

Congress of the United States
Washington, DC 20515

January 17, 2018

The Honorable Sonny Perdue
Secretary
United States Department of Agriculture
1400 Independence Ave, SW
Washington, DC 20250

Dear Secretary Perdue:

We write today to address misinterpretation of the U.S. Department of Agriculture's (USDA) regulatory authority under the Organic Foods Production Act of 1990 (OFPA).

In its latest Federal Register notice on the issue, published on November 14, 2017, the Agricultural Marketing Service (AMS) stated: "Although animal welfare is an important USDA priority, AMS believes that OFPA's reference to additional regulatory standards 'for the care' of organically produced livestock is limited to health care practices similar to those specified by Congress in the statute, rather than as reflecting a stand-alone concern for animal welfare." As the original sponsors of the organics legislation, we write to make clear that this recently-developed belief is misguided, as the statutory language and legislative history make clear.

Twenty-seven years ago, Congress passed OFPA as part of the 1990 Farm Bill. This was in an effort to establish consistent, national standards applicable to agricultural products, including livestock, sold or marketed as "organic" and those purposes of OFPA were reflected directly in the statute and the final 1990 Farm Bill (7 U.S.C. §§ 6501). We were clear in the bill that "livestock" included poultry (7 U.S.C. § 6502(11), and that all "livestock to be slaughtered and sold or labeled as organically produced" must be raised in accordance with statutory requirements (7 U.S.C. § 6509(a).

One difficulty we had in establishing detailed livestock raising requirements in 1990 was that the organic livestock sector was still in its infancy, as was noted in the Senate Report 101-357 to accompany S. 2830, the Food, Agriculture, Conservation, and Trade Act of 1990. However, we recognized then the immense opportunity for growth, and therefore proposed a partnership model between government and private organizations in standard setting and certification. This resulted in the idea behind the National Organics Standard Board ("NOSB"), which could use the growing experience of the private, grassroots farmers to shape organic standards.

Of course it would not have made any sense for Congress to constrict the influence of the NOSB in the way AMS's current interpretation does. That is why Senate Report 101-357 explained that: "The Committee regards this Board as an essential advisor to the Secretary on *all issues* concerning this bill and anticipates that many of the **key decisions concerning standards** will result from recommendations by this Board." To reflect the importance of the NOSB in developing the organic program through full participation on a wide range of issues, and not just those pertaining to "health care," Congress included the consultation requirement in the statute.

With respect to the “health care” provisions alluded to by AMS in the latest rulemaking, it is true that Congress enumerated three prohibited practices regarding the application of antibiotics, synthetic parasiticides, and other medication. However, Congress also clearly required the NOSB to recommend standards “in addition to” these “for the care of livestock.” Nonetheless, the AMS is interpreting the inclusion of NOSB’s “addition[al]” recommendations “for the care” of organically produced livestock in this statutory section as an indication that Congress intended to limit the USDA’s regulatory authority for rules relating to living conditions and animal welfare. This belies the true congressional intent, as outlined in the Senate Report, where it was explained why Congress added the NOSB recommendations provision to this section: “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 restricting livestock medications and the need to provide humane conditions for livestock rearing.” Congress was also aware of the need for more research to be done in areas not limited to medical attention or the “health care” needs of animals. Indeed, as was stated in the Senate Report, “[w]ith additional research and as more producers enter into organic livestock production, the Committee expects that USDA, with the assistance of the National Organics Standard Board, will elaborate on livestock criteria.”

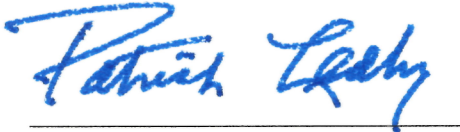
The congressional intent was clear in providing the USDA broad regulatory authority—that is, authority not “limited to health care practices similar to those specified by Congress in the statute”—could not be any clearer. Further, when Congress passed the 1990 Farm Bill, it directed USDA to conduct research on a number of topics, such as “the development of efficacious protocols and materials for handling organically produced products and improvements in the technology of organic livestock production.” Of course, it would have made little sense to direct and fund such research, while restricting the agency’s authority in such a way as to make implementation of the findings impossible.

Finally, the Conference Report produced after the House and Senate agreed on language for the final 1990 Farm Bill should resolve any further question in this matter. With respect to animal production practices and materials, Congress explained: “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.* This language was broad and clear on the USDA’s authority to promulgate, through notice and comment, regulations regarding “livestock standards” that are “in addition to” any of those specified in the original language that became law in 1990. There is zero evidence in the statutory language, the Conference Report, or the Senate Report indicating a congressional intent to limit or in any way restrict the USDA’s rulemaking authority when relying on the NOSB to develop animal raising standards for certification within the National Organic Program. To the contrary, the Conference Report reflected an agreement reached between the House and Senate, Congress was unequivocal that the opposite was true: Congress “recognize[s] the need to *further elaborate* on the standards set forth in the title and expect that by holding public discussions with interested parties and with the National Organic Standards Board, the Secretary will determine the necessary standards...”.

The now thrice-delayed organics rule would continue the process initiated with the access to pasture rule finalized in 2010, and would, in keeping with the purposes of OFPA, establish clear

and consistent standards for all organic livestock. We feel strongly that the rule is consistent with recommendations provided by USDA's Office of Inspector General, and nine separate recommendations from the NOSB. It will align regulatory language and congressional intent to enable producers and consumers to readily discern the required practices for organic poultry production and to differentiate the products in the marketplace. This is as Congress intended when it enacted OFPA and established the NOSB.

Sincerely,

A handwritten signature in blue ink, reading "Patrick Leahy", written over a horizontal line.

PATRICK LEAHY
United States Senator

A handwritten signature in blue ink, reading "Peter DeFAZIO", written over a horizontal line.

PETER DeFAZIO
United States Representative