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October 23, 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 October 9, 2014. It was published in the *Federal Register* as a final rule on October 7, 2014. 79 Fed. Reg. 60,349.

The final rule establishes procedures governing FTA's Public Transportation Emergency Relief Program. The Emergency Relief Program allows FTA, subject to the availability of appropriations, to make grants for eligible public transportation capital and operating costs in the event of a catastrophic event, such as a natural disaster, that affects a wide area, as a result of which the governor of a state has declared an emergency and the Secretary of Transportation has concurred, or the President has declared a major disaster.

The Congressional Review Act 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). This final rule has a stated effective date of November 6, 2014. The rule was published in the *Federal Register* on October 7, 2014, and received on October 9, 2014. Therefore, this final rule does not have the required 60-day delay in effective date.

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, with the exception of the 60-day delay requirement.

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: Holly J. Vandervoit
Paralegal Specialist
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

The Federal Transit Administration (FTA) discussed the potential costs to the federal government of this rule, the recipients of funds under this rule, and the broader benefits of such grants. FTA does not know the cost of this rule, meaning the amount of grants made under the rule, because the amount of funds available to make grants is subject to future appropriations by Congress. While Congress appropriated \$10.9 billion to FTA to provide assistance to public transportation systems impacted by Hurricane Sandy, FTA did not attempt to predict how much funding Congress might appropriate for the Emergency Relief Program in the future for similar extraordinary events. FTA does not expect to make grants under this rule of more than \$100 million in a typical year, i.e., a year without an extraordinary event such as Hurricane Sandy.

Grant recipients under this final rule benefit from the grants received for eligible projects. Eligible projects under the statute and the rule include emergency operating expenses, as well as capital projects to protect, repair, reconstruct, or replace public transportation equipment and facilities. In this rule, FTA has given protection of assets two distinct meanings: emergency protective measures taken immediately before, during, or after an emergency to protect assets from damage or further damage, and resilience projects that protect against future disasters. FTA's policy, as stated in this rule, is to assist recipients and subrecipients in restoring public transportation service and in repairing and reconstructing public transportation assets to a state of good repair as expeditiously as possible following an emergency or major disaster. In conjunction with repair and reconstruction activities, recipients may include projects that increase the resilience of affected public transportation systems to protect the systems from the effects of future emergencies and major disasters. Inherent in this policy is a prioritization of emergency operating expenses and emergency recovery and response projects over projects that protect against future emergencies. This prioritization could impact the funds available for resilience projects.

FTA also discussed benefits of the grants that will be made under this final rule. Actions taken by public transportation agencies to protect assets in advance of a serious weather event can have substantial financial benefits. For example, moving rolling stock to higher ground to protect it from storm surges can save millions of dollars. Further, actions taken during a weather event and in its immediate aftermath, including debris removal and dewatering, can prevent further damage to public transportation assets. As noted in the rule, it is in FTA's and the federal taxpayer's interests to reimburse the cost of these activities. Public transportation agencies are an integral part of the communities they serve, and these agencies will often assist with evacuations, rescue operations, and transportation of utility workers and other first responders, often without regard to the expense of those services. In addition, reestablishing

public transportation service after an emergency or major disaster may cause a public transportation agency to incur extraordinary costs that are not in the agency's budget.

FTA also states that temporary and permanent repairs undertaken after an emergency or major disaster assist the transit agency with restoring service and bringing the repaired or replaced facilities into a state of good repair. Temporary repairs may be necessary to restore service, and these repairs should, when feasible, be undertaken in such a way as to reduce the cost of permanent repairs. Bringing facilities and equipment into a state of good repair has both quantifiable and non-quantifiable benefits. Systems that are in a state of good repair are more efficient, more reliable, and more attractive to transit riders. Public transportation systems that are in a state of good repair have fewer breakdowns, and it is often less expensive to keep equipment and facilities in a state of good repair than it is to undertake heavy maintenance projects to keep a system running.

Lastly, FTA also states that resilience projects to address vulnerabilities to a public transportation facility or system due to the potential future recurrence of emergencies or major disasters have long-term financial benefits. Rebuilding with materials that can withstand weather events, rebuilding in a different location, or adding protective features to a facility or system can prevent the facility or system from experiencing similar damage in the future. These benefits are not only monetary; the ability to restore service in a timelier manner subsequent to an emergency or major disaster, when the facility or system has not sustained serious damage because it was strengthened by a resilience project, helps to restore the community to normalcy more quickly.

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

FTA determined that this final rule will not have a significant 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 determined that this final rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector of \$100 million (\$143.1 million adjusted for inflation) or more in any one year.

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

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

On March 29, 2013, FTA published an interim rule which included a request for comments. 78 Fed. Reg. 19,136. FTA received comments from eight entities: five transit agencies, two transportation workers union organizations, and one public transportation trade association. FTA responded to comments within scope in the final rule.

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

FTA determined that this final rule contains an information collection requirement under the Act. On February 6, 2013, this information collection requirement was given emergency approval

from the Office of Management and Budget (OMB) as part of FTA's promulgation of the interim final rule. The information collection requirement was given OMB Control Number 2132-0575. On August 28, 2013, FTA sought and received longer-term OMB approval for the information collection requirement; the modifications in the final rule from the interim final rule did not affect the information collection requirement. FTA estimates that it will take recipients approximately 50 hours to develop a damage assessment report under this requirement.

Statutory authorization for the rule

FTA promulgated this final rule under the authority of sections 5324 and 5334 of title 49, United States Code, and section 1.91 of title 49, Code of Federal Regulations.

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

FTA determined that this final rule is economically significant under the Order since the rule may affect transfer payments totaling more than \$100 million annually.

Executive Order No. 12,898 (Environmental Justice)

FTA determined that this final rule will not cause disproportionately high and adverse effects on minority or low income populations and that this rule does not affect the ability of affected populations to raise any concerns about potential environmental justice effects at the time FTA considers a grant application.

Executive Order No. 13,132 (Federalism)

FTA determined that this final rule will not have significant federalism implications to warrant the preparation of a federalism assessment and that this final rule will not preempt any state law or regulation or affect the states' abilities to discharge traditional state governmental functions.