January 17, 2018

Submitted electronically via regulations.gov

Dr. Paul Lewis, Ph.D.
Director Standards Division
National Organic Program
USDA-AMS-NOP
Room 2646 – So., Ag Stop 0268
1400 Independence Avenue SW
Washington, DC 20250-0268

Re: Organic Livestock and Poultry Practices Final Rule; Docket Number AMS-NOP-15-0012; NOP-15-06

On behalf of the American Society for the Prevention of Cruelty to Animals (ASPCA), the Animal Welfare Institute (AWI), The Humane Society of the United States (HSUS), and our combined tens of millions of members, the following comments are hereby submitted regarding the National Organic Program: Organic Livestock and Poultry Practices—Withdrawal, docket number AMS-NOP-15-0012; NOP-15-06. Our organizations support higher animal welfare standards for the National Organic Program (NOP) and condemn the US Department of Agriculture's (USDA's) efforts to nullify the Organic Livestock and Poultry Practices (OLPP) rule (hereafter referred to as the OLPP Rule), a regulation developed with scientific rigor and lengthy collaboration over two decades.

USDA's argument in support of its proposed rule is inadequate and is not based in law or in fact. USDA cannot reasonably separate animal health from animal welfare because the two are inextricably linked: Animal welfare reinforces animal health, and animal health reinforces animal welfare. Moreover, USDA's attempt to separate the two is not based in law. The Organic Foods Production Act (OFPA) does not treat welfare and health as separate concepts, but rather as one overarching issue over which USDA has regulatory authority. That is why USDA has, since the enactment of the OFPA, issued regulations that improve animal welfare. Finally, the OLPP Rule is a necessary correction to a market failure created by the current standards: Consumers expect organic products to include robust animal care standards, and the OLPP Rule ensures that organic products meet those consumer expectations. For these and other reasons outlined below, we oppose withdrawal and urge immediate implementation of the OLPP Rule.

A. USDA Cannot Reasonably Separate Animal Health from Animal Welfare

USDA now states that it proposes withdrawing the OLPP Rule because under the Agency's "current interpretation of 7 U.S.C. 6905," the Rule "would exceed USDA's statutory authority." 82 Fed. Reg. 59988. Specifically, USDA states:

> [I]t now believes OFPA does not authorize the animal welfare provisions of the [Organic Livestock] final rule. Rather, the agency's current reading of the statute, given the relevant language and context, suggests OFPA's reference to additional regulatory standards 'for the care' of organically produced livestock should be limited to health care practices similar to those specified by Congress in the statute, rather than expanded to encompass stand-alone animal welfare concerns. *Id*.

The distinction that USDA seeks to draw between standards for animal care and standards for animal health is erroneous and arbitrary. The Agency has not offered sufficient explanation of the bases for any of these assumptions, and the Agency will not be able to do so in a non-arbitrary way. As described below, USDA cannot reasonably distinguish between animal health care practices and animal welfare practices because according to scientific research, international standards, and USDA's own research and materials, the concepts are intertwined.

1. *Animal Welfare is a Well-Established Scientific Concept*

The American Veterinary Medical Association (AVMA) defines *animal welfare* as follows:

> Animal welfare means how an animal is coping with the conditions in which it lives. An animal is in a good state of welfare if (as indicated by scientific evidence) it is healthy, comfortable, well nourished, safe, able to express innate behavior, and if it is not suffering from unpleasant states such as pain, fear, and distress. Good animal welfare requires disease prevention and veterinary treatment, appropriate shelter, management, nutrition, humane handling and humane slaughter. Animal welfare refers to the state of the animal; the treatment that an animal receives is covered by other terms such as animal care, animal husbandry, and humane treatment. Protecting an animal's welfare means providing for its physical and mental needs.[1]

The AVMA derived its definition of animal welfare from the World Organization for Animal Health (commonly referred to as "OIE"—Office of International des Epizooties). With 181 member countries, including the United States, the OIE is the intergovernmental organization that coordinates, supports, and promotes animal disease control worldwide. The OIE has set international animal health standards since its founding in 1924. The World Trade Organization (WTO), upon its creation in 1995, recognized the OIE standards as WTO references in the category of sanitary (health) measures.[2]

In 2002, the OIE broadened its mandate to include animal welfare, publishing comprehensive sets of welfare standards three years later. To date, the OIE has established animal welfare

---

[1] AVMA, *Animal Welfare: What Is It? available at* https://www.avma.org/KB/Resources/Reference/AnimalWelfare/Pages/what-is-animal-welfare.aspx.

[2] World Organization for Animal Health, *Animal Welfare at a Glance*. *Available at* http://www.oie.int/en/animal-welfare/animal-welfare-at-a-glance/.

standards for animal transport, killing for disease control purposes, and slaughter and killing for human consumption, as well as for different animal on-farm production systems, including beef cattle, dairy cattle, and broiler chickens.[3] The OIE's welfare standards for farm animals are contained in Chapter 7 of its *Terrestrial Animal Health Code*.

2. *Animal Health and Animal Welfare Are Inextricably Linked*

According to the OIE, animal welfare standards should be science-based and "should always seek to maintain health as a basis of welfare."[4] In its *Guiding Principles for Animal Welfare*, the OIE asserts that there is "a critical relationship between animal health and animal welfare."[5] The *Principles* also note that "improvements in farm animal welfare can often improve productivity and food safety, and hence lead to economic benefits."[6] Further, in the glossary for its *Terrestrial Animal Health Code*, the OIE defines *animal health management* as "a system designed to optimize the physical and behavioural health and welfare of animals."[7] Additionally, OIE's *Global Animal Welfare Strategy* states "Animal welfare is closely linked to animal health."[8]

This link between animal health and animal welfare is recognized by America's largest trading partners for agricultural products. Canada and the European Union (EU), two of our largest trading partners, have adopted national organic regulations that recognize the significance of animal welfare to animal health. The United States has entered into organic equivalency agreements with both of these countries (Canada in 2009 and the EU in 2012).[9] When Canada entered into its equivalency agreement with the United States, it declared that livestock stocking densities for animals other than ruminants were not equivalent to Canadian organic standards because the US organic regulations do not provide stocking densities for this specification.[10] Any US organic meat company desiring to market its non-ruminant products in Canada as organic must meet Canadian space requirements.

Canadian organic regulations recognize the link between animal welfare and animal health as follows:

> Under a system of organic production, livestock are provided with living conditions and space allowances appropriate to their behavioural requirements and organically produced feed. These practices strive to minimize stress, promote good health and prevent disease.[11]

---

[3] *Id*.
[4] *Id*.
[5] World Organization for Animal Health, *Terrestrial Animal Health Code*, Introduction to the Recommendations for Animal Welfare, Chapter 7.1.1, (2017).
[6] *Id*.
[7] World Organization for Animal Health, *Terrestrial Animal Health Code*, Glossary, (2017).
[8] World Organization for Animal Health, *Global Animal Welfare Strategy*, (2017), *available at* http://www.oie.int/fileadmin/home/eng/Media_Center/docs/pdf/85SG/AW/EN_OIE_AW_Strategy.pdf.
[9] USDA-Agricultural Marketing Service, *International Trade Partners,* https://www.ams.usda.gov/services/organic-certification/international-trade.
[10] USDA-Agricultural Marketing Service, *International Trade Policies: Canada*, https://www.ams.usda.gov/services/organic-certification/international-trade/Canada.
[11] Government of Canada, *National Standard of Canada: Organic Production Systems*, General Principles and Management Standards, CAN/CGSB-32.310-2015, *available at* https://www.tpsgc-pwgsc.gc.ca/ongc-cgsb/programme-program/normes-standards/internet/bio-org/pgng-gpms-eng.html

The United States is the largest foreign supplier of organic products to Canada.[12] As a result, the Agricultural Marketing Service (AMS) needs to assess what, if any, impact its proposed rule will have on the US/Canada organic equivalency agreement. If USDA continues to insist that it has no authority to impose regulations that contain welfare requirements, it must face the possibility that Canada may determine that U.S. organic standards are no longer equivalent to Canada's. The Agency does not address this in its proposed rule and thus overlooks a significant economic risk.[13]

The EU organic regulations clearly articulate the importance of animal welfare to organic production, as in the following excerpt from the regulations' introduction:

> Organic stock farming should ensure that specific behavioural needs of animals are met. In this regard, housing for all species of livestock should satisfy the needs of the animals concerned as regards ventilation, light, space and comfort and sufficient area should accordingly be provided to permit ample freedom of movement for each animal and to develop the animal's natural social behavior. Specific housing conditions and husbandry practices with regard to certain animals, including bees, should be laid down. These specific housing conditions should serve a high level of animal welfare, which is a priority in organic livestock farming and therefore may go beyond Community welfare standards which apply to farming in general….[14]

Again, USDA must assess what impact its statutory determination will have on the EU equivalency agreement, as well as the economic effect of the dissolution of the equivalency agreement.

3. The Link Between Animal Health and Welfare Has Been Scientifically Proven

Acknowledgement of the link between animal health and animal welfare, by the OIE and many of its Member Countries, is based on more than four decades of scientific research. Two pioneers in the field of farm animal welfare science—veterinarian Andrew Fraser and zoologist Donald Broom—discussed animal welfare and behavior in relation to disease in their veterinary textbook *Farm Animal Behaviour and Welfare* (first published in 1974). They note that husbandry methods affect disease incidence, citing as an example a 1970s study that reported a gradual increase in chronic infections in poultry over a period when the frequency of intensive production practices was increasing.[15]

Fraser and Broom identify reduced resistance to disease as a consequence of poor welfare. They note: "This has been known for a long time in the medical and veterinary professions and is part

---

[12] Greene et al., *Growing Organic Demand Provides High-Value Opportunities for Many Types of Producers*, U.S. Dep't of Ag. Economic Research Serv. (2016), *available at* https://www.ers.usda.gov/amber-waves/2017/januaryfebruary/growing-organic-demand-provides-high-value-opportunities-for-many-types-of-producers/.

[13] *Id*. ("Equivalency arrangements improve access to foreign markets by reducing the need for additional inspection, auditing, and other costs.")

[14] Official Journal of the European Union, Commission Regulation (EC) No 889/2008 of 5 September 2008 laying down detailed rules for the implementation of Council Regulation (ECF) No 834/2007 on organic production and labelling of organic products with regard to organic production, labelling and control, *available at* http://eur-lex.europa.eu/eli/reg/2008/889/oj

[15] Fraser, A.F. & Broom, D.M. (1997) *Farm Animal Behaviour and Welfare (3rd ed.),* New York, NY: CAB International, p. 295.

of the more general process whereby poor welfare, whatever its cause, can lead to increased susceptibility to disease."[16] In 1988, Broom theorized a welfare-disease feedback effect, in which stressful living conditions lead to poor welfare, which leads to disease, which leads to worse welfare, which leads to more disease, worse welfare, and potentially death.[17]

According to Broom, the scientific evidence linking welfare with susceptibility to disease is of three kinds: 1) clinical data concerning individuals showing signs of disease, 2) experimental studies and surveys comparing levels of disease incidence in different husbandry systems or after different treatments, and 3) studies of immune system function after different treatments.[18]

4. Specific OLPP Rule Provisions Serve to Promote Animal Health

The types of scientific studies identified by Broom demonstrate a relationship between animal health and a number of living conditions specified in the OLPP Rule. Following is a brief summary of the scientific justification for several of the OLPP animal welfare requirements related to avian health care and living conditions.

OLPP RULE REFERENCE	ANIMAL WELFARE REQUIREMENT	ANIMAL HEALTH CORRELATION	SCIENTIFIC REFERENCES
205.238 Livestock care and production practices standard.	**(a) The producer must establish and maintain preventive health care practices, including: (5) Physical alterations …(ii) The following practices are prohibited: De-beaking… [defined as "The removal of more than one-third of the upper beak or removal of more than one-third of both the upper and lower beaks of a bird."]**	Beak trim length effects preening and removal of ectoparasites	Murillo, A.C. & Mullens, B.A. (2016) Timing diatomaceous earth-filled dustbox use for management of northern fowl mites (acari: macronyssidae) in cage-free poultry systems. Journal of Economic Entomology 109:2572-2579.
	(c) An organic livestock operation must not:	Force molting increases the probability that hens become	Holt, P.S. (2003) Molting and *Salmonella Enterica* Serovar Enteritidis Infection: The

[16] *Id.*
[17] Broom, D.M. (1988) "The relationship between welfare and disease susceptibility in farm animals," *Animal Disease—A Welfare Problem*, London: BVA Animal Welfare Foundation, p. 22-29.
[18] *Id.*

	(10) Practice forced molting or withdrawal of feed to induce molting.	infected with *Salmonella*.	Problem and Some Solutions. Poultry Science 82:1008–1010.
		Feed removal during a molt results in a loss of bone mineralization.	Mazzuco H. & Hester, P.Y. (2005) The effect of an induced molt using a nonfasting program on bone mineralization of white leghorns. Poultry Science 84:1483-1490.
Section 205.241 Avian living conditions	**(a) The producer of an organic poultry operation must establish and maintain year-round poultry living conditions that accommodate the health and natural behavior of poultry, including: Year-round access to outdoors; shade; shelter; exercise areas; fresh air; direct sunlight; clean water for drinking; materials for dust bathing; and adequate outdoor space**	Movement and the exercise that is associated with providing additional space and outdoor access strengthens muscles and bones.	Knowles, T.G. & Broom, D.M. (1990) Limb bone strength and movement in laying hens from different housing systems. Veterinary Record 126(15):354-356. Norgaard-Nielsen, G. (1990) Bone strength of laying hens kept in an alternative system, compared with hens in cages and on deep-litter. British Poultry Science 31(1):81-89. Shipov, A., Sharir, A., Zelzer, E., Milgram, J., Monsonego-Ornan, E., & Shahar, R. (2010) The influence of severe prolonged exercise restriction on the mechanical and structural properties of bone in an avian model. The Veterinary Journal 183:153-60.
	(b)(2) Producers must monitor ammonia levels at least monthly and implement practices to maintain ammonia levels below 10 ppm. When ammonia levels exceed 10 ppm, producers must implement additional practices and additional	Excessive ammonia levels in chicken houses can lead to ocular abnormalities, eye lesions, structural damage to the lungs, skin and respiratory problems, and blindness.	Al-Mashhadani E.H. & Beck M.M. (1985) Effect of atmospheric ammonia on the surface ultrastructure of the lung and trachea of broiler chicks. Poultry Science 64:2056-61. Berg, C.C. (1998) Foot-pad dermatitis in broilers and turkeys: prevalence, risk factors and prevention. Doctor's dissertation. Department of Animal

	monitoring to reduce ammonia levels below 10 ppm. Ammonia levels must not exceed 25 ppm.		Environment and Health, SLU. Acta Universitatis agriculturae Sueciae. Veterinaria 36, p. 16. Wathes, C.M. (1998) Aerial emissions from poultry production. World's Poultry Science Journal 54:241-51. Kristensen, H.H. & Wathes, C.M. (2000) Ammonia and poultry welfare: a review. World's Poultry Science Journal 56:235-45.
	(b)(5) Perches—for layers (Gallus gallus), six inches of perch space must be provided per bird. Perch space may include the alighting rail in front of the nest boxes. All layers must be able to perch at the same time except for aviary housing, in which 55 percent of layers must be able to perch at the same time.	Perches improve bone strength and increase bone volume.	Struelens, E. & Tuyttens, F.A.M. (2009) Effects of perch design on behaviour and health of laying hens. Animal Welfare 18:533-538. Wilson, S., Hughes, B.O., Appleby, M.C., & Smith, S.F. (1993) Effects of perches on trabecular bone volume in laying hens. Research in Veterinary Science 54(2):207.
		Hens prefer elevated perches for roosting at night. Perching is the natural resting position of a bird, and critical functions of rest and sleep include energy conservation and tissue healing and growth.	Campbell, D.L.M., Makagon, M.M., Swanson, J.C. & Seigford, J.M. (2016) Perch use by laying hens in a commercial aviary. Poultry Science 95(8):1736-1742. Blokhuis, H.J. (1984) Rest in poultry. Applied Animal Behaviour Science 12:289-303.
	(b)(6) All birds must have access to areas in the house that allow for scratching	Dustbathing balances lipid (oil) levels in the plumage,	Van Liere, D.W. & Bokma, S. (1987) Short-term feather maintenance as a function of dust-bathing in laying hens.

	and dust bathing. Litter must be provided and maintained in a dry condition.	improving its isulative capacity and protecting the skin from injury.	Applied Animal Behaviour Science 18(2):197-204. Olsson, I.A.S. & Keeling, L.J. (2005) Why in earth? Dustbathing behaviour in jungle and domestic fowl reviewed from a Tinbergian and animal welfare perspective. Applied Animal Behaviour Science 93: 259-282.
		Dustbathing removes external parasites, such as mites and lice.	Martin, C.D. & Mullen, B.A. (2012) Housing and dustbathing effects on northern fowl mites (*Ornithonyssus sylviarum*) and chicken body lice (*Menacanthus stramineus*) on hens. Medical and Veterinary Entomology 26:323–333. Murillo, A.C. & Mullens, B.A. (2016) Timing diatomaceous earth-filled dustbox use for management of northern fowl mites (acari: macronyssidae) in cage-free poultry systems. Journal of Economic Entomology 109:2572-2579.
	(b)(10) For broilers (*Gallus gallus*), indoor stocking density must not exceed 5.0 pounds of bird per square foot.	Rest is important for young, growing animals, and crowding increases the frequency with which birds disturb and walk over each other, interrupting their rest.	Duncan IJH. (2004) Welfare problems of poultry. In: Benson GJ and Rollin BE (eds.), The Well-Being of Farm Animals: Challenges and Solutions (Ames, IA: Blackwell Publishing). Hall A.L. (2001) The effect of stocking density on the welfare and behaviour of broiler chickens reared commercially. Animal Welfare 10:23-40. Buijs S., Keeling L.J., Vangestel C., Baert J., Vangeyte J., and Tuyttens F.A.M. (2010) Resting or hiding? Why broiler chickens stay near walls and how density affects this. Applied

			Animal Behaviour Science 124 (3-4):97–103.
		When birds walk over each other, it can cause thigh sores and scabs, and scratches on the back.	Bilgili, S.F. & Hess J.B. (1995) Placement density influences broiler carcass grade and meat yields. Journal of Applied Poultry Research 4:384-289. Simitzis, P.E., Kalogeraki E., Goliomytis M., et al. (2012) Impact of stocking density on broiler growth performance, meat characteristics, behavioural components and indicators of physiological and oxidative stress. British Poultry Science 53(6):721-730.
		Crowding can decrease overall locomotor activity, one possible cause of poor walking ability.	Simitzis, P.E, Kalogeraki E., Goliomytis M., et al. (2012) Impact of stocking density on broiler growth performance, meat characteristics, behavioural components and indicators of physiological and oxidative stress. British Poultry Science 53(6):721-30. Sørensen P., Su, G., & Kestin S.C. (2000) Effects of age and stocking density on leg weakness in broiler chickens. Poultry Science 79(6):864-870.
		Overcrowding can decrease growth and increase stress.	Simitzis, P.E., Kalogeraki E., Goliomytis M., et al. (2012) Impact of stocking density on broiler growth performance, meat characteristics, behavioural components and indicators of physiological and oxidative stress. British Poultry Science 53(6):721-730.
		High stocking density results in greater manure accumulation. When birds lie in wet, dirty litter, ammonia may irritate the skin, leading to hock	Arnould, C. & Faure, J.M. (2003) Use of pen space and activity of broiler chickens reared at two different densities. Applied Animal Behaviour Science 84(4):281-296. Dozier, W.A. III, Thaxton, J.P., Branton, S.L., et al.

		and foot-pad dermatitis.	(2005) Stocking density effects on growth performance and processing yields of heavy broilers. Poultry Science 84:1332-1338. Ventura, B.A., Siewerdt, F., & Estevez, I. (2010) Effects of barrier perches and density on broiler leg health, fear, and performance. Poultry Science 89:1574-1583. Simsek, U.G., Dalkilic, B., Ciftci, M., & Yuce, A. (2009) The influences of different stocking densities on some welfare indicators, lipid peroxidation (MDA), and antioxidant enzyme activities (GSH, GSH-Px, CAT) in broiler chickens. Journal of Animal and Veterinary Advances 8(8):1568-1572. Meluzzi, A., Fabbri, C., Folegatti, E., & Sirri, F. (2008) Effect of less intensive rearing conditions on litter characteristics, growth performance, carcase injuries and meat quality of broilers. British Poultry Science 49(5):509-515. Shepherd, E.M. & Fairchild, B.D. (2010) Footpad dermatitis in poultry. Poultry Science 89(10):2043-51.
		Respirable particle (dust) concentrations increase with stocking density.	Banhazi, T.M., Seedorf, J., Laffrique, M., & Rutley D.L. (2008) Identification of the risk factors for high airborne particle concentrations in broiler buildings using statistical modelling. Biosystems Engineering 101(1):100-110.
		Ammonia concentrations	AL Homidan, A. & Robertson, J.F. (2003) Effect of litter type and stocking density on

		increase with stocking density.	ammonia, dust concentrations and broiler performance. British Poultry Science 44 S7-8.

5. USDA Has Acknowledged that Maintenance of Animal Welfare Facilitates Animal Health

Many USDA agencies, including AMS, which administers NOP, acknowledge a critical, causal link between animal welfare and animal health.

USDA has acknowledged that adequate space allowances impact animal health. The USDA's regulations under the Animal Welfare Act provide that animals have "sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement," and that "Inadequate space may be indicated by evidence of malnutrition, poor condition, debility, stress, or abnormal behavior patterns." 9 C.F.R. § 3.128.

USDA has also acknowledged the link between humane handling and animal health. The Agency's Food Safety and Inspection Service (FSIS) states in a notice regarding live poultry handling at slaughter "Bruises are likely to result when birds are not treated humanely" and finds that, therefore, "Live poultry must be handled in a manner that is consistent with good commercial practices, which means they should be treated humanely."[19]

USDA has further acknowledged the connection between ammonia concentration and animal health. The Agency's National Institute of Food and Agriculture (NIFA) runs an extension program that provides animal welfare information. A 2015 piece titled *Animal Welfare as Related to Egg Production Systems* states "Greater concentrations of ammonia may lead to welfare and health problems, both for the animals and the caretakers. For poultry, chronic exposure to ammonia increases susceptibility to respiratory pathogens and may lead to impaired performance and eye problems."[20]

USDA's research arm, the Agricultural Research Service (ARS), has acknowledged the link between animal health and welfare. The mission statement of ARS's Livestock Behavior Research Unit (LBRU) states, "We will develop scientific measures of animal welfare, through the study of animal behavior, physiology, nutrition, neuroscience and immunology; that will allow an objective evaluation of animal agricultural practices. This holistic method of study will allow the improvement of existing practices and invention of new practices that can enhance animal welfare and increase animal productivity."[21]

[19] U.S. Department of Agriculture Food Safety and Inspection Service. *Treatment of Live Poultry Before Slaughter*, Notice, Sept. 28, 2005, *available at* https://www.federalregister.gov/documents/2005/09/28/05-19378/treatment-of-live-poultry-before-slaughter

[20] USDA National Institute of Food and Agriculture Cooperative Extension System, *Animal Welfare as Related to Egg Production Systems,* November 17, 2015, *available at* http://articles.extension.org/pages/67111/animal-welfare-as-related-to-egg-production-systems

[21] U.S. Department of Agriculture, *Mission Statement*, Agricultural Research Service Livestock Behavior Research Unit, July 26, 2017, a*vailable at* https://www.ars.usda.gov/midwest-area/west-lafayette-in/livestock-behavior-research/docs/main/

LBRU's informational publications regularly acknowledge the link between animal health and practices that decrease stress with respect to genetic selection and transport, two areas covered in the OLPP Rule.[22] A summer 2017 piece titled *Improving Poultry Skeletal Health* notes "Skeletal disorders are common in commercial meat (broiler) and egg-laying poultry due to selection for fast growth and daily egg production. Leg bone disorders are particularly concerning as they cause pain, difficulty in walking, and economic loss."[23] A separate summer 2017 piece on piglet weaning, transport, stress and antibiotics states "Weaning, transport, and thermal stress have the potential to increase disease incidence and reduce animal welfare, especially when they occur concomitantly," and finds that "These data suggest that providing L -glutamine at 0.20% of the diet following weaning and transport can improve piglet health and wellbeing similarly to traditional dietary antibiotic treatments."[24]

Similarly, a summer 2011 piece on dairy cow health stress and fetal health warns "Calves born to cows that have experienced heat stress during later pregnancy are generally smaller than those born during thermal neutral environments. Additionally, altered immunity of calves born after heat stressors has been demonstrated."[25] And a summer 2011 piece on laying hen genetic selection states "Genetic selection is a useful tool for improving animal health and welfare. Studies have shown that productivity can be increased while, at the same time, well-being improved. This approach has been verified in poultry breeding applications and has resulted in dramatic improvements in survivability, productivity, and welfare."[26]

Fall 2010 informational pieces include the inherent welfare/health connections involved in transport stress ("Stress reduces the fitness of an animal, which can be expressed through failure to achieve production performance standards or targets, or more drastically, through injury, disease and death. Stress in farm animals can also have detrimental effects on the quality of food products (meat, egg, and milk).");[27] sow lameness ("Older sows are more prone to foot problems than younger sows, likely due to increased time on rough or improper flooring" and "Housing systems can influence the amount of physical trauma to the body and the feet.");[28] and dairy cow lameness ("While many preventative measures have been developed and embraced as good dairy

---

[22] *See* 7 C.F.R. §205.238(1) Selection of species and type of livestock with regard to suitability for site-specific conditions and resistance to prevalent diseases and parasites; 7 C.F.R. § 205.242 Transport and slaughter.

[23] U.S. Department of Agriculture, Agricultural Research Service Livestock Behavior Research Unit, *Improving poultry skeletal health*, Summer 2017, *available at* https://www.ars.usda.gov/ARSUserFiles/50201500/LBRU%20Update%20Summer%202017%20final.pdf

[24] U.S. Department of Agriculture, Agricultural Research Service Livestock Behavior Research Unit, *Alternatives to antibiotics after transport and weaning stress*, Summer 2017, *available at* https://www.ars.usda.gov/ARSUserFiles/50201500/LBRU%20Update%20Summer%202017%20final.pdf

[25] U.S. Department of Agriculture, Agricultural Research Service Livestock Behavior Research Unit, *Pre-natal Heat Stress of Cows Affects the Well-Being of Offspring*, Summer 2011, *available at* https://www.ars.usda.gov/ARSUserFiles/50201500/Dairy%20Cow%20Heat%20Stress%20Fact%20Sheet.pdf

[26] U.S. Department of Agriculture, Agricultural Research Service Livestock Behavior Research Unit, *Laying Hen Welfare Fact Sheet*, Summer 2011, *available at* https://www.ars.usda.gov/ARSUserFiles/50201500/Genetic%20Selection%20Fact%20Sheet.pdf

[27] U.S. Department of Agriculture, Agricultural Research Service Livestock Behavior Research Unit, *Food Safety Fact Sheet: Stress in Farm Animals and Food Safety: Is there a Connection?* Fall 2010, *available at* https://www.ars.usda.gov/ARSUserFiles/50201500/Stress%20and%20Food%20Safety%20Fact%20Sheet.pdf

[28] U.S. Department of Agriculture, Agricultural Research Service Livestock Behavior Research Unit, *Sow Welfare Fact Sheet: Sow Lameness and Longevity,* Fall 2010, *available at* https://www.ars.usda.gov/ARSUserFiles/50201500/Sow%20Lameness%20Fact%20Sheet.pdf

practices, subclinical lameness continues to affect cow comfort, health, and production. Rubber flooring may be part of the solution.")[29]

Finally AMS, which administers NOP, has released materials noting a connection between animal health and animal welfare. AMS's *Guidelines for Organic Certification of Poultry* states "Animal health is the result of preventative and on-going management efforts to create living soils, provide nourishing forage and feed, and improve the quality of livestock life. Animals must be kept in healthy, low stress environments."[30] Its Guidelines for Organic Certification of Livestock Dairy contain identical language.[31] And the Agency's webinar introducing the OLPP Rule uses mortality as an illustrator of the health-welfare connection, stating "AMS is aware that mortality is an important measurement, and one of several indicators of animal welfare."[32]

Though USDA seeks to draw a distinction between "health care practices and "stand-alone animal welfare concerns," scores of empirical research, international standards, and USDA's own research and regulations belie this position. The standards promulgated by the OLPP Rule govern animal health *and* welfare, concepts that are intricately linked.

B. The Organic Foods Production Act Authorizes the Agency to Institute Animal Welfare Provisions

USDA's attempt to separate medical care practices and welfare practices is not only impossible as a matter of fact (as illustrated in Section A, above), it is also wrong as a matter of law. USDA's new interpretation of the OFPA is unsupported by statutory text, contrary to USDA's historic treatment of the statute, and contrary to the legislative history. For all of these reasons, the undersigned organizations urge USDA to reconsider its position and allow the OLPP Rule to become effective.

1. The OLPP Rule is Within USDA's Statutory Authority under the Organic Foods Production Act

As discussed above, USDA now claims that it can regulate only animal health, as distinct from animal welfare. Necessarily implicit in that conclusion are three unsupported and unsupportable assertions:

1. Animal health care is categorically and universally distinct from animal welfare;
2. In drafting the OFPA, Congress presumed no overlap between the two; and
3. The OFPA's text allows standards of "care" that have no connection to animals' welfare.

When enacting the OLPP Rule, USDA stated that it was "issuing these regulations to strengthen the USDA organic livestock production regulations with clear provisions to fulfill one purpose of

---

[29] U.S. Department of Agriculture, Agricultural Research Service Livestock Behavior Research Unit, *Dairy Cow Welfare Fact Sheet: Lameness Impact on Welfare of Dairy Cattle. Fall 2010*, *available at* https://www.ars.usda.gov/ARSUserFiles/50201500/Dairy%20Cow%20Lameness%20Fact%20Sheet.pdf

[30] U.S. Department of Agriculture, *Guidelines for Organic Certification of Poultry, available at* https://www.ams.usda.gov/sites/default/files/media/Poultry%20-%20Guidelines.pdf

[31] U.S. Department of Agriculture, *Guidelines for Organic Certification of Dairy Livestock*, *available at* https://www.ams.usda.gov/sites/default/files/media/Dairy%20-%20Guidelines.pdf

[32] U.S. Department of Agriculture, Agricultural Marketing Service, OLPP Webinar Slides Script, slide 52, accessed January 11, 2018 from https://www.ams.usda.gov/sites/default/files/media/OLPPWebinarSlidesScript.pdf

OFPA: to assure consumers that organically-produced products meet a consistent and uniform standard." National Organic Program (NOP); Organic Livestock and Poultry Practices, 82 Fed. Reg. 7,042, 7,043 (Jan. 19, 2017) (quoting 7 U.S.C. § 6501).

USDA made clear at the time that the statutory authority for the Rule was 7 U.S.C. §§ 6509(d)(2) and 6509(g). Section 6509(d)(2) provides: "The National Organic Standards Board shall recommend to the Secretary standards in addition to those in paragraph (1) for the care of livestock to ensure that such livestock is organically produced." Section 6509(g) provides: "The Secretary shall hold public hearings and shall develop detailed regulations, with notice and public comment, to guide the implementation of the standards for livestock products provided under this section."

As noted above in Section A, there is no hard and fast distinction between an animal's physical health and an animal's welfare, and both fall under the "care of livestock", which is broad terminology. USDA has not shown, nor can it show, that Congress believed the two were distinct and that the OFPA authorizes only standards pertaining to animals' physical/medical condition. Subsection (d)(2) of section 6509 falls under the heading "Health care;" the OFPA does not define that term, and thus the dictionary definition controls. *F.D.I.C. v.* Meyer, 510 U.S. 471, 476 (1994). "Health care" is defined as, "efforts made to maintain or restore physical, *mental, or emotional well-being* especially by trained and licensed professionals." Merriam Webster Dictionary, *available at* https://www.merriam-webster.com/dictionary/health%20care (Dec. 25, 2017) (emphasis added). If Congress had intended to limit the scope of section 6509 solely to the physical health of animals, it would not have authorized the creation of standards to address the "mental or emotional well-being" of animals.

Additionally, the standards authorized by Congress in subsection (d)(2) are even broader than "health care" standards. Subsection (d)(2) contemplates standards "for the *care* of livestock to ensure that such livestock is organically produced." 7 U.S.C. § 6509(d)(2) (emphasis added). The term "care" is also undefined in the Act, and its dictionary definition is broader than that of "health care." The pertinent definition of "care" is defined as "[t]he provision of what is necessary for the health, *welfare*, maintenance, and *protection* of someone or something." Oxford Dictionary, *available at* https://en.oxforddictionaries.com/definition/care (last visited Jan. 16, 2018) (emphasis added). Where Congress uses two distinct terms, here "health care" and "care" a court will not construe them as meaning precisely the same thing. *See Bank of New York v. F.D.I.C.*, 453 F. Supp. 2d 82, 93 (D.D.C. 2006) ("When different terms are used in a single piece of legislation, [a] court must presume that Congress intended the terms to have different meanings." (internal citation omitted). Thus "care" must mean something beyond the definition of "health care." Either term's plain meaning accommodates consideration of animal welfare. USDA has not shown, and cannot show that Congress intended otherwise.

USDA now resorts to inferences from "context" to avoid the plain and unambiguously broad meaning of "health care" and "care" as used in the statute. Courts will not follow USDA there. *Conn. Nat'l Bank v. Germain,* 503 U.S. 249, 253–54 (1992) ("When the words of a statute are unambiguous, …th[e] first canon [that a legislature says in a statute what it means and means in a statute what it says there] is also the last: judicial inquiry is complete.")

Similarly, Congress's use of the terms "*raised* in accordance with this chapter" (sections 6509(a)) and "*raised and handled* in accordance with this chapter" (sections 6509(e)(1), (2)(A)) belie USDA's new view that the statute authorizes only medical care standards. (Emphasis

added). "Handle" is defined in the statute as "to sell, process or package agricultural products." 7 U.S.C. § 6502(8). "Raised" is undefined in the statute, and thus, as with "health care," is to be understood by its dictionary definition. *F.D.I.C.*, 510 U.S. at 476. The relevant definition of raise[d] is "to breed and bring (an animal) to maturity." Merriam Webster Dictionary, *available at* https://www.merriam-webster.com/dictionary/raise (Jan. 17, 2018).

"Raise" and "handle" are exceedingly broad terms that Congress did not limit in the way USDA now seeks to. With the use of these broad, unqualified terms, the Act contemplates the establishment of standards for bringing animals to maturity; those standards may include caring for the animal's mental well-being, a critical aspect of an animal's "health care." 7 U.S.C. § 6509(d); *see also O & G Indus., Inc. v. Nat'l R.R. Passenger Corp.*, 537 F.3d 153, 161 (2d Cir.2008) (declining to infer express preemption by " 'supply[ing] that which [was] omitted by the legislature' " when a federal statute "contain [ed] no limitation on its face" and utilized "unambiguous" language) (quoting *Spielman v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 332 F.3d 116, 127 (2d Cir.2003)).

Moreover, the statutory text makes clear that section 6509(d)(2) is distinct from section 6509(d)(1), which bans the use of antibiotics, synthetic parasiticides, and other medication. Section 6509(d)(2) specifically provides that USDA can make livestock standards "for the care of livestock" that are "in addition to" the requirements of section 6509(d)(1). *See Hirschey v. F.E.R.C.*, 760 F.2d 305, 308 (D.C. Cir. 1985) (declining to limit statutory "in addition to" language in part because that reading was not compelled by statutory language.)

Finally, section 6509(g) provides no limiting language that would suggest it pertains only to medical regulations; it sweepingly provides that USDA implement any "standards for livestock products." Thus, USDA's newfound attempts to narrowly interpret the OFPA do not pass muster. In its proposed rule, USDA emphasizes that such standards are "to guide the implementation of the standards for livestock products provided under this section." 7 U.S.C. § 6509(g). Apparently the Agency's intent is to show that subsection (g) limits its authority to generate standards only as "provided under this section." But the Agency has not established, and cannot establish, that the plain language of "this section" is limited in the way USDA deems it to be, based on "context" and "structure." As noted above, "healthcare," "handle," "raised," and "care" are unambiguous and capaciously broad and as such, a court will not read into these terms unexpressed limitations.

2. Since the Beginning of the Organic Foods Production Act, USDA Has Understood That It Had Statutory Authority for Animal Welfare Concerns

USDA has long enacted organic livestock rules that reflect an interest in animal welfare. For example, in the rule that established the National Organic Program in 2000, USDA stated:

> Animals in an organic livestock operation must be maintained under conditions which provide for exercise, freedom of movement, and reduction of stress appropriate to the species. Additionally, all physical alterations performed on animals in an organic livestock operation must be conducted to promote the animals' welfare and in a manner that minimizes stress and pain.

National Organic Program, 65 Fed. Reg. 80,547, 80,560 (Dec. 21, 2000).

The 2000 rule also provided that organic livestock producers must not only accommodate the health of livestock, but also care for them in a way that accommodates their "natural behavior." *Id.* at 80,561.

> The producer must provide access to the outdoors, shade, shelter, exercise areas, fresh air, and direct sunlight suitable to the species, its stage of production, the climate, and the environment. This requirement includes access to pasture for ruminant animals. The producer must also provide appropriate clean, dry bedding. *Id.*

Additionally,

> The producer must provide shelter designed to allow for the natural maintenance, comfort level, and opportunity to exercise appropriate to the species. The shelter must also provide the temperature level, ventilation, and air circulation suitable to the species. *Id.*

These requirements reflect a concern not only for animals' medical needs, but also for animal welfare. They underscore USDA's recognition that welfare and health are intertwined, and that USDA has authority to take animal welfare interests into account when promulgating organic regulations.

USDA's 2010 organic livestock rule, the Access to Pasture Rule, also reflected an agency interest in animal welfare. National Organic Program; Access to Pasture (Livestock), 75 Fed. Reg. 7,154 (Feb. 17, 2010). The primary purpose of the Access to Pasture Rule was "to satisfy consumer expectations that ruminant livestock animals graze on pastures during the grazing season." *Id.* The rule prohibited continuous confinement of all animals indoors, including confinement of broilers and other poultry. *Id.* at 7,170. Further the rule required that "any feeding area must be large enough to allow all of the ruminant animals to eat simultaneously with no crowding or competition for food." *Id.*

Notably, the Access to Pasture Rule made clear that "[o]ne of the tenants [sic] of organic production is that animals are able to express their natural behaviors, and exercise and move freely." *Id.* at 7,171. The rule emphasized that this tenet was designed to align with the expectations of consumers, and noted that thousands of commenters had expressed their support therefor. *Id.*

The general content of the Access to Pasture Rule is not the only evidence that USDA was invested in improving animal welfare via organic regulations: the Agency said as much. When discussing temporary denial of access to the outdoors, the Agency stated "[t]hese exceptions are intended for animal welfare concerns rather than production yields." *Id.* at 7,170.

It is plain, then, that USDA has long presumed its authority to enact organic livestock regulations which considered animal welfare. The OLPP Rule was the logical outgrowth of those previous regulations.[33] USDA cannot now assert that the statute unambiguously excludes animal welfare as a consideration. It must at the very least turn to the legislative history for guidance.

[33] The OLPP Rule "would continue the process initiated with the Access to Pasture rulemaking to establish clear and comprehensive requirements for all organic livestock, consistent with recommendations provided by USDA's Office

3. *The Legislative History of the Organic Foods Production Act Makes Clear that USDA Had Authority to Enact the OLPP Rule*

The legislative history of the OFPA confirms USDA's previously long-held understanding of the Act: that it authorizes USDA to consider animal welfare when enacting organic livestock regulations.

When the OFPA was enacted, Congress recognized that there was, at the time, limited consensus on appropriate livestock standards. S. Rep. No. 101-357, at 289 (1990). But Congress also recognized the immense opportunity for growth in the industry, and proposed the National Organics Standard Board (NOSB) to help USDA shape future livestock standards. Congress granted the NOSB expansive jurisdiction: "The Committee regards this Board as an essential advisor to the Secretary on all issues concerning this bill and anticipate that many of the key decisions concerning standards will result from recommendations by this Board." S. Rpt. 101-357 at 296. Congress expected that the NOSB would participate in a wide range of issues, not merely limited to medical care, and thus included a consultation requirement in the statute. 7 U.S.C. § 6503(c).

Congress' intention was always that the NOSB and USDA would work together to formulate animal welfare-related regulations. Congress explained that the "Committee expects that, after due consideration and the reception of public comment, the Board will best determine the necessary balance between the goal of restriction livestock medications *and the need to provide humane conditions for livestock rearing*." S. Rept. 101-357 at 302-03 (emphasis added).

When the House and Senate were reconciling their respective versions of the OFPA, Congress stated that the "Conference substitute adopts the House provision with an amendment which requires the Secretary to hold hearings and develop regulations regarding livestock standards *in addition to* those specified in this title." H.R. Rep. 101-916 at 1177-78 (Oct. 22, 1990) (emphasis added). The legislative history thus confirms that Congress intended the Agency to enact new livestock standards in addition to those specified in the original language of the OFPA. All evidence suggests that Congress intended USDA's authority on this issue to be expansive, enabling the NOSB and USDA to refine and extend livestock standards as research on the subject grew. Congress "recognize[d] the need to further elaborate on the standards set forth in the title and expect[ed] that by holding public discussions with interested parties and with the National Organic Standards Board, the Secretary will determine the necessary standards." *Id.*

Given the above, USDA should revert to its decades-long understanding that it has authority to consider animal health and welfare jointly. Indeed, as discussed in detail in Section A above, it is not only infeasible but impossible to consider the two separately. USDA has not demonstrated, and cannot demonstrate, that Congress intended the OFPA to treat the two separately. Withdrawal of the OLPP Rule would therefore be arbitrary and capricious, and not in accordance with law, and thus a violation of the Administrative Procedure Act. 5 U.S.C. § 706(2)(A).

---

of Inspector General and nine separate recommendations from the NOSB." National Organic Program; Organic Livestock and Poultry Practices, 82 Fed. Reg. 7,042, 7,044 (Jan. 19, 2017).

C. The OLPP Rule Corrects a Market Failure Created by the Current Standards

AMS claims that the increase in sales of organic products indicates that the NOP regulatory regime is sufficient to meet consumer expectations and that the benefits of implementing the OLPP Rule cannot outweigh the corresponding additional costs to producers. However, as made clear in the NOSB consultation process, in comments made to AMS relating to the final rule and delay, and in consumer surveys, many products currently certified under the NOP do not meet consumer expectations. In fact, the record suggests that most consumers have a fundamental misunderstanding of the standards for animal care required under the NOP.[34] [35] It is this market failure that the OLPP Rule was promulgated to correct.

In the absence of clear standards, consumer confusion reigns. An April 2014 survey of consumers nationwide found that almost seventy percent of consumers (68%) mistakenly believe outdoor access under the organic label means that "[a]ll animals have access to outdoor pasture and fresh air throughout the day."[36] Consumer confusion is further demonstrated by a class action lawsuit filed on January 8, 2018 in the U.S. District Court for the Northern District of California. The suit seeks reimbursement for consumers who paid higher prices for Walmart's Organic Marketside store-brand eggs, which the corporation marketed as having come from hens with outdoor access.[37] USDA neglects to acknowledge the market failure inherent in consumers paying premium prices for organic products that do not meet their reasonable expectations for animal care, along with the subsequent waste of judicial and party resources that the OLPP Rule would prevent.

The OLPP Rule was drafted to help mitigate the gap between consumer expectations and the reality of how animals in the care of organic producers are actually raised. 82 Fed. Reg. 7,042. The rule also addresses one of the fundamental purposes of the OFPA: "to assure consumers [organic products] meet a consistent standard." 7 U.S.C. § 6501(2). While an agency has inherent authority to reconsider rules, it may not do so arbitrarily. 5 U.S.C. § 706(2)(A). Agency reconsideration of a rule by flyspecking an economic analysis conducted and approved by the Agency and the Office of Management and Budget under a previous administration is arbitrary, capricious, and an abuse of discretion. *Id.*

AMS also asserts that implementation of the OLPP Rule will negatively impact producers because they have made "significant investments in facilities and infrastructure" in response to

---

[34] Animal Welfare Institute, ASPCA, & Farm Forward, *Animal Welfare in the National Organic Program: The USDA Must Act Quickly to Protect Millions of Animals*, 7 *available at* https://awionline.org/sites/default/files/uploads/documents/FA-AWI-AnimalWelfare-NatOrganicProgram-2017-13.pdf; CONSUMER REPORTS NAT'L RESEARCH CTR., *Animal Welfare Survey*, 4 (March 18, 2017) *available at* http://greenerchoices.org/wp-content/uploads/2017/04/2017-Animal-Welfare-Survey-Public-Report.pdf.

[35] The OIG noted in a 2010 audit of the National Organic Program that AMS needed to more effectively identify inconsistent operating practices and clarify program requirements. The OLPP rule addresses this lack of consistency as relating to outdoor access for livestock and clarifies program requirements. U.S. DEP'T OF AGRIC., OFFICE OF INSPECTOR GEN., *Oversight of the National Organic Program*, Audit Report 01601-03-Hy, 21–22 (Mar. 2010).

[36] *Research on Consumer Perceptions of Organic Food Standards for Treatment of Animals*. Edge Research. April 2014. *available at* http://www.aspca.org/sites/default/files/aspca_organic_labeling_public_memo_4-10-14.pdf.

[37] "U.S. Lawsuit Says Wal-Mart Deceived Buyers of Organic Eggs" Jan. 18, 2018, *available at* https://www.nytimes.com/reuters/2018/01/08/business/08reuters-walmart-lawsuit-eggs.html?_r=0#story-continues-1

the growing organic market. While our perspective is that industry investments should not prevent AMS from imposing regulations when necessary or to ensure that statutory purposes are met, the Agency's assertion ignores the fact that most organic producers want the rule implemented and that many have made changes to their systems based on the requirements of the OLPP Rule. Most of the organic producers resistant to changing their systems are large-scale, industrial egg producers which seek to continue denying laying hens access to the outdoors under the ambiguous NOP regulations. Most organic producers, however, want the Rule implemented and many have made changes to their systems based on the requirements of the OLPP Rule.

Finally, withdrawing implementation of a rule that prevents producers from exploiting existing vague standards to edge out competition does not stifle innovation—rather, it evens the playing field. This is critical, given the mandate of the OFPA to ensure consistent practices across the industry. Therefore, withdrawal of a rule that ensures this consistency under the guise of ensuring innovation is arbitrary and capricious and violates the Administrative Procedure Act. 5 U.S.C. § 706(2)(A).

D. Executive Order 13771 (EO 13771) Should Not Apply to the OLPP Rule

The NOP is a voluntary program which applies only to producers that choose to be regulated. In exchange for meeting standards, producers reap financial benefits that, as AMS has already determined, outweigh the potential costs. Because producers that voluntarily comply with NOP standards incur costs and reap related benefits on a voluntary basis, the EO should not apply to the OLPP Rule.

Further, the language of the EO itself applies only to new regulations. Sec. 2(a). The OLPP Rule was finalized and promulgated under the previous administration, having undergone final notice and comment and assessment by the OMB. Therefore, the OLPP Rule should not fall under EO 13771. *See Air Council v. EPA,* (D.C. Cir. July 2017)(noting well-settled rule that dates appearing in final rules are part of the final rule and are not ancillary or evidence that the rule is not "final.")

Finally, EO 13771 explicitly notes that any elimination of agency rules should be performed in accordance with the Administrative Procedure Act and other applicable law. Sec. 2(c). As demonstrated above, the withdrawal of this rule is clearly not in compliance with the Administrative Procedure Act, and would therefore be inappropriate for elimination under EO 13771.

The undersigned believe that by seeking to nullify the OLPP Rule, USDA is prioritizing the economic interests of a handful of industrial organic egg producers and conventional animal agriculture trade groups that do not want the rule go into effect. We call on the USDA to implement the OLPP Rule without modification or further delay.

Sincerely,

The American Society for the Prevention of Cruelty to Animals

The Animal Welfare Institute

The Humane Society of the United States

THE AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS®

Deborah Dubow Press
Director of Regulatory Affairs

600 Pennsylvania Avenue, SE
Suite 450
Washington, DC 20003
Deborah.Press@aspca.org
(202) 621-6927

June 9, 2017

The Honorable Sonny Perdue
U.S. Department of Agriculture
Jamie L. Whitten Building
1400 Independence Ave., S.W.
Washington, DC 20250

Re: National Organic Program (NOP); Organic Livestock and Poultry Practices Second Proposed Rule; Document Number AMS-NOP-17-0031; NOP-15-06A

Dear Secretary Perdue:

The American Society for the Prevention of Cruelty to Animals (ASPCA) and its 2.5 million supporters urge the immediate implementation of the Organic Livestock and Poultry Practices (OLPP) rule. The ASPCA commends the National Organic Program (NOP) and the National Organic Standards Board (NOSB) for addressing the wide disparity of welfare provided to animals raised under the organic label via a transparent, collaborative rulemaking process. Proper farm animal welfare is fundamental to organic agriculture and a principal reason that consumers purchase organic products at premium prices. For too long, the organic standards have lacked clear, comprehensive requirements that protect animal well-being and adhere to consumer expectation. We support these standards and urge USDA to swiftly implement the OLPP rule.

I. The Final Rule is the Product of a Lengthy, Collaborative, and Transparent Process

The OLPP rule should be implemented without delay. The USDA has considered this rulemaking for over 15 years. Animal welfare has been on the NOSB's agenda since the NOP first issued regulations in 2000. The NOSB hears testimony and accepts written comment on its agenda every six months. The NOSB recommendations on which the proposed rule are based have been open to public comment on more than a dozen occasions. The ASPCA and stakeholder groups of diverse perspectives have contributed feedback on NOSB's animal welfare recommendations over the years through a commendably transparent and collaborative process. Those stakeholders who are truly interested in improving and not merely obstructing organic animal welfare standards have been well acquainted with the content of the rule for years. Changing course now would represent a significant policy shift on the part of USDA.

II. Consumer Trust in the Organic Program Demands Immediate Implementation

Consumers believe that the organic program requires higher welfare than conventional agriculture, and the existence of high welfare standards are integral to ensure that consumers continue to shop organic in high numbers. Consumer demand for organic food continues to surge. Over the last ten years, sales of products from organic farms have increased more than 70 percent, accounting for more than $40 billion in annual sales and making up more than five percent of the total grocery market in 2015. Organic meat and poultry sales rose over 17 percent in 2016, to $991 million, and are expected to reach $1 billion in 2017.[1]

The success of the organic industry reflects consumers' growing desire for transparency in how food is produced[2] and their support for the humane treatment of farm animals. A national survey conducted in 2016 found that the vast majority of consumers (77 percent) are concerned about the welfare of animals raised for food.[3] In research conducted by the nation's largest retailer, Walmart, two-thirds of the company's customers stated that they are more likely to shop at a retailer that improves the treatment of livestock.[4]

Moreover, consumers who buy organic already believe the organic program requires higher welfare than it actually does. The OLPP rule's outdoor access requirements are particularly important because many consumers already believe that such requirements are in place for animals raised under the label. A 2015 survey by Consumer Reports found that a majority of consumers (54 percent) believed that current organic regulations require that animals be allowed outdoors; an even greater majority of consumers (68 percent) believed that the organic regulations *should* require that animals have outdoor access.[5] A 2014 Edge Research survey commissioned by the ASPCA found that 63% of general consumers and 68% of organic consumers believe outdoor access entails pasture, while 90% and 94%, respectively, believe it

---

[1] Sales from U.S. Organic Farms Up 17 Percent from 2016, Organic Trade Association Report. May 25, 2017. Accessed May 25, 2017 from http://www.meatingplace.com/Industry/News/Details/73428.
[2] Millennial Impact: Food Shopping Decisions. Mintel. Sept 2015. Accessed May 23, 2017 from http://store.mintel.com/the-millennial-impact-food-shopping-decisions-us-september-2015.
[3] Results from a Recent Survey of American Consumers. Lake Research Partners. June 29, 2016. Accessed May 23, 2017 from https://www.aspca.org/sites/default/files/publicmemo_aspca_labeling_fi_rev1_0629716.pdf.
[4] D'Innocenzio, A. "Walmart's Push on Animal Welfare Hailed as Game Changer." The Washington Times. May 22, 2015. Accessed May 23, 2017 from http://www.washingtontimes.com/news/2015/may/22/wal-mart-presses-meat-suppliers-on-antibiotics-tre/.
[5] Natural Food Labels Survey. Consumer Reports National Research Center. 2015. Accessed May 23, 2017 from http://article.images.consumerreports.org/prod/content/dam/cro/magazine-articles/2016/March/Consumer_Reports_Natural_Food_Labels_Survey_2015.pdf

should.[6] Implementation of the OLPP rule is necessary to bring the organic standards in line with consumer expectations.

Ensuring that the organic standards meet consumer expectations will be key to maintaining the trust of organic consumers. Support for the humane treatment of animals is even stronger among consumers who buy organic foods. In a 2017 survey from Consumer Reports, six out of ten Americans said that it is *highly* (extremely or very) important that the animals used to produce organic food are raised on farms with high standards for animal welfare. Among consumers who *always* or *often* buy organic, this number rose to 86 percent.[8] Specific practices, such as outdoor space requirements, included in the OLPP rule have strong consumer support. For example, in the 2017 Consumer Reports survey, 83 percent of consumers who regularly buy organic products said that it is *highly* (extremely or very) important that eggs labeled "organic" come from hens that were able to go outdoors and had sufficient outdoor space to move freely.[9]

For the organic label to maintain consumer trust and for the organic market to continue to grow, the standards must meet consumer expectations. If USDA fails to implement the OLPP, consumer trust in the label will decline.

