



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

B-332839

January 22, 2021

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

The Honorable David Scott
Chairman
The Honorable K. Michael Conaway
Ranking Member
Committee on Agriculture
House of Representatives

Subject: *Department of Agriculture, Farm Service Agency: 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), Farm Service Agency entitled "Agricultural Disaster Indemnity Programs" (RIN: 0560-AI55). We received the rule on January 4, 2021. It was published in the *Federal Register* as a final rule on January 6, 2021. 86 Fed. Reg. 439. The stated effective date of the rule is January 6, 2021.

USDA states this final rule establishes the Quality Loss Adjustment Program to provide assistance to producers who suffered eligible crop quality losses due to hurricanes, excessive moisture, floods, drought, tornadoes, typhoons, volcanic activity, snowstorms, and wildfires occurring in calendar years 2018 and 2019. According to USDA, the rule also amends the provisions for the Wildfire and Hurricane Indemnity Program Plus (WHIP+) to be consistent with the Further Consolidated Appropriations Act, 2020, by adding excessive moisture and drought occurring in 2018 and 2019 as qualifying disaster events and clarifying eligibility of sugar beets. Pub. L. No. 116-94, 133 Stat. 2534 (Dec. 20, 2019). USDA states the changes to WHIP+ were self-enacting and were previously implemented by USDA.

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), 808(2). 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 of the rule and the need to implement it expeditiously to provide assistance to agricultural producers.

USDA therefore determined that it is not required to delay the effective date for 60 days from the date of publication to allow for congressional review 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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Mary Ann Ball
USDA/FPAC-BC

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF AGRICULTURE,
FARM SERVICE AGENCY
ENTITLED
“AGRICULTURAL DISASTER INDEMNITY PROGRAMS”
(RIN: 0560-A155)

(i) Cost-benefit analysis

The Department of Agriculture (USDA) stated that this final rule is expected to result in approximately \$950 million in payments for the continuation of disaster assistance program delivery, including payments to eligible producers for production losses due to excessive moisture and extreme drought under the Wildfire and Hurricane Indemnity Program Plus (WHIP+) and for quality losses covered by the Quality Loss Adjustment (QLA) Program, as provided for by the Further Consolidated Appropriations Act, 2020. Pub. L. No. 116-94, 133 Stat. 2534 (Dec. 20, 2019). Of that amount, USDA anticipates that an estimated \$500 million will be available for QLA Program payments. However, according to USDA, the amount of funding ultimately available for the QLA Program will not be known until other payments, for example for excessive moisture and drought under WHIP+, are finalized.

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

USDA determined that 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 that this final rule does not contain any federal mandates 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.*

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 also do not apply to this rule. In particular, USDA stated this rule involves programs for payments to certain agricultural commodity producers and therefore falls within the exception for rules involving a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. USDA found that notice and public procedure are contrary to the public interest due to the nature of the rule and the need to implement the regulations expeditiously to provide assistance to agricultural producers.

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

USDA stated that the Office of Management and Budget (OMB) approved a 6-month emergency information collection for the QLA Program information collection request.

Statutory authorization for the rule

USDA promulgated this final rule under sections 1531 and 4501 of title 7; section 3801 note 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 115-123; title I of Public Law 116-20; and division B, title VII of Public Law 116-94.

Executive Order No. 12866 (Regulatory Planning and Review)

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

Executive Order No. 13132 (Federalism)

USDA determined that this rule will not have 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. According to USDA, this rule also does not impose substantial direct compliance costs on state and local governments.