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United States Government Accountability Office
Washington, DC 20548

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March 1, 2011

The Honorable Debbie Stabenow
Chairwoman
The Honorable Pat Roberts
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, Rural Business-Cooperative Service and Rural Utilities Service: Biorefinery Assistance Guaranteed Loans*

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), Rural Business-Cooperative Service and Rural Utilities Service, entitled “Biorefinery Assistance Guaranteed Loans” (RIN: 0570-AA73). We received the rule on January 19, 2011. It was published in the *Federal Register* as an interim rule with request for comments on February 14, 2011. 76 Fed. Reg. 8404.

The interim rule with request for comments establishes a guaranteed loan program for the development and construction of commercial-scale biorefineries and for the retrofitting of existing facilities using eligible technology for the development of advanced biofuels. All provisions of this regulation are adopted on an interim final basis, are subject to a 60-day comment period, and will remain in effect until USDA adopts the final rule. Comments must be received on or before April 15, 2011.

The interim rule with request for comments has an effective date of March 16, 2011. The Congressional Review Act (CRA) 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). We received the rule on

January 19, 2011, but it was not published in the *Federal Register* until February 14, 2011. Therefore the interim rule with request for comments does not have the required 60-day delay in its effective date.

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: Judith A. Canales
Administrator
Rural Business-Cooperative Service
Department of Agriculture

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF AGRICULTURE,
RURAL BUSINESS-COOPERATIVE SERVICE AND
RURAL UTILITIES SERVICE
ENTITLED
"BIOREFINERY ASSISTANCE GUARANTEED LOANS"
(RIN: 0570-AA73)

(i) Cost-benefit analysis

USDA identified potential benefits and costs of the Biorefinery Assistance Guaranteed Loan Program to lenders, borrowers, and USDA. The analysis contains both quantitative estimates and qualitative descriptions of the expected benefits and costs of the Biorefinery Assistance Guaranteed Loan Program. USDA states that the environmental and energy impacts associated with the Biorefinery Assistance Guaranteed Loan Program were qualitatively assessed.

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

USDA has determined that this action will not have an economically significant impact on a substantial number of small entities.

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

USDA states that this interim rule contains no federal mandates for state, local, and tribal governments or the private sector and, thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

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

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

The interim rule with comment period was issued using the notice and comment procedures found at 5 U.S.C. § 553. On April 16, 2010, the USDA published a proposed rule for the Biorefinery Assistance Guaranteed Loan Program. 75 Fed. Reg. 20,044. USDA requested comments on the proposed rule, which are summarized in the interim rule with request for comments.

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

USDA states that the information collection requirements contained in the Notice of Funding Availability for the Section 9003 Biorefinery Assistance Guaranteed Loan Program published on November 20, 2008, were approved by the Office of Management and Budget (OMB) under emergency clearance procedures and assigned OMB Control Number 0570–0055. In accordance with the Paperwork Reduction Act of 1995, USDA is now seeking standard OMB approval of the reporting requirements contained in this interim rule.

Statutory authorization for the rule

USDA states that the interim rule with request for comments is authorized by 5 U.S.C. § 301 and 7 U.S.C. § 1989.

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

USDA explains that this interim rule has been reviewed under Executive Order 12,866 and has been determined to be economically significant by OMB.

Executive Order No. 13,132 (Federalism)

USDA determined that this interim rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in the rule will not have a substantial direct effect on states or their political subdivisions or on the distribution of power and responsibilities among the various government levels.