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December 1, 2009

The Honorable Blanche Lincoln
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, Farm Service Agency: Livestock Forage Disaster Program and Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish; Supplemental Agricultural Disaster Assistance*

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, Farm Service Agency (FSA), entitled “Livestock Forage Disaster Program and Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish; Supplemental Agricultural Disaster Assistance” (RIN: 0560-AH94). It was published in the *Federal Register* as a final rule on September 11, 2009. 74 Fed. Reg. 46,665. It was received by the House of Representatives on September 30, 2009. 155 Cong. Rec. H11108 (Oct. 7, 2009) (Executive Communications, etc). We received the rule on November 16, 2009.

The final rule implements specific requirements for the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP) and the Livestock Forage Disaster Program (LFP) authorized by the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). Pub. L. No. 110-246, 122 Stat. 1651 (June 18, 2008). LFP provides payments to eligible livestock producers that have suffered livestock grazing losses due to qualifying drought or fire. ELAP provides emergency assistance to eligible producers of livestock, honeybees, and farm-raised fish that have losses due to disease, adverse weather, or other conditions, including losses due to blizzards and wildfires. This rule specifies how LFP and ELAP payments are calculated, what losses are eligible, and when producers may apply for payments.

The Congressional Review Act requires major rules to have a 60-day delay in their effective date following their publication in the *Federal Register* or receipt by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). However, notwithstanding the 60-day requirement, any rule that an agency for good cause finds that the notice and public comment procedures are impractical, unnecessary, or contrary to the public interest is to take effect when the promulgating agency so determines. 5 U.S.C. § 808(2). FSA found that it would be contrary to the public interest to delay implementation of this rule because it would significantly delay assistance to the many people affected by the disasters addressed by this rule. Therefore, the requirement to have a 60-day delay does not apply to this rule.

Enclosed is our assessment of the FSA'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 FSA 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: Deirdre Holder
Director, 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,
FARM SERVICE AGENCY
ENTITLED
"LIVESTOCK FORAGE DISASTER PROGRAM AND
EMERGENCY ASSISTANCE FOR LIVESTOCK, HONEYBEES,
AND FARM-RAISED FISH; SUPPLEMENTAL
AGRICULTURAL DISASTER ASSISTANCE"
(RIN: 0560-AH94)

(i) Cost-benefit analysis

The Farm Service Agency (FSA) analyzed the costs and benefits of this final rule. FSA estimates that the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP) is likely to result in costs of the entire authorized \$50 million per year each year, providing benefits of \$50 million each year to producers of livestock, honeybees, and farm-raised fish. The benefits of the honeybee loss compensation aspect of the program could also include substantial indirect benefits to the agricultural sector as a whole, because honeybees pollinate more than \$14 billion worth of fruits, vegetables, and other crops in the United States. The honeybee portion of the program is expected to be the most expensive part of ELAP, due to losses resulting from colony collapse disorder. The Livestock Forage Disaster Program (LFP) is expected to cost about \$409 million per year, providing the same amount in benefits to livestock producers. The indirect benefit of the program is to reduce income variability of livestock producers due to drought and fire losses beyond their control.

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

FSA determined that this rule is not subject to the Act because FSA is not required to publish a notice of proposed rulemaking for this rule.

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

FSA determined that this final rule contains no federal mandates under the Act for state, local, and tribal governments or the private sector and that FSA was not required to publish a notice of proposed rulemaking for this rule.

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

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

The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) requires regulations implementing title I of the 2008 Farm Bill to be promulgated without regard to the notice and comment procedures of the Administrative Procedure Act. Pub. L. No. 110-234, § 1601(c)(2)(C), 122 Stat. 923 (May 22, 2008). The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009, applied this exemption to regulations implementing section 12033 of the 2008 Farm Bill. Pub. L. No. 110-329, § 10102, 122 Stat. 3574, 3588 (Sept. 30, 2008). FSA concluded that, to the extent relevant, the exemption also applies to the corresponding provision enacted in section 15101 since it is identical to section 12033 except for the provision for funding in section 15101 that does not appear in section 12033. Otherwise, section 10102 of the appropriations act would have no meaning. Therefore, FSA concluded that this final rule is exempt from the notice and comment requirements of the Administrative Procedures Act.

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

The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) requires regulations implementing title I of the 2008 Farm Bill to be promulgated without regard to the Paperwork Reduction Act. Pub. L. No. 110-234, § 1601(c)(2)(A), 122 Stat. 923 (May 22, 2008). For the same reasons as stated above, FSA concluded that this rule is exempt from the requirements of the Paperwork Reduction Act.

Statutory authorization for the rule

FSA promulgated this final rule under the authority of sections 1531 and 48501 of title 7, section 3801 note of title 16, section 2497 of title 19, United States Code and title III of Public Law 109-234 and title IX of Public Law 110-28.

National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321–4370f

FSA considered the environmental impacts of this final rule in a manner it determined was consistent with the provisions of the National Environmental Policy Act, the regulations of the Council on Environmental Quality, and FSA regulations for compliance with NEPA. 42 U.S.C. §§ 4321–4347; 40 CFR parts 1500–1508; 7 CFR part 799. FSA determined that the LFP provisions required by the 2008 Farm Bill that are identified in this rule are non-discretionary in nature, solely providing financial assistance. Therefore, FSA has determined that provisions for further NEPA review do not apply to this rule and no environmental assessment or environmental impact statement will be prepared.

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

The Office of Management and Budget designated this final rule as an economically significant rule under the Order and reviewed the rule.

Executive Order No. 12,372 (Intergovernmental Consultation)

FSA determined that ELAP and LFP are not subject to the Order.

Executive Order No. 12,988 (Civil Justice Reform)

FSA reviewed this final rule under the Order. FSA stated that, in accordance with the Order: (1) all state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) before any judicial action may be brought concerning this rule, appeal rights afforded program participants must be exhausted.

Executive Order No. 13,132 (Federalism)

FSA determined that this final rule does will not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government and that this rule does not impose substantial direct compliance costs on state and local governments.

Executive Order No. 13,175 (Tribal Governments)

FSA determined that the policies contained in this final rule do not impose substantial unreimbursed direct compliance costs on Indian tribal governments or have tribal implications that preempt tribal law.