

October 26, 2022

Erin Healy, MPH
Director, Standards Division
National Organic Program
USDA-AMS-NOP
Room 2646-So., Ag Stop 0268
1400 Independence Ave. SW
Washington, DC 20250-0268

RE: National Organic Program: Organic Livestock and Poultry Standards; Docket No. AMS-NOP-21-0073-0001

Dear Director Healy:

On behalf of the undersigned companies and animal welfare, environmental, and farming organizations and our millions of supporters, we commend the U.S. Department of Agriculture (USDA) Agricultural Marketing Service (AMS) for once again proposing much needed and widely supported regulations governing the care and welfare of animals raised organically. We agree with AMS that the proposed Organic Livestock and Poultry Standards (OLPS) rule is necessary to fulfill the purposes of the Organic Foods Production Act (OFPA) and ensure compliance with consistent animal raising standards for livestock and poultry production across the organic industry.

As the agency is well aware, the proposed OLPS rule is the result of decades of hard work and historic compromise among a wide variety of stakeholders including organic producers, retailers, distributors, NGOs, consumers, and the agency itself. Finalization of the previous rendition of this rule in 2017 marked a significant milestone for improvements to animal welfare and the USDA Organic label as a whole. AMS's controversial decision to reverse course and withdraw the rule was met with overwhelming opposition. This decision seemingly sought only to benefit a handful of corporate interests and large-scale operations that have successfully capitalized off a lack of clarity in the organic label at the expense of farmers dedicated to higher welfare practices that reflect the true spirit of organic production. Moving expeditiously to finalize the proposed OLPS rule is an opportunity for AMS to begin to remedy the harms inflicted upon organic producers by the absence of clear standards for livestock and poultry production. This action is also critical to accomplishing the agency's own stated goals of "ensuring a level playing field for producers and protecting consumer confidence in the integrity of the USDA Organic Seal." In the interest of animals, organic farmers, and consumers, we call on AMS to quickly finalize the proposed OLPS rule and require swift compliance with all its provisions.

Our groups welcome the opportunity to respond to specific questions raised by AMS in the proposed rule and offer ways in which the rule can be improved. While we would support AMS finalizing the proposed OLPS rule in its current form utilizing the shortest feasible implementation timelines, we believe the recommendations provided below will further clarify particular aspects of the rule to ensure uniform compliance and better align the standards with both third-party animal welfare certification programs and consumer expectations. We strongly urge the agency to take these points into consideration as it works to quickly finalize the rule.

The question of USDA's authority under the Organic Foods Production Act

The prior administration's decision to withdraw animal welfare regulations under the National Organic Program (NOP) was based, in part, on an erroneous interpretation of the OFPA and what it means to regulate the "care" of livestock throughout organic production. In attempting to justify the position that the agency lacked statutory authority to promulgate the rule, AMS incorrectly argued that standards for animal care practices cannot encompass or seek to address stand-alone concerns about animal welfare and should be limited only to health care practices. This suggests there is a significant distinction between animal health and animal welfare and that the two are not interconnected. This argument is not based in law or fact, and we are pleased AMS now agrees. We support the position AMS is currently proposing, which is that "OFPA does provide the requisite authority for regulations regarding livestock and poultry health care practices and living conditions, including regulations regarding animal welfare" and "that, as a policy matter, regulation is warranted." The reasoning for our support is as follows.

First—as our organizations have demonstrated extensively in the past—animal health and animal welfare are inextricably linked, and therefore any standards or regulations that seek to ensure optimal animal health cannot fail to also account for how the prescribed practices would impact welfare. This concept is well established within the scientific literature and has been recognized and endorsed by leading veterinary, animal health, and animal agriculture authorities, including the World Organisation for Animal Health (WOAH), the American Veterinary Medical Association, and the USDA itself. Furthermore, most of the country's largest animal agriculture trade associations—including a number of associations that have voiced opposition to this rule—recognize this concept within their animal care guidelines, the purposes of which are to outline permissible production practices that supposedly address animal welfare in order to promote optimal animal health and productivity. Given the widespread recognition of this concept and the intent of the OFPA, it is clear that the agency is acting well within its statutory authority to promulgate regulations for the care of organic livestock and poultry which seek to promote both animal health and animal welfare.

