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United States General Accounting Office
Washington, DC 20548

B-288277

July 17, 2001

The Honorable Paul Sarbanes
Chairman
The Honorable Phil Gramm
Ranking Minority Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

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

Subject: Federal Emergency Management Agency: Supplemental Property
Acquisition and Elevation Assistance

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Federal Emergency Management Agency (FEMA), entitled "Supplemental Property Acquisition and Elevation Assistance" (RIN: 3067-AD06). We received the rule on July 2, 2001. It was published in the Federal Register as a final rule on June 15, 2001. 66 Fed. Reg. 32666.

The final rule provides guidance on the administration of a Supplemental Property Acquisition and Elevation Assistance program. Funds are available under the Consolidated Appropriations Act for Fiscal Year 2000 (Pub. L. 106-113), which provides up to \$215 million for the acquisition of properties affected by Hurricane Floyd or surrounding events, and under Public Law 106-246, which provides \$50 million for the acquisition or elevation of properties made uninhabitable by floods in areas that have had a major disaster declaration in federal fiscal years 1999 or 2000.

The final rule has an announced effective date of August 14, 2001. 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). Since it was not received by Congress and our Office until July 2, 2001, the rule does not have the required 60-day delay in its effective date to allow for congressional review.

While the prior interim final rule (65 Fed. Reg. 7270, February 11, 2000) dealing with Hurricane Floyd relief, was made effective upon publication, it fell within the exception to the 60-day delay provision found at 5 U.S.C. 808(2) since no comments were requested prior to its publication. The instant final rule was to be based on any comments received within 60 days of publication of the interim final rule. Therefore, we do not believe the exception at section 808(2) is available. The fact that no comments were received following the request in the interim final rule does not alter this conclusion.

Enclosed is our assessment of the 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 indicates that, with exception of the effective date discussion above, FEMA complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is John Anderson, Managing Director, Physical Infrastructure. Mr. Anderson can be reached at (202) 512-2834.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

Cc: Mr. Michael D. Brown
General Counsel, Federal Emergency
Management Agency

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
FEDERAL EMERGENCY MANAGEMENT AGENCY
ENTITLED
"SUPPLEMENTAL PROPERTY ACQUISITION AND
ELEVATION ASSISTANCE"
(RIN: 3067-AD06)

(i) Cost-benefit analysis

Since the final rule is an administrative action in support of normal day-to-day grant activities required by Public Laws 106-113 and 106-246, which prescribe how the \$265 million will be transferred, no formal cost-benefit analysis was performed. The benefit of the rule will be the promotion of public health and safety by providing low-income homeowners with the financial means to move voluntarily out of high-risk flood hazard areas or to elevate homes above the 100-year flood level.

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

The 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

The final rule does not contain either an intergovernmental or private sector mandate, as defined in title II, of more than \$100 million 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.

This final rule follows FEMA's publication of an interim final rule on February 11, 2000, on an emergency basis to speed the issuance of flood relief grants under Public Law 106-113. 65 Fed. Reg. 7270. While the February 11th rule requested comments, none were received.

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

The final rule contains information collections that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Review Act. The collections were approved on an emergency basis in connection

with the interim rule. FEMA has submitted the required information concerning the collections to OMB for approval in order to continue to use the collections.

Statutory authorization for the rule

The final rule is promulgated under the authority contained in the Consolidated Appropriations Act for Fiscal Year 2000 (Pub. L. 106-113) and Public Law 106-246.

Executive Order No. 12866

The final rule was reviewed by OMB and found to be an “economically significant” regulatory action.

Executive Order No. 13132 (Federalism)

FEMA has determined that the interim final rule does not significantly affect the rights, roles, and responsibilities of states. It involves no preemption of state law nor does it limit state policymaking discretion.