III. The Rule Does Not Increase the Risk of Animal Disease

Contrary to the assertions of the rule's opponents, providing birds with outdoor access does not significantly increase mortality rates. To estimate the rule's impact on mortality rates, the NOP referred to statistics published by the USDA's Animal and Plant Health Inspection Service regarding organic egg production for 2013.[10] APHIS noted that mortality rates were similar for organic and nonorganic farms.[11] Because the majority of organic farms do provide meaningful outdoor access for their birds, birds allowed outside appear no more likely, on average, to die from sickness or predation than birds confined indoors.

---

[6]Research on Consumer Perceptions of Organic Food Standards for Treatment of Animals, *available at* http://www.aspca.org/sites/default/files/aspca_organic_labeling_public_memo_4-10-14.pdf

[8] Animal Welfare Survey. Consumer Reports National Research Center. March 18, 2017. Accessed May 23, 2017 from http://greenerchoices.org/wp-content/uploads/2017/04/2017-Animal-Welfare-Survey-Public-Report.pdf.

[9] Animal Welfare Survey. Consumer Reports National Research Center. March 18, 2017. Accessed May 23, 2017 from http://greenerchoices.org/wp-content/uploads/2017/04/2017-Animal-Welfare-Survey-Public-Report.pdf.

[10] USDA Animal and Plant Health Inspection Service. Layers 2013, Part IV: Reference of Organic Egg Production in the United States, 2013. November 2014. Accessed May 26, 2017. from https://www.aphis.usda.gov/animal_health/nahms/poultry/downloads/layers2013/Layers2013_dr_PartIV.pdf.

[11] USDA Agricultural Marketing Service. Organic Livestock and Poultry Practices Final Rule, Questions and Answers. January 2017. Accessed May 26, 2017 from https://www.ams.usda.gov/sites/default/files/media/OLPPExternalQA.pdf.

Little evidence supports the assertion of "faux-ganic" producers of a connection between outdoor access and large-scale disease outbreaks such as avian influenza (AI or "bird flu"). In fact, research suggests that large-scale poultry operations are more often the source of virulent strains of AI, and that milder strains are more likely to mutate into more virulent ones in crowded, indoor poultry operations than in flocks of birds that have been raised outdoors.[12]

After the 2015 national outbreak of highly pathogenic AI, the chief veterinary officer of the United States at the time, Dr. John Clifford, testified in a congressional hearing that transmission of the virus is not affected by whether birds are indoors or out.[13] In fact, that outbreak was concentrated in large, indoor confinement operations, not on farms with birds outdoors. According to the USDA, there were ten times as many cases of bird flu detected in commercial operations as in backyard flocks during the 2015 outbreak.[14] Moreover, officials in South Korea—where the virus has hit especially hard—recently found that poultry operations housing more than 100,000 chickens were *548 times* more likely to be affected than those with fewer than 4,000 chickens.[15]

The AI virus does not easily survive sunlight and the dry conditions found in outdoor access systems. Instead, it is more likely to survive and spread within or among crowded, unsanitary indoor poultry houses.[16] Moreover, the virus has been known to spread among indoor confinement operations even when no contact with wild birds has occurred. According to the USDA, potential risk factors identified during the 2015 outbreak included the sharing of company trucks and trailers between farms, the practice of company representatives visiting multiple farms, and the practice of renderers servicing multiple farms.[17]

---

[12] Avian Influenza and Outdoor Access for Organic Poultry Flocks. National Organic Coalition. Accessed May 23, 2017, available here http://www.nationalorganiccoalition.org/_literature_130075/Avian_Influenza_and_Outdoor_Access_for_Organic_Poultry.

[13] U.S. Senate Committee on Agriculture, Nutrition, & Forestry. Committee hearing on highly pathogenic avian influenza. Jul 7, 2015. Accessed May 23, 2017 from https://www.agriculture.senate.gov/hearings/highly-pathogenic-avian-influenza-the-impact-on-the-us-poultry-sector-and-protecting-us-poultry-flocks.

[14] USDA Animal and Plant Health Inspection Service. HPAI 2015/15 Confirmed Detections. Accessed May 23, 2017 from https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-disease-information/avian-influenza-disease/sa_detections_by_states/hpai-2014-2015-confirmed-detections.

[15] Chickens at Large Poultry Farms More Prone to Avian Influenza. The Korea Bizwire. Apr 20, 2017. Accessed May 23, 2017 from http://koreabizwire.com/chickens-at-large-poultry-farms-more-prone-to-avian-influenza/81222.

[16] Avian Influenza and Outdoor Access for Organic Poultry Flocks. National Organic Coalition. Accessed May 23, 2017 from http://www.nationalorganiccoalition.org/_literature_130075/Avian_Influenza_and_Outdoor_Access_for_Organic_Poultry.

[17] USDA Animal and Plant Health Inspection Service. Epidemiologic and Other Analyses of HPAI-Affected Poultry Flocks. September 9, 2015. Accessed May 23, 2017 from https://www.aphis.usda.gov/animal_health/animal_dis_spec/poultry/downloads/Epidemiologic-Analysis-Sept-2015.pdf.

The USDA has provided adequate protections against the spread of diseases, such as bird flu, in the OLPP rule. The rule allows the temporary confinement of animals in response to conditions "under which the health, safety, or well-being of the animal could be jeopardized." The final rule also removed a provision in the proposed rule that would have required a documented occurrence of disease in the region or migratory pathway to temporarily confine animals.[18] Continuing to suggest that outdoor access increases the risk of disease represents an attempt to frighten consumers and to deflect attention from the true issue, which is the need to provide higher-welfare conditions for animals on organic farms.

IV. Support for Provisions of the Rule

The ASPCA applauds the rule's provision of separate standards for avian and mammalian livestock that better reflect natural behaviors and welfare requirements. Including indoor space requirements for poultry ensures that birds are able to move freely and that spaces are not overcrowded, thus reducing injury, stress, ammonia levels, and spread of disease. Furthermore, setting poultry ammonia limits at 10ppm, not to exceed 25ppm, improves not only the health and welfare of birds, but also protects caretakers.

We applaud the rule's inclusion of poultry environmental enrichment standards, which will bring the organic standards closer in line with consumer expectations. Enrichments – including 30% solid flooring availability, sufficient litter for dust bathing without crowding, dry litter conditions, perching and roosting areas, and improved outdoor access – improve birds' health and quality of life.

The ASPCA supports standardizing requirements for poultry outdoor spaces and commends the rule for noting that restricting outdoor access for fear of disease is not an acceptable justification for confinement. Top scientists and veterinarians confirm that outdoor access is critically important to welfare, and the threat of avian viruses can be mitigated by temporary confinement when relevant migratory pathways are present.[19] Furthermore, the ASPCA appreciates the rule's recommended limits on artificial light hours for laying hens and mature birds.

---

[18] National Organic Program; Organic Livestock and Poultry Practices Final Rule. Federal Register. Jan 19, 2017. Accessed May 23, 2017 from https://www.federalregister.gov/documents/2017/01/19/2017-00888/national-organic-program-nop-organic-livestock-and-poultry-practices.

[19] *See* Dr. Ian Duncan statement on poultry welfare, *available at* https://www.aspca.org/sites/default/files/organic_academic_statement._ian_duncan.pdf; statement of Dr. John Clifford, Chief Veterinary Officer of USDA, at July 7, 2015 Senate Agriculture Committee hearing on avian flu. "We need better ways to control this disease, we've got to have facilities, and I don't have a problem with integrated facilities or outdoor birds. This virus doesn't care which way it is, but if we are building facilities we have to protect

The ASPCA supports the rule for providing more descriptive living-conditions requirements for swine, which include enrichment and bedding enhancements. The ASPCA applauds inclusion of some of the NOSB's recommendations for enrichment for swine, including rooting areas, and outdoor access. The rule ensures that sows and dairy young will have group housing, and that dairy young will be able to see, smell, and hear other calves and have access to pasture. The ASPCA supports the rule's inclusion of specific bedding requirements for poultry and livestock, to ensure clean, dry conditions, allow for natural behaviors, and prevent lesions and discomfort.

The ASPCA supports the rule for strengthening the definition of "outdoor access" for organic producers to ensure standardization across the organic industry. Specifically, the ASPCA appreciates expansion of the definition of "outdoor" to require contact with soil, and narrowing the definition to exclude the use of structures with solid roofing connected to the main living area, which undermine welfare and belie consumer expectations of outdoor access. We support the requirement that all organically raised animals must have equal access to inviting outdoor space. These measures will ultimately improve the quality of life for organically raised animals and ensure that these animals are raised in a manner that conforms to consumer expectations.

The ASPCA supports the rule's physical alteration restrictions. While the ASPCA acknowledges that some alterations may sometimes be necessary to assist with animal welfare, hygiene, identification, or safety, prohibiting practices such as debeaking, dubbing, toe trimming, and face branding ensures that the industry does not resort to shortcuts that compromise welfare. By requiring documentation detailing tried and failed alternatives, certain alteration practices, such as needle teeth trimming in pigs, will be used only as a last resort.

The ASPCA also commends the rule's requirements for lameness monitoring and stronger recommendations for pain control. Requiring records of the percentage of a herd or flock suffering from lameness and documenting causes encourages producers to take a more active role in their animals' welfare. Requiring records will also help auditors identify farms that need help preventing lameness. The ASPCA supports the rule's adoption of the NOSB's pain prevention and relief recommendations, including the use of certain anesthetics, analgesics, sedatives, and synthetic medications.

---

one house from another house." *Available at* http://www.agriculture.senate.gov/hearings/highly-pathogenic-avian-influenza-the-impact-on-the-us-poultry-sector-and-protecting-us-poultry-flocks.

The ASPCA supports the rule's sections regarding transportation and slaughter. Treating animals humanely and respectfully during the transportation and slaughter process is a basic tenet of organic production. The ASPCA agrees that livestock who suffer unreasonable stress and/or arrive at their destination in a deteriorated physical state should be treated or euthanized on-site rather than transported to slaughter. The ASPCA also supports the rule's improved transportation requirements, including seasonally-appropriate ventilation, as well as bedding and non-slip flooring. Coupled with new 12-hour transport time limits for feedings and rest, these new requirements will improve animals' health and welfare.

The ASPCA supports the rule's requirement that mammalian and avian slaughter meet standards laid out in the Federal Meat Inspection Act, in the regulations for humane handling and slaughter of livestock and exotic animals, the Agricultural Marketing Act of 1946, the Poultry Products Inspection Act, and the regulations at 9 C.F.R. parts 381.1(b)(v), 381.9, and 381.65(b). Furthermore, we support the requirements that minimize pain and suffering for birds during slaughter.

The ASPCA also supports the rule's requirement that producers or handlers of organic livestock and poultry provide to certifiers all non-compliance records and records of corrective measures. This ensures transparency in the organics certification process and requires producers and handlers to maintain vigilance in meeting the organic standards.

The ASPCA applauds the NOP and the NOSB for their work to put in place the first set of comprehensive on-farm animal welfare standards and thanks the agency and the NOSB for their many years of work to produce the final rules. The continued delay of implementation does a disservice to the National Organic Program, to true organic farmers, to consumers, and to animals. The rules should be implemented without further delay.

Sincerely,

Deborah Dubow Press
Director of Regulatory Affairs

Suzanne McMillan
Content Director, Farm Animal Welfare Campaign

BEYOND PESTICIDES
701 E Street, SE ■ Washington DC 20003
202-543-5450 phone ■ 202-543-4791 fax
info@beyondpesticides.org ■ www.beyondpesticides.org

June 8, 2017

Paul Lewis, Ph.D.
Director, Standards Division
National Organic Program, USDA AMS
1400 Independence Ave. SW
Washington, DC 20250

Re: Docket No. AMS-NOP-17-0031-0002 Organic Livestock and Poultry Practices Second Proposed Rule.

These comments to the U.S. Department of Agriculture are submitted on behalf of Beyond Pesticides. Founded in 1981 as a national, grassroots, membership organization that represents community-based organizations and a range of people seeking to bridge the interests of consumers, farmers and farmworkers, Beyond Pesticides advances improved protections from pesticides and alternative pest management strategies that reduce or eliminate a reliance on pesticides. Our membership and network span the 50 states and the world.

We appreciate the opportunity to provide input on the Organic Livestock and Poultry Practices. We support the recommendation by the National Organic Standards Board (NOSB) to allow the Organic Livestock and Poultry Practices rule to take effect immediately and urge USDA to take option 1 in the proposed rule, which will allow the rule to become effective on November 14, 2017.

It is crucial to ensure consistent standards for organic livestock and poultry operations, where a few large operations are using loopholes to deny proper living conditions for their animals. While the proposed rule is not as strong as it needs to be,[1] it is a positive move and must become effective immediately to protect organic animal welfare and preserve the public process that underpins the NOSB.

We appreciate your attention to this important and urgent issue. Thank you for your consideration of our recommendations.

Sincerely,

Carla Curle

Carla Curle
Science Program Associate

[1] See the attached Appendix for our full comments to the Organic Livestock docket in 2016.

Appendix. Comments submitted Re: AMS-NOP-15-0012

July 12, 2016

Dr. Paul Lewis, Ph.D.
Director, Standards Division
National Organic Program
USDA-AMS-NOP
Room 2646-So., Ag Stop 0268
1400 Independence Ave., SW
Washington, D.C. 20250-0268

Re: AMS–NOP–15–0012

Dear Dr. Lewis:

These comments are submitted on behalf of Beyond Pesticides. Founded in 1981 as a national, grassroots, membership organization that represents community-based organizations and a range of people seeking to bridge the interests of consumers, farmers and farmworkers, Beyond Pesticides advances improved protections from pesticides and alternative pest management strategies that reduce or eliminate a reliance on pesticides. Our membership and network span the 50 states and the world.

We support AMS's separation of mammalian and avian species in this proposal.

Mammals and birds differ in their needs. In addition, the regulations concerning mammalian livestock are much more developed and require less modification than the rules concerning poultry. The lack of clear standards for poultry threatens to weaken the integrity of the organic label, as the emergence of giant dairies did to organic milk in 2008. Without the publication and implementation of credible standards, organic poultry products will lose market share to other certifications that are less accountable but more clear in requirements that meet consumer expectations.

We support the comments of Federation of Organic Dairy Farmers (FOOD Farmers) concerning mammalian species.

With FOOD Farmers, we agree with the goals of the proposed regulation, *to establish a clear standard protecting the value of the USDA organic seal to consumers and to facilitate level enforcement of organic livestock and poultry standards.* We do not believe that this proposed rule achieves that goal. We agree that the access to pasture regulation adopted in 2010 incorporates many aspects of animal welfare that are seen as important by consumers and producers alike. To that extent, new mammalian livestock health care standards are

unnecessary. However, we concur with some of the NOP changes and agree with the comments submitted by FOOD Farmers.

The remainder of our comments will address avian species.

The issues of outdoor access and space are crucial to the welfare of poultry and the integrity of the organic label.

The current regulations capture the important principles that must be embodied in order to protect birds and consumers.

§205.237 (c), §205.238 (a), and §205.239(a) provide for:

- Selection of appropriate species and breeds;
- Prohibition of continuous total confinement;
- Year-round access to the outdoors, including pasture of sufficient quality and quantity, shade, shelter, exercise areas, fresh air, clean water for drinking, and direct sunlight;
- Adequate feed;
- Housing, pasture, and sanitation practices that minimize the occurrence and spread of diseases and parasites;
- Conditions that allow for exercise, freedom of movement, and reduction of stress; and
- Shelter that allows natural maintenance, comfort behaviors, and opportunity to exercise; suitable temperatures, ventilation, and air circulation; and reduced potential for livestock injury.

These regulations should have been interpreted in a way that prohibits the use of porches as "outdoors," and required the amount and quality of space necessary for birds to engage in a wide variety of natural behaviors –from scratching and pecking to stretching wings and running about for chickens. Since a wide variety of birds –from pigeons to emus—are used for eggs and meat, the regulations should have been interpreted in a species-specific fashion –requiring flight space for pigeons, access to water for ducks and chickens, and room for emus to run. Unfortunately, implementation of the current rule has been inconsistent and inadequate. In 2010, the USDA Office of the Inspector General (OIG) identified inconsistencies in certification practices, particularly dealing with how poultry were housed. In response to these findings, NOP issued a draft guidance, based on recommendations that the NOSB made in 2002.[2] NOP now finds that the draft guidance issued in response to the OIG report –which would have prohibited porches as "outdoor access"—was not adequate "to resolve the divergent outdoor access practices for organic poultry." While we oppose the use of guidance when regulation is required, clear and consistent guidance in the beginning may have eliminated the need for these proposed regulations. Given the tardy and inconsistent action of the program, however, we agree that regulations are now needed to make these requirements enforceable.

[2] NOSB 2002. Recommended Clarification on Access to the Outdoors for Poultry (PDF). Available at: https://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations/spring2002.

We do believe that the proposed regulations are still inadequate to protect the welfare of birds in organic production systems, to protect the integrity of the organic label, and to ensure compatibility with organic production principles.

Organic consumers have a stake in this rulemaking process.

In addressing the question, "Does this action apply to me?" NOP fails to acknowledge that consumers have a stake in animal welfare regulations. Organic consumers pay a premium for organics, making some assumptions about humane animal management and nutritional superiority.[3] The input of consumers who are extremely interested in the treatment of animals used to produce organic products should be considered –and actively sought.

Consumers who expect organic poultry to have generous access to pasture and learn that organic poultry may spend all of their lives indoors seek alternative sources for the eggs and meat products they purchase. The desire of consumers for eggs produced by birds with healthy diets and living conditions that allow them to express natural behaviors is reflected in the confusing variety of labels. Many consumers now understand that due to inadequate enforcement, organic certification may not be enough. This needs to be corrected.

Space requirements should be based on species, breed, and stage of life, not weight.

The need for space is based on considerations other than weight.

The current regulations (§205.238 (a)(4) and 205.239(a)) require that birds be given "living conditions which accommodate the health and natural behavior." Birds used for eggs and meat range from pigeons to emus. Emus run. Pigeons fly. Ducks and geese swim. Avian species used for food are diverse, and the diversity of behaviors exhibited by different poultry species cannot be captured by weight differences.

Emus weigh 120-150 pounds at maturity,[4] a chicken may weigh 2 to 5 pounds, and a pigeon may weigh 6 ounces to 3 pounds.[5] According to the proposed regulations, an emu might be given 24-30 square feet, which may seem ample compared to the space allotted a chicken, but an emu can reach speeds of up to 40 mph in a few steps, and each stride may reach 9 feet. An 8-ounce pigeon, on the other hand, would be allotted less than a quarter of a square foot –a space 6 inches by 6 inches, not nearly enough to exercise her natural behavior of flight.

Thus, requirements for the quantity and quality of space should be based on the needs of individual species. Water birds, for example, should have access to water –this should not be an optional "enrichment."

---

[3] Consumer Reports National Research Center, 2015. Natural Foods Survey. http://www.greenerchoices.org/pdf/CR_2015_Natural_Food_Labels_Survey.pdf.

[4] http://www.emumagic.com/ranch/emufacts.html.

[5] http://www.angelfire.com/ga3/pigeongenetics/basicpigeoncare.html.

Outdoor space requirements are inadequate.

There are two major considerations in judging space requirements: adequate space to perform natural behaviors and maintenance of the quality of the space. Although there are widely varying requirements by organic and other certification agencies requiring the space required by poultry, they do not seem to be justified by scientific studies of the actual needs of the birds. We suggest that to take seriously the requirement to allow natural behavior of the birds, NOP should prescribe much larger space requirements. We agree that "outdoors" should be defined in such a way as to prohibit structures such as "porches" as qualifying. We disagree that 50% of such space could be non-soil-based. Some non-soil substrate is acceptable if the minimum space requirement is met with soil-based substrate.

Layers

In considering space requirements, Keeling suggested that social factors that bring birds together are balanced against those that keep them apart.[6] She found "a range of interindividual distances according to activity going from largest to smallest in the order foraging, walking, standing and ground pecking which are performed at similar interindividual distances, and preening which is performed at the smallest interindividual distance. This pattern is consistent, occurring both outdoors in semi-natural conditions, inside in litter floor pens and with different strains of birds."[7] She also found that vulnerability to predation –as when performing an activity like preening with eyes closed—will bring birds closer together. Competition in foraging tends to keep them apart. Limiting the available space limits the amount of time that birds spend doing behaviors usually performed at greater distances between birds.[8]

Weeks and Nichol found, "The presence of apparently purposeless behaviour, of high levels of aggression or redirected behaviours such as feather pecking and cannibalism are indicators that the housing system is not meeting the behavioural needs of the hens and hence is not satisfactory for bird welfare." It is interesting to note that some of those supporting the need for the synthetic amino acid methionine cited these same behaviors as demonstrating a need for synthetic methionine.[9] Weeks and Nichol also noted, "Foraging is a behavioural need as even trough-fed hens housed in wire-floored cages perform scratching behaviour while feeding."[10] Savory et al. concluded from an experiment using six different densities of layers, "[A]ny space allowance of less than about 5000 cm^2 [5.38 square feet] per hen imposes at least some constraint on free expression of behavior."[11]

---

[6] Keeling, L. (1995). Spacing behaviour and an ethological approach to assessing optimum space allocations for groups of laying hens. *Applied Animal Behaviour Science*, *44*(2), 171-186.

[7] Keeling, L. (1995). Spacing behaviour and an ethological approach to assessing optimum space allocations for groups of laying hens. *Applied Animal Behaviour Science*, *44*(2), 171-186.

[8] Keeling, L. (1995). Spacing behaviour and an ethological approach to assessing optimum space allocations for groups of laying hens. *Applied Animal Behaviour Science*, *44*(2), 171-186.

[9] NOSB recommendation on methionine, April 2015. See p. 6. https://www.ams.usda.gov/sites/default/files/media/LS%20MET%20Final%20Rec.pdf.

[10] Weeks, C.A. and Nicol, C.J., 2006. Behavioural needs, priorities and preferences of laying hens. *World's Poultry Science Journal*, *62*(02), pp.296-307.

[11] Savory, C. J., Jack, M. C., & Sandilands, V. (2006). Behavioural responses to different floor space allowances in small groups of laying hens. *British poultry science*, *47*(02), 120-124.

Broilers

Broilers are allotted much less space in the proposed rule than layers or pullets, even when size is taken into account. There does not seem to be any rationale for this difference. NOP must propose a space requirement for broilers that has some basis in science. Broilers have similar behavioral requirements to pullets, who are also young birds.

An external report to the European Food Safety Authority found that stocking density increases a number of problems for birds, including "lameness, metabolic disorders, hock burn, sudden death syndrome, ascites, thermal discomfort and foot-pad dermatitis. These challenges can in part be attributed to fast early growth rate and high stocking density, both driven by their great impact on profitability."[12]

Buijs et al. showed that the stocking density of broilers has a negative impact on welfare for every step increase over 1.2 pound per square foot (final weight). Although different densities affected three different parameters (leg health, footpad and hock dermatitis, fearfulness) differently, the authors concluded, "The lowest 2 densities (6 and 15 kg/m^2 [1.2 and 3.1 lb/ft^2]) scored better than most middle densities (23, 33, 35, and 47 kg/m^2 [4.7, 6.7, 7.2, and 9.6 lb/ft^2]), whereas all densities scored better than the highest density (56 kg/m^2 [11.5 lb/ft^2])."[13] Similarly, Beloor et al. found, "The telomeric length (a measure of stress) of the birds housed in High density housing [0.62 ft^2 per bird] was reduced significantly ($p<0.05$) when compared to that of the birds in Low density [1.24 ft^2 per bird] –even though production parameters, such as feed conversion ratio and final feed intake, showed no effect."

Thus, broilers should be given as much space as layers.

Quality of outdoor space is important.

The rule should provide birds with larger outdoor areas that are entirely soil-based[14] and have at least 50 percent vegetative cover (living vegetation during the growing season or harvested vegetation scattered in the area) to create opportunities for poultry to engage in natural foraging behaviors and reduce soil erosion and nutrient run off. Water must be provided outdoors. In seasons when vegetation is not actively growing, the birds may be provided with alternative enhancement. Other enhancement may include, as mentioned in the notice: bales of straw or hay; raised platforms; cover for protection from aerial predators; shaded areas and trees; and loose substrate for dust bathing.

---

[12] de Jong I, Berg C., Butterworth A., Estevéz I., 2012. Scientific report updating the EFSA opinions on the welfare of broilers and broiler breeders. Supporting Publications 2012:EN-295. [116pp.]. Available online: www.efsa.europa.eu/publications.

[13] Buijs, S., Keeling, L., Rettenbacher, S., Van Poucke, E. and Tuyttens, F.A.M., 2009. Stocking density effects on broiler welfare: Identifying sensitive ranges for different indicators. *Poultry Science*, *88*(8), pp.1536-1543.

[14] The May 2002 NOSB recommendation stated that bare surfaces other than soil do not meet the intent of outdoor access for poultry.

Inadequate exit door space is required in the proposed 205.241(c)(2).

Exit door space should be tied to the area of the housing, as in the EU standards, which require "exit/entry pop-holes of a size adequate for the birds, and these pop-holes shall have a combined length of at least 4 m per 100 m^2 area [approximately 12 linear feet per 1000 square feet area] of the house available to the birds." We suggest that the proposed 205.241(c)(2) be revised to:

> **(2) Exit areas for birds to get outside must be designed to be of size adequate for the birds with a combined length of at least 12 linear feet per 1000 square feet area of the house available to the birds. If pasture associated with a fixed structure is rotated, then this requirement applies to the exit areas available to the birds at any time.**

Indoor space requirements are inadequate.

As with outdoor space, we suggest that if NOP were to take seriously the requirement to allow natural behavior of the birds, it would prescribe much larger space requirements. See specifics in the section on outdoor space. With the allowance of confinement based on stage of life and weather, many birds can spend all or most of their lives indoors. If these loopholes are allowed to persist, then the quantity and quality of the indoor space must be upgraded. There must be more space per bird, enrichment of the space, lower ammonia levels, and more ventilation.

Ammonia levels

We support the inclusion of regular (at least monthly) monitoring of ammonia and limits on ammonia levels to protect birds and human workers. However, the absolute limit of 25 ppm, with an action trigger for producers at 10 ppm is insufficient protection. Agency for Toxic Substances and Disease Registry (ATSDR) states that a minimum risk level (MRL) of 1.7 ppm has been derived for acute-duration inhalation exposure (14 days or less) to ammonia and an MRL of 0.1 ppm has been derived for chronic-duration inhalation exposure (365 days or more).[15] The Certified Humane® and Animal Welfare Approved labels require maximum ammonia levels of 10 ppm and 5 ppm, respectively.

Research shows detrimental impacts on chickens at 25 ppm[16] and preferences demonstrated by birds moving away from ammonia concentrations of 25 ppm (lowest concentration tested).[17]

Wathes et al. found that pigs and poultry apparently did not evolve adaptive mechanisms to limit their exposure to ammonia. They concluded, "Pig and poultry farmers therefore have a heavy responsibility to provide fresh air in livestock buildings, since their animals may not

---

[15] Agency for Toxic Substances and Disease Registry (ATSDR). 2004. Toxicological profile for Ammonia. Atlanta, GA: U.S. Department of Health and Human Services, Public Health Service.

[16] Reece, F. N., Lott, B. D., & Deaton, J. W. (1981). Low concentrations of ammonia during brooding decrease broiler weight. *Poultry Science*, *60*(5), 937-940.

[17] Kristensen, H. H., Burgess, L. R., Demmers, T. G., & Wathes, C. M. (2000). The preferences of laying hens for different concentrations of atmospheric ammonia. *Applied Animal Behaviour Science*, *68*(4), 307-318. Wathes, C. M., Jones, J. B., Kristensen, H. H., Jones, E. K. M., & Webster, A. J. F. (2002). Aversion of pigs and domestic fowl to atmospheric ammonia. *Transactions of the ASAE*, *45*(5), 1605.

recognize that ammoniated atmospheres are harmful and cannot take corrective action in any case."[18]

Manure inside buildings should be managed in a way that prevents ammonia build-up. Controlling moisture in the litter is an accepted practice for ammonia control.[19] Composting of poultry litter requires ample carbonaceous material to balance the nitrogen in the droppings, and this can also help control moisture and hence ammonia.[20]

We support a maximum limit of 5 ppm, but producers should implement additional management when ammonia is noticeable because of smell or irritation to eyes or mucus membranes. Proposed §205.241(b)(2) should be revised to read:

> **(2) Indoor space must be managed through ventilation and manure management to prevent buildup of ammonia. Ammonia levels must not exceed 5 ppm. Producers must monitor ammonia levels on a monthly basis. When ammonia levels are noticeable due to smell or irritation to eyes or mucus membranes, producers must implement additional practices to reduce ammonia levels.**

The conditions for confinement allow for significant abuses of the access to outdoors requirement. The loopholes should be closed.

The proposed regulations would "require organic poultry producers to provide their birds with year-round access to the outdoors, soil, shade, shelter, exercise areas, fresh air, direct sunlight, clean water for drinking, materials for dust bathing, and adequate space to escape both predators and aggressive behaviors, in a manner that is suitable to the species, the stage of life, and the environment." However, the provisions for temporary confinement negate these requirements by providing unreasonable loopholes.

Inclement weather

The current regulations at §205.239(b) allow a producer to provide temporary confinement or shelter because of inclement weather. Inclement weather is defined in the current regulations:

> *Inclement weather.* Weather that is violent, or characterized by temperatures (high or low), or characterized by excessive precipitation that can cause physical harm to a given

---

[18] Wathes, C. M., Jones, J. B., Kristensen, H. H., Jones, E. K. M., & Webster, A. J. F. (2002). Aversion of pigs and domestic fowl to atmospheric ammonia. *Transactions of the ASAE*, *45*(5), 1605.

[19] Miles, D.M., Rowe, D.E. and Cathcart, T.C., 2011. High litter moisture content suppresses litter ammonia volatilization. *Poultry science*, *90*(7), pp.1397-1405. Miles, D.M., Poultry Litter Moisture Management to Reduce Ammonia. USDA-ARS. https://www.ars.usda.gov/SP2UserFiles/Program/212/LivestockGRACEnet/LitterMoisture.pdf. Accessed 6/21/2016/.

[20] Walker, F., 2004. On-farm composting of poultry litter. *The Agricultural Extension Service, The University of Tennessee Institute of Agriculture*. Ogunwande, G.A., Osunade, J.A., Adekalu, K.O. and Ogunjimi, L.A.O., 2008. Nitrogen loss in chicken litter compost as affected by carbon to nitrogen ratio and turning frequency. Bioresource Technology, 99(16), pp.7495-7503.

species of livestock. Production yields or growth rates of livestock lower than the maximum achievable do not qualify as physical harm.

In general, providing shelter should be preferred to confining birds, but it is possible that a grower may learn of impending conditions that could cause physical harm. However, the proposed rule goes too far in allowing producers to confine birds because of "Inclement weather, including, when air temperatures are under 40 degrees F or above 90 degrees F." Chickens wear down coats! They are not threatened by temperatures just under 40 degrees – certainly not by temperatures above freezing. On the other hand, confining birds in hot weather may prove to be worse than allowing them to be outdoors in the shade, if indoor conditions are as crowded as allowed. Different species of poultry have different tolerances for temperatures and other weather. We recommend deleting the reference to temperatures in §205.241(d)(1) and restating the reference to physical harm in the definition, so that it would read,

(1) Inclement weather that can cause physical harm to a given species of poultry. Production yields or growth rates of poultry lower than the maximum achievable do not qualify as physical harm. Fully feathered poultry must not be confined at temperatures above freezing. If confined in hot weather, the indoor temperature must be at least 10 degrees F cooler than the outdoor temperatures. Birds must always be offered shelter.

Stage of life

The current regulations at §205.239(b) allow a producer to provide temporary confinement or shelter because of animal's stage of life. The proposed rule is more specific, in allowing confinement of poultry based on "the animal's stage of life, including the first 4 weeks of life for broilers and other meat type birds and the first 16 weeks of life for pullets." These age requirements (4 weeks of life for broilers and 16 weeks for pullets) are too conservative. Fast-growing breeds used for broilers could spend most or all of their lives inside with this provision. Many operations successfully put their birds (both layers and broilers) outside before four weeks without any adverse effects.[21] Thus, 16 weeks is particularly old. If broilers can go out at four weeks of age, then layers should be able to as well.

Allowing access to the outdoors, with more space to roam between outdoor and indoor areas, provides a healthier living situation for the birds, than continuous confinement. Poultry should not be confined indoors longer than absolutely necessary for the reason of allowing vaccinations to become effective. The temporary confinement timeframe should be tied to the requirements of the specific vaccine. Producers should not use the lack of vaccination as a reason to confine poultry, whenever there is an approved vaccine available to prevent a disease. Therefore, we suggest amending the proposed §205.241(d)(2) to read:

[21] http://www.apppa.org/getting-started-in-pastured-poultry; http://rodaleinstitute.org/establishing-a-small-scale-sustainable-pastured-poultry-operation/.

(2) The animal's stage of life, including the time during which the birds are not feathered; and

i. If temporary confinement of poultry is used to allow vaccinations the time needed to become fully effective before exposing the birds to the outdoors, this temporary confinement is limited to the earliest possible timeframe for that specific vaccine, and no longer than 16 weeks.

ii. When regionally necessary, nonuse of available vaccines should not be a reason to confine poultry for extended periods of time. The use of approved vaccinations to prevent disease is encouraged as part of a comprehensive Organic System Plan.

Disease

Outdoor access is important for disease prevention, and we are concerned that birds may be unnecessarily confined for disease prevention. The proposed language in §205.241(d)(3) helps to prevent unnecessary confinement:

> (3) Conditions under which the health, safety, or well-being of the animal could be jeopardized, however the potential for disease outbreak is not sufficient cause. A documented occurrence of a disease in the region or relevant migratory pathway must be present in order to confine birds.

However, "region" and "relevant migratory pathway" are too vague. Producers must be required to document danger to those birds from current occurrence of the disease in the region or flyway.

As documented by the National Organic Coalition, "Avian flu viruses generally carried by wild birds are almost invariably harmless to poultry (low pathogenicity avian influenza, or LPAI). Some LPAI strains, however, have the potential to mutate into "highly pathogenic avian influenza" (HPAI) strains, which are deadly to poultry. Research shows that the mutation of LPAI to HPAI occurs almost exclusively in crowded indoor poultry houses."[22]

---

[22] National Organic Coalition, 2015. Avian Influenza and Outdoor Access for Organic Poultry Flocks. http://www.nationalorganiccoalition.org/_literature_130075/Avian_Influenza_and_Outdoor_Access_for_Organic_Poultry. Citing:
Suarez, D., Senne, D.A., *et al*. 2004. Recombination resulting in virulence shift in avian influenza outbreak, Chile. *Emerging Infectious Diseases* 10(4): 693-699.
Schrijver RS and G Koch (eds). Avian Influenza: Prevention and Control. Workshop 1: introduction and spread of avian influenza. page 4. Accessed at http://library.wur.nl/ojs/index.php/frontis/article/view/1033/604
"Stressful, overcrowded confinement in industrial poultry facilities facilitates immune suppression in birds already bred with weakened immunity, offering viruses like bird flu ample opportunities for spread, amplification and mutation. Placing inbred birds into these kinds of unsanitary environments without the chance for a breath of fresh air or a ray of sanitizing sunshine seems the perfect storm environment for the evolution of the next super flu strain of pandemic influenza." In: Greger, M. 2006. *Bird flu: a virus of our own hatching*. Lantern Books. Page 214.
Peiris J.S., de Jong M.D. and Y. Guan. 2007. Avian influenza Virus (H5N1): a threat to human health. *Clinical Microbiology Reviews* 20(2): 243-267.

Thus, we suggest that §205.241(d)(3) be amended to read,

> **(2) Conditions under which the health, safety, or well-being of the animal could be jeopardized, but the potential for disease outbreak is not sufficient cause. In order to confine birds, producers must document danger to those birds from current local occurrence of the disease.**

Birds must have more space indoors if confined.

When fully feathered birds are confined for an extended period –more than a few days—they should have access to the space to which they would have access if not confined –that is the sum of the required indoor and outdoor space, as well as other enrichment. The introductory paragraph of 205.241(d) should be changed to read:

> **205.241(d) The producer of an organic poultry operation may temporarily confine birds. However, such confinement must be temporary and not used to limit space available to the birds. Producers who confine birds for more than a week after they are fully feathered must provide space equivalent to combined indoor and outdoor space requirements. Each instance of confinement must be recorded. Producers may confine birds because of: …**

Regulations should address genetics.

Over the past 50 years, selection for fast growth has increased growth rates by over 300 percent, from 25 grams per day to 100 grams per day. The fast growth rate is a primary risk factor for impaired locomotion and poor leg health in meat chickens.[23] Castellini et al. found that fast-growing birds spent significantly less time outdoors and walking, significantly more time lying, and required significantly longer to recover in a tonic immobility test than slower growing birds. They concluded that the fast-growing birds "had a good growth rate and feed conversion index, reaching an excellent body weight, but the mortality and the culling rate were high indicating that fast-growing strains do not adapt well to organic production."[24]

EU regulations require slow-growing breeds:

Arjan Stegeman states the Netherlands outbreak originated in an outdoor flock. Dennis Alexander responds: "If you look at all the outbreaks where you knew it must have arisen, never once we have seen HPAI in an outdoor flock. The Netherlands might be an exception but you never know where it first arose." In: Schrijver RS and G Koch (eds). Avian Influenza: Prevention and Control. Workshop 1: introduction and spread of avian influenza. Accessed at http://library.wur.nl/ojs/index.php/frontis/article/view/1033/604. Page 4.
U.S. Geological Survey, National Wildlife Health Center. Wildlife Health Bulletin #04-01. Accessed at: http://www.nwhc.usgs.gov/publications/wildlife_health_bulletins/WHB_04_01.jsp.

[23] Knowles TG, Kestin SC, Haslam SM, Brown SN, Green LE, Butterworth A, Pope J, Pfeiffer D, Nicol CJ. 2008. Leg disorders in broiler chickens: prevalence, risk factors and prevention. PLoS ONE 3(2):e1545.

[24] Castellini, C., Bosco, A.D., Mugnai, C. and Bernardini, M., 2002. Performance and behaviour of chickens with different growing rate reared according to the organic system. *Italian Journal of Animal Science*, *1*(4), pp.290-300.

> To prevent the use of intensive rearing methods, poultry shall either be reared until they reach a minimum age or else shall come from slow-growing poultry strains. Where slow-growing poultry strains are not used by the operator the following minimum age at slaughter shall be: (a) 81 days for chickens, (b) 150 days for capons, (c) 49 days for Peking ducks, (d) 70 days for female Muscovy ducks, (e) 84 days for male Muscovy ducks, (f) 92 days for Mallard ducks, (g) 94 days for guinea fowl, (h) 140 days for male turkeys and roasting geese and (i) 100 days for female turkeys. The competent authority shall define the criteria of slow-growing strains or draw up a list thereof and provide this information to operators, other Member States and the Commission.[25]

We recommend that the NOP adopt a similar provision.

Although the welfare of the animals is important to organic production and consumer expectations, it is not the only reason for the changes we suggest.

The same changes that promote welfare of the birds also promote compatibility with organic principles in other ways. The first of the "Principles of Organic Production and Handling" adopted by the NOSB is:

> 1.1. Organic agriculture is an ecological production management system that promotes and enhances biodiversity, biological cycles, and soil biological activity. It emphasizes the use of management practices in preference to the use of off-farm inputs, taking into account that regional conditions require locally adapted systems. These goals are met, where possible, through the use of cultural, biological, and mechanical methods, as opposed to using synthetic materials to fulfill specific functions within the system.

The more that the birds get through foraging, the less they need from purchased feed. And since the grain imported to the farm is often/usually imported from other countries, it also affects our trade balance. Nutrients obtained from insects don't need to be supplied by synthetic inputs. Birds with more space and access to soil biology are healthier, requiring less intervention to support their health.

The claim has been made that the use of synthetic methionine is essential for the welfare of poultry. This claim is not supported with established measures of animal welfare and data separating the impact of synthetic methionine from that of management choices. It is not supported by the research results reported by the Methionine Task Force (MTF) in its 2009 petition.[26] The European Union does not allow the use of synthetic methionine in organic

---

[25] EC regulation No. 889-2008, Article 12, #5.

[26] Petition for Amending the National List of the USDA's National Organic Program: DL- Methionine, ML-Methionine Hydroxy analog, and DL-Methionine-hydroxy analog calcium-for use only in organic poultry production

poultry,[27] but does require more space per bird, fewer birds per house, and more access to the outdoors.[28] Significantly, the EU also requires that poultry be of slow-growing breeds or be slaughtered at an older age. The contribution of all these factors to the welfare of poultry has been documented. Studies show that reduced stocking rates (both density and group size),[29] outdoor access,[30] and slower-growing birds (who use the outdoors more effectively), [31] but not synthetic methionine and cystine[32] have a positive impact on the welfare of poultry.

Finally, meat from pastured poultry contains more vitamin E, vitamin D, and a healthier ratio of omega 6 to omega 3 fatty acids.[33]

Thank you for your consideration of these comments.

Sincerely,

Terry Shistar, Ph.D.
Board of Directors

---

submitted by the Methionine Task Force. July 31, 2009. Pp. 17-18. http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5084508&acct=nopgeninfo

[27] "[G]rowth promoters and synthetic amino-acids shall not be used." Council Regulation (EC) No 834/2007, consolidated. p. 20. http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02007R0834-20130701&qid=1416479300107&from=EN; EU organic livestock summary http://ec.europa.eu/agriculture/organic/eu-policy/eu-rules-on-production/livestock/index_en.htm.

[28] EC regulation No. 889-2008, Article 12.

[29] de Jong I, Berg C., Butterworth A., Estevéz I., 2012. Scientific report updating the EFSA opinions on the welfare of broilers and broiler breeders. Supporting Publications 2012:EN-295. [116pp.]. Available online: www.efsa.europa.eu/publications Beloor, J., Kang, H. K., Kim, Y. J., Subramani, V. K., Jang, I. S., Sohn, S. H., & Moon, Y. S. (2010). The effect of stocking density on stress related genes and telomeric length in broiler chickens. *Asian-Aust. J. Anim. Sci*, *23*(4), 437-443. Buijs, S., Keeling, L., Rettenbacher, S., Van Poucke, E., & Tuyttens, F. A. M. (2009). Stocking density effects on broiler welfare: Identifying sensitive ranges for different indicators. *Poultry Science*, *88*(8), 1536-1543.

[30] Mahboub, H. D. H., Müller, J., & Von Borell, E. (2004). Outdoor use, tonic immobility, heterophil/lymphocyte ratio and feather condition in free-range laying hens of different genotype. *British Poultry Science*, *45*(6), 738-744. Knierim, U. (2006). Animal welfare aspects of outdoor runs for laying hens: a review. *NJAS-Wageningen Journal of Life Sciences*, *54*(2), 133-145. Bestman, M. W. P., & Wagenaar, J. P. (2003). Farm level factors associated with feather pecking in organic laying hens. *Livestock Production Science*, *80*(1), 133-140.

[31] Sossidou, E. N., Dal Bosco, A., Elson, H. A., & Fontes, C. M. G. A. (2011). Pasture-based systems for poultry production: implications and perspectives. *World's Poultry Science Journal*, *67*(01), 47-58.

[32] Kjær, J. B., & Sørensen, P. (2002). Feather pecking and cannibalism in free-range laying hens as affected by genotype, dietary level of methionine+ cystine, light intensity during rearing and age at first access to the range area. *Applied Animal Behaviour Science*, *76*(1), 21-39.

[33] Badger, M. (2015) Pasture and Feed Affect Broiler Carcass Nutrition. American Pastured Poultry Producers Association. http://www.apppa.org/dynamic_content/uploadfiles/1297/Pasture%20and%20Feed%20Affect%20Broiler%20Carcass%20Nutrition%20--Final%20-%20rev%204-22-15.pdf.

Paul Lewis, Ph.D.
Director, Standards Division, National Organic Program
USDA-AMS-NOP
1400 Independence Ave. SW
Room 2646-So., Ag Stop 0268
Washington, D.C. 20250-0268

Docket: AMS-NOP-17-0031; NOP-15-06A; RIN 0581-AD74
Re: National Organic Program; Organic Livestock and Poultry Practices Rule

June 9, 2017

Dear Dr. Lewis:

CCOF (California Certified Organic Farmers) strongly supports the Organic Livestock and Poultry Practices (OLPP) rule and urges USDA to let the rule become effective on November 14, 2017 (Option 1). Enclosed are CCOF's comments in support of Option 1.

CCOF is an organic certifier and a nonprofit organization that advances organic agriculture for a healthy world. We advocate on behalf of our members for organic policies, support the growth of organic through education and grants, and provide organic certification services.

If USDA further delays, suspends, modifies, or withdraws the rule, then organic producers of all scales and types of operations will be negatively impacted. Organic producers will continue to operate on an unfair playing field where some certifiers allow producers to implement practices that do not align with organic principles and consumer expectations of organic products. Organic stakeholders have already followed all the necessary steps to create a rule that protects animal welfare, meets consumer expectations, and ensures consistency among certifiers in enforcing organic standards for livestock production.

Thank for your careful consideration of our comments. Please contact me for further information.

Sincerely,

Kelly Damewood
Director of Policy and Government Affairs

cc: Cathy Calfo, Executive Director/CEO
Jake Lewin, President, CCOF Certification Services, LLC

2155 Delaware Avenue, Suite 150, Santa Cruz, CA 95060 • (831) 423-2263 • fax (831) 423-4528 • ccof@ccof.org • www.ccof.org

CCOF Comments on the Organic Livestock and Poultry Practices Rule (OLPP)

CCOF supports full implementation of the OLPP on November 14, 2017 (Option 1) for the following reasons:

1. **The OLPP aligns with consumer expectations for organic products and supports the success of the entire organic sector.**

As a voluntary, opt-in regulatory framework, organic standards must take into account consumer expectations for organic products. Organic consumers pay a premium because they trust the integrity of organic standards and the certification process. During the 14-year development of the standards now included in the OLPP, the National Organic Standards Board (NOSB) and the National Organic Program (NOP) carefully weighed consumer expectations for the treatment of animals with the practical and science-based practices used by producers to care for livestock and poultry. Producers who do not want to meet consumer expectations for organic products are not held to organic standards, and they have other marketing and labeling options available to them. Therefore, further delays and unclear standards only tarnish the USDA organic seal and negatively affect consumer trust, which in turn negatively impacts the market for all organic producers.

2. **The OLPP's standards are achievable.**

Although some CCOF-certified producers will have to modify some of their practices, CCOF's over 200 certified organic livestock operations—including dairy, beef, poultry, and pork producers—are already largely in compliance with the OLPP. Moreover, CCOF members support the OLPP standards, as evidenced in the sample of attached letters. And as the largest organic certifier in the U.S., CCOF is fully confident that organic producers will continue to thrive in the flourishing organic marketplace when they adjust their practices to meet the OLPP requirements.

3. **The OLPP levels the playing field for organic livestock producers.**

The OLPP would ensure consistent, fair implementation of organic livestock standards among certifiers. Some certifiers allow housing and confinement practices that CCOF has never allowed, including porches for poultry production. Certifiers have either loosely interpreted existing standards or are reluctant to exercise their authority to fully enforce outdoor access requirements without further clarification from the NOP. These disparities among certifiers create an unfair playing field where producers like CCOF members must compete with producers who are not held to the same high animal welfare standards. CCOF has long advocated for a rule like the OLPP because it would ensure consistent implementation of standards addressing animal welfare in organic production.

2155 Delaware Avenue, Suite 150, Santa Cruz, CA 95060 • (831) 423-2263 • fax (831) 423-4528 • ccof@ccof.org • www.ccof.org

4. The OLPP standards do not pose biosecurity risks to poultry.

CCOF works with its organic livestock producers to determine appropriate methods and durations of confinement of organic poultry to protect the health, safety, and welfare of the animals. NOP recently reissued a statement, which confirms temporary confinement of organic poultry is allowed in the USDA organic regulations (7 CFR 205.239(b)). CCOF remains unaware of any situation where a certified organic operation failed to adequately protect poultry from avian flu or other disease by inappropriately allowing birds outside.

5. Further delays undermine the organic rulemaking process.

Organic stakeholders spent over a decade developing the standards incorporated into the final OLPP. The NOP uses a transparent process to create organic standards, including multiple rounds of public comment and discussions through the NOSB meetings. Throughout the development of organic standards, stakeholders and members of the public have ample opportunities to participate in extensive discussions, analysis, and review of proposed standards. To ignore this highly transparent, trusted organic rulemaking process now would undermine all future efforts to clarify and strengthen organic standards. Therefore, USDA should not hesitate in fully implementing the OLPP on November 14, 2017.

2155 Delaware Avenue, Suite 150, Santa Cruz, CA 95060 • (831) 423-2263 • fax (831) 423-4528 • ccof@ccof.org • www.ccof.org

CENTER FOR FOOD SAFETY

Note: This comment was filed with many attachments (up to 65 additional documents). Please see https://www.regulations.gov/document?D=AMS-NOP-17-0031-46698 for full text of all attachments to this comment.

June 9, 2017

Mr. Paul Lewis, Ph.D.
Director Standards Division
National Organic Program
USDA-AMS-NOP
Room 2646-So., Ag Stop 0268
1400 Independence Ave, SW
Washington, D.C. 20250-0268

Re: Docket No. AMS-NOP-17-0031; NOP-15-06A – National Organic Program (NOP); Organic Livestock and Poultry Practices Second Proposed Rule

Dear Mr. Lewis,

Center for Food Safety (CFS) is a non-profit organization that empowers people, supports farmers, and protects the earth from the harmful impacts of industrial agriculture. CFS promotes the public's right to safe food and protects the environment through groundbreaking legal, scientific, and grassroots action. Our membership has grown to include more than 830,000 consumer and farmer supporters across the country that support organic food and farming, grow organic food, and regularly purchase organic products.

USDA's Delay Violates the Administrative Procedure Act (APA)

On January 20, 2017, the administration issued memorandum to the heads of executive departments and agencies titled "Regulatory Freeze Pending Review." Pursuant to this memorandum, USDA has delayed implementation of the Organic Livestock and Poultry Practices (OLPP) final rule without providing the public with an opportunity to comment as required by the APA. Instead, the agency issued a proposed rule requesting comment on the fate of the already final OLPP rule. Comments on the proposed rule cannot act as a substitute for the APA requirement to provide an opportunity to comment on substantive rule delays. USDA has violated the APA.

NATIONAL HEADQUARTERS
660 Pennsylvania Avenue, SE, Suite 302
Washington, D.C. 20003
T: 202-547-9359 F: 202-547-9429

CALIFORNIA OFFICE
303 Sacramento Street, 2nd Floor
San Francisco, CA 94111
T: 415-826-2770 F: 415-826-0507

PACIFIC NORTHWEST OFFICE
917 SW Oak Street, Suite 300
Portland, OR 97205
T: 971-271-7372 F: 971-271-7374

HAWAI'I OFFICE
1132 Bishop Street, Suite 2107
Honolulu, Hawaii 96813
T: 808-681-7688

office@centerforfoodsafety.org centerforfoodsafety.org

The suspension or delayed implementation of a final regulation normally constitutes substantive rulemaking under APA § 553.[1] The APA requires that, prior to issuing a final rule, an agency provide both notice and an opportunity for comment to the public.[2] The APA provides exceptions to the notice and comment requirement, but only when an agency is prescribing a rule of procedure, or if the agency finds for good cause that notice and comment is impracticable, unnecessary, or contrary to the public interest.[3] When an agency invokes the good cause exception—as is the case here—it must provide the public with both its finding of good cause, and "a brief statement of reasons therefor in the rules issued," if it seeks to avail itself of this second exception. These exceptions to the APA requirements "should be narrowly construed and only reluctantly countenanced."[4]

USDA's rule delay notice hardly illustrates that the Agency had good cause to delay the rule. USDA argues that it needs additional time to review the rule for factual and legal issues—the same issues that existed when it issued the final rule in the first place—which does not create good cause to forgo the requisite notice and comment.

USDA Must Implement the OLPP Rule

USDA's procedural violations aside, the Agency must implement the OLPP rule for the benefit of the organic industry. The OLPP rule takes a critical step toward aligning all organic production systems to comply with the high standard of integrity that consumers expect and the Organic Foods Production Act (OFPA) demands. As the federal register notice for the proposed rule acknowledged, the intent of the rule is to "better satisfy consumer expectations that organic livestock meet a uniform and verifiable animal welfare standard."[5] Organic is the gold standard, and as such, organic animals must be well fed, healthy, have access to the outdoors, and be raised in an environment that allows them to engage in their natural behaviors. This rule provides for that.

The OLPP rule is supported by every sector of the organic industry. Only a handful of operations are unable to comply without making significant changes. USDA cannot bend to the will of a few outliers at the expense of the organic program's reputation. Nor can it

[1] Environmental Defense Fund v. U.S. EPA, 716 F.2d 915, 920 (D.C. Cir. 1983) ("delayed implementation of a final regulation normally constitutes substantive rulemaking under APA § 553."); Environmental Defense Fund v. Gorsuch, 713 F.2d 802 at 816 (D.C.Cir.1983); NRDC v. EPA, 683 F.2d 752, 761 (3d Cir.1982); Council of Southern Mountains, Inc. v. Donovan, 653 F.2d 573, 580 n. 28 (D.C.Cir.1981) (per curiam).
[2] NRDC v. Abraham, 355 F.3d 179 (2d Cir. 2004) (citing) 5 U.S.C. § 553(c) (2003).
[3] 5 U.S.C. § 553(b)(3)(A) & (B).
[4] Zhang v. Slattery, 55 F.3d 732, 744 (2d Cir.1995) (internal quotation omitted).
[5] Federal Register Vol. 81 No. 71 (Wednesday, April 13, 2016), 21956-22009. National Organic Program; Organic Livestock and Poultry Practices,, at 21956.

ignore that the OLPP rule's standards will benefit organic consumers. The Agency, organic stakeholders, and the public have vetted the OLPP rule, now USDA must implement it.

