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November 26, 2019

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

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

Subject: *Department of Agriculture, Commodity Credit Corporation: Conservation Stewardship Program (CSP) Interim Rule*

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 “Conservation Stewardship Program (CSP) Interim Rule” (RIN: 0578-AA67). We received the rule on November 12, 2019. It was published in the *Federal Register* as an interim rule on November 12, 2019. 84 Fed. Reg. 60883. The effective date of the rule is November 12, 2019.

The interim rule with request for comment amends the existing regulation for CSP to incorporate programmatic changes as authorized by amendments in the Agriculture Improvement Act of 2018. Pub. L. No. 115-334, 132 Stat. 4490 (2018) (2018 Farm Bill). Among other things, this rule (1) defines new terms and adjusts existing terms, such as expanding the definition of “conservation activities” and defining the term “comprehensive conservation plan”; (2) revises the CSP ranking criteria and requires that both new contracts and contract renewals be ranked based on those criteria; (3) provides opportunity for participants to renew their contracts in the first half of the fifth year of the 5-year contract; (4) bases program allocations on funds rather than acres and eliminates the requirement the program be administered at \$18 per acre average nationally; and (5) incentivizes certain activities, including authorizing payment for cover crop activities at not less than 125 percent of the annual payment amount and authorizing a supplemental payment for advanced grazing management or resource-conserving crop rotations at not less than 150 percent of the annual payment amount.

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 60-day delay in effective date can be waived, however, if the agency finds that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule

issued. 5 U.S.C. § 808(2). Here, CCC states that, due to the nature of the rule, the mandatory requirements of the 2018 Farm Bill, and the need to implement the CSP regulations expeditiously to provide assistance to producers, the Natural Resources Conservation Service and CCC find that notice and public procedure are contrary to the public interest, and thus they are not required to delay the effective date for 60 days from the date of publication.

Enclosed is our assessment of CCC'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 Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Verna Howell
Management and Program Analyst, FPAC-BC
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
“CONSERVATION STEWARDSHIP PROGRAM (CSP) INTERIM RULE”
(RIN: 0578-AA67)

(i) Cost-benefit analysis

The Department of Agriculture, Commodity Credit Corporation (CCC), under the heading of a cost benefit analysis summary, compared the Conservation Stewardship Program (CSP) under the prior statutory authorization to the current statutory authorization. Compared to the CSP as authorized under the Agricultural Act of 2014 (2014 Farm Bill), Congress has significantly reduced the program’s size—from \$9 billion to \$3.975 billion over 5 years—in the Agriculture Improvement Act of 2018 (2018 Farm Bill), according to CCC. Pub. L. No. 113-79, 128 Stat. 649 (2014) (2014 Farm Bill); Pub. L. No. 115-334, 132 Stat. 4490 (2018) (2018 Farm Bill). CCC states that the 2018 Farm Bill left much of CSP’s underlying structure intact, and thus fewer dollars will lead to fewer contracts that are funded.

CCC states that funds for all activities conducted under the CSP contract are obligated upfront and funds for contracts renewals will come from available funds at the time of contract renewal. CCC states that, under the 2014 Farm Bill, renewals were non-competitive and at the request of the contract holder. Under the 2018 Farm Bill, renewals will now be ranked against each other and funded based on the availability of funds, according to CCC. CCC states that this will reduce the number of conservation actions undertaken and may increase the cost-effectiveness of CSP.

According to CCC, the 2018 Farm Bill also eliminated the 10-million-acre cap on enrollment and the annual \$18 per acre cap on program costs, moving to an annual funding level for new CSP contracts. Further, the 2018 Farm Bill mandates the establishment of the Grassland Conservation Initiative, which is expected to cost \$214.9 million over 5 years, representing 5.5 percent of total authorized CSP funding under the 2018 Farm Bill, according to CCC. CCC states that cost-effectiveness may be affected marginally as fewer funds will be available for higher ranked applications and contract renewals. According to CCC, participation in CSP is voluntary and, therefore, CCC does not expect CSP participation to negatively impact program participants and nonparticipants.

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

CCC states that this rule is not subject to the Act because no law requires that a proposed rule be published for this rulemaking initiative. CCC states further that, despite the Act not applying, the action only affects those entities who voluntarily participate in CSP and in doing so receive its benefits.

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

CCC states that this rule contains no federal mandates, as defined under the Act, for state, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of the Act, according to CCC.

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

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

CCC states that this rule involves matters relating to benefits, and therefore is exempt from the Act's requirements. CCC also states that regulations to implement the programs of chapter 58 of title 16, United States Code, are to be made as interim rules effective on publication, with an opportunity for notice and comment. 16 U.S.C. § 3846.

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

CCC states that the regulations to implement the programs of chapter 58 of title 16, United States Code, and the administration of those programs are exempt from the Act. 16 U.S.C. § 3846.

Statutory authorization for the rule

CMS states that it promulgated this interim rule pursuant to sections 3839aa-21 through 3839aa-25 of title 16, United States Code.

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

CCC states that the Office of Management and Budget (OMB) designated this rule as economically significant under the Order, and, therefore, OMB has reviewed this rule.

Executive Order No. 13,132 (Federalism)

CCC states that the policies contained in this interim 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. CCC also states that this rule does not impose substantial direct compliance costs on state or local governments.