

# AMERICAN AGRICULTURAL LAW ASSOCIATION

## UPDATE ON ORGANIC REGULATORY ISSUES

### I. INTRODUCTION OF PANEL AND PROGRAM

- A. Jennifer Tucker – Deputy Administrator, National Organic Program, USDA
- B. Laura Batcha – Executive Director, Organic Trade Association

### II. THE ORGANIC FOODS PRODUCTION ACT OF 1990 7 U.S.C. § 6501 *et seq.* and REGULATIONS – 7 CFR Part 205

See Appendices A and B

### III. The National Organic Program and USDA

### IV. State Programs and Third Party Certifiers

### V. Certification of producers

- A. The Organic Certificate legal implications
- B. Organic Label

### VI. What is Organic –

- A. What does Certified Organic Mean and what does it not mean?
- B. Method of Production v. Size of Operation?

### VII. USDA Enforcement

- A. Process – need for investigation, due process and organic integrity
- B. NOP
- C. ALJ
- D. Role of Courts
- E. Role of Outside Parties – e.g. Washington Post Series

See Appendix C

VIII. Pasture Rule

- A. Original – see Appendix D
- B. Amended in 2010 – see Appendix E
- C. Pasture Surveillance Program
- D. How do regulations match up against perception?
- E. What is the grazing season?
- F. What are exceptions to grazing and how do they relate to grazing season?

IX. Origin of Livestock Rule

- A. Purpose and goals
- B. USDA Final Rule – see Appendix F
- C. USDA Withdraws Final Rule – see Appendix G
- D. Industry and Congressional Reaction – Status Update

X. Proposed and Withdrawn Organic Marketing Order

XI. Role of Public in Enforcement

A. FOIA

- 1. NOP Generally
- 2. Geospatial Information – Section 1619 – 2009 Farm Bill – Appendix H
- 3. *Food Marketing Institute v. Angus Leader Media*, 139 S.Ct. 915 (2019) – Appendix I

- 4. Congressional Reaction to *Angus Leader* case – Appendix J

B. Preemption – status and limits

- 1. Who gets to enforce Organic regulations?
- 2. How does Organic fit into framework of Consumer Protection Laws
- 3. Organic Certification
  - a. *Organic Consumers Association v. Hain Celestial Group, Inc.*, 285 F.Supp.3d 100, 103-108 (D.D.C. 2018) – Appendix K;
  - b. *In re: Aurora Dairy Corp. Organic Milk Marketing and Sales Practices Litigation*, 621 F.3d 781 (8<sup>th</sup> Cir. 2010) – Appendix I;

- c. *Marentette v. Abbot Laboratories, Inc.*, 836 F.3d 112 (2<sup>nd</sup> Cir. 2018) – Appendix J
- 4. Limits of Preemption – See *Aurora Dairy*.

XII. Questions and Answers and Concluding Remarks