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March 8, 2005

The Honorable Saxby Chambliss
Chairman
The Honorable Tom Harkin
Ranking Minority Member
Committee on Agriculture, Nutrition, and Forestry
United States Senate

The Honorable Bob Goodlatte
Chairman
The Honorable Collin C. Peterson
Ranking Minority Member
Committee on Agriculture
House of Representatives

Subject: *Department of Agriculture, Commodity Credit Corporation: Tobacco
Transition Assessments*

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 "Tobacco Transition Assessments" (RIN: 0560-AH31). We received the rule on February 22, 2005. It was published in the Federal Register as a final rule on February 10, 2005. 70 Fed. Reg. 7007.

The final rule provides the manner in which assessments are to be made on various domestic manufacturers or importers of tobacco products to fund the tobacco transition payment program required by Title VI of the America Jobs Creation Act of 2004 (the 2004 Act) (Pub. L. 108-357).

Enclosed is our assessment of the 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 indicates that CCC complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Robert Robinson,

Managing Director, Natural Resources and Environment. Mr. Robinson can be reached at (202) 512-3841.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Thomas J. Witzig
Director, Regulatory Review Group
Department of Agriculture

ENCLOSURE

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF AGRICULTURE,
COMMODITY CREDIT CORPORATION
ENTITLED
"TOBACCO TRANSITION ASSESSMENTS"
(RIN: 0560-AH31)

Cost-benefit analysis

The final rule is expected to result in the procurement of approximately \$10.14 billion in assessments from tobacco manufacturers and importers over a 10-year period or approximately \$1.014 billion annually. Manufacturers and importers are expected to ultimately pass the majority of these costs on to consumers of tobacco products through small increases in the sale price.

The 2004 Act specifies each category of tobacco products share of the assessment based on prior share of the market over a specified period. The cigarettes' portion of the fiscal year 2005 assessment is 96.331 percent or \$975 million. The assessment is about 4.8 cents per pack. The cigars' proportion of the FY 2005 assessment is 2.783 percent or \$28.2 million and 0.4 cents per cigar.

Other products' shares of the assessment are (the implied increase in product prices in cents per pound are in parenthesis): snuff--\$5.5 million (7.3), chewing tobacco--\$1.1 million (2.4), pipe tobacco--\$.7 million (13.8), and roll-your-own--\$1.7 million (13.8).

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

Since the final rule was not preceded by a notice of proposed rulemaking, the requirements of the Regulatory Flexibility Act do not apply.

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

Since the final rule was not preceded by a notice of proposed rulemaking, the requirements of the Unfunded Mandates Reform Act of 1995 do not apply.

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

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

Section 642(b) of the 2004 Act requires that the final rule be promulgated without regard to the requirements of 5 U.S.C. 553 concerning notice and comment. Also, section 642(c) of the 2004 Act states that the Secretary may use the authority found in 5 U.S.C. 808 which allows an agency to forgo the Congressional Review Act's requirement of a 60-day delay in the effective date of a major rule.

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

Section 642(b) of the 2004 Act requires that the final rule be promulgated and administered without regard to the Paperwork Reduction Act.

Statutory authorization for the rule

The final rule is promulgated under the authority found in 7 U.S.C. 714b and 714c and Title VI of the America Jobs Creation Act of 2004 (Pub. L. 108-357).

Executive Order No. 12866

The final rule was reviewed by the Office of Management and Budget and found to be an "economically significant" regulatory action under the order.