

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ORGANIC TRADE ASSOCIATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
AGRICULTURE, *et al*,

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

DECLARATION OF  
GEORGE SIEMON, IN SUPPORT  
OF PLAINTIFF'S FIRST  
AMENDED COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF

Pursuant to 28 U.S.C. § 1746 I, George Siemon, declare:

1. I am the Chief Executive Officer (CEO) of CROPP Cooperative d/b/a Organic Valley.
2. CROPP is the largest farmer-owned organic cooperative in the world. CROPP Cooperative is a marketing cooperative focused exclusively in organic trade. Organized in 1988, CROPP is owned by over 2,000 certified organic livestock organic farmers in 36 states. The co-op achieved more than \$1 billion in sales in 2017. CROPP produces a variety of organic foods, including organic milk, soy, cheese, butter, spreads, creams, eggs, pork, poultry, and beef and produce.
3. CROPP Cooperative produces and markets certified organic dairy and egg products under the Organic Valley® brand and certified organic meat products under the Organic Prairie® brand.
4. CROPP produces, processes and markets only certified organic products and change in the organic regulations affects our business directly. Because we are a livestock products

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1 business, the Organic Livestock Production Practices rule directly affected our business  
2 by altering the terms of compliance and competition, including changing what can be  
3 certified and labeled as organically produced.

4  
5 5. CROPP, through my personal activity and that of others, supported the adoption of the  
6 OFPA in 1990 to remove the patchwork of state and private organic standards that were  
7 confusing consumers, and preventing a single, consistent definition of organic production  
8 practices to govern the interstate marketplace. In 1990, organic advocates considered it a  
9 great victory to have Congress create the National Organic Program (“NOP”) and the  
10 National Organic Standards Board (“NOSB”) to advise the USDA, and strongly  
11 supported the diverse composition of the NOSB and the mandate that the Secretary  
12 conduct pre-rulemaking consultations with the NOSB.

13  
14 6. It was widely understood by organic advocates at the time of the passage of the OFPA  
15 that livestock production practices and standards were underdeveloped compared to crop  
16 production practices and the statutory requirement that the NOSB and USDA develop  
17 additional dairy, meat and egg producing animal management and healthcare practices  
18 was considered necessary.

19  
20 7. CROPP, through its farmer-owners, has invested, and continues to invest significant time  
21 and financial and employee resources to remain abreast of organic policy making and the  
22 activities of the NOSB and the USDA’s National Organic Program (“NOP”).

23  
24 8. Because the NOP is a marketing program, and organic consumers are represented on the  
25 NOSB, it has long been the policy of the NOSB to incorporate consumer preferences and  
26 concerns into the recommendations to the USDA. Correspondingly, USDA has  
27

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1 recognized and repeatedly referred to consumer attitudes and preferences in developing  
2 and issuing the NOP's programmatic standards.

- 3  
4 9. Consumer preferences and attitudes are critical because unlike many other product  
5 "standards" for manufactured items, organic is called a "process-based" standard. No  
6 one can look at a tomato or egg and know if it is organic or not. The only way a  
7 consumer can know something is organically produced is if it is certified by a certifying  
8 agency. If the standards are not set by transparent mechanisms, or the verification  
9 systems are weak, or the standards are inconsistently applied, the grounds for consumer  
10 trust begin to dissolve.
- 11  
12 10. Unlike most federal rulemaking, the pre-rulemaking consultation with the NOSB  
13 requirement facilitates trust because it allows affected businesses, and consumers, a  
14 unique and comprehensive opportunity to be part of pre-vetting of any proposed  
15 amendment to the organic standards.
- 16  
17 11. This pre-vetting allows certified organic parties and consumers to ascertain the concerns  
18 of, and to fully assist the NOSB in refining its recommendations and critically, to hear the  
19 level of support or opposition from farmers, consumers, and organic business entities.
- 20  
21 12. Unlike most federal rulemaking, the direction and content of organic rulemaking is  
22 generally well formed prior to the publication of any final recommendation to the  
23 Secretary and certainly before any Notice of Proposed Rulemaking or Proposed Rule in  
24 the Federal Register. It is common for organic businesses to act in reliance on detailed  
25 NOSB recommendations that USDA has accepted, but not yet rendered into a final rule.
- 26  
27 13. I believe this pre-vetting opportunity was mandated by Congress to ensure the organic  
28 marketing program was always nimble, informed, transparent and continuously

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1 improving and to allow organic operators advance notice of programmatic issues that  
2 may result in changes to organic standards. It has also expressly brought consumer  
3 preferences into the discussion of organic standards.  
4

5 14. The Final OLPP was a very logical and nearly unchanged version of the NOSB's  
6 recommendations on this point and the provisions of the NPRM

7 15. CROPP relies on the rules governing notice and comment before the NOSB and those  
8 governing rulemaking by the USDA to ensure it is able to fully and fairly participate in  
9 all aspects of the development of organic policies. In addition, CROPP relies on the  
10 mandatory consultation provisions set forth in the OFPA to both learn the USDA's  
11 thinking and the thinking of the NOSB with regard to proposed amendments to the  
12 organic standards.  
13

