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United States Government Accountability Office
Washington, DC 20548

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December 21, 2007

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 Bob Goodlatte
Ranking Minority Member
Committee on Agriculture
House of Representatives

Subject: *Department of Agriculture, Commodity Credit Corporation: Milk Income Loss Contract 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 "Milk Income Loss Contract Program" (RIN: 0560-AH47). It was published in the *Federal Register* as a final rule on April 17, 2006. 71 Fed. Reg. 19,621. The rule was received by the House of Representatives on April 26, 2006, and by the Senate on May 15, 2006. We received the rule on December 7, 2007.

The final rule extended the Milk Income Loss Contract program until September 30, 2007, decreased the payment rate percentage during the extension period, and removed transition payment provisions from the program. CCC is directed by statute to invoke section 808 of title 5 to avoid the 60-day delay in effective date required for major rules under section 801.

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 indicates that CCC complied with the applicable requirements.

If you have any questions about this report, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236. 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

Robert J. Cramer
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,
COMMODITY CREDIT CORPORATION
ENTITLED
"MILK INCOME LOSS CONTRACT PROGRAM"
(RIN: 0560-AH47)

(i) Cost-benefit analysis

The Commodity Credit Corporation (CCC) estimated that expenses during fiscal years 2006 and 2007 would be between \$700 and \$900 million and that dairy farm income and government expenditures would increase equally.

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

CCC stated that the Regulatory Flexibility Act does not apply to this rule because the Office of the Secretary of Agriculture (Secretary) and CCC are not required to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

(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 rule imposes no unfunded mandates on any local, state, or tribal government or 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 Secretary and CCC were exempted from using notice and comment rulemaking under 5 U.S.C. § 553 by the Farm Security and Rural Investment Act of 2002, Public Law 107-171, sec. 1601(c).

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

The forms and other information collections activities needed to administer the program authorized by the regulations are not subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), because the Farm Security and Rural Investment Act of 2002, Public Law 107-171, that

authorizes the final rule provides that regulations promulgated under the Act shall be made without regard to PRA.

Statutory authorization for the rule

The final rule was promulgated under the authority of section 1502 of the Farm Security and Rural Investment Act of 2002, Pub. L. 107-171, as amended by the Deficit Reduction Act of 2004, Pub. L. 109-171.

Executive Order No. 12,866

The final rule is economically significant under the Executive Order and has been reviewed by OMB.

Executive Order No. 13,132 (Federalism)

CCC did not address the Executive Order in the final rule, although CCC did state that the final rule preempts state laws that are inconsistent with its provisions.