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Washington, DC 20548

B-329108

June 6, 2017

The Honorable Pat Roberts
Chairman
The Honorable Debbie Stabenow
Ranking Member
Committee on Agriculture, Nutrition, and Forestry
United States Senate

The Honorable K. Michael Conaway
Chairman
The Honorable Collin C. Peterson
Ranking Member
Committee on Agriculture
House of Representatives

Subject: *Department of Agriculture, Agricultural Marketing Service: National Organic Program (NOP); Organic Livestock and Poultry Practices*

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, Agricultural Marketing Service (AMS) entitled “National Organic Program (NOP); Organic Livestock and Poultry Practices” (RIN: 0581-AD44). We received the rule on May 22, 2017. It was published in the *Federal Register* as a final rule on January 19, 2017. 82 Fed. Reg. 7042. On February 9, 2017, AMS published a delay of effective date with a new stated effective date of May 19, 2017. 82 Fed. Reg. 9967.

The final rule amends the organic livestock and poultry production requirements by adding new provisions for livestock handling and transport for slaughter and avian living conditions. It also expands and clarifies existing requirements covering livestock care and production practices and mammalian living conditions.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). This final rule was published in the *Federal Register* on January 19, 2017. 82 Fed. Reg. 7042. It was received on May 22, 2017, and currently has a stated effective date of May 19, 2017. Therefore, the final rule does not have the required 60-day delay in its effective date.

Enclosed is our assessment of AMS’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. The final rule did not discuss the Unfunded Mandates Act. In its submission to us, AMS indicated that it had not prepared a written statement under the Unfunded Mandates Act but did not indicate whether such a statement was required. Our review of the procedural steps taken indicates that AMS complied with the other applicable requirements, with the exception of the 60-day delay in effective date requirement.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Elanor Starmer
Administrator, Agricultural Marketing Service
Department of Agricultural

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF AGRICULTURE,
AGRICULTURAL MARKETING SERVICE
ENTITLED
“NATIONAL ORGANIC PROGRAM (NOP);
ORGANIC LIVESTOCK AND POULTRY PRACTICES”
(RIN: 0581-AD44)

(i) Cost-benefit analysis

The Agricultural Marketing Service (AMS) analyzed the costs and benefits of this final rule under three sets of assumed conditions. Under the assumed conditions that all producers remain in the organic market and organic layer and broiler populations continue historical growth rates after the rule, AMS estimated that the costs would be \$28.7 million to \$31 million and the benefits would be \$16.3 million to \$49.5 million. Under the assumed conditions that 50 percent of organic layer production in year 6 (2022), moves to the cage-free market and organic layer and broiler populations continue historical growth rates after rule, AMS estimated that the costs would be \$11.7 million to \$12 million, benefits would be \$4.5 million to \$13.8 million, and transfers would be \$79.5 million to \$86.3 million. Under the assumed conditions that 50 percent of current organic layer production moves to the cage-free market in year 6 (2022) and there are no new entrants after publication of this rule that cannot comply, AMS estimated that the cost would be \$8.2 million, benefits would be \$4.1 million to \$12.4 million, and transfers would be \$45.6 million to \$49.5 million. AMS also estimated this rule will have a paperwork burden of \$3.9 million.

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

AMS stated that under this rule, large poultry operations would have significantly higher compliance costs than small operations on average and that, in particular, larger organic layer operations would demand greater land areas for outdoor access. AMS estimated that business revenues for small organic layer operations are \$736 million, or about \$1.03 million per firm. AMS calculated that for small egg producers, business revenues would need to be less than \$867,000 to \$967,000 per firm for the rule to cost more than 3 percent of revenue.

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

In its submission to us, AMS indicated that it had not prepared a written statement under the Act. The final rule did not discuss the Act.

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

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

On April 13, 2016, AMS published a proposed rule. 81 Fed. Reg. 21,955. AMS received 6,675 written comments, of which approximately 78 percent—or 5,182 comments—were form letters.

Comments were received from producers, producer associations, handlers, certifying agents, consumers and consumer groups, animal welfare organizations, veterinarians, state government agencies, foreign government agencies, and trade associations or organizations. AMS responded to comments in the final rule.

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

AMS determined that this final rule contains information collection requirements under the Act. AMS is requesting Office of Management and Budget (OMB) approval for a new information collection totaling 131,683 hours for the reporting and recordkeeping requirements contained in this final rule. OMB previously approved information collection requirements associated with the National Organic Program and assigned OMB control number 0581-0191. AMS intends to merge this new information collection, upon OMB approval, into the approved 0581-0191 collection. AMS estimated the total reporting, training, and recordkeeping costs to be \$3,932,134.

Statutory authorization for the rule

AMS promulgated this final rule under the authority of sections 6501 to 6522 of title 7, United States Code.

Executive Order No. 12,866 (Regulatory Planning and Review)

AMS determined that this final rule is an “economically significant regulatory action” under the Order, and, therefore, it was reviewed by OMB.