

# WHAT THE CLUCK, USDA?

*Oregon groups sue the Trump administration for dropping a regulation that would have bolstered organic-labeling*

**BY EMILY GREEN**  
SENIOR STAFF REPORTER

Attorneys at the Center for Food Safety's Portland office have taken the lead in a lawsuit filed against the U.S. Department of Agriculture in California's Northern District.

Plaintiffs in the case, which include the nonprofit Cultivate Oregon and two other West Coast food safety groups, allege the USDA violated laws governing its own policy processes when on March 13 it withdrew a previously approved animal welfare rule.

The rule would have addressed inconsistencies in the living conditions of animals raised under the organic label by banning de-beaking and several other physical alterations, adding new health care provisions, requiring that certified-organic poultry and egg producers provide their birds with real access to the outdoors, and it also would have placed limits on poultry overcrowding.

Most organic egg and poultry producers already follow the standards in the rule, and were widely in support of its implementation.

That's because without laws to level the playing field, producers who follow higher standards for animal welfare are being undercut by a handful of high-volume organic producers who do not, said Amy van Saun, Center for Food Safety attorney.

"That was the huge problem being solved by these rules, and one that apparently the Trump administration does not care about," she said.

The Center for Food Safety is a national nonprofit organization based in Washington, D.C.

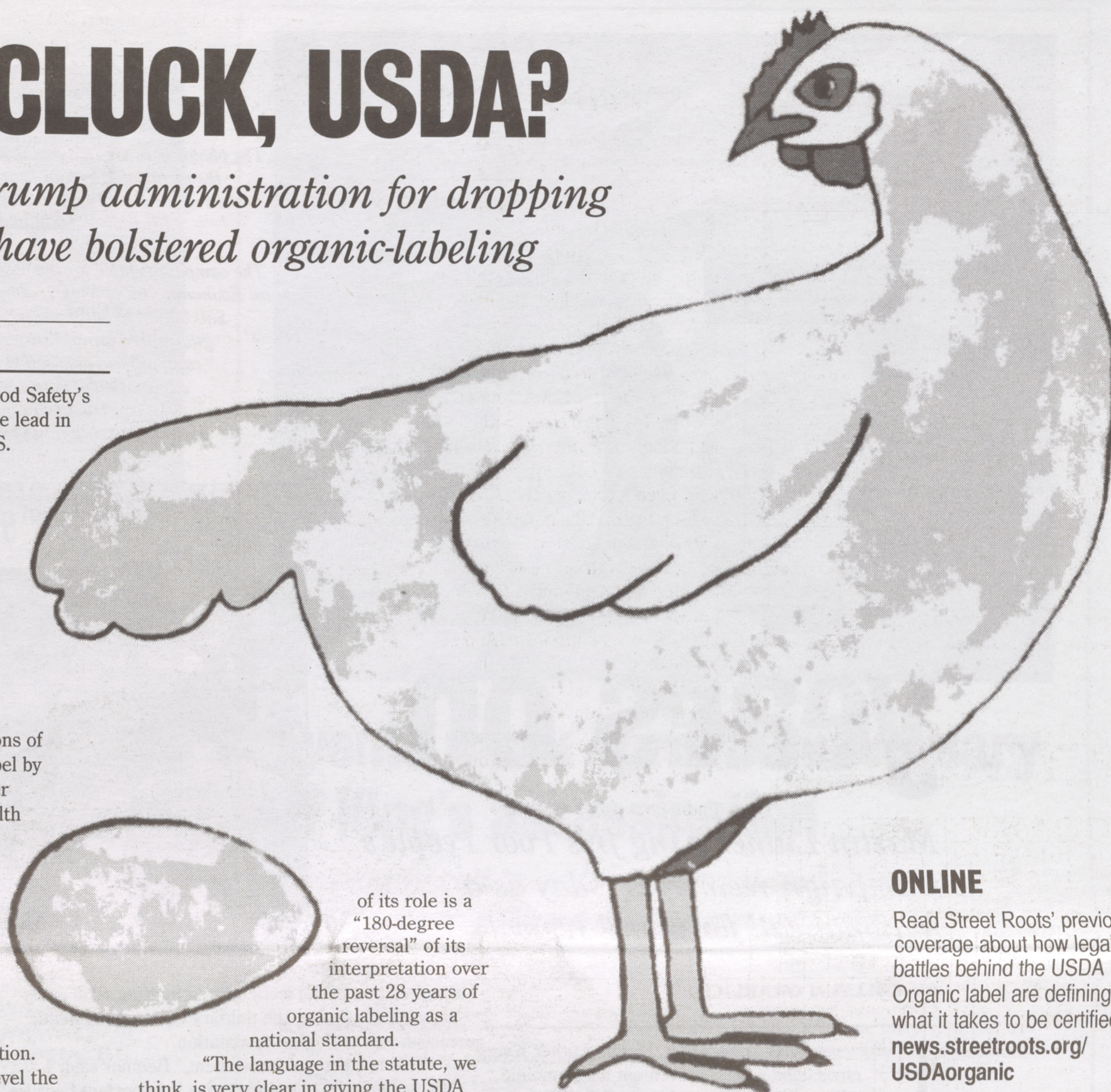
Amy Wong, attorney and director at Cultivate Oregon, said many organic egg producers in Oregon are doing the right thing, but without implementation of the new rule, they will only see the chasm between their costs and the costs of producers with lower standards deepen.

