

441 G St. N.W.
Washington, DC 20548

B-332964

February 16, 2021

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

The Honorable David Scott
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, Commodity Credit Corporation (CCC) entitled "Agricultural Conservation Easement Program" (RIN: 0578-AA66). We received the rule on February 4, 2021. It was published in the *Federal Register* as a final rule on February 4, 2021. 86 Fed. Reg. 8113. The effective date of the rule is February 4, 2021.

According to CCC, this final rule adopts, with minor changes, an interim rule that implemented changes to the Agricultural Conservation Easement Program that were necessitated by enactment of the Agriculture Improvement Act of 2018, Pub. L. No. 115-334, 132 Stat. 4490 (Dec. 20, 2018), and changes for administrative streamlining improvements and clarifications. CCC also stated that the rule makes permanent many of the changes made in the interim rule, responds to comments received, and makes further adjustments in response to some of the comments received.

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). Here, CCC stated that the regulations to implement the programs of chapter 58 of title 16 of the United States Code, as specified in 16 U.S.C. § 3846, and the administration of those programs, are to be made as an interim rule effective on publication, with an opportunity for notice and comment, and are to use the authority under 5 U.S.C. § 808 related to congressional review. CCC stated that consistent with the use of the authority under 5 U.S.C. § 808 related to congressional review for the immediate

effective date of the interim rule, this final rule is also effective on the date of publication in the *Federal Register*.

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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in cursive script that reads "Shirley A. Jones". The signature is written in black ink and is positioned above the typed name and title.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Dawana Clark
USDA/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
“AGRICULTURAL CONSERVATION EASEMENT PROGRAM”
(RIN: 0578-AA66)

(i) Cost-benefit analysis

The Department of Agriculture, Commodity Credit Corporation (CCC), stated that it projected annualized real cost to producers of accessing the Agricultural Conservation Easement Program of \$229,000 and projected annualized real transfers of \$433 million, discounted at 3 percent to 2019. CCC also stated that conservation benefits from the easement are difficult to quantify at a national scale but have been described by studies at an individual project or watershed or local scale.

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

CCC stated that this final rule is not subject to RFA because the rule is exempt from notice and comment rulemaking requirements of the Administrative Procedure Act and no other law requires that a proposed rule be published for this rulemaking initiative.

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

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

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

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

On January 6, 2020, CCC published an interim rule. 85 Fed. Reg. 558. CCC stated that 70 commenters, including individuals, organizations, and agencies, submitted comments, and that it identified 576 comments within the 70 entries. CCC stated that this final rule involves matters relating to benefits and therefore is exempt from the Act's requirements. CCC also stated that the regulations to implement the programs of chapter 58 of title 16 of the United States Code, as specified in 16 U.S.C. § 3846, and the administration of those programs, are to be made as an interim rule effective on publication, with an opportunity for notice and comment, and are to use the authority under 5 U.S.C. § 808 related to congressional review. CCC stated that consistent with the use of the authority under 5 U.S.C. § 808 related to congressional review for the immediate effective date of the interim rule, this rule is also effective on the date of publication in the *Federal Register*.

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

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

Statutory authorization for the rule

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

Executive Order No. 12866 (Regulatory Planning and Review)

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

Executive Order No. 13132 (Federalism)

CCC determined that this final rule does 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 determined that the rule does not impose substantial direct compliance costs on state and local governments. Therefore, according to CCC, consultation with the states is not required.