Higher welfare in organic farming is good for business

Producers choose to become certified organic for a variety of reasons. Regardless of their motivations, all organic producers receive a price premium for raising animals in a manner that aligns with consumer demand for sustainable, eco-friendly, and humane meat and poultry. This price premium provides economic incentive for producers to opt-in to management practices that use resources sustainably and protect the natural environment. They are rewarded in the marketplace for the additional costs and challenges of complying with the national organic standards. Any changes and improvements to the standards, like the Organic Livestock and Poultry Practices rule, only impact those farmers and handlers that have opted in to certification. They are not a mandatory imposition on all producers in the United States.

In this way, opportunities to strengthen the organic standards are good for organic business owners. In contrast, the more that consumers learn that a minority of producers may be certified without meeting the high bar of integrity they expect from the label, the success and viability of the organic business nationally is undermined.

Organic agriculture can lower local poverty rates, create jobs, and raise household incomes.[6] For example, research by Penn State Agricultural Economist Dr. Edward Jaenicke demonstrated that U.S. counties with high levels of organic agricultural activity showed median household income increases of over $2,000 and lower poverty rates by as much as 1.35 percentage points.

The OLPP rule will not cause financial strain on the vast majority of organic animal producers, and will provide a market opportunity for small and mid-scale producers that have not yet entered organic. In its analysis of the proposed rule, USDA stated clearly that "most organic egg producers could comply with the proposed indoor stocking rates with minor or no changes to their current operation"[7] and that 100% of organic broiler operations surveyed already comply with the recommended indoor spacing requirements.[8] Additionally, "many organic poultry producers currently provide [the recommended]

[6] Organic Trade Association. "Organic Hotspots," Web, last accessed June 9, 2017, *available at*: https://www.ota.com/hotspots.
[7] Fed. Reg. Vol. 81, No. 71 (April 13, 2016), *supra note* 5, at 21989.
[8] *Id*., 21991.

outdoor stocking density of 2.25 pounds/ft^2 for layers"[9] and that they "would not see changes in mortality."[10] A 2014 survey by Organic Egg Farmers of America also demonstrated that the majority of organic egg producers representing the majority of organic egg production already adhere to the practices and standards set forth by the NOSB.[11]

The rule is not just good for business already certified, but those that may opt into certification in the near future. As USDA notes, the exit of some producers would create "unmet consumer demand for organic eggs [that] would be an incentive for operations to enter organic egg production and for existing organic operations to expand."[12] The rule, therefore, is opening a door to other producers to enter the market or for currently certified producers to expand their operations. It is facilitating free market competition.

Additionally, organic poultry facilities that provide outdoor access and lower stocking densities for the birds are less susceptible to virulent strains of highly pathogenic avian influenza (HPAI). HPAI has threatened conventional poultry producers in recent years and decimated flocks. Research shows, though, that the flu viruses generally carried by wild birds are mostly harmless to poultry, referred to as low pathogenicity avian influence (LPAI).[13] LPAI strains may mutate to the deadly highly pathogenic avian influenza (HPAI), but that occurs almost exclusively in crowded indoor conditions.[14] Further, the virus transmits through feces and does not easily survive when exposed to sunlight or drying.[15] Strong organic practices outlined in the final rule, like lower stocking densities and providing outdoor access, are a part of the solution and provide economic benefit in terms of protections for flocks against HPAI.

[9] *Id*., at 21990.
[10] *Id*., at 21991.
[11] Statement adopted unanimously by the National Organic Standards Board, April 20, 2017. Sent via email by Tom Chapman, current NOSB Chair, to Abby Youngblood, Executive Director of the National Organic Coalition.
[12] Federal Register Vol. 81 No. 71 (Wednesday, April 13, 2016), 21956-22009. National Organic Program; Organic Livestock and Poultry Practices, at 21997.
[13] Suarez, D. et al. (2004). Recombination resulting in virulence shift in avian influenza outbreak, Chile. Emerging Infectious Diseases, 10(4): 693-699.
[14] Schrijver, R.S. & G. Koch (eds.) Avian Influenza: Prevention and Control. Workshop 1: introduction and spread of avian influenza, page 4, available at: http://library.wur.nl/ojs/index.php/frontis/article/view/1033/604; Greger, M. (2006). Bird flu: a virus of our own hatching. Lantern Books, page 214; Peris, J.S., de Jong, M.D. & Y. Guan. (2007). Avian influenza Virus (H5N1): a threat to human health. Clinical Microbiology Reviews, 20(2): 243-267.
[15] Sutton, D. et al. (2013). Inactivation of the infectivity of two highly pathogenic avian influenza viruses and a virulent Newcastle disease virus by ultraviolet radiation. Avian Pathology, 42(6): 566-568; Zou, S. et al. (2013). Inactivation of the novel avian influenza A (H7N9) virus under physical conditions or chemical agents treatment. Virology Journal, 10: 289; Shortridge, K.F. et al. (1998). Characterization of avian H5N1 influenza viruses from poultry in Hong Kong. Virology, 252: 331-342.

Higher welfare in organic farming is good for consumers

A primary purpose of the rule is to ensure organic consumers that products carrying the USDA Certified Organic seal were all produced to an equivalent standard. Organic meat and poultry is about far more than providing 100% certified organic feed for the animals' diet. Consumers expect that organic animals have been given a natural life and are kept in conditions that foster their health and welfare. In the absence of these much-needed improvements to the regulation, consumers may be duped into purchasing products that do not actually align with their expectations.

USDA reviewed substantial research on consumer "willingness to pay," an often used tool in economic analyses, demonstrating that consumers are willing to pay more for eggs from high welfare systems. The price of free-range eggs is 87.5% higher than conventional eggs, yet consumers continue to demand these products because they value animal welfare. Research has also shown that, in the U.S., egg consumption is actually relatively unresponsive to price changes. An increase in the price of eggs generally by 40%, for example, results in only minor reductions in consumption.[16]

According to a 2017 survey by Consumers Union, 6 out of 10 U.S. consumers, regardless of purchasing habits, believe that it is very or extremely important that animals used to produce organic food are raised on farms with high standards for animal welfare. For consumers that regularly buy organic foods, nearly 9 out of 10 (86%) believe this. More specifically, over half of all U.S. consumers (54%), regardless of organic purchases, believe it is very or extremely important that eggs labeled organic are from hens that were able to go outdoors and move freely outdoors. Eighty-three percent of those who regularly purchase organic believe organic hens must go outdoors.[17]

The survey figures demonstrate that the majority of all U.S. consumers and the vast majority of U.S. organic consumers believe that the organic label on animal products should at a minimum mean what the new rules seek to implement. Preventing the rule from going into effect would risk undermining the organic label and the entire industry.

The rule has been thoroughly vetted

Additionally, the Organic Livestock and Poultry Practices rule has been developed through a public stakeholder process, with substantial input from organic producers. For poultry,

[16] Fed. Reg. Vol. 81, No. 71 (April 13, 2016), *supra note* 5, at 21988.
[17] Consumer Reports National Research Center (March 18, 2017). *Animal Welfare Survey*. 2017 Nationally-Representative Phone Survey.

USDA stated in the notice of the proposed rule that the rule is based on input from producers on the practices "that would improve the overall quality of life for birds."[18] More than a decade in the making, the final rule is a prime example of the standard development process working effectively.

Further, the National Organic Standards Board, created by the Organic Foods Production Act of 1990 as an advisory body to USDA on organic, issued a unanimous statement and the April 2017 meeting in Denver, Colorado. The Board statement recognized that consumer trust in organic "depends on the strength and consistent application of the organic regulations," and that the 2011 NOSB recommendation upon which the rule is based "was the product of a decade of public NOSB meetings, lengthy discussions, public comment periods and consultation from organic producers, processors, consumers, and the veterinary and scientific community."[19]

Conclusion

Continued delay of the Organic Livestock and Poultry Practices rule is inappropriate. The rule has been fully vetted and finalized through the formal rulemaking process and should go into effect immediately.

Thank you for the opportunity to submit comments.

Respectfully submitted,

Cameron Harsh
Senior Manager, Organic & Animal Policy

Paige M. Tomaselli, Esq.
Senior Attorney

[18] Fed. Reg. Vol. 81, No. 71 (April 13, 2016), *supra note* 5, at 21991, emphasis added.
[19] Statement adopted unanimously by the National Organic Standards Board, April 20, 2017. Sent via email by Tom Chapman, current NOSB Chair, to Abby Youngblood, Executive Director of the National Organic Coalition.

Appendix A: Center for Food Safety's Comments to the proposed Organic Livestock and Poultry Practices rule, submitted July 13, 2016 to Docket No. AMS-NOP-15-0012

July 13, 2016

Mr. Paul Lewis, Ph.D.
Director Standards Division
National Organic Program
USDA-AMS-NOP
Room 2646-So., Ag Stop 0268
1400 Independence Ave, SW
Washington, D.C. 20250-0268

Re: Docket No. AMS-NOP-15-0012; NOP-15-06PR; RIN 0581-AD44

Dear Mr. Lewis,

Center for Food Safety (CFS) is a non-profit membership organization that works to protect human health and the environment by curbing the proliferation of harmful food production technologies and by promoting organic and sustainable agriculture. Our membership has rapidly grown to include over seven hundred thousand people across the country that support organic food and farming, grow organic food, and regularly purchase organic products.

The proposed Organic Livestock and Poultry Practices rule is an important step toward aligning all organic production systems with the high bar of organic integrity and consumer expectations of the organic label. It is the next step in what has been a decades-long process of developing strong, uniform standards for raising animals organically. Throughout that process, Center for Food Safety has provided extensive input via the public comment process[20] as well as additional publications[21] and engagement. As the Federal Register notice acknowledges, the intent of the rulemaking is to "better satisfy consumer expectations that organic livestock meet a uniform and verifiable animal welfare

[20] CFS submitted written comments and letters related to animal welfare in organic to the National Organic Standards Board in May 2012, April 2011, November 2009, December 2008, September 2006, June 2006.
[21] P.M. Tomaselli & L.J. Bunin (2014). *USDA Stalls Regulations to Improve Organic Poultry Living Conditions*, Washington, DC: Center for Food Safety, *available at* www.centerforfoodsafety.org/files/animal-welfare-final_56276.pdf.

standard."[22] Organic is the gold standard, and as such, organic animals must be well fed, healthy, have access to the outdoors, and be raised in an environment that allows them to engage in their natural behaviors.

Consumers feel that organic foods have value over conventional due to a strong belief that they have been produced in a manner that conserves natural resources, protects the native environment, does not rely on synthetic chemicals, and provides for the welfare of animals raised for food. To support such production systems, consumers accept a price premium to purchase foods that align with their values. In 2013, CFS conducted a survey of U.S. organic consumers to determine what factors influence their decision to purchase organic poultry products. Of the 17,396 participants who purchase organic eggs, more than 70 percent listed the provision of humane and natural conditions as among the top five reasons they choose organic eggs.[23] When a few producers take advantage of lax or unclear standards, consumer confidence in all organic producers and products is undermined. In the spirit of continuous improvement on which the U.S. federal organic law was founded, the aim of NOSB and NOP must always be to ensure that the standards are increasingly stringent and that all certified organic producers are held to a high bar of integrity.

The proposed rule recommends many changes to the current regulations for livestock and poultry that will significantly improve the wellbeing of organic animals and bring animal production systems in line with consumer demands, including:

Livestock Health Care Practices

Amended language related to the prohibition of hormones is a welcome addition

An integral component of organic animal production systems is the prohibition on the use of animal drugs to enhance productivity. As such, CFS appreciates the language in the proposed rule that provides further clarification on the prohibition of exogenous hormones. At §205.238(c)(3), the rule prohibits the use of synthetic or nonsynthetic hormones for production or reproductive purposes, in addition to the existing language prohibiting their use for promoting growth.[24] As hormone drugs are approved by FDA for uses other than growth promotion, the new language ensures that the regulatory prohibition of their use in organic is sufficiently comprehensive. Consumers do not expect

[22] 81 Fed. Reg. 71. 21956, 22009 (Wednesday, April 13, 2016), at 21956.
[23] Center for Food Safety (2013). *Survey on Organic Eggs & Poultry*, Online survey conducted in September. Survey participants comprise a group of self-selected Center for Food Safety supporters who volunteered to take the survey, and they were not randomly selected.
[24] 81 Fed. Reg. 71, *supra* note 3, at 21965.

animals that are raised organically to be dosed with drugs for any non-therapeutic purposes, which would include the regulation of an animal's reproductive cycle.

Avian Living Conditions

Requirements for poultry operations have been significantly improved in the proposed rule

CFS has consistently argued that strong welfare rules for poultry will not only provide outdoor space to birds, but ensure that the housing and outdoor areas are designed to encourage birds to utilize the outdoor space. The proposed language at §205.241(c)(1) & (2) provide some much needed specificity requiring appropriate space design and utilization.[25] In particular, requiring producers to train birds from an early age to use the outdoor space, provide enticing enrichment, and to ensure that exit areas are appropriately designed and accessible are all critical measures that provide for the greater welfare of poultry.[26]

The inclusion of language at §205.241(c)(6) prohibiting the consideration of porches as outdoor space[27] is a welcome addition to the rule and in line with the position expressed by the organic community throughout the development of this rule. CFS has consistently advocated against allowing producers to rely on porches or similar enclosed areas as suitable outdoor space. Not only are porches contrary to consumer expectations of outdoor space for organic animals, they do not allow birds to access the soil, insects, vegetation, and sunlight necessary for healthy and humane conditions.

Additionally, the proposed indoor space requirements for broilers, layer chickens, and turkeys are comparable to those established for other private welfare labels, as illustrated in the chart below, see Table 1 below. CFS also appreciates the proposal to institute stocking rates by weight rather than per animal. In past comments we have advocated for this metric, since animals increase in size and weight throughout production. Providing the

[25] 81 Fed Reg 71, *supra* note 3, at 21970.

[26] *See, e.g.* B. Rodenburg (2011). "Preventing feather pecking in laying hens," *World Poultry*, 29 March, *available at*: http://www.worldpoultry.net/Layers/Housing/2011/3/Preventing-feather-pecking-in-laying-hens-WP008683W; R. Trudelle-Schwarz (no date). "Cannibalism: Chicken Little Meets Hannibal Lector?" *Stories of Applied Animal Behavior*. K. Luanchberg & L. Shipley, (eds). University of Idaho and Washington State University, *available at*: http://www.webpages.uidaho.edu/range556/appl_behave/projects/chicken_cannibalism.html; J. Moritz, et al. (2005). "Synthetic Methionine and Feed Restriction Effects on Performance and Meat Quality of Organically Reared Broiler Chickens," *J. Appl. Poult. Res., 14*: pp. 521-535; M.W.P. Bestman & J.P. Wagenaar (2003). "Farm level factors associated with feather pecking in organic laying hens," *Livestock Production Science, 80*: pp. 133-140; C.J. Nicol, et al. (2003). "Matched concurrent case-control study of risk factors for feather pecking in hens on free-range commercial farms in the UK," *British Poultry Science, 44*: pp. 515-523.

[27] 81 Fed Reg 71, *supra* note 3, at 21970.

same amount of space per animal at all stages of growth forces increasingly cramped conditions as they approach slaughter weight. Also, as noted in the Federal Register, this helps to accommodate differences in weight between breeds and species.

Table 1 Comparison of minimum indoor space requirements[28]

	Proposed Rule	American Humane Association	Animal Welfare Approved	Certified Humane
Broilers	5 lbs/ft^2 (less than 1 ft^2/bird)	7 lbs/ft^2	0.67 ft^2/bird	6 lbs/ft^2
Layers	2.25 lbs/ft^2 (2 ft^2/bird), except: Pasture: 4.5 lbs/ft^2 (1 ft^2/bird) Aviary: 4.5 lbs/ft^2 (1 ft^2/bird) Slatted/Mesh: 3.75 lbs/ft^2 (1.2 ft^2/bird) Floor litter: 3 lbs/ft^2 (1.5 ft^2/bird)	116 in^2/bird (0.9 ft^2/bird, called enriched colony housing) Aviary: 1.2 ft^2/bird Slatted/Mesh: 1.2 ft^2/bird Floor Litter: 1.5 ft^2/bird	1.8 ft^2/bird	Pasture: 1 ft^2/bird Aviary: 1 ft^2/bird. Slatted/Mesh: 1.2 ft^2/bird Floor litter: 1.5 ft^2/bird
Turkeys	5 lbs/ft^2 (less than 1 ft2/bird)	None specified	5 ft^2/bird	7.5 lbs/ft^2

There are many opportunities to strengthen the proposed rule, including:

[28] *See* Animal Welfare Approved (2015). *Animal Welfare Approved Standards for Laying Hens*; Animal Welfare Approved (2015). *Animal Welfare Approved Standards for Meat Chickens*; Animal Welfare Approved (2015). *Animal Welfare Approved Standards for Turkeys*; American Humane Certified (2016). *Animal Welfare Standards for Broiler Chickens*, April; American Humane Certified (2016). *Animal Welfare Standards for Laying Hens – Cage-Free*, March; American Humane Certified (2015). *Animal Welfare Standards for Layers – Enriched Colony Housing*, October; American Humane Certified (2016). *Animal Welfare Standards for Laying Hens – Free Range & Pasture*, March; Humane Farm Animal Care (2014). *Animal Care Standards: Chickens*, August; Humane Farm Animal Care (2014). *Animal Care Standards: Egg Laying Hens*.

Livestock Health Care Practices

Breed restrictions and requirements for poultry should be expressly stated in the rule

The current regulations at §205.238(a)(1) state that organic producers must establish preventative health care practices including, "Selection of species and types of livestock with regard to suitability for site-specific conditions and resistance to prevalent diseases and parasites."[29] The NOP has not proposed to amend this language in any way. This represents a missed opportunity to more ardently restrict the breeds of animals allowed in organic to those that will flourish and thrive in organic systems. For example, the European Commission's organic standards require producers to use only slow-growing breeds, which have been shown to be better suited to organic diets, outdoor conditions, and pastures.

In addition to the general language at §205.238(a)(1), the new section, Avian Living Conditions, includes language that could offer de facto restrictions on poultry breeds in organic. For example §205.241(a) "would require organic poultry producers to provide their birds with year-round access to the outdoors, soil, shade, shelter, exercise areas, fresh air, direct sunlight, clean water for drinking, materials for dust bathing, and adequate space to escape both predators and aggressive behaviors, *in a manner that is suitable to the species*, the stage of life, and the environment."[30] This suggests that producers must take breed considerations into account, but the vague language allows for incredible flexibility that does not successfully limit breeds to those most appropriate for organic production. Similarly, as the space requirements were calculated based on the mature size of the ISA Brown strain of chicken, which weighs 4.5 pounds at maturity, the proposed rule tacitly incentivizes producers to select similar or smaller strains in order to raise more birds in a given space and comply with the rule.

Unfortunately, none of the proposed language offers a sufficient restriction on breeds for organic systems. In the case of poultry, this allows organic producers to continue using industrially-bred strains that thrive in confinement conditions and have difficulty maintaining health and vigor in outdoor or pasture-based systems. Industrial strains also have higher protein requirements in order to produce muscle tissue at higher rates. The use of these breeds has propelled the proliferation of "organic" confinement poultry systems as well as the continued use of the synthetic amino acid DL-methionine to meet their accelerated nutritional requirements. As both practices significantly undermine organic integrity and consumer confidence in organic poultry, specifically, the NOP should

[29] 81 Fed Reg 71, *supra* note 3, at 21962.
[30] *Ibid*., at 21971, emphasis added.

provide language in the rule that adequately restricts the breeds allowed in organic livestock and poultry systems and expressly prohibits industrial, fast-growing breeds.

Breed selection is an important aspect of preventative health care practices, as certain breeds maintain healthy condition and demonstrate higher adaptability in pasture-based and outdoor systems than others, particularly slower growing breeds as compared to faster growing breeds.[31] For example, researchers in Italy found that slower growing breeds spent a significantly higher percentage outdoors in organic systems than faster growing breeds, and had significantly lower mortality in organic systems as well.[32] Slow-growing Leghorns had 2 percent mortality and spent 70 percent of the time outdoors in organic systems compared to 16 percent mortality and only 30 percent time spent outdoors for the fast growing Ross breed.[33] In addition, selection of broilers for fast growth has resulted in increased appetite, "such that birds kept for breeding need to be feed-restricted to prevent obesity and reproductive failure. Birds on such limited diets show signs of chronic hunger, including pacing, stereotyped pecking, and excessive water intake."[34]

As an additional step to ensure that producers are sourcing breeds appropriate for organic systems, the final rule should include language that limits the allowable daily growth rate for poultry. When averaged over the life of the flock, the rate of growth for meat chickens allowed to grow naturally on an optimum ration must not exceed 0.075 pounds per day. This will not only encourage producers to source appropriate breeds for their systems and conditions, but will effectively prevent industrial management practices designed to spur growth, such as constant lighting and no room to exercise.

The phrase "appropriate body condition" is vague and unclear

At §205.238(a)(2) on the sufficiency of the organic feed rations, NOP is proposing to add the qualifying phrase "resulting in appropriate body condition" to the feed requirements.[35] This phrasing is both vague and unnecessary and must be deleted from the final rule. "Appropriate body condition" is a subjective determination not only dependent on the species, breed, stage of life, age, gender, and time of year, but also subject to inspector qualification, experience, and perspective. Its inclusion in the rule would support the use of body scoring as a quantitative measure of assessing the health and wellbeing of animals. However, body scoring is not compatible with organic systems.

[31] C. Castellini, et al. (2016). "Adaptation to organic rearing system of eight different chicken genotypes: behaviour, welfare, and performance," *Italian Journal of Animal Science, 15(1)*: 37-46.
[32] A. Dal Bosco, et al. (2009). "Effect of genotype and rearing system on chicken behavior and muscle fiber characteristics," *J Anim Sci, 87*: 4109-4117.
[33] Dal Bosco, et al., 2009.
[34] D. Fraser, et al. (2013). "General Principles for the welfare of animals in production systems: The underlying science and its application," *The Veterinary Journal*.
[35] 81 Fed Reg 71, *supra* note 3, at 21962.

Instead, strong organic animal welfare standards will encourage practices that reflect good husbandry and provide for natural behavior, sufficient space to move and exercise, and appropriate nutrition. Best management practices will result in healthy body condition of the animals. As such, inspectors should be trained to recognize conditions that are adverse to the animals' ability to exhibit natural behaviors, particularly when temporarily confined.

For physical alteration requirements, the definition of "competent person" must be clarified

At §205.238(a)(5), the proposed regulations for performing approved physical alterations on organic animals includes new language stipulating that alterations must be performed "by a competent person."[36] The attempt to clarify this term later in the notice is vague, stating only that, "Competency may be demonstrated by training or experience of the person performing the alterations or may be demonstrated by the training or experience of the person training the person performing the alterations."[37] Physical alterations can be minor surgical procedures. When conducted by untrained or over-worked farm workers without formal training on pain and sensitivity management, there is increased likelihood of physical suffering for the animals. CFS believes that the final rule should include requirements for animal welfare training for all employees authorized to perform physical alterations on animals. In the European Union, it is common for animal welfare regulations to recommend that all employees handling animals attend animal welfare training courses.[38] Increased training in proper animal care increases the ease of animal handling for workers as well as productivity.[39] Local veterinarians, land grant universities, and veterinary students could be enlisted in order to ensure that necessary training is not cost prohibitive to small farmers.

CFS recommends that AMS add "competent person" to the regulatory definitions, and propose a definition that clearly identifies the competency required to perform physical alterations on organic livestock and poultry.

CFS suggests the following language: Any person that has, through formal training, achieved the necessary ability, knowledge, and skill to perform a specific function or action. For persons handling or performing physical alterations on organic livestock and poultry,

[36] 81 Fed Reg 71, *supra* note 3, at 21962.
[37] *Ibid*., at 21964.
[38] *See, e.g.* Council Directive 2001/93, EC Laying Down the Minimum Standards for the Protection of Pigs, art. 5, 2001 O.J. (L 316) 36-38 (EU).
[39] EU Scientific Veterinary Committee (1997). *The Welfare of Intensively Kept Pigs*, September 30. Web, *available at*: *ec.europa.eu/food/animals/docs/aw_arch_1997_intensively_kept_pigs_en.pdf*.

competence is demonstrated through sufficient animal welfare and animal handling trainings.

For physical alterations, the phrase "reasonably young age" is vague and undefined

The requirement that physical alterations "must be performed at a reasonably young age" requires greater clarity to ensure that the wellbeing of organic animals is protected. "Reasonably young" is subjective, and leaves too much room for the provision to be abused and producers to conduct the approved physical alterations that are not explicitly restricted by age in the rule at any age. This language should be more specific in the final rule, even if age maximums must be established for each species and/or each alteration.

Certain inhumane alterations are still allowed under the proposed rule

CFS has previously commented on the importance of ensuring that tooth clipping or needle teeth trimming (hereinafter needle teeth trimming) in pigs is prohibited in the organic animal welfare regulations.[40] Scientific evidence indicates that needle teeth trimming is likely to cause immediate pain to pigs[41], with minimal benefit. NOP has added the practice to §205.238(a)(5)(i), which is an improvement, however CFS is concerned that the language in §205.238(a)(5)(i) will still allow some producers to abuse the provision by regularly trimming piglets' teeth at any sign of damage. Tooth grinding is not currently listed in the proposed restrictions on physical alterations.

Teeth trimming and tooth grinding are used to protect a sow's udder from tears. However, such damage is often minimal, while these practices, and teeth trimming in particular, can cause both acute and long-term pain. Teeth trimming can expose the tooth pulp cavity to infection, the teeth may fracture and bleed, abscesses may form, and gum damage may occur. One recent study concluded that pigs are likely to experience long-term pain from the tooth abnormalities that occur following trimming, and that this pain is likely to last until the milk teeth are lost and replaced with permanent teeth – a period of 50–120 days. This means that many pigs reared for meat may experience pain as a result of teeth trimming throughout their entire life.

Successful sow and piglet management can occur without resorting to teeth trimming. For example, producers can limit litter size to that which can be fully sustained by the sow, ensure that the sow is healthy with good milk supply, ensure that litter sizes are even, and ensure that there is adequate space and enrichment for the sow and for piglets. Without this type of precise litter management, it is possible that tears will be common and producers will resort to needle teeth trimming. Thus, CFS recommends that NOP add

[40] *See* Center for Food Safety (2011). Comments to NOSB, April 2011, *supra* note 1.
[41] Council Directive 2001/93, *supra* note 19, Preamble.

needle teeth trimming and tooth grinding to the list of prohibited physical alterations at §205.238(a)(5)(ii) that must not be performed on a certified operation. Animal Welfare Approved prohibits both practices by its certified producers.[42]

CFS also opposes beak trimming as a common practice and encourages producers to actively seek alternative management methods that prevent severe feather pecking and cannibalism. While the regulations prohibit de-beaking in poultry and beak trimming after 10 days of age, beak trimming is a painful procedure that can continue to cause pain throughout the animal's life, and should not be encouraged as the immediate option for organic poultry producers. *The UK organic standards through the Soil Association ban beak trimming entirely, as do the organic standards in China, Argentina and Australia.*[43] While the practice is commonly performed as a measure against severe feather pecking,[44] studies do not demonstrate a strong connection between beak trimming and reduced feather pecking.

Instead, more humane practices such as providing sufficient litter and scratching material and ample access to vegetative outdoor space have been shown to reduce feather pecking by encouraging natural foraging behaviors. Feather pecking and cannibalism can also be reduced if appropriate breeds are selected for organic production, as well as with appropriate light and nutrition management.[45] *AMS' own materials state that, "Most organic producers find alterations such as beak trimming to be unnecessary when they have designed their systems and management practices to provide adequate space, include roosters for natural social order, and use other strategies to reduce stress among birds."*[46] Only if such methods prove ineffective should producers consider beak trimming. CFS recommends that the qualifying phrase "after days of age" be removed from §205.238(a)(5)(ii) such that beak trimming as a practice will be prohibited in organic.

Infrared beak trimming is considered the most humane of the available technologies to perform the alteration. This is most commonly done at the hatchery on the 1st day of life.[47] *It involves immobilizing the chicks via head restraint and focusing high intensity, infrared energy through the beak's corneum layer, inhibiting further growth and causing the tip of the*

[42] Animal Welfare Approved (2015). *Animal Welfare Approved Standards for Pigs*.
[43] Compassion in World Farming. (2012). *Frequently Asked Questions:* laying hens, Farm Animal Welfare Compendium (Updated January 3, 2012).
[44] M.C. Appleby, J.A. Mench, & B.O. Hughes (2004). *Poultry Behavior and Welfare,* Oxfordshire, UK: CABI Publishing; B. Rollin (1995). *Farm Animal Welfare: Social, Bioethical, and Research Issues*, Iowa State U. Press.
[45] J. Jacob (2015). "Beak Trimming of Poultry in Small and Backyard Poultry Flocks," *eXtension*, May 5, *available at*: http://articles.extension.org/pages/66245/beak-trimming-of-poultry-in-small-and-backyard-poultry-flocks.
[46] A. Baier (2015). *Tipsheet: Organic Poultry Production for Meat and Eggs*, National Center for Appropriate Technology, developed with support from U.S Department of Agriculture's Agricultural Marketing Service, National Organic Program, July.
[47] H.W. Cheng (2010). *Laying Hen Welfare Fact Sheet*, USDA-ARS-MWA Livestock Behavior Research Unit.

beak to erode away after 7-10 days.[48] *This is considered the most humane technology available. However, as it is relatively new technology utilized by the industry, the degree of its welfare impacts may not yet be known. Further, this illustrates the need for a distinct, certified organic hatchery industry, as poultry producers seeking to address feather pecking through management practices rather than physical alterations may only have access to chicks from conventional hatcheries that beak trim their chicks on the 1st day of life.*

Additionally, CFS continues to oppose all instances of tail docking. The proposed rule only fully eliminates this practice for cattle. Tail docking in pigs is restricted to non-routine uses when alternatives have failed, and in sheep it is limited only by a specific threshold (cannot be "shorter than the distal end of the caudal fold"[49]). Tail docking is commonly practiced to prevent tail biting as an aggressive behavior. Studies have shown, however, that high rates of tail biting in pigs are associated with poor living conditions such as slatted rather than solid flooring, high stocking densities, crowded feeding systems, high post-weaning mortality rates, the presence of respiratory diseases,[50] nutrition, and a lack of more suitable objects to occupy the animals.[51] Organic production systems must implement practices and conditions that promote high welfare, addressing the factors that increase tail biting with management practices such as suitable stocking densities, appropriate nutrition, and enrichment. Further, a study of ninety-two pig farms in England, UK, found that "tail docking was associated with a three-fold increase in the risk of tail biting." As such, tail docking is incompatible with organic production and all instances of the practice must be prohibited.

Maximum ammonia levels should apply to all species and have one limit to prevent confusion

The proposed language related to ammonia limits in poultry houses is unnecessarily confusing and could be burdensome to producers and certifiers. Rather than two ammonia limits at which different actions would be required, NOP should establish one limit which producers must prevent ammonia levels from exceeding. Due to the harms caused to animals from ammonia emissions, such as respiratory and ocular diseases[52] and lowered

[48] Cheng, 2010, *supra* note 28.
[49] 81 Fed. Reg. 71, *supra* note 3, at 21962.
[50] C. Moinard, et al. (2003). "A case control study of on-farm risk factors for tail biting in pigs," *Applied Animal Behavior, 81(4)*: 333-355.
[51] P.K. Walker & G. Bilkei (2006). "Tail-biting in outdoor pig production," *The Veterinary Journal, 171*: pp. 367-369.
[52] D.M. Miles, et al. (2006). "Ocular responses to ammonia in broiler chickens," *Avian Disease, 50(1)*: pp. 45-49; A. Michiels, et al. (2015). "Impact of particulate matter and ammonia on average daily weight gain, mortality and lung lesions in pigs," *Preventative Veterinary Medicine, 121(1-2)*: pp. 99-107; K.J. Donham (1991). "Association of environmental air contaminants with disease and productivity in swine," *American Journal of Veterinary Research, 52(10)*: pp. 1723-1730.

immunity,[53] the proposed 10 parts per million (ppm) limit should be set as the maximum in the final rule. The 25 ppm limit is too high, as studies have demonstrated that birds suffer significant health impacts at 25 ppm.[54]

Further, high ammonia levels pose risks to other animals, not just poultry. A cross-sectional epidemiological study recommended that a maximum ammonia concentration of 7 ppm is necessary to protect pig health.[55]

As such, the language at §205.238(a)(9) should be changed to establish the ammonia limit as 10 ppm, as well as to strike the phrase "in poultry houses" to apply the requirement to all livestock. CFS recommends the following language: "Ventilation must be adequate to prevent buildup of ammonia. Ammonia levels in livestock housing must be less than 10 ppm. Producers must monitor ammonia levels on a monthly basis." The amendments to the language at §205.238(a)(9), applying to all livestock, means that the proposed §205.241(b)(2) specific to avian living conditions is no longer necessary.

The proposed requirements for euthanasia support euthanasia when it may not be necessary

The proposed language at §205.238(e)(1) states that "Organic livestock producers must have written plans for prompt, humane euthanasia for sick or injured livestock."[56] The use of the terms "sick" and "injured" without any further qualification allow for too broad a spectrum of conditions at which producers could euthanize animals. Illnesses or injuries are not necessarily severe enough to merit ending an animal's life. NOP must amend this language to clarify that humane and prompt euthanasia would be required for animals that are in irreversible condition and will not likely recover. CFS recommends the language be changed to "Organic livestock producers must have written plans for prompt, humane euthanasia for animals suffering from irreversible disease or injury."

Mammalian Living Conditions

[53] D.P. Anderson, C.W. Beard, & R.P. Hanson (1964). "The adverse effects of ammonia on chickens including resistence to infection with Newcastle disease virus," *Avian Research, 8*:pp. 369–379; C.L. Quarles & H.F. Kling (1974). "Evaluation of ammonia and infectious bronchitis vaccination stress on broiler performance and carcass quality," *Poultry Science, 53:* pp.1592–1596.

[54] Miles, et al., 2006, *supra* note 33; F.N. Reece, B.D. Lott, & J.W. Deaton (1981). "Low concentrations of ammonia during brooding decrease broiler weight," *Poultry Science*, *60(5)*: pp. 937-940.

[55] Donham, 1991, *supra* note 33.

[56] 81 Fed. Reg. 71, *supra* note 3, at 21964.

Language addressing housing and shelter must accommodate the unique needs of different species

CFS understands the intent behind the detail and specificity in the proposed language for §205.239(a)(4)(i), which has been changed from requiring shelter that allows for the "Natural maintenance, comfort behaviors, and opportunity to exercise" for animals," to the far more specific requirement to provide "Sufficient space and freedom to lie down in full lateral recumbence, turn around, stand up, fully stretch their limbs without touching other animals or the sides of the enclosure, and express normal patterns of behavior."[57]

This level of specificity, however, results in language that is too prescriptive and does not accommodate for major differences between species. The proposed language is appropriate for pigs, for example, but not for cattle. Unlike pigs, cattle will defecate and urinate where they stand or lie. In order to keep cows in clean, hygienic, sanitary housing, stalls need to be sized and designed in a manner that positions the animal's hind end such that the waste is channeled away from it and the other animals. Allowing cows to lie sideways or backwards while in their stalls may cause waste to end up at the front of the stall, on their feed, underneath the animal, or in neighboring stalls. This will lead to unsanitary conditions with increased risk of disease and infection.

This example illustrates the challenges with including language in the final rule that is far too prescriptive if the rule is divided only into the two broad categories of mammalian and avian species. AMS should consider further dividing the mammalian section into ruminant and non-ruminant mammals, recognizing that the living conditions, welfare, and health requirements for ruminant mammals are largely covered by the existing pasture rule.

Space requirements for pigs are needed

Clear stocking requirements are noticeably absent from the proposed rule, but are necessary to the protection of pig welfare. The NOSB did recommend establishing stocking rates for pigs in its final recommend. However, the NOSB's recommended stocking requirement of 6 square feet for a growing pig 225 to 255 pounds would be woefully inadequate and put organic pig production significantly behind private welfare labels and the European Union. The NOP should look to Certified Humane, Animal Welfare Approved, and the EU's general requirements for pig welfare as resources for identifying minimum space requirements per pig that make organic the strongest label. CFS has recommended specific rates below.

Providing adequate space for pigs is a critical component of ensuring that organic systems promote high welfare of the animals. Limited space can contribute to serious problems of

[57] 81 Fed Reg 71, *supra* note 3, at 21966.

aggression, and studies have shown that increased floor area can reduce the level and severity of injurious behavior.[58] At least one study determined that a minimum of 2.4 - 3.6 m^2 (25.8 - 38.7 ft^2) per sow was necessary to promote good welfare. This space range reduced aggression by allowing adequate space for social signaling of submissive behavior.[59]

The EU's minimum stocking rate for a growing pig of similar weight, regardless of organic or conventional production, is 6.9 - 10.8 ft^2.[60] This means that even if NOP had included the NOSB's proposed requirement for organic porcine stocking densities, it would still fall short of the minimum requirements for *conventional* pigs in the EU. Consumers expect that organic meat is produced with a higher standard than non-certified organic products. To ensure that consumer faith in U.S. organic meat products is maintained and they continue to support domestic producers, the standards for organic pig living conditions should exceed those for conventional pigs from other countries.

In contrast, Certified Humane provides that total indoor floor space should provide each pig with "no less than 1.5 times their minimum lying area," and that mature sows must have a minimum of 37.6 ft^2 of space per sow.[61] They also provide a detailed breakdown of minimum total space requirement (lying area and additional floor space combined) by weight of the animal, see Table 2 below.

Table 2 Certified Humane minimum total indoor space requirements for pigs[62]

Weight (lbs)	22	44	66	88	110	132	154	176	198	220	242	264
Min. total area (ft^2)	1.7	2.4	3.3	4.2	5.0	5.9	6.6	7.2	7.5	8.1	8.5	9.1

Similarly, Animal Welfare Approved stipulates the following requirements for pigs, see Table 3 below.

[58] S. Edwards (2008). "Balancing sow and piglet welfare with production efficiency," *London Swine Conference – Facing the New Reality,* April 1-2.
[59] R.C. Weng, S.A. Edwards, & P.R. English (1998). "Behaviour, social interactions and lesion scores of group-housed sows in relation to floor space allowance," *Applied Animal Behavior Science, 59*: pp. 307-316.
[60] Council Directive 2001/93, *supra* note 19, art. 1(1)(a).
[61] Humane Farm Animal Care (2013). *Animal Care Standards: Pigs*, March.
[62] *Ibid*.

Table 3 Animal Welfare Approved Indoor Spacing Requirements for Pigs, when pigs have access to ranging and foraging areas[63]

When pigs have access to ranging and foraging areas:				
Breeder pigs	Sows: 16 ft^2	Boars: 16 ft^2	Farrowing Sows: 42 ft^2	
Fattening Pigs	Up to 66lbs: 3 ft^2	67-110 lbs: 4.5 ft^2	111-187 lbs: 7 ft^2	187-242 lbs: 8.5 ft^2
When pigs are excluded from ranging and foraging areas:				
Breeder Pigs (min. bedded lying area + min. additional loafing area)	Sows: 64 ft^2	Boars: 150 ft^2	Farrowing Sows: 112 ft^2	
Fattening Pigs (min. bedded lying area + min. additional loafing area)	Up to 66 lbs: 11 ft^2	67-110 lbs: 15 ft^2	111-187 lbs: 20.5 ft^2	187-242 lbs: 25 ft^2

As such, we recommend adding a new §205.239(f) establishing maximum indoor stocking densities for swine, to read:

(f) Total minimum indoor space requirements for swine, including bedded lying area and additional floor space.

(1) For breeder pigs;

(i) No less than 38 ft^2 for sows and boars.

(ii) No less than 42 ft^2 for farrowing sows.

(2) For growing pigs;

(i) No less than 3 ft^2 for pigs up to 66 lbs.

(ii) No less than 4.5 ft^2 for pigs 67-110 lbs.

(iii) No less than 7 ft^2 for pigs 111-187 lbs.

(iv) No less than 8.5 ft^2 for pigs over 187 lbs.

If NOP does not, at this time, strengthen the many weak areas in this proposed rule regarding welfare standards for swine species, then it must put separate recommendations for pig welfare on the NOSB's agenda immediately to begin the process of promulgating a pig-specific rule. If the requirements in this proposed rule move forward as they stand,

[63] Animal Welfare Approved (2015). *Animal Welfare Approved Standards for Pigs*.

organic pork products will continue to seek additional welfare labels in order to meet consumer expectations.

The time allowed for independent housing of calves is excessive

The language at §205.239(a)(7) does not establish a minimum age for weaning calves, and allows for calves to be individually housed and prevented from socializing or accessing the outdoors until 6 months of age.[64] In contrast, Certified Humane establishes that calves may not be weaned before 5 weeks of age and sets an 8 week limit for calves to be kept from the herd and prevented from socialization. The European organic standards set the same 8 week limit. Six months, or roughly 26 weeks, is more than three times the length of other welfare standards. It must therefore be reduced to better align with international and other domestic welfare requirements.

Research shows that calves benefit from social housing at an early age. Due to the greater space availability in group housing, calves are allowed a more natural and comfortable lying position and display increased social behaviors. When provided with socialization, interaction with other calves exceeds interactions with the dam as early as 2 weeks of age.[65] Play-fighting and social licking are found to occur in the second and fourth weeks of age, respectively.[66] Social housing has also been shown to reduce repetitive oral behaviors during the first 6 weeks of rearing and to decrease the incidence of hairballs in the rumen.[67] It has also been shown to increase play behavior.[68] Play behavior reaches a peak at around four months old, and by six months of age the incidence of play behavior and investigative behavior (e.g., sniffing another animal) decrease rapidly.[69] Allowing producers to house calves individually for up to 6 months of age would effectively deprive them of their prime period of play and socialization.

The European Food Safety Authority's Scientific Veterinary Committee recommends socializing calves as early as possible. The agreed with the following statements: "Where calves cannot be kept with their mother, the system where welfare is best is in groups with

[64] 81 Fed. Reg. 71, *supra* note 3, at 21967.
[65] K.E. Bøe & G. Færevik (2003) "Grouping and social preferences in calves, heifers and cows," *Applied Animal Behaviour Science, 80*: 175-190, at 183.
[66] *Ibid*.
[67] American Veterinary Medical Association (2008). "Welfare Implications of Veal Calf Husbandry, AVMA Literature Reviews. October 13. Web, last accessed July 12, 2016, *available at*: https://www.avma.org/KB/Resources/LiteratureReviews/Pages/Welfare-Implications-of-the-Veal-Calf-Husbandry-Backgrounder.aspx.
[68] M.B. Jensen, K.S. Vestergaard, & C.C. Krohn (1997). "Play behaviour in dairy calves kept in pens: the effect of social contact and space allowance," *Applied Animal Behaviour Science, 56*: pp. 97-108; M.B. Jensen & R. Kyhn (2000). "Play behaviour in group-housed dairy calves, the effect of space allowance," *Applied Animal Behaviour Science, 67*: pp. 35-46.
[69] AVMA, 2008, *supra* note 48.

a bedded area and an adequate space allowance available to them;" "The welfare of calves is very poor when they are kept in small individual pens with insufficient room for comfortable lying, no direct social contact and no bedding or other material to manipulate;" "Calves are very social animals, interacting frequently with other calves after one week of age and developing normal social behaviour only if they can interact freely with other calves."[70]

A primary concern of socializing calves at an early age is the risk of inappropriate suckling, in which calves attempt to suckle at other calves. When calves are not provided with opportunities to suckle appropriately they will spend time licking or sucking inanimate objects when housed individually, or other calves when housed in groups. A study observing calves in social housing found that repetitive oral behaviors occurred 10-35 percent of the time.[71] However, management practices can adequately address and prevent inappropriate suckling while still providing calves with the social interactions and play that they desire. Repetitive sucking is reduced when calves are given brief opportunities to suckle their dams, as little as 15 minutes each day. Providing objects in the housing for calves to direct their suckling behavior toward such as artificial teats, as well as providing additional water, are additional effective interventions.[72]

Calf welfare requires social interaction from an early, and any potential negative welfare associated with inappropriate suckling can be effectively prevented by designing systems appropriately. The maximum period for individually housing calves should be set at 8 weeks, and the rule should encourage producers to begin socializing calves as early as possible.

Regulations for temporary confinement must ensure adequate housing is provided and that instances of temporary confinement are rare and well-documented

For both mammalian and avian livestock, the allowance for temporary confinement must be clear and specific enough so as to prevent producers from exploiting the allowance and denying animals' access to the outdoors indefinitely. CFS appreciates the restrictive language prohibiting the potential of a disease outbreak as justification for temporary confinement.[73] However, the proposed rule fails to provide sufficient clarity to guard against producers continuously denying herds and flocks from accessing the outdoors. For example, if meat chickens are allowed to be kept indoors for the first four weeks of life, and

[70] European Food Safety Authority (2006). "Scientific opinion on the risks of poor welfare in intensive calf farming systems. An update of the Scientific Veterinary Committee Report on the Welfare of Calves," *The EFSA Journal, 366*: at 18.
[71] AVMA, 2008, *supra* note 48.
[72] AVMA, 2008, *supra* note 48.; EFSA, 2006, *supra* note 51.
[73] 81 Fed. Reg. 71, *supra* note 3, at 21970.

disease is documented in the area the remaining 2-3 weeks, these "organic" chickens will have never been even introduced to the outdoors.

To address these concerns, the final rule should include language restricting the ability of producers to utilize continuous confinement, including, but not limited to: establishing a maximum limit for periods of temporary confinement, by species; mandating that producers immediately reinstate outdoor access when the instigating issue or risk has been resolved; and, implementing a maximum number of times that "risk to soil or water quality" may be used as justification for temporary confinement, above which punitive measures will be taken against the producer.

In addition, the rule does not expressly require that adequate housing must be provided during all periods of temporary confinement. Language must be added clarifying that, during periods of temporary confinement, the housing provided must meet all standards outlined in the rule.

The rule must expressly prohibit the use of farrowing crates

Added language at §205.239(8)(i) provides that "Sows may be housed individually at farrowing and during the suckling period."[74] However, language is needed to clarify that sows in organic operations may never be confined to farrowing crates. Farrowing crates are likely prohibited by the stipulation that housing must provide "Sufficient space and freedom to lie down in full lateral recumbence, turn around, stand up, fully stretch their limbs without touching other animals or the sides of the enclosure, and express normal patterns of behavior."[75] Not only should this language be amended to be specific to swine as argued earlier in these comments, new language should also be added at §205.239 to expressly prohibit the use of farrowing crates in organic swine production. Any lack of clarity or specific language in the provision allowing individual housing of sows at farrowing could be exploited.

The final rule must define "aggression" to prevent unnecessary confinement of pigs

§205.239(a)(8)(iii) allows for individual housing for "Swine with documented instances of aggression."[76] Without a definition for "aggression" or "instances of aggression," this provision could lead to unnecessary confinement of individual pigs based on subjective assessments of behavior. Tail biting and other aggressive behavior is usually seen in confined populations. Overcrowding and boredom are the main causes of swine aggression. Free-ranging pigs rarely have aggression problems, as they spend 5 to 10 hours a day looking for food and rooting. The current standards §205.238(a)(4) already require

[74] 81 Fed. Reg. 71, *supra* note 3, at 21967.
[75] *Ibid*., at 21966.
[76] *Ibid*., at 21967.

producers to provide "conditions which allow for exercise, freedom of movement, and reduction of stress appropriate to the species." Implementation of these requirements should alleviate most instances of aggression.

CFS recommends adding a new term in §205.2, "swine aggression", to read: "A pig that repeatedly initiates threatening physical contact such as biting, knocking, or lateral fighting with another pig that ends with submissive behavior or escape by the subject animal."

Additionally, the provision at §205.239(a)(8)(ii) allowing for individual housing of boars must stipulate that boar pens must be of sufficient dimensions to enable animals to turn around easily and lie fully stretched, such as included in the Certified Humane standards for pigs.[77] It should be noted that some research on mixed-gender housing for pigs suggests that the presence of boars can reduce incidence and intensity of fighting among sows.[78]

Requiring 50 percent soil cover outdoors for all mammalian livestock will threaten soil and water quality

The phrase "with at least 50 percent soil" should be deleted from the proposed regulatory definition of outdoors and instead, specifications for outdoor space provisions should be clarified separately under the Mammalian and Avian Living Conditions sections. For ruminants in particular, there are times when access to pasture is inappropriate, and requiring producers to provide access to bare or vegetative soil during the non-grazing season can negatively impact soil and water quality through nutrient loading and runoff.

Managing cows on soil during the winter and non-grazing seasons contradicts Natural Resource Conservation Service (NRCS) recommendations and many local watershed requirements. Requiring year-round access to outdoor space that includes at least 50 percent soil cover is not conducive to the health and well-being of mammals, particularly heavier species. The NRCS Conservation Practice Standard allows for producers to use protected surfaces on sites that may become muddy due to the higher risk of disease and impaired mobility of animals in muddy conditions. Yards/feeding pads of appropriate material in high use areas should be encouraged during those periods in the interest of animal welfare.

CFS supports the language proposed by FOOD Farmers in their written comments as §205.239(a)(13)(ii). In addition, CFS supports removing "with at least 50 percent soil" from the proposed definition of "outdoors" at §205.2.

Avian Living Conditions

[77] HFAC, 2013, *Pigs*, *supra* note 42.
[78] *Ibid*.

Birds must be able to access outdoor space at all times; thresholds of "inclement weather" are not appropriate justification for continuous confinement

The regulations currently allow for the temporary confinement of poultry flocks in inclement weather, defined as "Weather that is violent, or characterized by temperatures (high or low), or characterized by excessive precipitation that can cause physical harm to a given species of livestock."[79] The proposed rule seeks to establish clear parameters for the temperatures at which poultry producers may consider the weather to be unsuitable for birds to be outdoors. The low threshold temperature of 40 degrees Fahrenheit (below which animals may be confined to protect them from cold) and the high threshold of 90 degrees Fahrenheit (above which animals may be confined to protect them from heat) are proposed without sufficient reasoning or scientific support.[80] Research suggests that the concern for thermal stress is more related to the negative growth promotion and feed efficiency effects of lower- or higher-than-optimal temperatures, rather than on bird wellbeing.

While the literature is slightly varied on the optimal temperature range for efficient production, and primarily focused on temperatures in indoor, controlled environments, an ideal temperature range seems to fall between 17-25°C (62.6-77°F).[81] However, poultry scientists have consistently demonstrated that the stress associated with lower- or higher-than-optimal temperatures primarily impacts growth and feed efficiency rather than animal wellbeing. Researchers have also concluded that, "Selection for growth rate and feed efficiency (FE) is associated with a number of undesirable consequences and the increased susceptibility to heat stress is one of them. The magnitude of the reduction in body weight (BW) and BW gain at high temperatures (averaging 30°C [86°F]) appears to be associated with a high growth rate and breast yield at normal environment (averaging 25°C [77°F])."[82] This illustrates the importance of establishing clear breed requirements for organic poultry production. As other poultry scientists have demonstrated, "Because fast-growing broilers produce more heat and have a higher heat load, the effect of heat stress is more pronounced in commercial broiler stocks and in broilers with high growth potential compared to the slower-growing chickens (Cahaner and Leenstra, 1992; Eberhart and Washburn, 1993; Cahaner *et al*., 1995; Yunis and Cahaner, 1999). During heat exposure, the

[79] 7 C.F.R. §205.2

[80] 81 Fed. Reg. 71, *supra* note 3, at 21970.

[81] J. Blahova, et al. (2007). "Effect of Low Environmental Temperature on Performance and Blood System in Broiler Chickens (*Gallus domesticus*)," *Acta Vet Brno, 76*: pp. S17-S23; H. Lin, et al. (2006). "Strategies for preventing heat stress in poultry," *World's Poultry Science Journal, 62*: pp. 71-85, at 72.

[82] Lin, et al., 2006, *supra* note 62, at 72.

slower growing broiler lines have relatively lower mortality and body temperature compared to fast growing lines (Yalcin, *et al.*, 2001)."[83]

Further, if birds are introduced to cold or hot temperatures at an early age, it has been shown that there thermotolerance improves during temperature challenges later in life. Shinder, et al. (2002) showed that short-term exposure to cold in chicks improved viability during periods of extreme cold, and Yahav and McMurtry (2001), showed the same increased thermotolerance to heat stress when exposed to heat in the first days of life.[84]

Bird must, of course, always be allowed to seek shelter indoors when desired, such as in unfavorable weather conditions. Confining them indoors when temperatures are below or above a certain threshold, however, is not a matter of protecting their welfare. Maintaining ideal temperatures in the housing (e.g., heat during winter and air conditioning during summer) will likely encourage birds to seek shelter indoors while still allowing access to outdoor space for those that continue to utilize it. Even with air conditioning in the summer, for example, confining all birds indoors might lead to greater discomfort due to the generation of body heat combined with warm external temperatures, leading some to seek reprieve outdoors. Maintaining access to the outdoors during this time may also result in ancillary benefits to the producers, as the energy costs of cooling the housing space will likely increase with all birds confined indoors at one time.

Justification for allowing 70% of flooring to be slatted is needed

The proposed rule allows for organic poultry houses to be designed with slatted flooring so long as "30 percent of the flooring is solid with sufficient litter so that birds may dust bathe freely without crowding."[85] AMS provides no justification for allowing this ratio of slatted-solid flooring for poultry. According to the International Poultry Training Centre in The Netherlands, the ratio of litter to slatted flooring in poultry houses has a direct impact on the stocking density producers can use, and "the higher proportion of slats, the higher the density can be."[86] The three common litter-to-slatted floor ratios are ⅓ slatted floor to ⅔ litter, ½ slatted floor to ½ litter, and ⅔ slatted floor to ⅓ litter.[87] AMS is proposing to allow organic producers to use a slightly higher proportion of slats, at 70 percent slatted floor to 30 percent litter. The relationship between increased proportion of slatted flooring

[83] Lin, et al., 2006, *supra* note 62 (2006), at 72. All references cited in the quote have been submitted to the docket with these comments.

