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January 13, 2015

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

The Honorable K. Michael Conaway
Chairman
The Honorable Collin C. Peterson
Ranking Member
Committee on Agriculture
House of Representatives

Subject: *Department of Agriculture, Rural Business-Cooperative Service, Rural Utilities Service:
Rural Energy for America 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 (USDA), Rural Business-Cooperative Service, Rural Utilities Service entitled "Rural Energy for America Program" (RIN: 0570-AA76). We received the rule on December 19, 2014. It was published in the *Federal Register* as a final rule on December 29, 2014. 79 Fed. Reg. 78,220.

The final rule establishes provisions for the grants and loan guarantees available for renewable energy systems (RES) and energy efficiency improvements (EEI) and for the grants available for energy audits and for renewable energy development assistance.

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). The final rule has a stated effective date of February 12, 2015. We received the rule on December 19, 2014, and it was published in the *Federal Register* on December 29, 2014. Therefore, this rule does not have the required 60-day delay in effective date.

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. With the exception of the required 60-day delay in effective date, our review of the procedural steps taken indicates that USDA 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: Lillian E. Salerno
Administrator, Rural Business-Cooperative Service
Department of Agriculture

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF AGRICULTURE,
RURAL BUSINESS-COOPERATIVE SERVICE,
RURAL UTILITIES SERVICE
ENTITLED
"RURAL ENERGY FOR AMERICA PROGRAM"
(RIN: 0570-AA76)

(i) Cost-benefit analysis

USDA performed a cost-benefit analysis in conjunction with the final rule. USDA estimated that approximately 1,393 Rural Energy for America Program (REAP) awards will be made in a typical fiscal year as follows: 487 renewable energy systems (RES) awards, 884 energy efficiency improvements (EEI) awards, and 22 energy audit, renewable energy development assistance (EA/REDA) awards. Of the RES awards, USDA expects the vast majority to be associated with solar, followed by wind and biomass projects. USDA expects the awardees to be mostly businesses, including sole proprietors, with relatively few state, local, and tribal government entities.

USDA calculated a net costs savings of approximately \$10 million as the result of improvements in the implementation of the REAP program. USDA attributes the cost savings achieved by the final rule to the decreased costs estimated for the changes in program implementation.

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

USDA determined that the final rule, while mostly affecting small entities, will not have a significant economic impact on a substantial number of these small entities. USDA made this determination based on the fact that the final rule only impacts those who choose to participate in the program. Small entity applicants will not be affected to a greater extent than large entity applicants.

(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 the final rule contains no federal mandates for state, local, and tribal governments or the private sector.

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

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

On April 14, 2011, USDA published an interim final rule in the *Federal Register*, 76 Fed. Reg. 21,110, and on April 12, 2013, USDA published a proposed rule in the *Federal Register*, 78 Fed. Reg. 22,044. USDA received comments from 32 commenters on the interim final rule and from 37 commenters on the proposed rule. USDA responded to those comments in the final rule. 79 Fed. Reg. 78,220.

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

The final rule contains information collection requirements under the Paperwork Reduction Act, and USDA has submitted the requirements contained in the final rule to the Office of Management and Budget (OMB) for review and approval.

Statutory authorization for the rule

The final rule is authorized by section 8107 of title 7 of the United States Code.

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

According to USDA, the final rule has been reviewed under the Executive Order and has been determined to be economically significant by OMB. USDA conducted a benefit-cost analysis to fulfill the requirements of the Executive Order.

Executive Order No. 13,132 (Federalism)

USDA determined that the provisions contained in the final rule will not have a substantial direct effect on states or their political subdivisions or on the distribution of power and responsibilities among the various government levels.