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Washington, DC 20548

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November 10, 2010

The Honorable Blanche Lincoln
Chairman
The Honorable Saxby Chambliss
Ranking Member
Committee on Agriculture, Nutrition, and Forestry
United States Senate

The Honorable Collin C. Peterson
Chairman
The Honorable Frank D. Lucas
Ranking Member
Committee on Agriculture
House of Representatives

Subject: *Department of Agriculture, Commodity Credit Corporation: Biomass Crop Assistance Program*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by Department of Agriculture (USDA), Commodity Credit Corporation, entitled “Biomass Crop Assistance Program” (RIN: 0560-AH92). We received the rule on October 20, 2010. It was published in the *Federal Register* as a final rule on October 27, 2010. 75 Fed. Reg. 66,202.

The final rule implements the new Biomass Crop Assistance Program (BCAP) by specifying the requirements for eligible producers and participants, biomass conversion facilities, and eligible renewable biomass crops and materials. BCAP is intended to assist agricultural and forest land owners and operators with the establishment and production of eligible crops in selected project areas for conversion to bioenergy, and the collection, harvest, storage, and transportation of eligible material for use in a biomass conversion facility.

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). USDA 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 publication in the *Federal Register*, October 27, 2010.

Enclosed is our assessment of USDA'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 USDA 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
"BIOMASS CROP ASSISTANCE PROGRAM"
(RIN: 0560-AH92)

(i) Cost-benefit analysis

USDA prepared a cost-benefit analysis in conjunction with the final rule. The total outlays are \$461 million in constant (2011) dollars. Because the payments under the final rule are essentially transfer payments, the costs to the government equal the benefits to biomass crop assistance program (BCAP) producers and biomass crop farms.

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

USDA determined that the final rule will not have a significant economic impact on a substantial number of small entities.

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

USDA states that the final rule contains no federal mandates for state, local, or tribal governments, or of the private sector.

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

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

On June 11, 2009, USDA published in the *Federal Register* a BCAP notice of funding availability for the collection, harvest, storage, and transportation of eligible materials. 74 Fed. Reg. 27,767. On February 8, 2010, USDA published the BCAP proposed rule, which terminated the notice of funding availability. 75 Fed. Reg. 6,264. USDA received 24,008 comments on the proposed rule from individuals, trade groups and organizations, state and local government entities, federal entities, tribes, and Alaska native corporations. The majority of the comments were submitted as one of four form letters. USDA responded to the comments in the final rule. 75 Fed. Reg. 66,202.

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

The final rule contains information collection requirements under the Act. USDA requested comments on the revision of new information collection requirements and submitted those comments and responses to the comments in the full request submitted to the Office of Management and Budget (OMB). The approved burden hours will be incorporated into existing approval under OMB control number 0560-0082.

Statutory authorization for the rule

The final rule is authorized by section 9001 of the Food, Conservation, and Energy Act of 2008, Pub. L. 110-246.

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

The final rule was determined to be economically significant and was reviewed by OMB.

Executive Order No. 13,132 (Federalism)

USDA determined that the final rule does not have a substantial direct effect on states, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government.