



Office of the General Counsel

B-281084

October 2, 1998

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

The Honorable Robert F. 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:
Solid Wood Packing Material From China**

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 (APHIS), entitled "Solid Wood Packing Material From China" (RIN: 0579-AB01). We received the rule on September 18, 1998. It was published in the Federal Register as a interim rule on September 18, 1998. 63 Fed. Reg. 50100.

The interim rule amends the APHIS rules for importing logs, lumber, and other unmanufactured wood articles by adding treatment and document requirements for solid wood packing material imported from China. The rule requires that wooden pallets, crating, dunnage, and other wood packing material imported into the United States from China will have to be heat-treated, fumigated, or treated with preservatives prior to departure from China. According to APHIS, the action is necessary to control the risk that such material could introduce dangerous plant pests into the United States.

Enclosed is our assessment of APHIS' 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 APHIS complied with the applicable requirements.

If you have any questions about this report, please contact James Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Department of Agriculture, Animal and Plant Health Inspection Service, is Larry Dyckman, Director for Food and Agriculture Issues. Mr. Dyckman can be reached at (202) 512-5138.

Robert P. Murphy
General Counsel

Enclosure

cc: Mr. Craig A. Reed
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
"SOLID WOOD PACKING MATERIAL FROM CHINA"
(RIN: 0579-AB01)

(i) Cost-benefit analysis

APHIS has conducted a preliminary cost-benefit analysis of the interim rule. The actual cost of the interim rule will be the cost of treating the wood packing material or switching to other substitutes, which, according to APHIS, cannot be estimated at this time without data on the costs of treatment in China. Approximately 30 percent of Chinese imports are currently voluntarily fumigated before arrival in the United States. The cost to APHIS in implementing the final rule is estimated at \$2.7 million annually due to the increased number of inspections and inspectors.

The benefit of the interim rule is listed as the protection of forest and agriculture resources that could be lost. The losses could total \$41 billion, impacting the forest products, commercial fruit, maple syrup, nursery, and tourist industries in the United States.

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

Since the interim rule was not issued following a general notice of proposed rulemaking, APHIS was not required to prepare an initial or final regulatory flexibility analysis under the Act. However, APHIS points out that the interim rule may have a significant economic impact on a substantial number of small entities. If it is determined to have such an impact, the issues raised by section 604 of the Act will be discussed in a final regulatory flexibility analysis.

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

The interim rule does not impose an intergovernmental or private sector mandate of over \$100 million annually as defined by the Unfunded Mandates Act of 1995.

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

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

The Administrator of APHIS has found good cause under 5 U.S.C. § 553(b)(B) to publish the interim rule without employing the normal notice and comment procedures of the Administrative Procedure Act because of the immediate need to prevent introduction and spread of the plant pests. However, APHIS will accept comments for a 60-day period and the comments received will be discussed in a later Federal Register notice. Additionally, APHIS will conduct three public hearings during the 60-day comment period.

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

The interim rule contains an information collection which is subject to review by the Office of Management and Budget under the Paperwork Reduction Act. APHIS has requested expedited approval of the collection.

The preamble to the interim rule contains the information required by the Act, including the reason for the collection, the estimated number of respondents, and the estimated annual burden.

The collection includes the completion of foreign government certificates, exporter statements, and requests for inspections. The estimated number of respondents is 29,000 with an estimate of 29.31 responses per respondent. The estimated total annual burden is 73,950 hours.

Statutory authorization for the rule

The interim rule was promulgated under the authority contained in 7 U.S.C. §§ 150dd, 150ee, 150ff, 151-167, 450, 2803, and 2809 and 21 U.S.C. § 136 and 136a.

Executive Order No. 12866

The interim rule was determined to be an "economically significant" regulatory action and was reviewed and approved by the Office of Management and Budget as meeting the requirements of the Order.