



Office of the General Counsel

B-274636; B-274637

September 23, 1996

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

The Honorable Pat Roberts
Chairman
The Honorable E (Kika) de la Garza
Ranking Minority Member
Committee on Agriculture
House of Representatives

Subject: Department of Agriculture, Federal Crop Insurance Corporation:
Catastrophic Risk Protection Endorsement and General Administrative
Regulations; Federal Crop Insurance Reform Act of 1994, Regulations for
Implementation

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on two major rules promulgated by Department of Agriculture, Federal Crop Insurance Corporation, entitled "Catastrophic Risk Protection Endorsement" and "General Administrative Regulations; Federal Crop Insurance Reform Act of 1994, Regulations for Implementation" (RIN: 0563-AB11). We received the rules on September 12, 1996. They were published in the Federal Register as final rules on August 20, 1996. 61 Fed. Reg. 42979 and 61 Fed. Reg. 42970.

The first listed rule provides for a catastrophic risk protection plan of crop insurance and the second rule provides noninsured producers, policyholders, and insurance companies the regulations applicable to the catastrophic risk protection program. This new catastrophic risk protection level of insurance was mandated by the Federal Crop Insurance Reform Act of 1994 (P.L. 103-354).

Enclosed is our assessment of the Federal Crop Insurance Corporation's compliance with the procedural steps required by sections 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rules. Our review indicates that the Corporation complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Senior Attorney, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Department of Agriculture, Federal Crop Insurance Corporation is Robert A. Robinson, Director for Food and Agriculture Issues. Mr. Robinson can be reached at (202) 512-5138.

Robert P. Murphy
General Counsel

Enclosure

cc: Mr. Kenneth Ackerman
Manager
Federal Crop Insurance Corporation

ANALYSIS UNDER 5 U.S.C. §§ 801(a)(1)(B)(i)-(iv) OF TWO MAJOR RULES
ISSUED BY
THE DEPARTMENT OF AGRICULTURE, FEDERAL CROP INSURANCE
CORPORATION
ENTITLED
"CATASTROPHIC RISK PROTECTION ENDORSEMENT" (RIN: 0563-AB09) AND
"GENERAL ADMINISTRATIVE REGULATIONS; FEDERAL CROP INSURANCE
REFORM ACT OF 1994, REGULATIONS FOR IMPLEMENTATION"
(RIN: 0563-AB11)

(i) Cost-benefit analysis

The Federal Crop Insurance Corporation (FCIC) prepared a cost-benefit analysis in connection with the final rules. The costs and benefits discussed in the analysis consider both rules.

The analysis estimated \$25 million in savings associated with requiring a producer to obtain at least catastrophic coverage for any crop of economic significance as a condition of receiving benefits for that crop under certain Department of Agriculture programs (linkage requirement) or signing a waiver for eligibility for emergency crop loss assistance. A \$3 million cost resulting from the loss of revenue is estimated from the tobacco marketing card and the undivided interest language which allows a landowner to obtain catastrophic coverage to satisfy the linkage requirement for all other landowners who hold an undivided interest in given insurable acreage. Therefore, a \$22 million annual savings is estimated to result from the rules.

In addition, the rule is expected to result in less volatility of producers' incomes and less risk of no income due to adverse weather events and rural communities and producers will benefit from the certainty of payments in times of catastrophic yield losses. The Government benefits from a single disaster protection program, as opposed to the previous ad hoc disaster programs, and reduced Federal outlays.

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

Pursuant to section 605(b) of the Act, FCIC certified in the preambles to both the interim rules (60 Fed. Reg. 2000 and 1996 (January 6, 1995)) and the final rules (61 Fed. Reg. 42980 and 42970 (August 20, 1996)) that the rules would not have a significant impact on a substantial number of small entities. Therefore, there was no requirement to prepare an initial or final regulatory flexibility analysis under sections 603 or 604 of the Act. For the same reason, sections 607 and 609 are inapplicable.

