



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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

B-330217

July 26, 2018

The Honorable Pat Roberts  
Chairman  
The Honorable Debbie Stabenow  
Ranking Member  
Committee on Agriculture, Nutrition, and Forestry  
United States Senate

The Honorable K. Michael Conaway  
Chairman  
The Honorable Collin C. Peterson  
Ranking Member  
Committee on Agriculture  
House of Representatives

Subject: *Department of Agriculture, Farm Service Agency: 2017 Wildfires and Hurricanes Indemnity 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 “2017 Wildfires and Hurricanes Indemnity Program” (RIN: 0560-AI39). We received the rule on July 17, 2018. It was published in the *Federal Register* as a final rule on July 18, 2018. 83 Fed. Reg. 33,795. The effective date of the final rule is July 18, 2018.

The final rule provides payments to eligible producers who suffered eligible crop, tree, bush, and vine losses resulting from hurricanes and wildfires that occurred in the 2017 calendar year, as authorized by the Bipartisan Budget Act of 2018 (BBA). This rule specifies the administrative provisions, eligibility requirements, application procedures, and payment calculations for the 2017 Wildfires and Hurricanes Indemnity Program (WHIP).

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). This final rule was received on July 17, 2018. It was published in the *Federal Register* on July 18, 2018, and has a stated effective date of July 18, 2018. 83 Fed. Reg. 33,795. 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 agencies find for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agencies incorporate a statement of the findings and their reasons in the rule issued. 5 U.S.C. § 808(2). FSA found good cause to issue this regulation effective upon publication in the *Federal Register*. FSA stated beneficiaries of the rule have suffered extensive damage due to the losses from the hurricanes and wildfires that occurred in 2017. FSA found it would be contrary

to the public interest to delay the effective date because it would delay implementation of the 2017 WHIP as required by BBA. Also, FSA stated the regulation needs to be effective to provide adequate time for producers to submit applications to request payments.

Enclosed is our assessment of 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 agency's submissions to us 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  
Farm Service Agency  
Department of Agriculture

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
DEPARTMENT OF AGRICULTURE,  
FARM SERVICE AGENCY  
ENTITLED  
“2017 WILDFIRES AND HURRICANES INDEMNITY PROGRAM”  
(RIN: 0560-AI39)

(i) Cost-benefit analysis

The Department of Agriculture, Farm Service Agency (FSA) stated the Bipartisan Budget Act of 2018 (BBA) provided up to \$2.36 billion for the 2017 Wildfires and Hurricanes Indemnity Program (WHIP) but that early estimates suggest that total WHIP payments could be lower. FSA further stated that in addition to producer payments, WHIP funds will be used for a \$340 million block grant to Florida that will provide further aid to producers with damaged trees. The agency also stated the federal government is expected to expend around \$10 million to manage 2017 WHIP and, because of the 2017 WHIP mandate that producers purchase insurance, the government is expected to incur around \$100 million in additional subsidy costs. The required policies will cost producers around \$60 million. FSA estimates that payment limitation savings will be at least \$50 million.

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

FSA stated the rule is not subject to RFA because FSA is not required by the Administrative Procedure Act or any law to publish a proposed rule for this rulemaking.

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

FSA stated the rule contains no federal mandates, as defined by the Act, for state, local, and tribal governments, or the private sector, and therefore, the rule is not subject to the requirements of the Act.

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

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

FSA stated notice and comment procedures were not required under 5 U.S.C. § 553 because the rule involves a matter relating to public property, loans, grants, benefits, or contracts. Because this rule relates to benefits, FSA published the rule without prior opportunity to comment.

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

FSA submitted the rule to the Office of the Management and Budget (OMB) with an information collection request, and OMB granted a 6-month emergency information collection. Since the

information collection activities will continue for more than the approved 6 months, FSA solicited comments and asked OMB to approve a 3-year information collection.

Statutory authorization for the rule

FSA promulgated the rule under 7 U.S.C. §§ 1531, 4501; 16 U.S.C. § 3801 and note; 19 U.S.C. § 2497; title III, Pub. L. No. 109-234; title IX, Pub. L. No. 110-28; § 748, Pub. L. No. 111-80, and title I, Pub. L. No. 115-123.

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

FSA stated it submitted the rule to OMB for review and included a cost-benefit analysis in the final rule.

Executive Order No. 13,132 (Federalism)

FSA stated the rule does not have any 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.