



**United States Government Accountability Office
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November 2, 2011

The Honorable Tom Harkin
Chairman
The Honorable Michael B. Enzi
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Lamar Smith
Chairman
The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
House of Representatives

Subject: *Department of Justice: James Zadroga 9/11 Health and Compensation Act of 2010*

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 Justice (Justice), entitled "James Zadroga 9/11 Health and Compensation Act of 2010" (RIN: 1105-AB39). We received the rule and accompanying materials on October 20, 2011. It was published in the *Federal Register* as a final rule on August 31, 2011, with a correction published on October 20, 2011. 76 Fed. Reg. 54,112; 76 Fed. Reg. 65,112.

The final rule amends the regulations implementing the September 11th Victim Compensation Fund of 2001 (the Fund) to reflect the changes made by the James Zadroga 9/11 Health and Compensation Act of 2010. Pub. L. No. 111-347, 124 Stat. 3623 (Jan. 2, 2011).

Enclosed is our assessment of Justice'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 Justice complied with the applicable requirements.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of major rules from the date of publication in the *Federal Register* or receipt of the rule and accompanying material—including a statement as to whether the rule is major—by Congress, whichever is later. 5 U.S.C § 801(a)(3)(A). The final rule published in the *Federal Register* on August 31, 2011 (the final rule), stated that this rule had an effective date of October 3, 2011. 76 Fed. Reg. 54,112. The final rule also stated it was not a major rule under CRA. 76 Fed. Reg. 54,119. However, the correction published in the *Federal Register* on October 20, 2011 (the correction), revised the rule to state that the rule is a major rule because the compensation benefits awarded to eligible claimants will have an annual beneficial impact on the economy of \$100 million or more in certain years. 76 Fed. Reg. 65,112. Since the accurate statement as to whether the rule is a major rule was received on October 20, 2011, and the rule has an effective date of October 3, 2011, the rule does not have the 60-day delay in effective date.

However, any rule that an agency for good cause finds that notice and public comment procedures are impractical, unnecessary, or contrary to the public interest is to take effect when the promulgating agency so determines. 5 U.S.C. § 808(2). The correction also stated that Justice found good cause to waive the 60-delay and make the rule effective October 3, 2011. Justice reached this conclusion because it determined that, in view of the need to begin processing compensation claims as soon as possible, it was impractical to comply with the 60-day delay. 76 Fed. Reg. 65,112.

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: Sheila L. Birnbaum
Special Master, September 11th
Victim Compensation Fund
Department of Justice

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF JUSTICE
ENTITLED
"JAMES ZADROGA 9/11 HEALTH AND
COMPENSATION ACT OF 2010"
(RIN: 1105-AB39)

(i) Cost-benefit analysis

The Department of Justice (Justice) assessed the costs and benefits of this final rule and determined that the regulatory approach it selected maximizes the net benefits. According to Justice, the primary benefits and costs of this rulemaking are both set by statute, as Congress has appropriated a capped amount—\$2.775 billion payable over a period of years—for this program. Because the \$2.775 billion appropriated by Congress for the Fund must pay for claimant awards as well as the Fund's administrative expenses, Justice recognized that it is important for the Fund to establish procedures to screen out ineligible or inappropriate claims while keeping administrative expenses as low as possible consistent with the goal of ensuring that funds are not diverted to processing ineligible claims in order to maximize the amount of funds available for claimants. Finally, based on past practice with the operation of the original Fund and the necessity to establish the legal and administrative framework for the reopened Fund, Justice concluded that there are no viable nonregulatory actions that it could take to implement the Zadroga Act in a fair and efficient manner.

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

Justice certifies that this rule will not have a significant economic impact on a substantial number of small entities because it provides compensation to eligible individuals who were physically injured as a result of the terrorist-related aircraft crashes of September 11, 2001, and compensation through a "personal representative" for those who were killed as a result of those crashes. This rule provides compensation to individuals, not to entities.

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

Justice determined that this rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or

more in any one year, and it will not significantly or uniquely affect small governments.

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

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

Justice published a notice of proposed rulemaking on June 21, 2011, to which Justice received 95 comments. 76 Fed. Reg. 36,027. Justice also participated in town hall meetings with several hundred victims, victims' advocates, and others.

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

Justice determined that, in order to be able to evaluate claims and provide compensation, it will need to collect information from an individual (or a personal representative of a deceased individual) who suffered physical harm or was killed as a result of the terrorist-related aircraft crashes of September 11, 2001, or the debris removal efforts that took place in the immediate aftermath of those crashes. Accordingly, Justice will submit an information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the emergency review procedures of the Act. Justice will also publish a Notice in the *Federal Register* soliciting public comment on the information collection associated with this rulemaking.

Statutory authorization for the rule

Justice promulgated this final rule under the authority of title IV of Public Law 107-42 and title II of Public Law 111-347. 115 Stat. 230, 237-241 (Sept. 22, 2011); 124 Stat. 3623, 3659-3665 (Jan. 2, 2011).

Executive Order Nos. 12,866 and 13,563 (Regulatory Planning and Review)

Justice determined that this final rule is economically significant under the Order and submitted the rule to OMB for review.

Executive Order No. 13,132 (Federalism)

Justice determined that this regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or on distribution of power and responsibilities among the various levels of government. However, Justice did work cooperatively with state and local officials in the affected communities in the preparation of this rule and individually notified national associations representing elected officials regarding this rulemaking.