However, the preambles to the final rules do discuss additional flexibility and cost savings for small entities in several areas. First, producers are no longer required to obtain at least catastrophic coverage for economically significant crops but may sign a waiver foregoing emergency crop loss assistance. Second, all producers with a share in a tobacco crop are allowed to be under one marketing card to insure the crop under one insurance policy. Finally, with certain restrictions, persons who hold an undivided interest in a crop may be eligible to purchase one insurance policy covering all shares to satisfy linkage requirements, thereby not having to pay the \$50 processing fee in these situations.

According to an official at FCIC, publication of the certifications in the Federal Register was treated as providing notice under section 605(b) to the Small Business Administration's (SBA) Chief Counsel for Advocacy. The SBA has confirmed that some agencies follow this practice without objection from SBA.

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

In the preambles to the final rules, FCIC explains that the rules do not contain a Federal mandate under Title 2 of the Act for State, local or tribal governments or the private sector and therefore, sections 202 and 205 of the Act are inapplicable.

In addition, the final rules do not affect small governments or contain a significant intergovernmental mandate. Accordingly, sections 203 and 204 of the Act, which require agencies to consult with small governments and solicit input from State, local, and tribal governments, are also inapplicable.

(iv) Other relevant information or requirements under Acts and Executive orders

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

The rules were promulgated through the notice and comment rulemaking procedures of the Act, 5 U.S.C. § 553. Because the Federal Crop Insurance Reform Act of 1994 required that the statutory changes be implemented by the 1995 crop year and many of the changes were mandated by the statute, FCIC invoked the exception to the notice and comment requirements contained in 5 U.S.C. § 553(b)(B) that it would be impractical and contrary to the public interest to publish the rules prior to making the rules effective. Therefore, the rules were published as interim rules rather than as proposed rules.

However, a 60 day period was afforded for comments to be submitted on the interim rules, which period was reopened on August 7, 1995 and extended to August 18, 1995. Forty comments were received and considered prior to the issuance of the final rules. Each of the comments and the response and changes

made by the FCIC based on such comments are discussed in the preambles to the final rules.

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

The information collections contained in the rules, which include the Crop Insurance Application and Crop Insurance Acreage Report, were submitted to the Office of Management and Budget (OMB) for approval as required by the Act. The submittal, which was made available to the public, contained the reasons for collecting the information and the burden estimates, as required by the Act.

On March 22, 1996, OMB approved the information collection and assigned OMB Control No. 0563-003.

Statutory authorization for the rules

The Corporation is authorized under 5 U.S.C. §§ 1506 (l) and (p) to issue regulations to carry out the function of providing crop insurance. These rules implement section 106 of the Federal Crop Insurance Reform Act of 1994 (Pub. L. 103-354) and section 193 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104-127) requiring the FCIC to offer catastrophic risk protection.

Executive Order No. 12866

The rules were determined to be "economically significant" under Executive Order 12866 requiring review by the Office of Management and Budget, Office of Regulatory Affairs (OIRA). OIRA approved the final rules as complying with the requirements of the Order based on the information supplied by FCIC, including a planned regulatory action document describing the reasons for the rules and an assessment of the costs and budgetary impact of the rules.

Other Executive Orders and Statutes

The preambles to the final rules state that the rules have been reviewed under Executive Orders Nos. 12372 (Intergovernmental cooperation) and 12612 (Federalism) and found not subject to those Orders.

Also, according to the preambles, the final rules were reviewed pursuant to Executive Order No. 12778 (Civil Justice Reform). However, that Executive Order has been replaced by Executive Order No. 12988, effective May 5, 1996. The prior Executive Order contained a similar requirement now found at section 3(b)(2)(A) of the newly effective Order requiring that the preemptive effects of the rule be specified. FCIC has been determined that the provisions of the rules that preempt

State and local laws to the extent such State and local laws are inconsistent with the rules meet those standards.