



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

B-335744

November 16, 2023

The Honorable Debbie Stabenow  
Chairwoman  
The Honorable John Boozman  
Ranking Member  
Committee on Agriculture, Nutrition, and Forestry  
United States Senate

The Honorable Glenn Thompson  
Chairman  
The Honorable David Scott  
Ranking Member  
Committee on Agriculture  
House of Representatives

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

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 (USDA), Agricultural Marketing Service (AMS) entitled “National Organic Program (NOP); Organic Livestock and Poultry Standards” (RIN: 0581-AE06). We received the rule on November 8, 2023. It was published in the *Federal Register* as a final rule on November 2, 2023. 88 Fed. Reg. 75394. The stated effective date is January 2, 2024.

AMS states that the final rule amends organic livestock and poultry production requirements by adding new provisions for livestock handling and transport, slaughter, and avian (poultry) living conditions, as well as by expanding and clarifying existing requirements covering livestock care and production practices and non-avian living conditions. AMS states that these changes will ensure organically produced foods meet a transparent and consistent standard to allow the industry to maintain consumer confidence in USDA organic products, to align with consumer expectations regarding outdoor access, and to further facilitate interstate commerce in organic products.

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). The *Congressional Record* does not reflect receipt of the final rule by the Senate or House of Representatives. However, the agency provided documentation showing that the Senate and House of Representatives both received the rule on November 13, 2023. The rule has a stated effective date of January 2, 2024. 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. 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 Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive style with a large initial 'S' and a long, sweeping tail on the 'J'.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Erin Morris  
Associate Administrator  
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 STANDARDS”  
(RIN: 0581-AE06)

(i) Cost-benefit analysis

The Department of Agriculture (USDA), Agricultural Marketing Service (AMS) performed a cost-benefit analysis regarding the final rule. Specifically, AMS analyzed the final rule's impact on the organic broiler market and the organic egg market. AMS estimated that the final rule will result in annual costs for organic layer operations of \$28.1 to \$32.9 million and costs for organic broiler operations of \$4.8 to \$5.5 million. Additionally, AMS estimated that organic egg production exiting for the cage-free egg market will lead to a temporary economic welfare loss of approximately \$8.7 to \$16.0 million over the first 20 years of the rule. AMS estimated annual benefits for layer operations of \$76.6 to \$89.6 million and benefits for organic broiler operations of \$31.5 to \$35.6 million. In total, AMS anticipated the final rule will produce annualized net benefits ranging from \$59.1 million (assuming a 7 percent discount rate overall) to \$78.1 million (assuming a 3 percent discount rate overall).

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

AMS performed a regulatory flexibility analysis to determine the final rule's impact to domestic small businesses including avian and mammalian livestock producers and slaughter facilities that currently hold or are pursuing USDA organic certification, as well as organic certifying agents. According to AMS, this analysis revealed that the cost of implementing the final rule will fall on certified organic egg and broiler producers. AMS found that the final rule's requirements would not add significant costs to other organic livestock sectors because these requirements seek to codify existing industry practices. AMS stated that it expects that most organic layer operations affected by this rule and about one third of all organic broiler operations are small businesses as defined by Small Business Administration criteria. AMS further stated that it expects that the costs to comply with the outdoor space requirements will be more burdensome for larger organic layer producers and they are more likely to transition to a cage-free label. According to AMS, these operations will require significantly more land and will be less likely to have that area available for expansion. For small egg producers, AMS stated that business revenues would need to be less than \$137,195 to \$154,922 per firm for the rule to cost more than 3 percent of revenue. For small broiler producers, AMS stated that business revenues would need to be less than \$117,456 to \$132,632 per firm for the rule to cost more than 3 percent of revenue. AMS also expects that organic producers may have some increased costs to meet the reporting and recordkeeping requirements that will be associated with this rule. However, while certifying agents are small entities that will be affected by the final rule, AMS does not expect these certifying agents to incur substantial costs as a result of the final rule.

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

AMS did not discuss the Act in the final rule. In its submission to us, AMS indicated that it considered preparation of a written statement under section 202 of the Unfunded Mandates Reform Act of 1995 to be not applicable.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

AMS did not discuss the Act in the final rule.

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

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

On August 9, 2022, AMS published a proposed rule. 87 Fed. Reg. 48562. AMS held a listening session on August 19, 2022, and received 19 oral comments. AMS received 40,336 written comments from a variety of stakeholders including consumers, operations, certifying agents, retailers, trade associations, and advocacy groups. AMS discussed the subjects of these comments in the final rule.

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

AMS stated that the rule contains information collection requirements covered by the Act and that it is requesting OMB review and approval for a new information collection. OMB states that it intends to merge this new information collection (OMB Control Number 0591-0293) with a previously approved information collection (OMB Control Number 0581-0191). According to AMS, the final rule will result in an overall burden of 100,310 reporting hours costing a total of \$4,287,105.

Statutory authorization for the rule

AMS promulgated the final rule pursuant to sections 6501–6524 of title 7, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

AMS stated that the final rule is a significant regulatory action under the Order, as amended, and therefore has been reviewed by OMB.

Executive Order No. 13132 (Federalism)

AMS stated that it determined the final rule conforms with the principles of federalism described in the Order. Specifically, AMS stated that the final rule does not impose substantial direct costs or effects on states, does not alter the relationship between states and the federal government, and does not alter the distribution of powers and responsibilities among the various levels of government. AMS further stated that states had the opportunity to comment on the proposed rule and that no state provided public comment on the federalism implications of the final rule. Therefore, AMS stated that it concluded the final rule does not have federalism implications.