



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

B-334416

June 27, 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: Rescinding Requirement for Negative Pre-Departure COVID-19 Test Result or Documentation of Recovery From COVID-19 for All Airline or Other Aircraft Passengers Arriving Into the United States From Any Foreign Country*

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) titled "Rescinding Requirement for Negative Pre-Departure COVID-19 Test Result or Documentation of Recovery From COVID-19 for All Airline or Other Aircraft Passengers Arriving Into the United States From Any Foreign Country" (RIN: 0920-ZA38). We received the rule on June 14, 2022. It was published in the *Federal Register* as a notice on June 15, 2022. 87 Fed. Reg. 36129. The effective date is June 12, 2022.

According to CDC, this notice is rescinding an order titled, "Requirement For Negative Pre-Departure COVID-19 Test Result Or Documentation Of Recovery From COVID-19 For All Airline Or Other Aircraft Passengers Arriving Into The United States From Any Foreign Country." See generally 86 Fed. Reg. 7387 (Jan. 28, 2021); 86 Fed. Reg. 69256 (Dec. 7, 2021) (*Federal Register* notice amending 86 Fed. Reg. 7387) (referred to collectively as the Order). CDC stated that the Order required all air passengers, two years or older, traveling to the United States from a foreign country to present a negative COVID-19 test result from a sample taken no more than one day before departure, or documentation of recovery from COVID-19 in the past 90 days, before boarding a flight.

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). CDC stated that, while this notice is major under the CRA, it is not necessary to delay the effective date because CDC found good cause to lift the restriction established in the Order immediately. CDC stated further that, in its judgment, the Order is unnecessary to prevent the introduction of COVID-19 into the United States and to seek comment prior to the effective date of this notice would be impracticable and contrary to the public interest.

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 cursive script that reads "Shirley A. Jones". The signature is written in black ink and is positioned above the typed name and title.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

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

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
“RESCINDING REQUIREMENT FOR NEGATIVE PRE-DEPARTURE COVID-19
TEST RESULT OR DOCUMENTATION OF RECOVERY FROM COVID-19
FOR ALL AIRLINE OR OTHER AIRCRAFT PASSENGERS ARRIVING
INTO THE UNITED STATES FROM ANY FOREIGN COUNTRY”
(RIN: 0920-ZA38)

(i) Cost-benefit analysis

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

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

In its submission to us, CDC indicated that it considered preparation of an analysis under the Act 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

In its submission to us, CDC indicated that it considered preparation of an Unfunded Mandates Reform Act analysis 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.*

According to CDC, this notice is not a legislative rule within the meaning of the Administrative Procedure Act (APA) but rather a rescission of a previous order undertaken as an emergency action under the existing authority of 42 U.S.C. § 264(a) and 42 C.F.R. §§ 71.20, 71.31(b), which was taken without notice and comment. *See generally Requirement for Negative Pre-Departure COVID-19 Test Result or Documentation of Recovery from COVID-19 For All Airline or Other Aircraft Passengers Arriving Into the United States From Any Foreign Country*, 86 Fed. Reg. 7387 (Jan. 28, 2021); 86 Fed. Reg. 69256 (Dec. 7, 2021) (*Federal Register* notice amending 86 Fed. Reg. 7387) (referred to collectively as the Order). CDC stated that in the event that a court determines that this notice qualifies as a legislative rule under the APA, notice and comment and a delay in effective date are not required because the prior Order was established without notice and comment and there is good cause to lift the restriction immediately, given the current judgment that it is unnecessary to prevent the introduction of COVID-19 into the United States. CDC stated further that to seek comment prior to the effective date of this notice would be impracticable and contrary to the public interest. 5 U.S.C. § 553(b)(3)(B).

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

CDC determined that this notice contains information collection requirements under the Act. CDC stated that the Passenger Disclosure and Attestation Form (Office of Management and Budget Control Number 0920-1318) has been amended to remove the testing requirement. CDC also stated that it will publish a separate notice regarding this change under the PRA.

Statutory authorization for the rule

CDC promulgated this final rule pursuant to section 264 of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

In its submission to us, CDC indicated that it considered preparation of the analysis provided for under the Order to be not applicable.

Executive Order No. 13132 (Federalism)

In its submission to us, CDC indicated that it considered preparation of the analysis provided for under the Order to be not applicable.