Second, the plain language of the statute and the legislative history support the position that promulgation of the OLPS rule is authorized. The two relevant provisions of the OFPA are 7

U.S.C. § 6509(d)(2), which requires the National Organic Standards Board to recommend additional standards “for the care of livestock”, and 7 U.S.C. § 6509(g), which requires the Secretary of Agriculture to “develop detailed regulations...to guide the implementation of the standards for livestock products provided under this section.” As stated above, in withdrawing the previous animal welfare rule, AMS attempted to limit the scope of these provisions in a way that goes against the plain meaning of the key term in question, “care,” and what it applies to. Since there is no specific definition for “care” within the statute, an interpreting court will look to the dictionary to determine the plain meaning of the term. “Care” is defined by Oxford Languages as “the provision of what is necessary for the health, *welfare*, maintenance, and protection of someone or something” (emphasis added). Clearly, based on this definition, it is more than reasonable for the agency to interpret section 6509(d)(2) of the OFPA to allow for the establishment of standards for production that encompass animal welfare, especially in the absence of specific language suggesting otherwise.

This argument is further strengthened by the legislative history of the OFPA, which demonstrates Congress intended for the USDA to eventually develop standards for the raising of organic livestock and poultry through consultation with the National Organic Standards Board (NOSB). In response to the USDA’s decision to withdraw the previous animal welfare rule, the two leading members of Congress who introduced the OFPA—Senator Patrick Leahy and Congressman Peter DeFazio—rebuked the USDA’s misinterpretation of the statute and reiterated Congress’ original intent on the record.¹ Additionally, the senate report accompanying the OFPA explicitly recognized the need for the NOSB to “determine the necessary balance between the goal of restricting livestock medications and *the need to provide humane conditions for livestock rearing*” and directed the board to “recommend livestock standards, *in addition to those specified in this bill, to the Secretary [of Agriculture]*”² (emphasis added).

This report language, as well as the statutory language requiring the NOSB to provide specific, recommended standards “for the care of livestock,” not only demonstrates the expansive authority Congress granted the USDA, but also that Congress intended for the NOSB to play a significant role in shaping the NOP, especially as it pertains to livestock and poultry production, as more research became available. The NOSB began holding public meetings and soliciting public input on issues pertaining to animal welfare in 2000 and continued to do so on ten separate occasions until 2011 when it unanimously approved a formal recommendation for rulemaking action on animal welfare and stocking rates.³ This was just one of nine separate

¹ Comment submitted by Senator Patrick Leahy and Congressman Peter DeFazio on Docket No. AMS-BOP-15-0012-6686, (January 17, 2018) (available at <https://www.regulations.gov/comment/AMS-NOP-15-0012-123041>).

² S. Rep. 101-357 (1990). Food, Agriculture, Conservation, and Trade Act of 1990.

³ NOSB Livestock Committee Final Recommendation on Animal Welfare and Stocking Rates (Dec. 2, 2011) (available at <https://www.ams.usda.gov/sites/default/files/media/NOP%20Livestock%20Final%20Rec%20Animal%20Welfare%20and%20Stocking%20Rates.pdf>).

recommendations made by NOSB that addressed issues pertaining to animal welfare,⁴ in addition to two unanimous resolutions issued by NOSB in support of animal welfare regulations under the NOP.⁵

The USDA's own past actions also provide direct evidence of its clearly understood authority to regulate within the sphere of animal welfare. Since the inception of the National Organic Program in 2000, the USDA has recognized that animal welfare is directly related to the production of organic food, stating:

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.⁶

In promulgating the Access to Pasture Rule in 2010, the USDA again demonstrated its understanding that it had authority to regulate animal welfare. The stated primary purpose behind the rule was “to satisfy consumer expectations that ruminant livestock animals graze on pastures during the grazing season,” and the agency acknowledged 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.”⁷ Such statements make clear that the USDA has historically been directly invested in improving animal welfare through organic regulations.

Based upon the legislative history of OFPA, and the USDA's own past actions, it is clear that the agency has long understood that it does in fact have legal authority to regulate animal welfare matters. We strongly support the USDA's efforts to enact OLPS under this authority and codify these essential standards that so many farmers dedicated to higher welfare practices are already employing.

Consumer support and market need for proposed rule

Support for the implementation of meaningful animal welfare standards on organic farms has remained high for what has now been more than two decades. The previously withdrawn Organic Livestock and Poultry Practices (OLPP) rule had widespread support from organic

⁴ Animal Welfare under the National Organic Program: A Timeline. Animal Welfare Institute (May 2017) (available at <http://awionline.org/sites/default/files/uploads/documents/temp/Organic-animal-welfare-timeline-rev-May-2017.pdf>).

