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February 19, 2014

The Honorable John D. Rockefeller IV
Chairman
The Honorable John Thune
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Bill Shuster
Chairman
The Honorable Nick J. Rahall II
Ranking Member
Committee on Transportation and Infrastructure
House of Representatives

Subject: *Department of Transportation, Federal Transit Administration: Emergency Relief 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 Transportation, Federal Transit Administration (FTA) entitled "Emergency Relief Program" (RIN: 2132-AB13). We received the rule on February 5, 2014. It was published in the *Federal Register* as an interim final rule; request for comments on March 29, 2013. 78 Fed. Reg. 19,136.

The interim final rule established procedures governing the implementation of the Federal Transit Administration's (FTA) Public Transportation Emergency Relief Program under 49 U.S.C. § 5324, as authorized by the Moving Ahead for Progress in the 21st Century Act. FTA issued the interim final rule in order to comply with the Disaster Relief Appropriations Act of 2013. FTA indicated that it would accept comments on the interim final rule and publish a final rule after the comment period closed.

The final rule had an effective date of March 29, 2013. 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). However, notwithstanding the 60-day delay requirement, any rule that an agency for good cause finds that notice and public procedures are impractical, unnecessary, or contrary to the public interest is to take effect when the promulgating agency so determines. §§ 553(d)(3), 808(2). Accordingly, FTA determined that good cause existed for immediate effectiveness of this rule because the rule was expected to address the immediate need to repair transit system facilities, infrastructure, and equipment damaged by Hurricane Sandy.

Enclosed is our assessment of FTA'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 FTA 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: Bonnie Graves
Acting Assistant Chief Counsel for
Legislation and Regulations
Department of Transportation

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF TRANSPORTATION,
FEDERAL TRANSIT ADMINISTRATION
ENTITLED
"EMERGENCY RELIEF PROGRAM"
(RIN: 2132-AB13)

(i) Cost-benefit analysis

In its submission to the Comptroller General, FTA did not include an analysis of the costs and benefits of the interim final rule.

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

In compliance with RFA, FTA evaluated the effects of the interim final rule on small entities and determined the interim final rule would not have a significant economic impact on a substantial number of small entities. FTA stated that recipients of Emergency Relief Program funds are generally states and local governmental authorities. FTA stated that the only burden placed upon local governments by this rule would be the small paperwork burden associated with the application process, which was addressed in the Paperwork Reduction Act section of this notice and was designed to minimize the paperwork burdens of the rule. For this reason, FTA certified that this action would 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

FTA stated that the interim final rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995. The federal share for grants made under the Emergency Relief Program is 80 percent, and the Secretary may waive all or part of the non-federal share. According to FTA, the interim final rule would not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$143.1 million or more in any one year (2 U.S.C. § 1532).

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

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

The Administrative Procedure Act (5 U.S.C. § 553(d)) requires that a rule be published 30 days prior to its effective date unless one of three exceptions applies. One of these exceptions is when the agency finds good cause for a shorter period. Here, FTA determined that good cause existed for immediate effectiveness of the interim final rule because the rule was expected to address the immediate need to repair transit system facilities, infrastructure, and equipment damaged by Hurricane Sandy. Thus, according to FTA it was in the public interest for this final rule to have an immediate effective date.

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

On February 6, 2013, in compliance with PRA and the Office of Management and Budget (OMB) implementing regulation at 5 C.F.R. § 1320.13, FTA received emergency approval from OMB for an Information Collection for funds appropriated by the Disaster Relief Appropriations Act (Information Collection number 2132-0575). FTA stated that the approval for this information collection would expire on August 13, 2013. In compliance with PRA and OMB implementing regulation at 5 C.F.R. § 1320.8(d), FTA indicated that it would seek longer-term approval from OMB for Information Collection number 2132-0575, for which FTA received emergency approval. The Information Collection included not only funds specific to Hurricane Sandy but for the Emergency Relief Program in its entirety. FTA indicated that it would seek comment on whether the information collected would have practical utility; whether its estimation of the burden of the proposed information collection was accurate; whether the burden could be minimized through the use of automated collection techniques or other forms of information technology; and for ways in which the quality, utility, and clarity of the information could be enhanced.

Statutory authorization for the rule

FTA stated that the interim final rule was issued pursuant to the authority in 49 U.S.C. § 5324(a).

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

FTA determined that this was an economically significant rule within the meaning of the Order because of the amount of funding FTA reasonably expected to distribute as a result of Hurricane Sandy.

Executive Order No. 13,132 (Federalism)

FTA stated that the interim final rule was analyzed in accordance with the principles and criteria established by the Order, and FTA determined that the interim final rule would not have sufficient federalism implications to warrant the preparation of a federalism assessment. FTA also determined that this interim final rule would not preempt any state law or state regulation or affect the states' abilities to discharge traditional state governmental functions.