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February 2, 2021

Chair
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 January 18, 2021. It was published in the *Federal Register* as a final rule on January 8, 2021. 86 Fed. Reg. 1288. The effective date of this final rule is January 8, 2021.

According to FEMA, this final rule adopts, with minor technical edits, an interim final rule with request for comments published in the *Federal Register* on May 13, 2020, establishing standards and procedures by which FEMA may require certain contracts or orders that promote the national defense be given priority over other contracts or orders and setting new standards and procedures by which FEMA 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, as amended. 50 U.S.C. § 4511. FEMA stated these regulations are part of FEMA's response to the ongoing COVID-19 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). Here, although FEMA did not specifically mention CRA's 60-day delay in effective date requirement, FEMA stated that this rule is effective immediately because the delayed effective date generally required by the Administrative Procedure Act is unnecessary. FEMA stated further that the interim final rule that this final rule makes final, with only technical changes, is already in effect.

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 that reads "Shirley A. Jones". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Shabnaum Q. Amjad
Deputy Associate Chief Counsel
Regulatory Affairs Division
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 Department of Homeland Security, Federal Emergency Management Agency (FEMA) indicated that it considered preparation of an analysis of the costs and benefits of this 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 that it did not issue a notice of proposed rulemaking for this final rule and was not required to do so under any law. Thus, FEMA stated that the RFA's requirements relating to a final regulatory flexibility analysis do not apply.

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

FEMA stated that it did not issue a notice of proposed rulemaking in advance of this final rule. Therefore, FEMA stated that the written statement provisions of the Unfunded Mandates Reform Act do not apply.

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

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

On May 13, 2020, FEMA published an interim final rule titled, “Emergency Management Priorities and Allocations System (EMPAS).” 85 Fed. Reg. 28500. FEMA stated that it received four germane public comments. FEMA addressed these comments in the preamble of this final rule.

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

FEMA determined that this final rule contains information collection requirements under the Act. FEMA stated that the Requests for Special Priorities Assistance collection, Office of Management and Budget (OMB) Control Number 1660-0149, was submitted for review under OMB's emergency clearance procedures. FEMA stated further that the new Rated Orders, Adjustments, Exceptions, or Appeals Under the Emergency Management Priorities and Allocations System (EMPAS) collection, OMB Control Number 1660-0150, cleared OMB's emergency clearance procedures.

Statutory authorization for the rule

FEMA promulgated this final rule pursuant to sections 313 and 314 of title 6, and sections 4511 to 4518 of title 50, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

FEMA stated that this rule was designated a “significant regulatory action” and economically significant. FEMA stated further that this the rule was reviewed by OMB.

Executive Order No. 13132 (Federalism)

FEMA has determined that this rulemaking 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, and, therefore, does not have federalism implications.