



441 G St. N.W.
Washington, DC 20548

B-326216

September 12, 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: Margin Protection Program for Dairy and Dairy Product Donation 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, Commodity Credit Corporation (CCC) entitled "Margin Protection Program for Dairy and Dairy Product Donation Program" (RIN: 0560-AI13). We received the rule on August 25, 2014. It was published in the *Federal Register* as a final rule on August 29, 2014. 79 Fed. Reg. 51,453.

The final rule implements regulations for the Margin Protection Program for Dairy (MPP-Dairy) and the Dairy Product Donation Program as authorized by the 2014 Farm Bill.

The final rule has an effective date of August 29, 2014. 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 August 25, 2014, and the rule was published in the *Federal Register* on August 29, 2014. Therefore, the final rule does not have the required 60-day delay in its effective date. The 60-day delay in effective date can be waived, however, if the agency finds for good cause that delay is 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 determined that it would be contrary to the public interest to delay the effective date of the final rule, as it would delay implementation of MPP-Dairy as required in the 2014 Farm Bill, which specifies in section 1601(c)(3) that rules implementing title I of the 2014 Farm Bill, such as this final rule, use the authority in section 808(2) of CRA.

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
"MARGIN PROTECTION PROGRAM FOR DAIRY
AND DAIRY PRODUCT DONATION PROGRAM"
(RIN: 0560-AI23)

(i) Cost-benefit analysis

CCC performed a cost-benefit analysis. According to CCC, if current milk prices and cattle feed prices continue through the end of 2018, the payments to dairy producers from the government via the Margin Protection Program for Dairy (MPP-Dairy) and the Dairy Product Donation Program (DPDP) will be zero. Any program payments would be more than offset by MPP-Dairy premiums and fees. However, in the event of prolonged low margins, programs outlays could exceed \$100 million per year. CCC determined that if actual margins vary significantly from mean projections used for the 2015 President's Budget Midsession Review, DPDP is expected to trigger twice during the 2015 to 2018 period and total cost is expected to be about \$400 million over the 4-year period, for an average cost of \$100 million per year. That is a net cost to the government for both MPP-Dairy and DPDP, meaning the projected total payments to producers and the cost of the dairy products purchased minus the MPP-Dairy fees and premiums paid to CCC. Nearly all of the impacts estimated in this analysis are transfers between entities within society. For example, DPDP results in an average annual cost to the government of about \$30 million for dairy product purchases (cost side of the transfer), which would be balanced by low-income individuals receiving \$30 million worth of free dairy products (benefit side of the transfer).

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

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act or any other law, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The final rule is exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act, and therefore the final rule is not subject to the Regulatory Flexibility Act.

(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 the final rule contains no federal mandates for state, local, and tribal governments, or on the private sector.

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

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

In general, the Administrative Procedure Act, 5 U.S.C. 553, requires that a notice of proposed rulemaking be published in the *Federal Register* and interested parties be given an opportunity to comment. However, section 1601(c)(2) of the Agricultural Act of 2014, Pub. L. No. 113-79 (the 2014 Farm Bill) exempts rules promulgated under title I of the 2014 Farm Bill, such as this final rule, from the notice and comment provisions of the Administrative Procedure Act.

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

The final rule is exempt from the Paperwork Reduction Act, as specified in subsection 1601(c)(2)(B) of the 2014 Farm Bill, which provides that rules promulgated under title I of the bill be promulgated and administered without regard to the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is authorized by sections 1401-1410, and 1431 of the Agricultural Act of 2014, Pub. L. No. 113-79 (2014 Farm Bill) (7 U.S.C. §§ 9051-9060, 9071).

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

The final rule was designated as economically significant under the Order and was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

CCC determined that the final rule will not have any substantial direct effect on states, on the relationship between the federal government and the states, or on the distribution of power among the various levels of government, except as required by law. Additionally, CCC determined that the final rule does not impose substantial direct compliance costs on state and local governments.