⁵ NOSB Resolution on the Organic Livestock and Poultry Practices (OLPP) Rule, (Apr. 21, 2017) (available at <https://www.ams.usda.gov/sites/default/files/media/OLPPResolutionFinalRec.pdf>); NOSB Resolution on Organic Livestock and Poultry Practices, (Apr. 30, 2021) (available at <https://www.ams.usda.gov/sites/default/files/media/NOSBResolutionOLPP.pdf>).

⁶ National Organic Program, 65 Fed. Reg. 80,547, 80,560 (Dec. 21, 2000).

⁷ National Organic Program, Access to Pasture (Livestock), 75 Fed. Reg. 7,153, 7,171 (Feb. 17, 2010).

farmers, animal welfare advocates, and consumers, with more than 70,000 comments submitted in opposition to its withdrawal.

Public surveys show time and time again⁸ that consumers are concerned about farm animal welfare and purchase organic animal products because they believe that they come from animals raised in higher-welfare conditions, but that these expectations do not match the current requirements of organic livestock and poultry production. Consumers fundamentally misunderstand the standards for animal care required under the NOP. As AMS recognizes in the proposal (“AMS does believe a market failure exists in the organic label.”⁹), this confusion has resulted in a market failure wherein a handful of large producers are reaping the economic benefits of the organic label without actually meeting consumer expectations.

In the years that have passed since the OLPP rule was first introduced, this consumer confusion has only increased. A September 2022 survey of organic consumers found that, when asked to categorize certain statements about organic standards as either true or false, a significant number of those polled mistakenly believed that there are higher standards for animal welfare on organic farms than what is currently required under organic regulations. Additionally, many indicated that they were simply unsure about the veracity of the statements:

- 59% of organic consumers mistakenly believed that animals raised on organic farms have significantly more space to move than on non-organic farms (28% were unsure about whether the statement was true or false)
- 56% of organic consumers mistakenly believed that all animals raised on organic farms have access to outdoor pastures and fresh air throughout the day (29% were unsure about whether the statement was true or false)
- 45% of organic consumers mistakenly believed that animals on organic farms do not have their beaks and tails cut off (40% were unsure about whether the statement was true or false)

This confusion— and particularly the mistaken belief that organic standards currently provide more benefits to animals than are actually provided under the NOP —means that many consumers are spending a premium on organic products that don’t actually meet their expectations, while others who are unsure about the conditions animals are raised under are

⁸ AWI and ASPCA, *2022 Survey on Public Perception of Animal Welfare in the USDA Organic Program* (Sept. 2022) (available at https://www.aspc.org/sites/default/files/awi_aspca_organic_consumer_survey_summary_2022_final.pdf); ASPCA and Lake Research Partners, *Results from a Survey of American Consumers* (Feb. 2019) (available at https://www.aspc.org/sites/default/files/aspc-2018_animal_welfare_labelling_and_consumer_concern_survey.pdf) “76% of consumers say they are concerned about the welfare of animals that are raised for food;” Consumer Reports, *Animal Welfare Survey* (Mar. 2017) (available at <https://advocacy.consumerreports.org/wp-content/uploads/2017/04/2017-Animal-Welfare-Survey-Public-Report.pdf>) “Six out of 10 Americans say 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/often buy organic, this number rises to 83%”

⁹ National Organic Program, Organic Livestock and Poultry Standards, 87 Fed. Reg. 48569 (Aug. 9, 2022).

seeking out supplemental animal-raising claims or labels to make up the difference. Accordingly, organic producers looking to demonstrate their commitment to higher animal welfare often turn to third-party welfare certifications to supplement their USDA Organic certification. Dual certification is common throughout the organic industry, but especially so within the egg industry. A long list of USDA Organic egg producers also carry the Certified Humane by Humane Farm Animal Care certification, including Vital Farms, O Organics, Pete and Gerry's, Nature's Yoke, The Farmer's Hen, and The Country Hen. Finalizing the proposed rule will create uniform standards that bring the USDA Organic program more in-line with third-party animal welfare certifications and will help close the gap between consumer expectations and the reality of how organic animals are raised. It may also eliminate the need for some organic producers to maintain dual certification.

Do the proposed amendments provide enough clarity to farmers, handlers, and certifying agents to be able to comply with the proposed requirements?