[84] Blahova, 2007, *supra* note 62; S. Yahav & J.P. McMurtry (2001). "Thermotolerance Acquisition in Broiler Chickens by Temperature Conditioning Early in Life—The Effect of Timing and Ambient Temperature," *Poultry Science, 80*: pp. 1662-1666.

[85] 81 Fed. Reg. 71, *supra* note 3, at 21971.

[86] J. Hulzebosch (2006). "Wide range of housing options for layers," *World Poultry, 22(6)*: pp. 20-22.

[87] *Ibid*. Full (100 percent) litter systems are also used, but full (100 percent) slatted floor systems are uncommon as they are relatively expensive and inconvenient for farmers to provide regular care to the birds.

over litter and increased stocking densities suggests that this housing design is primarily functional for industrial confinement poultry production, and likely not appropriate for organic systems.

Producers using aviary housing must demonstrate how the housing design encourages birds in tiered levels to access the outdoors

An important component for encouraging birds to utilize the outdoor space is that the exits are well distributed in the space, such that birds are not forced to travel far inside the shelter in order to find the nearest exit. Birds often stick to a specific area. As such, there must be an exit available and reasonably accessible from any given point in the house. CFS is concerned that aviary-style housing, which utilizes multiple levels or tiers, does not provide meaningful outdoor access if all exits are located on the ground level. Before allowing for aviary-style housing in the final rule, it must be demonstrated that aviaries can be designed such that birds are either consistently encouraged to move down to the ground level, and thus regularly made aware of the availability of exits, or that exits can be provided at each tier that safely and effectively allow birds to get outside. AMS estimates that 50 percent of the U.S. organic laying flock is in aviary housing. It would be detrimental to organic integrity and trust in the organic label if half of the organic laying hen population are kept in housing that cannot provide meaningful outdoor access even after the rule is finalized.

Outdoor access for poultry must require 50% vegetative cover

The NOSB recommended that outdoor space consist of at least 50 percent vegetative cover. Additionally, many private welfare labels include language specific to providing vegetation or vegetative cover in outdoor areas for poultry. For example, Animal Welfare Approved includes language for laying hens and meat chickens, requiring that "nutritional requirements of grazing animals can be adequately met through grazing and appropriate supplementation," and that "Birds must have access to growing green vegetation on the range whenever conditions allow."[88]

CFS recommends that NOP exceed the precedents set by existing welfare labels and require that outdoor space for poultry be at least 50 percent vegetative cover when conditions allow. This requirement will help ensure that producers are providing adequate outdoor space per bird. Overcrowding the space will denude the vegetation, such that producers will need to employ measures such as reducing stocking density or increasing the outdoor space in order to comply with the vegetative cover standard.

[88] AWA, 2015, Standards for Laying Hens, and AWA, 2015, Standards for Meat Chickens, *supra* note 9.

The vegetative cover requirement will also bring organic poultry more strongly in line with consumer expectations of organic. Bare soil, without vegetation does not provide a quality living environment for the birds, since soil without living roots and plants does not provide the following important food sources: insects, invertebrates, or plant matter. Bare soil, without living plants, quickly becomes compacted and does not provide good scratching, dust bathing, or exercise areas for the birds. Poultry outdoor access areas comprised of bare soil do not protect water, soil or air quality. During times of high temperatures or sunny days, bare soil yards are significantly hotter than vegetated yards, making the outdoor experience for the birds less attractive and hardly beneficial to their welfare.

CFS recommends the following changes to the proposed rule to ensure that poultry producers are providing vegetative cover for at least 50 percent of the outdoor space:

Adding a new term, "vegetation," in the definitions at §205.2 to read: *"Vegetation.* Living plant matter, can be native or planted, anchored in the soil by roots. Can be a mix of grasses, forbs and/or brush with majority of the soil covered by this living plant matter during the growing season*."*

Changing the language at §205.241(c)(1) to read: "Outside access and door spacing must be designed to promote and encourage outside access for all birds on a daily basis. Producers must provide access to the outdoors at an early age to encourage (train) birds to go outdoors. Outdoor areas must be at least 50% covered with vegetation and suitable enrichment, such as shade and water, to entice birds to go outside."

Changing the language at §205.241(c)(8) to read: "At least 50 percent of outdoor access space must be covered with vegetation except when conditions threaten the soil or water quality. Outdoor access without soil or vegetation must be provided temporarily only due to seasonal or climatic conditions."

The proposed outdoor space requirements are not sufficient to provide for natural behavior of birds, and are not in line with other welfare systems

AMS has proposed outdoor space requirements of 2.25 pounds (lbs) of hen per square foot (ft^2) for layers, comparable to 2 ft^2 per bird. According to the Federal Register notice, "This is consistent with the NOSB recommendation for outdoor stocking density."[89] However, the recommendation from NOSB was a range of 2-5 ft^2, noting that 5 ft^2 would ensure adequate availability of vegetation per bird.[90] In addition, the proposed outdoor space requirements for broilers and turkeys is 5 lb per ft^2, which is equivalent to less than 1 ft^2 per bird for

[89] 81 Fed. Reg. 71, *supra* note 3, at 21984-85.
[90] 81 Fed. Reg. 71, *supra* note 3, at 21984-85.

chickens according to AMS' equivalency calculations. CFS has previously supported outdoor space requirements that provide the equivalent of 5 ft^2 per bird, which is the minimum requirement of Organic Valley for its layer flocks, for example.

Table 4 Comparison of Outdoor Space Requirements

	Proposed Rule	**American Humane Association**	**Animal Welfare Approved**	**Certified Humane**
Broilers	5 lb/ft^2 (<1 ft^2/bird)	7 lb/ft^2	2 ft^2/bird	109 ft^2/bird *
Layers	2.25 lb/ft^2 (2 ft^2/bird)	Pasture: 109 ft^2/bird* Aviary: None specified Slatted/Mesh: None specified Floor Litter: None specified	4 ft^2/bird	Pasture: 109 ft^2/bird* Free Range (housing type not specified): 2 ft^2/bird
Turkeys	5 lb/ft^2**	None specified	11 ft^2/bird	None specified

*American Humane and Certified Humane mandate outdoor space as minimum 2.5 acres per 1,000 birds in pasture-based poultry systems, which is roughly 109 ft^2 per bird. According to personal communication with Certified Humane, this acreage could at most be broken into fourths and rotate the birds between the four sections. This would provide for an allowed minimum space per bird of roughly 27 ft^2 per bird.

**Certified Humane provides a range of average weights for broiler, hen, and tom turkeys of 15-37.5 pounds. Using this range, the proposed 5 lb/ft^2 for turkeys would equate to roughly a range of 3-7.5 ft^2 per bird depending on the birds raised.[91]

Table 4, above, clearly depicts how the proposed outdoor space requirements for broilers are deficient compared to two of the three private welfare labels.[92] Considering that an intention of updating the rule is to prevent organic producers from needing additional certifications to convey high welfare provisions to their customers, the organic standards

[91] Humane Farm Animal Care (2014). *Animal Care Standards: Turkeys*, August.

[92] American Humane's requirement of 7 lbs per ft^2 amounts to roughly 0.64 ft^2 per bird using AMS' conversion formula based off the mature weight of the ISA Brown strain of 4.5 pounds. American Humane Certified (2013). *Animal Welfare Standards for Turkeys*, May 22.

should exceed private welfare standards wherever possible. Less than 1 ft^2 per bird is less than half the outdoor space required by Animal Welfare Approved of 2 ft^2 per bird. CFS strongly urges NOP to require organic producers to at least meet, if not exceed, the space required by the strongest private welfare labels. Therefore, the final rule should require a minimum space equivalent to 2 ft^2 per bird, equivalent to 2.8 lbs of bird per ft^2 at maturity based on mature weight of broiler chickens of 5.6 lbs.

There is wide variation in the types of poultry housing utilized by layer operations in the U.S., and the outdoor space requirements for layers must reflect this diversity. As it did in the proposed rule for indoor space requirements, NOP should establish distinct minimum outdoor space requirements for different types of housing. For all stationary housing systems, 2 ft^2 of outdoor space per layer is not sufficient to promote the high level of welfare required of organic. Instead, a minimum requirement should equivalent to 5 ft^2 per bird, equivalent to 1 lb of bird per ft^2 at maturity based on mature weight of laying hens of 5 lbs. The next section of our comments discusses pasture-based systems in great detail.

The final rule should outline separate standards for organic pastured poultry systems

Pasture-based housing systems for poultry are unique in design and the provision of welfare. For this reason, they are not adequately covered by standards governing "outdoor" or "indoor" space requirements, and require separate standards be developed for these production systems. CFS supports the request made in written comments submitted by the National Organic Coalition for NOP to establish a separate section, to be §205.241(c)(9), outlining the requirements of pasture-based poultry operators.

The American Pastured Poultry Producers Association identifies two main practices for pasturing poultry. Daily move systems (also called pasture pen systems) consist of a movable, well-ventilated shelter without a floor, such that direct access to the pasture is provided, in which the birds are confined at all times to within this structure. Currently, these systems are not adequately covered by the proposed rule, as the proposed definition of "outdoors" or "pasture housing."[93] These systems are difficult to fit within the current rule, as birds must have "year round access to the outdoors,"[94] but "Space that has a solid roof overhead and is attached to the structure providing indoor space does not meet the definition of outdoor access."[95] As such, these structures within which birds are confined but on pasture would have to be defined as *either* indoor or outdoor space, and could not constitute both. This is problematic, particularly for establishing minimum space requirements in such systems. NOP must determine separate standards for daily move

[93] 81 Fed. Reg. 71, *supra* note 3, at 21960.
[94] *Ibid*., at 21967.
[95] *Ibid*., at 21967.

pasture systems, also referred to as pasture pen systems, based on current, scientific data regarding welfare, stress, flock size, and adequate stocking rates to provide for the health and natural behavior of the birds.[96]

Day range pasture systems (also called movable shelter systems), also consist of moveable structures, which may or may not have flooring, but birds are provided access to space outside of the structure created by portable fencing. There is a clear delineation between the outdoor and indoor space provided.

Organic poultry producers that raise birds on pasture should represent the gold standard of pastured poultry production. As such, it is important to look to existing welfare standards as benchmarks for organic to meet and ideally, exceed. Certified Humane's definition of pasture raised poultry requires that, whether the housing provided is fixed or mobile, the birds have access to the pasture space, which is more than 50% vegetative cover, 12 months a year and are only kept indoors at night as protection from predators (this definition would not include daily move/pasture pen system but would refer to dry range/movable shelter systems).[97] Both American Humane Certified and Certified Humane require that, for layers on pasture, 2.5 acres be provided per 1,000 birds.[98] Producers are allowed to divide this pasture area into at most quarters and rotate the flock among the four segments. This amounts to a minimum of 27.25 ft^2 per bird. For Certified Humane, these same space allowances are required of broiler chickens when they are raised on pasture.[99]

NOP should require that organic producers raising layer or broiler chickens on pasture provide an equivalent amount of space per bird, 27.25 ft^2, equivalent to roughly 0.15 lbs of bird per ft^2 at maturity. In systems that do not fit the criteria for pastured organic, the space requirements would be as described above, a minimum of 2 ft^2 per broiler and 5 ft^2 per laying hen.

It is critical that pastured poultry continue to play a role in the broad spectrum of organic poultry production systems. While there is a variety of strategies and systems utilized by producers raising chickens on pasture in the U.S. NOP should, to the extent possible, promulgate standards that recognize this diversity in operations. It is imperative, however, that the welfare standards for certified organic pastured poultry operations at least meet those of existing domestic welfare labels.

---

[96] *See*, e.g., A.W. Bassler (2005). *Organic Broilers in Floorless Pens on Pasture*. Doctoral Thesis. Uppsala, Sweden: Swedish University of Agricultural Sciences Department of Animal Nutrition and Management.
[97] HFAC, 2014, Egg Laying Hens, *supra* note 9.
[98] *Ibid*.; Amer. Humane Cert., 2016, Laying Hens – Free Range & Pasture, *supra* note 9.
[99] HFAC, 2014, Chickens, *supra* note 9.

The lengths allowed for confining broilers and pullets due to the stage of life are contrary to consumer expectations of organic

Allowing producers to deny broiler chickens access to the outside for the first 4 weeks of life means that broilers may spend nearly 60 percent of their roughly 7-week lives with complete confinement indoors. This is in direct contradiction to the requirement at §205.241(c)(1) that "Producers must provide access to the outdoors at an early age to encourage (train) birds to go outdoors."[100] Providing access only in the latter half of a bird's life can hardly be considered "at an early age." Additionally, as the proposed language acknowledges, birds must be conditioned to the outdoors in order to meaningfully use the space. Confining birds indoors for 4 weeks will effectively discourage birds from utilizing the outdoor area for the remaining 2-3 weeks of their lives. By allowing producers to deny access to the outdoors for broilers for the first 4 weeks, it is likely that many of the birds will never go outdoors unless coerced or forced.

While generally birds should not be outside before their feathers have fully developed, typically by 4-5 weeks, there are a number of factors that influence the age at which chicks can safely be introduced to the outdoors. Certain breeds, for example, are more likely to develop feathers at earlier ages. In warmer climates and during warmer seasons, in which daytime temperatures are consistently above 65°F, birds as young as 2 weeks old can safely be outside.[101] The final rule must ensure that producers are required to provide birds with access to the outdoors prior to 4 weeks of age when feathering and weather are suitable.

The allowance of continuous confinement of pullets up to 16 weeks similarly decreases the likelihood that birds will successfully utilize the outdoor space. As such, the stage of life at which pullets must be provided with outdoor access should be reduced to 8 weeks. CFS recommends that the language at §205.241(d)(2) be changed to, "The animal's stage of life, including until sufficiently feathered, but no longer than the first 4 weeks of life for broilers and other meat type birds and the first 8 weeks of life for pullets."

Furthermore, the fact that climates and seasons and poor feathering may prevent birds from safely going outdoors prior to 4 weeks of age reinforces the need for requiring

[100] 81 Fed. Reg. 71, *supra* note 3, at 21970.

[101] Southern States (no date). "Moving Your Chicks Outside," Web. Last accessed July 12, 2016, *available at*: https://www.southernstates.com/articles/moving-chicks-outside.aspx; My Pet Chicken (no date). "The My Pet Chicken Guide to Chicken Care, Chapter 4: Caring for Baby Chicks," Web. Last accessed July 12, 2016, *available at*: http://www.mypetchicken.com/backyard-chickens/chicken-care/chapter-4-caring-for-baby-chicks.aspx?t=1; J. Rhodes (no date). "Getting Started with Chickens: The Ultimate Guide," *Abundant Permaculture*, Web. Last accessed July 12, 2016, *available at*: http://abundantpermaculture.com/getting-started-with-chickens-the-ultimate-guide/.

producers to use poultry breeds that align with organic principles and expectations. By requiring slower growing broiler breeds, producers that determine access to the outdoors prior to 4 weeks would negatively impact the birds' welfare would be confining birds for a smaller percentage of their lifespans compared to fast-growing breeds.

Certain vaccinations have a period before which they effectively inoculate birds against pathogens of concern. CFS strongly believes that this waiting period for vaccines to take effect must not be used as justification for confining poultry indoors longer than absolutely necessary. Any vaccine-related temporary confinement must correspond only to the requirements of the specific vaccine. Further, producers must not use the lack of vaccination as a reason to confine poultry when there is an approved vaccine available that could be administered to the flock.

CFS, therefore, recommends the addition of new language, to be §205.241(d)(2)(i) and (ii):

(i) If temporary confinement of poultry is used to allow vaccinations the time needed to become fully effective before exposing birds to the outdoors, this temporary confinement is limited to the earliest possible timeframe for that specific vaccine, and no longer than 16 weeks.

(ii) When regionally necessary, nonuse of available vaccines should not be a reason to confine poultry for extended periods of time. The use of approved vaccinations to prevent disease is encouraged as part of a comprehensive Organic Systems Plan.

The final rule must expressly require a minimum period of darkness for poultry

The proposed language at §205.241(b)(3) enables producers to use artificial light to prolong the daylight up to 16 hours. This phrasing is unclear as to whether producers are required to provide a minimum period of darkness for poultry. The explanatory text of the notice states only that, "No artificial light could be used to prolong the day if natural darkness was 8 hours or less."[102] While this appears to be an attempt to prevent producers from keeping birds in continuously lit conditions, it lacks sufficient clarity to effectively prevent this practice. As it stands, the text of the rule allows producers to use artificial light for 16 hours of their choosing, meaning they could use natural light during the 8 hours mid-day, and use artificial lighting overnight. The explanatory language in the notice restricts the use of artificial light only to days in which the natural darkness was longer than 8 hours. However, this restriction needs to be made clear in the text of the final rule itself. CFS also recommends rephrasing that restriction to an explicit requirement that producers provide birds with a minimum period of darkness.

[102] 81 Fed. Reg. 71, *supra* note 3, at 21971.

The proposed implementation timeline for poultry producers to comply with outdoor space requirements is unnecessarily long

The proposed timeline for full implementation of the rule is unacceptable. The exception for poultry producers from the one year implementation timeline is unnecessarily complicated and provides for too long of a window in which certified organic poultry may continue to be crowded and denied access to the outdoors. This timeframe is in stark contrast to that provided to the organic ruminant industry when the pasture rule was finalized in 2010. Published in the Federal Register February 17, 2010, the notice established that the rule was to become effective June 17, 2010.[103] Operations that were certified organic at the time of the rule's publication were given only until June 17, 2011, one year from the effective date, to fully comply with the new rule. The total period from publication of the final rule to requiring full compliance by the industry, therefore, was 16 months. Furthermore, operations that were not certified organic at the time of the rule's publication were required to comply with the final rule in order to obtain certification at the effective date, June 17, 2010.

Achieving compliance with the final pasture rule was a significant undertaking for organic ruminant producers, yet they were provided a 16 month window to bring their operations in line with the new rule. The proposed timeframe in the Organic Livestock and Poultry Practices rule would afford the poultry industry nearly 5 times that. This demonstrates an inappropriate preferential treatment within NOP for certain organic producers over others. CFS recommends that the final rule follow the precedent set by implementation of the pasture rule. Full compliance with the rule should be required one year after the date at which the rule goes into effect, which must be no more than one year after publication of the rule.

Transport and Slaughter

CFS supports the positions and recommendations regarding transportation of organic livestock put forward by FOOD Farmers in their written comments. In particular, the proposed rule should be amended to:

- Specify the type of transportation covered by the regulation. FOOD Farmers recommends changing §205.242(a) to read "Transport to Buyers, and Slaughter and Auction Facilities."
- Make the requirements for identifying organic animals during transport under §205.242(a)(1) more feasible for small producers by removing the requirement that

[103] 75 Federal Register 31. 7154, 7195 (Wednesday, February 17, 2010), https://www.regulations.gov/document?D=AMS-TM-06-0198-4165.

organic animals be segregated in separate pens from non-organic animals during transport.

- Add clarifying language at §205.242(a)(2) to specify that animals must be ambulatory in order to be considered fit for transport.
- Allow for the provision of bedding during transport to be dependent on the species, size, and type of flooring.
- Amend §205.242(a)(5) to be a direct reference to the Federal Twenty-Eight Hour Law (49 USC 80502).

In regards to the slaughter provisions for mammalian and avian species, CFS agrees that organic operations must be in compliance with all requirements established by USDA's Food Safety and Inspection Service (FSIS) and the Humane Slaughter Act (HAS). As such, we support AMS' proposal in the rule related to slaughter.

National Environmental Policy Act (NEPA)

NOP must comply with NEPA before finalizing this proposed rule. USDA's NEPA regulations mandate that each USDA agency comply with NEPA and the Council on Environmental Quality's (CEQ's) implementing regulations. 7 C.F.R. § 1b.4 excludes certain agencies—including the Agricultural Marketing Service—from NEPA's requirements to conduct an Environmental Assessment or an Environmental Impact Statement "unless the agency head determines that an action may have a significant environmental effect." The Organic Livestock and Poultry Practices rule will have a significant environmental effect. Thus, a failure to conduct a NEPA analysis would be arbitrary and capricious, otherwise not in accordance with the law, and without observance of the procedure required by law. 5 U.S.C. 706(2)(A), (D).

The Organic Livestock and Poultry Practices rule will substantially change the way organic animals are raised, including providing much needed access to the outdoors for millions of animals that currently do not have access. This shift in organic livestock rearing may have significant positive or negative impacts on the environment, depending on how the final rules are structured. For example, if the agency promulgates a rule that only requires outdoor access for poultry to be 50 percent bare soil, this could further compact and degrade soil quality, negatively impacting waterways. On the other hand, if NOP adopts the NOSB recommendation of 50 percent vegetative cover for poultry outdoors, this could have a positive impact on soil health and water quality.

The CEQ regulations define effects as: "those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial." 40 C.F.R. § 1508.8(b). Similarly, 40 C.F.R. § 1508.27(b)(1) states "a

significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial." Simply because the balance of this rule may be beneficial to the environment does not diminish agency's requirement to study the impacts. "Environmental[ly] enhancing agencies and actions are not exempt from NEPA absent a clear and unavoidable *statutory* conflict. The relevant inquiry in each case is whether the proposed action has a significant impact on the quality of the human environment. This question cannot be answered without at least going through the preliminary environmental assessment stage. *See Jones v. Gordon,* 792 F.2d 821 (9th Cir.1986). It is only through the analysis mandated by NEPA that the true impacts of an agency action can be identified and evaluated." *Douglas County v. Lujan*, 810 F. Supp. 1470 (D. Or. 1992) at 1482.

Conclusion

The Organic Livestock and Poultry Practices rule is long overdue. There are many areas in the proposed rule that must be strengthened in the final iteration in order to protect the integrity of the organic label, to ensure that organic consumers are buying animal products that meet a consistent standard of welfare, and to adhere to the spirit and letter of the law. NOP must move forward with the final rulemaking in a timely manner, so that animal production practices that are less-than-organic will not be permitted to continue.

Thank you for the opportunity to submit comments.

Respectfully submitted,

Paige M. Tomaselli, Esq.
Senior Attorney

Cameron Harsh
Senior Manager, Organic & Animal Policy

ConsumersUnion®

POLICY & ACTION FROM CONSUMER REPORTS

June 9, 2017

Paul Lewis, Ph.D.
Director, Standards Division
National Organic Program, USDA-AMS-NOP
Room 2646-So., Ag Stop 0268
1400 Independence Avenue S.W.
Washington, D.C. 20250-0268

Submitted via www.regulations.gov.

Comments of Consumers Union to the U.S. Department of Agriculture Agricultural Marketing Service on the National Organic Program (NOP) Organic Livestock and Poultry Practices Second Proposed Rule[1]
Docket No. AMS-NOP-17-0031

Consumers Union, the policy and mobilization arm of Consumer Reports, urges the U.S. Department of Agriculture (USDA) to let the Organic Livestock and Poultry Practices (OLPP) rule, published in the Federal Register on January 19, 2017, become effective without further delay. Therefore, among the four options listed as "Actions Being Considered" by the USDA in the notice referenced above, the best would be Option 1, "Let the rule become effective. This means that the rule would become effective on November 14, 2017."

The OLPP rule, which amends and improves existing organic production and handling requirements, is the result of over a decade of public engagement in the organic rulemaking process. Changes under the rule have wide support among organic industry stakeholders, including consumers.

Our most recent data show that the rule is supported by a vast majority of the Americans who support the organic industry by often or always buying organic foods. According to a Consumer Reports survey conducted in March 2017,[2] the vast majority (86%) of consumers who often or always buy organic food say it is highly important that

[1] 82 Fed. Reg. 21742 (May 10, 2017).

[2] Consumer Reports conducted the survey to assess the opinion of Americans regarding standards for the organic label. Opinion Research Corporation (ORC) of Princeton, New Jersey, administered the survey to a nationally representative sample of 1,018 adult U.S. residents through its CARAVAN Omnibus Survey. Respondents were selected by means of random-digit dialing and were interviewed via phone. The survey fielded from March 23-26, 2017. The margin of error is +/-3.1 percentage points at the 95% confidence level. The data were statistically weighted to be demographically and geographically representative of the U.S. population.

animals used to produce these foods are raised on farms with high standards for animal welfare, such as minimum space requirements or access to outdoor space. While the new rule is not perfect, it would be a step in the right direction toward providing consumers with assurance that producers of organic meat, poultry, dairy, and eggs meet standards for improved animal welfare.

The new rule also would create consistency on access to the outdoors for chickens, including laying hens, by setting a minimum outdoor space requirement. Our survey found that 83% of consumers who often or always buy organic food think it is highly important that organic eggs come from hens able to go outdoors and with enough space to move around freely.

Not only is there wide support for the OLPP standards from consumers, but there is also widespread support from the organic industry, as shown by a letter of support for the rule signed by more than 300 producers representing $1.95 billion in annual sales.[3]

It is important to note that the new rule does not add a requirement for outdoor access for poultry; rather, it clarifies the existing requirement for outdoor access by setting a minimum space requirement. This change creates consistency in how the existing rule is interpreted by different certifiers. As a result, it will assure consumers who buy organic foods that animals actually were able to go outdoors.

Some organic poultry businesses do not want to let their birds outdoors, and oppose the OLPP rule. We urge the USDA to consider that organic certification is a choice, not a requirement for any farmer or business. Likewise, purchasing certified organic foods is a choice for consumers. To protect consumers who buy organic foods from being misled and ensure their expectations are met, farmers and businesses that cannot meet all the requirements for organic certification should not sell their products as certified organic. The new rule will require that producers sell their products with a label that accurately reflects their production practices and therefore no longer misleads consumers.

Since the existing standards have always required "access to the outdoors," most organic farmers already meet this requirement. According to the Organic Trade Association, 76% of organic farmers currently allow their flocks to have "real outdoor access."[4]

We are aware that some opponents of the new rule argue that outdoor access for chickens increases disease risk. This argument is contradicted by published research. We urge you to consider the following results of published research summarized by the National Organic Coalition:

---

[3] Organic Trade Association, Letter from 334 organic beef, pork, dairy, and poultry producers to George Ervin "Sonny" Perdue III, Secretary, U.S. Department of Agriculture (Apr. 28, 2017) (online at ota.com/sites/default/files/indexed_files/Organic%20Livestock%20and%20Poultry%20Producer%20Letter.pdf).

[4] Organic Trade Association, "Take action now on animal welfare rule" (May 2017) (online at www.ota.com/livestockpractices).

> Avian flu viruses generally carried by wild birds are almost invariably harmless to poultry (low pathogenicity avian influenza, or LPAI). Some LPAI strains, however, have the potential to mutate into "highly pathogenic avian influenza" (HPAI) strains, which are deadly to poultry. Research shows that the mutation of LPAI to HPAI occurs almost exclusively in crowded indoor poultry houses. ... Lower stocking densities and outdoor access are part of the solution, not the problem. Preventing future outbreaks of HPAI should involve addressing the *root of the problem* by building a system of poultry farming with low densities, outdoor access, and healthy birds with strong immune systems.[5]

The OLPP rule creates consistency, sets an appropriately high bar for animal welfare, and meets consumer expectations in many areas. Certified organic farms should do more than simply substitute organic-approved inputs for conventional inputs; organic food should reflect a different production system and a different way of farming, which should include humane treatment and improved living conditions for animals.

We urge the USDA to make the OLPP rule effective without further delay. Thank you for considering our comments.

Respectfully submitted,

Charlotte Vallaeys
Senior Policy Analyst

[5] National Organic Coalition, "Avian Influenza and Outdoor Access for Organic Poultry Flocks" (July 13, 2015) (online at www.nationalorganiccoalition.org/_literature_130075/Avian_Influenza_and_Outdoor_Access_for_Organic_Poultry).

Paul Lewis Ph.D., Director,
Standards Division, National Organic Program,
USDA-AMS-NOP,
1400 Independence Ave. SW., Room 2642-So.,
Ag Stop 0268, Washington, DC
20250-0268.

Docket: AMS-NOP-17-0031; NOP-15-06A,
RIN: 0581-AD74

Re: National Organic Program (NOP); Organic Livestock and Poultry Practices proposed rule

The Cornucopia Institute is a national food and farm policy watchdog group working to uphold the integrity of organic agriculture. Through research and investigations on agricultural and food issues, Cornucopia provides needed information to family farmers, consumers and other stakeholders in the good food movement and to the media. Cornucopia has more organic farmer members than any other non-profit organization and seeks to protect the integrity of the organic label through our work.

The Cornucopia Institute supports letting the proposed Organic Livestock and Poultry Practices rule become effective as proposed. This would allow the rule to come into effect on November 14, 2017. The final Organic Livestock and Poultry Practices rule will facilitate the National Organic Program (NOP) in consistently enforcing more defined animal welfare benchmarks on organic farms and ranches. The final rule will also remove some loopholes being taken advantage of by some large operations. In addition, further delay in rulemaking only serves to weaken the organic label as consumers have a certain perception of organic livestock care that is not the current reality. Many consumer and animal welfare groups support this rulemaking, highlighting the issue in the eyes of the public.

Cornucopia feels that this proposed rule is not strong enough in many respects, but that to abandon it would undermine the influence of the National Organic Standards Board (NOSB) and its long-term history of engaging organic stakeholders in the rulemaking process. As a federal advisory board, mandated under the Organic Foods Production Act of 1990, the integrity of the NOSB is an essential part of the organic program.

Congress created the NOSB so that a balance of organic interests would have a seat at the table in defining, maintaining and enhancing organic standards. Their recommendations cannot go unheeded by the USDA.

In fact, the NOSB has made many recommendations regarding livestock health and living conditions since the early 2000s. In 2002, the NOSB made recommendations including prohibiting "porches" to meet the requirement for outdoor access in poultry.[1]

Between 2009 and 2011, the NOSB issued another series of recommendations on animal welfare. The November 2009 recommendation suggested revisions and additions to the livestock health care practice standards and living conditions standards. The NOSB recommended banning or restricting certain physical alterations, and requiring organic producers to keep records on animals which were lame and/or sick, including how they were treated.

In December 2011, the NOSB released suggested changes to the animal welfare standards.[2] These recommendations included providing definitions for terms that were undefined in the animal welfare standards, including "outdoor access" and "soil." At this time, the NOSB also reiterated that true outdoor access is a basic tenant of organic production.

Many of these NOSB recommendations were considered, as is appropriate, for the rule in question. The NOSB's voice was also prominent in asking for better enforcement of the current organic livestock rules, even before the USDA Office of the Inspector General identified inconsistencies in certification practices in 2010.

Due to the work and time invested in the issue by the NOSB and organic stakeholders, the Organic Livestock and Poultry Practices rule should be enacted as planned. In addition to the considerations regarding the NOSB, there is also no doubt that inconsistencies and poor coverage of poultry issues in the current organic livestock standards cannot be allowed to stand. This rule does wipe out the practice of poultry producers using "porches" to qualify as outdoor access, something that has been needed for some time.

Since its inception the organic industry has asked for strict oversight. Industrial interests in "organic" egg production were fully aware that the current standards require outdoor access, and that tougher enforcement provisions were being debated, and they still built into infrastructure including the porches. These businesses are mostly conventional with a small portion of their business in organics. They are not the dedicated businesses that built and sustain the organic label. To delay this rule from being enacted due to the push of conventional agribusiness would harm the organic label.

Alternative recommendations should the USDA choose not to enact the rule as planned

If the USDA instead chooses to suspend the rule indefinitely, we respectfully request that the department immediately and vigorously enforce the current standards requiring

---

[1] NOSB. 2002. "Recommended Clarification on Access to the Outdoors for Poultry (PDF)." https://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations/spring2002

[2] NOSB. 2011. "Formal Recommendation by the NOSB to the NOP, Animal Welfare and Stocking Rates." https://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations/fall2011

outdoor access for all organic livestock. This would include disallowing porches in organic poultry production.

In addition, if the USDA chooses to suspend the rule instead of enacting it on schedule, we request that the rule be modified to address its weaknesses and then finalized as soon as possible.

The Cornucopia Institute submitted formal comments on the substance of both the initial iteration of the proposed rule and the final rule being commented on at this time. These comments still stand as relevant if the USDA decides that modifying the final rule as the weaknesses in the rule are analyzed in depth.

The following are particular weaknesses that Cornucopia institute feels must be addressed if the rule modified:

- **The entire rule must be consistent with allowing animals to perform their natural behaviors.** If the rule is modified before going into effect, further guidelines or language must be enacted to support requirements for the performance of natural behaviors.

  For example, the final rule includes the requirement at § 205.241(b)(1) that, "*Poultry housing must be sufficiently spacious to allow all birds to move freely, stretch their wings, stand normally, and engage in natural behaviors*." The NOP noted in their commentary on this section that *"[c]ertifiers should verify that producers are in compliance with these requirements."* This certifier compliance responsibility is not clear in the rule itself, nor does it lay out guidelines for how a certifier should actually go about verifying that the birds are able to perform these natural behaviors.

  Similar issues exist for other livestock, but poultry have historically received the brunt of inhumane treatment in organic agriculture. It is time all livestock get their legally-mandated respect under the organic label.

  Poultry stocking densities are insufficient, would not allow performance of natural behaviors, and do not meet consumer expectations for organic poultry. Cornucopia feels that AMS stocking density requirements for poultry housing indoors is particularly inappropriate. Instead, we believe that the stocking density requirements for housing systems that do not fit into the describe types in § 205.2 is much more indicative of what consumers think of in organic production (stating that producers must provide an indoor stocking density of no more than 2.25 pounds of hen per square foot). Studies show that hens more space than this rule requires to spread their wings indoors – one of the most basic instinctive behaviors in chickens.
  Outdoor stocking densities are also insufficient, both not providing enough room for the birds to perform natural behavior and also enough room to prevent completely denuding outdoor areas of vegetation. This increases the environmental risk and

will deprive chickens of another natural behavior – foraging for greens and invertebrates. Apart from increasing space required for birds outdoors, another way to improve the rule would be to require the outdoor area to contain vegetation at all times.

- **Aviary housing systems should be approached with caution.** While multi-level housing, commonly found in industrial-scale houses, in and of itself offers birds an advantage in some cases (by supporting the instinct to perch), aviary housing in the industry is more often used to radically boost animal numbers in strict confinement situations. The proposed rule props up that assumption by allowing more pounds per square foot.

  Fixed-barn aviary housing (as opposed to small coops with multiple levels of perching), which house *more* birds by utilizing multiple levels, may cause problems providing all birds meaningful outdoors access. Poultry tend to be territorial and individuals will not move throughout the whole barn. If an individual is on a top level and all the doors providing outdoor access are on the floor level, those birds will likely never even know there are doors open to the outdoors. In addition, some aviaries have systems in place that allow them to confine birds to certain parts of the barn. These are glorified cages and should not be tolerated in organic production under any circumstances.

The above are some of the most pressing weaknesses in the proposed rule that should be modified should the USDA choose improve the current rule rather than, as we recommend, putting the proposal into effect as planned. Moving forward, we hope that the USDA will find Cornucopia's initial comprehensive comments on the Organic Livestock and Poultry Practices helpful for rulemakings and guidance.

Attached to this comment are our previous analysis of this rulemaking process. If you have any questions regarding our comments or need additional background information, please contact us, and we will be happy to assist.

Sincerely,

Marie Burcham, J.D.
Farm and Food Policy Analyst, Livestock Specialist
The Cornucopia Institute
PO Box 126
Cornucopia, WI 54827
Burcham@cornucopia.org

Legal Inconsistencies in the New Organic Livestock Rule

An analysis of where these rules might conflict with OFPA or the existing regulations

Marie Burcham, JD, Livestock Specialist for The Cornucopia Institute

The Organic Foods Production Act (OFPA), codified at 7 U.S.C. ch. 94; 7 U.S.C. §6501 *et seq.*, generally regulates livestock in compliance with organic certification. When analyzed, there were no direct conflicts between OFPA and the proposed Organic Livestock and Poultry Practices rule.

The new rule adds to and changes the existing organic livestock regulations. The additions are significant and were clearly the focus of the new rule, adding a completely new section of avian living conditions (§205.241).

Inconsistencies and issues exist within the new rule itself – in some instances *because* of the changes made in the new rendition. In particular, these inconsistencies have to do with the health and well-being of the animals.

From the current version of the Livestock Living Conditions regulations (updated in 2010):

> **7 CFR § 205.239 Livestock Living Conditions.** (a) ***The producer of an organic livestock operation must establish and maintain year-round livestock living conditions which accommodate the health and natural behavior of animals****, including;*
>
> *(1) Year-round access for all animals to the outdoors, shade, shelter, exercise areas, fresh air, clean water for drinking, and direct sunlight, suitable to the species, its stage of life, the climate, and the environment: Except, that, animals may be* ***temporarily*** *denied access to the outdoors in accordance with §205.239(b) and (c).*
> *Yards, feeding pads, and feedlots may be used to provide ruminants with access to the outdoors during the non-grazing season and supplemental feeding during the grazing season. Yards, feeding pads, and feedlots shall be large enough to allow all ruminant livestock occupying the yard, feeding pad, or feedlot to feed simultaneously without crowding and without competition for food.* ***Continuous total confinement***

P.O. Box 126 Cornucopia, Wisconsin 54827 608-625-2000 VOICE 866-861-2214 FAX cultivate@cornucopia.org

of any animal indoors is prohibited. Continuous total confinement of ruminants in yards, feeding pads, and feedlots is prohibited. [*Emphasis added*]

Several sections in the new rule seem to conflict with the regulation requiring that "*[t]he producer of an organic livestock operation must establish and maintain year-round livestock living conditions which accommodate the health and natural behavior of animals…*" This section [§205.239(a)] remains largely unchanged in the new rule (changes bolded below):

> (a) *The producer of an organic livestock operation must establish and maintain year-round livestock living conditions which accommodate the* ***well-being*** *and natural behavior of animals, including: (1) Year-round access for all animals to the outdoors, shade, shelter, exercise areas, fresh air, clean water for drinking, and direct sunlight, suitable to the species, its stage of life, the climate, and the environment: Except, that, animals may be temporarily denied access to the outdoors in accordance with paragraphs (b) and (c) of this section.*

While the term "health" could be considered synonymous, the term "well-being" encompasses more than just an animal's biological functions. As a case in point, the Merriam-Webster dictionary defines "well-being" as: "the state of being happy, healthy, or prosperous." Because this term encompasses an animal's emotional state, which we can interpret through their behavior, we must now take that into account for organic production. This would seem to be an improvement, allowing for more comprehensive coverage of animal welfare in comparison to the current language.

What follows is a list of some specific concerns depicting where the final rule conflicts with the language that living conditions must "*accommodate the* ***well-being*** *and natural behavior of animals*." These issues are particularly relevant to the new rule as it applies to hogs and poultry.

Hogs

The new §205.239(a)(9) and (10), concerning swine housing, are applicable to the performance of natural behaviors by pigs and require the ability to display instinctive rooting behaviors throughout (even when temporarily confined).

However, §205.239(a)(10) allows for denial of access to **rooting material** when hogs are farrowing due to commenter concern that piglets would be suffocated or crushed. There is no requirement in the new rule that some bedding must be provided to hogs when farrowing, even if it is not deep enough to root in. The new requirement for **outdoor access** seems broad in §205.239(a)(12)[1]. However, in the AMS guidelines and commentary on the final rule, it is stated that swine are "***not required to have access to the soil or vegetation***." This is not specified in the actual final rule.

[1] § 205.239(a)(12) Outdoor space must be provided year-round. When the outdoor space includes soil, maximal vegetative cover must be maintained as appropriate for the season, climate, geography, species of livestock, and stage of production.

Both digging and wallowing are natural behaviors for hogs. While the rooting instinct may be served by providing deep bedding material, digging and wallowing are not. There is a strong argument that hogs being prevented from wallowing and rooting would affect an animal's *well-being* as the final rule states. It could also increase stress and aggression in the hogs.

Another related concern for the well-being of hogs is that both **needle teeth clipping and tail docking** will still be allowed in this final rule under §205.238(a)(5)(i). Even when done at a young age, these procedures are typically performed without any kind of anesthesia and can cause profound trauma, compromising the "well-being" of the animal.

While the AMS argues that prohibiting the practices raises welfare concerns because swine can injure each other with the needle teeth (often they chew on each other's tails and ears when stressed, becoming cannibalistic), by the time such injuries occur, the animals are already in a stressed environment. In addition, while the new rule requires some documentation that alternative methods were tried, there is no age cap nor requirement to try certain alternatives that would promote the natural behavior of swine. Presumably, if other methods to curb aggression must be used, hogs could quickly become too old to perform these modifications.

The best prevention practice for hog aggression would require providing more space, lower stocking densities, and opportunities for animals to engage in their natural instinctive behaviors. These require material changes to management practices and infrastructure. Unless changes in either the industry or the regulations occur, the justification for routine physical alterations will be maintained in perpetuity.

It remains to be seen how the qualification in the new rule that, "*[t]he following practice may not be routinely used and must be used only with documentation that alternative methods to prevent harm failed…*" will be enforced due to the vagary of the language. This leaves open the potential for abuse by industrial-scale producers who have, without regulatory mandate, an economic disincentive to provide a richer environment for their animals. Few, if any, family-scale producers who afford swine authentic access to the outdoors, on soil, find the necessity to physically alter their hogs due to aggression.

Poultry

The Livestock and Living Conditions section does apply to poultry, as it is included in the OFPA definition.[2]

Beak trimming is still allowed for poultry, while de-beaking remains prohibited[3]. However, combining the language of the rules, there is inconsistency in how this would be applied. The new §205.238(a)(5)(ii) prohibits beak trimming after 10 days of age.

[2] 7 USC § 6502(11) Livestock. The term "livestock" means any cattle, sheep, goats, swine, **poultry**, equine animals used for food or in the production of food, fish used for food, wild or domesticated game, or other nonplant life. [emphasis added]

[3] § 205.238(a)(5)(ii)

Dissimilar to the problem of tail docking and needle teeth trimming in hogs, there is no requirement that aggression is documented in the birds before beak trimming is performed — because of the maximum age requirement, any perceived need would have to be determined on a pro-forma basis.

Despite being less extreme than de-beaking, beak trimming affects the birds' well-being by taking away the tip of their beak. This makes it more difficult for them to perform natural behaviors – particularly foraging and the consumption of vegetation and invertebrates outdoors. As with the problem of hogs, aggression and cannibalism in poultry is directly related to the welfare of the flock. Overcrowding and the inability to perform natural behaviors increase the stress response in poultry. Few, if any, producers who afford their birds legitimate access to pasture engage in beak trimming.

The new allowance for pullets to be confined up to 16 weeks, with 5 weeks of possible added time for nest box training (a total of 21 weeks), also contradicts the animals' well-being and natural behavior.[4] Poultry, by nature, instinctively peck, scratch, and hunt for palatable vegetation and protein (usually in the form of invertebrates). Confining pullets completely indoors during the first 21 weeks of life (5.25 months) prevents them from going outdoors to access soil and vegetation.

There are already provisions for dealing with confinement due to inclement weather, which should cover confining younger birds when environmental conditions could harm them; temporary confinement allowance is detailed in the new provision §205.241(d).

The new §205.241(c) deals with outdoor space requirements for poultry. Part of this requirement states that: "*[p]roducers must provide access to the outdoors at an early age to encourage (i.e., train) birds to go outdoors.*" This appears to be in conflict with allowing pullets to be confined for up to 21 weeks.

Unfortunately, even under the current standards, a very small percentage of organic laying hens ever venture outdoors because, as young pullets, they were never "trained" to be comfortable outside of the building.

The final rule [§205.241 (b)(1)] also states that: "*[p]oultry housing must be sufficiently spacious to allow all birds to move freely, stretch their wings, stand normally, and engage in natural behaviors.*" Research shows that the average grown hen needs 2 ft^2 to fully stretch both of her wings. The indoor stocking density allotted by the final rule, providing as little as 1 ft^2 in aviaries and 1.5 ft^2 in single-level houses, will not provide this needed space, preventing the most basic physical activity in some birds.

[4] The new § 205.241(d)(2)(ii) allows for the 16 week confinement for pullets. (§ 205.241(d)(7) allows the additional 5 weeks for nest box training, with the limiting language that "…provided that birds shall not be confined any longer than required to establish the proper behavior."

What follows are detailed notes taken on the recent release of the proposed rule and the Agricultural Marketing Service's general comments and responses to public comment.

NOTES AND ANALYSIS:
ORGANIC LIVESTOCK AND POULTRY PRACTICES FINAL RULE
AMS-NOP-15-0012; RIN 0581-AD44

The following is Cornucopia's technical analysis of the new Organic Livestock Rule.

Note: Cornucopia's commentary is in **red text**, interesting changes are highlighted in yellow, and language changes within the rule are underlined.

The Agricultural Marketing Service (AMS) via the National Organic Program (NOP) released this final rule to address the care and production practices, transport, slaughter, and living conditions for organic livestock and poultry. 6,675 written comments were received, of which 78% (5,182) were form letters. There were 1,493 individual (non-form) comments on the proposed rule. The final rule addresses some of those commenter concerns, but not others.

It is the contention of The Cornucopia Institute that key elements of this rule were not necessary to facilitate enforcement of the existing standards (for example, affording organic poultry meaningful access to the outdoors is already mandated by law). Furthermore, by virtue of the years-long delay in promulgating and clarifying the standards, the majority of organic livestock production has become industrialized.

Many of the provisions are inadequate. Standards that would have upheld the true intent of the Organic Foods Production Act are missing.

What follows are notes and analysis on the final rule, including notes on the AMS commentary.

NOTES REGARDING THE EXECUTIVE SUMMARY

- **Implementation timing:** This rule will be fully implemented March 20, 2018 EXCEPT organic egg operations that are certified before March 20, 2020 need to implement the outdoor access requirements by March 21, 2022. Organic egg operations that become certified after March 20, 2020 need to comply with the outdoor access requirements in order to obtain certification. Organic broiler operations must fully implement the indoor space requirements by March 20, 2020.
- The final rule only applies to chickens (not organic turkeys — further rulemaking will be required).
- One goal of the rule: reduce certification burdens on producers because they won't have to get certified by independent animal welfare certification programs (the USDA found that the majority of organic producers also participate in private, third-party verified animal welfare certification programs).
- Adds new terms to § 205.2: *beak trimming*, caponization, cattle wattling, *de-beaking*, de-snooding, dubbing, *indoors or indoor space*, mulesing, *non-ambulatory, outdoors*

or outdoor space, *perch, pullet, ritual slaughter, soil, toe clipping, and vegetation*. (Italicized terms were either revised from or NOT in the proposed rule).

- Definition of "outdoors or outdoor space": any area outside of an enclosed building or enclosed housing structure, but including roofed areas that are not enclosed. In this definition, "outdoors or outdoor space" includes all of the non-enclosed space encompassing soil-based areas such as pastures, pens, or sacrifice lots; hardened surface areas such as feedlots, walkways, or loafing sheds; and areas providing outdoor shelter such as windbreaks and shade structures. <u>The definition has species based requirements (the 50% vegetation requirement for poultry remains).</u> [17]
- Confirms that USDA has the authority to conduct this rulemaking and the NOSB is authorized to recommend standards.
- Many comments asked the AMS to clarify the current rule, prompting them to continue with this rulemaking.
- Commenters asked how this final rule would impact existing organic trade agreements, such as equivalency agreements and recognition agreements. The USDA will respond and assist with these issues relating to foreign governments (and does not foresee a problem).

NOTES ON THE AMS RESPONSE AND ANALYSIS TO COMMENTS ON THE GENERAL SUMMARY & DEFINITIONS (§ 205.2)

- Amended definition of "de-beaking" and stood by definition and prohibition of caponization. [20-22]
- AMS amended the definition of de-beaking in the final rule to make it more specific (as to how much of the beak can be removed).
- Definition of <u>indoors</u>: commenters were specifically concerns about how the rule would apply to things like chicken tractors, which may have a roof but also offer full contact to the soil/vegetation. In response AMS revised definition of indoors to *define it as the space inside of an enclosed building or housing structure with solid, slatted, or perforated flooring.* [23-24]
- AMS replaced the term "pasture housing" with "mobile housing." [24]
- Notes that outdoor space is the default living space. [25]
- Regarding nest boxes being included in indoor space – AMS choose to <u>exclude</u> nest boxes from indoor space calculations. [26]
    - ***This is an important clarification – nest boxes should never be included in the calculation.***
- AMS chose to qualify porches as "indoor space" as long as they are accessible to birds at all times. [27].
    - ***Allowing porches to be considered part of the "indoor space" calculation needs more clarification. While on the surface the AMS seems to want to appeal to businesses who have relied on porches to meet outdoor access requirements, most porches are not arranged such that they are accessible to all birds at all times (often porches are accessed through doors that make the limited space hard for all birds to access). If included in any space calculation, these porches must be "accessible to ALL birds"***

and standards should be developed for certifiers to determine whether that space is being used continuously.

Furthermore, since most porches have concrete or wood floors, are devoid of any natural amenities that would interest chickens, and do not provide food and water, few if any chickens will take advantage of that additional space. The end result will be higher stocking densities in the primary structure itself (this rule already allows producers to stock at levels which are no better than conventional factory livestock facilities provide).

- Comments on soil/vegetation requirement: [28-29]
  - AMS says that requirements for vegetation would be hard to meet seasonally.
- Spaces with roofs are allowed to be calculated as "outdoors" as long as they meet other qualifications, including not being "enclosed." [29]
  - ***This is a considerable loophole since businesses could erect temporary roofed structures that could qualify as outdoor space or potentially even convert porches, by removing the screened walls, to meet the new definition of "outdoors". What may save this issue is the language (cited below) that structures are "moved regularly."***
  - The language in the final rule (in the definition section **§ 205.2)** is as follows: Outdoors or outdoor space. Any area outside an enclosed building or enclosed housing structure, including roofed areas that are not enclosed. Outdoor space for avian species includes, but is not limited to: (1) Pasture pens. Floorless pens, with full or partial roofing, that are moved regularly and provide direct access to soil and vegetation.
- Comments on how confusing it is to have "roost" and "perch" – AMS choose to just define perch. [30]
- Definition of "soil" – many comments on the issue, but AMS retained the proposed definition. [30-31]
- Stocking density: AMS removed the phrase "at any one time" and included "given area" in response to comments that the term is used for both indoor and outdoor areas. [31-32]
- AMS refused to define "swine aggression" (commenter concern). [34]

NOTES ON THE AMS COMMENTS AND CONSIDERATIONS FOR LIVESTOCK CARE AND PRODUCTION PRACTICES STANDARD (§ 205.238)

Notes on the description and summary of the final rule:

- Needle teeth clipping and tail docking in pigs is still allowed when there are documented welfare reasons. [35-36]
  - ***This continued allowance is indefensible, even with the restrictions. AMS argues that preventing it entirely raises welfare concerns because swine can injure each other with the needle teeth (often they chew on each other's tails and ears), but by the time such injuries occur the animals are already in a stressed environment. Responding by tail docking and teeth clipping only serves to enhance the suffering at that point. This is a***

crutch for the high density confinement industrial model of raising hogs regardless of scale. (See p. 45 for more detail on the AMS reasoning).

