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United States Government Accountability Office  
Washington, DC 20548

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B-319271

February 4, 2010

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, Farm Service Agency: Supplemental Revenue Assistance Payments 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 “Supplemental Revenue Assistance Payments Program” (RIN: 0560-AH90). We received the rule on January 20, 2010. It was published in the *Federal Register* as a final rule on December 28, 2009. 74 Fed. Reg. 68,480.

The final rule implements specific requirements for the new Supplemental Revenue Assistance Payments Program (SURE) authorized by the 2008 Farm Bill. SURE provides disaster assistance to eligible participants who have experienced qualifying crop production losses, or crop quality losses, or both, occurring in crop year 2008 through September 30, 2011. All crops for which crop insurance or noninsured crop disaster assistance program coverage is available for eligible crops for SURE. To be eligible for SURE payments, participants must meet a risk management purchase requirement, with some exceptions, and have suffered a qualifying loss due to disaster. A qualifying loss is defined as a loss of at least 10 percent of a crop of economic significance on a participant’s farm in a disaster county, or on a participant’s farm with an overall loss greater than 50 percent of normal production (normal revenue for all crops on the farm) due to disaster. The final rule specifies how a qualifying loss is determined, how SURE payments are calculated, and how and when participants may apply for payment.

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 delay requirement, any rule that an agency for good cause finds that notice and public 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). FSA found that it would be contrary to the public interest to delay implementation of this rule, because it would significantly delay assistance to the many people affected by the disasters addressed by the rule, and therefore FSA made the rule effective immediately on December 22, 2009.

Enclosed is our assessment of the 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  
"SUPPLEMENTAL REVENUE ASSISTANCE  
PAYMENTS PROGRAM"  
(RIN: 0560-AH90)

(i) Cost-benefit analysis

FSA prepared a cost-benefit analysis in conjunction with the final rule. FSA expects that payments from the Supplemental Revenue Assistance Payments Program (SURE) for 2008 through 2011 will total \$3.4 billion, an average of \$0.85 billion per crop year, which represents both the cost of the program and the benefit to the participants. FSA states that this is less than the average of \$1.14 billion per year for previous ad hoc crop disaster programs from 1998 to 2007.

The overall costs for SURE are expected to be less than the cost of previous ad hoc programs for several reasons. First, unlike ad hoc disaster programs, SURE, in general, is additional compensation for established losses under crop insurance or noninsured crop disaster assistance program (NAP), and is not a benefit that replaces or duplicates previously received crop insurance or NAP payments. Additionally, SURE payments are based on farm revenue losses, rather than losses in particular crops or individual units; therefore, participants with losses in one crop but not others may or may not qualify for a SURE payment. Finally, the SURE guarantee cap is 90 percent of expected revenue, while previous programs had a cap of 95 percent of normal crop value.

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

The Regulatory Flexibility Act requires agencies to prepare an analysis in conjunction with any notice of proposed rulemaking or any final rule for which a notice of proposed rulemaking was promulgated. 5 U.S.C. § 604. FSA did not issue a notice of proposed rulemaking in conjunction with this final rule; therefore, FSA was not required to prepare a Regulatory Flexibility Act analysis.

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

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare an analysis before promulgating any notice of proposed rulemaking or any final rule for which a

notice of proposed rulemaking was promulgated. 2 U.S.C. § 1532(a). FSA did not issue a notice of proposed rulemaking in conjunction with this final rule; therefore, FSA was not required to prepare an Unfunded Mandates Reform analysis.

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

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

The final rule was promulgated and administered without regard to the notice and comment provisions of the Administrative Procedure Act, as required by section 1601(c)(2) of the 2008 Farm Bill.

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

The final rule is exempt from the requirements of the Paperwork Reduction Act, as specified in section 1601(c)(2) of the 2008 Farm Bill.

Statutory authorization for the rule

The final rule is authorized by sections 12033 and 15101 of the 2008 Farm Bill.

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

The final rule was determined to be economically significant, was reviewed by the Office of Management and Budget, and FSA prepared a cost-benefit analysis as required under the Order.

Executive Order No. 13,132 (Federalism)

FSA determined that this final rule does not have federalism implications, because it will not have substantial direct effects on the 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. In addition, FSA determined that this final rule does not impose substantial direct compliance costs on state and local governments.