Much of the impetus behind the promulgation of the proposed animal welfare standards in the organic program is to provide clarity for farmers and certifiers to ensure uniform, consistent application of organic standards across organic farms. Accordingly, we appreciate that AMS is specifically asking whether the proposed amendments succeed in this effort. It is critical that the standards laid out in the proposed rule are clear and concise enough to ensure uniform interpretation and application. As a whole, the proposed rule and amendments provide the necessary detail and specificity. However, we recommend AMS clarify the following provisions of the proposed rule:

1. More clarity around physical alteration standards

We appreciate AMS's updated standards around physical alterations, which prohibit several alterations and place limitations on the remaining allowable alterations. However, the current language requiring physical alterations to be performed at "a reasonably young age" is vague and provides insufficient guidance. Without a specified acceptable age range for physical alterations, it is likely that "reasonably young" ages for alterations will vary significantly among organic farms. We recommend AMS look to existing third-party welfare certifications to guide their age restrictions for certain alterations. For example, the certifications that permit teeth clipping on pigs only do so within the first 4 hours.¹⁰ Castration age restrictions under certification schemes differ depending on the species and method. Pigs must be castrated at less than 10 or 7 days old, whereas standards for beef cattle range from less than seven days old to less than three months

¹⁰ Humane Farm Animal Care, *Animal Care Standards for Pigs*, at H9, (2020) (available at https://2gn8ag2k4ou3ll8b41b7v2qp-wpengine.netdna-ssl.com/wp-content/uploads/Standard_Pigs.pdf).

old depending on the castration method and type of production.¹¹ Regarding disbudding, even industry standards¹² recommend that it be performed before the horn buds attach to the skull, as removal of attached horns (dehorning) is far more invasive and increases the risk of infection.¹³ Welfare certifications generally limit disbudding to calves younger than two months old, though some have even shorter acceptable timeframes, such as prohibiting disbudding on calves over three weeks of age.¹⁴

We also recommend that AMS clarify which physical alterations require pain control. The current language requiring that alterations be performed “with minimal stress and pain” does not effectively ensure that painful alterations, like disbudding and castration, are carried out with the use of appropriate pain control, including allowed anesthetics, analgesics, and sedatives. Research released since the 2017 version of this rule leaves no room for doubt that even neonatal animals feel significant and sometimes long-lasting pain from castration, disbudding, and hot blade beak trimming.^{15,16,17,18} In addition, management of procedural pain has been demonstrated to decrease the likelihood of development of some infectious diseases, such as calf pneumonia.¹⁹ We recommend that AMS update the proposed rule to make explicit that pain relief is required before and after physical alterations such as dehorning and castration.

2. More clarity around transport standards

We support the addition of the proposed husbandry requirements for transport of organically raised livestock, which will have significant benefits for animal welfare and better align the organic program with third-party animal welfare certifications. However, we request that AMS clarify that some form of bedding is *always* required for livestock in transport. The proposed regulation is currently unclear because of the language stating that bedding “must be provided ...

¹¹ ASPCA & Vermont Law School’s Center for Agriculture and Food Systems, *Farm Animal Welfare Certification Guide: A Farmer and Business Tool for Understanding Welfare Certification Programs*, (Oct. 2019) (available at https://www.aspc.org/sites/default/files/fw_cert_guide_updt_2019_web_05.pdf).

¹² National Milk Producers Federation, National Dairy FARM Program, *Animal Care Reference Manual Version 4 2020-2022*, (Nov. 2021) (available at <https://nationaldairyfarm.com/wp-content/uploads/2020/02/Animal-Care-V4-Manual-Print-Friendly.pdf>).

¹³ Marquette, G. A., McGee, M., Fisher, A. D., Stanger, K., Argüello, A., & Earley, B. (2021). Horn bud size of dairy-bred and suckler-bred calves at time of disbudding. *Irish veterinary journal*, 74(1), 17. <https://doi.org/10.1186/s13620-021-00196-0>

¹⁴ ASPCA & Vermont Law School’s Center for Agriculture and Food Systems, *Farm Animal Welfare Certification Guide: A Farmer and Business Tool for Understanding Welfare Certification Programs* (available at https://www.aspc.org/sites/default/files/fw_cert_guide_updt_2019_web_05.pdf).