- New § 205.238(a)(8) that requires organic producers to actively monitor and document lameness within the herd or flock. [37]
- Synthetic medications are allowed to reduce suffering; withholding times established. [37]
- AMS added the new § 205.238(c)(8) to prohibit organic livestock producers from withholding individual treatment designed to minimize pain and suffering for injured, diseased, or sick animals. The final rule, in § 205.238(c)(8), also references the AVMA guidelines on euthanasia. [38-39]
    - ***This was always assumed in the organic standards but has now been clarified and explicitly listed. Simple analgesics relive suffering and pain in animals with health conditions. The desire to maintain the organic status of an animal should never be used as an excuse to promote individual pain and suffering. The added reference to euthanasia should provide some guidance to livestock producers as well.***
- Forced molting is now prohibited – § 205.238(c)(10).
- A parasite control plan is now required.
- Sections on euthanasia prevent suffocation, manual blows to the head by blunt instrument or manual blunt force trauma, and use of equipment that crushes the neck [(205.238(e)(2)]. [39-40]

Discussion of comments received on Livestock Healthcare Practice Standard:

- Breed selection comments (esp. regarding poultry breeding that affects the health of the animal) – the AMS said this isn't possible. [40-41]
- Regarding comments saying that physical alterations should not be performed because of "hygiene" (that this could create a loophole in the rule) – AMS REMOVED hygiene from the final rule. ***(A positive change.)*** HOWEVER, physical identification is still an allowed purpose for physical alteration. [41-42]
- Comments on swine needle teeth/tail docking – that it is still allowed. [45]
- § 205.238(a)(5)(ii) clarified in response to comments concerned about loophole with language "The following practices must not be performed on a certified operation…" [45-46]
- AMS is NOT entirely prohibiting beak trimming. [47]
    - ***This is detrimental for animal welfare. In high welfare organic systems beak trimming is unneeded – it is an indicator of POOR WELFARE if the birds are aggressive/cannibalizing each other. It may be preferable that individual aggressive birds are culled and/or that birds are selected for less aggression (typically aggression is indicative of stress related to stocking density and denying birds the opportunity to exhibit their natural instinctive behaviors). In general when enough space and enrichments are given to birds (and livestock of all kinds, as in the case of tooth clipping and tail docking and hogs) these kinds of painful and disfiguring alterations are not needed. NOTE: beak trimming does make it more difficult for birds to consume grass and other vegetation.***

- Comments requested prohibition on all branding, but AMS only prohibited face branding EXCEPT where there is an exception for state or federal law. [50-51]
    - ***Face branding is something that should be banned wholesale, and it's beneficial that the new rule takes this into account. Branding in general is painful for animals – ear tags, ear notches, back tags, neck chains, tail tags, freeze brands, tattoos, paint marks, leg bands, and electronic identification methods are all less painful. Face branding is already illegal in many states and is widely considered "cruel" by the scientific community.***
- AMS removed the term "edible" from §205.238(c)(1) after commenter concerns that the sale of fiber would be okay for animals undergoing treatment. [54]
- There were detailed changes made regarding administering synthetic drugs. The proposed §205.238(b)(3) has been deleted and the requirements for this provision have been incorporated under § 205.238(b). [56-57]
    - The language of the final rule at 205.238(b) is as follows: (b) Producers may administer medications that are allowed under 205.603 to alleviate pain or suffering, and when preventive practices and veterinary biologics are inadequate to prevent sickness. Parasiticides allowed under § 205.603 may be used on: (1) Breeder stock, when used prior to the last third of gestation but not during lactation for progeny that are to be sold, labeled, or represented as organically produced; And (2) Dairy stock, when used a minimum of 90 days prior to the production of milk or milk products that are to be sold, labeled, or represented as organic.
- AMS amended § 205.238(c)(3) to provide clarification on the allowed use of oxytocin by adding the condition, "except as provided in § 205.603." [58]
- Notes that livestock producers should describe their comprehensive parasite management plan within their overall organic system plan. [61]
- Comments regarding the killing of male chicks or unhatched eggs responded to by noting that the concern was "out of scope". Under the USDA organic regulations, poultry or edible poultry products must be sourced from poultry that has been under continuous organic management beginning no later than the second day of life. [63]

NOTES ON AMS SUMMARY AND COMMENTS REGARDING MAMMALIAN LIVING CONDITIONS (§ 205.39)

Notes on the description and summary of the final rule:

- AMS revised § 205.239(a)(4)(i) to specify that shelter must be designed to accommodate natural behaviors over every 24-hour period. Shelter must have sufficient space for the animals to lie down, stand up, and fully stretch their limbs and allow livestock to express their normal patterns of behavior over a 24-hour period.
    - Edits to the rule include (according to AMS summary): Dairy animals can be housed in stalls that direct manure and urine for part of the day as long as they have complete freedom of movement during parts of the day for grazing, loafing, and exhibiting natural behavior. [64-65]

- Indoor space is not required for livestock, but *shelter* is. [65]
- Rule allows the individual housing of young animals until weaning (no longer than 6mo.) but they have to be able to turn, stretch, lie down, etc. [65]
- THREE new provisions in § 205.239(a)(8) to require the group housing of swine, with three listed exceptions:
    - § 205.239(a)(8)(i) allows for sows to be individually housed at farrowing and during the suckling period;
    - § 205.239(a)(8)(ii) allows for boars to be individually housed to reduce the likelihood of fights and injuries; and
    - § 05.239(a)(8)(iii) allows for swine to be individually housed after multiple documented instances of aggression or to allow an individual pig to recover from a documented illness. [66]
        - ***There should be more clarity in how the aggression is documented – aggression is usually only a serious problem with overcrowding and the inability to perform natural behaviors.***
- ROOTING: new provisions in §§ 205.239(a)(9) and (10) concerning swine housing are applicable to the performance of natural behaviors by pigs.
    - Section 205.239(a)(9) prohibits the use of flat decks or piglet cages. It also prohibits the stacking of piglets in flat decks in multiple layers.
    - §205.239(a)(10) requires that both indoor and outdoor areas for swine have some space that permits rooting. Producers have to demonstrate how swine can root during temporary confinement as well. The rule actually states: (10) For swine, rooting materials must be provided, except during the farrowing and suckling period.
    - ***Guidance will likely be needed to assure an adequate amount of space/material is provided to for the appropriate number of animals.***
- ADDED new requirement for outdoor access in § 205.239(a)(12). Organic livestock are required to have unencumbered access to the outdoors year-round, unless temporary confinement is justified under a specific reason described in the regulations (e.g., nighttime confinement for protection from predators for poultry). [67]
    - NOTE: Swine are not required to have access to the soil or vegetation according to AMS guidelines & commentary on the final rule.
- Confinement for breeding. Section 205.239(c)(1) describes the time when ruminants may be denied access to pasture, but not access to the outdoors, before and after a breeding attempt. Livestock can't be confined indoors to observe estrus or until they are determined to be pregnant, but groups of livestock can be confined before procedures. [68]

Discussion of comments received on Mammalian Living Conditions:

- Comments that opposed soil as part of the requirement. AMS responded that many of the concerns were already addressed in the pasture rule (temporary confinement to protect soil and water quality). [70-71]
- Final rule requires year-round outdoor access for swine but AMS removed requirement that swine have access to soil due to comments. [72] (In the

commentary the AMS acknowledged that this was only really a problem when swine were placed in *too-small an area.*)

- Comments regarding free stall, tie stall, or stanchion barns for dairy animals: problem with current facilities and requirements to turn around, etc. (The draft rule would've required stall designs which would have resulted in animals urinating and defecating in their own bedding). AMS revised the standard to specifically state that over a 24 hour period, mammalian livestock must have the opportunity to move, turn around, and exhibit natural behaviors. Their comments state that the animals cannot be confined in stalls all day. [73-75]
    - ***This is an acceptable compromise. It would be preferable to phase-out these kinds of barns – i.e. no new barns built of this type. Phasing out the use of these barns would also benefit animal welfare. (Note: almost all dairy barns that are being built today* are *free-stall barns as they are less labor-intensive for farm workers and contribute to the well-being of the animals.)***
- Cattle young – some commenters wanted group housing required at a younger age. [73]
- Some comments were against farrowing crates or stalls for pigs.
    - AMS changed rule to NOT require rooting material during farrowing period. See for the language. [75-76]
        - ***This decreases humane conditions for farrowing hogs – they should have bedding of some kind. Depth of bedding will also matter for rooting, as bedding that is too shallow cannot meet a hogs need to root and dig (again, a guidance might be needed to negate a possible loophole here). The concern commenters and the AMS had regarding rooting material during farrowing is related to piglets being smothered/crushed by their mothers or deep bedding. Again, this is less of an issue in high welfare systems where a farrowing hog is given ample space. Some bedding should be provided even if it is not deep enough for true rooting.***

NOTES ON AMS SUMMARY AND COMMENTS AVIAN LIVING CONDITIONS (§ 205.241)

Notes on the description and summary of the final rule:

- Required living conditions include: year-round access to the outdoors, soil, shade, shelter, exercise areas, fresh air, direct sunlight, clean water for drinking, materials for dust bathing, and adequate space to escape aggressive behaviors. [77]
- Indoor space requirements (§ 205.241(b))
- Ammonia levels (205.241(b)(2)) – When ammonia levels exceed 10 ppm, producers must implement additional practices and additional monitoring to reduce ammonia levels below 10 ppm. Above 25ppm is not allowed. ***(Not altered from proposal – this threshold level is still very high considering other welfare considerations.)***
- Lighting requirements allow up to 16 hours of light (§ 205.241(b)(3)). [78]
    - The language of the rule reads as follows: (3) For layers and fully feathered birds, artificial light may be used to prolong the day length, to provide up to 16 hours of continuous light. Artificial light intensity must be lowered

gradually to encourage hens to move to perches or settle for the night. Natural light must be sufficient indoors on sunny days so that an inspector can read and write when all lights are turned off.

- Rule requires that litter be maintained in a "dry" manner; but can be topped off. Also indoor space has to allow for scratching and dust bathing. § 205.241(b)(6) [79]
- 205.241(b)(7) includes specific flooring requirements, including at least 30% solid flooring. [80]
- INDOOR SPACING REQUIREMENTS (New §§ 205.241(b)(8), 205.241(b)(9), and 205.241(b)(10)). Space requirements vary on type of housing for *layers*.
    - No more than 2.25 pounds of hen per ft^2 for housing that does not fit into defined types. [80]
    - NOTE: mobile pens do not count as "indoors".
    - Aviary housing requires less indoor space than houses with limited vertical access.
- NOTE: AMS has only established indoor space stocking density rules for CHICKENS in this final rule. [81]
    - The final rule regarding actual allowed CHICKEN stocking densities is located at **205.241(b)(8)-(10)**, with stocking density for layers, pullets, and broilers denoted as separate from each other. The final rule reads as follows for indoor stocking densities [206]:
        - (8) For layers (*Gallus gallus*), indoor stocking density must not exceed (live bird weight): (i) Mobile housing: 4.5 pounds per square foot. (ii) Aviary housing: 4.5 pounds per square foot. (iii) Slatted/mesh floor housing: 3.75 pounds per square foot. (iv) Floor litter housing: 3.0 pounds per square foot. (v) Other housing: 2.25 pounds per square foot.
        - (9) For pullets (*Gallus gallus*), indoor stocking density must not exceed 3.0 pounds of bird per square foot.
        - (10) For broilers (*Gallus gallus*), indoor stocking density must not exceed 5.0 pounds of bird per square foot.
- Space provided depends on the average weight of the birds at the time (according to AMS summaries). AND larger breeds must be provided with more space, so the loophole with breed types may be avoided. [81-82 talking about the weight of birds]
    - Space is calculated by measuring all flat spaces (not perches or nest boxes).
    - ***NOTE: the language of the actual rule does not specify that indoor stocking density must specifically be determined by the weight of the birds at the time (or rather, average weight of the birds), only that stocking densities be calculated by pounds per foot of room. This could be problematic because producers may rely on breed averages rather than determining the* actual *average weight of the birds they have (for example, one batch of layers may be heavier than average).***
    - ***Additionally, the space required for birds—approximately one square foot in aviary systems—is no better for certified organic animals than for typical conventional, industrial-scale production. This was a real missed opportunity for the organic label to truly distinguish itself. It is folly for***

the USDA to suggest that additional animal welfare labeling will no longer be required and suggesting that as a cost-saving for producers.

- 205.241(c)(1) requires that the outdoor space be designed to promote and encourage outdoor access for all birds, DAILY.
- 205.241(c)(2) requires outdoor areas for poultry to have a minimum of 50% soil and that the soil portion of the outdoor area includes "maximal vegetative cover." [83-84]
    - ***"Maximal vegetative cover" is going to be hard to police, especially because allowances are made for climate differences. Poultry producers in very arid or very cold climates may get a free pass when it comes to vegetation. AMS should include a guidance, similar to what they have done for ruminant grazing, that appropriate cultivars and management practices need to be implemented to assure vegetative cover even in climates where vegetation might not be expected.***
    - The language of the final rule (regarding vegetative cover) is as follows: (2) At least 50 percent of outdoor space must be soil. Outdoor space with soil must include maximal vegetative cover appropriate for the season, climate, geography, species of livestock, and stage of production. Vegetative cover must be maintained in a manner that does not provide harborage for rodents and other pests. [207]

- Spacing requirements: [84]
    - Layers: 1ft^2 outdoor space for every 2.25 pounds of bird in the flock. Ex. average 4.5 pounds, a producer must provide 2.0 square feet of outdoor space for each bird in the flock.
    - Pullets: 1 ft^2 of outdoor space for every 3.0 pounds of bird in the flock.
    - Broilers: 1 ft^2 of outdoor space for every 5.0 pounds of bird in the flock.
    - ***This type of spacing requirement should not be considered a "victory" in the organic industry. Organic Valley requires 5 ft^2 of outdoor space and other welfare certification programs and producers give 50-100 ft^2 for pastured birds. European regulators require 43 ft^2. Mobile (chicken tractor) systems do give less apparent space to their birds, but because the pens are moved frequently, they are always exposed to new ground while still being kept safe.***

- New § 205.241(c)(7): porches and lean-tos that allow birds to freely access (with roof, but no screens) can count as outdoor space.
    - ***Allowing roofed structures attached to buildings to operate as "outdoor space" gives big industry another loophole with which to avoid giving their birds true outdoor access. These producers will be able to use this extra "space" to enable higher stocking densities.***
    - ***Note that porches can be utilized as either indoor OR outdoor space in the final rule. This is problematic. As worded, porches could count as both indoor and outdoor space during certain times. Even if porches cannot count as indoor and outdoor space simultaneously, their status***

could potentially change depending on the season or time of day. This is confusing, potentially ripe for abuse, and needs guidance.

- New § 205.241(d) describes allowed conditions for temporary confinement. Records need to be kept. This section maintained the requirement from the proposal that poultry must have access to the outdoors. Stage of life is an allowed condition for temporary confinement (4 weeks for broilers and up to 16 weeks for pullets without counting time for nest-box training). [85-86]
    - ***This is objectionable since many commercial pullet producers have testified that they allow young birds outdoor access. Again, this is a missed opportunity to distinguish organics.***
    - ***NOTE: allows for nest box training up to five weeks. This could extend the time pullets (or young layers at that point) are not given access to the outdoors up to 21 weeks. This is an unnecessarily long time.***
- § 205.241(d)(4) provides an allowance for indoor confinement to prevent risk to soil or water quality. Apparently this provision *allows for confinement of birds when the outdoor area is being managed to reestablish vegetation.* [87]
    - ***This could constitute another loophole. Industrial farms could "re-seed" multiple times per year and keep the ground free of poultry for a month or more at a time. These passages need to have further guidance to clarify and prevent their use in this fashion.***

Discussion of comments received on Avian Living Conditions:

- Clarification added that producers must try and maintain ammonia levels below 10ppm. [89-90] Non-subjective methods must be used to measure ammonia. [91]
- Lighting: rule edited to require up to 16 hours of *continuous light*. [91] ***(A beneficial clarification)***
- Issues of natural light – AMS kept the subjective test for inspectors (natural light indoors is sufficient for an inspector to read and write when all lights are turned off *anywhere indoors*). [93-94]
    - ***All fully feathered birds and layers are subject to the light requirements now with this beneficial clarification. Note that the natural light requirement, as written, could be interpreted to not require natural light for young birds (because the rest of 205.241(b)(3) speaks to fully-feathered and layers).***
- Section § 205.241(b)(5). Now contains all the exit area requirements instead of them being in different sections. [94-95]
- AMS REMOVED the requirement, as proposed, that exit areas be designed so that all birds within the house can go through the exit areas within one hour (b/c it would be too hard to verify compliance). [95]
    - ***This standard is intentionally vague and makes it even harder to enforce because the standard is less clear for producers.***
- Also regarding EXIT AREAS – it no longer says that exits have to be distributed around the building, just that "Poultry houses must have sufficient exit areas that are appropriately distributed to ensure that all birds have ready access to the outdoors…" [96]

    - ***This change ONLY benefits large producers with fixed barns. AMS removed the explicit requirement that doors be spaced all around the building. Despite arguments to the contrary, this may make it difficult for all birds to exit in very large barns. The language requiring doors to be spaced around entire buildings should have been maintained for fixed barns.***
- Perches and roosts [97-98]
- Comments on INDOOR SPACE: Many comments recommended birds be provided with at least 1.5 ft^2 per bird, regardless of size. Other comments noted the requirements proposed by AMS fell short of the 2 ft^2 of indoor space recommended by the NOSB.
    - Standards fell on: <u>for a 4.5lb</u> layer (because the rule calculates space available by weight) 1.5 square feet per bird for floor litter housing; 1.2 square feet per bird for slatted/mesh floor housing; and 1 square foot per bird for <u>mobile and aviary housing</u>. [99]
        - ***These changes make mobile and aviary housing equivalent when they are not. The explanation is that houses with vertical space provide more space access in the house, BUT all flat surfaces in an aviary are still counted in the space calculation. In addition, mobile housing is always associated with true pasture production.***
    - NOTE the actual rule at **§ 205.241(b)(8)** states: (i) Mobile housing: 4.5 pounds per square foot. (ii) Aviary housing: 4.5 pounds per square foot. (iii) Slatted/mesh floor housing: 3.75 pounds per square foot. (iv) Floor litter housing: 3.0 pounds per square foot. (v) Other housing: 2.25 pounds per square foot.
- <u>AMS removed the specific space requirements for turkeys and other avian species (both outdoors and indoors).</u> [100 & 103]
- OUTDOOR SPACE: many commenters said the outdoor space was not large enough, that there was not strict enough rules for vegetation, etc. they also received comments that these requirements would make some people discontinue organic production. <u>AMS did not change their outdoor space requirements</u>. [101-102]
    - The outdoor area requirement: must be calculated as the <u>outdoor area available to all birds in the flock at any given time</u>. For example, if a producer rotates birds between two outdoor areas, each area must be large enough to meet the stocking density requirement. [108-109]
        - ***This language and requirement is reasonable, though the stocking densities themselves are not.***
    - Goes into more details as to how "porches" can be considered "outside" (discussed earlier and goes into more detail later). [109-112] NOTE: they state that many commenters seem surprised/did not know that porches met the entire requirement for "outdoor access" before.
    - Biosecurity: AMS addresses comments saying outdoor access is bad for biosecurity saying outdoor access requirements can be factored into comprehensive biosecurity plans. [113]

        - They also state: "…rule does not obviate the necessity to comply with all other applicable laws and regulations, including animal health regulations of APHIS."
    - Vegetation must be maintained to avoid harboring pests. Doors must also prevent pests from entering houses (wild birds/rodents). [117-118]
    - AMS did kept the 50% soil rule that was in the proposal but has tweaked the language to require "…maximal vegetative cover appropriate for the season, climate, geography, species of livestock, and stage of production…" [119]
- CONFINEMENT: Birds can also be confined when there is a risk to soil/water quality OR when vegetation needs to be reestablished. This allowance was added to § 205.241(c)(2) to allow re-seeding and time for the seeds to germinate and establish. [120] *(This could be utilized as a serious loophole for producers with fixed barns in particular, since their outdoors areas may be stripped of vegetation quite quickly if any appreciable number of birds actually venture outdoors.)*
- Enrichment: AMS just emphasizes that enrichment pertains to the point that birds be able to engage in natural behaviors indoors. [122-123]
    - ***This point could raise questions because some natural behaviors may not be accounted for.***
- Temperature range: no changes to the range (40-90 deg. F). AMS notes that weather may still qualify as inclement weather (§ 205.2) even within this temperature range [124-126]
- Temporary confinement:
    - AGE: AMS notes that it received comments saying that young layers should go out *before 16 weeks* of age. Other comments said that having outdoor access earlier would "train" them to go outdoors. AMS responds that producers *can* let birds out before 16 wks. [126-127]
    - DISEASE/MIGRATORY BIRDS: To temporarily confine birds under this provision, producers must be able to demonstrate that the "birds' health, safety, or well-being are jeopardized by access to the outdoors." If they can, then the AMS changes to the final rule allow for more flexibility in how and when the birds are confined. [127-128]
        - ***Allowing confinement for migratory pathways could constitute another large loophole for poultry producers. Some areas have continuous bird migration seasonally. Additional guidance is needed for temporary confinement due to bird migrations so that producers are not confining their birds for entire migratory seaosns.***
    - Nest box training: the rule allows 2 weeks for confining birds. Some comments said this was *too short.* The proposed rule was modified based on these comments. Birds may be confined to train birds to use nests, but the period must not exceed five weeks. [129]
        - ***This creates another extended period of time within which birds can be confined (specifically layers). This extension is not needed. Many organic producers say they only confine birds for this purpose for a few days, or at most two weeks. Chickens instinctually seek out nesting boxes within which to lay their***

eggs. Adding this exemption for outdoor access, to the first 16 weeks of life for pullets, means that organic birds can be confined, exclusively, for an outrageously long 21 weeks before they are ever offered outdoor access (the outdoors will seem unfamiliar and frightening at that point in time). Our observations are that when larger buildings offer outdoor access, utilizing similar management practices for their younger birds, that only between three and 10% of the birds actually go outdoors. This is obviously a violation of the spirit of the rules and the expectations of organic consumers.

  - § 205.241(d) to clarify, "Operations may temporarily confine birds" for reasons at § 205.241(d).
  - Temporary confinement for youth events (like 4H) up to 24 hours after the event. [132]
- Recording confinement: Commenters said that having to record instances of confinement was unnecessary with respect to the recordkeeping requirements already in the organic rules. AMS has revised § 205.241(d) to clarify that confinement must be recorded. Producers do not need to record each instance of confinement if the producer has described the reasons for routine temporary confinement (i.e., a standard operating procedure) in their OSP. [130-131]
  - ***Essentially if confinement is part of standard operating procedure (such as confinement at night) it can be part of the OSP. However, it is not specified whether every instance of other confinement has to be recorded. We support detailed recordkeeping for any non-standard practice (with standard practices always outlined in the OSP). Recordkeeping of this nature is required for farmers and ranchers raising ruminants to document when they are not on pasture.***
- Soil and water quality – many comments apparently stated that increased outdoor access would lead to more outdoor contamination. The AMS, to minimize potential impacts to soil or water quality from livestock with outdoor access, has included a requirement in the final rule for vegetation in outdoor areas (§ 205.241(c)(2)). The AMS discusses NPDES requirements briefly. [133]
  - ***Vegetation should be a greater requirement (more of the area should be required to have vegetation, rather than just "maximizing" vegetation) to maximize the environmental benefits of vegetation.***
- Comments about slow growing breeds were not addressed by the AMS. It was stated that the NOSB should comment on this issue to influence further rulemaking.
- Litter being required (in a dry condition) for poultry is now a standalone requirement. In the final rule, this requirement has been moved to § 205.241(b)(6). The requirements for scratch areas, dust baths, and litter now appear at §§ 205.241(b)(6) and (7). [136]
- Comments requested that "litter" be defined, but the AMS apparently declined. The concern of the commenters was that dehydrated manure could be used as litter. [136-137]
  - ***The AMS should acknowledge, and give guidance, on whether or not dehydrated manure can be used as bedding.***

NOTES ON AMS SUMMARY AND COMMENTS REGARDING TRANSPORT (§ 205.242(a)).

Notes on the description and summary of the final rule:

- New § 205.242(a)(1) requires that animals are clearly identified during transport. [138]
- New § 205.242(a)(2) sets minimum fitness requirements for livestock to be transported. (New.)
- New §§ 205.242(a)(3) and (4) set minimum standards for the trailer, truck, or shipping container used for transporting organic livestock.
- 205.242(a)(5) requires that all livestock be provided with organic feed and clean water if transport time exceeds 12 hours. [138-139]
- The new § 205.242(a)(6) requires that operations that transport livestock to sales or slaughter have emergency plans in place that adequately address problems reasonably possible during transport. [139]

Discussion of comments received regarding Transport:

- Clarification that 205.242(a)(1) applies to transport of organic livestock to buyers, auction, and slaughter facilities. [139]
- Due to concerns about the burden of identification AMS revised the proposal. The new language in § 205.242(a)(1) *removed* the requirement for designating and identifying organic pens during transport, changing the text to read: "Certified organic livestock must be clearly identified as organic, and the identity must be traceable during transport to buyers, auction, and slaughter facilities." [140]
- Language in proposal 205.242(a)(2)(ii) was revised to read "non-ambulatory", getting rid of language that would remove an animal from slaughter for being "sick, injured, weak, disabled, blind, and lame." [140]
    - ***The commenters and the AMS seem to dismiss this list (sick, injured, etc.) as "minor ailments" now because it would not seem to affect the quality of the slaughter product. The issue here is that "minor ailments" is a vague term that could encompass many levels of suffering even if they do not pose a risk to human health. Additional guidance should be published addressing these ambiguities. Consumers would rightly be concerned if sick or otherwise suffering animals are being slaughtered – that does not fit into the definition of "humane." Further clarification is needed in this section to address the vagueness of the language.***
- Transport of calves sections were not changed.
- Section 205.242(a)(4) includes the phrase "as needed," when it comes to bedding during transport. [140-141]
    - ***This is unlikely to get producers or truckers to operate in a manner that will truly enforce good animal welfare if bedding is otherwise inconvenient or costly for producers/shippers.***
- Many commenters stated that it was cruel to ship for 12 hours because animals would have to go without food and water for that long of a period (or more, if they were withheld food and water prior to loading). Other commenters recommended reliance on the federal 28-hour law and removal of the access to feed requirement.

AMS responded that the 12 hours was recommended by the NOSB, which the AMS determined was humane – animals can still be shipped for more than 12 hours, but they must be given access to food and water. [143]

- Regarding the federal 28-hour rule, some commenters stated that it is poorly enforced, inhumane, etc. Note: this federal regulation currently EXCLUDES poultry. *AMS has decided to remove reference to the Twenty-Eight Hour Law in the final rule due to redundancy with APHIS*. [145-146]
    - ***Despite the perceived redundancy, AMS did not address the problem that poultry are not covered under this federal law. While the final rule now requires that all livestock be provided with organic feed and clean water if transport time exceeds 12 hours, the fact that poultry are excluded from the 28-hours law is still extremely important. The 28-hour law goes into more detail about what is and what is not allowed when transporting livestock. Yes, organic poultry will have to be given food and water, but they are still garnering less respect under this rule, this should have been acknowledged by the AMS (as it was in their proposed rule). NOTE: poultry are ALSO not covered under the Animal Welfare Act.***
- AMS has changed §§ 205.242(a)(5)(i) and 205.242(a)(6) to specify that the certified operation responsible for overseeing the transport of organic livestock is responsible for keeping verification records that demonstrate organic compliance during transport.

NOTES ON AMS SUMMARY AND COMMENTS SLAUGHTER AND THE HANDLING OF LIVESTOCK IN CONNECTION WITH SLAUGHTER (§ 205.242(b) and (c)).

NOTE: Cornucopia did not submit in-depth comments on this topic.

Also, AMS has separated mammalian from avian slaughter requirements due to the differences in how mammalian and avian livestock are handled and slaughtered.

Notes on the description and summary of the final rule:

- NEW § 205.242(b) regarding mammalian slaughter clarifies the authority in this section. [148]
- NEW 205.242(b)(1) requires certified organic slaughter facilities to be in full compliance with the Humane Methods of Slaughter Act (HMSA) of 1978 (7 U.S.C. 1901 149 et seq.) and its implementing FSIS regulations, as determined by FSIS.
    - ***NOTE: the HMSA does not apply to poultry or livestock killed in ritual slaughter.[5] The organic industry could truly stand out for consumers by requiring that humane practices of slaughter are applicable to all poultry species. While FSIS regulations require that breathing has stopped before birds are scalded, evidence shows that many slaughter facilities do not meet these and other standards.***
- The new § 205.242(b)(2) deals with the slaughter of exotic animals.

[5] For more information and discussion on the HMSA, this article is particularly helpful: Detailed Discussion of the Humane Methods of Slaughter Act, by Cynthia F. Hodges. Michigan State University College of Law, 2010. *Available online at:* https://www.animallaw.info/article/detailed-discussion-humane-methods-slaughter-act

- New § 205.242(b)(3) requires that all certified organic slaughter facilities provide any FSIS noncompliance records or corrective action records relating to humane handling and slaughter to certifying agents during inspections or upon request.
- With respect to poultry:
    - The new § 205.242(c) deals particularly with avian slaughter facilities. Specifically, this section is concerned with making sure organic slaughter meets the Poultry Products Inspection Act (PPIA). [152-155] This issue is also discussed in the comments section. [162]

Discussion of comments received regarding Slaughter:

- Many commenters were concerned that inspectors would not be appropriately trained in recognizing violations to slaughter regulations (particularly as they arise from FSIS). The AMS noted that FSIS requirements apply to both organic and non-organic slaughter and that certifiers have to check if FSIS has issued noncompliance orders. [158-159]
- Vocalization thresholds: both commenters and the NOSB recommended certain vocalization thresholds to promote welfare within the slaughter facilities. AMS did not feel this was warranted due to FSIS requirements already in place. [158-159]

Livestock Healthcare Practice Standards

Preamble

The current regulations require access to the outdoors. There is no reason not to enforce the current law. If the goal of this rule is to create an environment wherein certifiers, and the accreditation staff at the USDA, are better able to determine whether an operator is complying with the law, the motives behind this proposed rule are fine. However, if there are zero birds outdoors and zero space available for them outdoors, then those producers are clearly breaking the law. It is the responsibility of the USDA (as charged by Congress) to protect ethical industry participants and consumers from this type of fraud.

Summary

The Cornucopia Institute **opposes** the passage of the draft rule, as it is proposed, to amend the Organic Livestock and Poultry Practices animal welfare standards, because the current rule is, in many regards, superior to what is being proposed. Though the National Organic Program (NOP) argues that this proposed rule would create greater consistency among organic livestock practices, a guidance on the current rule would serve the same purpose.

In fact, a guidance clarifying the perceived ambiguities in the current rule would be preferable, because the proposed rulemaking enshrines loopholes and practices that would continue to economically disadvantage producers following the current law.

Despite the NOP's continued insistence that maintaining "consumer confidence" in organics is one of the reasons for this proposed rulemaking, Cornucopia believes that consumer deception will continue under the draft rule.

We have specific comments and criticisms on some areas of the proposed rule. In summary, Cornucopia's stance is that:

- The *current regulations,* if they were enforced as they should be, provide greater consideration for animal welfare and consumer confidence than would the proposed rule.
- The proposal codifies loopholes that are detrimental to animal welfare.
- The minimal requirements for indoor and outdoor space allotted for poultry do not allow for the expression of natural behaviors or environmental protection.
- Consumers expect organic food to impart much higher standards for animal welfare than conventional food and, while the outdoor access requirement guarantees this for all organic food, the stocking density requirements are otherwise similar to the conventional production model.
- Many areas in the proposed rule lack the specificity needed to make the rule meaningful. Ambiguous language will lead to the same inconsistencies that concern the NOP and the public, and will certainly lead to abuse of the rule.

Introduction

The Current Rule and Its Faulty Implementation

From the outset, it should be clear that much of this proposed rule only attempts to clarify policy **already in place**. The primary sections that the NOP intends to revise and expand are 7 CFR §205.238 (Livestock health care practice standard) and §205.239 (Livestock Living Conditions). The origin of the livestock section does not have any proposed changes.

In particular, the standing rules regarding the health care, transport, and living conditions for organic livestock already require that all organic livestock have year-round access to the outdoors and living conditions that promote natural behaviors.[1] Unfortunately, proper implementation of that rule has been either lax or non-existent.

The USDA Office of the Inspector General identified inconsistencies in certification practices in 2010. Inconsistencies in how poultry were housed were a chief concern. In response to these findings, the NOP issued a draft guidance, based on recommendations the NOSB made in 2002, that would have prohibited the use of "porches" to meet the requirement for outdoor access.[2]

The NOP now states that, after public comment, they determined that rulemaking was "necessary to resolve the divergent outdoor access practices for organic poultry…" The draft guidance was never finalized and now, six years later, the public is presented with this proposed rulemaking for animal welfare standards. What's more, the rulemaking process, and proposed implementation timeline, could result in a total of 12 to 14 years, or more, of delay to the enforcement of the law.

The NOP states that "*For all livestock, the regulations require: an environment that allows animals to express natural behaviors; preventive health care to reduce the likelihood of illness; and protection from conditions that jeopardize an animal's well-being, such as predators and adverse weather.*" The NOP also rightly acknowledges that the organic regulations "*require housing and living conditions that allow animals to freely exercise their natural behaviors.*"

What the NOP did not mention in their review of the current standards is that the current organic livestock standards require year-round access to the outdoors. The emphasis on natural behaviors should *require* access to the outdoors. For example, poultry display natural behaviors of dust and sun bathing, hunting for insects, eating grass, scratching and pecking at the ground, and socializing with their flock mates. Screened porches do not allow for *any* natural behaviors.

In many respects, the current standards are comprehensive, requiring that all livestock have access to the outdoors (and "livestock" is defined to include poultry, as

---

[1] 7 CFR 205.239(a)(1)

[2] NOSB 2002. Recommended Clarification on Access to the Outdoors for Poultry (PDF). Available at: https://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations/spring2002

we will discuss in more depth later). At worst, the current standards lack a comprehensive definition section.

Many organic livestock and poultry producers have suffered economically due to the lack of enforcement of the current rules. While ethical farmers give their livestock ample access to the outdoors – and not just the "outdoors", but vegetation, enrichment, and the ability to perform natural behaviors without restriction – they have had to compete with those producers only paying lip service to the rules.

As revealed in the NOP's discussion, these issues are most prevalent among organic poultry producers. Industrialized producers often use "porches" to meet the requirement for outdoor access. We maintain that these "porches" do not meet the requirements of the *current* rules, and should be disallowed already.

Certifying agents were identified by the NOP as a source of disparity in how the current regulations are enforced. However, the NOP's understanding of certification is nonsensical, apparently accepting that "numerous combinations of environmental, cultural, and economic factors" result in variation in the manner in which the regulations are applied.

While certifying agents can take into account site-specifics, the fact remains that the current standards *require certain things*. The rules for outdoor access and natural behavior are not terms of infinite flexibility to be interpreted in whatever way the producer prefers.

It is the position of The Cornucopia Institute that some sites, and climates, are not conducive for organic livestock management. The request for certification by every operator, if they cannot meet the legal requirements for certification, cannot be accommodated.

All laws mean something. If certifying agents are interpreting the standard irresponsibly, then the cure is a guidance, not a new rulemaking.

Reconciling the Costs

The NOP performed many cost calculations with the information they had, determining that costs would increase for some organic producers. The NOP acknowledges that, for some producers, the costs would increase quite a bit and may even lead to some exiting the organic industry altogether.

However, this economic analysis was disproportionate and focused almost entirely on larger organic livestock producers (CAFOs) that employ intensive confinement systems. These producers do not represent all of organics. An economic analysis that does not take into account the *harm perpetuated* when welfare rules are not enforced on small and medium producers is incomplete, at best. Many organic farmers have been economically injured by the lack of enforcement of the current standards for animal welfare, particularly outdoor access. True enforcement would help these farmers in the competitive market, and these economies need to be taken into account in the NOP's analysis,

Poultry productions with "aviary" style housing were the NOP's primary concern in their economic analysis, because aviary houses, accommodating massive populations of birds, may not have sufficient land adjacent to the poultry barns to meet the proposal's outdoor access requirements.

Cornucopia believes that, while these cost accountings are valuable, the NOP did not go far enough in tallying the costs associated with this proposed rule and the organic animal welfare standards in general. Our chief concern is that the NOP acknowledge the **unknown, but significant, costs to family-scale famers** who struggle to compete against prices from industrial-scale operations, due to the USDA's refusal to enforce the standing rule on outdoor access. Up to this point, these family-scale producers have carried the financial and ethical burdens of the organic egg and broiler markets. This cost should have been calculated and included in the NOP decision-making process but, unfortunately, it was not.

The benefits of enforcing animal welfare standards to small and moderate organic livestock operations should also be taken into account.

In their comments on the proposed rule, the NOP states that they believe most organic producers will "meet or exceed" the proposed rule's requirements. The NOP's conclusion shows that the proposed rules are not a step forward. Instead, it indicates that the majority of production is taking place in conditions that are typically found in conventional operations, **violating both the letter and the spirit of the law with respect to animal living conditions and health.**

C**laims by industry that it is too burdensome to prohibit porches and require true outdoor access are faulty.** Organic livestock have always legally been required to have access to the outdoors. Banning practices that are not compatible with organic ideals should be a goal of evolving rules and guidance. Maintaining organic integrity is more important than a possible expense to some producers, particularly with respect to porches and outdoor access for poultry.

This rulemaking and, in particular, the express banning of porches as "outdoor access" is not a surprise to industrial-scale poultry producers. Producers using porches as a perceived loophole, providing for "outdoor access," should have known that strict enforcement could come at any time, invalidating the infrastructure these producers built with the expectation that lax enforcement would continue. Many of the large industrial-scale producers and their industry lobby group, United Egg Producers (UEP), have actively engaged in the NOSB rulemaking process and associated debate. The controversy regarding porches has also been covered extensively in the trade by popular media. There is no plausible excuse for not being aware of the inherent risks involved in building infrastructure in this politically charged environment. Any reduced production will be offset by higher market prices.

We must correct the economic wrong perpetuated on organic producers who already follow the letter and spirit of the standing regulations. Continuing to allow some producers to take advantage of the current standards only extends the economic and social inequity

"Does This Action Apply to Me?"

The NOP asks: "Does this action apply to me?" without acknowledging that **consumers are impacted by animal welfare regulations too.** Consumers pay a premium for organics and have certain assumptions about humane animal management and nutritional superiority. Any changes to the treatment of animals within the organic label is of strong interest to consumers and their input should be considered.

NOSB Recommendations

The NOSB has made many recommendations regarding livestock health and living conditions since the early 2000s. The NOSB has advocated many times that housing must allow animals to perform natural behaviors and have access to the outdoors. In May 2002, specific recommendations were made to the NOP to clarify the rule regarding access to the outdoors for poultry,[3] specifically noting that "*surfaces other than soil do not meet the intent of the organic standards*."

Between 2009 and 2011, the NOSB issued another series of recommendations on animal welfare. The November 2009 recommendation suggested revisions and additions to the livestock health care practice standards and living conditions standards. The NOSB recommended banning or restricting certain physical alterations, and requiring organic producers to keep records on animals which were lame and/or sick, including how they were treated.

In December 2011, the NOSB released suggested changes to the animal welfare standards.[4] These recommendations included providing definitions for terms that were undefined in the animal welfare standards, including "outdoor access" and "soil." **The NOSB also reiterated that outdoor access is the basic tenet of organic production.**

However, Cornucopia feels that the 2011 NOSB recommendations did not go far enough, recommending language changes that would enshrine loopholes and animal welfare problems. In a side-by-side comparison of the 2011 NOSB recommendations and the proposed rule, there were many differences between the two.

While the NOSB made some recommendations to avian living conditions, the new draft animal welfare standards create an entirely new section for these issues. In general, the new draft goes into more detail and makes many changes that were not recommended by the NOSB. These changes and additions land on each end of the spectrum, significantly weakening the requirements recommended by the NOSB, while developing new language proposals. This new language is something that the

---

[3] NOSB, 2002. Recommended Clarification on Access to the Outdoors for Poultry (PDF). Available at: https://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations/spring2002

[4] NOSB, 2011. Formal Recommendation by the NOSB to the NOP, Animal Welfare and Stocking Rates. Available at: https://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations/fall2011

Board has never discussed, nor has the public ever been made privy to – and they create onerous requirements that (in the case of dairy) might not be feasible.

Standing AMS Policy

Another issue with how the current standards are being interpreted is standing NOP policy. The 2002 NOP memorandum explained that organic regulations do not require all animals in the herd or flock to have access to the outdoors at the same time.[5] This interpretation of the current standards is not the most obvious interpretation, and it makes no sense that this would be specified in NOP policy.

The current standards for outdoor access will be discussed in more detail later in this document, but the language states that organic livestock must have living conditions that accommodate "***year-round access for all animals to the outdoors…***" [Emphasis added].[6]

Implementation of the Proposed Rule

The proposed timing for the implementation is unacceptable. If this proposed rule is put into effect as recommended by the NOP, it will extend the injustice and economic discrimination against producers already following the law.

The phase-in timeline is unacceptable, particularly with respect to poultry. At most, organic poultry producers should be allotted three years. In commercial production, flocks are generally kept in chicken houses for only one year.

Organic poultry houses with adjacent land that can be immediately certified should be given no more than one year to implement the outdoor access requirement for poultry. Phase-in for poultry houses needing to transition to qualify for organic should only be permitted if the buildings can actually be converted to organic use (i.e., if there is adjacent land that could be utilized for outdoor access).

If there is no appreciable outdoor space to convert, the operation should not be allowed to continue producing organic eggs after one year (or the end of the productive life of the existing flock, whichever comes first). That space availability can be calculated based on whether or not the available land surrounding a building meets the minimum parameters, reconciling the size of the building and the specifications for which it was designed, in terms of flock size.

These producers should not be allowed a three-year transition period, because they would not be able to use the buildings after three years, as designed. It is true that some facilities may need a 3-year window to convert the land around the building to organic management to meet the "outdoor access" requirement and be free from prohibited materials. However, if certifiable land is available, they should be allowed to make that transition more quickly.

---

[5] National Organic Program, 2002. Access to the Outdoors for Livestock. Retained as Policy Memo 11-5. Available in the NOP Handbook. *Available at:* https://www.ams.usda.gov/sites/default/files/media/NOP-PM-11-5-AccesstoOutdoors.pdf

[6] 7 CFR §205.239(a)(1)

In some cases, the operator could file an amended organic systems plan, indicating a reduction in flock size to appropriately correspond with the amount of outdoor space available. Parameters for this scenario should be developed that would eliminate "fairytale" chicken houses (for example, a chicken house designed to hold 100,000 birds on paper). Such an OSP could be amended to indicate the number of birds would be downsized to 50,000. That would not be an economically viable formula and manipulations like this example can be avoided by having firm parameters already in place. An alternative would be to require a bond be posted in assurance of continued organic production after a three-year transition.

The NOP appears to have concerns that a shorter implementation period will chase some producers out of the organic egg and poultry market altogether. However, this view panders to the lowest common denominator, supporting those producers who are currently not in compliance with the law, while harming those producers already providing appropriate animal welfare. The reality is that many industrial-scale producers frequently switch between organic and conventional production based on market demand. These producers will not lose all value in their infrastructure if they cannot immediately switch their facilities to organic production. Instead, they can remain in the "cage-free" or "free-range" markets with little economic loss.

If some industrial-scale (conventional/organic) producers (such as Herbruck's, whose representatives have testified before the NOSB) truly believe that their birds are healthier indoors and that they create safer eggs, they can market these perceived advantages directly to consumers and label their eggs "produced with organic feed." Because of the potential tightening in the market after this rule goes into effect, it is likely that organic egg pricing will moderately increase. Any organizations creating their own niche (produced with organic feed) would likely be able to maintain their prices, market shares, and profit margins.

Livestock Health Care practice Standard

In general, the changes to the livestock practice were less significant than those in the avian section of the proposed rule. However, because "livestock" is defined to include poultry, these sections of the proposal apply to mammalian and avian species. This proposed rule does not alter the standards for "origin of livestock" or what has been termed the "pasture rule."

Physical alterations

The NOP's proposal regarding physical alterations were significant. The current regulations at §205.238(a)(5) limit physical alterations to those needed to "promote the animal's welfare." The NOP draft standards *expand* the use of physical alterations for hygiene, identification, and safety purposes. The draft also provides more specificity regarding how physical alterations on livestock should be performed.

Unfortunately, the statement that "*[p]hysical alterations must be performed on livestock at a reasonably young age, with minimal stress and pain and by a competent person*" lacks the specificity needed to be meaningful. Without defining the above terms, the regulations don't set any kind of line determining when physical

alterations may *not* be performed due to the age of the animal, the level of stress and pain, or the competency of the person performing the alteration.

These definitions would, of course, be species-specific. However, there are certain life stages that can be used as qualifiers if it is too burdensome to define these terms with more specificity. For example, some alterations could be performed "before weaning" or "within five months of weaning." In addition, a more specific definition of the "competent person" intended to carry out these functions would benefit animal welfare. Some physical alterations should be performed by a veterinarian, for example.

Section 205.238(a)(5) also states that alterations can be *"performed to benefit the welfare or **hygiene of the animals**..."* [emphasis added]. Cornucopia agrees with the Federation of Organic Dairy Farmers' (FOOD Farmers) comments that allowing alterations for hygiene may create a loophole within which dairy farmers might justify docking tails even though that practice is prohibited elsewhere. Alterations should not be allowed exclusively for hygiene reasons.

The new animal welfare standards also add multiple new sections to the regulations regarding physical alterations. Needle teeth trimming and tail docking in pigs are listed as practices that should not be used routinely (to be listed in §205.238(a)(5)(i)). In their companion explanation to the proposed rule, the NOP explained these practices "*may only be performed in response to documented animal welfare reasons when alternative steps to prevent harm fail*." This specificity is not in the rule itself; for example, how many alternative methods and which alternative methods must be tried before these alterations are allowed?

Teeth trimming and tail docking are unnecessary when other animal welfare considerations are applied; both practices should be prohibited on certified operations.

Teeth trimming is performed to reduce injuries among piglets and sows' teats. However, sows and piglets are less prone to injury in high-welfare systems.[7][8] This is especially true when sows are kept in spacious and clean farrowing areas. Teeth clipping *and* tail docking are prohibited by both the Animal Welfare Approved[9] program and Global Animal Partnership's 5-Step welfare standards[10].

---

[7] Literature Review on the Welfare Implications of Teeth Clipping, Tail Docking and Permanent Identification of Piglets, July 15, 2014. American Veterinary Medical Association. *Available at*: https://www.avma.org/KB/Resources/LiteratureReviews/Documents/practices_piglets_bgnd.pdf

[8] An HSUS Report: The Welfare of Piglets in the Pig Industry. The Humane Society of the United States. *Available at:* http://www.humanesociety.org/assets/pdfs/farm/welfare_piglets.pdf

[9] *Pig Standards*, 5.9.17 & 5.9.3. Animal Welfare Approved. *Available online at:* http://animalwelfareapproved.org/standards/pig-2015/

[10] 5-Step® Animal Welfare Rating Standards for Pigs v2.1. Global Animal Partnership. *PDF for pig requirements accessible at:* http://www.globalanimalpartnership.org/5-step-animal-welfare-program/standards

The proposed rule also specifies that a long list of practices must not be performed on certified operations. In general, Cornucopia supports narrowing the list of allowed physical alterations because they pose stressors for livestock.

In addition, Cornucopia agrees with FOOD Farmers' comments regarding the addition of §205.238(a)(5)(ii), stating that the proposed new language *"…must not be performed on a certified operation…"* is misleading and not as definitive as possible. We believe this could lead to livestock producers taking advantage of various loopholes. FOOD Farmers gives the example of how this phrasing could mislead producers thinking of transitioning livestock to organic, potentially performing these alterations immediately prior to becoming certified organic or before transitioning individual animals. These practices should not be allowed and greater clarity in this section is needed to prevent these expected abuses.

General comments and criticisms on the livestock healthcare practice standard

- Cornucopia supports the recommendation by FOOD Farmers to change the term "*sickness"* to "*illness or to alleviate pain and suffering"* in the proposed §205.238(b). We agree that this will reflect consistency with the rest of the regulation.
- The revised §205.238(c)(3) would prevent producers of organic livestock from "*[a]dminister[ing] hormones for growth promotion, production or reproduction.*" Oxytocin is currently listed as a synthetic substance, allowed for use in organic livestock production, used in post-parturition therapeutic applications.[11] Our understanding is that oxytocin is in regular use by some dairy producers to help cows recover after birth. This use could possibly fall under the ambiguous umbrella of "reproduction" listed in the proposed rule. Therefore, the proposal may conflict with the National List of Prohibited and Allowed Substances and create more confusion for certifiers and producers.
- Cornucopia agrees that natural behaviors are species-specific. However, natural behaviors are better-defined for ruminant livestock than for poultry, swine, or other species (for example, ruminants are required to graze for the entire growing season, but not less than 120 days per year). Defining each species' natural behaviors may be too restrictive if an exhaustive list, as defined by animal behaviorists, is not included. For example, a natural behavior of poultry is to consume insects and vegetation, but this degree of specificity is not found anywhere in the proposed regulations.

[11] 7 CFR §205.603(17)

Mammalian Living Conditions

Access to soil

As part of the definition of the "outdoors",[12] the NOP is proposing to add a new requirement for outdoor access in §205.239(a)(12). Specifically requiring "*[a]t least 50 percent of outdoor access space must be soil, except for temporary conditions which would threaten the soil or water quality when outdoor access must be provided without contact to the soil*."

The NOP states that "*[t]o make access to soil meaningful, at least 50 percent of all the outdoor access area must be comprised of soil.*" However, soil alone is not an indicator of good animal welfare or good outdoor access. A better indicator would be a *requirement for vegetation* during all times of the year when vegetation could be present and at an appropriate growth stage for harvesting by animals. The presence of vegetation itself indicates that issues of soil, water, and air quality are being taken into account, that stocking densities are appropriate, and that the animals have access to vegetation to graze or browse.

Bare soil may allow for some natural behaviors and is certainly better for animal joints and lameness issues than surfaces like concrete. However, as an animal welfare solution, requiring that mammals have access to the soil year-round may not provide the benefit intended by this section. In many regions, outdoor access to soil results in muddy and unsanitary conditions during the winter or rainy seasons. Bare dirt, packed down by animals, will become covered in manure because of the density of livestock confined in the outdoor area.

A surface of soil is not conducive to the scraping and removal of manure and urine. This buildup will lead to environmental problems from runoff, erosion, and a high manure load. This problem will be particularly serious for large poultry barns and other livestock operations where the specific area and contiguous land does not have the capacity to handle the stocking density at a given time.

Cornucopia agrees that all livestock should have year-round access to the outdoors and that access to soil (and particularly vegetation) is important. However, a blanket statement that outdoor areas must be 50% soil is misleading and confusing to consumers and organic producers. The exceptions to the "soil rule" might allow practices currently common in the organic livestock market to continue, such as confining livestock to an outdoor concrete "yard" during the non-grazing season to protect soil and water quality.

The rule with its exceptions is not clear. For example, would a dairy have to let their cattle out on a dirt paddock that has not been torn up with the expectation that the quality of the paddock will rapidly degrade, and *then* the producer can pull their cattle off to protect the soil? The rule and its exceptions do not answer these questions with specificity. Adopting the NOSB's 2011 recommendation (noting that yards, feeding

[12] §205.2

pads, and feedlots may be used to provide ruminants with access to the outdoors during the non-grazing season), without specifying that the access to soil must be year-round for ruminant livestock, may be a better approach.[13]

While the NOP comments that soil is good for swine because it allows them to root and engage in other natural behaviors, the same behaviors could also be supported by giving pigs deep bedding material in their other housing — during temporary periods of time when outdoor access would pose a threat to the environment.

Confinement

The proposed rules states that all livestock must have "*[s]ufficient space and freedom to lie down in full lateral recumbence, turn around, stand up, fully stretch their limbs without touching other animals or the sides of the enclosure, and express normal patterns of behavior.*"[14] This language appears to ban stalls, stanchions, and tie stalls for cattle. Housing with stalls is very common in the dairy industry and has never been expressly prohibited in the organic standards or discussions on animal welfare rules.

Cattle stalls must be carefully sized to ensure that manure and urine are deposited in the alleyway or gutter, and not in the stall itself. This draft proposal would require stalls to be sized nearly double (in width) the current dairy industry standard, in order to allow an animal to lie in full lateral recumbence with limbs stretched and not touch another animals or the sides of their enclosure. Sizing stalls this large would mean that animals could lie sideways or possibly backwards in most stalls, allowing cattle to defecate and urinate in their stall and on their bedding.

The vast majority of dairy farmers, regardless of scale, utilize stalls to manage their cattle in a safe and sanitary manner. No existing regulatory language would indicate that their management practices are incompatible with current legal expectations. Requiring all NOP-certified dairy operators to reconfigure or replace every stall-based dairy cow and heifer facility would be economically unfeasible. This change would also be an unexpected rulemaking, never previously discussed by the NOSB or the public, creating radically different standards than have existed since 2002 (and prior to that under the voluntary/private certification programs that existed). This situation is unlike the poultry producers who claim this rulemaking is onerous, because having their birds outdoors has always been part of the organic rules.

If the NOP would like to move towards banning stanchions, and tie stalls, they must take into account all the dairy producers who rely on their existing stall-based infrastructure to operate their businesses. A better approach would be to maintain the standing production model, while simultaneously reinforcing the animal outdoors and, outside of their stalls whenever conditions permit (appropriate conditions would have to accommodate the natural instinctive behaviors of the species — as an

[13] The NOSB recommended this language revised in §205.239(a)(1)(ii)

[14] Proposed rule at §205.239(a)(4)(i)

example ruminants spend a considerable amount of their day lying down and should have access to their stalls and bedding on an appropriate schedule).

The proposed rule revises §205.239(b)(7) to state that "*…animals shall not be confined any longer than necessary to perform the natural or artificial insemination…*" This is too stringent, and highly impractical, for many producers. Cattle are often bred using artificial insemination (AI), often by AI technicians who travel from farm to farm to provide the service, as needed by each producer. The AI tech's schedule will vary from day to day, making it difficult, if not impossible, to know precisely when the breeder will arrive each day.

An animal may need to be confined for a few hours before the breeder arrives. In addition, requiring that the bred animal be let out to pasture right after the breeding has occurred is highly impractical and creates a logistical nightmare for a family-scale farm operator (as opposed to a large industrial-scale operation that might have designated staff to perform these functions).

For example, the rule as written would mean someone would need to watch for when the breeder arrives on the farm and then take that cow (or group of cows, if more than one was bred that day) out to, or from, the day's pasture, which could be a half a mile or more away, when the rest of the herd is already there. Doing so will not only create problems in getting the bred cows in through the gate when the rest of the herd is already there, but will also be disruptive to the rest of the herd. Allowing livestock to be confined for 12 to 24 hours at the time of breeding, as well as allow the cow to go out of estrous (as injuries can happen to cows in estrous from their riding behavior) will remove the related problems with this proposal. Confinement, related to breeding, for more than 24 hours can and should be prohibited.

Though the NOP, in their accompanying comments, states that a "*group of livestock may be confined while the various individuals are bred…*," it is not clear in the language of the proposed rule itself what would be allowed. According to the NOP's explanation, a producer could confine a large number of cows (as long as they are a "group") when all of them are not open for breeding. Neither extreme is realistic nor reflects industry practices today. Cornucopia does not want to see a loophole created where operators of large herds (often with staggered reproductive cycles), could confine a large percent of their animals because a minority of them were ready to breed.

Other concerns regarding the provisions on confinement include:

- The term in §205.239(c)(4), allowing confinement for short "periods for milking," needs to be better defined, because in large cow herds, the process of bringing cows in and out of the milking parlor, where some industrial dairies are now milking three and four times a day, may lead to animals confinement for the majority of the day. This obviously violates many other provisions in the current rule and the pasture standard, which requires that *all* animals graze and get meet the minimum requirement for pasture.
- The proposal revises §205.239(d). This section exempts ruminant slaughter stock from the pasture requirement. There is a loophole in the proposed

standards requiring ruminants be maintained on pasture during finishing period. More specifics are needed in this section if it is retained.

