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December 1, 2009

The Honorable Blanche Lincoln
Chairman
The Honorable Saxby Chambliss
Ranking Minority Member
Committee on Agriculture, Nutrition, and Forestry
United States Senate

The Honorable Collin C. Peterson
Chairman
The Honorable Frank D. Lucas
Ranking Minority Member
Committee on Agriculture
House of Representatives

Subject: *Department of Agriculture, Commodity Credit Corporation: Conservation Reserve 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, Commodity Credit Corporation (CCC), entitled “Conservation Reserve Program” (RIN: 0560-AH80). We received the rule on November 16, 2009. It was published in the *Federal Register* as an interim rule with request for comments on June 29, 2009. 74 Fed. Reg. 30,907. It was received by the House of Representatives on July 28, 2009, and the Senate on July 14, 2009. 155 Cong. Rec. H9273 (July 31, 2009) (Executive Communications, etc.); 155 Cong. Rec. S8034 (July 23, 2009) (Executive and Other Communications).

The interim rule amends the terms and conditions of enrolling acreage in the Conservation Reserve Program. This rule also updates other eligibility requirements to implement certain provisions of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). Pub. L. No. 110-246, 122 Stat. 1651 (June 18, 2008).

The Congressional Review Act requires major rules to have a 60-day delay in their effective date following their publication in the *Federal Register* or receipt by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). However, notwithstanding the 60-day requirement, any rule that an agency for good cause finds that the notice and public comment procedures are impractical, unnecessary, or contrary to the public

interest is to take effect when the promulgating agency so determines. 5 U.S.C. § 808(2). The 2008 Farm Bill requires that CCC promulgate regulations implementing title II of the act within 90 days of enactment. 2008 Farm Bill, § 2904(a), 122 Stat. 1091. Further, the 2008 Farm Bill states that in promulgating such regulations, CCC is to use the authority provided under section 808(2) of title 5, United States Code. *Id.*, § 2904(c), 122 Stat. 1091. Consequently, the agency determined that it would be contrary to the public interest to delay implementation of this rule because it would significantly delay implementation of the program changes required by the 2008 Farm Bill. Therefore, the requirement to have a 60-day delay does not apply to this rule.

Enclosed is our assessment of the CCC'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 of the procedural steps taken indicates that CCC complied with the applicable requirements.

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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Deirdre Holder
Director, Regulatory Review Group
Department of Agriculture

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF AGRICULTURE,
COMMODITY CREDIT CORPORATION
ENTITLED
"CONSERVATION RESERVE PROGRAM"
(RIN: 0560-AH80)

(i) Cost-benefit analysis

The Commodity Credit Corporation (CCC) analyzed the costs and benefits of this interim rule. Based on estimates concerning the amount of land that will be eligible, assumed participation rates and annual enrollment, and estimated per-acre costs, CCC estimates the costs of implementing the changes considered in the interim rule will total \$79.6 million through fiscal year 2012 and \$191.2 million through fiscal year 2018, which averages to \$19.1 million per year over 10 years. According to CCC, the extent of environmental benefits derived from this rule will depend on participation rates and the specific conservation measures adopted. CCC offers the following examples of benefits: (1) tree thinning has the potential to enhance wildlife habitat, provide for carbon sequestration, and reduce the risk of wildfires; (2) enrollment of aquaculture ponds and flooded farmland and associated buffers can increase migratory waterfowl and other wildlife species populations, and potentially reduce flood damage, protect water quality, and provide for carbon sequestration; and (3) constructed wetlands and buffers can reduce nitrate loadings, reduce down-stream flood damages, and increase wildlife habitat.

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

CCC determined that the Act is not applicable to this interim rule because CCC is not required by section 553, title 5, United States Code, or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. CCC is authorized by section 2904 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) to issue an interim rule effective on publication with an opportunity for comment. Pub. L. No. 110-246, § 2904(b)(2)(B), 122 Stat. 1651, 1819 (May 22, 2008).

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

CCC determined that this interim rule contains no federal mandates as it will not result in expenditures to state, local, or tribal governments, in the aggregate, or the private sector, of \$100 million or more 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.

Section 2904(b)(2) of the 2008 Farm Bill permits the promulgation of regulations implementing title II of the 2008 Farm Bill to be promulgated as interim rules effective on publication with an opportunity for notice and comment, if determined appropriate by CCC. This rule was issued as an interim rule with request for comment and CCC stated that it would consider comments on this rule received by August 28, 2009.

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

Section 2904(b)(1)(A) of the 2008 Farm Bill states that the promulgation of regulations implementing title II of the 2008 Farm Bill are to be carried out without regard to the Paperwork Reduction Act. According to CCC, this interim rule implements sections 2101–2111 of the 2008 Farm Bill and, accordingly, the Act does not apply to this rule.

Statutory authorization for the rule

CCC promulgated this interim rule under the authority of section 2904 of the 2008 Farm Bill and sections 714b and 714c of title 15 and sections 3801 to 3847 of title 16, United States Code.

Executive Order No. 12,866 (Regulatory Planning and Review)

CCC determined that this interim rule is economically significant and the rule was reviewed by the Office of Management and Budget.

Executive Order No. 12,988 (Civil Justice Reform)

CCC reviewed this interim rule under the Order. CCC stated that, in accordance with the Order: (1) all state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) before any judicial action may be brought concerning this rule, appeal rights afforded program participants must be exhausted.

Executive Order No. 13,132 (Federalism)

CCC determined that this interim rule does will not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government and that this rule does not impose substantial direct compliance costs on state and local governments.