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United States Government Accountability Office
Washington, DC 20548

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December 12, 2005

The Honorable James M. Inhofe
Chairman
The Honorable James M. Jeffords
Ranking Minority Member
Committee on Environment and Public Works
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: *Department of Homeland Security, Federal Emergency Management Agency: Special Community Disaster Loans 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 "Special Community Disaster Loans Program" (RIN: 1660-AA44). We received the rule on November 28, 2005. It was published in the Federal Register as an "interim rule with request for comments" on October 18, 2005. 70 Fed. Reg. 60443.

The interim rule implements the Special Community Disaster Loans Program authorized in the Community Disaster Loan Act of 2005. The rule describes the procedures and requirements for a program designed to provide loans for essential services to local governments that have experienced a loss in revenue due to a major disaster.

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. Our review indicates that 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 Norman Rabkin, Managing Director, Homeland Security and Justice. Mr. Rabkin can be reached at (202) 512-8777.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: David A. Trissell
General Counsel
Federal Emergency Management Agency

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
"SPECIAL COMMUNITY DISASTER LOANS PROGRAM"
(RIN: 1660-AA44)

(i) Cost-benefit analysis

FEMA notes that Congress has authorized \$1 billion in new loan authority and lifted the \$5 million limit on individual loans. Therefore, it is very possible that more than \$100 million in Special Community Disaster Loans could be made within the next year.

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

Since the interim rule was not preceded by a Notice of Proposed Rulemaking, a Regulatory Flexibility Analysis is not required.

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

Since the interim rule was not preceded by a Notice of Proposed Rulemaking, the requirements of the Act do not apply. However, FEMA notes that the interim 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.*

FEMA has found "good cause" under 5 U.S.C. 553(d)(3) to forgo notice and comment procedures. FEMA stated it would not be in the public interest to delay the effectiveness of the loan program because of the immediate needs of local governments impacted by Hurricanes Katrina and Rita.

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

The interim 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. 1660-0083 with an expiration date of April 30, 2006.

Statutory authorization for the rule

The interim rule was issued pursuant to the authority found in the Community Disaster Loan Act of 2005 (Pub. L. 109-88) and the Second Emergency Supplemental Appropriations Act to Meet Immediate Needs Arising From the Consequences of Hurricane Katrina, 2005 (Pub. L. 109-62).

Executive Order No. 12866

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

Executive Order No. 13132 (Federalism)

FEMA states that the interim rule does not have sufficient federalism implications to warrant the preparation of a federalism impact statement.