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September 9, 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: *Commodity Futures Trading Commission: Whistleblower Incentives and Protection*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Commodity Futures Trading Commission (Commission), entitled “Whistleblower Incentives and Protection” (RIN: 3038-AD04). We received the rule on August 24, 2011. It was published in the *Federal Register* as a final rule on August 25, 2011, with an effective date of October 24, 2011. 76 Fed. Reg. 53,172.

The final rule implements section 23 of the Commodity Exchange Act (CEA) entitled “Commodity Whistleblower Incentives and Protection.” The Commission is adopting Final Rules 165.1 through 165.19 and Appendix A, thereto, and new Forms TCR (“Tip, Complaint or Referral”) and WB-APP (“Application for Award for Original Information Provided Pursuant to Section 23 of the Commodity Exchange Act”), under the CEA. The Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted on July 21, 2010 (“Dodd-Frank Act”), established a whistleblower program that requires the Commission to pay an award, under regulations prescribed by the Commission and subject to certain limitations, to eligible whistleblowers who voluntarily provide the Commission with original information about a violation of the CEA that leads to the successful enforcement of a covered judicial or administrative action, or a related action. The Dodd-Frank Act also prohibits retaliation by

employers against individuals who provide the Commission with information about possible CEA violations.

Enclosed is our assessment of the Commission'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 the Commission 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: David A. Stawick
Secretary of the Commission
Commodity Futures Trading Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
COMMODITY FUTURES TRADING COMMISSION
ENTITLED
"WHISTLEBLOWER INCENTIVES AND PROTECTION"
(RIN: 3038-AD04)

(i) Cost-benefit analysis

The Commission notes that section 15(a) of the CEA requires the Commission to consider the costs and benefits of its action before promulgating a regulation. According to the Commission, to the extent that it was left with discretion under section 748 of the Dodd-Frank Act, the Commission exercised that discretion with consideration of minimizing the potential costs while maintaining fidelity to the congressional intent behind section 748 of the Dodd-Frank Act. The Commission explains that it has considered the costs and benefits of its regulations as part of the deliberative rulemaking process. Additionally, the Commission notes that the Paperwork Reduction Act related costs are included in the overall compliance costs considered with respect to the final rule.

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

The Commission states that in its Proposing Release, the Chairman, on behalf of the Commission, certified that a regulatory flexibility analysis is not required because the persons that would be subject to the rules—individuals—are not “small entities” for purposes of the Regulatory Flexibility Act and the rules therefore would not have a significant economic impact on a substantial number of small entities. The Commission also notes that it received no comments regarding this conclusion.

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

As an independent regulatory agency, the Commission is not subject to title II of the Act.

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

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

The final regulations were issued using the notice and comment procedures found at 5 U.S.C. § 553. On December 6, 2010, the Commission proposed part 165 of

the Commission's Regulations to implement new section 23 ("the Proposed Rules" or "Proposing Release"). 75 Fed. Reg. 75,728. According to the Commission, the rules contained in proposed part 165 defined certain terms critical to the operation of the whistleblower program, outlined the procedures for applying for awards and the Commission's procedures for making decisions on claims, and generally explained the scope of the whistleblower program to the public and to potential whistleblowers. The Commission received more than 635 comment letters. The Commission explains that over 600 of these comments, sent by or on behalf of different individuals and entities, were variations of the same form letter, while the remaining 35 comments were submitted by individuals, whistleblower advocacy groups, public companies, corporate compliance personnel, law firms and individual lawyers, professional associations, and nonprofit organizations.

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

The Commission states that it submitted proposed collections of information to the Office of Management and Budget (OMB) for review in accordance with the PRA.

Statutory authorization for the rule

The Commission states that it is adopting the rules and forms under the authority contained in sections 2, 5, 8a(5) and 23 of the Commodity Exchange Act.

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

As an independent regulatory agency, the Commission is not subject to the review requirements of the order.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, the Commission is not subject to the review requirements of the order.