



**United States
General Accounting Office
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Office of the General Counsel

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June 12, 1997

The Honorable Richard G. Lugar
Chairman
The Honorable Tom Harkin
Ranking Minority Member
Committee on Agriculture, Nutrition, and Forestry
United States Senate

The Honorable Bob Smith
Chairman
The Honorable Charles W. Stenholm
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-AA19). We received the rule on May 29, 1997. It was published in the Federal Register as a final rule on May 22, 1997. 62 Fed. Reg. 28258. Although this rule was promulgated by the Commodity Credit Corporation (the organization that funds the Environmental Quality Incentives Program), it was filed with us by the Natural Resources Conservation Service (the organization whose personnel administer the program).

The Environmental Quality Incentives Program (EQIP) is a new conservation program, reflecting the functions of four previous programs--the Agricultural Conservation Program, the Great Plains Conservation Program, the Water Quality Incentives Program, and the Colorado River Basin Salinity Control Program. Those programs were repealed as of April 4, 1996. However, an interim program was instituted between April 4 and October 4, 1996, to maintain a basic program until EQIP could begin. 16 U.S.C. § 3839aa-8.

According to the Natural Resources Conservation Service, this single, voluntary program will provide flexible technical, financial, and educational assistance to farmers and ranchers who face serious threats to soil, water, and related natural resources on agricultural and other lands, including grazing lands, wetlands, forest lands, and wildlife habitats.

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, except for ignoring the 60-day delay in the effective date of a major rule required by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), the CCC complied with the applicable requirements.

The preamble to the final rule states that the rule is effective on the date of publication in the Federal Register, May 22, 1997, because CCC has determined that it is impracticable, unnecessary, and contrary to the public interest to delay the effective date of the rule. The immediate effective date, according to the preamble, will permit the CCC to offer the public timely, reliable information about funding for conservation practices as early as possible before the start of the spring 1997 planting season because it may influence planting decisions. Failure to provide the information in a timely manner may mean another year delay in the conservation benefits. Finally, it stated that the expiration on April 4, 1996, of the four former conservation programs and the end of the 180-day authority to administer an interim conservation program on October 4, 1996, mean there is no program to provide technical, financial, and educational assistance to farmers and ranchers.

SBREFA provides that where an agency for "good cause" finds that notice and public procedures are impracticable, unnecessary, or contrary to the public interest, the delay provisions of section 801 do not apply. 5 U.S.C. § 808(2). Here, CCC did not make such a finding but published the proposed rule on October 11, 1996, in accordance with the Administrative Procedure Act. It received and considered comments on the proposed rule. As discussed in our report on a major rule issued by the Health Care Financing Administration concerning Medicare (B-275549, B-275552, December 9, 1996), the "good cause" exception to the 60-day delay provision found at section 808(2) is not available when notice and comment procedures have been used.

Moreover, we note that an effective date of May 22, 1997, is in all probability too late to influence spring planting decisions. Also, the fact that the four former programs expired over a year ago and the temporary authority expired 8 months previously seems to make a further delay of 60 days of small consequence.

If you have any questions about this report, please contact Kathleen Wannisky, Associate General Counsel for Operations, at (202) 512-5207. The official responsible for GAO evaluation work relating to the Department of Agriculture, Natural Resources Conservation Service is Robert Robinson, Director for Food and Agriculture Issues. Mr. Robinson can be reached at (202) 512-5138.

Robert P. Murphy
General Counsel

Enclosure

cc: Paul W. Johnson
Chief, Natural Resources
Conservation Service
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
"ENVIRONMENTAL QUALITY INCENTIVES PROGRAM"
(RIN: 0578-AA19)

(i) Cost-benefit analysis

Because the Office of Management and Budget (OMB) determined that this was an "economically significant regulatory action" under Executive Order 12866, the Natural Resources Conservation Service (NRCS) conducted an economic analysis of the potential impacts associated with this program. NRCS submitted that analysis to the General Accounting Office on May 29, 1997, along with a copy of its final rule.

