



Office of the General Counsel

B-281889

January 29, 1999

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

The Honorable Larry Combest
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:
Pseudorabies in Swine; Payment of Indemnity

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 "Pseudorabies in Swine; Payment of Indemnity" (RIN: 0579-AB10). We received the rule on January 13, 1999. It was published in the Federal Register as an interim rule on January 15, 1999. 64 Fed. Reg. 2545.

The interim rule establishes the animal health regulations to provide for the payment of indemnity for the voluntary depopulation of herds of swine known to be infected with pseudorabies. APHIS states that the payment of indemnity will encourage depopulation of infected herds and, therefore, will reduce the risk of other swine becoming infected with the disease.

Enclosed is our assessment of the 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: Ms. Joan M. Arnoldi
Acting 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
"PSEUDORABIES IN SWINE; PAYMENT OF INDEMNITY"
(RIN: 0579-AB10)

(i) Cost-benefit analysis

The Secretary of Agriculture has authorized the transfer of \$80 million in funds from the Commodity Credit Corporation to conduct the indemnity program. Approximately \$62 million will be used for indemnity costs and the remainder will be used for euthanasia, transport, disposal, clean-up, and surveillance. APHIS has determined that this is the most appropriate time to conduct the program because of the depressed market value of swine. This will mean that the indemnity will be paid at considerable savings.

(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. APHIS states that it does not expect the interim rule to have a negative impact on small entities. However, if following further analyses such an impact is shown, APHIS will discuss the issues in a Final Regulatory Flexibility Analysis under section 604.

(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, as defined in title II, of more than \$100 million in a year under the Unfunded Mandates Reform 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 Acting 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 halt the spread of pseudorabies among swine. However, APHIS will accept comments for a 60-day period and the comments received will be discussed in a later Federal Register notice.

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 (OMB) under the Paperwork Reduction Act. OMB has approved the collection on an emergency basis and assigned control number 0579-0137. The preamble to the interim rule contains the information required by the act concerning the annual burden.

Statutory authorization for the rule

The interim rule is issued under the authority of 21 U.S.C. §§ 111-113, 114, 114a, 114a-1, 120, 121, 125, and 134b.

Executive Order No. 12866

The interim rule was determined to be an "economically significant" regulatory action under the order. It was reviewed and approved by the Office of Management and Budget as complying with the requirements of Executive Order 12866.