August 25, 2014

The Honorable Debbie Stabenow
Chairwoman
The Honorable Thad Cochran
Ranking Member
Committee on Agriculture, Nutrition, and Forestry
United States Senate

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

Subject: Department of Agriculture, Commodity Credit Corporation: Cotton Transition Assistance Program and General Provisions for Agriculture Risk Coverage and Price Loss Coverage 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 “Cotton Transition Assistance Program and General Provisions for Agriculture Risk Coverage and Price Loss Coverage Programs” (RIN: 0560-AI22). We received the rule on August 12, 2014. It was published in the Federal Register as a final rule on August 8, 2014. 79 Fed. Reg. 46,335.

This final rule implements the new Cotton Transition Assistance Program (CTAP) authorized by the Agricultural Act of 2014 (the 2014 Farm Bill).\(^1\) It also includes general provisions needed to implement CTAP, the Agriculture Risk Coverage (ARC), and Price Loss Coverage (PLC) Programs. CCC intends to implement ARC and PLC through a separate rulemaking and will provide benefits for other commodities. CTAP is a temporary program that provides payments to producers on farms for which cotton base acres were in existence as of September 30, 2013, as adjusted. It will operate for only the 2014 crop year and in certain counties for the 2015 crop year and is intended to be a transition for producers on farms with upland cotton base acres that were in existence as of September 30, 2013, between the previous Direct and Counter-cyclical Payments Program (DCP) and the new Stacked Income Protection Plan (STAX), which is authorized to begin no later than the 2015 crop year.

The Congressional Review Act requires a 60-day delay in the effective date of a major rule from the date of publication in the Federal Register or receipt of the rule by Congress, whichever is

later. 5 U.S.C. 801(a)(3)(A). The rule has a stated effective date of August 8, 2014. The rule was published in the Federal Register on August 8, 2014, and received on August 12, 2014. Therefore, the final rule does not have the required 60-day delay in effective date. The 60-day delay in effective date can be waived, however, if the agency finds for good cause that notice and public procedures thereon are impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. § 808(2). CCC found that it would be contrary to the public interest to delay the effective date of this rule because it would delay implementation of CTAP as specified in the 2014 Farm Bill. Section 1601(c)(3) of the 2014 Farm Bill directs CCC to waive the 60-day requirement when implementing the changes required by title I of the 2014 Farm Bill, such as for the changes being made by this rule. Further, CCC found that the regulation needs to be effective to provide adequate time for producers to be ready to begin the sign-up process in a timely fashion and make payments as soon as possible after October 1, 2014. Therefore, the 60-day delay requirement is waived.

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 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
    USDA/FSA Regulatory Review Group Director
    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
"COTTON TRANSITION ASSISTANCE PROGRAM
AND GENERAL PROVISIONS FOR AGRICULTURE
RISK COVERAGE AND PRICE LOSS COVERAGE PROGRAMS"
(RIN: 0560-AI22)

(i) Cost-benefit analysis

The Commodity Credit Corporation (CCC) estimates that Cotton Transition Assistance Program (CTAP) payments will be $572.1 million for 2014 and $1.6 million for 2015. In 2013, approximately 122,000 producers enrolled upland cotton base acres in the Direct and Counter-cyclical Payments Program (DCP) and the Average Crop Revenue Election (ACRE). For 2014, CCC estimates a similar number of producers and farms will apply for 2014 CTAP payments totaling $572.1 million. For 2015, CCC estimates that approximately 18,000 producers with 2013 upland cotton base acres in areas where the Stacked Income Protection Plan (STAX) has not yet been implemented will apply for CTAP payments totaling $1.6 million. Some producers with cotton base acres did not enroll those acres in DCP and ACRE. If those producers apply for CTAP, meaning that every potentially eligible cotton base acre generates a CTAP payment, the estimates would be slightly higher, at $624 million for 2014 and $1.8 million for 2015. There is a payment limit of $40,000 per year per person or legal entity for CTAP.

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

This final rule is not subject to the Act because CCC was not required to publish a proposed rule for public comment.

(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 final rule contains no federal mandates 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.

Regulations implementing title I of the 2014 Farm Bill, such as this final rule, are to be promulgated without regard to the notice and comment provisions of the Act. 7 U.S.C. § 9091(c)(2)(A).
Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

Regulations implementing title I of the 2014 Farm Bill, such as this final rule, are to be promulgated without regard to the Act. 7 U.S.C. § 9091(c)(2)(B).

Statutory authorization for the rule

CCC promulgated this final rule under the authority of sections 1508b, 7911–7912, 7916, 8702, 8711–8712, and 8751–8752 of title 7 and sections 714b and 714c of title 15, United States Code.

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

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

Executive Order No. 13,132 (Federalism)

CCC determined that this final rule does not have any 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, except as required by law. CCC also determined that this rule impose substantial direct compliance costs on state and local governments.