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B-321784

April 7, 2011

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

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

Subject: *Department of Agriculture, Rural Utilities Service: Rural Broadband Access Loans and Loan Guarantees*

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 Utilities Service, entitled “Rural Broadband Access Loans and Loan Guarantees” (RIN: 0572-AC06). We received the rule on March 23, 2011. It was published in the *Federal Register* as an interim rule on March 14, 2011. 76 Fed. Reg. 13,770.

The interim rule amends the regulations governing the Rural Broadband Access Loan and Loan Guarantee Program. The changes include revisions to eligibility requirements and direct loan terms.

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. Our review of the procedural steps taken indicates that USDA complied with the applicable requirements.

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). This rule was published on

March 14, 2011, and received on March 23, 2011. This final rule has a stated effective date of March 14, 2011. Therefore this interim rule does not have the required 60-day delay in its effective date. 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. § 808(2). In its submission to GAO, USDA did not address whether good cause exists under the Congressional Review Act for this interim 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 Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer  
Managing Associate General Counsel

Enclosure

cc: Michele L. Brooks  
Director, Program Development  
and Regulatory Analysis  
Rural Development Utilities Programs  
Department of Agriculture

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF AGRICULTURE,  
RURAL UTILITIES SERVICE  
ENTITLED  
"RURAL BROADBAND ACCESS LOANS AND LOAN GUARANTEES"  
(RIN: 0572-AC06)

(i) Cost-benefit analysis

In its submission to GAO, the Department of Agriculture (USDA) stated that it analyzed the costs and benefits of this final rule. USDA provided GAO with the portion of the analysis discussing the economic benefits. USDA found that rural economies benefit generally from broadband availability, including by such measures as employment growth and nonfarm private earnings. According to USDA, it has awarded \$3.4 billion to 297 recipients in 45 states and 1 U.S. territory for infrastructure projects. According to USDA, the projects funded will bring broadband service to 2.8 million households, reaching nearly 7 million people, 364,000 businesses, and 32,000 anchor institutions across more than 300,000 square miles. These projects also overlap with 31 tribal lands and 124 persistent poverty counties, traditionally the most costly to serve areas.

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

An agency is not required to perform a Regulatory Flexibility Analysis under the Act for rules for which an agency is not required to publish a notice of proposed rulemaking. USDA determined that it was not required to issue a notice of proposed rulemaking for this rule under the authority of section 6110(b) of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill).<sup>1</sup>

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

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

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<sup>1</sup> Pub. L. No. 110-246, § 6110, 122 Stat. 1651, 1960–1965 (June 18, 2008).

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

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

On May 11, 2007, USDA promulgated a proposed rule amending the regulations governing the Rural Broadband Access Loan and Loan Guarantee Program. 72 Fed. Reg. 26,742. While USDA was analyzing public comments on the proposed rule, Congress enacted the 2008 Farm Bill which amended the authorizing legislation for the program. Section 6110(b) of the 2008 Farm Bill authorized USDA to implement the changes made by the Act through the promulgation of an interim rule.

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

This interim rule contains a revision to an existing information collection requirement under the Act entitled “Rural Broadband Loan and Loan Guarantee Program” (OMB Control Number 0572-0130) which will be submitted to the Office of Management and Budget (OMB) for review. USDA estimates that public reporting for this requirement to average 89 hours per response with an estimated 75 respondents providing 3 responses each for a total estimated burden of 10,545 hours.

Statutory authorization for the rule

USDA promulgated this interim rule under the authority of sections 901 to 950bb-1 of title 7, United States Code and section 6110 of the 2008 Farm Bill.

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

USDA determined that this interim rule will not significantly affect the quality of the human environment.

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

USDA determined that this interim rule is an economically significant rule under the Order, and it was reviewed by OMB.

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

USDA determined that this interim rule meets the applicable standards of the Order.

Executive Order No. 13,132 (Federalism)

USDA determined that this interim rule does 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.

Executive Order No. 13,175 (Consultation with Indian Tribes)

USDA stated that it has undertaken a series of tribal consultation sessions to gain input by tribal officials concerning the impact of this interim rule on tribal governments, communities, and individuals.