



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

B-327106

July 8, 2015

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, Rural Business-Cooperative Service, Rural Utilities Service: Biorefinery, Renewable Chemical, and Biobased Product Manufacturing 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 the Department of Agriculture (USDA), Rural Business-Cooperative Service, Rural Utilities Service entitled “Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program” (RIN: 0570-AA73). We received the rule on June 15, 2015. It was published in the *Federal Register* as an interim final rule on June 24, 2015. 80 Fed. Reg. 36,410.

The interim final rule for the Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program (the program), formerly the Biorefinery Assistance Program, incorporates changes required in the Agricultural Act of 2014 (2014 Farm Bill) and addresses comments received on the interim final rule published on February 14, 2011 (76 Fed. Reg. 8404). The interim final rule established provisions for the loan guarantees available for biorefineries to support the production of advanced biofuels and renewable chemicals and for biobased product manufacturing facilities. According to USDA, the major changes being implemented by this rule are: revised the purpose and scope section by adding renewable chemicals and biobased product manufacturing; added the ability to fund biobased product manufacturing facilities; removed the requirement that the majority of the biorefinery production must be an advanced biofuel in order to be eligible for program assistance; supplemented the program to include a “project-finance framework”; implemented a two-phase application process; overhauled the scoring of applications; and limited interest accrual to 90 days, in most instances, to determining what the guarantee will cover and what can be included in a loss claim.

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: Lillian E. Salerno  
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,  
RURAL UTILITIES SERVICE  
ENTITLED  
“BIOREFINERY, RENEWABLE CHEMICAL, AND  
BIOBASED PRODUCT MANUFACTURING ASSISTANCE PROGRAM”  
(RIN: 0570-AA73)

(i) Cost-benefit analysis

USDA estimates that approximately 95 applicants will submit Phase 1 applications to the Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program (the program). According to USDA, the burden to these applicants under the new two-phase application process is estimated to be approximately 700 hours per application. USDA estimates that each applicant who receives a loan guarantee would require an additional 252 hours for reporting and other servicing actions.

USDA states that the benefits associated with the program under the subsequent interim rule are, for the most part, the same as those that accrue under the baseline program. Direct beneficiaries of the program continue to be those applicants who receive a section 9003 loan guarantee, but now include owners and operators of biorefineries whose primary product is a renewable chemical and owners and operators of biobased product manufacturing facilities. Indirect beneficiaries of the program continue to include technology providers of the systems used in advancing these facilities, feedstock suppliers, producer associations and cooperatives, and lenders. Expanding the program to include renewable chemicals and biobased product manufacturing will further potential positive environmental impacts associated with replacing petroleum-based feedstock with renewable biomass feedstock. USDA expects the changes to make the program more attractive to larger, more sophisticated lenders who are under more regulatory scrutiny than the lenders that have historically participated in the USDA's guaranteed loan programs. Their participation is necessary due to the size of the projects funded under the program. Changes are also made that clarify and streamline USDA application requirements, which will aid lenders and borrowers in putting together materials required as part of the application process. USDA also expects the changes to the program to result in a greater diversity of the types of projects being funded, including biobased product manufacturing facilities and biorefineries whose primary product is a renewable chemical that had not been eligible for funding under the program as authorized by the 2008 Farm Bill. USDA further expects these changes to improve the financial feasibility of biorefineries producing advanced biofuels and renewable chemicals because renewable chemicals typically are of higher value than advanced biofuels and have broader market opportunities.

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

USDA certified that the rule will not have a significant economic impact on a substantial number of small entities. The rule affects entities that utilize the section 9003 Guaranteed Loan Program and any prospective entities that may utilize the program in the future. Between fiscal

years 2009 and 2014, USDA received 42 applications. Of these 42 applications, 28 applications were either withdrawn by the applicant/borrower, were determined by USDA to be ineligible, or have had program funds previously committed, deobligated. Of the remaining 14 applications, USDA issued 10 Conditional Commitments and 4 applications are pending further review and evaluation. USDA estimates that most, if not all, of the entities that submitted applications would be considered a small entity. Because of this high percentage, USDA has determined that this rule will have an impact on a substantial number of small entities. However, USDA has also determined that the economic impact of this rule on these entities will not be significant. The most significant change in the rule that affects entities applying for this program is the implementation of the two-phase application process, which will have a positive impact on most applicants. Thus, under the new application process, 67 percent of the applicants between fiscal years 2009 and 2014 would have incurred significantly lower application costs. USDA concluded that the rule will not have a significant impact on a substantial number of small entities.

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

USDA states that the rule contains no federal mandates (under the regulatory provisions of title II of UMRA) for state, local, and tribal governments or the private sector. It concluded that the 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.

This interim final rule modified the program to incorporate administrative improvements based on USDA experience in implementing the program, addressed comments received on the interim final rule published in the *Federal Register* on February 14, 2011 (76 Fed. Reg. 8404), and incorporated the guaranteed loan provisions of USDA's Business and Industry (B&I) Guaranteed Loan program to make the rule a "stand alone" rule. The interim final rule published on February 14, 2011, addressed comments that USDA received on the proposed rule, which was published on April 16, 2010 (75 Fed. Reg. 20,044).

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

USDA intends to seek Office of Management and Budget (OMB) approval of the new reporting and recordkeeping requirements contained in this rule. USDA estimated that the annual public reporting burden for the requirements will increase the current collection of information by an estimated total of 6,281 hours. USDA anticipates the number of respondents to fluctuate based on funding levels. The average burden per respondent under the current interim rule is estimated to be 148 hours, and the average burden under the subsequent interim rule is estimated to be 410 hours, for an estimated increase of 262 hours per respondent.

USDA stated that respondents for this data are lending institutions and for-profit businesses but also include individuals and corporations, non-profit businesses, Indian tribes, units of state and local governments, farmer and rural electric cooperatives, Associations of Agricultural Producers, Institutions of Higher Education, public power entities, and consortiums of any of the foregoing entities. The annual estimates are for both subparts associated with the rule. The annual estimates are:

- number of respondents: 32,
- number of responses per respondent: 23.5,
- number of responses: 752, and
- total annual burden (hours) on respondents: 13,115.

#### Statutory authorization for the rule

USDA states that the Food, Conservation, and Energy Act of 2008 (Pub. L. No. 110-246), otherwise known as the 2008 Farm Bill, established the Biorefinery Assistance Program under title IX, section 9003, for making loan guarantees to fund the development, construction, and Retrofitting of Commercial-Scale Biorefineries using Eligible Technology. The program's authority is continued in the Agricultural Act of 2014 (2014 Farm Bill) (Pub. L. No. 113-79) with several specific changes as implemented in the interim final rule.

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

This interim final rule has been reviewed under Executive Order 12,866 and has been determined to be "economically significant" by OMB. USDA conducted a benefit-cost analysis to fulfill the requirements of Executive Order 12,866. In the analysis, USDA identified alternatives considered, the distributional effects of the rule changes, and the estimated costs of applying for and the potential benefits of receiving section 9003 funding.

#### Executive Order No. 13,132 (Federalism)

It has been determined, under Executive Order 13,132, that this interim final 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.