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B-318838

October 28, 2009

The Honorable Blanche Lincoln  
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: Farm Storage Facility Loan and Sugar Storage Facility Loan Programs*

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 “Farm Storage Facility Loan and Sugar Storage Facility Loan Programs” (RIN: 0560-AH60). We received the rule on October 15, 2009. It was published in the *Federal Register* as a final rule on August 18, 2009. 74 Fed. Reg. 41,581.

The final rule amends the regulations governing the Farm Storage Facility Loan (FSFL) and Sugar Storage Facility Loan (SSFL) programs. The final rule implements changes from the 2008 Farm Bill and adds hay and renewable biomass as eligible FSFL commodities, extends the maximum loan term to 12 years, and increases the maximum loan amount to \$500,000. The final rule also adds fruits and vegetables (including nuts) as eligible facility loan commodities and adds cold storage facilities as eligible facilities. The final rule also clarifies requirements for loan security and allows for a partial loan disbursement during construction if certain conditions are met.

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. Accordingly, CCC found good cause to forego the usual 60-day delay in effective date of a major rule and make the rule effective upon the date of filing for public inspection with the *Federal Register*, August 17, 2009, in order to allow the large number of agricultural producers who are dependent upon these provisions for financing farm storage to know the details as soon as possible, as it affects their planting, marketing, and building decisions.

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: 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  
"FARM STORAGE FACILITY LOAN AND  
SUGAR STORAGE FACILITY LOAN PROGRAMS"  
(RIN: 0560-AH60)

(i) Cost-benefit analysis

CCC prepared a cost-benefit analysis in conjunction with the final rule. CCC determined that the changes to the farm storage facility loans (FSFL) program will add costs of \$6 million in 2009, \$28 million in 2010, \$30 million in 2011, and \$32 million in 2012 over the cost of the existing program. If the full costs of the program are considered, rather than the changes made by the final rule, the financial impact will be over \$100 million per year.

CCC determined that the final rule will have benefits to producers of about \$10 million per year in interest rate savings over what they would have to pay to finance comparable loans from commercial lenders. Assuming that all those producers could have gotten a commercial loan and would have done so, commercial lenders have an equivalent \$10 million loss in loan revenue per year. The benefits to producers may be larger, if the credit markets remain tight because the spread between FSFL rates and commercial rates might be larger. CCC also noted that the final rule has a small potential for negative impact on commercial storage facilities, such as grain elevators, by providing below-market rate loans for on-farm storage facilities. However, because FSFL has funded less than 4 percent of the on-farm storage capacity in the United States, it is unlikely that the program is having a significant impact on commercial storage facilities at a national level.

(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. CCC did not issue a notice of proposed rulemaking in conjunction with this 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

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare an analysis before promulgating any notice of proposed rulemaking or any final rule for which a notice of proposed rulemaking was promulgated. 2 U.S.C. § 1532(a). CCC did not issue a notice of proposed rulemaking in conjunction with this final rule; therefore, CCC was not required to prepare an Unfunded Mandates Reform analysis.

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

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

The final rule was promulgated and administered without regard to the notice and comment provisions of the Administrative Procedure Act, as required by section 1601(c) of the 2008 Farm Bill.

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

The 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

The final rule is authorized by section 1614 of the 2008 Farm Bill, Pub. L. No. 110-246, codified at 7 U.S.C. § 8789.

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

The final rule was determined to be economically significant, was reviewed by the Office of Management and Budget, and CCC prepared a cost-benefit analysis as required under the Order.

Executive Order No. 13,132 (Federalism)

CCC determined that this 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. In addition, CCC determined that this final rule does not impose substantial direct compliance costs on state and local governments.