

The Organic Livestock and Poultry Practices Rule and Current Events

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The United States Department of Agriculture (“USDA”) announced on March 12, 2018 that it withdrew the Organic Livestock and Poultry Practices (“OLPP”) rule, originally proposed by the Obama administration early in 2017. The purpose of the OLPP was to establish new rules and regulations for the handling, transportation, and slaughtering of organic livestock. Many believe that these changes would provide integrity to the USDA’s Organic Label, while others suggest that the broad restrictions and rules will instead cause production costs to increase, leading to higher prices for consumers.

The OLPP was proposed under the authority of the Organic Foods Production Act of 1990 (“OFPA”), which authorized USDA to create standards and regulations for the marketing of organic products to ensure that consumers are getting a consistent product each time they purchased organic products. The standards codified the requirements of the National Organic Program (“NOP”) and are overseen by USDA’s Agricultural Marketing Service (“AMS”). The NOP carries out its purpose by defining terms; listing specific allowed synthetic and prohibited substances and outlining standards to facilitate the accreditation of producers who wish to label their products under the USDA organic label.

In the 2017 proposal, USDA added and revised definitions currently in the program to more stringently regulate living space, food, physical alterations, and medical care of organic livestock and poultry. For example, the rule proposes several changes to the methods and means which producers can physically alter an animal such as beak clipping, de-snooding, and cattle wattling. Further, the rule proposes further guidance as to the spacing for outdoor and indoor space requirements that provides for natural vegetation and natural sunlight. Finally, another large component to the proposed rule is for stricter transportation guidelines that mandate producers to ensure that livestock products are in fit and proper health before being transported.

The proposal was initially postponed shortly after the Trump administration took office and was later postponed several more times before being withdrawn. In December of 2018, the rule was also opened for public comment regarding the withdrawal of the rule, and over 72,000 comments were submitted during the comment period. Of those comments, 63,000 opposed the withdrawal of the rule, fifty supported the withdrawal; and the rest of the comments took no position.

USDA justified its decision to withdraw from the rule in part by stating that it exceeded the department's authority. More specifically, USDA claimed that the authorizing law does not allow USDA to enforce the types of prohibitions that the OLPP intended to impose on organic producers. Additionally, USDA argued that the OFPA's statutory language regarding animal care is focused solely on preventing the ingestion of non-organic substances, and to mandate any practices beyond that would unconstitutionally broaden Congress' intention.

Further, USDA decided not to move forward with finalizing the regulations because AMS believes that the burden far exceeded the benefits of the regulations, especially the economic context. More specifically, AMS concluded that nearly 50% of current egg producers would leave the market due to the proposed restrictions, which in turn, lead to supply shortages and inevitable price increases for the organic egg market. Egg prices were estimated to increase by a mean of \$1.25 per dozen if the OLPP was implemented. Price increases would be felt in the livestock market as well. As a result, USDA argued that while many producers choose to hold themselves to stricter standards when producing organic livestock and poultry products, adopting the rule entirely would bar consumers who wish to participate in the organic market, but cannot afford to pay the high premiums that are attributed to these stricter standards.

The withdrawal was criticized by several proponents for organic products. One of those groups, the Organic Trade Association ("OTA"), brought suit against the USDA for its alleged violations of the OFPA and the Administrative Procedure Act ("APA"). The suit was filed in the Federal District Court for the District of Columbia.

Plaintiffs' claims allege that the USDA's actions were arbitrary and capricious, exceeding statutory authority and in violation of the OFPA and APA. Plaintiffs claim that the violations occurred when the USDA made rulings on the first and second delay without proper notice nor providing an opportunity for public commenting. Additionally, they allege that USDA further violated OFPA and APA when the third delay failed to disclose any legal authority that the USDA intended to rely on to amend the OLPP; failed to disclose that the USDA intended to rescind the rule; and failed to provide any reports or documentation to rescind the rule.

After the USDA withdrew the rule entirely, the Plaintiffs amended their pleadings to include that the USDA failed to provide any justification as to the rule's withdrawal. Finally, Plaintiffs allege that the USDA violated both acts by failing to consult and obtain a recommendation from the National Organic Standards Board. The USDA has filed a Motion to Dismiss this lawsuit in the U.S. District Court for the District of Columbia that was ultimately denied in October of this year. U.S. District Judge Rosemary M. Collyer denied the agency's motion and granted Plaintiffs' requests for oral arguments; the date has yet to be determined.

SOURCES:

Department of Agriculture; National Organic Program; Organic Livestock and Poultry Practices; Final Rule, 83 Fed. Reg. 7042 (Jan. 19, 2017).

Department of Agriculture; National Organic Program; Organic Livestock and Poultry Practices; Final Rule; withdrawal, 83 Fed. Reg. 10,775 (Mar. 13, 2018).

Pls.' Second Am. Pet., 2-6, *Organic Trade Association v. United States Department of Agriculture*, No. 1:17-cv-01875-RMC (D.D.C.).

STATUTES:

Organic Foods Production Act, 7 U.S.C. § 6501 et. seq.

REGULATIONS:

7 C.F.R. Ch. I, Part 205, National Organic Program.

ADDITIONAL RESOURCES:

National Agricultural Law Center: National Organic Program

Reneé Johnson, CONG. RESEARCH SERV., IF10622, USDA's Organic Livestock and Poultry Practices Regulations (2017).

Regulatory Impact Analysis: Organic Livestock and Poultry Practices Withdrawal (2018).