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April 29, 2014

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

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

Subject: *Department of Agriculture, Commodity Credit Corporation: Supplemental Agricultural Disaster Assistance Programs, Payment Limitations, and Payment Eligibility*

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 "Supplemental Agricultural Disaster Assistance Programs, Payment Limitations, and Payment Eligibility" (RIN: 0560-AI21). The Farm Service Agency (FSA) administers the programs and provisions for CCC. We received the rule on April 8, 2014. It was published in the *Federal Register* as a final rule on April 14, 2014. 79 Fed. Reg. 21,086.

The final rule implements specific requirements for the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP), Livestock Forage Disaster Program (LFP), Livestock Indemnity Program (LIP), Tree Assistance Program (TAP), and general provisions for Supplemental Agricultural Disaster Assistance Programs authorized by the Agricultural Act of 2014 (2014 Farm Bill). Although there were similar disaster programs under the 2008 Farm Bill, the authority for those programs has expired.

The 2014 Farm Bill reauthorizes these programs and they are similar to the 2008 programs, however, there are distinct changes in payment limits, eligible losses, and eligible causes of loss from prior programs. Eligible ELAP, LFP, LIP, and TAP losses must have occurred on or after October 1, 2011, to be eligible for payment. The final rule specifies how ELAP, LFP, LIP, and TAP payments are calculated, what losses are eligible, and when producers may apply for payments.

Additionally, the final rule implements changes required by the 2014 Farm Bill by amending the regulations that specify maximum income limits (payment eligibility) and maximum benefit amounts (payment limits) for participants in programs funded by CCC and some FSA programs. The intended effect of the eligibility requirements is to ensure that program payments and benefits are issued only to those persons and legal entities that meet the income eligibility

requirements as specified in the 2014 Farm Bill, and that program participants do not receive any program payments above the maximum allowable payment amount. The payment limits and average Adjusted Gross Income (AGI) limits in this final rule apply to 2014 and subsequent crop, program, or fiscal year benefits, and to benefits for programs that were authorized by the 2014 Farm Bill for retroactive 2012 or 2013 crop, program, or fiscal year benefits.

The final rule was effective on April 14, 2014, the date of publication in the *Federal Register*. 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 the agency for good cause finds that notice and comment procedures are impractical, unnecessary or contrary to the public interest is to take effect when the promulgating agency so determines. § 553(d)(3), 808(2). FSA believes there is good cause for making the final rule effective immediately upon the date it was published in the *Federal Register* because section 1601(c)(3) of the 2014 Farm Bill provides that the authority in the CRA will be used in implementing the changes required by title I of the 2014 Farm Bill, such as for the changes being made by this rule. Consistent with section 1601(c)(3) of the 2014 Farm Bill, FSA found 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 2014 Farm Bill by impeding the conduct of future signups without having these additional changes to the program regulations in place. Furthermore, the agency stated that generally, under the Administrative Procedure Act (5 U.S.C. § 553), before rules are issued by government agencies, the rule must be published in the *Federal Register*, and the required publication of a substantive rule is to be not less than 30 days before its effective date. One of the exceptions is when the agency finds good cause for not delaying the effective date. The agency, in making this final rule exempt from notice and comment through section 1601(c)(2) of the 2008 Farm Bill, using the administrative procedure provisions in 5 U.S.C. 553, found that there is good cause for making this rule effective less than 30 days after publication in the *Federal Register*. The rule allows FSA to provide benefits to producers whose losses were caused by adverse weather, natural disasters, or other conditions. Therefore, to begin providing benefits to producers as soon as possible, this final rule was effective upon publication.

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
USDA/FSA Regulatory Review Group Director
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
"SUPPLEMENTAL AGRICULTURAL DISASTER ASSISTANCE
PROGRAMS, PAYMENT LIMITATIONS, AND PAYMENT ELIGIBILITY"
(RIN: 0560-AI21)

(i) Cost-benefit analysis

FSA provided a summary of the cost benefit analysis and stated that the full cost benefit analysis is available on regulations.gov. According to the summary that FSA provided, the 2014 Farm Bill authorizes four permanent livestock disaster assistance programs: LIP, LFP, ELAP, and TAP. The permanent disaster assistance programs provide a permanent means of addressing the same needs as programs provided to producers on an ad hoc basis in the past. The estimated annual payments of LIP, LFP, ELAP, and TAP is approximately \$502 million and provides targeted payments to livestock and honey bee producers who suffer losses from a disaster.

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

FSA stated that the final rule is not subject to RFA because CCC and FSA are not required by law to publish a proposed rule for public comments on this rule.

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

FSA determined that the final rule contains no federal mandates, as defined in title II of UMRA, for state, local, and tribal governments or the private sector. Therefore, FSA concluded that the final rule is not subject to the requirements of sections 202 and 205 of UMRA.

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

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

FSA stated that in general, the Administrative Procedure Act (5 U.S.C. 553) requires that a notice of proposed rulemaking be published in the *Federal Register* and interested persons be given an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation, except when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. The regulations to implement the provisions of title I and the administration of title I of the 2014 Farm Bill are exempt from the notice and comment provisions of 5 U.S.C. 553 and the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 1601(c)(2) of the 2014 Farm Bill.

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

FSA states that the regulations in the final rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 1601(c) of the 2014 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

Statutory authorization for the rule

FSA states that the final rule implements the general eligibility provisions and specific requirements for supplemental agricultural disaster assistance programs authorized by section 1501 of the 2014 Farm Bill (Pub. L. No. 113–79). FSA states that with the authorization provided in the 2014 Farm Bill, these disaster assistance programs are permanent or “standing” programs; that is, they are continuing programs not subject to annual appropriations. ELAP, LFP, LIP, and TAP were previously authorized under the 2008 Farm Bill (the Food, Conservation, and Energy Act of 2008, Pub. L. 110–246); however, these programs expired. The 2014 Farm Bill authorizes ELAP, LFP, LIP, and TAP disaster programs and, while they are similar to those programs authorized by the 2008 Farm Bill, the newly authorized programs have minor changes from those previously authorized programs. In addition, the 2014 Farm Bill authorized retroactive payments under these programs for losses in FY 2012 and 2013.

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

FSA states that the Office of Management and Budget (OMB) designated this rule as economically significant and has reviewed the rule. It also states that the regulatory action was taken to implement a major budgetary program required by the 2014 Farm Bill. Consistent with OMB guidance, this type of action is considered a budgetary transfer representing a payment from taxpayers to program beneficiaries unrelated to the provision of any goods or services in exchange for the payment. As such, according to FSA, there are no economic gains, because the benefits and payments to those who receive such a transfer are matched by the costs borne by taxpayers to offset disaster losses by program beneficiaries. The estimated transfer payments for disaster assistance provided by the rule were summarized in the rule.

Executive Order No. 13,132 (Federalism)

FSA determined that policies contained in this rule do not have any substantial direct effect on states, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, FSA concluded that consultation with states is not required.