¹⁵ Bergamasco, L., Edwards-Callaway, L. N., Bello, N. M., Mijares, S. H., Cull, C. A., Rugan, S., Mosher, R. A., Gehring, R., & Coetzee, J. F. (2021). Unmitigated Surgical Castration in Calves of Different Ages: Cortisol Concentrations, Heart Rate Variability, and Infrared Thermography Findings. *Animals: an open access journal from MDPI*, 11(9), 2719. <https://doi.org/10.3390/ani11092719>

¹⁶ Bergamasco, L., Edwards-Callaway, L. N., Bello, N. M., Mijares, S., Cull, C. A., Mosher, R. A., & Coetzee, J. F. (2021). Unmitigated Surgical Castration in Calves of Different Ages: Electroencephalographic and Neurohormonal Findings. *Animals : an open access journal from MDPI*, 11(6), 1791. <https://doi.org/10.3390/ani11061791>

¹⁷ Adcock, S., & Tucker, C. B. (2018). The effect of disbudding age on healing and pain sensitivity in dairy calves. *Journal of dairy science*, 101(11), 10361–10373. <https://doi.org/10.3168/jds.2018-14987>

¹⁸ Glatz, P.C. & Underwood, G. (2021). Current methods and techniques of beak trimming laying hens, welfare issues and alternative approaches. *Animal Production Science*, 61(10), 968–. <https://doi.org/10.1071/AN19673>

¹⁹ Dr. Hans Coetzee, *Advancing Farm Animal Management with Improved Methods to Recognize and Manage Pain*, slide 21, (2020) (available at <https://www.ncfar.org/Portals/0/adam/Content/zjCVxrKBfkyrbltxiU92zw/Documents/Presentation.pdf>)

as needed to keep livestock clean, dry, and comfortable.” The qualifying “as needed” leaves appropriate bedding up to interpretation and as a result many organic livestock may be transported without bedding. Accordingly, we recommend that AMS remove the “as needed” language from the proposed rule.

3. More clarity around exit areas for poultry

We support the proposed regulations ensuring that all poultry houses have “sufficient exit areas that are appropriately distributed to ensure that all birds have ready access to the outdoors.” Appropriately spaced and sized exits are critical to encouraging and enabling birds to have meaningful access to the outdoors. Unfortunately, the current proposed language requiring “sufficient” exit areas is not clear enough to ensure all organic producers actually provide birds such meaningful access. We recommend that AMS include language requiring that all exits be large enough to allow more than one bird at a time to pass through and are distributed along the house with enough frequency to encourage birds to go outdoors, without being obstructed by dominant individuals. This will allow for consistent enforcement of the rule and provide clear parameters for producers investing in more/new exit doors.

To what degree do the proposed requirements align with third-party animal welfare certification programs and current industry practices?

As stated above, confusion around animal welfare requirements under the NOP and the proliferation of animal raising claims in the marketplace have led to an increasing number of organic producers obtaining third-party animal welfare certifications—including GAP Steps 1-5+,²⁰ administered by the non-profit Global Animal Partnership (GAP), and Certified Humane mentioned above—in addition to the USDA Organic certification. If AMS wishes to bolster trust in the organic label and ensure it meets consumer expectations, it is critical for the agency to finalize the proposed rule, while also making sure it closely aligns with requirements established by third-party animal welfare certification programs. A recent 2022 survey demonstrates that 84% of organic consumers strongly support doing so.²¹

Many aspects of the proposed rule are currently aligned with these programs and deliver significant improvements for animal welfare, including closing the loophole that has allowed the use of small, enclosed porches for chickens in lieu of meaningful outdoor access on grass or other vegetation, prohibiting certain painful physical alterations such as debeaking of birds, routine tail docking of pigs, and tail docking and face branding of cattle, requiring indoor

²⁰ The Global Animal Partnership (GAP) certification is based on a six-tier rating scale, from Step 1 to Step 5+, wherein products can receive a GAP rating based on specific requirements and standards met during production. For purposes of this comment, we focused on standards required by GAP Steps 3 and above, all of which require access to outdoors.

²¹ AWI and ASPCA, *2022 Survey on Public Perception of Animal Welfare in the USDA Organic Program* (Sept. 2022) (available at https://www.aspc.org/sites/default/files/awi_aspc_aorganic_consumer_survey_summary_2022_final.pdf)

environmental enrichments and bedding, and prohibiting the use of gestation crates. However, improvements are warranted in a number of key areas. We strongly encourage AMS to consider making the following improvements to strengthen alignment with third-party animal welfare certification programs.

