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United States Government Accountability Office  
Washington, DC 20548

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B-321072

November 9, 2010

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

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

Subject: *Department of Agriculture, Farm Service Agency: Crop Assistance 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, Farm Service Agency (FSA), entitled “Crop Assistance Program” (RIN: 0560-AI11). We received the rule on October 20, 2010. It was published in the *Federal Register* as an interim rule on October 25, 2010, with a stated effective date of October 22, 2010. 75 Fed. Reg. 65,423.

The interim rule provides emergency assistance to reestablish the purchasing of rice, cotton, soybeans, and sweet potatoes in specified counties for which a disaster designation was issued based on excessive moisture and related conditions for the 2009 crop year. This rule specifies the eligibility requirements, payment calculations, and application procedures for the Crop Assistance Program, which will provide up to \$550 million to eligible producers.

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). However, notwithstanding the 60-day delay requirement, any rule that an agency for good cause finds that 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. §§ 553(d)(3), 808(2). FSA determined that because this rule concerns

discretionary disaster relief and authorities, it would be contrary to the public interest to withhold relief prior to public comment. Therefore, FSA determined that this rule is effective October 22, 2010.

Enclosed is our assessment of FSA'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 FSA 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,  
FARM SERVICE AGENCY  
ENTITLED  
"CROP ASSISTANCE PROGRAM"  
(RIN: 0560-AI11)

(i) Cost-benefit analysis

The Farm Service Agency (FSA) analyzed the costs and benefits of this interim rule. FSA estimated that the total cost to the government, and the corresponding benefit to producers, for the Crop Assistance Program will be between \$137 million and \$543 million, depending on how many producers in disaster counties apply for payment.

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

FSA determined that the Act is not applicable to this interim rule because a notice of proposed rulemaking is not required for this rule.

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

FSA determined that this interim rule contains no federal mandates under the Act for state, local, or tribal governments, or for the private sector.

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

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

FSA determined that withholding disaster relief would be contrary to the public interest and therefore issued this interim rule without an opportunity for prior public comment. However, FSA has invited public comment on the provisions of this interim rule; the 30-day public comment period is to close on November 24, 2010.

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

FSA determined that this interim rule contains an information collection requirement entitled "Crop Assistance Program (CAP)," which it submitted to the Office of Management and Budget (OMB) for review. FSA estimates that this information

collection requirement will have 279,091 applicants with a total annual burden of 350,210 hours.

Statutory authorization for the rule

FSA promulgated this interim rule under the authority of section 612c of title 7, United States Code.

National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321–4347

FSA determined that no environmental assessment or environmental impact statement is required because the Crop Assistance Program solely provides financial assistance to reestablish purchasing power to eligible producers.

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

FSA determined that this interim rule is economically significant under the Order and therefore it was reviewed by OMB.

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

FSA stated that this interim rule will not have preemptive effect with respect to any state or local laws, regulations, or policies that conflict with the rule or which otherwise impede its full implementation.

Executive Order No. 13,132 (Federalism)

FSA determined that this interim rule will not have a substantial direct effect on states, the relationship between the federal government and the states, or the distribution of power and responsibilities among the levels of government.

Executive Order No. 13,175 (Tribal Implications)

FSA determined that this interim rule does not have tribal implications that preempt tribal law. FSA provided the opportunity for government-to-government consultation with tribal governments prior to the publication of the interim rule.