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Office of the General Counsel

B-277346

July 9, 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 Beef from Argentina

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 Beef from Argentina" (RIN: 0579-AA71). We received the rule on June 24, 1997. It was published in the Federal Register as a final rule on June 26, 1997. 62 Fed. Reg. 34385.

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 beef from Argentina. The agency states that the change is in keeping with provisions of trade agreements recently entered into by the United States as it removes unnecessary restrictions on such importation.

The agency's decision to consider Argentina a region from which beef could be imported with a negligible risk of introducing or disseminating foot and mouth disease 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 certification by Argentine officials that a number of mitigating measures

have been taken before the beef is made available for importation into the United States. 62 Fed. Reg. 34385 at 34386.

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 BEEF FROM ARGENTINA"  
(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 beef from Argentina 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. 34389. According to APHIS, if Argentina was able to fill its 20 thousand metric ton (KT) quota of nonfed beef, consumers would save approximately \$90 million annually. This would be offset, however, by annual losses of more than \$40 million to the U.S. dairy and beef sectors because of lower prices for products. These losses translate into reduced net farm income of just over \$15 per beef farm and \$83 per dairy farm.

(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 17016). The analysis concluded that, because the rule relaxed the foot and mouth disease-related restrictions on the importation of beef from Argentina, the proposed rule could have a significant economic impact on a substantial number of small entities in the United States. According to APHIS, over 95 percent of the beef and dairy industries are composed of producers and firms that can be categorized as small according to the Small Business Administration's size classification. The analysis discussed the potential impact on the U.S. livestock sector, feedlot operators, live cattle dealers/transporters, cattle slaughterers/primary processors, and the dairy industry. The analysis invited comments on these potential impacts.

On June 26, 1997, APHIS published its Final Regulatory Flexibility Analysis (62 Fed. Reg. 34385 at 34389). 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 beef from Argentina and (2) allowing importation under either less or more stringent conditions than those adopted in the rule. APHIS rejected the first alternative because it believed scientific evidence permitted importation of beef from Argentina under certain conditions 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 foot and mouth disease into the United States and that more stringent mitigating conditions would be unnecessarily restrictive.

(iii) 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 industry associations, 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, 134b, 134c, 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 No. 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 foot and mouth disease 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 No. 12988**

According to APHIS, this rule has been reviewed under Executive Order No. 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.