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United States Government Accountability Office
Washington, DC 20548

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August 17, 2009

The Honorable Tom Harkin
Chairman
The Honorable Saxby Chambliss
Ranking Minority Member
Committee on Agriculture, Nutrition, and Forestry
United States Senate

The Honorable Collin C. Peterson
Chairman
The Honorable Frank D. Lucas
Ranking Minority Member
Committee on Agriculture
House of Representatives

Subject: *Department of Agriculture, Commodity Credit Corporation: Conservation Stewardship 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, National Resources Conservation Service (NRCS), entitled “Conservation Stewardship Program” (RIN: 0578-AA43). We received the rule on July 31, 2009. It was published in the *Federal Register* as an “interim final rule with request for comment” on July 29, 2009. 74 Fed. Reg. 37,499. The interim final rule is effective on July 29, 2009, and comments must be received on or before September 28, 2009.

Section 2301 of the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, 122 Stat. 1651, 1768 (the 2008 Act) amended the Food Security Act of 1985 to establish the Conservation Stewardship Program. NRCS states in the interim final rule that the purpose of the Conservation Stewardship Program is to encourage producers to address resource concerns in a comprehensive manner by undertaking additional conservation activities, and improving, maintaining, and managing existing conservation activities. Section 2904 of the 2008 Act authorized the Secretary of Agriculture, in consultation with the Commodity Credit Corporation, to issue this regulation as an interim final rule effective on the date of publication. This interim final rule sets forth the policies, procedures, and requirements necessary to implement the Conservation Stewardship Program as authorized by the 2008 Act.

Enclosed is our assessment of the NRCS's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that NRCS 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: Leslie Deavers
Acting Farm Bill Coordinator
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"
(RIN: 0578-AA43)

(i) Cost-benefit analysis

NRCS prepared a cost-effectiveness analysis (CEA) of this interim final rule. The CEA describes how financial assistance and technical assistance are made available through the Conservation Stewardship Program, with the program objective being to have producers adopt additional conservation activities. The CEA attempts to compare the impact of these activities in generating environmental benefits with program costs. Since the Conservation Stewardship Program is a voluntary program, it is not expected to impose any obligation or burden upon agricultural producers and non-industrial private forestland owners who chose not to participate.

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

NRCS determined that the Regulatory Flexibility Act is not applicable to this interim final rule because NRCS is not required by 5 U.S.C. § 553, or any other provision of law, to publish a notice of proposed rulemaking with regard to the subject matter of the rule.

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

NRCS states that this interim final rule does not compel the expenditure of \$100 million or more by any state, local, or tribal government, or anyone in the private sector, and therefore a federalism assessment is not required.

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

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

NRCS published this rule as an interim final rule effective on publication with request for comment, as authorized by section 2904(b) of the 2008 Act. So, despite the publication and effective date of July 29, 2009, comments can be submitted through September 29, 2009.

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

NRCS states that this interim final rule is exempt from the requirements of the Paperwork Reduction Act, as specified in section 2904 of the 2008 Act. Therefore, NRCS did not report recordkeeping or estimated paperwork burden associated with this interim final rule.

Statutory authorization for the rule

NRCS promulgated this rule pursuant to sections 2301 and 2904 of the 2008 Act.

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

NRCS concluded that this interim final rule is an economically significant regulatory action under the Executive Order since it results in an annual effect on the economy of \$100 million or more. Accordingly, NRCS conducted an economic analysis of the potential impacts of the program.

Executive Order No. 13,132 (Federalism)

NRCS did not discuss this Executive Order.