1. Require group housing of dairy young stock (calves) at an earlier age.

Under §205.239(a)(7) of the proposed rule, calves may be housed in individual pens until they reach 6 months of age. Additionally, this particular provision fails to address outdoor access requirements during this time, which may lead to calves being denied access to the outdoors for the first 6 months of their life. As written, this provision does not align with either third-party animal welfare certification programs or consumers' attitudes toward animal welfare. Under standards for Certified Humane, individual housing of calves is not permitted beyond 8 weeks²² and to receive certification for GAP Step 3 and above, individual housing of calves is not permitted after 2 days of age.²³ When asked about particular production practices on organic farms in a recent survey, 68% of organic consumers viewed the housing of calves in individual hutches or pens for the first several months of their life without contact with other calves as unacceptable.²⁴ Recent scientific research has demonstrated the benefits of housing calves in groups at a young age, including increased intake of solid feed and body weight gain, especially during the pre-weaning phase, as well as a greater ability to cope with novel situations and less fearful behavior.²⁵ For these reasons, group housing of calves is recommended by the WOA, as well as the Dairy Cattle Welfare Council.²⁶

2. Establish specific limits on transport times

The proposed rule currently fails to limit the amount of time animals spend in transport, leaving restrictions under the federal Twenty-Eight Hour Law as the only limitation. This is inadequate for several reasons, the most obvious being that the law does not apply to birds. Additionally, research suggests that animals suffer adverse effects from traveling 28 consecutive hours, raising significant welfare concerns. While we recognize that under §205.242(a)(5) of the proposed rule animals must receive food and water after 12 hours, we recommend that transport times be

²² Humane Farm Animal Care, *Animal Care Standards for Pigs*, at E46(b), (2021) (available at https://2gn8ag2k4ou3ll8b41b7v2qp-wpengine.netdna-ssl.com/wp-content/uploads/HFAC-Dairy-Cattle-Standards_20.3-1.pdf).

²³ Global Animal Partnership, *5-Step Animal Welfare Pilot Standards for Dairy Cattle v1.0*, at 8.3.2 (Jun. 4, 2021) (available at <https://globalanimalpartnership.org/wp-content/uploads/2021/07/G.A.P.-5-Step-Standards-for-Dairy-Cattle-v1.0-20210707.pdf>).

²⁴ AWI and ASPCA, *2022 Survey on Public Perception of Animal Welfare in the USDA Organic Program* (Sept. 2022) (available at https://www.aspc.org/sites/default/files/awi_aspca_organic_consumer_survey_summary_2022_final.pdf).

²⁵ De Paula Vieira A., et al. (2010) Effects of pair versus single housing on performance and behavior of dairy calves before and after weaning from milk. *J Dairy Sci.* 93: 3079-3085; Bernal-Rigoli et al. (2012) Effects of housing and feeding systems on performance of neonatal Holstein bull calves. *J Animal Sci.* 90: 2818-2825; Babu et al. (2009) Hemato-biochemical changes, disease incidence and live weight gain in individual versus group reared calves fed on different levels of milk and skim milk. *J Animal Sci.* 80:149-156. 2 Costa, J.H.C. et al. (2016) Invited review: Effects of group housing of dairy calves on behavior, cognition, performance, and health. *J Dairy Sci.* 99: 2453-2467

²⁶ Dairy Cattle Welfare Council, *Social Housing of Dairy Calves* (2021) (available at <https://www.dwcouncil.org/node/4017>).

capped altogether. Under standards for Certified Humane, maximum transport times are between 8 and 10 hours depending on the species (with the exception of hens for which transport must be kept to “a minimum”). Under standards for GAP Step 3 and above, maximum transport times are between 6 and 18 hours depending on species. Establishing maximum transport times will better align the NOP with not only animal welfare certification programs, but with consumer sentiments as well. According to a recent consumer perception survey, 67% of organic consumers find transporting animals for more than 12 hours unacceptable.²⁷

3. Establish additional criteria for fitness for transport in line with WOAH guidelines

While we appreciate that the proposed rule includes fitness for transport criteria under §205.242(a)(2), the proposed standards are inadequate to ensure the welfare of animals during transport. They fail to include important criteria established by the WOAH and do not align with standards under both Certified Humane and GAP. We strongly encourage AMS to consider revising this section to align with Chapter 7.3 of the WOAH’s Terrestrial Animal Health Code, which finds the following animals unfit for transport (except for care or veterinary treatment):