The analysis estimates that the Environmental Quality Incentives Program (EQIP) will have a beneficial impact on the adoption of conservation practices and, when installed or applied to technical standards, will increase net farm income. The analysis also estimates that society will benefit from the program in terms of long-term productivity, maintenance of the resource base, non-point source pollution damage reductions, and wildlife enhancements. NRCS states that, because EQIP is a voluntary program, it will not impose any obligations or burdens on agricultural producers who choose not to participate. NRCS states that the program was authorized at \$1.3 billion for the period FY 1996 through FY 2002, with annual amounts of \$200 million after the initial interim year of \$130 million.

In the analysis the agency discusses the three alternatives considered in implementing the program--i.e., targeting all the funds to priority areas, targeting the majority of the funds to priority areas, and targeting the majority of the funds to non-priority areas. The analysis discusses the beneficial effects and the adverse effects of each alternative and concludes that the second alternative offered the greatest environmental return for the federal dollars spent, provided program managers and participants the greatest flexibility in program administration, gave effective conservation coverage across the land, and involved a large number of participants.

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

The preamble to the final rule (62 Fed. Reg. 28258) states that the Regulatory Flexibility Act is not applicable to this rule because the Commodity Credit Corporation (CCC), which funds this program and has issued this rule, 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.

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

According to the preamble, the rule does not compel the expenditure of \$100 million or more by any state, local, or tribal government or the private sector and, therefore, a statement under section 202 of the Unfunded Mandates Act of 1995 is not required.

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

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

According to CCC, this rule is not covered by section 553 of the Administrative Procedure Act because CCC is not required to publish a notice of proposed rulemaking by that section or any other provision of law.

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

CCC states that no substantive changes have been made in this final rule which affect the recordkeeping requirements and estimated burdens previously reviewed and approved under OMB control number 0560-0174.

Executive Order 12866

OMB determined that this rule was an economically significant regulatory action under Executive Order 12866 because it could result in an annual effect on the economy of \$100 million or more. Pursuant to the order, NRCS conducted an economic analysis, as discussed above. The NRCS economic analysis is discussed in the preamble to the final rule (62 Fed. Reg. 28258); NRCS provided a full copy of the analysis to us when it filed its copy of the final rule on May 29, 1997.

Executive Order 12998

The agency reviewed this rule under Executive Order 12998, Civil Justice Reform, and determined that the provisions of the final rule are not retroactive and that they

preempt state and local laws to the extent such laws are inconsistent with this rule. Before any legal action is brought against this rule in federal court, the administrative appeal rights set forth at 7 C.F.R. parts 11 and 614 must be exhausted.

Federal Crop Insurance Reform and Department of Agriculture
Reorganization Act of 1994 (Pub. L. No. 103-354)

The Department of Agriculture classified this rule as a major rule pursuant to section 304 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 since it had an annual economic impact on the economy of at least \$100 million and it also affected human health and safety or the environment. Because of this classification, NRCS staff, in cooperation with Agriculture's Office of Risk Assessment and Cost Benefit Analysis, prepared an environmental risk assessment for EQIP. The major conclusion of this assessment is that agricultural production activities, in the absence of conservation techniques and practices, can have serious environmental impacts. The assessment concluded that the best solutions to address risks to environmentally stressed resources are conservation measures applied in concerted, concentrated efforts in priority areas, with smaller scale efforts going to sectors outside priority areas.

National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq.

In compliance with the National Environmental Policy Act of 1969, as amended, NRCS staff developed an environmental assessment of this rule to determine if implementation would have a significant impact on the human environment. NRCS concluded that it would not and the Chief of NRCS issued a finding of no significant impact on May 20, 1997. NRCS provided us with a complete copy of the Environmental Assessment and the Finding of No Significant Impact.

Statutory authorization for the rule

CCC cites as authority for this rule 15 U.S.C. §§ 714b and 714c; 16 U.S.C. §§ 3839aa-3839aa-8.