U.S. GOVERNMENT ACCOUNTABILITY OFFICE
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Washington, DC 20548

B-330348

September 14, 2018

The Honorable Pat Roberts
Chairman
The Honorable Debbie Stabenow
Ranking Member
Committee on Agriculture, Nutrition, and Forestry
United States Senate

The Honorable K. Michael Conaway
Chairman
The Honorable Collin C. Peterson
Ranking Member
Committee on Agriculture
House of Representatives

Subject: *Department of Agriculture, Commodity Credit Corporation: Market Facilitation Program*

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), Commodity Credit Corporation (CCC) entitled "Market Facilitation Program" (RIN: 0560-AI42). We received the rule on August 30, 2018. It was published in the *Federal Register* as a final rule on August 30, 2018. 83 Fed. Reg. 44,173. The effective date of the final rule is August 30, 2018.

The final rule implements the Market Facilitation Program (MFP). MFP provides payments to producers with commodities that have been significantly impacted by actions of foreign governments resulting in the loss of traditional exports. This rule specifies the eligibility requirements, payment calculations, and application procedures for MFP. The details for specific commodities and the relevant application start dates will be announced in subsequent notices of funds availability.

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). This rule was received on August 30, 2018. It was published in the *Federal Register* on August 30, 2018, and has a stated effective date of August 30, 2018. Therefore, the final rule does not have a 60-day delay in its effective date.

However, the 60-day delay in effective date can be waived, if the agencies find for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agencies incorporate a statement of the findings and their reasons in the rule issued. 5 U.S.C. § 808(2). USDA found good cause to issue this regulation effective upon publication in the *Federal Register*. According to USDA, the beneficiaries of this rule have been significantly impacted by actions of foreign governments resulting in the loss of traditional exports. Therefore, USDA found that it would be contrary to the public interest to delay the effective date of this rule because it would delay implementation of MFP. USDA stated that the regulation needs to be effective to provide adequate time for producers to submit applications to request payments.

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. 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: Mary Ann Ball
FSA Regulatory Review Group
Department of Agriculture

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF AGRICULTURE,
COMMODITY CREDIT CORPORATION
ENTITLED
"MARKET FACILITATION PROGRAM"
(RIN: 0560-AI42)

(i) Cost-benefit analysis

The Department of Agriculture's (USDA's) Commodity Credit Corporation (CCC) performed a cost benefit analysis of the final rule. CCC stated that the amount of Market Facilitation Program (MFP) payments for each commodity is intended to offset some of the adverse impact of losing market demand due to trade issues, for example, retaliatory tariffs imposed by other countries. According to CCC, the payment rate per unit (for example, bushel, pound, hundredweight, or animal) for each commodity will reflect the severity of the impact of trade disruptions to that commodity and the commodity-specific period of adjustment to new trade patterns. For example, the payment rate for a commodity that is heavily dependent on export markets, such as soybeans, will be higher than a commodity for which most production is marketed domestically. USDA forecasted those impacts based on the percentage of 2017 U.S. production of each commodity that was exported in 2017, the share of exports affected by trade disruptions, and other variables such as current stocks-to-use ratio for crop commodities.

As stated in the final rule, the expected cost of initial MFP payments is approximately $5 billion. The majority of payments will go to soybean producers, because USDA has determined that soybeans have been most severely impacted by recent trade actions based on analysis of exports as a share of total production, the time it will take to adjust to new trade patterns, the observed price impact, and the current stocks-to-use ratio. The rule stated that the payments represent the total benefits (payments) to producers, which is the total cost to the government for MFP.

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

USDA stated that this rule is not subject to RFA because CCC is not required by the Administrative Procedure Act or any law to publish a proposed rule for this rulemaking.

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

According to USDA, the final rule contains no federal mandates, as defined in title II of UMRA, for state, local, and tribal governments or the private sector. Therefore, USDA stated that 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.*

USDA stated that the Administrative Procedure Act provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to grants or benefits. The final rule governs the program for payments to certain commodity producers and USDA states that it thus falls within that exemption. Accordingly, USDA maintained that the rule is effective upon publication in the *Federal Register*. Further, according to USDA, the opportunity for notice and comment is limited to the Paperwork Reduction Act requirements for the information collection activities.

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

USDA stated that, in accordance with PRA, a new information collection request that supports MFP was submitted to the Office of Management and Budget (OMB) for emergency approval, and OMB approved the 6-month emergency information collection.

Statutory authorization for the rule

USDA promulgated the rule under 15 U.S.C. §§ 714b and 714c.

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

USDA stated that OMB designated this rule as economically significant under the Regulatory Planning and Review Order, and therefore OMB has reviewed this rule. The costs and benefits of this rule were summarized in the final rule, but USDA stated that the full cost benefit analysis is available on regulations.gov.

Executive Order No. 13,132 (Federalism)

USDA determined that the policies contained in the final rule do 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. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, according to USDA, consultation with the states is not required.