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June 17, 2020

The Honorable Mike Crapo  
Chairman  
The Honorable Sherrod Brown  
Ranking Member  
Committee on Banking, Housing, and Urban Affairs  
United States Senate

The Honorable Peter A. DeFazio  
Chairman  
The Honorable Sam Graves  
Ranking Member  
Committee on Transportation and Infrastructure  
House of Representatives

Subject: *Department of Homeland Security, Federal Emergency Management Agency:  
Emergency Management Priorities and Allocations System (EMPAS)*

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 "Emergency Management Priorities and Allocations System (EMPAS)" (RIN: 1660-AB04). We received the rule on June 2, 2020. It was published in the *Federal Register* as an interim final rule on May 13, 2020. 85 Fed. Reg. 28500. The effective date of the rule is May 13, 2020. The agency is holding a comment period through June 12, 2020.

According to FEMA, the interim final rule establishes standards and procedures by which the agency may require certain contracts or orders that promote the national defense be given priority over other contracts or orders. FEMA states that the rule also sets new standards and procedures by which the agency may allocate materials, services, and facilities to promote the national defense under emergency and non-emergency conditions pursuant to section 101 of the Defense Production Act of 1950. 50 U.S.C. § 4511. According to FEMA, this rule is part of the agency's response to the ongoing Coronavirus Disease 2019 emergency.

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). According to FEMA, there is no required delay in the effective date of the rule because it is being promulgated under the good cause exception to notice and comment under the Administrative Procedure Act. 5 U.S.C. § 808(2). According to FEMA, the situation of the Coronavirus Disease 2019 pandemic requires FEMA to establish, without delay, the relevant regulatory framework, in order

to provide a clear, robust, and enforceable mechanism for exercising its authority under section 101 of the Defense Production Act of 1950 and other applicable authorities. See 50 U.S.C. § 4511.

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. 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, reading "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Adrian Sevier  
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  
“EMERGENCY MANAGEMENT PRIORITIES AND  
ALLOCATIONS SYSTEM (EMPAS)”  
(RIN: 1660-AB04)

(i) Cost-benefit analysis

In its submission to us, the Federal Emergency Management Agency (FEMA) indicated that it considered preparation of an analysis of the costs and benefits of this interim final rule to be not applicable.

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

FEMA stated the RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to the Administrative Procedure Act. 5 U.S.C. § 553(b). According to FEMA, it concluded RFA's requirements relating to initial and final regulatory flexibility analysis do not apply to this interim final rule because FEMA is not issuing a notice of proposed rulemaking.

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

According to FEMA, the written statement provisions of the Act do not apply to this interim final rule because FEMA has not issued a notice of proposed rulemaking for the rule.

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

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

FEMA published this interim final rule on May 13, 2020, effective immediately upon publication. 85 Fed. Reg. 28500. FEMA stated that the rule is being issued pursuant to the good cause exception of the Act because it would be impracticable and contrary to public interest to delay the implementation of the rule until a full public notice and comment process is completed, given the national emergency caused by the Coronavirus Disease 2019 (COVID-19) pandemic. According to FEMA, the situation of the COVID-19 pandemic requires FEMA to establish, without delay, the relevant regulatory framework, in order to provide a clear, robust, and enforceable mechanism for exercising its authority under section 101 of the Defense Production Act of 1950 and other applicable authorities. See 50 U.S.C. § 4511.

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

FEMA determined that this interim final rule contains information collection requirements under the Act. According to FEMA, a request for the new information collection was submitted to the Office of Management and Budget (OMB) under its emergency clearance procedures.

Statutory authorization for the rule

FEMA promulgated this interim final rule pursuant to the authority of sections 313 and 314 of title 6, and various sections of the title 50, United States Code.

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

The Department of Homeland Security, in coordination with OMB, determined that this interim final rule is economically significant under the Order. However, FEMA stated that it is proceeding under the emergency provision of section 6(a)(3)(D) of the Order.

Executive Order No. 13,132 (Federalism)

FEMA determined that this interim final rule does not have federalism implications as defined by the Order because it does 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.