- (i) Animals sick, injured, weak, disabled or fatigued;
- (ii) Animals unable to stand unaided or bear weight on each leg;
- (iii) Animals blind in both eyes;
- (iv) Those for whom movement would cause additional suffering;
- (v) Newborns with an unhealed navel;
- (vi) Pigs of less than 3 weeks, lambs and kids of less than 1 week, and calves of less than 10 days of age;
- (vii) Females having given birth within the previous 48 hours and traveling without young;
- (viii) Pregnant animals in the final 10% of their gestation period at the planned time of unloading;
- (ix) Animals with unhealed wounds from recent surgical procedures.²⁸

4. Improve outdoor space, soil, and vegetation requirements for birds and pigs

While the proposed rule does include space, soil, and vegetation requirements to some extent, they are insufficient for a number of reasons. First, indoor and outdoor space requirements are missing completely for pigs and turkeys. This omission could create more problems with ensuring consistent application and enforcement of standards across farms. Specific indoor and outdoor space requirements for both pigs and turkeys have been established under standards for

²⁷ AWI and ASPCA, *2022 Survey on Public Perception of Animal Welfare in the USDA Organic Program* (Sept. 2022) (available at https://www.aspc.org/sites/default/files/awi_aspc_aorganic_consumer_survey_summary_2022_final.pdf)

²⁸ World Organization for Animal Health, *Terrestrial Animal Health Code Ch. 7.3 Transport of Animals by Land, Article 7.3.7*, (2018) (available at https://www.woah.org/fileadmin/Home/eng/Health_standards/tahc/2018/en_chapitre_aw_land_transpt.htm).

GAP Step 3 and above, while Certified Humane includes specific indoor stocking densities for both species. We strongly encourage the USDA to revisit previous recommendations proposed by the NOSB for indoor and outdoor space allowances for pigs and turkeys to prevent overcrowding that can lead to poor health and welfare outcomes for these species.²⁹

Secondly, the proposed outdoor space requirements applicable to chickens are inadequate to provide for optimal bird health and expression of natural behaviors while also ensuring organic producers are able to maintain vegetation and manage erosion. Rather than adopting the higher end of NOSB's outdoor space recommendations for chickens, which would be up to 5 square feet per bird,³⁰ AMS has instead chosen to reduce the space allowances considerably within the proposed rule. This is especially troubling when considering that §205.241(c)(2) allows for half of this space to be comprised of concrete or gravel. Research shows birds are unlikely to use outdoor space unless it is enriched with trees, shaded areas, or forage.³¹ High stocking densities in combination with limited access to soil and vegetation not only compromises bird health and welfare, but also goes against consumer expectations for organic production. When asked during a recent survey which criteria should be a requirement of outdoor access on organic farms, 63% of organic consumers indicated soil and vegetation should be required, not gravel or concrete, and 65% of organic consumers said outdoor space should allow for ample room for animals to behave naturally.³² For these reasons we recommend AMS increase both space allowances and soil and vegetation requirements for birds.

Lastly, under the proposed rule, soil and vegetation requirements are again missing completely for pigs. To ensure outdoor spaces are adequate and uniform across all organic farms, we recommend the USDA establish soil and vegetation requirements for pigs that do not permit concrete or gravel as suitable outdoor access.

What is an appropriate and feasible implementation period for the proposed changes?

We appreciate the opportunity to comment on an appropriate implementation period for the proposed animal welfare standards. As stated throughout this comment, organic consumers and farmers alike have already waited far too long for regulatory improvements to the NOP's animal welfare standards. The longer organic producers are allowed to take advantage of existing loopholes, particularly when it comes to providing animals with meaningful outdoor access, the

²⁹ NOSB Livestock Committee Proposed Regulatory Recommendation Animal Welfare and Stocking Rates, 49-61 (Oct. 14, 2011) and NOSB Livestock Committee Proposed Guidance Recommendation Animal Welfare and Stocking Rates, 63-68 (Oct. 14, 2011) (available at <https://www.ams.usda.gov/sites/default/files/media/packetga.pdf>).

³⁰ NOSB Livestock Committee Final Recommendation on Animal Welfare and Stocking Rates (Dec. 2, 2011) (available at <https://www.ams.usda.gov/sites/default/files/media/NOP%20Livestock%20Final%20Rec%20Animal%20Welfare%20and%20Stocking%20Rates.pdf>).

³¹ Nagle TA, Glatz PC. Free range hens use the range more when the outdoor environment is enriched. *Asian-Australas J Anim Sci.* 2012 Apr;25(4):584-91. doi: 10.5713/ajas.2011.11051.