Swine

In the mammalian section, the NOSB proposed mandatory group housing of swine and a requirement for rooting materials for swine. These are both beneficial changes for the welfare of the animal, as current practices allow slatted and concrete flooring. However, **there is no minimum space allowance for pigs.** Just as poultry should have a minimum space allowance, other species should as well.

As already discussed, needle teeth clipping and tail docking should not be permitted. These alterations are only utilized to prevent stressed animals from doing themselves and their fellows harm.

Another concern in the section on swine is that pigs can be separated from group housing and confined due to "aggression" in the proposal at §205.239(a)(8)(iii). Aggression in pigs is a function of stress and genetics, and alternatives should be tried before those animals are separated. The same is true for other species (such as chickens) and should not be used as an excuse to keep very social animals from being housed in groups.

Euthanasia

The proposed livestock health care practice standards include requirements for euthanasia to reduce suffering of any sick or disabled livestock. Unfortunately, the current standard at §205.238(c)(7) does not speak of euthanasia or animal suffering at all. Like much of the current regulation, this section is vague and open to multiple interpretations.

With respect to euthanasia, the NOP proposes to leave open which forms of euthanasia are applied and, instead, just list those forms that are prohibited. However, new technologies may be developed that are not compatible with organic agriculture and they would not be automatically prohibited because of how the rule is written. Instead, the rule should cite the methods that are currently allowable and encourage producers to petition NOSB when new methods of euthanasia enter the market.

The proposed §205.238(c)(8) should read "*Withhold individual treatment designed to minimize pain and suffering for injured, diseased, or sick animals, which may include forms of euthanasia as recommended by the American Veterinary Medical Association* ***or the advice of an attending veterinarian****" [underlined language added]*.

Cornucopia supports the addition of §205.238(e) in the rule, with some exceptions. It is unclear in §205.238(e)(1) whether livestock producers would be required to euthanize their animals when they are sick or injured, or if they are just required to have a written plan of some kind in place regarding sick or injured animals. It is unnecessary and harmful to require euthanasia whenever an animal is sick or injured. For one, both "sick" and "injured" are broad and subjective terms. Adding

unnecessary or unclear requirements for further paperwork to a livestock producer's busy schedule should be avoided.

Other points of concern

Cornucopia has various concerns regarding the proposed rule regarding mammalian living conditions that must be addressed before anything is finalized.

- There is no definition of "clean" at §205.239(a)(6). While the proposed rule states that animal's living conditions should be kept clean, there is no description of "properly clean, as needed." The term "clean" is completely subjective, if meant to include natural behaviors. For example, swine prefer wallowing and rooting in mud (though not manure) and could not be called "clean" by any common sense of the word. Even on a new pasture, cows may lay on a fresh manure patty and become soiled. The NOP commentary acknowledges some of these realities of keeping livestock, yet the proposed rule wording does not acknowledge, or appear to allow for, less than fully clean animals — a normal consequence in operating a pasture-based system.
- In the proposed §205.239(a)(1), the NOP lumps together "*[y]ards, feeding pads, and feedlots*" together with pasture, soil, and other surfaces the animals may have contact with when they are "outdoors." There should be a differentiation between these surfaces, as they all have very different implications for animal welfare.
- Also in the proposed §205.239(a)(1), the language states that "*[y]ards, feeding pads, and feedlots shall be large enough to allow all ruminant livestock occupying the yard, feeding pad, or feedlot to feed without competition for food in a manner that maintains all animals in a* ***good body condition***" [emphasis added]. Because "good body condition" is not defined and is highly variable, depending on the species and stage of production (for example, a dairy cow may be lean during peak milking), Cornucopia recommends that that language "appropriate body condition" be substituted whenever this issues comes up.

  Body scoring is a quantitative measure that may not work well in pasture-based organic systems, because it is highly variable, subjective, and requires training and experience that organic inspectors often lack.
- There should be more specificity regarding gates that give outdoor (and pasture) access for grazing livestock. If there are only one or two gates giving thousands of animals pasture access, then it will take too long for each animal to get the required 30% dry matter intake (DMI). Just like in poultry confinement buildings, gates leading to pasture have to be evenly distributed and readily accessible to livestock. Otherwise, operators of large feedlots or dairy barns could conceivably confine thousands of animals with one or two gates open on the far end of a facility. Just as with poultry, the majority of the animals would have no effective access to pasture.

Avian Living Conditions

If the cumulative effect of the rules on livestock health and avian living conditions do not result in birds *actually* going outdoors, they are a gross betrayal of consumer goodwill and their understanding of the organic label. Many consumers think the birds are going outside today, and are they being deceived by the lax enforcement that allows porches.

Stocking density concerns

The proposed stocking density requirements for poultry are completely inadequate and conflict with other sections of the proposed rule. The NOP should accept no less than a minimum of *5 square feet per bird* outdoors for laying hens and broilers, and 5 square feet per 7.5 lbs. for turkeys inside, to meet the welfare needs of the birds and the expectations of organic consumers. Outdoors, the standard for animal welfare should be even greater.

Research on laying hens shows that each bird needs much more space to stretch one wing, to preen, and to turn around than conventional systems allow.[15] In addition, research shows that a grown hen needs about 2 square feet to flap and stretch both her wings – another natural behavior impacted by overcrowding. Despite this, the NOP rejects the NOSB recommendation that 2 square feet be allotted to birds indoors, stating that that requirement is "too liberal."

Cornucopia disagrees. In fact, evidence supports a space requirement much higher than two feet indoors, and an even higher stocking density outdoors. The NOP's own proposed rule requires that "*[p]oultry housing must be sufficiently spacious to allow all birds to move freely, **stretch their wings**, stand normally, and engage in natural behaviors" [Emphasis added]*.[16] A requirement is not "too liberal" for organic production when the requirement is compatible with current industry averages in conventional poultry operations.

*High stocking density leads to many specific welfare issues in poultry. The organic rules should strive for superior animal welfare at all times, not just because it is something consumers expect, but because producers will benefit from healthier birds. The organization Compassion in World Farming summarizes some of the research on the connection between animal welfare and stocking density in broiler chickens, finding that high stocking density leads to a **reduced ability to exhibit natural behaviors,** restricted movement, and poor environment.[17] These considerations lead to problems with walking, preening, eating, and drinking.*

Birds in overcrowded situations are interrupted when they are trying to rest, leading to poor development. These "interruptions" also lead to unhealthy animals, more

---

[15] The Welfare of Chickens Raised For Meat. Animal Welfare Institute. Available online at: http://www.fao.org/fileadmin/user_upload/animalwelfare/20910.pdf

[16] Proposed rule at §205.241(b)(11).

[17] Welfare Sheet: *Broiler chickens.* Compassion in World Farming. *Available online:* https://www.ciwf.org.uk/media/5235309/Welfare-sheet-Broiler-chickens.pdf

susceptible to disease and aberrant behaviors, such as feather picking and aggression. In addition, high stocking densities mean large amounts of manure. Without constant maintenance, both outdoor and indoor areas will not be kept clean enough for the birds to exhibit natural behaviors, such as dust and sun bathing.

The NOP made several assumptions when they worked to calculate stocking density. Specifically, they based their weight requirements on the assumption that the predominant breed used for layers is the ISA Brown strain of chicken (with an average weight of 4.5 pounds). In reality, most egg producers use a variety of breeds and the ISA Brown strain is one of many types. Other common types include the Lohmann Brown, Hyline Brown, and LSL White strains. There is also variation within each strain that producers will select for based on their individual needs.

Cornucopia recommends that stocking density calculations are not based on a specific strain or weight. Many strains are used by producers, and sometimes flocks will consist of multiple strains. There is also enough variation within strains that some producers could take advantage of the rule; inspectors are not going to weigh the average bird in a producer's flock!

Organic Valley, for example, requires 1.75 square feet per bird indoors and *5* square feet per bird outdoors (though certain farms are exceptions to this rule and in violation of the current standards due to a lack of outdoor access). Even though the EU and the U.S. have an equivalency agreement, the EU has an outdoor requirement of *43 feet squared per bird*.[18] That is not even close to the equivalent of what is being proposed. Animal welfare labels provide much greater allowance for space per bird as well, and it is a very real fear of organic producers that consumers will turn to these labeling schemes when they learn how low the organic label sets welfare standards.

50% soil is not enough and minimum vegetation should be required

As already discussed with respect to mammals, the definition of "outdoors" which includes an area of 50% soil, is inadequate. If 50% of the outdoor space is soil, then the other half could be concrete or gravel, or other surfaces which offer no welfare benefits to poultry. Even litter would be preferable because it would be possible for the birds to scratch and even dust bathe in litter. As it stands, manure covered dirt does not count, and should never count, as "soil."

In 2011 the NOSB recommended that outdoor access include vegetation for poultry. The NOSB stated that "*[a] minimum of two square feet of outdoor space is required to protect the soil and to minimize parasite loads. Five or more feet of outdoor area would ensure that some vegetation would be available to birds during the growing season and producers are encouraged to provide a high quality outdoor area with vegetation that will be used and occupied by all birds listed in the chart.*"

As part of the definition of the outdoors,[19] the NOP proposes to add a new requirement for outdoor access in §205.239(a)(12). Specifically, the new

---

[18] Do people know where their chicken comes from? By Tom de Castella. BBC News Magazine, October 23, 2014. *Last accessed 5/10/16:* http://www.bbc.com/news/magazine-29219843

[19] §205.2

requirement would require that "*[a]t least 50 percent of outdoor access space must be soil, except for temporary conditions which would threaten the soil or water quality when outdoor access must be provided without contact to the soil.*"

However, it is *impossible* to stock birds so densely outside and still maintain "soil and water quality" as the proposed rule requires. Manure will build up and create a hospitable environment for disease, parasites, odors, and flies. In fact, these concerns seem to already be prevented by the existing rule, which requires that producers establish "*… appropriate housing, **pasture conditions, and sanitation practices** to minimize the occurrence and spread of diseases and parasites*" [emphasis added].[20] This clause, combined with the stocking density concerns, make the proposed rule conflict with itself. There is no way to stock birds as densely as proposed and still comply with sanitation and environmental problems or allow natural behaviors to their fullest.

The NOP's draft guidance (though it was never finalized) informed certifying agents and producers that maintaining poultry on soil or outdoor runs would demonstrate compliance with the outdoor access requirement in §205.239. The proposed rule requires that "*[a]t least 50 percent of outdoor access space must be soil*" in §205.241(c)(8).

There is no requirement that the birds have access to vegetation, even though grass is the ultimate enrichment for poultry. Chickens graze, scratch, and pick up insects. Bare soil, which will rapidly be covered with manure at the suggested stocking densities, limits these natural behaviors. Ironically, in their included comments, the NOP acknowledged that vegetation was an important enrichment for poultry. If the proposed §205.241(c)(1) *requires* outdoor enrichment to "entice the birds" then the NOP should be comfortable adopting a minimum 50% vegetative cover.

Cornucopia agrees with the NOP statement that "*[m]inimum vegetative cover would provide opportunities for poultry to engage in natural foraging behaviors. In addition, the vegetative cover would help to reduce soil erosion and nutrient run off.*" There is no reason not to change the soil requirement to a vegetation requirement for poultry.

Indoor requirements for poultry

The NOP's proposed rule defined "indoors" as the flat space or platform area under a solid roof, where the animals have access to both food and water and can be confined, if necessary. Unfortunately, the NOP's calculation adds the square footage of *every* flat space to this calculation, even when those spaces may not be utilized regularly by the birds. This calculation could include nest boxes and perches.

The NOP also notes that the space found in porches can be included in the space calculations, as long as they are accessible to the birds at all times. Cornucopia disagrees with this assumption. **Porches should not be included in either indoor *or* outdoor space calculations, regardless of whether the porches are inaccessible to birds at some times, or all the time.** Birds rarely use these spaces,

[20] Current rule (no revision proposed) at §205.238(a)(3)

especially when doors only allow some birds to exit the building at one time. Food, water, and material for the birds to scratch in are not usually available on porches. Without these enrichments, birds are unlikely to utilize these spaces.

Allowing porches to be included in space calculations has the potential to create a tremendous loophole. Large, industrial operations that want to confine birds into tightly packed houses could add very inexpensive, rudimentary porch or porch-like structures, contiguous to the primary henhouses. This relatively inexpensive space could undermine the spirit of the new rulemaking by allowing the continuation of the conventional "factory farm" model of organic poultry production.

With respect to the allowance for doors on poultry houses, it is vital that the doors are large enough for several birds to get outside at the same time. The new proposed §205.241(c)(1) states that "*…door spacing must be designed to promote and encourage outside access for all birds on a daily basis.*" While a good baseline provision, there is too much ambiguity in this phrasing to be meaningful. Because most poultry are very territorial, in large barns a chicken at one end may not even know they can get outside if the door is ten feet away from them. The proposed §205.241(b)(5) requires poultry houses to have exits "*appropriately distributed **around the building**, to ensure that **all birds** have ready access to the outdoors*" [emphasis added].

We agree with the sentiment of this proposal, but believe it needs more specificity before being accepted. It should specify that doors be located with regularity and around *all sides* of the building for each bird to have access to the outdoors. One recommendation is that doors be placed such that, for every 50ft of wall, there should be 10ft of door. We agree that making the doors wide will also encourage the birds to go outside, and wonder why the NOP did not create better specifications within the proposed doors section, defining what a "wide" door means, or even what the phrase "distributed around the building" means.

Based on research by Cornucopia staff, the *height* of doors seem to also factor into whether birds actually venture outside. Low, small doors, many of which open hinging "up/out," block the view of the sky. This door style does not allow poultry to exercise their instinctual behavior of looking upwards to assure that there are no avian predators present before venturing out.

With respect to indoor housing, these are other issues that Cornucopia feels need to be changed and/or clarified within the proposed rule:

- The proposed §205.241(b)(11) requires that "*Poultry housing must be sufficiently spacious to allow all birds to move freely, stretch their wings, stand normally, and engage in natural behaviors.*" Cornucopia agrees that indoor space should always allow birds to exhibit their natural behaviors. However, combined with the minimum stocking densities (discussed above) it will be hard, if not impossible, for birds to dust bathe without doing so in manure. They will also not be able to stretch their wings fully.

- Under the proposed §205.241(b)(3), artificial light may be used to prolong the day length up to 16 hours. It is beneficial that the proposal requires natural light in poultry barns, but again, the language could use more specificity. If a normal day length is already 16 hours, presumably artificial light would not be allowed to extend it any longer.
- Cornucopia also has some concerns about aviary systems. Aviaries, which house more birds by utilizing multiple levels, may cause problems providing all birds meaningful outdoors access. As already discussed, poultry tend to be territorial and individuals will not move throughout the whole barn. If an individual is on a top level and all the doors providing outdoor access are on the ground floor, those birds my never even know there are doors open to the outdoors. In addition, some aviaries have systems in place that allow them to confine birds to certain parts of the barn. These are glorified cages and should not be tolerated in organic production.

Outdoor Requirements for Poultry

The proposed rule makes significant changes to the outdoor requirements for poultry. The clear concern and underlying target of these changes is the inconsistency in how the "outdoor access" requirement is implemented. Cornucopia agrees with the NOP that the disparity in amounts of outdoor access has economic implications for producers, and lessens consumer confidence in the organic label. Cornucopia also believes that porches do not constitute even a modicum of "outdoor access."

In the explanation along with the rule, "*AMS agrees with FDA that porches are not outdoor space. Many do not provide contact with soil nor align with consumer expectations and NOSB recommendations for outdoor access*." Cornucopia agrees with this sentiment and wonders why this information could not come in a guidance.

Leaving the proposed rule for a moment, it is clear that those utilizing porches to qualify as "outdoor access" have always been in violation of the current rule. The *current regulation,* as of May, 2016, states that "[*t]he producer of an organic livestock operation must establish and maintain year-round livestock living conditions which accommodate the health and natural behavior of animals, including:* ***year-round access for all animals to the outdoors****, shade, shelter, exercise areas,* ***fresh air****, clean water for drinking, and* ***direct sunlight****, suitable to the species, its stage of life, the climate, and the environment…*" [emphasis added].[21]

This language applies to poultry, as "*livestock*" is defined as: "*…cattle, sheep, goats, swine,* ***poultry****, or equine animals used for food or in the production of food, fiber, feed, or other agricultural-based consumer products; wild or domesticated game; or other non-plant life...*" [emphasis added].[22] The current rule also states that "[*c]ontinuous total confinement of* ***any animal indoors*** *is prohibited.*"[23] **Taken together, this language makes it clear that porches are in violation of the current law**.

[21] 7 CFR 205.239(a)(1)
[22] 7 CFR 205.2. *Livestock*
[23] §205.239(a)(1)

A significant problem with the proposed rule is that it does not require the outdoor space to be contiguous to the building within which poultry are housed. Chickens are unlikely to travel far from their shelters, and so there has to be pasture available *alongside* buildings and doors.

Biosecurity

Other commenters maintain that porches for poultry (as oppose to actual outdoor access) are necessary for biosecurity reasons, citing concerns of disease contamination from wild birds (primarily avian influenza and salmonella).

The truth is that high-welfare, pasture-based systems have few, if any, problems with disease. There are organic practitioners allowing their birds true outdoor access (with access to the soil and even vegetation) in every state where organic chicken or egg production takes place. We have seen no documented health problems associated with the outdoor access. These high-welfare systems, by and large, use rotational pasture methods which effectively keep poultry from living in their own manure. Keeping birds clean and in the fresh air, and sunshine, is a better disease preventative than limiting exposure to wild birds. In addition, chickens that are outdoors (and particularly those that can feed on vegetation and insects) are less stressed than poultry in crowded barns and, therefore, have stronger immune systems to deal with possible outbreaks of disease. The NOP should consider the prevalence of disease in flocks with the highest welfare as a benchmark to which all organic poultry should aspire.

The proposed definition of "outdoors" would allow fencing, or overhead netting, that does not block sunlight or rain, preventing predators and wild birds from entering the outdoor area. However, adding netting to most systems would be impracticable and could even involve an additional future cost. The FDA stated that none of the rules they promulgate regarding food biosecurity will prevent organic producers from complying with the organic regulations, but if things like netting become more prevalent, and are specifically sanctioned in the NOP regulations, the FDA may require the netting because it would not "interfere" with the ability of producers to meet organic standards. For high-welfare producers, such as those that do rotational pasturing of their birds, this would be logistically impossible and come at a prohibitive cost.

The addition of §205.241(d)(3) would allow poultry to be confined due to the production area being on a migratory pathway (for wild birds). This is a serious loophole that should not be included. In some regions, migrations are ongoing for three months or more, which could allow birds to be confined to buildings for an extended period. As already discussed, the health of a flock is better predicted by the welfare of the birds and whether they are crowded or stressed.

Some "experts" in the industry may disagree with our conclusions. However, these comments do not take into account the viable market already existing in pastured

poultry or the widely accepted understanding that birds with true outdoor access are healthier and therefore resistant to disease.

In particular, the comments filed by the National Assembly of State Animal Health Officials (NASAHO) affirm that "outdoor access" provisions would undermine biosecurity instructions that the USDA gave to poultry producers after the avian influenza outbreak last year, as well as FDA requirements for preventing salmonella. Susan Keller, president of the NASAHO, writes in their comments that the "*AMS acknowledges the increased risk, so the fact that this change in the rule is even being considered is a major concern. It must be questioned whether this proposal emphasizes marketing above poultry health and, if so, whether the risk to the entire national poultry industry has been considered*."[24]

These comments show a bias toward one narrow aspect of the dominant paradigm in the poultry industry: large intensive-practice producers. As previously stated, the biosecurity concerns of having poultry outdoors are minimal in properly managed operations. Outdoor access has always been part of the organic law.

If the NOP is concerned about biosecurity issues, they should seek the advice of poultry producers who are currently keeping their birds outdoors on pasture or those with significant outdoor access. These producers' experiences illustrate how outdoor access and the organic label are more than compatible. When birds have access to adequate space, fresh air, sunshine, and exercise, they maintain better physical health than confined birds.

Surveys regarding avian influenza show that there are *multiple factors* that influence the disease's prevalence and virulence. According to findings analyzed by the National Organic Coalition, "*[r]esearch shows that the mutation of LPAI to HPAI occurs almost exclusively in crowded indoor poultry houses.*"[25]

While opponents of keeping birds outdoors seem to be concerned about exposure to wild birds, this exposure is only one of *many* potential disease vectors. Research shows that disease is more likely to be passed by people traveling between poultry houses, and indoor-only barns appear to be especially vulnerable. Essentially, **lower stocking densities *and* true outdoor access, where the birds (and their manure) are exposed to sunlight and fresh air, are not the problem: they are the solution.**

Temporary Confinement

The proposed regulation at §205.241(d)(1) states that birds can be temporarily confined during *"Inclement weather, including, when air temperatures are under 40*

---

[24] Comments on the same docket from the National Assembly of State Animal Health Officials. Specific comments from Susan Keller, president of the NASAHO.

[25] Avian Influenza and Outdoor Access for Organic Poultry Flocks. National Organic Coalition. *PDF available online at:* http://www.nationalorganiccoalition.org/_literature_130075/Avian_Influenza_and_Outdoor_Access_for_Organic_Poultry

degrees F or above 90 degrees F…" **This provision for temporary confinement is too lax.**

First, "inclement weather" is not defined and could be used as a significant loophole for producers. While the NOP states in their narrative that *"[b]*irds *may be confined due to storms, blizzards, and other hazardous conditions…*" this language is not in the actual rule. This term must be defined for this provision, and others (including the temperature requirements for the birds), to be meaningful.

Birds do well in varied weather conditions and temperatures and if outdoor runs have shade structures, as required, the birds can freely choose to seek shelter either outside or in their barns.

The temperature threshold standards provide another loophole for producers in regularly hot or cold climates. With adequate shade, birds can be comfortable outdoors in temperatures and above 90°F. Having doors to the outdoors open will allow the birds' ability to choose whether to stay in or out regardless of the weather. **Cornucopia supports removing the high-temperature allowance for temporary confinement.** To address any aberrant weather that might impact poultry welfare, the term the term "inclement weather" could be defined to include weather patterns *unusual for the area*, such as unexpected heat.

At the colder end of the spectrum, Cornucopia would support a limit for outdoor access **below** 40°F. Inclement weather is a greater indicator for poultry welfare than temperature alone. Chief concerns are harsh winds and wet weather, both of which poultry are sensitive to. Wind breaks and protective cover can do a lot to mitigate these threats, while keeping the birds outdoors. In addition, different breeds of poultry should be considered for their ability to withstand local weather norms, requiring organic producers to adapt their programs to the environment, rather than the other way around.

Other Avian Considerations

There are other concerns regarding animal welfare that are not addressed in the proposed rule *or* areas where the proposed rule is inappropriate:

- The NOPS's discussion of porches in the proposed rule is framed in its history. Porches began in many operations following the 2002 AMS administrative appeal decision ordering the certification of an operation, providing porches exclusively for outdoor access. However, **the "Country Hen" decision was a corrupt and legally indefensible**. It was made in 3 days, an unprecedented turnaround time for administrative decisions. In addition, the administrator in charge of the case went to work for Country Hen after his retirement from the USDA. The subsequent legal decisions were never based on debate or the legality of housing animals on porches instead of outdoor access, but solely on whether the certifier had the ability to appeal the NOP's decision. This decision was clearly made in deference to the egg industry, disrespecting the discerning consumer and ethical poultry operations.

- Poultry should have access to the outdoors **during all daylight hours.** This timing will, of course, change depending on the seasons and latitude of the farm.
- The new §205.241(b)(6) language is unclear given the proposed definitions of "perch" and "roost". The differentiation between these terms is poor and needs to be clarified before it can be deemed meaningful within the proposed §205.241(b)(6) and the definition section. Aviaries where the upper levels are extended flat spaces do not meet the common-sense definition of either "perch" or "roost."
- The proposed rule states that poultry can be confined up to a certain age, at which point they are required to have outdoor access.[26] These age requirements (4 weeks of life for broilers and 16 weeks for pullets) are too conservative. Many operations successfully put their birds (both layers and broilers) outside at four weeks without any adverse effects.[27] As such, 16 weeks is particularly old. Also, if broilers can go out at four weeks of age, then layers should be able to as well, *at a minimum.*
- There is no requirement that ducks and geese have access to water for swimming and dabbling. These are species-specific natural behaviors that should be acknowledged.
- In their comments, the NOP states that structures for shade are permitted in outdoor spaces and those shade structures not attached to building can be included in the "outdoor space". The rules do not clarify what percent of the outdoor space can be covered with a roof for shade.
- If this proposed rulemaking goes forward, it should include provisions restricting the breed of poultry (and in particular, broilers) to slower-growing breeds. As it stands, common broiler breeds are so fast-growing and "top heavy" (from growing a large breast) that they can barely walk, and often suffer physical deformity as a result of their breeding. This breeding practice imparts poor animal welfare to the birds and should not be utilized in organic production. A bird that cannot walk cannot make use of outdoor access or enrichment, and should therefore be disallowed by any provision requiring the birds be able to perform "natural behaviors." In fact, these breeds would potentially already be illegal due to §205.238(a)(1), which requires "*[s]election of species and types of livestock with regard to* ***suitability for site-specific conditions…***" [emphasis added]. All organic operations should take into account the desired outcome of having a hearty bird that can, and does, go outside and whose welfare is not impacted by questionable genetics.

[26] §205.241(d)(2)

[27] Conversation with Joel Salatin of Polyface Farm in Swoope, VA. Website information: http://www.polyfacefarms.com/

- The poultry products derived from birds kept in conditions that allow full expression of their natural behavior and diets are better for consumers. The significant scientific evidence showing that pastured poultry imparts greater health benefits should not be ignored. These benefits include healthier fats and nutrient density in the meat and eggs – something lacking in most American diets.[28,29,30] Of course, many consumers are aware of this and choose organic because they believe their choices are going to be healthier for their families.
- There is no scientific basis for the industries' argument that there will be an increase in the incidences of disease, parasites, cannibalism, and stress due to true outdoor access or access to soil and vegetation. Other production considerations, such as overcrowding, ventilation, and diet are stronger indications. In fact, studies show that birds reared with outdoor access are healthier and less stressed than those housed indoors in deep litter.[31] Both cannibalism and piling, which other commenters state is a risk of providing more space and outdoor access to birds, is *only a risk at all* in large groups.[32] Behaviors like feather picking are also mitigated by providing allowances for natural foraging behaviors.[33] For all of these concerns, the NOP's focus should be on stocking density and the numbers of birds housed in one area.

Transport to Sale and Slaughter

Organic slaughter facilities *should* be in full compliance with the Humane Methods of Slaughter Act (HMSA) of 1978, and its associated FSIS regulations. Therefore, Cornucopia supports the NOP's proposal to add § 205.242(b)(1) to require compliance with HMSA and FSIS.

Cornucopia supports the FOOD Farmers position on transport and slaughter. In particular, we agree that the USDA NOP does not go far enough to safeguard the

---

[28] P.I.P. Ponte*, et al.* Restricting the Intake of a Cereal-based Feed in Free-range-pastured Poultry: Effects on Performance and Meat Quality; Poultry Science, 2008. *PDF available online at:* http://ps.oxfordjournals.org/content/87/10/2032.full.pdf

[29] P.I.P. Ponte, *et al.* Influence of Pasture Intake on the Fatty Acid Composition, and Cholesterol, Tocopherols, and Tocotrienols Content in Meat from Free-range Broilers; Poultry Science, 2008. *Available online at:* http://ps.oxfordjournals.org/content/87/1/80.abstract

[30] Research shows eggs from pastured chickens may be more nutritious. Penn State News, July 20, 2010. *Last accessed 6/21/2016 at: h*ttp://news.psu.edu/story/166143/2010/07/20/research-shows-eggs-pastured-chickens-may-be-more-nutritious

[31] KM Liles, *et al*. Comparing the Effects of Conventional and Pastured Poultry Production Systems on the Stress Levels of Broilers. Tuskegee University. Number 2 Professional Agricultural Workers Journal. June 2015. *PDF available online at:* http://tuspubs.tuskegee.edu/cgi/viewcontent.cgi?article=1042&context=pawj

[32] DC Lay Jr. *et al.* Hen welfare in different housing systems. Poultry Science Association. June 2011. *PDF available online at:* http://www.poultryscience.org/docs/ps_962.pdf

[33] Hubereicher B and Wechsler B. 1997. Feather pecking in domestic chicks: Its relation to dustbathing and foraging. Animal Behavior 54: 757-768 Part 4. http://www.ncbi.nlm.nih.gov/pubmed/9344430

welfare of organic livestock up to the time of slaughter. It also does not honor the recommendations of the NOSB to ensure that organic livestock are handled humanely in appropriate facilities. These issues should be addressed in this rule.

Conclusion

Cornucopia cannot support this rulemaking in its present form. The allotted stocking densities for poultry alone are not what consumers expect and discriminate against ethical organic practitioners and their marketing partners. The requirement that livestock be out on soil does not go far enough. More than 50% of poultry's outdoor access should be composed of soil, and outdoor areas should be required to have vegetation. Dairy cattle should not be maintained in indoor conditions that would prevent their healthful management, and could lead to the deterioration of hygienic conditions and clean/high-quality milk production. Furthermore, requirements for cattle need to balance maximum outdoor access and pasture (when possible), against significant environmental risks and factors that could impact animal health and quality milk production. The NOP must take into account the financial harm that has been perpetuated on ethical organic farmers. These farmers will be harmed by delay in enforcement of the current rules.

Allowing the current practices for animal welfare to continue is unacceptable. Porches for poultry do not and have never met the definition of "outdoors." Cornucopia recommends enforcing the current rules. If a rulemaking must be made, there are many changes this proposed rule would have to go through to be remotely acceptable to the consumer public and the ethical organic farmer.

May 16, 2017

Open letter to Secretary Perdue and Members of Congress,

We the undersigned companies represent approximately 150 family owned and operated certified organic poultry operations in addition to our own direct family owned farms. In addition to owning and operating certified organic egg farms that are committed to outdoor access for our hens, we are long-time standing members of the United Egg Producers (UEP) and we serve on its Organic Committee.

We are writing to express strong support for the Organic Livestock and Poultry Practices (OLPP) final rule and urge USDA to let the rule become effective, in its entirety, on November 14, 2017. As members of the UEP, we are saddened by the position that the UEP Board took in opposition to the final OLPP rule becoming effective. The board took this position without listening to the organic committee, and the position that was advanced by the Executive Board was not passed or cleared by the organic committee. There was no clear majority on the issue and the organic committee supported a no position stance.

The OLPP final rule is an industry-developed standard and is a product of a decade of public discussion and feedback from consumers, farmers, processors, retailers, veterinarians, and experts in animal welfare and animal science. The final rule, as written, ensures that we operate on a level playing field and meet a consistent standard, regardless of our operation size. Additionally, the final rule, as written, allows for adequate flexibility to temporarily confine animals in order to prevent disease outbreaks, and we do not agree with the unfounded assertions that this final rule will increase biosecurity risks.

The decision to become certified organic is voluntary. The USDA organic standards call for outdoor access and as organic egg producers, we entered the organic market with the understanding that the rules will evolve overtime and that our practices will need to adjust according to market demands. We have participated in the public rulemaking process since its inception and we have consistently commented and supported a rule that meets consumer demand while also adhering to required biosecurity measures and food safety requirements without compromise.

As organic egg farmers, UEP members, and organic stakeholders that will be impacted by USDA's decision, we support the Organic Livestock and Poultry Practice final rule because we are committed to delivering a product that meets the highest standards possible and is in line with consumer expectations of what the USDA Organic label means.

Sincerely,

--

David Will, Chino Valley Ranchers, Colton, CA

Andy Wilcox, Wilcox Family Farms, Roy, WA

John Brunnquell, Egg Innovations, Warsaw, IN

Health Care Without Harm

the campaign for environmentally responsible health care

CAMPAIGN HEADQUARTERS

12355 SUNRISE VALLEY DRIVE
SUITE 680
RESTON, VA 20191
T: 703.860.9790
F: 703.860.9795
EMAIL: INFO@HCWH.ORG
WWW.NOHARM.ORG

June 9, 2017

Paul Lewis Ph.D., Director, Standards Division
National Organic Program, USDA-AMS-NOP
1400 Independence Ave. SW., Room 2642-So.
Ag Stop 0268 Washington, DC 20250-0268

RE: AMS-NOP-17-0031NOP-15-06A National Organic Program (NOP); Organic Livestock and Poultry Practices Second Proposed Rule

Dear Dr. Paul Lewis,

Anchors in Action is a national cross-sector partnership among Center for Good Food Purchasing, Health Care Without Harm, Real Food Challenge, and School Food Focus. Together these groups represent more than 850 hospitals, 7,800 elementary and secondary schools, municipal agencies in more than six major metropolitan cities, and 194 colleges and universities with food service budgets collectively in the hundreds of millions of dollars.

These four organizations seek to leverage the procurement power and moral authority of anchor institutions to realize their shared vision of a food system that conserves and renews natural resources, advances social justice and animal welfare, builds community wealth, and fulfills the food and nutrition needs of all eaters now and into the future. Anchors in Action groups drive change by unifying demand within and across institutional networks for supply chains that benefit all people, especially underserved and marginalized communities, ultimately seeking:

- Healthier, more sustainable, and ethically produced food for those who eat in institutions;
- Market access and resources for producers who supply institutions; and
- A shift in the entire food system towards health, justice, sustainability, equity, and community ownership.

To this end, the undersigned organizations believe the Organic Livestock and Poultry Practices Rule should be fully implemented without further delay.

<u>Implementation is Critical for Maintaining the Integrity of Organic Certification</u>

1. The organic community is in agreement on these rules
2. Consumers want better conditions for farm animals
3. Consumers expect better conditions as part of the organic certification

In a 2015 national telephone survey, Consumer Reports found that 84 percent of respondents said that “better conditions for farm animals” were important or very important to them and the same goes for institutional food purchasers[1]. As the organic market continues to grow, with the USDA reporting over $43 billion in sales of certified organic in 2015, informed college and university, hospital and school buyers want to be confident about where they are spending their ever tightening budgets. They expect organic animals to be raised humanely and have access to outdoors and be assured all producers are meeting a consistent standard.

Additionally, our organizations know many organic livestock and poultry farmers already adhere to high standards and are being undercut because of loopholes that allow a small number of producers to deny meaningful outdoor access to animals while still benefiting from the organic label. We believe the new Organic Livestock and Poultry Practices Rule will level the playing field and ensure that all poultry and eggs sold as organic comply with baseline practices and principles for animal welfare and treatment.

The organic community, along with farmers, buyers, and researchers has spent more than ten years working to improve animal welfare practices under the organic standard. The National Organic Standard Board (NOSB) and organic community have consistently called for meaningful outdoor access for poultry dating back to 1998. It is disingenuous for poultry operations that do not meet these requirements to claim that they have been taken by surprise. Additionally, operations that do not currently meet the standards will have up to five years to comply with the new standards.

Common Misconceptions about the Rule

The same producers that are benefiting from the loopholes claim that providing outdoor access to poultry will spread disease. However, scientific studies indicate that indoor confinement is a risk factor for spreading disease[2]. It is important to remember that all existing USDA and FDA health and safety rules will remain in place once the new standards are implemented.

Additionally, these same producers have expressed that hens will be more vulnerable to predators with the new rules. USDA's Animal and Plant Health Inspection Service (APHIS) has published statistics demonstrating that mortality rates are similar for organic and non-organic egg operations[3]. Most organic producers already provide outdoor access and use a variety of practices to protect birds from predators such as overhead netting and electric fencing. The proposed rule is based on substantial public input, including from producers, on practices that improve the overall quality of life for birds. The rule also gives ample time for transition to reduce hardship, up to five years for poultry.

Going forward, the organizations representing Anchors in Action believe it is in our best interest that the rule proceeds as scheduled to the agency's published timetable, and that it is fully implemented and adequately enforced. The new standards would reduce confusion and support institutional buyer confidence in the overall integrity of the Organic Program - which the meat, milk, and eggs they purchase bearing the USDA certified organic seal do indeed come from animals that were raised humanely.

Sincerely,

Health Care Without Harm
Real Food Challenge
Center for Good Food Purchasing
School Food FOCUS

---

1 "Consumer Reports survey finds consumers think it's important to have high animal welfare standards for organic food" https://consumersunion.org/news/consumer-reports-survey-finds-consumers-think-its-important-to-have-high-animal-welfarestandards-for-organic-food/

2 National Organic Coalition. 'Avian Influenza and Outdoor Access for Organic Poultry Flocks' https://app.box.com/s/nidqve1wpuad488k5x9j0v39osnyz6nv

3 USDA, AMS - NOP ' Organic Livestock and Poultry Practices Final Rule Questions and Answers – January 2017' ttps://www.ams.usda.gov/sites/default/files/media/OLPPExternalQA.pdf

NOFA-NY
NORTHEAST ORGANIC FARMING ASSOCIATION OF NEW YORK

June 5, 2017

Dr. Paul Lewis, Ph.D., Director, Standards Division
National Organic Program, USDA-AMS-NOP
1400 Independence Ave., SW
Room 2642-So., Ag Stop 0268
Washington, DC 20250-0268

RE: AMS-NOP-17-0031; NOP-15-06A
National Organic Program Organic Livestock and Poultry Practices Second Proposed Rule

Dr. Lewis:

Founded in 1983, the Northeast Organic Farming Association – New York (NOFA-NY) is the premier statewide organization growing a strong organic and sustainable agriculture movement in New York State and is part of a regional network of seven Northeast Organic Farming Associations. NOFA-NY provides education and assistance to local organic and sustainable farmers; connects consumers with organic and sustainable farmers; advocates policies that support a sustainable food and farm system at both the state and federal levels; and is the largest USDA-accredited organic certifier in New York certifying nearly 1,000 organic operations in the state.

As we noted in our comprehensive comments to you in July 2016, attached and excerpted below, we strongly believe that these Organic Livestock and Poultry Practices Rules must be implemented as soon as possible.

Let us be clear: No further review is needed. NOFA-NY believes that the U.S. Department of Agriculture should follow through with its original intentions and **implement Action Number (1): "Let the rule become effective. This means that the rule would become effective on November 14, 2017."** [FR Vol. 82, No. 89, May 10, 2017]. Do Not Delay.

Following over a decade of extraordinary, comprehensive, and collaborative work through the USDA NOP, it is clear that these rules have been requested by farmers, industry and consumers alike. In fact, they go to the heart of organic integrity, and are necessary for the label to continue to represent the high standards that consumers expect and pay for in the marketplace. As we previously stated to you:

> NOFA-NY is in favor of the clarification of organic regulations regarding livestock and poultry practices and animal welfare provisions. We appreciate the move towards consistency in the

1423 Hathaway Drive, Farmington, NY 14425
TEL 585.271.1979 FAX 585.271.7166
WWW.NOFANY.ORG
INFO@NOFANY.ORG

> implementation of the organic standards, and hope that real animal welfare provisions – especially for poultry – are moved to final regulations as soon as possible. We note that some other animals such as dairy have significant provisions already in place. That said, there are some important adjustments that need to be made in this proposal, in order for it to be acceptable and consistent with other parts of the organic standards, and we have detailed them below, as well as separately submitted from our NOFA-NY LLC Certification Agency.
>
> It is a basic tenet of organic production for animals to be treated humanely, and consumers believe that animals bearing the organic label have had significant access to the outdoors (see work done by Consumers Union: http://www.greenerchoices.org/pdf/CR_2015_Natural_Food_Labels_Survey.pdf). The final rule implementing Organic Foods Production Act, (OFPA) notes that animals should have living conditions "which accommodate the health and natural behavior of the livestock." [regulation]. This is clearly stated in the law, the Regulations, as well as congressional intent language.
>
> Indeed, the concept of accommodating health and natural behavior of animals is already a certifiable standard, and NOFA believes that additions to the regulations should enforce that principle as well as make it more consistently implemented, without losing each farm's unique manner of complying with these standards.

We note that the organic label is not for every producer and is entirely voluntary. If large poultry operations do not want to meet the rigor of the organic label, then they are welcome to continue to produce their product without outdoor requirements, and label it however they wish – *but not organic.*

The entire organic sector will be negatively impacted if the final rule is delayed further. Consumer trust and confidence in the USDA Organic seal are the foundation of the organic industry. If the process by which organic standards are developed and enforced is undermined, consumer trust in the organic seal will suffer.

In fact, NOFA-NY Certified LLC has <u>always</u> complied with the National Organic Program – with what we believe has always been in the regulations, requiring meaningful outdoor access and natural behavior, despite the fact that other certifiers were not.

> NOFA-NY has always required our poultry producers to provide outdoor access on the ground, and we have never allowed porches to be used for outdoor access. Due to this prohibition on porches, some poultry operations have left our organization over the years, and we have declined to work with some operations that we believed would not be in compliance. We have always understood that meaningful outdoor access is the intent of the rule, and is important for organic integrity. [NOFA-NY Certified Organic LLC comments, June 2, 2016]

Therefore, NOFA-NY requests that the Secretary implement the Organic Livestock and Poultry Practices Rule as soon as possible and no later than November 14, 2017.

Sincerely,

Liana Hoodes,
NOFA-NY Policy Advsior

Enclosures:
NOFA-NY INC comments July 2016: **AMS-NOP-15-0012; NOP-15-06PR, and Regulatory Information Number (RIN) 0581-AD44** – National Organic Program Organic Livestock and Poultry Practices Proposed Rule

NOFA-NY Certified Organic LLC, June 2016: **AMS-NOP-15-0012; NOP-15-06PR, and Regulatory Information Number (RIN) 0581-AD44** – National Organic Program Organic Livestock and Poultry Practices Proposed Rule

NOFA-NY
NORTHEAST ORGANIC FARMING ASSOCIATION OF NEW YORK

July 12, 2016

Dr. Paul Lewis, Ph.D., Director, Standards Division
National Organic Program, USDA-AMS-NOP
Room 2646-So., Ag Stop 0268
1400 Independence Ave., SW
Washington, DC 20250-0268

RE: AMS-NOP-15-0012; NOP-15-06PR, and Regulatory Information Number (RIN) 0581-AD44
National Organic Program Organic Livestock and Poultry Practices Proposed Rule

Dear Dr. Lewis:

Thank you for the opportunity to provide comment on the Proposed Rule on Organic Livestock and Poultry Practices. We appreciate the National Organic Program's efforts to strengthen the existing rule and provide greater clarity and consistency between certifiers.

Founded in 1983, the Northeast Organic Farming Association – New York (NOFA-NY) is the premier statewide organization growing a strong organic and sustainable agriculture movement in New York State. NOFA-NY provides education and assistance to local organic and sustainable farmers; is a USDA-accredited organic certifier (certifying over 800 organic operations in NYS); connects consumers with organic and sustainable farmers; and advocates policies that support a sustainable food and farm system at both the state and federal levels.

NOFA-NY is in favor of the clarification of organic regulations regarding livestock and poultry practices and animal welfare provisions. We appreciate the move towards consistency in the implementation of the organic standards, and hope that real animal welfare provisions – especially for poultry – are moved to final regulations as soon as possible. We note that some other animals such as dairy have significant provisions already in place. That said, there are some important adjustments that need to be made in this proposal, in order for it to be acceptable and consistent with other parts of the organic standards, and we have detailed them below, as well as separately submitted from our NOFA-NY LLC Certification Agency.

It is a basic tenet of organic production for animals to be treated humanely, and consumers believe that animals bearing the organic label have had significant access to the outdoors (see work done by Consumers Union: http://www.greenerchoices.org/pdf/CR_2015_Natural_Food_Labels_Survey.pdf). The final rule implementing Organic Foods Production Act, (OFPA) notes that animals should have living

conditions "which accommodate the health and natural behavior of the livestock." [regulation]. This is clearly stated in the law, the Regulations, as well as congressional intent language.

Indeed, the concept of accommodating health and natural behavior of animals is already a certifiable standard, and NOFA believes that additions to the regulations should enforce that principle as well as make it more consistently implemented, without losing each farm's unique manner of complying with these standards.

Successful organic systems rely on practices that attempt to approach natural systems, and therefore can be significantly different in terms of practices, feed, as well as genetics for livestock and poultry. As organic evolves its standards to reflect these differences, we expect to see a decreasing reliance on conventional systems that are used with organic input substitutions, and an increase in wholly more organic, welfare-based sustainable systems.

For instance, animals' ability to access the outdoors is a primary natural behavior that is required in organic, but not in other production systems. Because lives for animals that go outdoors are so different than those that are always indoors, it is often true that animals and birds bred for fast growth and indoor lives do not thrive outdoors. As so with seeds, we hope to see future research and focus on regionally-adapted breeds (especially poultry) that do well in organic, outdoor systems.

In addition, re-arranging outdoor areas so there is meaningful ground cover, biotic and vegetative life, during all seasons when animals normally go outdoors may take creative thinking from farmers more used to conventional systems of raising poultry and livestock. Certifiers and inspectors should expect to see a diversity of methods that reach the goal of giving animals a life where they can exhibit natural behaviors. Implementation of these standards should *not* encourage a one size fits all approach to animal welfare.

While pasture and animal welfare labels are growing in popularity in the marketplace, we believe that organic farms should not have to acquire an additional label for animal welfare. Currently, because of the disparity of oversight and implementation, some organic farmers have found added value in certifying to an additional label to prove that they are treating their animals humanely. USDA organic standards must meet basic animal welfare standards, and then must re-visit these standards on a regular basis to continually improve living conditions for animals. In fact, all organic systems must be based on natural systems, and consider the welfare of both humans and animals in a significant manner.

This balance between quantifiable or prescriptive measures versus individualized production systems is clearly summarized by the comments from FOOD Farmers[1] excerpted below:

> FOOD Farmers is concerned about relying on heavily prescriptive or quantifiable measures to define the limits of animal welfare standards because standards

[1] FOOD Farmers is the umbrella organization of the Northeast Organic Dairy Producers Alliance (NODPA), Midwest Organic Dairy Producers Alliance (MODPA) and Western Organic Dairy Producers Alliance (WODPA). FOOD Farmers represents over 1,200 or two thirds of organic dairy farmers across the country.

written in this way don't allow either the producer or certifier any room for considering individualized solutions that are suitable for the wide range of production systems used by organic livestock producers of differing scales and located in different parts of the country and internationally. The NOSB Livestock Committee's concerns about individual solutions was evident in many statements that were made in the guidance documents, for example the tethering of calves which can be done in many ways, some of which fit into an organic system plan and others that don't. In addition, diverse livestock systems may rely on multiple species in one area (pasture or paddock), which makes space calculations extraordinarily complex. We have learned from the implementation of the pasture regulation, which contains many quantitative limits, that while it does increase consistency to a numerical standard, it also burdens producers and certifiers with paperwork, lessening the time producers can devote to innovating and perfecting their organic production systems unique to their operation. These quantative requirements have also not necessarily increased consistency in interpretation of regulations by certifiers. We have seen that prescriptive regulation encourages inspectors/certifiers to keep their eyes to the paperwork and not lift their eyes to an assessment of the whole livestock system.

We appreciate the proposed Rule under consideration here and believe that it is a necessary first step for organic to acknowledge that these are important and necessary values of the organic label. There are some changes that must be made, and some suggestions of improving other parts that we comment on below.

Again, thank you for the opportunity to comment.

Sincerely,

Nancy Apolito, Executive Director

Liana Hoodes, Policy Advsior

1423 Hathaway Drive, Farmington, NY 14425
tel 585.271.1979 fax 585.271.7186
www.nofany.org
info@nofany.org

NOFA-NY Certified Organic, LLC

840 Upper Front Street • Binghamton, New York 13905
Phone 607-724-9851 • Fax: 607-724-9853
Email: certifiedorganic@nofany.org • www.nofany.org

June 20, 2016

Dr. Paul Lewis, Ph.D.
Director, Standards Division
National Organic Program
USDA-AMS-NOP
Room 2646-So., Ag Stop 0268
1400 Independence Ave., SW
Washington, DC 20250-0268

RE: AMS-NOP-15-0012; NOP-15-06PR, and Regulatory Information Number (RIN) 0581-AD44
National Organic Program Organic Livestock and Poultry Practices Proposed Rule

Dear Dr. Lewis:

Thank you for the opportunity to provide comment on the Proposed Rule on Organic Livestock and Poultry Practices. We appreciate the National Organic Program's efforts to strengthen the existing rule and provide greater clarity and consistency between certifiers.

NOFA-NY Certified Organic, LLC (NOFA-NY) currently has 380 certified livestock operations, which includes 315 dairies, with the remainder split between poultry, beef, swine and other livestock operations. We also have an additional 66 dairy operations in transition.

While we appreciate the effort that went into the proposed rule, there are some areas where further clarity is needed.

Under Definitions:

(1) Pasture Housing. A mobile structure for avian species with 70 percent perforated flooring

NOFA-NY recommends changing this to Mobile Housing. It more closely represents the intent of moving a mobile structure on grass.

Outdoors. Any area in the open air with at least 50 percent soil, outside a building or shelter where there are no solid walls or solid roof attached to the indoor living space structure. Fencing or netting that does not block sunlight or rain may be used as necessary.

This definition seems to be directed at poultry, but as written could have potentially devastating ramifications for large ruminant operations – especially dairy farms, as well as swine operations. Having large numbers of large animals on soil during the non-grazing season can be devastating to the soil. Problems include a high nutrient load on a small area, not being able to capture manure to use on ground that needs fertilizer, and if animals are made to go on pastures in the non-grazing season, it can severely damage them for use as pasture the following year. Also, having cows on soil in the non-grazing season directly contradicts NRCS recommendations and what they will fund in grant cycles. The Chesapeake Bay Initiative also discourages access to soil in the non-grazing season for farms in Pennsylvania and New York, and the entire Chesapeake Bay watershed.

NOFA-NY recommends clarifying that the definition only applies to poultry operations, or removing "with at least 50% soil" from the definition.

Toe Clipping. The proposed rule defines it only for male birds. This procedure is done on both male and female birds. This procedure is listed as Toe Trimming in section 205.238(a)(5)(ii).

NOFA NY recommends changing the wording to read:

Toe Trimming. *The removal of the nail and distal joint of the back two toes of turkeys.*

205.238 Livestock Heath Care Practice Standard

205.238(a)(5)

If hygiene is included in this section, it will seemingly create a loophole where dairy farmers could try to justify docking tails. Hygiene is the main reason cows' tails are docked on dairy farms.

We believe substituting the word "safety" for "hygiene" will make the rule much stronger. Safety is the main justification for dehorning cattle – safety for the cattle and for people working with the cattle.

NOFA NY believes requiring physical alterations to be performed by a "competent person" is too subjective.

NOFA-NY recommends that section 205.238(a)(5) be amended to read:

Physical alterations may be performed to benefit the welfare or safety of the animals, or for identification purposes. Physical alterations must be performed on livestock at a reasonably young age, with minimal stress and pain.

205.238(a)(5)(ii) The following practices must not be performed on a certified operation:

By stating the practices that must not be performed on a certified operation, it opens the possibility that these practices, specifically referring to cattle, could be done to dairy animals during their one-year transition to organic, when the operation is not technically certified. We recommend changing "must not be performed on a certified operation" to "are prohibited:"

Furthermore, we believe there should be a limit to the amount of beak that can be trimmed on poultry, even in the first 10 days. We recommend limiting beak trimming to no more than the thickness of a dime during the first 10 days of life.

NOFA NY recommends changing section 204.238(a)(5)(ii) to read:

The following practices are prohibited: de-beaking, de-snooding, caponization, dubbing, toe trimming of chickens, toe trimming of turkeys unless with infra-red at hatchery, beak trimming of more than the thickness of a dime before 10 days of age, beak trimming after 10 days of age, tail docking of cattle, wattling of cattle, face branding of cattle, tail docking of sheep shorter than the distal end of the caudal fold, and mulesing of sheep.

205.238(a)(7)

We appreciate the wording in this section, but believe "injury" should be included as well.

NOFA-NY recommends changing section 205.238(a)(7) to read:

All surgical procedures necessary to treat an illness or injury shall be undertaken in a manner that employs best management practices in order to minimize pain, stress, and suffering, with the use of appropriate and allowed anesthetics, analgesics, and sedatives.

205.238(a)(8). Monitoring the lameness and keeping records of the percent of the herd or flock suffering from lameness and the causes.

We believe this section is overly prescriptive, and will result in additional unnecessary paperwork for producers and certifiers. Livestock farms are already required to document all illnesses and treatments, and new section 205.238(c)(9) further clarifies the requirement.

NOFA NY recommends removing section 205.238(a)(8) entirely. It is not in line with the Sound and Sensible Initiative which is intended to reduce the paperwork burden for producers, is already covered in other sections of the rule, and will in no way strengthen the rule or contribute to animal welfare.

205.238(b)

This section uses the term "sickness." To provide clarity and consistency in the rule, we recommend changing the word "sickness" to "illness". The term "illness" is used in numerous other sections of the rule.

NOFA-NY recommends changing section 205.238(b) to read:

When preventative practices and veterinary biologics are inadequate to prevent illness, a producer may administer synthetic medications: Provided, That, such medications are allowed under 205.603. Parasiticides allowed under 205.603 may be used on:

205.238(c)(1)

If the word "edible" product is left in this section, it will mean that fiber from animals treated with a prohibited substance could still be sold as organic. We recommend removing the word "edible" product.

Milk from animals undergoing treatment with synthetic substances allowed under 205.603 having a withhold time should not be allowed to be fed to organic animals or young stock. This is in direct conflict with 205.237(a), which requires agricultural products used as feed to be produced and handled organically. If milk from animals can't be sold as organic, it should not be fed to organic young stock or other organic animals.

The way the new wording is written, it allows the milk to be fed only to the animal's own offspring. This is not workable on dairy farms, where cows produce much more milk than their calf needs, and generally do not suckle their own offspring.

NOFA-NY recommends changing the wording of 205.238(c)(1)to read:

Sell, label, or represent as organic any animal or product derived from any animal treated with antibiotics, any substance that contains a synthetic substance not allowed under 205.603, or any substance that contains a nonsynthetic substance prohibited in 205.604. Milk from animals undergoing treatment with prohibited substances or with synthetic substances allowed under 205.603 having withholding time, cannot be sold as organic or be fed to organic livestock.

