



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

B-334344

June 6, 2022

The Honorable Patty Murray
Chairwoman
The Honorable Richard Burr
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Frank Pallone, Jr.
Chairman
The Honorable Cathy McMorris Rodgers
Republican Leader
Committee on Energy and Commerce
House of Representatives

Subject: *Department of Health and Human Services, Centers for Disease Control and Prevention: Public Health Determination and Order Regarding the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists*

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 Health and Human Services, Centers for Disease Control and Prevention (CDC) entitled “Public Health Determination and Order Regarding the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists” (RIN: 0920-ZA41). We received the rule on April 6, 2022. It was published in the *Federal Register* as a general notice on April 6, 2022. 87 Fed. Reg. 19941. The effective date is May 23, 2022.

According to CDC, the general notice terminates the “Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists”, issued on August 2, 2021 (August Order), and all related prior orders issued pursuant to the authorities in sections 362 and 365 of the Public Health Service Act, 42 U.S.C. § 201 *et seq.*, and implementing regulations. According to CDC, the August Order prevented the admission of certain noncitizens into the United States from land borders and certain costal borders with certain exceptions. 86 Fed. Reg. 42828.

The Congressional Review Act (CRA) 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 60-day delay in effective date can be waived however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. § 808(2). Specifically, CDC determined it had good cause because the Department of Homeland Security (DHS) requires time to institute operational plans to implement the general notice, including COVID-19 mitigation measures, and to begin

regular immigration processing pursuant to title 8 of the United States Code. According to CDC, in light of the August Order's significant disruption of ordinary immigration processing and DHS's need for time to implement an orderly and safe termination of the August Order, there is good cause not to delay termination beyond May 23, 2022.

Enclosed is our assessment of CDC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. 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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is fluid and cursive, with "Shirley" on the top line and "A. Jones" on the bottom line.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Vanessa Jones
 Regulations Coordinator
 Department of Health and Human Services

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES,
CENTERS FOR DISEASE CONTROL AND PREVENTION
ENTITLED
“PUBLIC HEALTH DETERMINATION AND ORDER REGARDING
THE RIGHT TO INTRODUCE CERTAIN PERSONS FROM COUNTRIES
WHERE A QUARANTINABLE COMMUNICABLE DISEASE EXISTS”
(RIN: 0920-ZA41)

(i) Cost-benefit analysis

The Department of Health and Human Services, Centers for Disease Control and Prevention (CDC) did not discuss the costs and benefits in the notice. In its submission to us, CDC indicated that it considered preparation of an analysis of the costs and benefits of the notice to be not applicable.

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

CDC did not discuss RFA’s requirements in the notice. In its submission to us, CDC indicated that it considered preparation of an RFA analysis of the notice to be not applicable.

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

CDC did not discuss the Act’s requirements in the notice. In its submission to us, CDC indicated that it considered preparation of an Unfunded Mandates Reform Act analysis of the notice to be not applicable.

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

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

CDC asserted that it had good cause to waive notice and comment procedures. CDC determined it had good cause because the Department of Homeland Security (DHS) requires time to institute operational plans to implement this notice, including COVID-19 mitigation measures, and to begin regular immigration processing pursuant to title 8 of the United States Code. CDC stated that in light of the significant disruption of ordinary immigration processing caused by the “Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists”, issued on August 2, 2021, and DHS’s need for time to implement an orderly and safe termination of the same, there is good cause not to delay termination beyond May 23, 2022.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

CDC did not discuss the PRA’s requirements in the notice. In its submission to us, CDC indicated that it considered preparation of a PRA analysis of the notice to be not applicable.

Statutory authorization for the rule

CDC promulgated the final rule pursuant to sections 265 and 268 of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

CDC did not discuss the Order's requirements in the notice. In its submission to us, CDC indicated that it considered preparation of an analysis of the notice under the Order to be not applicable.

Executive Order No. 13132 (Federalism)

CDC did not discuss the Order's requirements in the notice. In its submission to us, CDC indicated that it considered preparation of a federalism analysis of the notice to be not applicable.