



441 G St. N.W.  
Washington, DC 20548

B-336165

April 18, 2024

The Honorable Debbie Stabenow  
Chairwoman  
The Honorable John Boozman  
Ranking Member  
Committee on Agriculture, Nutrition, and Forestry  
United States Senate

The Honorable Glenn Thompson  
Chairman  
The Honorable David Scott  
Ranking 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-AA68). We received the rule on March 20, 2024. It was published in the *Federal Register* as a final rule on October 26, 2020. 85 Fed. Reg. 67637. The effective date is October 26, 2020.

According to CCC, this final rule adopts, with minor changes, an interim rule<sup>1</sup> that made changes to the Natural Resources Conservation Service’s (NRCS’s) Environmental Quality Incentives Program (EQIP). In the rule, CCC explained that through EQIP, NRCS incentivizes agricultural producers to conserve and enhance soil, water, air, plants, animals (including wildlife), energy, and related natural resources on their land. CCC stated that the changes were made to be consistent with the Agriculture Improvement Act of 2018, Pub. L. No. 115-334, 132 Stat. 4490 (Dec. 20, 2018), and implement administrative improvements and clarifications. CCC expressed that the rule makes permanent those changes appearing in the interim rule, responds to comments, and makes further adjustments in response to some of the comments received.

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). The *Congressional Record* does not yet reflect receipt of the final rule by Congress. According to documentation provided by CCC, the rule was received by both houses of Congress on April 5, 2024. Email from Management Analyst,

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<sup>1</sup> 84 Fed. Reg. 69272 (Dec. 17, 2019).

Department of Agriculture, to Staff Attorney, GAO, *Subject: RE: Congressional Report Act - Environmental Quality Incentives Program (RIN 0578-AA68) - final rule - October 26, 2020* (Apr. 11, 2024). 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). CCC stated that the regulations to implement the programs of chapter 58 of title 16, United States Code, as specified in 16 U.S.C. § 3846, and the administration of those programs are to be made as an interim final rule, effective on publication, and are to use the authority under 5 U.S.C. § 808 related to congressional review. CCC stated that, consistent with the use of the authority under 5 U.S.C. § 808 related to congressional review for the immediate effective date of the interim rule, it made this final rule effective upon publication in the *Federal Register*. CCC also noted that the rule relates to benefits and is, therefore, exempt from the Administrative Procedure Act's notice and comment requirements.

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. 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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in cursive script that reads "Shirley A. Jones".

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Mary Ball  
USDA/FPAC-BC  
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-AA68)

(i) Cost-benefit analysis

The Department of Agriculture, Commodity Credit Corporation (CCC) prepared a cost benefit analysis of this final rule. CCC estimated that most of the rule’s impacts consist of transfer payments to producers for completed conservation practices under Environmental Quality Incentives Program (EQIP) contracts. According to CCC, the Agriculture Improvement Act of 2018, Pub. L. No. 115-334, 132 Stat. 4490 (Dec. 20, 2018), increased EQIP funding by 15 percent on average to \$1.84 billion per year.

In terms of the costs associated with rule, CCC stated that the costs consist of the administrative costs of applying for EQIP funding and are described in the rule’s full regulatory impact analysis. In terms of the rule’s benefits, CCC explained that such benefits are the environmental improvements that are due to the increased conservation practices over and above those that farmers privately undertake. According to CCC, conservation practices funded through EQIP will continue to: contribute to improvements in soil health and reductions in water and wind erosion on cropland, pasture and rangeland; reduce nutrient losses to streams, rivers, lakes and estuaries; increase wildlife habitat; and provide other environmental benefits. Furthermore, CCC stated that continued implementation of practices which treat and manage animal waste through EQIP will directly contribute to improvements in water quality and improvements in air quality (such as reduced risk of algal blooms or reduction in methane emissions, respectively). In the rule, CCC estimated that the expenditures, from both public and private sources, of implementing EQIP conservation practices will be \$13.6 billion dollars (FY 2019 through 2023), assuming a historical average participant cost of 40 percent and a technical assistance share of 27 percent.

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

CCC stated that this rule is not subject to the Act because this rule is exempt from notice and comment rulemaking requirements in the Administrative Procedure Act and no other law requires that a proposed rule be published for this rulemaking initiative.

(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 final rule contains no federal mandates for state, local, and tribal governments or the private sector, and therefore, is not subject to the requirements of the Act.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO's major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: "the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act's exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act's requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act" in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

CCC did not discuss the Act in the rule or in its submission to us.

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

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

On December 17, 2019, CCC published an interim rule. 84 Fed. Reg. 69272. CCC stated that it received 598 comments from 197 commenters in response to the interim rule. In addition, CCC noted that one organization submitted a spreadsheet with 12,852 comments. CCC stated that it reviewed these comments and categorized and summarized them according to the topics identified in the rule. According to CCC, the topics that generated the greatest response include conservation practices, contract limits, and national priorities.

Of the 598 comments raised by the 197 commenters, CCC clarified that 47 were general in nature, and most expressed support for EQIP or how EQIP has benefitted particular operations. Additionally, CCC stated that it received 21 comments that were not relevant to the EQIP interim rule, 7 comments that criticized the rule for not strengthening EQIP's impact on climate resilience or soil health, and 6 comments that requested CCC's technical assistance for existing and potential projects. CCC affirmed that this final rule responds to the comments received by the public comment deadline and makes minor clarifying and related changes.

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

Because this final rule implements the programs of chapter 58 of title 16, United States Code, CCC determined the rule is exempt from the Act in accordance with 16 U.S.C. § 3846(b)(1).

Statutory authorization for the rule

CCC promulgated this final rule pursuant to sections 714b and 714c of title 15, and sections 3839aa to 3839-8 of title 16, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

CCC stated OMB designated this final rule as economically significant under the Order and reviewed the rule.

Executive Order No. 13132 (Federalism)

CCC determined that this final rule does not have any substantial direct effect on states, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government, except as required by law.