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National Organic Program
U.S. Department of Agriculture, Agricultural Marketing Service
Room 2646-So., Ag Stop 0268
1400 Independence Ave., S.W.
Washington, DC 20250

Docket No. AMS-NOP-15-0012
RIN 0581-AD44

Sent via electronic submissions on the Federal eRulemaking Portal: www.regulations.gov

Re: National Organic Program: Organic Livestock and Poultry Practices: Proposed Rule, 81 Federal Register 21956 (Apr. 13, 2016)

To Whom It May Concern,

Center for Science in the Public Interest (“CSPI”) and the Harvard Food Law and Policy Clinic (“FLPC”) (collectively, “We”) are pleased to submit these comments for the docket of the United States Department of Agriculture’s (“USDA”) Agricultural Marketing Service (“AMS”) on the proposed changes to the livestock and poultry requirements under the National Organic Program (“NOP”). CSPI is a national membership organization which advocates on behalf of consumers for issues in the food system, especially consumer information, nutrition, health, and safety. The FLPC, a division of the Center for Health Law and Policy Innovation, links Harvard Law School students with opportunities to work with clients and communities on various food law and policy issues. The FLPC provides legal and policy guidance to a range of clients seeking to increase access to healthy foods, assist small and sustainable farmers in breaking into new commercial markets, and reduce waste of healthy, wholesome food, while educating law students about ways to use law and policy to impact the food system.

Over twenty years ago, CSPI actively promoted the Organic Food Production Act (“OFPA”) that established the NOP as a means to meet consumer demands for more environmentally sustainable, healthy, and humane food. While many elements of the current program satisfy those goals, one of the more blatant gaps has been the surprisingly minimal standards concerning animal welfare. We support efforts to improve animal welfare standards under the NOP in order to fulfill the mandate of the OFPA as it was originally conceived and, moreover, to meet consumer expectations that animals under the NOP are afforded a higher standard of living. The discrepancy between consumers’ justifiable expectations and the program as it currently exists threatens to undermine the legitimacy of the NOP.

The legislative history of the OFPA makes clear that animal welfare was a key concern for legislators and the law was passed with the intention that AMS would establish strong animal welfare standards.¹

¹ *Recommendations: Animal Welfare*, NATIONAL ORGANIC STANDARDS BOARD 1-2 (Nov. 5, 2009) [hereinafter *2009 NOSB Recommendations*] (“From its conception, regulation in organic agriculture was intended to provide conditions that foster the natural behavior of livestock.”); *see also*, S. REP. NO. 101-357, at 292 (1990) (“With additional research and as more producers

Despite the persistent lack of such regulations, consumers expect that animals certified under the organic program receive better treatment than animals in the conventional food system. Recent surveys have found that most consumers believe that “organic” means that animals spend time outdoors;² have minimum living space requirements;³ and have “significantly more space to move” than those under conventional management.⁴ As a result, consumers are willing to pay price premiums of as much as 50% or more for organic animal products.⁵

Consumers’ legitimate expectations of a more compassionate and animal-welfare-focused approach under the NOP are not being met by existing regulations, which instead permit conditions not that dissimilar from conventional agriculture. With regard to key aspects of the program, including requirements for access to outdoor space and adequate and appropriate living spaces, pain alleviation during medical procedures, and adaptations that provide the ability to engage in instinctual behaviors, the existing organic regulations fall short—either through vague language or total omission. These discrepancies mislead consumers and disadvantage those organic producers that do adhere to higher standards, resulting in economic loss for both groups.

The Proposed Rule addresses a number of these gaps, bringing the NOP more in line with consumer expectations. In sum, as explained further below, we support the improved accommodation of the natural behaviors of poultry and swine, the regulation of transportation, the elimination of certain painful physical alterations, and the required use of anesthesia for other, medically-necessary physical alterations. However, we find that, for a few key areas, the Rule does not go far enough toward closing existing loopholes and codifying standards that reflect a commitment to animal welfare. In some of these areas, the proposed regulations differ from the formal recommendations of the National Organic Standards Board (“NOSB”) and, where this discrepancy exists, we urge AMS to adopt the NOSB’s recommendations. The NOSB’s 2009 and 2011 animal welfare recommendations were passed unanimously, following public comment and consultations with farmers, animal welfare experts, and advocacy groups.⁶ A final rule that incorporates those recommendations should come as no surprise to producers and would better align the NOP’s animal welfare requirements with consumer expectations and the higher standards anticipated for organic production.

enter into organic livestock production, the Committee expects that USDA, with the assistance of the National Organic Standards Board will elaborate on livestock criteria.”).

² *Natural Food Labels Survey*, CONSUMER REPORTS NATIONAL RESEARCH CENTER 5 (2015), http://www.consumerreports.org/content/dam/cro/magazine-articles/2016/March/Consumer_Reports_Natural_Food_Labels_Survey_2015.pdf.

³ *Organic Food Labels Survey*, CONSUMER REPORTS NATIONAL RESEARCH CENTER 4 (2014), <http://www.greenerchoices.org/pdf/CR2014OrganicFoodLabelsSurvey.pdf>.

⁴ *Research on Consumer Perceptions of Organic Standards for Treatment of Animals*, AMERICAN SOCIETY FOR THE PROTECTION OF ANIMALS (Apr. 2014), https://www.asPCA.org/sites/default/files/asPCA_organic_labeling_public_memo_4-10-14.pdf; see also Twilight Greenaway & Adrien Schless-Meier, *Just Because Your Chicken Is Organic Doesn't Mean It Was Raised Humanely*, MOTHER JONES (5:00 ET, Apr. 23, 2015), <http://www.motherjones.com/environment/2015/04/organic-standards-animal-welfare>.

