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B-318412

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: Marketing Assistance Loans and Loan Deficiency Payments*

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 "Marketing Assistance Loans and Loan Deficiency Payments" (RIN: 0560-AH87). It was published in the *Federal Register* as a final rule on April 7, 2009, with a stated effective date of April 6, 2009. 74 Fed. Reg. 15,644. 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, it has not been received by GAO.

The final rule revises the regulations governing the Marketing Assistance Loans (MAL) and Loan Deficiency Payments (LDP) programs for wheat, feed grains soybeans, other oilseeds, peanuts, pulse crops, honey, wool, and mohair. CCC is making these amendments to comply with the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). Pub. L. No. 110-246, 122 Stat. 1651 (June 18, 2008). The 2008 Farm Bill extended the MAL and LDP programs through 2012 with some changes, which are implemented in this rule. Among the changes implemented is adding large chickpeas to the list of pulse crops eligible for assistance beginning in crop year 2009. This rule also provides separate rates for long and medium grain rice beginning in crop year 2008. Additionally, the rule allows producers to store collateral in warehouses without a CCC storage agreement if the warehouses are licensed by the federal government or a state.

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 1601(c)(3) of the 2008 Farm Bill directs CCC to make this finding. 7 U.S.C. § 8781(c)(3). Accordingly, CCC determined that this final rule affects a large number of agricultural producers who are dependent on these provisions for income support and need to know the details as soon as possible, and that this constitutes good cause to make the rule effective April 6, 2009. Therefore, the requirement to have a 60-day delay does not apply to this rule.

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. Although CCC's finding of good cause means that the effective date is not affected by the non-submission of the rule to GAO, the requirement to submit the rule to the Comptroller General is still applicable.

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, 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  
"MARKETING ASSISTANCE LOANS AND  
LOAN DEFICIENCY PAYMENTS"  
(RIN: 0560-AH87)

(i) Cost-benefit analysis

The Commodity Credit Corporation (CCC) prepared a cost-benefit assessment of the changes made by this final rule. The assessment includes discussions of the statutorily-mandated and discretionary changes for the Marketing Assistance Loans (MAL) and Loan Deficiency Payments (LDP) programs. CCC expects the projected impacts from the use of its discretionary authority to be relatively minor. Projected outlays impacts were discussed in a cost-benefit analysis completed for a prior rulemaking. 73 Fed. Reg. 79,284 (Dec. 29, 2008). That analysis stated that the average annual change in government outlays for fiscal years 2008 to 2012 would be \$487 million. CCC determined that the impacts of the regulatory changes addressed in this final rule and the prior rule are inherently interrelated and therefore did not address the impact of the rules individually.

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

CCC determined that this final rule is not subject to the Act because CCC 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 determined that this major rule is not subject to the Act because CCC was not required to publish a notice of proposed rulemaking. However, CCC determined that this final rule contains no federal mandates under the Act for state, local, and tribal governments 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.

CCC determined that section 1601(c) of the 2008 Farm Bill exempts this final rule from the notice and comment provisions of the Act. Section 1601(c)(2)(C) states

that regulations under title 7, United States Code, are to be promulgated without regard to the notice and comment provisions of the Act. 7 U.S.C. § 8781(c)(2)(C).

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

This final rule is exempt from the requirements of the Act. 7 U.S.C. § 1601(c)(2)(A).

Statutory authorization for the rule

CCC promulgated this final rule under the authority of sections 7231–7237 and 7931–7936 of title 7 and 714b and 714c of title 15, United States Code, and Public Law 110-246 (2008 Farm Bill).

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

CCC stated that the environmental impacts of this final rule have been considered in a manner consistent with the provisions of NEPA, the regulations of the Council on Environmental Quality (40 C.F.R. parts 1500–1508), and Farm Service Agency regulations for compliance with NEPA (7 C.F.R. part 799). The Farm Service Agency determined that this rule will not constitute a major federal action significantly affecting the quality of the human environment, and, therefore, no environmental impact statement was prepared.

Executive Order No. 12866 (Regulatory Planning and Review)

CCC determined that this final rule is economically significant under the Order. CCC prepared a cost-benefit analysis of the rule and the Office of Management and Budget reviewed the rule.

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

CCC determined that this final rule preempts state and local laws, regulations, or policies that are inconsistent with its provisions, but only if they present an irreconcilable conflict with the rule. This rule is not retroactive.

Executive Order No. 13132 (Federalism)

CCC determined that the policies contained in this final rule do 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.