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Office of the General Counsel

B-276990

May 27, 1997

The Honorable Richard G. Lugar  
Chairman  
The Honorable Tom Harkin  
Ranking Minority Member  
Committee on Agriculture, Nutrition, and Forestry  
United States Senate

The Honorable Bob Smith  
Chairman  
The Honorable Charles W. Stenholm  
Ranking Minority Member  
Committee on Agriculture  
House of Representatives

Subject: Department of Agriculture, Animal and Plant Health Inspection Service:  
Importation of Pork from Sonora, Mexico

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 Agriculture, Animal and Plant Health Inspection Service, entitled "Importation of Pork from Sonora, Mexico" (RIN: 0579-AA71). We received the rule on May 7, 1997. It was published in the Federal Register as a final rule on May 9, 1997. 62 Fed. Reg. 25439.

The Animal and Plant Health Inspection Service is amending the regulations concerning the importation of animal products to allow, under certain conditions, the importation of fresh, chilled, or frozen pork from the State of Sonora, Mexico. The agency states that the change is in keeping with provisions of the North American Free Trade Agreement and the General Agreement on Tariffs and Trade as it removes unnecessary restrictions on such importation.

The agency's decision to consider Sonora a region from which fresh pork could be imported with a negligible risk of introducing or disseminating hog cholera was based on an analysis of a number of risk factors detailed in the supplementary information published with the final rule. In addition, the agency will require an authorized Mexican government official to certify that pork exported from Sonora

not have been in contact with pork from any region having more than a slight risk for hog cholera.

Enclosed is our assessment of the Animal and Plant Health Inspection Service'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 the agency complied with the applicable requirements.

If you have any questions about this report, please contact Kathleen E. Wannisky, Associate General Counsel for Operations, at (202) 512-5207. The official responsible for GAO evaluation work relating to the Department of Agriculture, Animal and Plant Health Inspection Service is Robert Robinson, Director for Food and Agriculture Issues. Mr. Robinson can be reached at (202) 512-5138.

Robert P. Murphy  
General Counsel

Enclosure

cc: Terry L. Medley  
Administrator  
Animal and Plant Health Inspection Service  
Department of Agriculture

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE  
ISSUED BY  
THE DEPARTMENT OF AGRICULTURE,  
ANIMAL AND PLANT HEALTH INSPECTION SERVICE  
ENTITLED  
"IMPORTATION OF PORK FROM SONORA, MEXICO"  
(RIN: 0579-AA71)

Background

On April 18, 1996, the Animal and Plant Health Inspection Service (APHIS), Department of Agriculture, published in the Federal Register (61 Fed. Reg. 16978-17105) a proposed rule that was intended to revise six different parts of Title 9 of the Code of Federal Regulations. These revisions established importation criteria for certain animal and plant products based on the level of disease risk in specified geographical locations.

The agency initially solicited comments for a 90-day period ending July 17, 1996. It later extended the period for an additional 60 days.

Based on its review of the comments received, APHIS has decided that further analysis of most parts of the proposed rule is warranted. APHIS did determine, however, that the amendments to the regulations allowing, under certain conditions, the importation of fresh, chilled, or frozen pork from the State of Sonora, Mexico, into the United States could be issued as a final rule at this time. This report addresses only that final rule.

(i) Cost-benefit analysis

An economic impact analysis is included with the Regulatory Impact Analysis at 62 Fed. Reg. 25441. Because pork production in Sonora is a relatively new development and because the United States has restricted the importation of swine and pork products for the last 20 years, APHIS bases its potential impact analysis on some assumptions regarding the level of pork production in Sonora in the future, the percentage of pork production that might be processed in Sonora for shipment to the United States, and the demand for pork in the United States. APHIS estimates that the importation of pork from Sonora could cause U.S. pork producers to lose from 5 to 10 cents per pound (liveweight) but could save consumers from 7 to 16 cents per pound (retail weight). APHIS states that these estimates are dependent on both the amount of fresh pork imported and on consumer reaction to the Mexican pork products.

