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United States Government Accountability Office
Washington, DC 20548

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July 21, 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: Sugar 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 (USDA), Commodity Credit Corporation (CCC), entitled “Sugar Program” (RIN: 0560-AH86). It was published in the *Federal Register* as a final rule on April 6, 2009. 74 Fed. Reg. 15,359. It was received by the Senate on April 9, 2009, and by the House of Representatives on April 24, 2009. 155 Cong. Rec. S4441 (April 20, 2009); 155 Cong. Rec. H5166 (May 5, 2009). As of July 20, 2009, we have not received the rule.

The final rule implements provisions of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) administering the sugar loan and sugar marketing allotment program through 2012. The 2008 Farm Bill generally extends the existing sugar program with some changes, including new loan rates for raw cane sugar and beet sugar, new provisions to guarantee domestic suppliers an 85 percent market share, and revised procedures for granting new allocations for new entrants. As noted by CCC, all of the changes made by this final rule are required by the 2008 Farm Bill, for which USDA has little or no discretion in when and how to implement.

The final rule has an effective date of April 6, 2009, the same date as its publication in the *Federal Register*. The Congressional Review Act (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, the Act exempts any rule “that an agency for good cause finds that notice

and public procedures are impractical, unnecessary, or contrary to the public interest” from the 60-day delay. 5 U.S.C. § 808. Such rules take effect “at such time as the Federal agency promulgating the rule determines.” *Id.* Section 1601(c)(3) of the 2008 Farm Bill requires that CCC use the authority in 5 U.S.C. § 808 to forgo the 60-day delay. 7 U.S.C. § 8781(c)(3).

In addition, before a rule can take effect, the Congressional Review Act requires the promulgating agency to submit to the Comptroller General, in addition to each House of Congress, a copy of the rule, a concise general statement relating to the rule including whether it is a major rule, and the proposed effective date of the rule. 5 U.S.C. § 801(a)(1)(A). As of July 20, 2009, we have not received a copy of this rule. Notwithstanding CCC’s failure to submit the rule to our Office, the final rule is effective on April 6, 2009, because of the inclusion of section 1601(c)(3) in the 2008 Farm Bill and CCC’s related finding of good cause. However, the requirement to submit the rule to the Comptroller General is still applicable.

Enclosed is our assessment of 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, except for the failure to file the rule with our Office, 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: Dennis J. Taitano
Acting Executive Vice President
Commodity Credit Corporation
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
"SUGAR PROGRAM"
(RIN: 0560-AH86)

(i) Cost-benefit analysis

CCC prepared a cost-benefit analysis of this final rule. CCC states that this final rule implements two major changes in the sugar program resulting from the 2008 Farm Bill, higher loan rates and a guaranteed market share. CCC concludes that these are expected to have zero impact on federal costs for FY 2009 and FY 2010 because baseline assumptions project FY 2011 to be the first year of surplus sugar in the marketplace. However, over the course of FY 2009 through FY 2018, CCC concludes that federal net expenditures are expected to be \$1.055 billion more than if the 2002 Farm Bill provisions were still in place. CCC also concludes that the loan rate increase is expected to increase sugar costs to consumers and sugar users by \$1.4 billion from 2009 to 2018.

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

CCC states that this final rule is not subject to the Regulatory Flexibility Act since it was 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

CCC concludes that this final rule contains no federal mandate under the regulatory provisions of the Unfunded Mandates Reform Act for state, local, and tribal governments or the private sector. CCC notes that, regardless, this final rule is not subject to the Act because CCC was not required to publish a notice of proposed rulemaking.

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

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

CCC states that this final rule is exempt from the notice and comment provisions of the Administrative Procedure Act, as specified in section 1601(c) of the 2008 Farm Bill.

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

CCC states that this final rule is exempt from the requirements of the Paperwork Reduction Act, as specified in section 1601(c)(2) of the 2008 Farm Bill.

Statutory authorization for the rule

CCC states that this final rule was promulgated under the authority in 7 U.S.C. §§ 1359aa-1359jj and 7272, 15 U.S.C. §§ 714b and 714c, and implements the changes to the sugar loan and sugar marketing allotment programs mandated by Title I of the 2008 Farm Bill, Pub. L. No. 110-246, 122 Stat. 1651.

Executive Order No. 12866 (Regulatory Planning and Review)

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

Executive Order No. 13132 (Federalism)

CCC states that this final rule does 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. CCC also states that this final rule does not impose substantial direct compliance costs on state and local governments, and therefore consultation with the states is not required.