³² AWI and ASPCA, *2022 Survey on Public Perception of Animal Welfare in the USDA Organic Program* (Sept. 2022) (available at https://www.aspc.org/sites/default/files/awi_aspc_aorganic_consumer_survey_summary_2022_final.pdf)

worse it will be for the integrity and reputation of the USDA Organic label, for the organic farmers currently meeting proposed outdoor space requirements, and for the animals being raised on “organic” farms currently operating under conditions similar to conventional, non-certified farms. It’s imperative that the proposed changes are implemented as quickly as possible, and the implementation scenarios suggested by AMS do not accurately reflect this urgency. Accordingly, we encourage AMS to choose the following alternative implementation timeframe:

- a) One year for all proposed changes, except for the indoor space requirements for broiler operations and the outdoor space requirements for layer operations.
- b) Three years for the indoor space requirements for broilers *and* outdoor space requirements for layers. New entrants certified after the rule’s effective date must comply with the indoor space requirements for broilers and outdoor space requirements for layers immediately.

A three-year implementation timeline for both indoor broiler space and outdoor layer space requirements eliminates potential confusion among certifiers and creates a uniform date much sooner when organic consumers can trust that *all* organic farms are meeting the same animal welfare standards. Similarly, there is no reason to give new organic entrants additional time to comply with the new organic standards. Allowing new entrants to deny animals meaningful access to the outdoors will unnecessarily prolong consumer confusion and unfair competition for farmers already meeting the new standards. The need to correct the market failure within the organic industry is urgent. Three years is more than enough time for large egg companies to come into compliance with outdoor space requirements. Almost six years have already passed since the OLPP rule was originally finalized, which would have required organic egg producers to meet the same outdoor space requirements proposed in this rule as of March 21, 2022.

USDA Organic is a *voluntary* program meant to represent the gold standard. Restoring this reputation and increasing consumer trust in the organic seal is far more important than catering to the demands of a handful of large egg producers, all of whom will continue to have access to premium markets even if they choose not to comply with the proposed welfare standards. Many broader animal welfare mandates, such as state laws banning the use of battery cages and gestation crates,³³ have shorter implementation timelines than the ones suggested by AMS in the proposed rule. For example, the Arizona Department of Agriculture finalized regulations this year requiring all egg producers in the state to meet cage-free standards within three years.³⁴

Finally, organic consumers overwhelmingly support shorter implementation timelines. In a September 2022 survey of organic consumers, 92% identified three years or less as an acceptable

³³ ASPCA, *Farm Animal Confinement Bans by State* (2022) (available at <https://www.aspc.org/improving-laws-animals/public-policy/farm-animal-confinement-bans>)

³⁴ Arizona Administrative Register, Notice of Final Rulemaking [R22-62] (Apr. 22, 2022) (available at https://apps.azsos.gov/public_services/register/2022/16/contents.pdf).

timeframe for companies to comply with any new organic animal welfare standards.³⁵ Only six percent of organic consumers identified five years as an acceptable time frame, and a miniscule two percent identified 15 years as an acceptable time frame.³⁶ A three-year implementation timeline for the indoor broiler space and outdoor layer space requirements put forth in the OLPS rule is more than fair to current organic producers, and any timeline longer than three years is wholly unacceptable for animals, farmers, and consumers.

Thank you for the opportunity to comment on the proposed rule to implement meaningful animal welfare standards under NOP. The undersigned companies and organizations urge AMS to strengthen (per our comments) and quickly finalize these long-awaited regulations.

Sincerely,

Alexandre Family Farms
American Society for the Prevention of Cruelty to Animals (ASPCA)
Animal Legal Defense Fund
Animal Welfare Institute
Bilinski's Sausage Company
Center for Biological Diversity
Compassion in World Farming
Farm Aid
Farm Forward
Food and Water Watch
Food Animal Concerns Trust (FACT)
Friends of the Earth
Iowa Citizens for Community Improvement
Mercy for Animals
Natural Grocers
Natural Resources Defense Council (NRDC)
Pitman Family Farms
Smallbatch Pets
Socially Responsible Agriculture Project (SRAP)

³⁵ AWI and ASPCA, *2022 Survey on Public Perception of Animal Welfare in the USDA Organic Program* (Sept. 2022) (available at https://www.aspc.org/sites/default/files/awi_aspca_organic_consumer_survey_summary_2022_final.pdf)

³⁶ *Id.*