14 16. I am aware that the current Administration has not consulted the NOSB regarding its  
15 course of action with regard to the blocking the OLPP and CROPP has presently lost the  
16 opportunity to meaningfully advocate to the NOSB on the current matter. This is an  
17 ongoing deprivation.  
18

19 17. I am personally unaware in more than 25 years of participation with Congress, USDA,  
20 the NOSB and the organic marketplace, of any significant organic policy that has been  
21 developed without consultation with the NOSB until the recent activity by USDA  
22 surrounding its efforts to block the implementation of the OLPP.  
23

24 18. CROPP submitted written comments and testimony during the NOSB deliberations that  
25 led to the OLPP and again on the NPRM that led to the OLPP and has submitted  
26 comments every time the USDA has allowed comment since January 2017.  
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1 19. CROPP requires all the members of its cooperative to be certified organic and to comply  
2 with all organic practices set forth in the rules and presently requires its members to  
3 observe the organic production practices listed in the OLPP.  
4

5 20. CROPP required compliance because the final rule's provisions were a very long time in  
6 development and thus largely anticipated, known, and were an important next step in the  
7 process of continual improvement of organic standards that Congress imposed. The  
8 compliance costs, such as alteration of pork and poultry housing, expansion of poultry  
9 housing, and acquisition of certified organic land, and adaptation of ongoing management  
10 practices, such as moving birds in and out of the barns, necessary to comply with OLPP  
11 are incurred and ongoing expenses that can only be redressed by implementation of the  
12 OLPP.  
13

14 21. The lower welfare management practices that the OLPP bars, particularly the elimination  
15 of poultry houses that provide no access to the outdoors where there is no roof and no  
16 floor, is necessary to ensure fair competition in the marketplace. As the NOP found  
17 before adopting the OLPP, consumers are increasingly confused because of the  
18 inconsistent approach to "outdoor access."  
19

20 22. Livestock production standards that include outdoor access that includes direct sunlight,  
21 soil access, dust bathing and allowing animals to engage in other natural behaviors, and  
22 other best animal husbandry practices are a main tenet of the organic foods production  
23 system unlike other agricultural production methods. The practices codified in the OLPP  
24 were over a decade in the making. *Organic Livestock and Poultry Practices*, 82 Fed.  
25 Reg. at 7042-92 (published January 19, 2017) ("final rule").  
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1 23. In 2010 the USDA’s Inspector General concluded that the “outdoor access” requirement  
2 for poultry raised on certified organic farms was not being consistently applied. The  
3 NOP agreed to resolve the inconsistencies. After many years of discussion, it was  
4 determined that a rulemaking to ensure consistency was needed because certain practices  
5 that had been previously accepted were no longer acceptable, in part because it was not in  
6 the animal’s best interests and because consumers were abandoning organic products for  
7 products certified to “higher welfare” standards.  
8

9 24. Many of these “higher welfare” standards the OLPP incorporated are set forth in  
10 certification programs such as the Global Animal Partnership 5 Step Program (“GAP”) or  
11 “Certified Humane”.  
12

13 25. Verifying animal production standards that are in addition to organic requirements  
14 imposes an additional cost on certified organic operations. Simply put, it duplicates the  
15 cost of the organic certification. CROPP members have borne the financial cost burden  
16 of double certification and continue to do so.  
17

18 26. The delay in implementing the OLPP has caused ongoing imposition of costs of  
19 additional certification that would have been alleviated by the final rule becoming  
20 effective.  
21

22 27. In addition, during this period of delay consumers have become increasingly aware that  
23 the pre-OLPP requirements of “outdoor access” are not being consistently applied thus  
24 causing reputational harm to farmers that are willing to comply with the new  
25 requirements and lowering consumer trust and diluting the value of the USDA’s organic  
26 seal.  
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1 28. If consumers understand that some organic livestock products meet higher welfare  
2 standards than others the USDA organic seal is concretely damaged by that inconsistency  
3 because consumers cannot know which organic products meet the higher requirements  
4 and which don't.

5  
6 29. CROPP depends on consistent application of the organic standards and without OLPP,  
7 some organic producers are not allowing their poultry to truly go outdoors and stocking  
8 densities are at unhealthy levels.

9  
10 30. CROPP cannot abandon the federal organic program for other certification programs as  
11 its brand, Organic Valley, and its membership, require organic certification. CROPP is  
12 harmed when the USDA's organic seal is devalued in the market place.

13 31. The failure to consult the NOSB during this entire delay period has also eroded  
14 confidence that the USDA is operating transparently and managing the NOP to ensure  
15 consistent standards are applied to all certified operations.

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

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18  
19 Executed this \_\_\_\_ day of February 2017. \_\_\_\_\_

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24 \_\_\_\_\_  
25 CEO, CROPP Cooperative and Organic Valley  
26 Family of Farms

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28 Declaration of George Siemon