"Those brands that are able to do the lesser-quality organic under this rule are still going to be able to produce even cheaper eggs, and those people who are still doing the right thing, it's going to get more expensive for them," she said.

After 10 years of going through all the required public-comment periods and processes required for new organic-label rules, the animal welfare rule was approved the day before the Trump administration took office. But following the president's executive order freezing all new regulations, implementation of the rule was delayed three times before the USDA officially withdrew it.

The USDA claims it had to withdraw the rule because "based on its current interpretation" of statute, it does not have the authority to implement it.

Van Saun said the agency's new interpretation



of its role is a "180-degree reversal" of its interpretation over the past 28 years of organic labeling as a national standard.

"The language in the statute, we think, is very clear in giving the USDA authority, and in fact even requiring it to make additional standards for the raising and care of livestock," she said.

The effects of the USDA's new interpretation of the statute could be far-reaching. The agency has already implemented animal welfare rules related to ruminant animals, such as requiring organic dairy cows have access to pasture. However, this new interpretation could pave the way for those rules to also be rescinded.

"They made it clear that this interpretation threatens not just the poultry rule that was just passed, but also rules that have been in place for years that everyone has been relying on," van Saun said. "It really threatens to gut organic."

The USDA received more than 72,000 comments relating to the withdrawal of the new rule, according to a tally on regulations.gov. Van Saun said that only about 50 of those comments were in support.

Ignoring tens of thousands of comments among stakeholders, farmers and consumers in organic policy-making is unusual, as it's a voluntary program with regulations based on consensus, van Saun said.

Oregon has the second-highest percentage of consumers who purchase organic products in the U.S., according to the Organic Trade Association, with 91 percent of Oregonian households buying organic.

Under the guidance of Sonny Perdue, who is also named in the March 21 lawsuit, the USDA claimed another reason for the rule withdrawal was because it would be too costly to producers. However, as the lawsuit points out, this rationale goes against the agency's own prior economic

## ONLINE

Read Street Roots' previous coverage about how legal battles behind the USDA Organic label are defining what it takes to be certified: [news.streetroots.org/USDAorganic](http://news.streetroots.org/USDAorganic)

ILLUSTRATION BY EMILY GREEN

analysis, which found costs would be minimal.

A Cornucopia Institute investigation found that Cal-Maine and Herbruck's Poultry were among the largest egg producers to oppose the new animal welfare rules. Both of these companies sell eggs under several brands, including Eggland's Best. They also sell eggs to store-brand organic labels such as Safeway (O Organics), Kroger (Fred Meyer's Simple Truth Organic) and Trader Joe's.

When people think organic, "they don't think of animals that are confined indoors," van Saun said, adding that the new rule is needed to close the gap between what people think of as organic and what the label actually requires.

Connie Karr, the certification director at Oregon Tilth, told Street Roots in an interview last summer that her organization was strongly supportive of the new animal welfare standards and that most operations in Oregon are already following the new guidelines.

Oregon Tilth is the third-largest organic certifier in the U.S., and it certifies organic growers across the nation and advocates on their behalf. Karr said that in Oregon, while there are some mid-sized to large producers, the majority are "the smaller, family-sized farms."

According to the most recently available USDA census data from 2014, Oregon was home to 7,700 live organic chickens and turkeys and more than 45,000 live organic dairy cows, beef cattle and calves.

[emily@streetroots.org](mailto:emily@streetroots.org); Twitter @greenwrites