



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

B-334131

March 29, 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 Reassessment and Immediate Termination: Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists with Respect to Unaccompanied Noncitizen Children*

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 Reassessment and Immediate Termination: Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists with Respect to Unaccompanied Noncitizen Children" (RIN: 0920-ZA40). We received the rule on March 17, 2022. It was published in the *Federal Register* as a general notice on March 17, 2022. 87 Fed. Reg. 15243. The effective date is March 11, 2022.

According to CDC, the notice terminates a previously issued notice entitled, "Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists," issued on August 2, 2021, 86 Fed. Reg. 42828, 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 the implementing regulation, to the extent they apply to Unaccompanied Noncitizen Children. Previously, Unaccompanied Noncitizen Children were exempted from prior CDC orders.

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. §§ 553(b)(3)(B), 808(2). Here, although CDC did not specifically mention the CRA's 60-day delay in effective date requirement, the agency found good cause to waive notice and comment procedures and incorporated a brief statement of reasons. Specifically, CDC stated it would be impracticable and contrary to public health practices, the public interest, and immigration laws that apply in the absence of an order under 42 U.S.C. § 265 to delay the issuing and effective date of the notice. In addition, CDC stated the notice concerns ongoing discussions with Canada, Mexico, and other countries regarding how best to control COVID-19 transmission over shared borders and therefore directly "involve[s] . . . a . . . foreign affairs function of the United States."

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, reading "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Calvin E. Dukes II
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
“PUBLIC HEALTH REASSESSMENT AND IMMEDIATE TERMINATION:
ORDER SUSPENDING THE RIGHT TO INTRODUCE CERTAIN PERSONS
FROM COUNTRIES WHERE A QUARANTINABLE COMMUNICABLE DISEASE
EXISTS WITH RESPECT TO UNACCOMPANIED NONCITIZEN CHILDREN”
(RIN: 0920-ZA40)

(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 waived notice and comment procedures for good cause. CDC determined it had good cause because it would be impracticable and contrary to public health practices, the public interest, and immigration laws that apply in the absence of an order under 42 U.S.C. § 265 to delay the issuing and effective date of the notice. In addition, CDC stated the notice concerns ongoing discussions with Canada, Mexico, and other countries regarding how best to control COVID-19 transmission over shared borders and therefore directly “involve[s] . . . a . . . foreign affairs function of the United States.”

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

CDC did not discuss 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 notice 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 an analysis of the notice under the Order to be not applicable.