205.238(c)(2) Administer any animal drug in the absence of illness or to alleviate pain or suffering, with the exception of vaccinations and other veterinary biologics.

The proposed wording as written seems to say that a producer must not administer an animal drug to alleviate pain or suffering.

NOFA-NY recommends changing the wording of 205.238(c)(2) to read:

Administer any animal drug in the absence of illness, pain or suffering, with the exception of vaccinations and other veterinary biologics.

205.238(c)(7)

While there were no proposed changes to this section, we believe it should be clarified that livestock and products from livestock treated with a prohibited substance must be clearly identified, and shall not be sold, labeled, or represented as organically produced. While there are numerous allowed treatment options available, occasionally a prohibited product may need to be used to minimize pain and suffering in an ill or injured animal. The following proposed wording further clarifies this requirement.

NOFA-NY recommends changing the wording of 205.238(c)(7) to read:

Withhold medical treatment designed to minimize pain and suffering from an ill or injured animal in an effort to preserve its organic status. All appropriate medications must be used to restore an animal to health when methods acceptable to organic production fail. Livestock and products from livestock treated with a prohibited substance must be clearly identified and shall not be sold, labeled or represented as organically produced.

205.238(c)(10)

It is unclear whether this wording is intended to prohibit forced molting altogether, or to restrict forced or induced molting to certain practices. NOFA-NY would like to see further clarification on the intent of this section.

205.238(e)(1)

While we appreciate this section which clarifies euthanasia for ill or injured livestock, we believe there needs to be some wording included for depopulation of poultry flocks.

Since the American Veterinary Medical Association guidelines are referenced in 205.238(c)(8), we believe it will provide additional clarity if they are also referenced in this section.

NOFA NY recommends changing the wording of 205.238(e)(1) to read:

Organic livestock producers must have written plans for prompt, humane euthanasia for incurably sick or injured livestock, or to depopulate poultry flocks. Euthanasia methods should align with American Veterinary Medical Association guidelines.

205.239 Mammalian Living Conditions (formerly Livestock Living Conditions)

205.239(a)(1)

We appreciate the attempt to clarify that mammals must have year-round outdoor access, etc., but are concerned about ruminant animals and swine being required to have at least 50% of their outdoor access area to be soil during the non-grazing season.

In reality, the exemption for risk to soil and water quality will likely keep most large animals off soil for most of the non-grazing season. We believe animals can get adequate exercise and meet all other requirements of 205.239(a)(1) without having daily access to soil.

We understand that the exemptions in 205.239(b) apply, but we are still concerned about the proposed wording for the following reasons:

If animals are required to have access to soil in the non-grazing/non-growing season, it will create a nutrient overload on the soil sacrifice lot, and the manure cannot be captured to be used on fields where fertility is needed.

The requirement for animals to have access to soil contradicts NRCS and Chesapeake Bay Initiative requirements to restrict animals' contact with soil during the non-grazing or non-growing season.

If animals are required to have access to pastures in the non-grazing season, pastures will be damaged for the following grazing season.

205.239(a)1) references "good body condition". In 205.238(a)(5) references "appropriate body condition". We recommend changing the wording in 205.239(a)(1) to "appropriate body condition" for consistency.

NOFA-NY recommends changing the wording in 205.239(a)(3) to read:

Year-round access for all animals to the outdoors, soil, shade, shelter, exercise areas, fresh air, clean water or drinking, and direct sunlight, suitable to the species, its stage of life, the climate, and the environment: Except, that, animals may be temporarily denied access to the outdoors in accordance with 205.239(b) and (c). Yards, feeding pads and feedlots shall be large enough to allow all ruminant livestock occupying the yard, feeding pad, or feedlot to feed without competition for food in a manner that maintains all animals in appropriate body condition. Continuous total confinement of any animal indoors in prohibited. Continuous total

confinement of ruminants in yards, feeding pads, and feedlots is prohibited during the grazing season.

205.239(a)(3)

The new wording "Animals must be kept clean during all stages of life with the use of appropriate, clean, dry bedding, as appropriate for the species" creates an unrealistic situation on most farms. While this is clarified in the preamble, unfortunately that clarification gets lost in the actual rule. We believe 205.239(a)(4)(iv) further clarifies the intent of this section.

NOFA NY believes the original wording of 205.239(a)(3) was adequate, with the following changes:

Appropriate clean dry bedding. When roughages are used as bedding they must be organically produced and handled in accordance with this part by an operation certified under this part, except as provided in 205.236(a)(2)(i).

205.239(a)(4)(i)

The new wording appears to be intended for swine, is too prescriptive, and as written, seems to disallow stanchion, tie-stall and free-stall barns, which are commonly used in dairy operations. Cows do not typically lie down in full lateral recumbence, unless calving, ill or injured. In most types of housing, animals touch each other, whether in stalls or loose housing.

The intent of this section is further clarified in 205.239(a)(4)(iv).

NOFA-NY recommends removing the proposed language in 205.239(a)(4)(i), and keeping the original language, which reads:

Natural maintenance, comfort behaviors, and opportunity to exercise;

205.239(a)(4)(iv)

This section further clarifies 205.239(a)(3) and 205.239(a)(4)(i). We believe that adding the following wording from 205.239(a)(11) to this section will provide additional clarity.

NOFA NY recommends the changing the wording of 205.239(a)(4)(iv) to read:

Areas for bedding and resting that are sufficiently large, solidly build, and comfortable so that animals are kept clean, dry and free of lesions. In confined housing with individual stalls, at least one stall must be provided for each animal in the facility at any given time. A cage must not be called a stall.

205.239(a)(7)(i) and 205.239(a)(7)(ii)

The proposed wording referring to weaning in this section seems to contradict section 205.239(c)(2), which allows newborn dairy calves up to six months of age to be individually housed and denied outdoor access or pasture. Dairy calves are typically weaned between two and three months of age, but still possess a strong sucking instinct. If young calves are group housed too early, it can result in them sucking on the undeveloped udders of other calves, which will ruin the animal for future dairy production. The weaning process is extremely stressful to calves, and requiring them to immediately be moved to group housing may result in health issues. We recommend allowing calves to be individually housed until the weaning process is complete, but not longer than six months of age.

NOFA-NY recommends changing the wording in 205.239(a)(7)(i) to read:

Until the weaning process is complete, but not longer than six months of age, providing that they have enough room to turn around, lie down, stretch out when lying down, get up, rest and groom themselves; individual animal pens shall be designed and located so that each animal can see, smell and hear other calves.

NOFA-NY recommends changing the wording in 205.239(a)(7)(ii) to read:

Dairy young stock shall be group housed after the weaning process, but not later than six months of age.

205.239(a)(7)(iii)

The new wording requires dairy young stock over six months of age to have access to the outdoors at all times. While we don't disagree with this requirement, we believe that changing the wording as follows will provide more clarity.

NOFA-NY recommends changing the wording in 205.239(a)(7)(iii) to read:

Dairy young stock over six months of age shall have year-round access to the outdoors, including access to pasture during the grazing season, except as allowed under 205.239 (b) and (c).

205.239(a)(10)

The proposed wording says that rooting must be permitted whether indoors or outdoors, and during temporary confinement events. We believe the wording is redundant, and would be clear and adequate if changed as follows:

Exercise areas for swine must provide rooting at all times, including during temporary confinement events.

205.239(a)(11)

The proposed wording seems to be intended for swine, but the first sentence sounds like it was intended for dairy. Swine are required to be group housed, and are not typically provided with stalls. We recommend removing the first sentence of the new wording.

NOFA-NY recommends changing the wording in 205.239(a)(11)to read:

For group-housed swine, the number of individual feeding stalls may be less than the number of animals, as long as all animals are fed routinely over a 24-hour period.

205.239(a)(12)

It is unclear if this section applies only to swine, or to all mammals. The requirement for at least 50 percent of outdoor access space to be soil seems to be in direct conflict with NRCS requirements to not allow access to soil in the non-growing season. It also appears to be in conflict with the Chesapeake Bay Initiative, which affects farms in Pennsylvania, New York and the entire Chesapeake Bay watershed. Risk to soil or water quality could, in some years, provide an allowable reason to keep animals off soil for the entire non-growing season. If animals have adequate daily outdoor access on concrete, it seems that the word "temporary" is unnecessary in this section.

NOFA-NY recommends changing the wording of this section to read:

At least 50 percent of outdoor access space must be soil, except for conditions which would threaten the soil or water quality, in which case outdoor access must be provided without contact to the soil.

205.239(b)(6)

While no change was proposed for this section, we believe the words "and livestock sales" opens up the possibility of organic cows being collected and housed at or sold through non-certified auction facilities. It needs to be clarified that organic animals may only be held at and sold through a certified auction facility or sale barn.

NOFA-NY recommends changing the wording of this section to read:

Sorting or shipping animals and livestock sales: Provided that the auction or sales facility is certified as a handler except as provided in 205.239(b)(8), and the animals are maintained under

continuous organic management, including organic feed, throughout the extent of their allowed confinement.

205.241 Avian Living Conditions

We appreciate the proposed wording in this section, and only have a few areas to comment on.

205.241(b)(3)

The wording "Natural light be sufficient indoors on sunny days so that an inspector can read and write when all lights are turned off" seems overly prescriptive. We believe this wording would be better suited in a guidance document.

NOFA-NY recommends removing the last sentence of this section so it reads:

For layers and mature birds, artificial light may be used to prolong the day length up to 16 hours. Artificial light intensity must be lowered gradually to encourage hens to move to perches or settle for the night.

205.241(b)(4)(ii)

We believe birds should have adequate solid floor area with sufficient litter, and disagree that a 30 percent solid floor area is adequate. Slatted and mesh floors do not provide a natural environment for birds, nor do they allow the birds to exhibit their natural behavior of pecking, scratching and dust bathing. NOFA-NY recommends requiring at least 50% solid floor area with sufficient litter.

NOFA-NY recommends changing the wording of 205.241(b)(4)(ii) to read:

Houses, excluding mobile housing, with slatted/mesh floors must have a minimum of 50 percent solid floor area with sufficient litter available for dust baths so that birds may freely dust bathe without crowding.

205.241(b)(7), (8) and (9)

We appreciate what the proposed rule is trying to accomplish with these sections, but believe listing bird weights will result in an extra burden on producers and certifiers to determine compliance. We recommend using bird/sq. foot instead of weight/sq. foot, while taking into consideration the difference in size between chickens and turkeys or other poultry. We do not believe the rule should differentiate between aviary housing, floor litter housing or slatted/mesh floor housing.

NOFA-NY proposes the following:

Laying hens and broilers. No more than 1 bird/ 1.5 sq. foot indoor space and 1 bird/ 2 sq. feet outdoor space/mobile housing

Pullets. No more than 1 bird/ 1 sq. foot indoor space and 1 bird/2 sq. foot outdoor space/mobile housing

Turkeys, and other meat type species, no more than 1 bird/3 sq. feet indoors or 1 bird/4 sq. feet outdoors.

205.241(c)(8)

We agree that at least 50 percent of avian species' outdoor access area should be soil, but it should clear that there may be no restriction to access unless one of the temporary exemptions applies.

NOFA-NY recommends changing the wording of 205.241(c)(8) to read:

At least 50 percent of outdoor access space must be soil, with no restriction to access except as allowed in 205.241(d).

205.241(d)(2)

How long birds may be confined should be contingent on weather conditions, not the age of birds. By using only the age of birds, broilers will be inside half of their life and pullets will be inside for the first four months of their lives. If given the opportunity to exit buildings at a young age, birds prefer to be outside, and will utilize outdoor access areas. While there may be times of the year, such as winter, that it may be acceptable to keep them inside for a longer period, it goes against organic principles to allow birds to be totally confined in nice weather. We do not believe that pullets should be treated differently than broilers.

NOFA-NY recommends changing the wording of 205.241(d)(2) to read:

The animals stage of life. Not longer than the first 4 weeks of life for broilers and pullets if weather conditions threaten the well being of the birds. Slower growth is not considered a threat to well being. If weather conditions are above 50 degrees, birds should have outdoor access earlier than 4 weeks.

205.241(d)(6)

We believe including the words "and poultry sales" in this section opens up the possibility of organic birds being sold through a non-certified auction/sale facility. It

needs to be clarified that such auction/sale facilities are required to be certified as a handler if selling or housing organic poultry or livestock.

NOFA-NY recommends changing the wording of 205.241(d)(6) to read:

Sorting or shipping birds and poultry sales: Provided, the auction or sales facility is certified as a handler except as provided in 205.239 (b)(8), and the birds are maintained under continuous organic management throughout the extent of their allowed confinement.

205.242 Transport and Slaughter

Thank you for including transport and slaughter proposed standards as part of the proposed rule. While we agree with most sections, there are a few sections that we wish to comment on.

Transport and Slaughter

205.242(a) Transportation

205.242(a)(1)

Certified organic livestock are typically identified with ear tags or other means of identification. We disagree that organic livestock must be transported in designated sections of livestock trailers labeled for organic use. While this may make sense for large groups of cattle traveling long distances on cattle trailers with non-organic cattle, for the average producer it is burdensome. Most producers either truck their own animals to a slaughterhouse or sale barn, or hire someone to truck the animals for them. If using a hired trucker to truck one or two animals, and those animals have to be segregated in their own pen, it will result in lost revenue for the trucker, and higher trucking costs for the organic producer.

NOFA-NY recommends changing the wording of 205.242(a)(1) to read:

Certified organic livestock must be clearly identified as organic, and the identity must be traceable for the duration of the trip.

205.242(a)(2)(ii)

We believe this section to be overly prescriptive and potentially economically damaging to livestock producers. The way this section is worded, a producer may have to euthanize an animal with something as simple as a sore foot, mastitis or pink eye. There are many cases where an animal may have a minor ailment that would not prevent its transport to a slaughterhouse or sale barn. USDA regulations already prevent a "down" (non-ambulatory) animal from being processed for food. Producers

are not allowed to transport non-ambulatory animals, and if an animal goes down and can't get up at a slaughterhouse, USDA inspectors will condemn it and not allow it to be processed.

NOFA-NY recommends changing the wording of 205.242(a)(2)(ii) to read:

Non-ambulatory animals must not be transported for sale or slaughter. Such animals must be medically treated or euthanized.

205.242(a)(5)

We believe that clarification is needed to ensure that if animals are off-loaded during transport, the location must be certified if the animal is to retain organic status.

NOFA-NY recommends changing the wording of 205.242(a)(5) to read:

Arrangements for water and organic feed must be made if transport time, including all time on the mode of transportation, exceeds twelve hours. If animals are off-loaded, the site/facility must be certified.

In response to the request for comments on three questions posed by AMS, NOFA-NY offers the following comments:

1. The clarity of the proposed requirements: Can farmers, handlers, and certifying agents readily determine how to comply with the proposed regulations?

NOFA-NY believes with the suggested revisions above, producers, handlers and certifying agents should be able to determine compliance.

2. The accuracy of the assumptions and estimates in the Regulatory Impact Analysis and Regulatory Flexibility Analysis pertaining to organic poultry and egg production. In addition, the accuracy of AMS' assertion that the proposed requirements pertaining to mammalian livestock codify current practices among these organic producers.

NOFA-NY believes poultry producers will be able to comply with proposed avian standards with revisions noted above. We have always required our poultry producers to have adequate space indoors as well as meaningful outdoor access on the ground. We have never allowed porches as outdoor access areas. There will be few changes necessary for our poultry producers.

Regarding mammalian livestock, we'd like to make the following comments:

NOFA-NY is confident that the intent of the proposed rule is NOT to move all dairy farms away from the standard types of barns used, including stanchion, tie-stall and free-

stall barns. However, when dairy farmers read the proposed rule, specifically section 205.239(a)(4)(i), that was their interpretation of the proposed wording.

205.239(a)(4)(i) Sufficient space and freedom to lie down in full lateral recumbence, turn around, stand up, fully stretch their limbs without touching other animals or the sides of the enclosure, and express normal patterns of behavior.

This wording appears to be written for swine production. It is a non-fit for dairy cow stall-based barns, which the vast majority of organic dairy producers have for housing during the non-grazing season and inclement weather. Dairy cows and their young stock are very different from pigs. While pigs have an inborn habit to defecate and urinate away from their laying areas when provided with free range housing, dairy cattle defecate wherever and whenever the urge arises. They may defecate and urinate when they are lying in their stall, when they arise from lying, when they are on pasture, etc.

In order to keep housed dairy cows and young stock as clean and sanitary as possible, stalls need to be sized properly to ensure that the animal's back end is positioned so that manure and urine is deposited in the gutter or alley rather than in the stall where the animal can lay on it. A dairy cow normally rests in an upright sitting position and stalls are sized to fit this upright sitting position. Very occasionally, a cow or heifer will be seen out on pasture laying flat out on their side or " *in full lateral recumbence*" with the limbs fully stretched out. Cows generally only lay flat out when they are calving, ill or dead. If this 205.239(a)(4)(i) provision is kept as is, and requires that all stalls are sized large enough to fit this "dead cow" position, it will mean stalls would have to be approximately twice the width they currently are. This will allow cows to lie sideways or backwards in their stalls and manure and urine will end up on neighboring cows, at the front of their stalls, and underneath the cows themselves. Not only will this make it impossible to keep cows clean, it will also lead to unsanitary conditions and increased incidence of mastitis from environmental pathogens found in manure.

If the proposed wording of this section is taken literally, it will also mean that all the organic dairy farms that have stalls will have to retrofit their barns to double the size of the stalls, which would mean they will only have room for half as many cows as they currently do, or they will have to build new facilities and build them much larger than current best practice would require. This requirement could be met by no longer using stalls and instead using bedpacks and compost pack barns. One of the reasons that bedpack barns have been limited in number is that they consume extremely large volumes of bedding, and availability of appropriate bedding has been a serious issue. A number of barns that were originally designed as compost bedpacks have been converted to freestall barns because of the difficulty of securing adequate amounts of sawdust or shavings needed to make these barns function properly. The cost to renovate and/or build new facilities countrywide to meet this requirement is estimated to be billions of dollars.

NOFA-NY believes our suggested revision to 205.239(a(4)(i) will provide clarity to the intent of the proposed rule.

205.239(a)(12) At least 50 percent of outdoor access space must be soil, except for temporary conditions which would threaten the soil or water quality when outdoor access must be provided without contact to the soil.

Requiring at least 50% soil for outdoor access in the non-grazing season is opposite of USDA's Natural Resources and Conservation Service (NRCS) policy which they have been promoting for decades. NRCS has long encouraged producers to replace earthen barnyards with improved yards that are covered with concrete, surrounded by curbs and properly sloped in order to capture the manure and urine deposited by the livestock and control runoff. Many states and critical watersheds also have regulations pertaining to cows on soil in the non-grazing season and have worked diligently to encourage and subsidize the move away from soil based yards. For larger farm sizes, it is required in some states.

As stated above, NOFA-NY believes mammalian animals can receive adequate outdoor access and meet the intent of the rule without requiring them to have access to soil during the non-grazing/non-growing season.

3. The implementation approach and timeframe. AMS is proposing that all provisions of this rule must be implemented within one year of the publication date of the final rule except for the outdoor space requirements for avian species. AMS is proposing two distinct implementation timeframes for the outdoor space requirements for poultry: (1) three years after the publication of the final rule any non-certified facility would need to comply in order to obtain certification; (2) all facilities certified prior to that three-year mark would need to comply within five years of the publication of the final rule.

NOFA-NY proposes an 18-month implementation period for all except avian outdoor space requirements. We believe this will allow implementation in conjunction with normal annual certification cycles.

For avian outdoor space requirements, we propose the following:

For operations applying for certification for the first time, they must be in compliance before being granted certification. We don't believe there should be an implementation period for new producers.

For operations currently certified or in the certification process upon publication of the final rule, they must be in compliance within three years of publication. This will allow

additional land needed to meet outdoor access requirements to be transitioned to organic production.

After three years from the date of the publication of the final rule, all poultry operations must be in compliance.

NOFA-NY has always required our poultry producers to provide outdoor access on the ground, and we have never allowed porches to be used for outdoor access. Due to this prohibition on porches, some poultry operations have left our organization over the years, and we have declined to work with some operations that we believed would not be in compliance. We have always understood that meaningful outdoor access is the intent of the rule, and is important for organic integrity.

We appreciate all of the work that has gone into this proposed rule. Thank you for the opportunity to provide input on behalf of our producers.

Sincerely,

Lisa Engelbert
Certification Program Administrator

PUBLIC SUBMISSION

As of: October 05, 2018
Received: May 11, 2017
Status: Withdrawn
Posted: June 08, 2017
Tracking No. 1k1-8wbq-cv1u
Comments Due: June 09, 2017
Submission Type: Web

Docket: AMS-NOP-17-0031
Organic Livestock and Poultry Practices Second Proposed Rule

Comment On: AMS-NOP-17-0031-0001
National Organic Program: Organic Livestock and Poultry Practices

Document: AMS-NOP-17-0031-10266
Chapman, Tom

Submitter Information

Name: Tom Chapman
Address:
1451 66th St
Emeryville, CA, 94608
Email: tchapman@clifbar.com
Organization: NOSB

General Comment

Please find our comments attached.

Tom Chapman
Chair - NOSB

Attachments

OLPP FR letter

Attachment - Animal Welfare Survey Summary

May 10th, 2017

Paul Lewis Ph.D., Director,
Standards Division, National Organic
Program, USDA–AMS–NOP, 1400
Independence Ave. SW., Room 2642 So., Ag Stop 0268,
Washington, DC 20250 0268.

Re: Document Number AMS–NOP–17–0031; NOP–15–06A

Dear Dr. Lewis,

I am writing to the National Organic Program as Chair of the National Organic Standards Board (NOSB). Established by the Organic Foods Production Act of 1990 (OFPA), the NOSB is the federal advisory board to the Secretary of Agriculture. Our composition, as specified by the act, is representative of the entire organic community, including Farmers/Ranchers, Food Processors, Retailers, Environmentalists/Conservationists, Public/Consumer Interests, Scientists and Certifiers. Part of our charter is to "assist in the development of standards" and to "advise the Secretary on other aspects of the implementation of [the OFPA]." At the April 2017 National Organic Standard Board meeting, the NOSB members unanimously passed the resolution regarding the implementation of the Organic Livestock and Poultry Practices. The NOSB is aware that the transcripts and records of these meeting have not yet been published. This Federal Register notice asked the public to advise what policy action the USDA should pursue regarding the Organic Livestock and Poultry Production. Based on the resolution below, the NOSB continues to support option (1) Let the rule become effective. This means that the rule would become effective on November 14, 2017.

April 2017 National Organic Standards Board Resolution on Organic Livestock and Poultry Practices Rule:

The National Organic Standards Board recognizes that consumers' trust of the organic label and industry growth depends on the strength and consistent application of the organic regulations. NOSB has an integral role in advising USDA in its promulgation of these volunteer standards, and strives to seek consensus among organic stakeholders in its recommendations to USDA and the secretary. The recently finalized Organic Livestock and Poultry Practices rule was based on a unanimous NOSB recommendation to USDA in 2011. The NOSB recommendation was the product of a decade of public NOSB meetings, lengthy discussions, public comment periods and consultation from organic producers, processors, consumers, and the veterinary and scientific community. According to a survey by Organic Egg Farmers of America from 2014, the majority of organic egg producers representing the majority of organic egg production already adhere to the practices and standards set forth in the rule[1]. A recent Consumer Reports survey found that 83% of consumers who frequently purchase organic products believe that organic eggs should come from hens that have access to the outdoors[2]. Additionally, USDA APHIS has found no significant differences in mortality rates between organic and conventional laying hen operations[3]. Support for this rule has been expressed through public comment by major and growing organic brands[4]. The rule is supported by organic producers, consumers, the industry,

and the NOSB. The NOSB stands ready to answer any additional questions the Secretary may have on the Organic Livestock and Poultry Practices Rule. **Therefore be it resolved by unanimous vote, the National Organic Standards Board—as USDA's Federal Advisory Board on organic issues and representing organic farmers, ranchers, processors, retailers and consumers—urges the Secretary to allow the Organic Livestock and Poultry Practices rule to become effective on May 19th 2017 without further delay.**

Signed:

Tom Chapman, Chair
Ashely Swaffer, Vice Chair
Jesse Buie, Secretary
Sue Baird
Harriet Behar
Asa Bradman, Ph.D.
Lisa de Lima
Steve Ela
Dave Mortensen, Ph.D.
Joelle Mosso
Emily Oakley
Scott Rice
A-dae Romero-Briones, J.D., LL.M
Dan Seitz, J.D., Ed.D
Francis Thicke, Ph.D.

[1] Organic Poultry Industry Animal Welfare Survey; Organic Egg Farmers of America, 2014 (attached)
[2] "Consumer Reports survey finds consumers think it's important to have high animal welfare standards for organic food" https://consumersunion.org/news/consumer-reports-survey-finds-consumers-think-its-important-to-have-high-animal-welfare-standards-for-organic-food/
[3] Layers 2013,Part IV: Reference of Organic Egg Production in the United States, 2013. https://www.aphis.usda.gov/animal_health/nahms/poultry/downloads/layers2013/Layers2013_dr_PartIV.pdf
[4] Docket ID: AMS-NOP-15-0012, National Organic Program - Organic Livestock and Poultry Practices. https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dc=PS&D=AMS-NOP-15-0012

Organic Poultry Industry Animal Welfare Survey

Methodology & Acknowledgments

- The Organic Egg Farmers of America (OEFA) conducted a survey of organic poultry operations asking a number of questions regarding the animal welfare standards passed by the NOSB on December, 2011.
- The Organic Trade Association (OTA) provided OEFA technical support, 3rd party confidential analysis of responses, and data compilation. This service was provided to OEFA free of charge as a benefit afforded to OEFA through its strategic alliance with OTA's Farmer Advisory Council.
- The survey in both electronic and hardcopy form was circulated to organic poultry producers throughout the United States via OTA membership lists, Accredited Certifying Agencies, and organic farming advocacy groups. The survey was conducted from July 16, 2014 through July 31, 2014. Distribution of the survey was limited to producers certified under USDA organic regulations. All responses remained confidential.
- The survey received 157 responses (representing 8.3 million organic laying hens and 12.1 million organic broilers), which constitutes a response rate that provides a 95% confidence level with a confidence interval of 6.65, based on the number of organic poultry producers reported in the 2011 NASS Organic Producer Survey (566).
- Responses relating to other classes of poultry (turkeys, ducks, etc.) and certain questions relating to broiler operations were not included in this summary to avoid disclosure of reported data from individual operations. If there were less than 4 respondents to a particular question, the data was not included in the survey.
- OEFA formed in Fall of 2011. Our mission is to bring together various stakeholders dedicated to the production of eggs in compliance with the Organic Standards, and to create an environment of honesty and co-operation for the betterment of the industry as a whole.

Survey Objective

- The National Organic Program (NOP) recently announced they are moving forward with rulemaking, in response to the animal welfare standards recommended by NOP on December 2, 2011.
- The objective of the survey was to capture the current state of organic livestock production under NOP certification and the ramifications of adoption and implementation of the proposed animal welfare standards as passed by NOSB.

Operational Overview

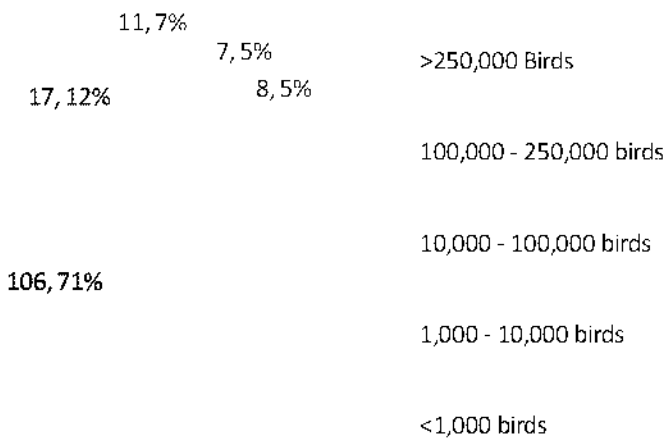
2014 OEFA Survey Totals

Number of Certified Organic Producers	157
Number of Certified Organic Laying Hens	8,331,026
Number of Certified Organic Broilers (annual production)	12,286,375

2011 NASS Organic Producer Survey Results

Number of Certified Organic Producers	566
Number of Certified Organic Laying Hens	6,739,949
Number of Certified Organic Broilers (annual production)	19,654,307

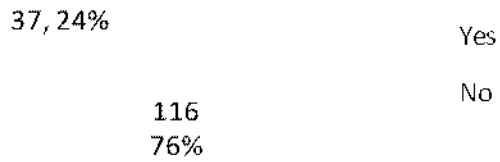
Scale of Operations (Layers)



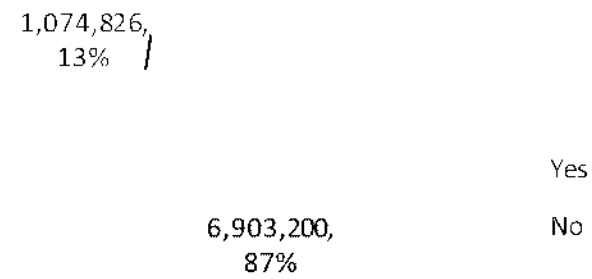
Operational Overview

Does Your Operation Obtain Additional Private Animal Welfare Certifications for your Certified Organic Flocks?

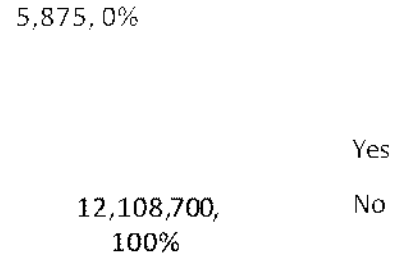
Number of Producers



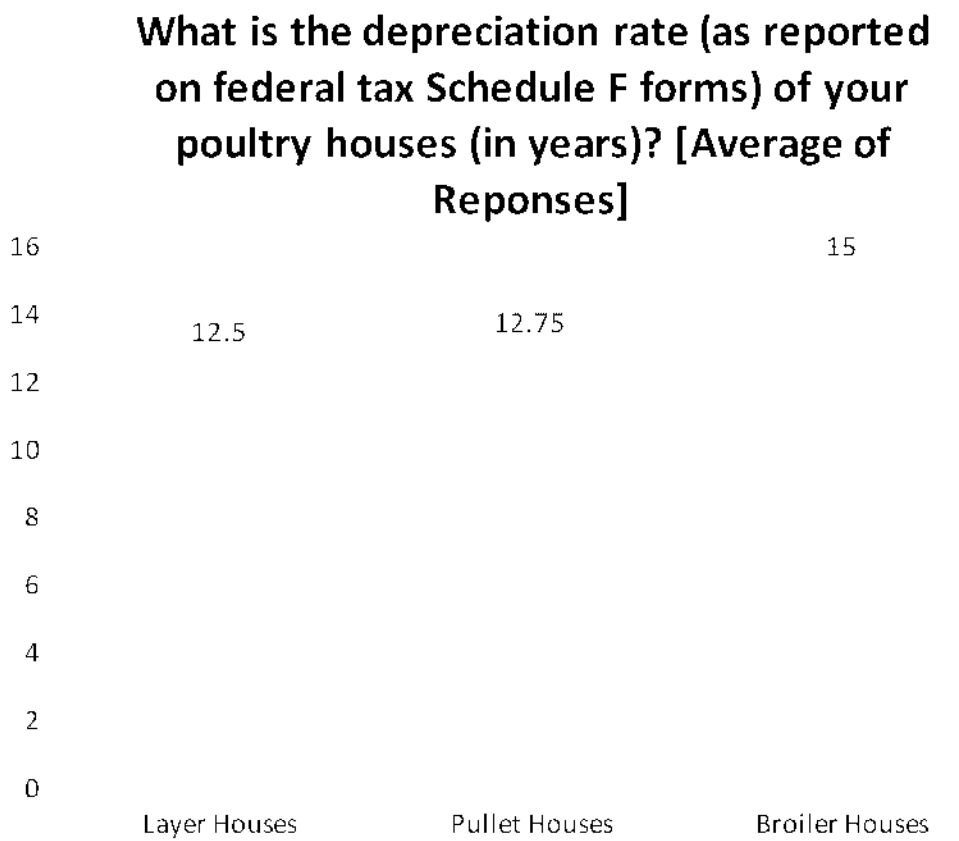
Number of Layers

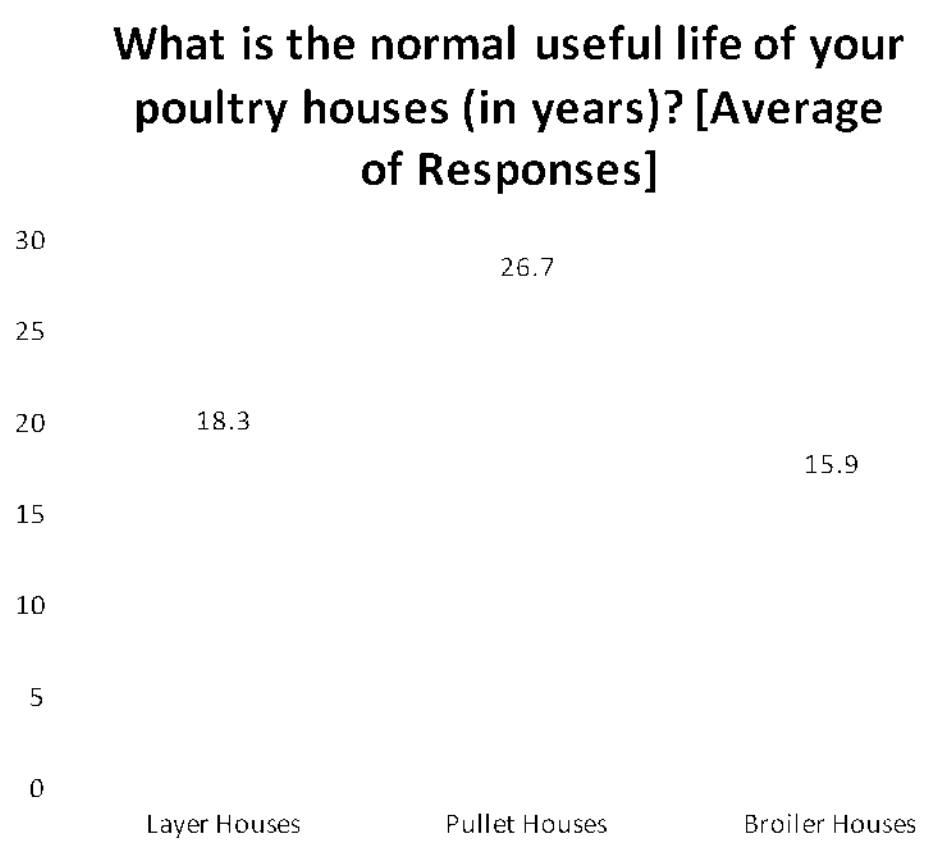


Number of Broilers



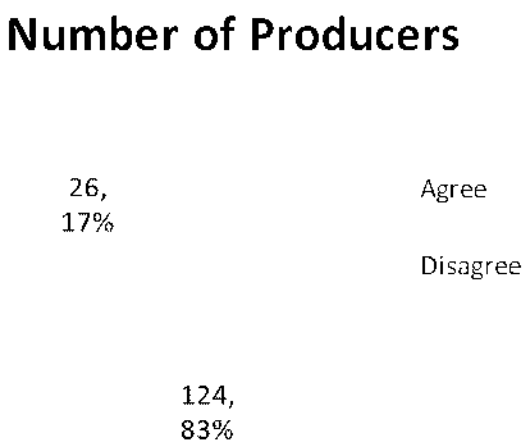
Operational Overview

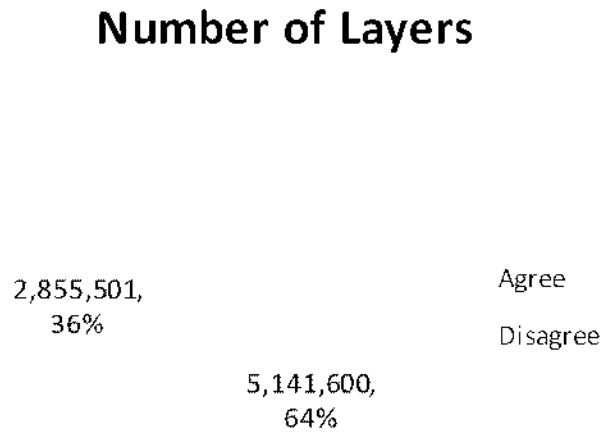


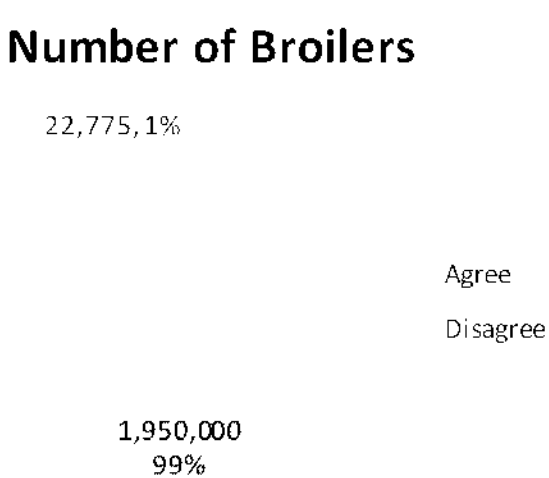


Health Care Requirements

Do you agree or disagree: Beak trimming performed by 10 days of age and toe trimming performed at the hatchery on the first day of life ensures best practices for poultry when deemed necessary.



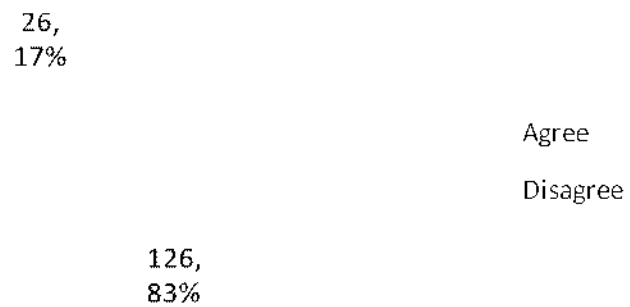




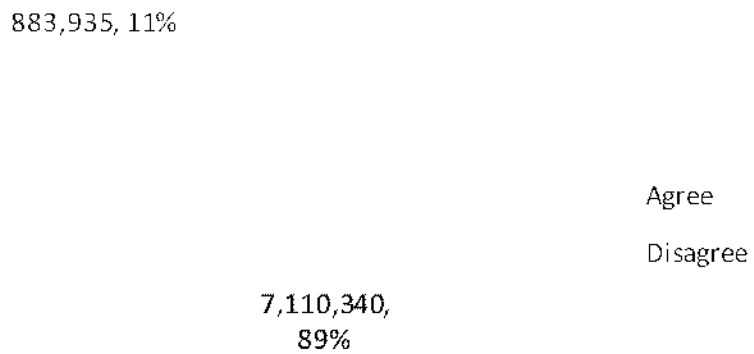
Health Care Requirements

Do you agree or disagree that beak trimming should be prohibited unless performed within 10 days of age?

Number of Producers

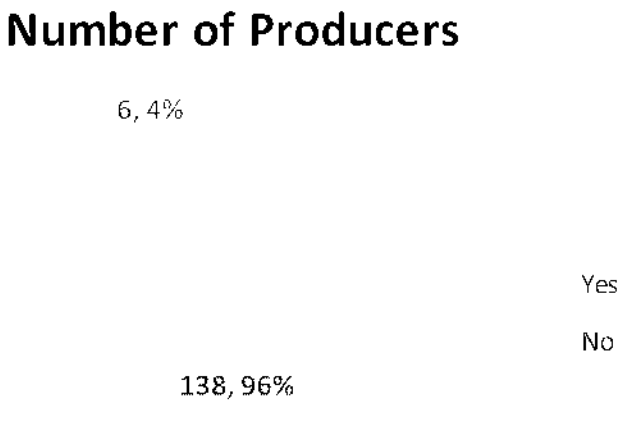


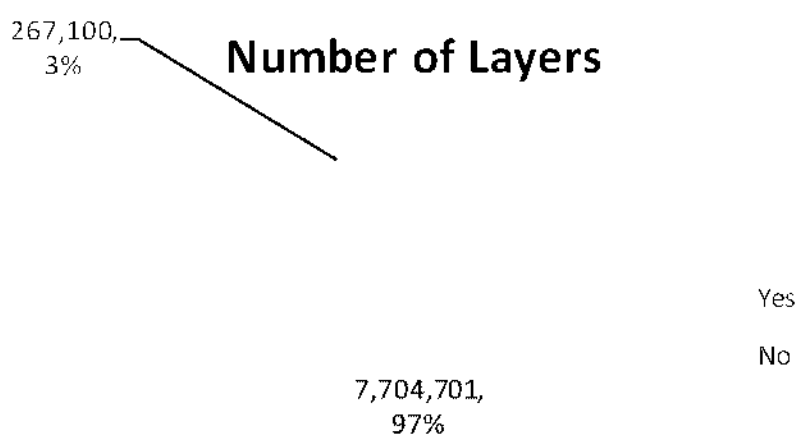
Number of Layers



Health Care Requirements

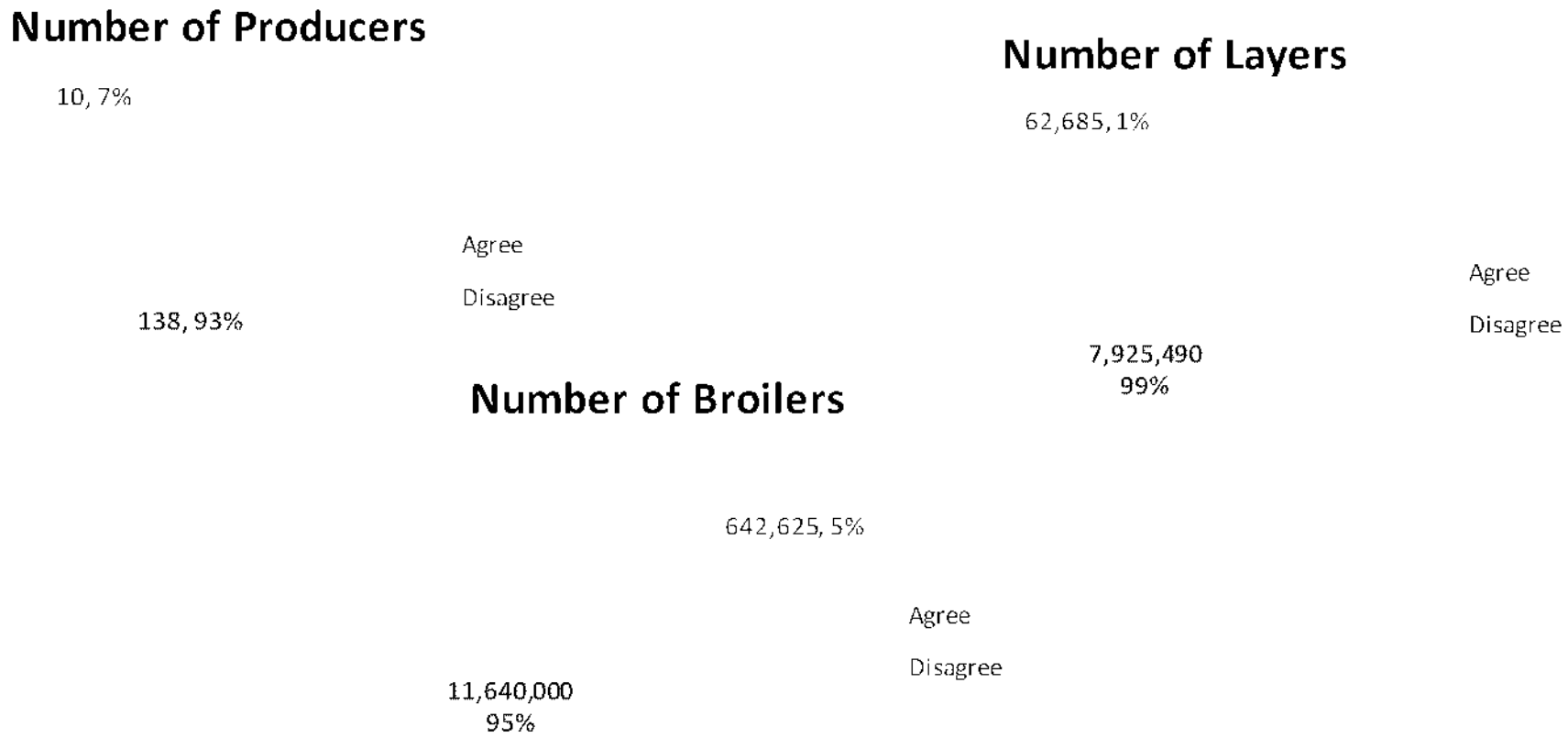
Could your operation(s) adapt to the proposed requirement that beak and toe trimming be preformed within 10 days of age?





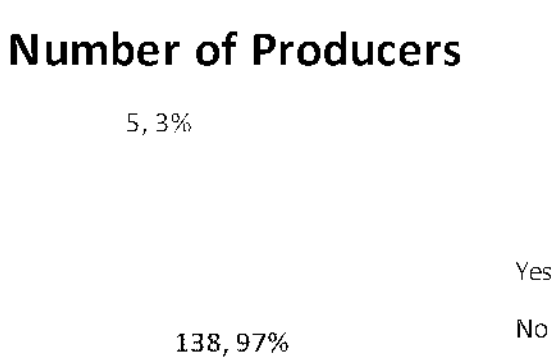
Health Care Requirements

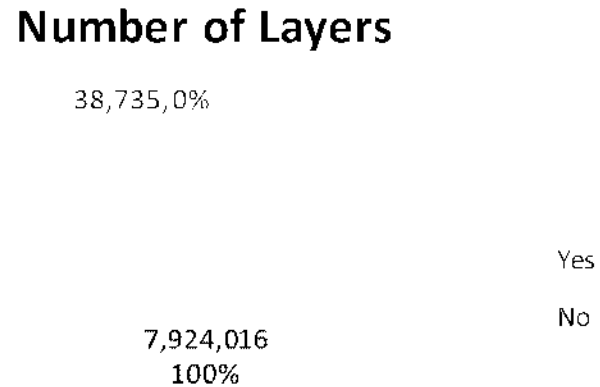
Do you agree or disagree that ammonium levels SHOULD be less than 10ppm and MUST be less than 25ppm indoors?

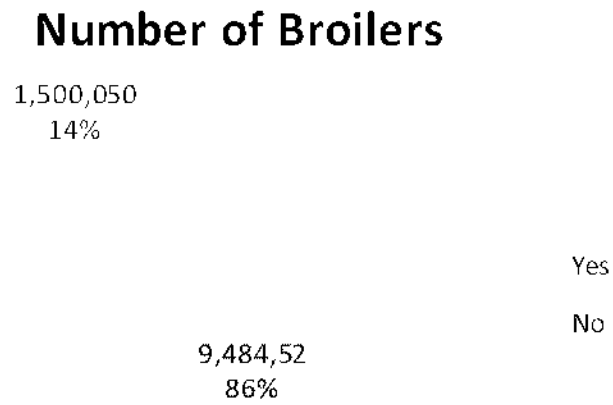


Health Care Requirements

Could your operation(s) adapt to the requirements that ammonium levels SHOULD be less than 10ppm and MUST be less than 25ppm indoors?



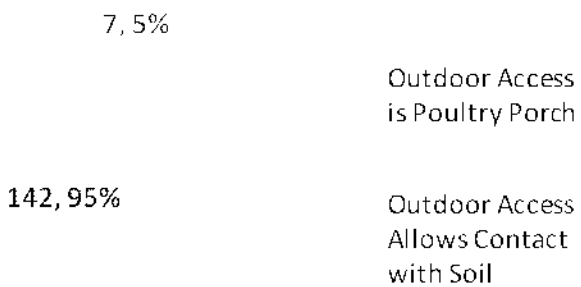




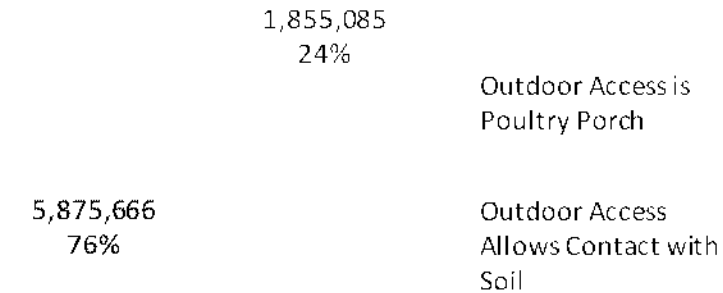
Outdoor Access and Spacing Requirements

Do you currently have outdoor access that is exclusively enclosed space with a floor, walls, and roof (i.e. "poultry porch")? OR Do you currently have outdoor access that allows poultry to contact the soil when seasonally appropriate?

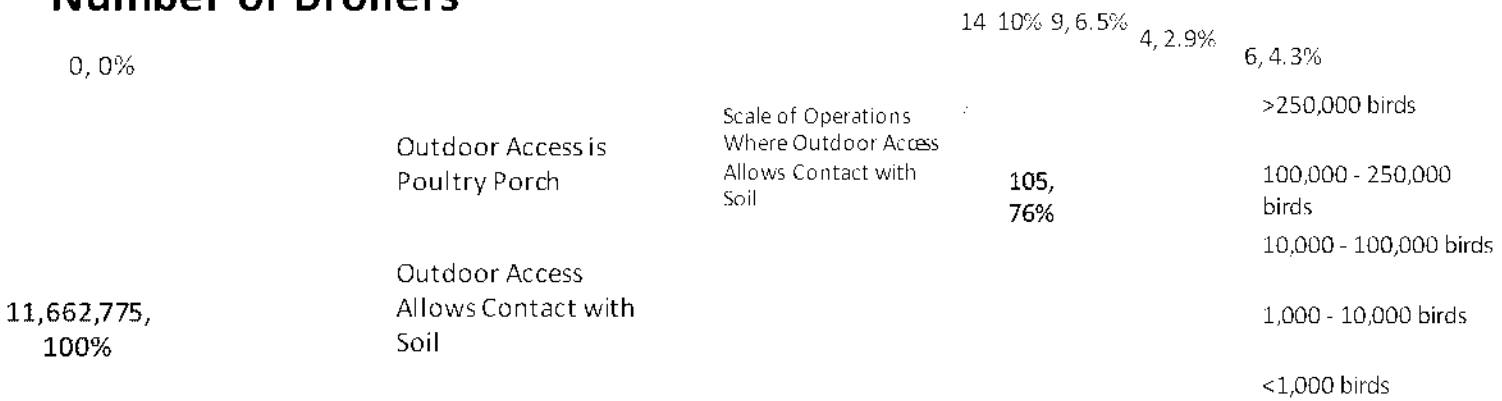
Number of Producers



Number of Layers



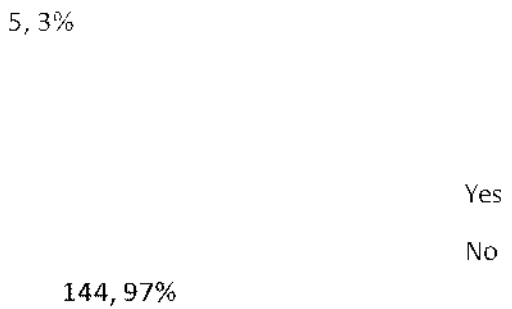
Number of Broilers



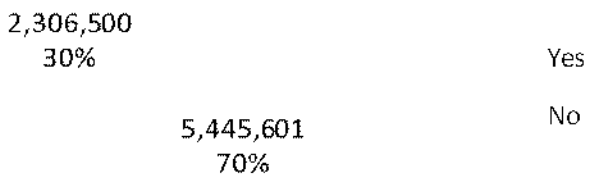
Outdoor Access and Spacing Requirements

It is the intent of NOSB that outdoor areas provide birds with access to the soil when seasonally appropriate, sky overhead, and without a solid roof or walls. Can your operation(s) adapt to this proposed requirement?

Number of Producers



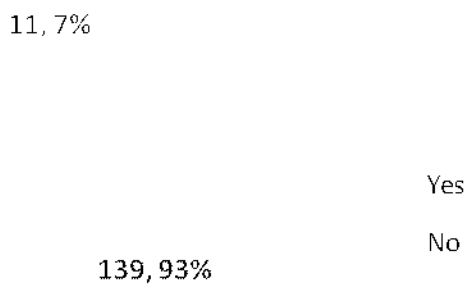
Number of Layers



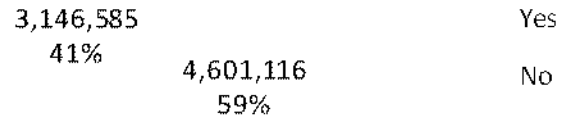
Outdoor Access and Spacing Requirements

The NOSB recommends at least 2 sq. ft. per bird (layers, pullets, and broilers) in outdoor pens and runs. Can your operation(s) meet this proposed requirement?

