



441 G St. N.W.
Washington, DC 20548

B-329893

March 28, 2018

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-AD75). We received the rule on March 13, 2018. It was published in the *Federal Register* as a final rule; withdrawal on March 13, 2018. 83 Fed. Reg. 10,775.

The final rule withdraws the Organic Livestock and Poultry Practices final rule published in the *Federal Register* on January 19, 2017, by the Agricultural Marketing Service. AMS states that the existing organic livestock and poultry regulations remain effective.

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. Our review of the procedural steps taken indicates that AMS complied with the applicable requirements.

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: Bruce Summers
Acting Administrator
Agricultural Marketing Service
Department of Agriculture

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-AD75)

(i) Cost-benefit analysis

The U.S. Department of Agriculture, Agricultural Marketing Service (AMS) estimates that withdrawal of the final rule will result in a cost savings of \$10.2 million to \$32.6 million per year, discounted at 7 percent over 15 years. AMS further states when factored over perpetuity and extended to account for future years, the estimated cost savings become, on an annualized basis, \$8.5 million to \$34.9 million. AMS states it estimated costs and benefits based on three potential scenarios of how organic egg producers would respond to the rule if it went into effect. For all scenarios, AMS states the midpoint of the cost estimates, including the estimated paperwork burden, exceeds the midpoint of the estimated benefits.

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

AMS states data suggest nearly all organic egg producers qualify as small businesses. AMS estimates that out of 722 operations reporting sales of organic eggs, only four are not small businesses. Based on surveys of organic egg producers, AMS believes producers would face costs to acquire more land and providing transport services if the rule was implemented. By withdrawing the rule, AMS states producers would save on these costs. However, AMS states these savings do not meet the definition of “significant economic impact” under RFA. Therefore, AMS certifies the rule will not have a significant economic impact on a substantial number of small entities.

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

The final rule does 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.

AMS published a notice of proposed rulemaking on December 18, 2017. 82 Fed. Reg. 59,988. AMS received approximately 72,000 comments on the proposed rule. AMS states the majority of the comments, over 63,000, opposed the withdrawal. This included over 56,000 comments submitted as form letters. According to AMS, approximately 50 comments supported withdrawal, and this included five comments submitted as form letters. AMS further states, the remaining comments, about 7,800, did not state a clear opinion about the proposed withdrawal.

AMS responded to the comments in the final rule. AMS published the final rule on March 13, 2018. 83 Fed. Reg. 10,775.

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

AMS states no additional collection or recordkeeping requirements are imposed on the public by the final rule and that Office of Management and Budget clearance is not required.

Statutory authorization for the rule

AMS states it is withdrawing the rule because it lacks authority to promulgate the rule under 7 U.S.C. § 6905.

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

AMS states the rule is a major rule under the Order and has included a Regulatory Impact Assessment, including the costs and benefits, in the final rule.

Executive Order No. 13,132 (Federalism)

The final rule does not discuss the Order.