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December 19, 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: Environmental Quality Incentives Program (EQIP)*

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) and the Natural Resources Conservation Service (NRCS) entitled “Environmental Quality Incentives Program (EQIP)” (RIN: 0578-AA62). We received the rule on December 15, 2014. It was published in the *Federal Register* as an interim rule with request for comment on December 12, 2014. 79 Fed. Reg. 73,954.

The interim rule includes a request for comment and amends the existing Environmental Quality Incentives Program (EQIP) regulation to incorporate programmatic changes as authorized by amendments in the Agricultural Act of 2014 (2014 Act).

The interim rule has an effective date of December 12, 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 December 15, 2014, and the rule was published in the *Federal Register* on December 12, 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). Further, section 1246(c) of the Food Security Act of 1985 (the 1985 Act), as amended by section 2608 of the 2014 Act, requires that the Secretary of Agriculture use the authority in section 808(2) of title 5, United States Code. CCC determined that it has good cause to delay the effective date of the final rule, in order to meet the congressional intent to have the conservation programs, authorized or amended under Title XII of the 1985 Act, in effect as soon as possible. NRCS also determined it has good cause to

forgo delaying the effective date given the critical need to let agricultural producers know what programmatic changes are being made so that they can make financial plans accordingly, prior to planting season.

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: Patricia J. Lawrence  
Chief of Staff, Natural Resources Conservation Service  
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  
"ENVIRONMENTAL QUALITY INCENTIVES PROGRAM (EQIP)"  
(RIN: 0578-AA62)

(i) Cost-benefit analysis

CCC states that most of this rule's impacts consist of transfer payments from the federal government to producers. While those transfers create incentives that very likely cause changes in the way society uses its resources, CCC lacked data with which to quantify the resulting social costs or benefits. Given the existing limitation and lack of data, CCC states that it will investigate ways to quantify the incremental benefits obtained from this program. Despite the limitations on its ability to quantify and estimate the value of social costs or benefits from the implementation of conservation practices, EQIP as amended under the Agricultural Act of 2014 (2014 Act), is expected to positively affect natural resources and mitigate environmental degradation. According to CCC, results from the national Conservation Effects Assessment Project conducted by NRCS demonstrate that implementation of the types of conservation practices funded under EQIP reduce sediment and nutrient loss from agricultural fields and improve water quality nationwide. Because data is limited on the natural resource impact from the EQIP program, NRCS has requested public comment on how the agency should estimate the public value of conservation resulting from assistance provided through EQIP.

The Agriculture Act of 2014 increases EQIP funding over the amount appropriated by Congress over the previous 5-year period, from FY 2009–FY2013, by 29 percent to \$8.0 billion. It is estimated that the conservation practices implemented with this funding will continue to contribute to reductions of water erosion and wind erosion on cropland, pasture, and rangeland; reduce nutrient losses to streams, rivers, lakes, and estuaries; increase wildlife habitat, and provide other private and public environmental benefits. It is also expected that continued implementation of practices that treat and manage animal waste through EQIP will directly contribute to improvements in water quality and associated improvements in air quality, for example, from reduction in emissions such as methane. These and other practices include secondary benefits that help sequester carbon and capture greenhouse gases that contribute to climate change. NRCS estimates that the cost, from both public and private sources, of implementing the conservation practices with EQIP funding will be \$11.9 billion dollars (FY 2014–FY 2018). Cost estimates are presented in a summary table in the interim final rule.

(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 of any rule subject to 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. CCC states that it did not prepare a regulatory flexibility analysis for this rule because it is not required by 5 U.S.C. 553, or any other provision of law, to publish a notice of proposed rulemaking with respect to the

subject matter of this rule. Even so, CCC states that it has determined that this action, while mostly affecting small entities, will not have a significant economic impact on a substantial number of these small entities. CCC says that it made this determination based on the fact that this regulation only impacts those who choose to participate in the program. Small entity applicants will not be affected to a greater extent than large entity applicants.

(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 this interim 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.

CCC states it is not required by the Administrative Procedure Act, or any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule. The interim rule includes a request for comments that must be submitted on or before February 10, 2015.

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

The interim rule is exempt from PRA, as specified in section 1246 of the Food Security Act of 1985 (the 1985 Act), as amended by the 2014 Act, which requires that implementation of programs authorized by Title XII of the 1985 Act be made without regard to PRA. Therefore, CCC and NRCS did not report recordkeeping or estimated paperwork burden associated with this interim rule.

Statutory authorization for the rule

The interim rule is authorized by the Agricultural Act of 2014, Pub. L. No. 113-79.

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

The interim final rule with request for comment was designated as economically significant under the Order and was reviewed by the Office of Management and Budget. Pursuant to Executive Order 12,866, CCC conducted an economic analysis of the potential impacts associated with this program.

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. Additionally, CCC determined that the final rule does not impose substantial direct compliance costs on states. Therefore, CCC concluded that this interim rule does not have Federalism implications.