

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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ORGANIC TRADE ASSOCIATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 17-1875 (PLF)
	)	
UNITED STATES DEPARTMENT OF	)	
AGRICULTURE, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

ORDER

On October 31, 2019, plaintiff, Organic Trade Association (“OTA”), moved for summary judgment on Counts Two and Three of the Second Amended Complaint, challenging the two statutory issues and economic modeling as unlawfully deficient. Memorandum of Law in Support of Plaintiff’s Motion for Summary Judgment [Dkt. No. 98] at 4, 40. On January 2, 2020, defendants United States Department of Agriculture (“USDA”), *et al.*, moved the Court for an order staying summary judgment proceedings and remanding to USDA consideration of the economic assumptions underlying the Withdrawal Rule<sup>1</sup> and the Organic Livestock and Poultry Practices Rule.<sup>2</sup> Defendants’ Motion to Stay Summary Judgment Proceedings and For Voluntary Remand Or, In the Alternative, For An Extension of Time [Dkt. No. 102] at 1. On February 21, 2020, USDA filed a status report confirming the request for

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<sup>1</sup> 83 Fed. Reg. at 10775-83 (Mar. 13. 2018).

<sup>2</sup> 82 Fed. Reg. at 7042-92 (Jan. 19, 2017).

remand. Defendants' Status Report Regarding Motion for Voluntary Remand [Dkt. No. 108] at 2. On March 12, 2020, the Court granted USDA's motion to stay the case and for voluntary remand, giving "180 days for USDA to publish a final rule, after notice and comment, fully explaining its updated cost/benefit analysis." Order [Dkt. No. 112] at 3. The Court further ordered that the parties submit a joint status report no later than September 8, 2020. *Id.*

On September 4, 2020, USDA posted a final draft of its decision on the United States Department of Agriculture Agricultural Marketing Service website, Joint Status Report ("JSR") [Dkt. No. 114] ¶ 3, and on September 17, 2020, an official version of that decision was published in the Federal Register, see Notice of Intended Publication of USDA's Final Remand Report and OTA Position Regarding Case Scheduling [Dkt. No. 119] at 1. On September 8, 2020, the parties filed a joint status report agreeing that the Court should lift the stay issued on March 12, 2020, *id.* ¶ 6, and thereafter submitted opposing case management schedules, compare Defendants' Proposed Case Management Schedule ("Def. Proposed Sched.") [Dkt. No. 115] with Plaintiff's Proposed Case Management Schedule ("Pl. Proposed Sched.") [Dkt. No. 116]. OTA seeks to bifurcate briefing of the statutory authority questions and the economic modeling questions, arguing that the legal issues are ripe for summary judgment now, while the economic modeling questions should be addressed later when the record is complete. Pl. Proposed Sched. at 5. USDA opposes OTA's proposal, arguing that "bifurcation now would defeat the entire purpose of the stay entered on March 12, [2020] which was to 'ensure the Court has a complete record at summary judgment.'" Def. Proposed Sched. ¶ 2 (citing Order at 3). The Court agrees that bifurcation is neither useful nor efficient, and may be inconsistent with Judge Collyer's March 12, 2020 Order. See Order at 3 ("[C]ases[] are best decided on a complete record."). Accordingly, it is hereby,

ORDERED that the parties' joint request to lift the stay entered by the Court in its March 12, 2020 Order [Dkt. No. 112] is GRANTED and the stay is hereby lifted; it is

FURTHER ORDERED that on or before November 2, 2020 plaintiff shall file its third amended complaint setting forth any supplemental allegations or modifications it believes necessary to account for defendants' further proceedings on remand; it is

FURTHER ORDERED that defendants may, if they so choose, file an answer to plaintiff's third amended complaint on or before November 16, 2020; it is

FURTHER ORDERED that on or before November 23, 2020 defendants shall produce to plaintiff the complete administrative record; it is

FURTHER ORDERED that on or before December 21, 2020 plaintiff shall file any motions regarding the composition of the administrative record and any motion for summary judgment; it is

FURTHER ORDERED that on or before January 11, 2021 defendants shall file any opposition to plaintiff's motion regarding the composition of the administrative record, any opposition to plaintiff's motion for summary judgment, and any cross-motion for summary judgment; it is

FURTHER ORDERED that on or before February 8, 2021 plaintiff shall file any reply to defendants' opposition regarding the composition of the administrative record, any reply to defendants' opposition regarding summary judgment, and any opposition to defendants' cross-motion for summary judgment; and it is

