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United States Government Accountability Office  
Washington, DC 20548

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B-318524

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: Wetlands Reserve 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 “Wetlands Reserve Program” (RIN: 0578-AA47). 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 January 15, 2009. 74 Fed. Reg. 2317.

The interim final rule sets forth how the Wetlands Reserve Program will be implemented in response to changes made by the Food, Conservation, and Energy Act of 2008 (2008 Act), and incorporates other changes to the regulation for clarification or program administration improvement. Those changes include raising the enrollment cap to 3,041,200 acres through 2012, limiting program eligibility to private lands and acreage owned by Indian tribes, determining the rate of compensation for easements of 30-year contracts enrolled in the program, requiring ownership of the land for 7 years under the easement enrollment option, expanding the ranking criteria, and adding a 30-year contract enrollment option on acreage owned by Indian tribes.

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 delay requirement, any rule that an agency for good cause finds that notice and public 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). Section 2904(c) of the 2008 Act directs CCC to make this finding. Accordingly, CCC found good cause to forego the usual 60-day delay in effective date of a major rule and make the rule effective as of January 15, 2009, in order to meet the congressional intent to have conservation programs in effect as soon as possible. Therefore, the requirement to have a 60-day delay does not apply to this rule.

Enclosed is our assessment of the 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. Our review of the procedural steps taken indicates that CCC 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  
"WETLANDS RESERVE PROGRAM"  
(RIN: 0578-AA47)

(i) Cost-benefit analysis

CCC prepared a cost-benefit analysis in conjunction with this interim final rule. The main program costs associated with the interim final rule are for the purchase of easements and wetland restoration expenses with the program. CCC stated that approximately 89.8 percent of the Wetlands Reserve Program funding has been used for permanent easement projects, which have an associated Fiscal Year (FY) 2007 average per acre cost of \$3,000, about 7.9 percent for 30-year easement projects, with an FY 2007 average per acre cost of almost \$1,100, and 2.4 percent for restoration cost-share agreement projects, with an FY 2007 average per acre cost of nearly \$670.

The benefits associated with the interim final rule include creation of high-value wetlands, control of sheet and rill erosion as lands are converted from cropland to wetlands, creation and protection of habitat for fish and wildlife, improving water quality by filtering sediments and chemicals, and providing opportunities for educational, scientific, and recreational activities. According to CCC, many of the benefits are difficult to quantify. However, CCC was able to conclude that the monetary and non-monetary benefits from the Wetlands Reserve Program, as discussed in the interim final rule, can exceed total program costs.

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

The Regulatory Flexibility Act requires agencies to prepare an analysis in conjunction with any notice of proposed rulemaking or any final rule for which a notice of proposed rulemaking was promulgated. 5 U.S.C. § 604. As explained below, CCC did not issue a notice of proposed rulemaking in conjunction with this interim final rule; therefore, CCC was not required to prepare a Regulatory Flexibility Act analysis.

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

CCC determined that the interim final rule will not compel the expenditure of \$100 million or more in any one year by any state, local, or tribal governments, or anyone in the private sector.

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

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

The Administrative Procedure Act generally requires an agency to issue a notice of proposed rulemaking and an opportunity for public comment. 5 U.S.C. § 553. Section 2904 of the 2008 Act authorized CCC to promulgate an interim final rule with an opportunity for notice and comment. So, despite the publication and effective date of January 15, 2009, comments could be submitted through March 16, 2009.

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

The interim final rule was promulgated without regard to the Paperwork Reduction Act, as required by section 2904 of the 2008 Act. Therefore, no recordkeeping or estimated paperwork burden associated with the interim final rule were reported.

Statutory authorization for the rule

The interim final rule was authorized by the Food, Conservation, and Energy Act of 2008, Pub. L. 110-234, which amended the Wetlands Reserve Program, codified at 16 U.S.C. § 3837 et. seq.

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

The interim final rule was determined to be economically significant, and CCC prepared a cost-benefit analysis as required under the Order.

Executive Order No. 13,132 (Federalism)

CCC determined that this interim final rule does not have federalism implications, because it will not have substantial direct effects on the 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.