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United States General Accounting Office
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May 5, 2004

The Honorable Orrin G. Hatch
Chairman
The Honorable Patrick J. Leahy
Ranking Minority Member
Committee on the Judiciary
United States Senate

The Honorable F. James Sensenbrenner, Jr.
Chairman
The Honorable John Conyers, Jr.
Ranking Minority Member
Committee on the Judiciary
House of Representatives

Subject: *Department of Justice: Civil Division; Claims Under the Radiation Exposure Compensation Act Amendments of 2000; Amendments Contained in the 21st Century Department of Justice Appropriations Authorization Act of 2002*

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 (DOJ), entitled “Civil Division; Claims Under the Radiation Exposure Compensation Act Amendments of 2000; Amendments Contained in the 21st Century Department of Justice Appropriations Authorization Act of 2002” (RIN: 1105-AA75). We received the rule on April 21, 2004. It was published in the Federal Register as a final rule on March 23, 2004. 69 Fed. Reg. 13628.

The final rule revises DOJ’s regulations implementing the Radiation Exposure Compensation Act (RECA) to reflect changes made to the RECA by the Radiation Exposure Compensation Act Amendments of 2000, enacted on July 10, 2000 (“2000 Amendments”) and the 21st Century Department of Justice Appropriations Authorization Act, enacted on November 2, 2002 (“Appropriations Authorization Act”).

The final rule has an announced effective date of April 22, 2004. 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). The rule was published in the Federal Register on

March 23, 2004. It was received by the House of Representatives on April 21, 2004, and by the Senate on April 22, 2004.

In the preamble to the final rule, DOJ states that it has found it unnecessary and contrary to the public interest to delay the effective date of the rule pursuant to section 801 because the final rule merely conforms the regulations to the requirements of the Appropriations Authorization Act, and following notice and comment, implements the changes made by the 2000 Amendments. Therefore, DOJ invokes the exception to the delay in the effective date allowed by 5 U.S.C. 808.

Our Office has held that the exception contained in section 808 is not available for a rule that has been subject to public notice and comment. The portion of the final rule dealing with the Appropriations Authorization Act is eligible for the exemption because it was not issued for public notice and comment. However, the remainder of the final rule that implements the 2000 Amendments changes and on which comments were received is not. Accordingly, that portion of the final rule does not have the required 60-day delay in its effective date.

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

Our Office has issued several reports commenting on the compensation program. See *Radiation Exposure Compensation: Funding to Pay Claims May Be Inadequate to Meet Projected Needs* (GAO-03-481, April 2003) and *Radiation Exposure Compensation: Analysis of Justice's Program Administration* (GAO-01-1043, September 2001).

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: Dianne S. Spellberg
Acting Assistant Director
Civil Division, Torts Branch
Department of Justice

ENCLOSURE

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF JUSTICE
ENTITLED
"CIVIL DIVISION; CLAIMS UNDER THE RADIATION EXPOSURE
COMPENSATION ACT AMENDMENTS OF 2000;
AMENDMENTS CONTAINED IN THE 21ST CENTURY
DEPARTMENT OF JUSTICE APPROPRIATIONS
AUTHORIZATION ACT OF 2002"
(RIN: 1105-AA75)

(i) Cost-benefit analysis

DOJ estimates that the compensation payments made under the final rule will exceed \$100 million a year for several years.

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

The Attorney General has certified that 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.

The final rule was issued using the notice and comment procedures found at 5 U.S.C. 553. On August 7, 2002, the Attorney General published a Notice of Proposed Rulemaking in the Federal Register. 67 Fed. Reg. 51440. In response, nearly 50 comments were received and are discussed in the preamble to the final rule.

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

The information collections associated with the final rule have been approved by the Office of Management and Budget (OMB) and given OMB Control No. 1105-0052.

Statutory authorization for the rule

The final rule is promulgated under the authority found in sections 6(a), 6(i) and 6(j) of the Radiation Exposure Compensation Act (Pub. L. 101-426), as amended by sections 3(c)-(h) of the Radiation Exposure Compensation Act Amendments of 2000 (Pub. L. 106-245), and section 11007 of the 21st Century Department of Justice Appropriations Authorization Act (Pub. L. 107-273) (42 U.S.C. 2210 note and 5 U.S.C. 500(b)).

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.