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United States Government Accountability Office
Washington, DC 20548

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March 24, 2010

The Honorable Christopher J. Dodd
Chairman
The Honorable Richard C. Shelby
Ranking Minority Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable James L. Oberstar
Chairman
The Honorable John L. Mica
Ranking Minority Member
Committee on Transportation and Infrastructure
House of Representatives

Subject: *Department of Homeland Security, Federal Emergency Management
Agency: Special Community Disaster Loans 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 Homeland Security, Federal Emergency Management Agency (FEMA), entitled “Special Community Disaster Loans Program” (RIN: 1660-AA44). It was published in the *Federal Register* as a final rule on January 19, 2010. 75 Fed. Reg. 2800. It was effectively received as a major rule on March 14, 2010.

On October 7, 2005, Congress passed the Community Disaster Loan Act of 2005 authorizing FEMA to loan up to \$1 billion to communities that had sustained revenue losses due to Hurricanes Katrina and Rita. Loans that FEMA issued under the 2005 Act are referred to as Special Community Disaster Loans (Special CDLs).

This final rule amends FEMA’s Special CDL Program regulations to establish procedures and requirements for Special CDL cancellations. The Special CDL Program and the cancellation provisions apply to communities in the Gulf Coast region who received Special CDLs following Hurricanes Katrina and Rita.

The final rule has an announced effective date of March 22, 2010. The Congressional Review Act requires 60 days between the effective date of a major rule and the later of the date of publication of the rule in the *Federal Register* or receipt by Congress of

a report containing a copy of the final rule, a concise general statement, including whether or not the rule is a major rule, and the proposed effective date of the rule. 5 U.S.C. § 801(a)(3)(A). GAO received a copy of the rule on January 25, 2010, along with a report indicating that the rule was not a major rule. This final rule was published on January 19, 2010. However, on March 14, 2010, FEMA notified GAO that the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) had determined that the final rule was likely to result in an annual effect on the economy of \$100 million or more, and therefore, the final rule is a “major rule” under the Congressional Review Act. 5 U.S.C. § 804(2). Consequently, we determined that FEMA’s major rule was effectively received on March 14, 2010, for purposes of our reporting requirements under 5 U.S.C. § 801(a)(2)(A). Neither we nor Congress, however, have received a corrected report, nor has a corrected rule been published in the *Federal Register*. Therefore, this final rule does not have the required 60-day period prior to its effective date.

Enclosed is our assessment of FEMA’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 procedural steps taken indicates that FEMA, with the exception of the 60 day period prior to the effective date, 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: David A. Trissell
Chief Counsel, Federal Emergency
Management Agency
Department of Homeland Security

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HOMELAND SECURITY,
FEDERAL EMERGENCY MANAGEMENT AGENCY
ENTITLED
"SPECIAL COMMUNITY DISASTER LOANS PROGRAM"
(RIN: 1660-AA44)

(i) Cost-benefit analysis

FEMA determined that the overall cost impact of this rule is the cost to the applicant to apply for the cancellation, as well as the impact on the economy of potentially forgiving all Special Community Disaster Loans (CDLs) and any related interest and costs. FEMA estimated that the annual estimated cost to submit the application for loan cancellation will be \$4,850.32. FEMA determined that if all 152 recipients of Special CDLs apply for and are found eligible for full cancellation under the rule, up to \$1,270,501,241, plus any applicable interests and costs, could be forgiven. Therefore, the maximum total economic impact of this final rule was determined by FEMA to be approximately \$1.3 billion. However, FEMA notes that it is impossible to predict the economic impact with precision because it cannot know the dollar amounts or number of loans that will be cancelled. Also, although the impact of the final rule may be spread over multiple years as applications are received, processed, and loans cancelled, the total economic effects of a specific loan cancellation would only occur once, rather than annually.

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

FEMA certified that this final rule will not have a significant economic impact on a substantial number of small entities.

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

FEMA determined that this final rule is excluded from the Unfunded Mandates Reform Act, because the Act excludes rules that require compliance with accounting or auditing procedures with respect to grants or other money provided by the federal government, and rules that provide for emergency assistance or relief at the request of any state, local, or tribal government or any official of a state, local, or tribal government. 2 U.S.C. § 1503.

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

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

FEMA published a notice of proposed rulemaking on April 3, 2009. 74 Fed. Reg. 15,228. FEMA received 68 comments on the proposed rule and responded to comments in the final rule. FEMA also made five substantive changes to the regulatory text in response to the comments. 75 Fed. Reg. 2800.

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

The final rule contains information collection requirements as defined by the Paperwork Reduction Act. The requirements associated with the “Application for Community Disaster Loan (CDL) Program and the Special Community Disaster Loan Program” have been approved by OMB and assigned OMB Control Number 1660-0083 and expires on June 30, 2012. The final rule does not contain any changes that would affect the currently approved collection.

The final rule does contain information collection requirements for applicants seeking cancellation of a Special CDL. FEMA intends that such applicants will use the Application for Loan Cancellation, and its associated forms, if applicable, already approved by OMB under OMB Control Number 1660-0082, which expires on January 31, 2010. FEMA will submit to OMB for approval a request to amend the existing collection to increase the number of respondents from 1 to 153. FEMA estimates that the total annual burden hours will be 153, the total annual respondent costs will be \$4,882.23, and that there will be no start-up, operational, or other costs associated with the information collection.

Statutory authorization for the rule

The final rule is authorized by section 4502(a) of the U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Pub. L. 110-128, 119 Stat. 2061 (2007), as codified at 42 U.S.C. § 5184.

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

The final rule was determined to be an economically significant regulatory action and was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

FEMA determined that the final rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.