program, with the “marketing” angle being an after-thought to try and use 5(e) to get around Congress.

Conclusion

The CCC should not try and do an end-run around Congress and push a program not authorized by law. I strongly urge the CCC to respect the will of Congress, and more importantly the will of the American people who are represented through their legislators.

Sincerely,

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