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August 17, 2009

The Honorable Tom Harkin
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, Commodity Credit Corporation: Environmental Quality Incentives 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, Commodity Credit Corporation (CCC), entitled “Environmental Quality Incentives Program” (RIN: 0578-AA45). We received the rule on July 31, 2009. It was published in the *Federal Register* as an “interim final rule with request for comment” on January 15, 2009. 74 Fed. Reg. 2293.

The interim final rule amends the existing Environmental Quality Incentives Program (EQIP) regulations to incorporate changes as authorized by amendments in the Food, Conservation, and Energy Act of 2008 (2008 Act). Those changes include extending EQIP's implementation through Fiscal Year 2012, providing payments for conservation practices related to organic production and for conservation practices related to the transition to organic production, providing an increased payment rate to historically underserved producers, and establishing a national target to set aside 5 percent of EQIP funds for socially disadvantaged farmers or ranchers and an additional 5 percent of EQIP funds for beginning farmers or ranchers.

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). Section 2904(c) of the 2008 Act directs CCC to make this finding. Accordingly, CCC found good cause to forego the usual 60-day delay in effective date of a major rule and make the rule effective as of January 15, 2009, in order to meet the congressional intent to have conservation programs in effect as soon as possible. Therefore, the requirement to have a 60-day delay does not apply to this rule.

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 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: Leslie Deavers
Acting Farm Bill Coordinator
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"
(RIN: 0578-AA45)

(i) Cost-benefit analysis

CCC prepared a cost-benefit analysis in conjunction with this interim final rule. For purposes of the analysis, CCC compared the increased EQIP funding against previous levels of EQIP funding. CCC stated that the expanded funding will result in an estimated \$10.4 in benefits over the period of FY 2007 to FY 2012, with \$0.8 billion attributable to improved animal waste management and \$9.6 billion to land treatment. Estimated net benefits for that period were \$57 million above total costs. Ultimately, CCC determined that the interim final rule will provide \$18 million in additional net benefits due to the expansion of EQIP funds in the 2008 Farm Bill.

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

CCC determined that the final rule will not have a significant environmental impact on small entities.

(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 the interim final rule will not compel the expenditure of \$100 million or more in any one year by any state, local, or tribal governments, or anyone in the private sector.

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

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

The Administrative Procedure Act generally requires an agency to issue a notice of proposed rulemaking and an opportunity for public comment. 5 U.S.C. § 553. Section 2904 of the 2008 Act authorized CCC to promulgate an interim final rule effective upon publication with an opportunity for notice and comment.

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

The interim final rule was promulgated without regard to the Paperwork Reduction Act, as required by section 2904 of the 2008 Act. Therefore, CCC is not reporting recordkeeping or estimated paperwork burden associated with this interim final rule.

Statutory authorization for the rule

The interim final rule was authorized by the Food, Conservation, and Energy Act of 2008, Pub. L. 110-234, which reauthorized and amended the Environmental Quality Incentives Program, codified at 16 U.S.C. § 3839aa et. seq.

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

The interim final rule was determined to be economically significant, and CCC prepared a cost-benefit analysis as required under the Order.

Executive Order No. 13,175 (Consultation and Coordination with Indian Tribal Governments)

CCC determined that the interim final rule will not have a substantial direct effect on tribes, since the regulatory provisions are required by statute and do not impose unreimbursed compliance costs or preempt tribal law. Therefore, CCC determined that consultation with tribal governments was not required.