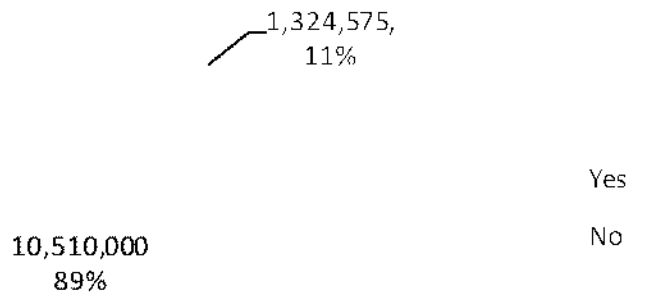
Number of Producers



Number of Layers



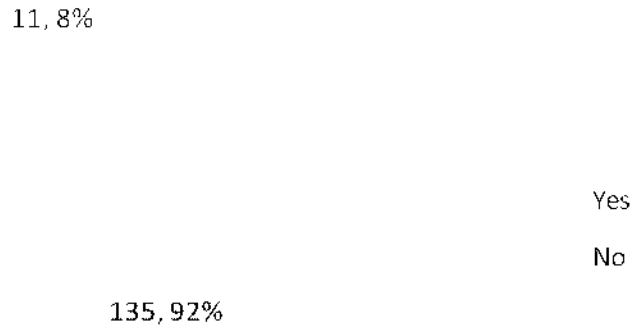
Number of Broilers



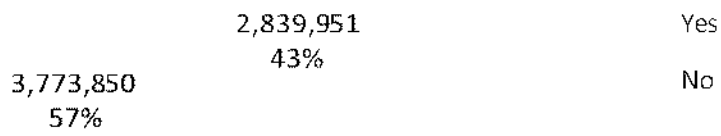
Outdoor Access and Spacing Requirements

At your current spacing, are you able to maintain at least 50% vegetation during the growing season (includes pasture, brushes, shrubs, and trees)?

Number of Producers



Number of Layers

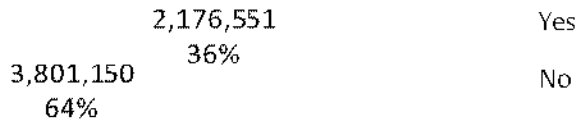


Outdoor Access and Spacing Requirements

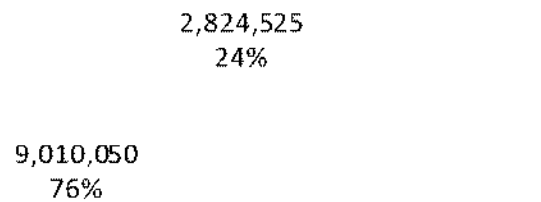
Could your operation(s) meet the recommended 2 sq. ft./bird spacing AND maintain 50% vegetative cover during the growing season (includes pasture, brushes, shrubs, and trees)?

Number of Producers

Number of Layers



Number of Broilers

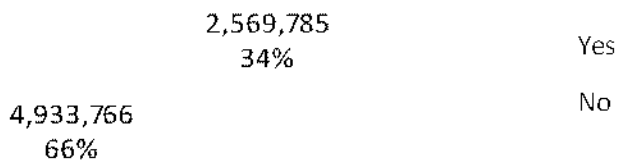


Outdoor Access and Spacing Requirements

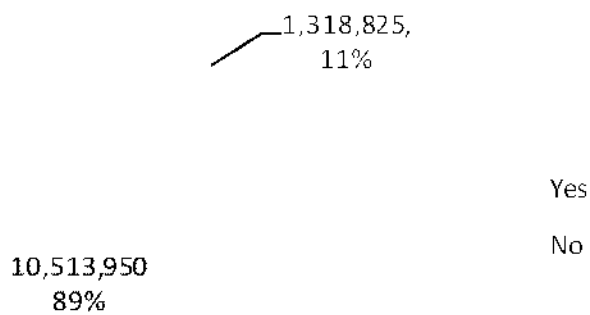
Does minimum outdoor spacing of 2 sq. ft./bird ensure that organic poultry operations will manage vegetation and provide shelter, and blinds; manage erosion and bird boredom/aggression; minimize mortality, lameness, and disease; maintain good feather cover, hygiene, body condition, and low levels of mortality?

Number of Producers

Number of Layers



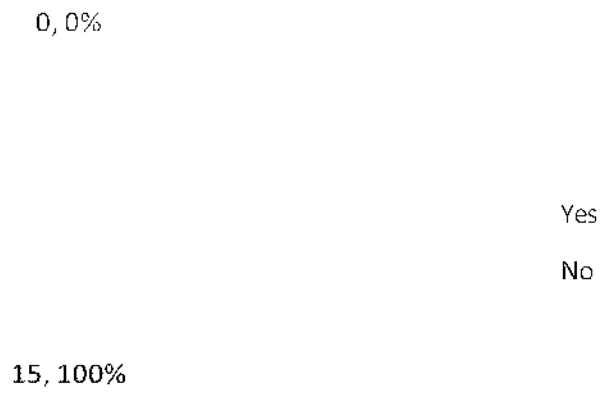
Number of Broilers



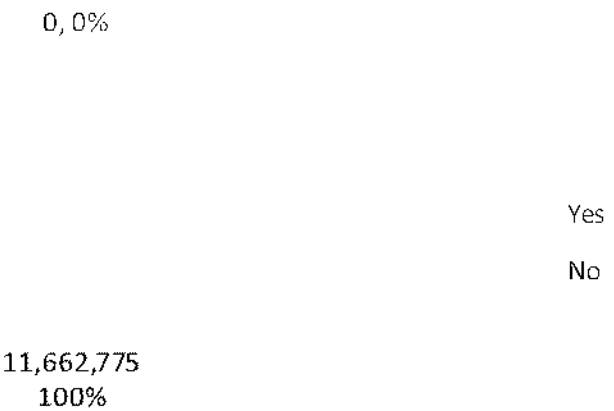
Outdoor Access and Spacing Requirements

Do you allow broilers outdoor access by 4 weeks of age (provided they are fully feathered and weather permits)?

Number of Producers



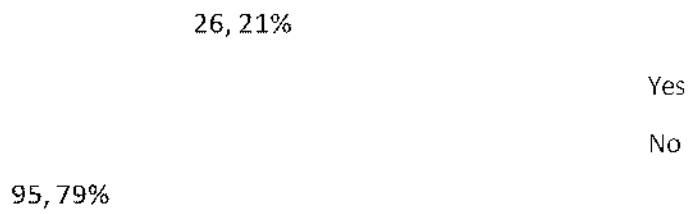
Number of Broilers



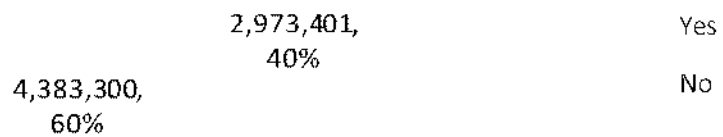
Outdoor Access and Spacing Requirements

Do you allow pullets outdoor access by 16 weeks of age (provided they are fully feathered and weather permits)?

Number of Producers



Number of Layers

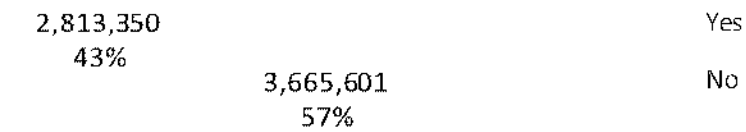


Outdoor Access and Spacing Requirements

Could your operation(s) adapt to this proposed requirement allowing pullets outdoor access by 16 weeks of age?

Number of Producers

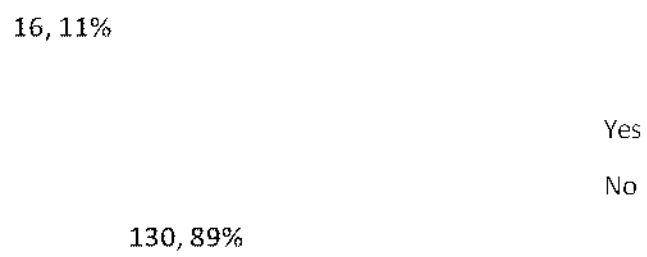
Number of Layers



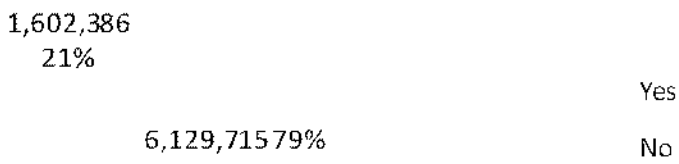
Outdoor Access and Spacing Requirements

Do you agree or disagree that once layers are accustomed to going outdoors, a brief confinement period of no more than 5 weeks should be allowed for nest box training?

Number of Producers



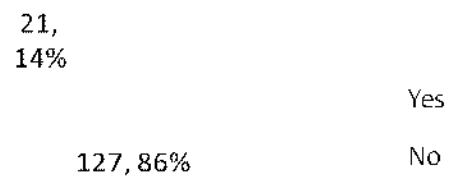
Number of Layers



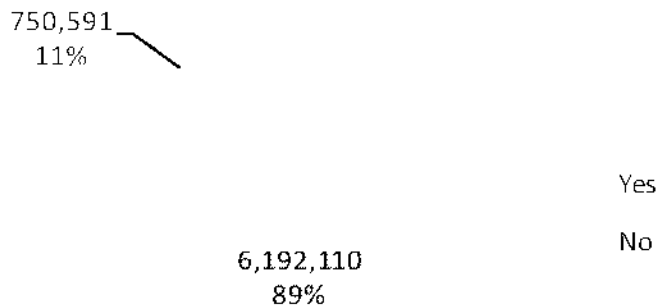
Outdoor Access and Spacing Requirements

Do you currently explain in your Organic System Plan how ventilation will be managed and how birds will be encouraged to access the outdoors?

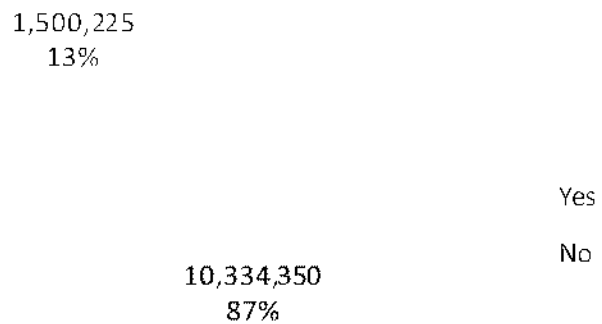
Number of Producers



Number of Layers



Number of Broilers

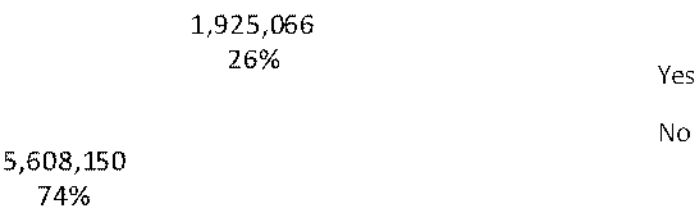


Poultry Housing and Indoor Space Requirements

The NOSB recommends a minimum of 2.0 Sq Ft/Bird indoor space for laying hens and breeders. Could your operation(s) adapt to this proposed requirement?

Number of Producers

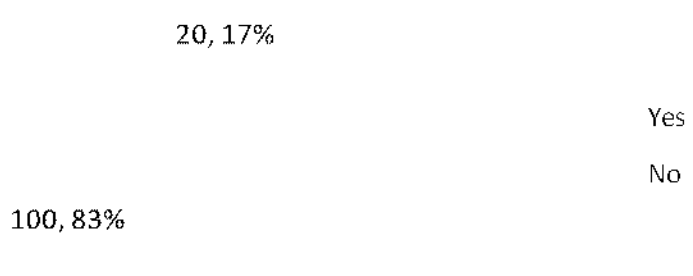
Number of Layers



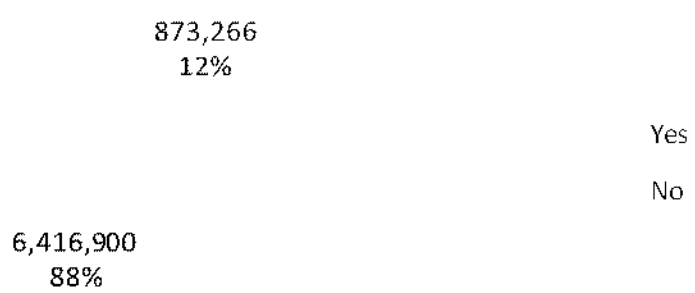
Poultry Housing and Indoor Space Requirements

The NOSB recommends a 2.0 Lbs/Sq Ft minimum of indoor space for pullets. Could your operation(s) adapt to this proposed requirement?

Number of Producers

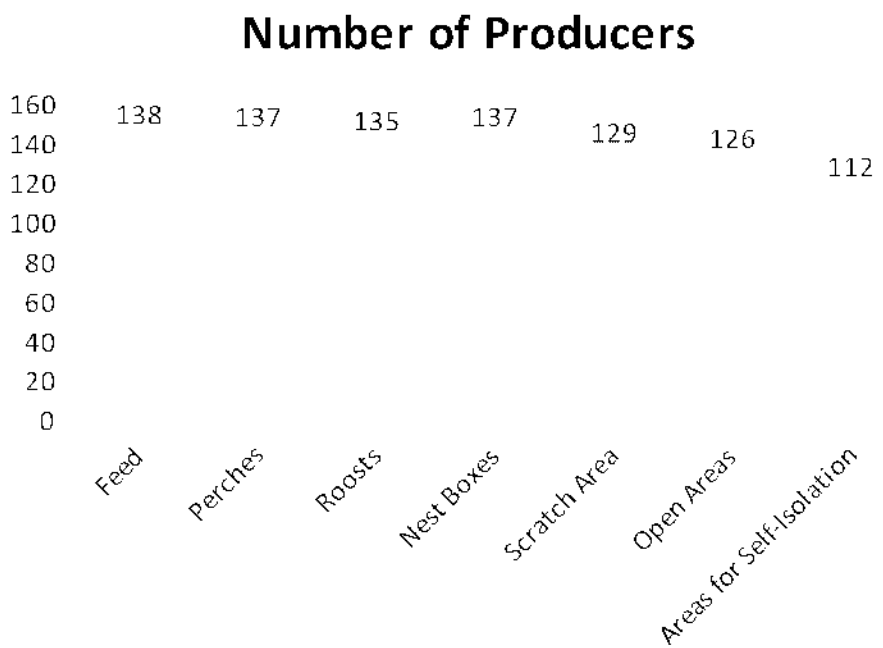


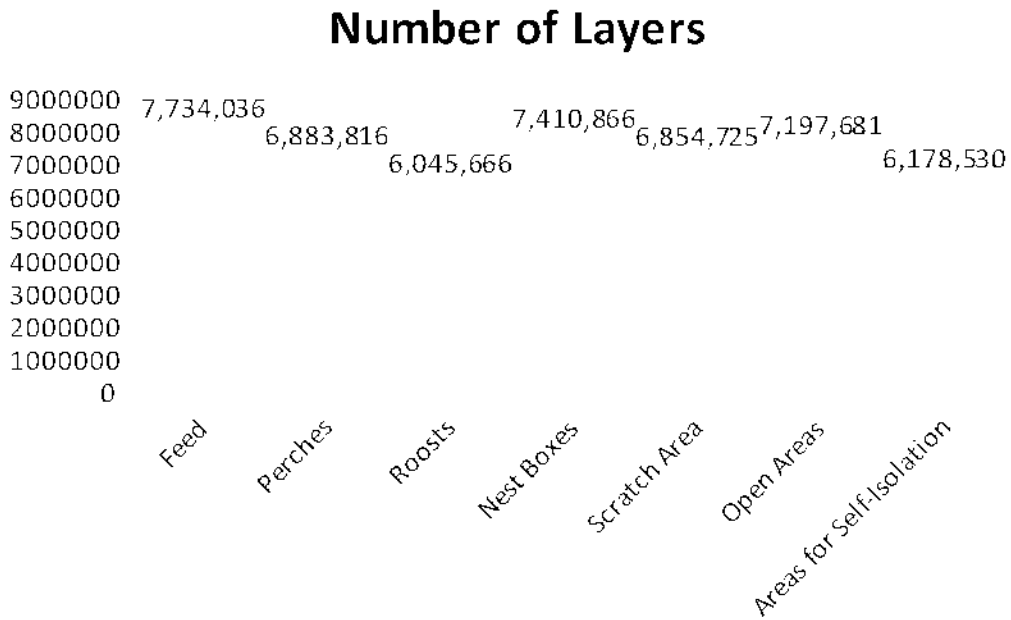
Number of Layers



Poultry Housing and Indoor Space Requirements

Does your indoor space allow birds to access the following (check all that apply): Feed; Perches; Roosts; Nest Boxes; Scratch Areas; Open Areas; Areas for Self-Isolation

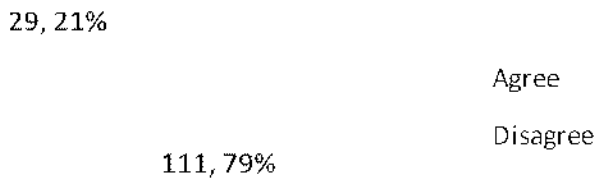




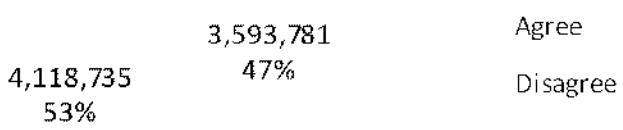
Poultry Housing and Indoor Space Requirements

The NOSB recommendation states that indoor space requirements must be met by the interior ground floor perimeter of the poultry house. Perching areas and nest boxes would not be used in the calculation of floor space. Do you agree or disagree with this system of calculating indoor spacing?

Number of Producers



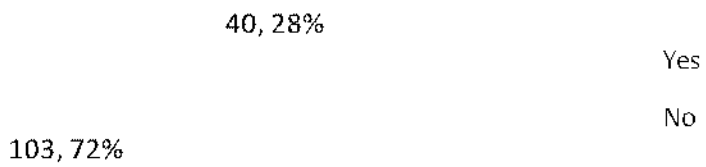
Number of Layers



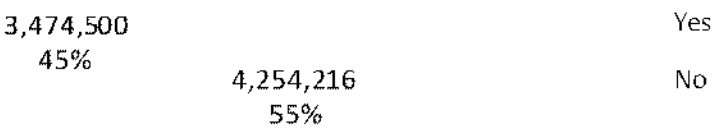
Poultry Housing and Indoor Space Requirements

Could your operation meet the proposed indoor spacing requirements if total indoor space was calculated <u>without</u> including nest boxes or perching areas?

Number of Producers

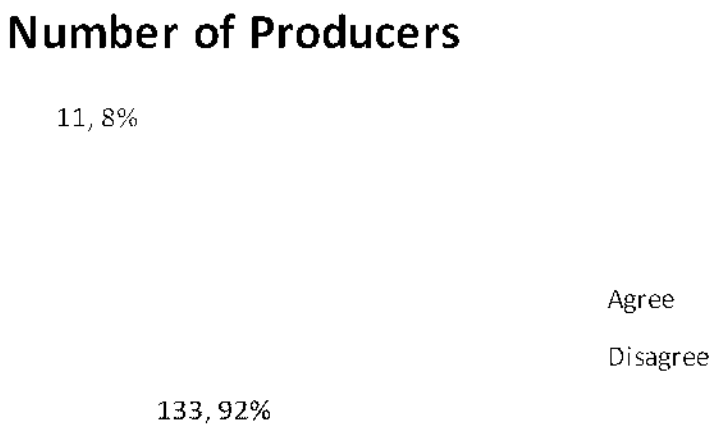


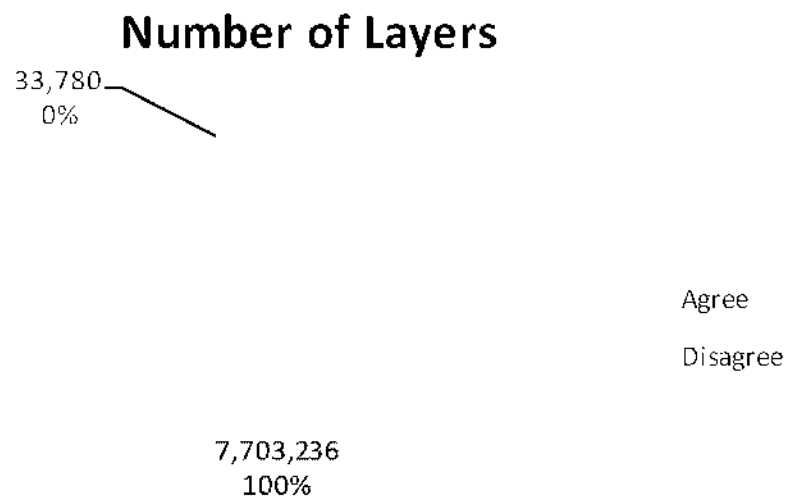
Number of Layers



Poultry Housing and Indoor Space Requirements

Do you agree or disagree that all birds must have access to scratch areas in the house?





Thank You

Organic Egg Farmers of America

For additional information, please contact:

Ashley Swaffar
Vital Farms
Ashley.swaffar@vitalfarms.com
479-530-4469 (office)

June 9, 2017

Paul Lewis, Ph.D.
Director, Standards Division, National Organic Program
USDA-AMS-NOP
1400 Independence Ave., SW, Room 2642-So., Ag Stop 0268
Washington, DC 20250-0268

Docket: AMS-NOP-17-0031; NOP-15-06A

RE: Organic Livestock and Poultry Practices Second Proposed Rule

Dear Dr. Lewis:

Thank you for this opportunity to provide comment on how USDA should proceed with the finalization of the Organic Livestock and Poultry Practices Final Rule.

The Organic Trade Association (OTA) is the membership-based business association for organic agriculture and products in North America. OTA is the leading voice for the organic trade in the United States, representing over 9,500 organic businesses across 50 states. Our members include growers, shippers, processors, certifiers, farmers' associations, distributors, importers, exporters, consultants, retailers and others. OTA's mission is to promote and protect organic with a unifying voice that serves and engages its diverse members from farm to marketplace.

OTA strongly urges USDA to elect **Option 1** and allow the Organic Livestock and Poultry Practices Final Rule to become effective on November 14, 2017.

Summary

This final rule is the product of decades of public deliberation, compromise, and unanimous National Organic Standard Board recommendations. It is supported by the vast majority of organic producers, handlers, and consumers; it levels the playing field for all operations which is essential to a voluntary standard; it eliminates inconsistencies among Accredited Certification Agencies (ACAs) on the interpretation and application of the organic standards on organic poultry and livestock operations; and it accomplishes these benefits with a generous implementation timeline to accommodate the adjustments individual businesses may need to make to come into compliance with the added clarification this final rule provides.

The following points, as summarized below, further support OTA's position in support of Option #1. Our more detailed comments follow thereafter.

- **Market expectations of the USDA organic seal are dependent on Option #1:** This final rule is an industry-developed standard and is a product of a decade of public discussion and feedback from consumers, farmers, processors, retailers, veterinarians, and experts in animal welfare. This final rule was developed through transparent public deliberation, compromise, and unanimous National Organic Standard Board recommendations, and was guided by the regulatory process mandated by Congress in the Organic Foods Production Act of 1990 (OFPA). To choose anything

Headquarters - The Hall of the States, 444 N. Capitol St. NW, Suite 445-A, Washington, D.C., 20001 • (202) 403-8513
Member Services - 28 Vernon St., Suite 413, Brattleboro VT 05301 • (202) 403-8630
www.OTA.com

but Option #1 would undermine the organic regulatory process and seriously compromise consumer confidence and in-turn negatively affect organic businesses across the nation. Market expectations and confidence in the USDA Organic seal are the foundation of our industry. If the process by which organic standards are developed and enforced is undermined, the integrity of the organic seal will suffer.

- **The final rule does not compromise biosecurity measures and food safety requirements:** Some commenters are inaccurately relating the concerns raised with NOP's final requirements for outdoor access, citing the need to protect organic flocks against diseases and for food safety. They are not bringing forth any new science to support these concerns, rather they are rehashing the same hypothetical theories about the impact outdoor access has on biosecurity and food safety that USDA has already addressed in the final rule. The organic standards, under the current regulations, as clarified by the final rule, provide explicit allowances for organic producers temporarily to confine their livestock and poultry to preserve their health and prevent disease outbreaks. This rule **does not** require producers to subject their animals to higher risks of disease or infection, and comments suggesting that is the case are inaccurate and should be disregarded. Our detailed comments below include consolidated information to demonstrate the fact that organic producers are required to comply with all food safety and biosecurity rules, and that they will be able to comply with the outdoor requirements of the final rule without a negative impact on food safety or biosecurity efforts.

- **USDA has authority to promulgate this rule:** Some opponents of this final rule are making a case that USDA does not have the statutory authority to impose animal welfare requirements under the National Organic Program, because OFPA limits its scope for consideration of livestock as organic to feeding and medication practices only. However, this is based on an incorrect reading of OFPA. The purpose of OFPA is to establish national standards governing the marketing of certain agricultural products as organically produced products and to assure consumers that organically produced products meet a consistent standard. OFPA also specifically authorizes NOSB to "recommend to the Secretary standards in addition to those in paragraph (1) for the care of livestock to ensure that such livestock is organically produced." This rule does not go beyond its stated purpose – and in fact, ensures consistency that is currently lacking.

- **Implementation timelines are adjustable and exist outside of rule:** The final rule will require some operations to make changes to their operations, and we would support adjusting the implementation timeline to allow adequate time for these changes to be made. However, implementation timelines do not appear in the regulations, and, therefore, any adjustments to implementation timelines can and should only be made within the context of Option 1. It is completely unjustified to make any adjustments to the implementation timelines within the context of suspending, withdrawing, or any further delaying of the final rule.

- **The decision to become organic is voluntary**: The USDA organic standards have always called for outdoor access in response to market demand for organic production. Organic producers voluntarily enter the organic market with the understanding that the rules will evolve over time and that their practices will need to adjust according to market demands. The viability of the organic market rests on the trust that the organic seal represents a meaningful differentiation from other agricultural practices. A federal voluntary standard that meets the changing needs of

Headquarters - The Hall of the States, 444 N. Capitol St. NW, Suite 445-A, Washington, D.C., 20001 • (202) 403-8513
Member Services - 28 Vernon St., Suite 413, Brattleboro VT 05301 • (202) 403-8630
www.OTA.com

customers is imperative for the organic sector. Without the ability to deliver a product that keeps up with the evolving consumer preference and market demand, the relevance of the USDA Organic seal is at stake, and it will have long-term detrimental effects on an entire industry.

- **Organic stakeholders have shaped this organic standard through a consensus process:** The vast majority of the comments being received on this rule are in support of Option #1. The comparatively small number of commenters in opposition to the final rule provide varying reasons for their positions, but many have one thing in common: they are not representing certified organic producers, handlers, brands, or consumers and/or they are not recognizing the decade-long consensus building process that led to a unanimous NOSB recommendation. The Organic Livestock and Poultry Practices Final Rule should become effective based on the process of achieving consensus around voluntary industry driven production standards and not on whether there is unanimous support. Requiring 100% unanimity to progress the organic standards is untenable and will stifle the organic industry's ability to meet market expectations.

We offer the following more detailed comments.

I. Background and History

The USDA organic regulations have required outdoor access and adequate space for freedom of movement for organic livestock and poultry since they became final in 2002:

> **7 CFR 205.239**
> (a) The producer of an organic livestock operation must establish and maintain year-round livestock living conditions that accommodate the health and natural behavior of animals, including:
> (1) Year-round access for all animals to the outdoors, shade, shelter, exercise areas, fresh air, clean water for drinking, and direct sunlight, suitable to the species, its stage of life, the climate, and the environment
> (4) Shelter designed to allow for:
> (i) Natural maintenance, comfort behaviors, and opportunity to exercise;
> (ii) Temperature level, ventilation, and air circulation suitable to the species; and
> (iii) Reduction of potential for livestock injury;

However, the organic industry has seen an inconsistent application of the regulations, particularly regarding how Accredited Certification Agencies (ACAs) evaluate "outdoor access." The roots of this inconsistency lie in an appeals decision made in October 2002 shortly following the publishing of the final organic standards in the *Federal Register*. In this case, a single operation made application to an ACA to achieve organic certification for its laying operation in Massachusetts. When the certifier conducted the inspection, its determination was that porches did not satisfy the outdoor access requirements under the organic standards, and it issued a Proposed Notice of Denial of Certification. The operation then appealed the decision, and three days following, the ACA received notification that USDA had sustained the appeal and was directed to retroactively grant certification to the date of the Proposed Notice of Denial of Certification. It is upon this single sustained appeals decision at USDA that the allowance of "porches" to be considered outdoor access rests. The National Organic Program never amended the regulations in response to this appeals decision, and inconsistency among ACA's enforcement of outdoor access requirements has existed in the organic industry ever since. Most ACAs

Headquarters - The Hall of the States, 444 N. Capitol St. NW, Suite 445-A, Washington, D.C., 20001 • (202) 403-8513
Member Services - 28 Vernon St., Suite 413, Brattleboro VT 05301 • (202) 403-8630
www.OTA.com

do not allow porches to satisfy outdoor access requirements, thus creating an uneven playing field between producers depending on which ACA they choose for certification services.

The Accredited Certifiers Association, which represents most ACAs operating under USDA accreditation, including 14 ACAs housed in State Departments of Agriculture, has indicated on numerous occasions, and most recently with a letter directly to USDA, its wish for consistent and clear standards to enforce and that the final rule become effective without further delay. This final rule provides the clarity and consistency ACAs are asking for. The final Organic Livestock and Poultry Practices rule would prevent future inconsistency regarding outdoor access and ensure a level playing field for all organic livestock and poultry operations.

II. Rulemaking Process

This final rule is the product of over a decade of work from organic producers, organic brands, USDA's Federal Advisory Committee Act advisory board—the National Organic Standards Board (NOSB), and USDA's National Organic Program (NOP).

- **1995-2000:** NOSB made a series of recommendations that were incorporated into the final rule establishing the USDA organic regulations in 2000. These included healthcare practices, outdoor access and livestock living conditions.

- **2002:** The USDA organic regulations were implemented, and a sustained appeals decision resulted in inconsistent application of outdoor access requirements among ACAs and in the organic poultry sector.

- **2010:** An audit conducted by USDA's Office of the Inspector General (OIG)[1] identified inconsistencies in certification practices regarding outdoor space.

- **2011:** NOSB unanimously adopted a final detailed set of recommendations[2][3] that were intended to further define, clarify and incorporate production practices including provisions establishing maximum ammonia levels, perch space requirements, outdoor access clarifications, specific indoor and outdoor space requirements and stocking densities for avian species.

- **2013-2017:** NOP released an economic analysis[4] of two options for regulations regarding outdoor access for poultry and indicated it would pursue rulemaking to clarify outdoor access based on the NOSB recommendations.

---

[1] https://www.usda.gov/oig/webdocs/01601-03-HY.pdf

[2] https://www.ams.usda.gov/sites/default/files/media/NOP%20Livestock%20Final%20Rec%20Animal%20Welfare%20and%20Stocking%20Rates.pdf

[3] https://www.ams.usda.gov/sites/default/files/media/NOP%20Livestock%20Final%20Rec%20Animal%20Handling%20and%20Transport%20to%20Slaughter.pdf

[4] https://www.ams.usda.gov/sites/default/files/media/Poultry%20Living%20Conditions%20Economic%20Impact%20-%20Phase%203.pdf

Headquarters - The Hall of the States, 444 N. Capitol St. NW, Suite 445-A, Washington, D.C., 20001 • (202) 403-8513
Member Services - 28 Vernon St., Suite 413, Brattleboro VT 05301 • (202) 403-8630
www.OTA.com

- **2016**: NOP released a proposed rule (81 Fed. Reg. 21955) to ensure consistent application of the organic regulations for livestock and poultry operations.

- During the rulemaking process, NOP completed an additional economic analysis at the request of Congress and stakeholders.

- **2017:** NOP released the final rule incorporating producer feedback provided in the comment period. The rule was published in the *Federal Register* on January 19, 2017 (82 Fed. Reg. 7042). Due to the White House Memorandum to federal agencies released on January 20, 2017, requesting a regulatory freeze on rules recently published or pending, the effective date of the rule was delayed to May 19, 2017. On May 10, 2017, USDA delayed the effective date by an additional six months to November 14, 2017, and reopened the comment period.

A hallmark of this process is the transparency with which organic stakeholders have moved through rulemaking. With the exception of the single decision, at the USDA staff level in 2002, that created the inconsistency in interpretations of "outdoor access," this process has incorporated substantive public comments from organic producers and handlers. It has also listened to the expectations of organic consumers, and balanced the realities of commercial-scale production with the need to maintain strict standards, so the organic brand can continue to differentiate itself in the marketplace.

This is not a "midnight" rule pushed through without support from industry. This rule was written and adjusted based on the demands of the organic industry to operate on a level playing field that can clearly and consistently differentiate organic products on store shelves. This rule represents compromise and consensus among organic stakeholders.

III. Biosecurity, Food Safety, Mortality, and Egg Supply

OTA emphasizes that the final rule addressed issues relating to biosecurity, food safety, mortality, and egg supply. Despite more than adequate clarification and addressing of the concerns, some commenters are still raising these issues. The organic standards, under the current regulations and as amended by the final rule, provide allowances for organic producers to confine their livestock and poultry to preserve their health. This rule **does not** require producers to subject their animals to higher risks of disease or infection, and comments suggesting that is the case are inaccurate and should be disregarded. And these same concerns were fully vetted though interagency, scientific review during the proposed rule stage of the process. No new information has been brought forward in this 30-day comment period to indicate outdoor access as required under the final regulation, and as is already implemented by the vast majority of production scale livestock and poultry farmers will cause any increase in biosecurity or food safety risks.

Biosecurity and Food Safety

Commenters are inaccurately relating the concerns raised with NOP's final requirements for outdoor access, citing the need to protect organic flocks against diseases and for food safety. Limiting exposure to migrating waterfowl that may transmit these diseases is acknowledged by USDA APHIS, FDA and State veterinarians as an important step in preventive approaches to avoid disease outbreaks. Accordingly, NOP's final rule takes these concerns into account, and the existing regulations include provisions that ensure that organic poultry operations will not be putting their flocks at a greater risk for exposure or infection by complying with the final regulations.

Headquarters - The Hall of the States, 444 N. Capitol St. NW, Suite 445-A, Washington, D.C., 20001 • (202) 403-8513
Member Services - 28 Vernon St., Suite 413, Brattleboro VT 05301 • (202) 403-8630
www.OTA.com

Organic producers have the same goals and must meet the same requirements as all other farmers: safe food, healthy animals, and profitable farms. Organic producers achieve this through required implementation of preventive controls but still must meet all other USDA and FDA requirements along with reasonable and appropriate exceptions to accommodate for disease outbreaks, food safety concerns, and predation prevention measures.

Outdoor access is fundamental to the organic regulations, and it is what the market expects. In response to the biosecurity, food safety and bird health concerns raised, OTA has consolidated the following information to demonstrate the fact that organic producers are required to comply with all food safety and biosecurity rules, and that they will be able to comply with the outdoor requirements of the final rule without negative impact on food safety or biosecurity efforts.

- **Biosecurity - HPAI in flocks provided access to the outdoors**
  During the 2015 outbreak of HPAI in poultry flocks in the U.S., APHIS conducted extensive investigations of outbreak patterns and developed conclusions around what vectors caused the outbreak and how producers can best guard against exposing their flocks to disease vectors moving forward. In its June 15, 2015, report (attached), APHIS suspects that wild birds were responsible for the initial introduction of HPAI into commercial poultry, but concludes that the disease was spreading between operations through other means. The report points to several potential routes for disease proliferation including "sharing of equipment between an infected and non-infected farm, employees moving between infected and non-infected farms, lack of cleaning and disinfection of vehicles moving between farms, and reports of rodents or small wild birds inside poultry houses." Notably, APHIS did not implicate poultry access to the outdoors as a cause of introduction of HPAI to commercial poultry flocks, nor did it indicate that poultry access to the outdoors was a factor in the spread of the disease.

- **Current biosecurity risk mitigation provisions**
  Despite the lack of evidence implicating outdoor access as a cause of recent poultry disease outbreaks in commercial operations, it is acknowledged that outdoor access may be a risk factor that producers should take into account when developing their biosecurity procedures. Organic regulations currently allow temporary confinement of poultry indoors because of "conditions under which the health, safety, or well-being of the animal could be jeopardized" (7 CFR 205.239(b)(3)). This provision has been interpreted by organic operators, organic certifiers, and NOP to include times when disease outbreaks are occurring or when the potential for exposure to wild birds is high (i.e. during migratory times in recognized flyways). NOP issued Policy Memo 11-12 (attached) and includes this in its program handbook to clarify that outdoor access requirements do not supersede APHIS guidance on biosecurity and that producers and certifiers "may work together to determine an appropriate method and duration of confinement of organic poultry flocks without a loss of organic certification." Additionally, NOP has developed a "Biosecurity in USDA Organic Poultry Operations" fact sheet (attached) which further clarifies requirements under the current organic regulations and measures producers can take to ensure biosecurity in their operations without violating the organic standards. The final rule retains this language, and does not in any way increase the potential risk to disease for organic livestock and poultry.

- **Food Safety - Salmonella concerns and egg safety**

Headquarters - The Hall of the States, 444 N. Capitol St. NW, Suite 445-A, Washington, D.C., 20001 • (202) 403-8513
Member Services - 28 Vernon St., Suite 413, Brattleboro VT 05301 • (202) 403-8630
www.OTA.com

FDA adopted the Egg Safety Rule in 2009 following a lengthy rulemaking process. FDA was seeking to reduce *Salmonella enteritidis* (SE) in eggs. One of its strategies was to prevent SE by limiting the exposure of poultry to potential disease vectors. Wild birds, wild animals, rodents and flies were all identified as concerns for SE contamination. FDA focused on prevention measures in both the poultry house and adjacent grounds. The NOP requirement for outdoor access was expressly considered in the Egg Safety rulemaking. During the comment period for the final rule, FDA highlighted the compatibility of the organic outdoor access standard and the Egg Rule with the following comment: "We agree that it would be difficult to prevent stray poultry and other animals from entering the grounds of the farm, and we believe it is sufficient to keep stray animals out of the poultry house. Therefore, in the final rule, we have changed the requirement for stray animals so that it applies only to poultry houses rather than the entire grounds. Further, we have consulted with AMS, which administers the National Organic Program, and AMS has informed us that this requirement would not make it impossible for eggs to qualify as organic."
[74 Fed. Reg. 33030, 33038-33039 (July 9, 2009)]

No scientific evidence has been presented by USDA or FDA showing hens allowed to have outdoor access are more susceptible to SE than those kept indoors. FDA considered NOP requirements when it adopted the Egg Safety Rule. FDA crafted the final rule to be consistent with NOP requirements for outdoor safety, and concluded that doing so did not compromise food safety. Additionally, numerous production scale organic egg producers currently provide outdoor access aligned with the final Organic Livestock and Poultry Practices rule and maintain compliance with FDA's Egg Safety Rule. Comments suggesting that outdoor access will jeopardize the organic industry's ability to provide safe food are not grounded in the facts and should be disregarded.

Mortality

AMS described the assumptions it made about increases to mortality from this rule in the proposed regulation: "AMS assumed that the mortality rate for hens would increase to 8 percent from 5 percent if this proposed rule is finalized. The increased mortality would chiefly be attributed to increased predation, disease and parasites from greater outdoor access." Production scale organic producers have commented on the federal register regarding their mortality, and, consistently, the producers who are already complying with the requirements of this final regulation experience mortality below expected breed averages.

Additionally, as producers adjust to the new outdoor access requirements, they will also be required to adjust their practices to provide housing that promotes the health of their flocks, and should an increase in predation occur, the producer would be obligated to implement preventive practices (e.g. covering outdoor areas in the case of aerial predators or secured fencing in the case of terrestrial predators) to mitigate the risk of predation. The final regulation provides flexibility to producers to accomplish this goal by allowing for covered outdoor space (provided it is not also enclosed) to count towards the space calculation for the outdoor stocking density requirements.

Egg Availability

Some comments have suggested that organic egg availability will suffer should the final rule become effective and major producers exit the organic egg market. OTA disagrees with this concern. The survey conducted by Organic Egg Farmers of America in 2014 suggests that 75% of the organic egg

Headquarters - The Hall of the States, 444 N. Capitol St. NW, Suite 445-A, Washington, D.C., 20001 • (202) 403-8513
Member Services - 28 Vernon St., Suite 413, Brattleboro VT 05301 • (202) 403-8630
www.OTA.com

availability already complies with the outdoor access requirements of the final rule. Additionally, with the five-year phase-in period for outdoor access requirements for egg producers, the producers willing to adjust to the final rule have ample time to expand their production to fill any void that may occur as a result of producers exiting the organic market. It should be noted that the egg market is dynamic and will always experience fluctuations in egg availability. In fact, the U.S. organic egg market is currently experiencing a significant over-supply or organic eggs.

IV. USDA Has Authority to Promulgate this Rule

Some opponents of the Organic Livestock and Poultry Practices rule, having been unsuccessful on the merits, are using a flawed legal process argument as an attempt to delay or derail implementation of this final rule. They argue that USDA does not have the statutory authority to impose animal welfare requirements under the National Organic Program because they argue the Organic Foods Production Act of 1990 (OFPA) limited its scope for consideration of livestock as organic to feeding and medication practices only – and not any standards beyond those two.

However, this is based on a flawed reading of OFPA. The Organic Livestock and Poultry Practices rule is clearly within USDA's statutory authority under OFPA. OFPA's purpose is clear from the start – "to establish national standards governing the marketing of certain agricultural products as organically produced products; [and] to assure consumers that organically produced products meet a consistent standard".[5] This rule does not go beyond this stated purpose – and in fact, ensures consistency that may be currently lacking.

OFPA also specifically authorizes NOSB to "recommend to the Secretary standards in addition to those in paragraph (1) for the care of livestock to ensure that such livestock is organically produced."[6] It would be hard to find a clearer statutory directive authorizing additional standards for the care and welfare of animals produced organically. NOSB's decade of consideration, leading to multiple recommendations that the Secretary create and implement animal welfare standards for livestock and poultry that is organically produced, seems to be *precisely* what OFPA contemplated. Later in that same section, Congress makes clear its directive that "[t]he Secretary shall hold public hearings and shall develop detailed regulations, with notice and public comment, to guide the implementation of the standards for livestock products provided under this section."[7] There is no question that this is exactly how the Organic Livestock and Poultry Practices rule came about, squarely within the authority granted by Congress in OFPA.

If this were not clear enough, OFPA continues to grant broad authority to the Secretary to consider whether other production and handling practices should be allowed within the USDA organic program. "If a production or handling practice is not prohibited or otherwise restricted under this title, such practice shall be permitted unless it is determined that such practice would be inconsistent with the applicable organic certification program."[8] This makes clear that the organic program is designed to evolve over time, as the Department determines whether certain practices are consistent with the organic program. The National Organic Program is not static, and while certain practices may have been allowed at one time,

[5] 7 U.S.C. § 6501.
[6] 7 U.S.C. § 6509(d)(2).
[7] 7. U.S.C. § 6509(g).
[8] 7 U.S.C. § 6512.

Headquarters - The Hall of the States, 444 N. Capitol St. NW, Suite 445-A, Washington, D.C., 20001 • (202) 403-8513
Member Services - 28 Vernon St., Suite 413, Brattleboro VT 05301 • (202) 403-8630
www.OTA.com

Congress clearly authorized the Department to make continual refinements and amendments to the standards, as practices are determined to be either consistent with, or inconsistent with, the program.

In fact, Congress foresaw the need to elaborate livestock standards in 1990, when it passed OFPA. The report accompanying the Senate bill included the following statements anticipating additional standards and directing NOSB to recommend additional standards to the Secretary:

> More detailed standards are enumerated for crop production than for livestock production. This reflects the extent of knowledge and consensus on appropriate organic crop production methods and materials. With additional research and as more producers enter into organic livestock production, the Committee expects that USDA, with the assistance of the National Organic Standards Board, will elaborate on livestock criteria. (Report, 292).
>
> There are not many organic livestock producers at this time, perhaps as few as one hundred. A major reason is that few producers are willing to invest in raising animals organically since USDA explicitly prohibits meat and poultry from being labeled as organically produced. There is also little consensus on appropriate livestock standards and thus State and private programs vary widely. (Report, 302).
>
> The Board shall recommend livestock standards, in addition to those specified in this bill, to the Secretary. (Report, 303).[9]

Although these passages do not explicitly reference animal welfare, it was presumed that animal welfare would be encompassed whenever such standards were developed. Also, the Humane Society of the United States played a central role in advocating for the passage of OFPA – which underscores the point that it was widely understood at the time of passage that organic livestock production would eventually include meaningful animal welfare standards.

The letter of the law and congressional intent demonstrated through Report language are clear. Moreover, animal welfare standards were anticipated by the Department when it promulgated the National Organic Program Final Rule in 2002. The Preamble accompanying that rule describes several animal welfare practices, many of which have yet to be fully articulated by the Program. According to the Description of Regulations, an organic livestock producer ***must***:

- Select species and types of livestock with regard to suitability for site-specific conditions and resistance to prevalent diseases and parasites
- Provide a feed ration including vitamins, minerals, protein, and/or amino acids, energy sources, and, for ruminants, fiber
- Establish appropriate housing, pasture conditions and sanitation practices to minimize the occurrence and spread of diseases and parasites
- Maintain animals under conditions which provide for exercise, freedom of movement, and reduction of stress appropriate to the species

[9] Report 101-357, 101st Congress, 2nd Session, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, to Accompany S. 2830, Food Agriculture, Conservation, and Trade Act of 1990, July 6, 1990, GPO: 1990.

Headquarters - The Hall of the States, 444 N. Capitol St. NW, Suite 445-A, Washington, D.C., 20001 • (202) 403-8513
Member Services - 28 Vernon St., Suite 413, Brattleboro VT 05301 • (202) 403-8630
www.OTA.com

- Conduct all physical alternations to promote the animals' welfare and in a manner that minimizes stress and pain
- Establish and maintain livestock living conditions which accommodate the health and natural behavior of the livestock
- Provide access to the outdoors, shade, shelter, exercise areas, fresh air, and direct sunlight suitable to the species, its stage of production, the climate, and the environment
- Provide shelter designed to allow for the natural maintenance, comfort level, and opportunity to exercise appropriate to the species.[10]

In sections relating to comments, the Preamble describes several issues that the Secretary understood would require elaboration, but for which he had insufficient expertise – so a central role for NOSB was established. These cases include confinement and space requirements;[11] managing ruminant production operations;[12] and temporary confinement to enhance species' well-being.[13]

Moreover, a search of the USDA Agricultural Marketing Service website (which has authority over the National Organic Program) shows continued reference to animal welfare as "a basic principle of organic production" going back at least a decade.[14] All of this historical documentation demonstrates the importance of animal welfare in the organic regulatory scheme, and rebuts the argument that it is not within USDA's statutory authority or purview.

The statutory language of OFPA, congressional intent as demonstrated by Report language, and regulatory language and actions all support the authority of the Department to promulgate organic animal welfare rules. Faced with this, opponents make two additional and particularly specious arguments in support of their claim that the Department is not authorized to incorporate animal welfare standards into the organic regulations. These arguments ignore the straightforward reading of OFPA and congressional intent, which govern what the Department may or may not do in this regard. The following arguments are also of questionable merit. We rebut them below.

First, opponents argue that because animal care is not specific to organic – and is an end both organic and conventional producers can strive toward – it is inappropriate for inclusion in the organic standards. This argument is without merit. Of course, the entirety of the organic toolbox – from allowed inputs, to allowed practices, to animal welfare – is available to any producer, organic or conventional. Whether something is uniquely available to organic producers is not the metric by which organic regulations are considered – this would make no sense.

Second, opponents argue that because the Department has not until now incorporated animal care into any definition or explanation of the organic program, and instead focused on biological diversity and soil fertility, this rule must be an unlawful expansion of its authority. However, this inappropriately assumes that how the Department choses to exercise its authority on the day the National Organic Program took

[10] Preamble, Subpart C, Organic Crop, Wild Crop, Livestock and Handling Requirements, Description of Regulations.
[11] Preamble, Livestock Production, Changes based on comments (5); Changes Requested But Not Made (5).
[12] Id., Changes Requested But Not Made (6).
[13] Id., Changes Requested But Not Made (7).
[14] See https://search.usa.gov/search?utf8=%E2%9C%93&affiliate=usda-ams&query=animal+welfare&commit=Search (last visited, June 2, 2017).

Headquarters - The Hall of the States, 444 N. Capitol St. NW, Suite 445-A, Washington, D.C., 20001 • (202) 403-8513
Member Services - 28 Vernon St., Suite 413, Brattleboro VT 05301 • (202) 403-8630
www.OTA.com

effect defines the extent of its authority. This is directly in conflict with the statutory authority, described above, that allows for continued analysis and regulation.[15]

The Department clearly has statutory authority for the Organic Livestock and Poultry Practices rule, and opponents are left with only inaccurate legal interpretation, factually false claims, and unrealistic arguments to suggest otherwise. The Department must dismiss these arguments and move forward with implementation of the rule.

V. Organic Stakeholders

As USDA evaluates comments to this docket in the *Federal Register*, it is important to evaluate whether the comments come from organic stakeholders. The operations, brands, and consumers affected by this rule are unified in support of moving forward and allowing the rule to become effective:

- Three hundred and thirty four (334) organic livestock producers sent a letter to USDA urging the rule become effective without further delay.
- A survey conducted of organic livestock and poultry operations in 2014 indicated that 95% of producers were already in compliance with the outdoor access requirements proposed by NOSB and later incorporated into the final rule.
- NOSB submitted a letter to the Secretary of Agriculture adding to the public record the unanimous resolution that was passed at its April 2017 meeting to let the rule become effective without further delay.
- Every major U.S. accredited organic certifier has also called on the Secretary of Agriculture to allow the organic livestock rule to go into effect.
- Production-scale operations in the organic livestock and poultry market also support the rule becoming effective without delay. Examples include but are not limited to Perdue Farms, Pete & Gerry's, Chino Valley Ranchers, Organic Valley, Egg Innovations, and Applegate Natural and Organic Meats. Major organic retail brands like General Mills and J.M. Smucker Company also support Option #1.

Commenters in opposition to the final regulation becoming effective provide varying reasons for their positions, but many have one thing in common: they are not representing certified organic producers, handlers, brands, or consumers. The concerns raised by opponents should be considered by USDA, as the public comment process requires, but it is critical that USDA separate the perspectives of those the regulation will affect (organic stakeholders) with those the regulation will not affect. Organic is a voluntary regulatory approach to differentiating products in the marketplace, and the rulemaking process should be shaped by those who volunteer to be regulated, not by those who opt out.

VI. Implementation timelines are adjustable and exist outside of the final regulation

OTA also acknowledges that this regulation will require adjustments, and we support adequate implementation timeline to allow for these to be made. Implementation timelines do not appear in the regulations, and, therefore, any adjustments to implementation timelines can and should only be made

[15] See id.

Headquarters - The Hall of the States, 444 N. Capitol St. NW, Suite 445-A, Washington, D.C., 20001 • (202) 403-8513
Member Services - 28 Vernon St., Suite 413, Brattleboro VT 05301 • (202) 403-8630
www.OTA.com

within the context of Option 1. It is completely unjustified to make any adjustments of implementation timelines within the context suspending, withdrawing, or any further delaying of the final rule. Some commenters have indicated that the change in the implementation timeline from the proposed rule to the final rule for outdoor requirements for poultry may cause hardships for their operations. USDA can accommodate this by adjusting the implementation timeline without further delaying the effective date of the rule. Perdue Farms, in its public comments, suggests USDA return to the original proposed implementation timeline where outdoor requirements must be implemented in three or five years (depending on whether the operation is new or existing) for all avian species rather than just for egg producers as the final rule allows. Minor adjustments to the implementation timeline can be made without delaying the effective date and do not require further rulemaking or additional comment periods. OTA would support such an action, provided the rule become effective on November 14, 2017.

Conclusion

Being certified organic is a choice, not a mandate. Organic means more than just what the animals eat. The comprehensive regulation reflects a consensus between producers, certifiers, and consumers that organic livestock, including poultry, should be provided with meaningful outdoor access and adequate space to move around, and that all organic livestock should not be subjected to unnecessary physical alterations.

The voluntary organic program ensures products bearing the USDA Organic seal meet rigorous standards. The viability of the organic market rests on market expectations of the USDA Organic seal, and trust that the organic seal represents a meaningful differentiation from other agricultural practices. Organic producers and handlers embrace the dynamic nature of the organic standards, and enter into the market knowing that the regulations will change to accommodate the demands of organic consumers. A federal voluntary standard that meets the changing needs of customers is imperative for the organic sector, and the needs of customers must be balanced with the realities of production-scale production. The organic livestock and poultry practices final rule strikes this balance. Without the ability to deliver a product that keeps up with the evolving consumer preference, the relevance of the USDA Organic seal is at stake, and it will have long-term detrimental effects on an entire industry.

Lastly, while some comments are suggesting USDA take another course than allowing the rule to become effective on November 14, 2017, these comments are in the overwhelming minority. The final rule is the result of over a decade of public consensus that led to a rare unanimous NOSB recommendation. Tens of thousands of consumers, producers, and handlers have provided comments to USDA in support of Option 1, and this is the course USDA should take. Requiring 100% unanimity to progress organic regulations is untenable and will stifle the organic industry's ability to meet its consumer demands. As USDA evaluates comments on this proposed rule and weighs the merits of the four options proposed, Option 1 is clearly the only option that supports the organic industry's ability to succeed.

On behalf of our members across the supply chain and the country, OTA thanks USDA for the opportunity to comment.

Respectfully submitted,

Laura Batcha

Headquarters - The Hall of the States, 444 N. Capitol St. NW, Suite 445-A, Washington, D.C., 20001 • (202) 403-8513
Member Services - 28 Vernon St., Suite 413, Brattleboro VT 05301 • (202) 403-8630
www.OTA.com

Laura Batcha
CEO / Executive Director
Organic Trade Association

cc: Nathaniel Lewis
Farm Policy Director
Organic Trade Association

Headquarters - The Hall of the States, 444 N. Capitol St. NW, Suite 445-A, Washington, D.C., 20001 • (202) 403-8513
Member Services - 28 Vernon St., Suite 413, Brattleboro VT 05301 • (202) 403-8630
www.OTA.com