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January 27, 2020

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: Agricultural Conservation Easement 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), Commodity Credit Corporation (CCC) entitled “Agricultural Conservation Easement Program” (RIN: 0578-AA66). We received the rule on January 10, 2020. It was published in the *Federal Register* as an interim rule on January 6, 2020. 85 Fed. Reg. 558. The effective date of the rule is December 30, 2019.

The interim rule makes changes to the Agricultural Conservation Easement Program (ACEP) regulations to conform to the Agriculture Improvement Act of 2018 (the 2018 Farm Bill). USDA stated that ACEP is a voluntary program with two components—agricultural land easements (ACEP-ALE) and wetland reserve easements (ACEP-WRE)—to help farmers and ranchers preserve their agricultural land and restore, protect, and enhance wetlands on eligible lands. The rule makes changes to requirements on buy-protect-sell transactions, which are arrangements between the Natural Resources Conservation Service (NRCS) and an eligible entity where the entity owns or will own the land prior to the acquisition of the agricultural land easement and the eligible entity sells fee title or transfers ownership to a farmer or rancher. Specifically, according to the agency, the final rule identifies that an ACEP-ALE cost-share payment will only be provided on a reimbursable basis in order to minimize the risk that the eligible entity will have to repay NRCS for the federal share. The final rule also revises the extent to which the eligible entity’s cash contribution is a national ranking criterion and specifies the measures that will be used to maintain or increase agricultural viability, such as ACEP-ALE plans, may be a state ranking criterion. In addition, regarding the ACEP-WRE component, the final rule revises the definition of wetland restoration to include the requirement for wetland restoration to be conducted following published state-specific criteria and guidelines developed in consultation with state technical committee.

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 for good cause 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). USDA found that the notice and public procedures are contrary to the public interest because of the mandatory requirements of the 2018 Farm Bill, and the need to implement the ACEP regulations expeditiously to provide assistance to producers.

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 Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Verna Howell
FFAC-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
“AGRICULTURAL CONSERVATION EASEMENT PROGRAM”
(RIN: 0578-AA66)

(i) Cost-benefit analysis

The Department of Agriculture (USDA) stated that the mandatory and discretionary changes required by the Agriculture Improvement Act of 2018 (the 2018 Farm Bill) may affect the Agricultural Conservation Easement Program (ACEP) costs and the resulting impacts on natural resource concerns, but stated that those changes are expected to be small. USDA also stated that because ACEP is voluntary, it does not impose any burden upon agricultural landowners who choose not to participate.

USDA explained the costs and benefits of the two primary changes in the 2018 Farm Bill. USDA stated that the change to the existing contribution requirements for the non-federal share under ACEP-agricultural land easements (ACEP-ALE) adds flexibility for eligible entities to meet the non-federal share requirements by no longer specifying a minimum cash contribution amount to be provided by the eligible entity and allowing the total of the non-federal share to be comprised of a charitable donation or qualified conservation contribution from the private landowner. However, USDA stated that this change may result in increased ACEP-ALE enrollments and in an increase of 8 to 10 percent in federal contribution toward ACEP-ALE easements. In addition, USDA explained that the buy-protect-sell transactions change in the 2018 Farm Bill are intended to help farmers and ranchers acquire agricultural land they could not otherwise afford and to protect agricultural land that may have otherwise been developed or removed from agricultural production.

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

USDA determined that this final rule is not subject to the Act because the final rule involves matters relating to benefits.

(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 this final rule contains no federal mandates, as defined under the Act, 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.*

USDA did not publish a proposed rule in the *Federal Register*. The agency stated that this final rule involves matters relating to benefits and therefore is exempt from the Act's requirements.

Following the listening session for initial public input on February 26, 2019, USDA received 183 written comments from individuals, trade groups, other organizations, and state entities. USDA responded to comments in this final rule.

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

USDA determined this final rule is exempt from the Act.

Statutory authorization for the rule

USDA promulgated this final rule pursuant to sections 714b and 714c of title 15 and sections 3865–3865d of title 16, United States Code.

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

USDA determined that this final rule is economically significant under the Order and submitted it to the Office of Management and Budget for review.

Executive Order No. 13,132 (Federalism)

USDA determined that this rule does not impose any substantial direct compliance costs on state and local governments.