



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

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

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

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)<sup>1</sup> identified inconsistencies in certification practices regarding outdoor space.
- **2011:** NOSB unanimously adopted a final detailed set of recommendations<sup>23</sup> 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<sup>4</sup> 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.

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<sup>1</sup> <https://www.usda.gov/oig/webdocs/01601-03-HY.pdf>

<sup>2</sup>

<https://www.ams.usda.gov/sites/default/files/media/NOP%20Livestock%20Final%20Rec%20Animal%20Welfare%20and%20Stocking%20Rates.pdf>

<sup>3</sup>

<https://www.ams.usda.gov/sites/default/files/media/NOP%20Livestock%20Final%20Rec%20Animal%20Handling%20and%20Transport%20to%20Slaughter.pdf>

<sup>4</sup>

<https://www.ams.usda.gov/sites/default/files/media/Poultry%20Living%20Conditions%20Economic%20Impact%20-%20Phase%203.pdf>

- **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 through 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.

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**

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

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 of 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”.<sup>5</sup> 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.”<sup>6</sup> 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.”<sup>7</sup> 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.”<sup>8</sup> 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,

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<sup>5</sup> 7 U.S.C. § 6501.

<sup>6</sup> 7 U.S.C. § 6509(d)(2).

<sup>7</sup> 7 U.S.C. § 6509(g).

<sup>8</sup> 7 U.S.C. § 6512.

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).<sup>9</sup>

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

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<sup>9</sup> Report 101-357, 101<sup>st</sup> Congress, 2<sup>nd</sup> 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.

- 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.<sup>10</sup>

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;<sup>11</sup> managing ruminant production operations;<sup>12</sup> and temporary confinement to enhance species' well-being.<sup>13</sup>

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.<sup>14</sup> 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 chooses to exercise its authority on the day the National Organic Program took

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<sup>10</sup> Preamble, Subpart C, Organic Crop, Wild Crop, Livestock and Handling Requirements, Description of Regulations.

<sup>11</sup> Preamble, Livestock Production, Changes based on comments (5); Changes Requested But Not Made (5).

<sup>12</sup> Id., Changes Requested But Not Made (6).

<sup>13</sup> Id., Changes Requested But Not Made (7).

<sup>14</sup> See <https://search.usa.gov/search?utf8=%E2%9C%93&affiliate=usda-ams&query=animal+welfare&commit=Search> (last visited, June 2, 2017).

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.<sup>15</sup>

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

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<sup>15</sup> See *id.*

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  
CEO / Executive Director  
Organic Trade Association

cc: Nathaniel Lewis  
Farm Policy Director  
Organic Trade Association