



G A O

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

B-298391

July 10, 2006

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

The Honorable Bob Goodlatte
Chairman
The Honorable Collin C. Peterson
Ranking Minority Member
Committee on Agriculture
House of Representatives

Subject: *Department of Agriculture, Farm Service Agency: Emergency Conservation 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, Farm Service Agency (FSA), entitled "Emergency Conservation Program" (RIN: 0560-AH43). While our Office has not yet received the rule, it was received by the Senate on June 8, 2006, and the House received the rule on June 13, 2006. It was published in the Federal Register as an interim final rule on May 26, 2006. 71 Fed. Reg. 30263.

The interim final rule amends the Emergency Conservation Program (ECP) to implement the provisions of the Department of Defense, Emergency Supplemental Appropriation to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Pub. L. 109-149). The rule provides assistance to nursery, oyster, and poultry producers and non-industrial private forest landowners to rehabilitate public or private oyster reefs or farmland damaged by hurricanes during calendar year 2005.

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 indicates that, with the exception of filing the rule with our Office, FSA complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Robert Robinson, Managing Director, Natural Resources and Environment. Mr. Robinson can be reached at (202) 512-3841.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Tom Witzig
Director, Regulatory Review Group
Department of Agriculture

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF AGRICULTURE,
FARM SERVICE AGENCY
ENTITLED
"EMERGENCY CONSERVATION PROGRAM"
(RIN: 0560-AH43)

(i) Cost-benefit analysis

The interim final rule controls the distribution of an additional \$199,800,000 to the ECP funding and FSA expects all the allocated funding to be expended.

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

As the interim final rule was not preceded by a Notice of Proposed Rulemaking, the requirements of the Act do not apply.

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

The interim final rule does not contain either an intergovernmental or private sector mandate, as defined in title II, of more than \$100 million in any one year.

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

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

FSA has determined that there is "good cause" under 5 U.S.C. 553 to forego notice and comment procedures and issue the rule as an interim final rule because it would not be in the public interest to delay relief to the persons affected by the hurricanes.

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

The interim final rule contains an information collection that has been reviewed and approved by the Office of Management and Budget (OMB) and assigned OMB Control No. 0560-0082.

Statutory authorization for the rule

The interim final rule is issued pursuant to the authority found in Pub. L. 95-334, 92 Stat. 420, 16 U.S.C. 2201 et. seq. and Pub. L. 109-149, Division B, Sec. 101.

Executive Order No. 12866

The interim final rule was reviewed by OMB and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13132 (Federalism)

The interim final rule does not have federalism implications that warrant the preparation of a federalism assessment.