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February 2, 2010

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

The Honorable Collin C. Peterson
Chairman
The Honorable Frank D. Lucas
Ranking Minority Member
Committee on Agriculture
House of Representatives

Subject: *Department of Agriculture, Farm Service Agency: Dairy Economic Loss Assistance Payment 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, Farm Service Agency (FSA), entitled “Dairy Economic Loss Assistance Payment Program” (RIN: 0560-AI07). We received the rule on January 20, 2010. It was published in the *Federal Register* as a final rule on December 21, 2009. 74 Fed. Reg. 67,805.

The final rule implements the new Dairy Economic Loss Assistance Payment (DELAP) program, which will assist dairy producers by providing payments to producers who produced and marketed milk in the United States at some time from February through July 2009. The payments provided by the DELAP program are intended to offset a portion of the dairy producers’ losses resulting from milk prices that were far below production costs.

The Congressional Review Act requires major rules to have a 60-day delay in their effective date following their publication in the *Federal Register* or receipt by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). However, notwithstanding the 60-day delay requirement, any rule that an agency for good cause finds that notice and public procedures are impractical, unnecessary, or contrary to the public interest is to take effect when the promulgating agency so determines. 5 U.S.C. § 808(2). FSA stated that due to the given economic conditions in the dairy industry,

FSA considered it appropriate to make the final rule effective as soon as possible so that benefits may be provided. Therefore, FSA made the final rule effective immediately upon display by the Office of the Federal Register, on December 17, 2009.

Enclosed is our assessment of the FSA'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 FSA 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
Director, Regulatory Review Group
Department of Agriculture

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF AGRICULTURE,
FARM SERVICE AGENCY
ENTITLED
"DAIRY ECONOMIC LOSS ASSISTANCE PAYMENT PROGRAM"
(RIN: 0560-AI07)

(i) Cost-benefit analysis

FSA prepared a cost-benefit analysis in conjunction with the final rule. FSA expects that the Dairy Economic Loss Assistance Payment (DELAP) program will provide \$290 million in payments to dairy producers during fiscal year (FY) 2010, which represents both the cost of the program and the benefit to the participants. All payments under the program are expected to be made in FY 2010.

The DELAP program provides payment to dairy producers in FY 2010 based on production in February through July 2009. FSA does not expect that the final rule will result in a significant change in the price of milk for consumers, because it is not subsidizing the cost of current production or providing price support.

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

The Regulatory Flexibility Act requires agencies to prepare an analysis in conjunction with any notice of proposed rulemaking or any final rule for which a notice of proposed rulemaking was promulgated. 5 U.S.C. § 604. FSA did not issue a notice of proposed rulemaking in conjunction with this final rule; therefore, FSA was not required to prepare a Regulatory Flexibility Act analysis.

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

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare an analysis before promulgating any notice of proposed rulemaking or any final rule for which a notice of proposed rulemaking was promulgated. 2 U.S.C. § 1532(a). FSA did not issue a notice of proposed rulemaking in conjunction with this final rule; therefore, FSA was not required to prepare an Unfunded Mandates Reform analysis.

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

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

The final rule was promulgated and administered without regard to the notice and comment provisions of the Administrative Procedure Act, as required by section 748(b)(2) of the 2010 Agriculture Appropriations Bill.

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

The final rule is exempt from the requirements of the Paperwork Reduction Act, as specified in section 748(b)(2)(C) of the 2010 Agriculture Appropriations Bill.

Statutory authorization for the rule

The final rule is authorized by section 10104 of the 2002 Farm Bill (Pub. L. 107-171), and the funds made available under this rule were authorized by the 2010 Agriculture Appropriations Bill (Pub. L. 111-80).

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

The final rule was determined to be economically significant, was reviewed by the Office of Management and Budget, and FSA prepared a cost-benefit analysis as required under the Order.

Executive Order No. 13,132 (Federalism)

FSA determined that this final rule does not have federalism implications, because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. In addition, FSA determined that this final rule does not impose substantial direct compliance costs on state and local governments.