

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**ORGANIC TRADE ASSOCIATION**

**Plaintiff,**

**v.**

**UNITED STATES DEPARTMENT OF  
AGRICULTURE, *et al*,**

**Defendants.**

**Civil Case No. 1:17-cv-01875-RMC**

**DECLARATION OF  
LAURA BATCHA IN SUPPORT OF  
PLAINTIFF'S FIRST AMENDED  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

Pursuant to 28 U.S.C. § 1746 I, Laura Batcha, declare:

1. I am the CEO and Executive Director of the Organic Trade Association (“OTA”). This statement is based on my personal knowledge and is submitted in support of OTA’s opposition to the USDA’s motion to dismiss.
2. The Organic Trade Association is a membership-based business association for organic agriculture and products in North America.
3. Our members include growers, shippers, processors, certifiers, farmers’ associations, distributors, importers, exporters, consultants, retailers, consumers and others.
4. OTA’s mission is to promote and protect the growth of organic trade to benefit the environment, farmers and consumers using research-driven policy analysis and advocacy.
5. OTA’s members recognize that use of the USDA’s Organic Seal constitutes a kind of shared brand among all certified operations and businesses. This unique common equity places greater than usual emphasis on the need for consensus standard setting under the federal organic program and on uniform compliance.
6. The USDA seal is commonly and uniformly used on the packaging of every certified organic product.

- 1 7. OTA was instrumental in obtaining passage of the Organic Foods Production (“OFPA”)  
2 (“Congress was petitioned by the Organic Trade Association to establish national  
3 standards for organic food and fiber products.) *See* 65 Fed. Reg. at 80677
- 4 8. OTA is experienced in the development, implementation and enforcement of organic  
5 standards *See* 65 Fed. Reg. at 80678 (citing OTA’s work developing the American  
6 Organic Standards.)
- 7 9. OTA routinely works closely with the National Organic Standards Board (“NOSB”) on  
8 organic policy, standards, and other matters.
- 9 10. The NOSB’s role developing standards for the Secretary of Agriculture has historically  
10 been plenary. For the last 20 years it has been understood that the strongest role for the  
11 NOSB is with regard to the National List, and development of livestock standards.
- 12 11. OTA’s relationships with the principal statutory advisor to the Secretary of Agriculture is  
13 a key part of its professional toolkit and when the USDA denies the NOSB its  
14 consultative opportunity, it directly harms OTA’s members and mission.
- 15 12. OTA was instrumental in obtaining the publication of the Organic Livestock and Poultry  
16 Practices final rule. *See* 82 Fed. Reg. at 7042-92 (January 19, 2017) (“OLPP”)
- 17 13. USDA’s refusal to undertake notice and comment prior to issuing final rules that  
18 amended the OLPP directly harmed OTA’s interest in participation in the rulemakings.  
19 *See* 82 Fed. Reg. at 9967 (February 9, 2017). (“First Delay Rule”) 82 Fed. Reg. at 21,677  
20 (May 10, 2017) (the Second Delay Rule)
- 21 14. The USDA’s subsequent rulemaking undertaken on May 10, 2017, Fed. Reg. at 21742,  
22 asked for comment *solely* on whether the published final OLPP should be implemented  
23 as published, further delayed or permanently withdrawn. It contained no substantive  
24 inquiry, identified no deficiency in the existing administrative record made over  
25 approximately ten years, identified no outstanding issue of law, fact or policy, and did not  
26 mention the NOSB’s role or its view on the matter.
- 27 15. When the USDA issued its Third Delay Rule following the May 10, 2017 rulemaking it  
28 said, “This final rule adopts Option 3: Delay, so that important questions regarding  
USDA’s statutory authority to promulgate the OLPP rule and the likely costs and benefits  
of that rule, can be more fully assessed through the notice and comment process prior to

1 AMS making a final decision on whether the OLPP final rule should take effect.” *See*  
2 82 Fed. Reg. at 52643

3 16. USDA also said, “[D]uring the course of reviewing the rulemaking record for the Organic  
4 Livestock Rule final rule, AMS discovered a significant, material error in the  
5 mathematical calculations of the benefits estimates.” 82 Fed. Reg. at 52644 Based on  
6 this discovery, AMS concluded: “It is not appropriate for AMS to allow a final rule to  
7 become effective based on a record containing such a material error.” *Id.*

8 17. The rationale set forth for further delay in November was not a logical outgrowth of the  
9 four procedural questions posed in the May 10, 2017 notice of rulemaking, thus OTA and  
10 its members were deprived of the chance to meaningfully comment.

11 18. In addition, the technical reports necessary to assess whether a cost/benefit error had been  
12 made were not included in the rulemaking materials, and thus could not be evaluated and  
13 commented upon. The documents that USDA was apparently analyzing were posted to  
14 the regulations.gov website on December 18, 2017. Available at  
15 <https://www.regulations.gov/docket?D=AMS-NOP-15-0012> “Supporting Documents  
16 Folder” (OLPP-PRIA) and (“Benefit+Cost Workbook for OLP Notice”)

17 19. OTA requested an extension of time in order to evaluate and comment on the cost benefit  
18 analysis question posed by USDA but the request was denied. Available at  
19 regulations.gov

20 20. Our members are very concerned that the ongoing delay is increasing consumer  
21 confusion and leading to unhelpful litigation against producers, retailers and others. A  
22 recently filed case in California seized on the concerns expressed by AMS in the OLPP  
23 regarding consumer confusion and the incompatibility of certain production systems with  
24 the claim that poultry receive “outdoor access.” *See Gibson v. Wal-Mart and Cal-Maine*  
25 *Foods*, 3:18-cv-00134, N.D. Ca.)

26 21. Further delay in implementing the OLPP clarifications increases the risk of civil liability  
27 for OTA and its members, as the civil litigants like those in the *Gibson* case may choose  
28 to attack the certifying agents as well as the certified organic operation.

I declare under penalty of perjury that the foregoing is true and correct.

1 Executed this \_\_\_\_ day of February 2018.

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5 Laura Batcha  
6 Organic Trade Association  
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