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September 4, 2018

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, Commodity Credit Corporation: Seed Cotton Changes to Agriculture Risk Coverage (ARC), Price Loss Coverage (PLC) Programs*

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), Farm Service Agency (FSA) and Commodity Credit Corporation (CCC) entitled “Seed Cotton Changes to Agriculture Risk Coverage (ARC), Price Loss Coverage (PLC) Programs” (RIN: 0560-AI40). We received the rule on August 17, 2018. It was published in the *Federal Register* as a final rule on August 16, 2018. 83 Fed. Reg. 40,653.

The final rule revises the eligibility requirements, enrollment procedures, and payment calculation for ARC and PLC required to conform to the Bipartisan Budget Act of 2018 (BBA). BBA amends the Agricultural Act of 2014 (the 2014 Farm Bill) to add seed cotton as a covered commodity and remove generic base acres from ARC and PLC. The final rule also amends provisions to include seed cotton yields, allocation of generic base acres, election of ARC-County Option (ARC-CO) or PLC for seed cotton base acres, and enrollment for 2018. The rule also makes some minor, clarifying changes to the administration section.

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 final rule was received on August 17, 2018. It was published in the *Federal Register* on August 16, 2018, and has a stated effective date of August 16, 2018. Therefore, the final rule does not have a 60-day delay in its effective date.

The 60-day delay in effective date can be waived however, if the agencies find for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agencies incorporate a statement of the findings and their reasons in the rule issued. 5 U.S.C. § 808(2). USDA found good cause to issue this regulation effective upon publication in the *Federal Register*. Section 1601(c)(3) of the 2014 Farm Bill provides that the authority in section 808 of Small Business Regulatory Enforcement Fairness Act of 1996 be used in implementing the changes required by title I of the 2014 Farm Bill, as amended, such as for the changes being made by the final rule. Consistent with section 1601(c)(3) of the 2014 Farm Bill, USDA found that it would be contrary to the public interest to delay the effective date of this rule because it would delay implementation of seed cotton as a covered commodity for ARC and PLC as required by the 2014 Farm Bill, as amended. According to USDA, the regulation needs to be effective to provide adequate time for producers to update base acres and yields in preparation for enrollment for 2018.

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. 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: Mary Ann Ball
USDA/FSA 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,
COMMODITY CREDIT CORPORATION
ENTITLED
“SEED COTTON CHANGES TO AGRICULTURE RISK COVERAGE (ARC),
PRICE LOSS COVERAGE (PLC) PROGRAMS”
(RIN: 0560-AI40)

(i) Cost-benefit analysis

The Department of Agriculture’s (USDA’s) Farm Service Agency (FSA) and Commodity Credit Corporation (CCC) performed a cost benefit analysis of the final rule. CCC’s estimates of transfer payments from these Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) programs are based on supply, demand, and price conditions and FSA projections for the 2018 crop. Based on the projections, the net increase in 2018-crop ARC and PLC payments is expected to be around \$743 million. Allocation of generic base is expected to increase ARC and PLC payments by \$1,067 million (\$917 million for seed cotton and \$150 million for other covered commodities) with offsets of \$324 million from eliminating ARC and PLC payments on attributed generic base.

As stated in the final rule, the changes are expected to have marginal impacts on supply, demand, and prices because the impacts are spread across the covered commodities and acreage shifts are expected to represent a small percentage of the respective covered commodity planted acreage. Peanut planted acreage is expected to decrease by approximately 15 percent, but peanut prices are not expected to change significantly because of ample peanut supplies. Peanut acres are expected to shift to other commodities such as corn and soybeans with greater market returns because eliminating generic base decouples ARC and PLC payments from planting decisions. The rule states that most seed cotton base acres are expected to elect and enroll in PLC.

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

USDA states that this rule is not subject to RFA because neither CCC nor FSA are required by the Administrative Procedure Act or any law to publish a proposed rule for this rulemaking.

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

According to USDA, 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, USDA states that this 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.*

USDA states that the Administrative Procedure Act 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 final rule involved matters relating to benefits and USDA states that it is therefore being published as a final rule without the prior opportunity for comments. In addition, according to USDA, 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, as specified in section 1601(c)(2) of the 2014 Farm Bill.

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

USDA concluded that the regulations in the final rule are exempt from the requirements of PRA, as specified in section 1601(c) of the 2014 Farm Bill, which provides that these regulations be promulgated and administered without regard to PRA.

Statutory authorization for the rule

USDA promulgated the rule under the 2014 Farm Bill and the Bipartisan Budget Act (Pub L. No. 113-79; 7 U.S.C. §§ 9011-9019), and 7 U.S.C. §§ 1508b, 7911-7912, 7916, 8702, 8711-8712, 8751-8752, and 15 U.S.C. §§ 714b and 714c.

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

USDA stated that the Office of Management and Budget (OMB) designated this rule as economically significant under the Regulatory Planning and Review Order, and therefore, OMB has reviewed this rule. The costs and benefits of this rule were summarized in the final rule, but USDA stated that the full cost benefit analysis is available on regulations.gov.

Executive Order No. 13,132 (Federalism)

USDA determined that the policies contained in the final 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, consultation with the states is not required.