



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

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September 25, 2019

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

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

Subject: *Department of Agriculture, Federal Crop Insurance Corporation, Farm Service Agency, Commodity Credit Corporation: Agricultural Disaster Indemnity Programs*

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 (USDA), Federal Crop Insurance Corporation (FCIC), Farm Service Agency (FSA), Commodity Credit Corporation (CCC) entitled "Agricultural Disaster Indemnity Programs" (RIN: 0560-AI52). We received the rule on September 13, 2019. It was published in the *Federal Register* as a final rule on September 13, 2019. 84 Fed. Reg. 48518. The effective date of the rule is September 13, 2019.

This final rule prescribes how USDA will provide agricultural disaster assistance as authorized by the Additional Supplemental Appropriations for Disaster Relief Act of 2019 (Disaster Relief Act). The final rule also contains specific administrative provisions for payments to eligible producers and dairy operations for milk through the Wildfire and Hurricane Indemnity Program Plus (WHIP+), the On-Farm Storage Loss Program, and the Wildfire and Hurricane Indemnity Program (WHIP). This final rule expands the eligibility for 2017 WHIP to include losses incurred from Tropical Storm Cindy and updates regulations from the Tree Assistance Program (TAP). Finally, the rule provides support to producers who were prevented from planting eligible crops in 2019 due to various natural disaster events.

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 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. §§ 553(b)(3)(B). USDA found good cause for the provisions of this rule to become effective immediately upon publication because it determined that the notice and public procedures are contrary to the public interest given the nature and

need to implement the regulations expeditiously to provide agricultural disaster assistance to producers who suffered certain losses in 2018 and 2019. USDA therefore determined that they are not required to delay the effective date for 60 days from the date of publication and that this rule is effective upon publication in the *Federal Register*.

Enclosed is our assessment of USDA'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 Janet Temko-Blinder, Assistant General Counsel, at (202) 512-7104.

signed

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Mary Ann Ball
Management Analyst
Department of Agriculture

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF AGRICULTURE,
FEDERAL CROP INSURANCE CORPORATION,
FARM SERVICE AGENCY,
COMMODITY CREDIT CORPORATION
ENTITLED
“AGRICULTURAL DISASTER INDEMNITY PROGRAMS”
(RIN: 0560-A152)

(i) Cost-benefit analysis

The Department of Agriculture (USDA) stated that the final rule is expected to result in about \$2.9 billion in combined payments out of the 2018 Wildfire and Hurricane Indemnity Program Plus (WHIP+) and remaining 2017 Wildfire and Hurricane Indemnity Program (WHIP) appropriations, with most benefits going to producers with 2018 hurricane losses in the Southeast and 2019 prevented planting in the Midwestern states. USDA also estimates that the rule includes an estimated \$1.223 billion in indemnities for 2018 and 2019 eligible disasters to date, and \$535 million for a 10 to 15 percent expansion of existing coverage on prevented planting. Lastly, after factoring in estimated payments for on-farm storage losses of \$50 million and eligible milk losses of \$5 million, USDA anticipates expenditures of \$1.813 billion to count against the \$3 billion appropriated funds under the Disaster Relief Act of 2019.

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

USDA determined this final rule is not subject to RFA because USDA is not required by the Administrative Procedure Act (APA) 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

USDA determined this final rule does not mandate any requirements for state, local, or tribal governments, or for the private sector.

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

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

As noted above, USDA stated that it is not required by APA to publish a proposed rule for this rulemaking. USDA determined that the 30-day delay in effective date provisions under APA do not apply to this rule because this rule involves programs for payments to certain agricultural commodity producers. USDA believes there is good cause for this rule to become effective immediately upon publication, so as to expeditiously provide agricultural disaster assistance to producers who suffered certain losses in 2018 and 2019.

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

USDA determined that this final rule contains a new information collection requirement (ICR) under the Act. It is entitled “Wildfire and Hurricane Indemnity Program Plus.” USDA estimated that it will have an annual number of 26,592 respondents with a total annual burden of 18,405 hours. It was submitted to the Office of Management and Budget (OMB) for emergency approval and OMB approved it for 6 months. With this final rule, the Farm Service Agency (FSA) is requesting comments from interested individuals and organizations on the ICR. USDA stated that following the 60-day public comment period for this rule, this ICR will be submitted to OMB for approval for 3 years.

Statutory authorization for the rule

USDA promulgated this final rule under sections 1506, 1531, and 4501 of title 7; section 3801 of title 16; and section 2497 of title 19, United States Code, and title III of Public Law 109-234; title IX of Public Law 110-28; section 748 of Public Law 111-80; title I of Public Law 113-179; and title VII of Public Law 115-141.

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

OMB determined that this final rule is economically significant under the Order and has reviewed the rule.

Executive Order No. 13,132 (Federalism)

USDA determined this 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 and responsibilities among the various levels of government, except as required by law and that this rule does not impose substantial direct compliance costs on state and local governments.