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United States General Accounting Office
Washington, DC 20548

B-292160

April 17, 2003

The Honorable John McCain
Chairman
The Honorable Ernest F. Hollings
Ranking Minority Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Sherwood L. Boehlert
Chairman
The Honorable Ralph M. Hall
Ranking Minority Member
Committee on Science
House of Representatives

Subject: *Department of Homeland Security, Federal Emergency Management Agency: Assistance to Firefighters Grant 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 Homeland Security, Federal Emergency Management Agency (FEMA), entitled "Assistance to Firefighters Grant Program" (RIN: 3067-AD21). We received the rule on April 7, 2003. It was published in the Federal Register as a final rule on March 14, 2003. 68 Fed. Reg. 12544.

The rule finalizes guidance announced in a prior interim final rule regarding the administration of grants made under the authority of the Federal Fire Prevention and Control Act of 1974. The interim final rule was published in the Federal Register on February 27, 2002 (67 Fed. Reg. 9142) and was the subject of a major rule report issued on March 27, 2002 (GAO-02-535R).

The final rule has an announced effective date of March 14, 2003, the date of publication in the Federal Register. 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). Therefore, the rule does not have the required delay in its effective date.

While the interim final rule was made effective upon publication, FEMA cited the "good cause" exception to the 60-day delay provision found at 5 U.S.C. 808(2) that

notice and public procedure are impractical, unnecessary, or contrary to the public interest. Since FEMA had not received comments on the rule, the exception was properly applied. However, in connection with the instant final rule, FEMA did receive comments in response to the interim final rule, which FEMA considered in issuing the final rule. Our Office has always found the exemption at section 808(2) to only be available if the agency did not receive public comments on the rule. See Department of Health and Human Services, Health Care Financing Administration: Medicare Program, B-275549, B-275552, December 9, 1996, GAO/OGC-97-9, and Department of Justice, Office of the Attorney General: September 11th Victim Compensation Fund of 2001, B-290094, March 22, 2002, GAO-02-534R.

We also note that there are no substantive changes from the interim final rule, which has been in effect since February 27, 2002, and the newly issued final rule.

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 the exception of the 60-day delay in the effective date, 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 Michael Gryszkowiec, Managing Director, Physical Infrastructure. Mr. Gryszkowiec can be reached at (202) 512-2834.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Jordon S. Fried
Acting General Counsel
Department of Homeland Security

ENCLOSURE

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HOMELAND SECURITY,
FEDERAL EMERGENCY MANAGEMENT AGENCY
ENTITLED
"ASSISTANCE TO FIREFIGHTERS GRANT PROGRAM"
(RIN: 3067-AD21)

(i) Cost-benefit analysis

FEMA did not perform a cost-benefit analysis in connection with the final rule. In conjunction with the prior interim final rule, FEMA noted that it expected to award approximately \$345 million in grants. With the addition of cost-sharing, the total value of all grants would be in the \$395 million to \$400 million range.

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

Since the final rule was not preceded by the publication of a notice of proposed rulemaking, the requirements of the Regulatory Flexibility Act 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

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.

In issuing the final rule, FEMA states that it considered the 17 comments it received in response to the interim final rule.

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

The final rule contains an information collection that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. OMB has approved the collection and assigned OMB Control No. 1660-0054, which expires on December 31, 2005.

Statutory authorization for the rule

The final rule is promulgated under the authority contained in the Federal Fire Protection and Control Act (15 U.S.C. 2201 et seq.).

Executive Order No. 12866

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

Executive Order No. 13132 (Federalism)

The final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.