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

On April 18, 1996, APHIS published its Initial Regulatory Flexibility Analysis in the preamble to the proposed rule (61 Fed. Reg. 16978 at 17017). The analysis concluded that, because the rule relaxed the hog cholera-related restrictions imposed on the importation of live swine and prepared pork products from Sonora, Mexico, the proposed rule could have a significant economic impact on a substantial number of small entities in the United States. The initial analysis invited comments on the potential impacts discussed.

APHIS stated that the precise impacts of pork-product imports were difficult to predict because of the uncertainty as to how they would substitute for domestic and/or foreign pork products. APHIS points out that commercial pork production in Sonora is relatively new and that the United States has imposed restrictions on the importation of swine and fresh pork products from Mexico for over 20 years. The analysis does discuss, however, what APHIS considers to be the anticipated impact on the U.S. livestock sector: the farrow-to-finish swine operators, the live-hog dealers/transporters, and the swine slaughterers/primary processors.

On May 9, 1997, APHIS published its Final Regulatory Flexibility Analysis (62 Fed. Reg. 25439 at 25441). In that analysis, APHIS discusses the reason for the final rule and the legal basis for it. It also describes and estimates the number of small entities affected by the rule and discusses the recordkeeping, reporting, and other compliance requirements.

Finally, it describes the alternatives considered in the development of the rule and why it rejected them and adopted the rule as proposed. The alternatives included (1) not lifting the current importation restrictions for the State of Sonora and (2) allowing importation under either less or more stringent mitigating conditions. APHIS rejected the first alternative because it believed scientific evidence permitted importation of pork products from Sonora and not permitting such importation would be contrary to trade agreements entered into by the United States. APHIS rejected the second alternative because it believed that less stringent mitigating measures than the ones proposed would increase the risk of the introduction of hog cholera into the United States and that more stringent mitigating conditions would be unnecessarily restrictive.

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

According to APHIS, this rule contains no federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) that may result

in expenditures by state, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more 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 rule was issued as a notice of proposed rulemaking on April 18, 1996 (61 Fed. Reg. 16978) under the notice and comment procedures of 5 U.S.C. § 553. Initially, APHIS allowed 90 days for comments, but in response to several requests that the comment period be extended, it allowed an additional 60-day comment period. All comments were due by September 17, 1996. During the comment period APHIS also held four public hearings at which both oral and written comments were received. In total, 113 comments were received from representatives of state and foreign governments, international economic and political organizations, veterinary associations, state departments of agriculture, livestock and exporting and importing industry associations, and other interested parties. Based on the number and complexity of the comments, APHIS decided to issue only a small portion of the proposed rule at this time and to review and reanalyze the other portions of the rule before issuing them as final.

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

According to APHIS, the information collection and recordkeeping requirements included in this final rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act. The assigned OMB control number is 0579-0015.

Statutory authorization for the rule

APHIS cites as statutory authorization for this rule 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332.

Executive Order No. 12866

The final rule is considered to be an "economically significant regulatory action" under Executive Order 12866 and was reviewed by OMB for compliance with that order.

National Environmental Policy Act, 42 U.S.C. 4321 et seq.

APHIS performed an environmental assessment and determined that the actions required or authorized by this rule will not present a significant risk of introducing

or disseminating hog cholera disease agents into the United States and will not have a significant impact on the quality of the human environment. Based on those findings, the Administrator has determined that an environmental impact statement need not be prepared.

#### Executive Order 12988

According to APHIS, this rule has been reviewed under Executive Order 12988 (Civil Justice Reform) and has been found to meet the standards set forth in the order. The final rule preempts all state and local laws and regulations that are inconsistent with the final rule, has no retroactive effect, and does not require administrative proceedings before parties may file suit in court challenging this rule.