⁵ See *The Cost of Organic Food*, CONSUMER REPORTS (Mar. 19, 2015), <http://www.consumerreports.org/cro/news/2015/03/cost-of-organic-food/index.htm>.

⁶ *2009 NOSB Recommendations*, *supra* note 1; *Formal Recommendation by the National Organic Standards Board (NOSB) to the National Organic Program, Animal Welfare and Stocking Rates*, NATIONAL ORGANIC STANDARDS BOARD 1 (Dec. 2, 2011) <https://www.ams.usda.gov/sites/default/files/media/NOP%20Livestock%20Final%20Rec%20Animal%20Welfare%20and%20Stocking%20Rates.pdf> [hereinafter *2011 NOSB Recommendation*].

I. Natural Behaviors and Outdoor Access

a. *We support the adoption of differentiated mammalian and avian living standards.*

The existing regulations group all animals raised for the production of food or other consumer products under “livestock,”⁷ failing to recognize that mammalian and avian livestock have vastly different physiological compositions and needs. In order to ensure better animal treatment and living conditions, standards should be specifically attuned to each species’ natural instincts and requirements. We applaud the distinction between mammalian and avian living conditions under the Proposed Rule and urges its adoption.

b. *We support, with reservations, the improved regulations to ensure poultry are able to engage in certain natural behaviors: specifically, dust-bathing and perching.*

The existing regulations require “living conditions which accommodate the health and natural behavior of animals,”⁸ but fail to define which “natural behavior[s]” must be accommodated, or how. The Proposed Rule is an important step in the right direction. Dust-bathing and perching are natural avian behaviors, and birds’ inability to engage in these behaviors can sometimes cause violent behaviors that signal, and worsen, the stresses of confinement.⁹ we support the proposed requirements for minimum perch space and sufficient litter for dust baths.¹⁰

Consistent with consumer expectations that birds have *meaningful* access to outdoor space, we support the adoption of a definition of outdoor space that excludes porches and requires 50% soil cover.¹¹ The use of porches has long been at odds with consumer expectations as well as the basic requirements of “living conditions which accommodate the health and natural behaviors of animals”¹² and “year-round access for all animals to the outdoors.”¹³ The inclusion of a minimum soil cover requirement also ensures that birds will have the opportunity to engage in natural foraging and dust bathing behaviors. While a number of commenters raise biosecurity concerns related to the elimination of porches and the requirements of meaningful outdoor access, the Animal Health and Plant Inspection Services has definitively found that the Proposed Rule “would not have any impact” on biosecurity efforts surrounding highly pathogenic avian influenza and other poultry diseases.¹⁴

⁷ 7 C.F.R. § 205.2.

⁸ 7 C.F.R. § 205.239(a).

⁹ See Aurora Paulsen, *Welfare Improvements for Organic Animals: Closing Loopholes in the Regulation of Organic Animal Husbandry*, 17 *Animal L.* 337, 354 (2011); SARA SHIELDS & IAN DUNCAN, *HSUS REPORT: A COMPARISON OF THE WELFARE OF HENS IN BATTERY CAGES AND ALTERNATIVE SYSTEMS* 3 (2009), <http://www.humanesociety.org/assets/pdfs/farm/hsus-a-comparison-of-the-welfare-of-hens-in-battery-cages-and-alternative-systems.pdf>; see also #6: *Less Animal Suffering*, in MICHAEL F. JACOBSON & CTR. SCI. PUB. INTEREST, *SIX ARGUMENTS FOR A GREENER DIET* 115 (2006), <https://www.cspinet.org/EatingGreen/pdf/arguments6.pdf>.

¹⁰ *National Organic Program: Organic Livestock and Poultry Practices: Proposed Rule*, U.S. DEP’T OF AGRIC., 81 *Federal Register* 21956, 21970 (Apr. 13, 2016) [hereinafter *Organic Livestock and Poultry Practices: Proposed Rule*].

¹¹ *Id.* at 22005.

¹² 7 C.F.R. § 205.239(a).

¹³ *Id.*

¹⁴ *Organic Livestock and Poultry Practices Proposed Rule: Questions and Answers*, U.S. DEP’T AGRIC., AGRIC. MARKETING SERV. (April 2016), <https://www.ams.usda.gov/sites/default/files/media/NOP%20Livestock%20Poultry%20Practices%20Proposed%20Rule%20QAs.pdf>.

However, we are disappointed that the Proposed Rule does not include a vegetative cover requirement. As noted by AMS, vegetative cover provides nutrition and enrichment to birds; draws them outside; and helps prevent soil erosion and nutrient runoff.¹⁵ The Proposed Rule's requirement of "suitable enrichment"¹⁶ is too vague. We urge AMS to adopt the NOSB's 2011 recommendation requiring at least 50% vegetative cover.¹⁷

- c. *We support, with reservations, the improved regulations to ensure that swine are able to engage in certain natural behaviors: specifically, socializing and rooting.*

The existing regulations do not provide any targeted accommodations for the natural behaviors of swine. We support the requirements that swine be housed in group settings and, further, in environments that provide exercise areas and with sufficient enrichment to permit rooting.¹⁸ This is an important step towards ensuring that swine are able to fully express natural behaviors; swine are social creatures and possess an innate foraging instinct.

However, we are disappointed that AMS has failed to include a vegetative cover requirement for swine. We urge AMS to adopt the recommendation that swine be maintained on pasture with minimum 25% vegetative cover during the grazing season, as recommended by the NOSB¹⁹ and leading animal welfare groups.²⁰

- d. *AMS should establish minimum weaning ages for cattle.*

We are disappointed by the Proposed Rule's continued silence on weaning. Accommodation of cows' close maternal bond with their young would be more consistent with consumers' expectations of humane treatment, as well as third-party certification standards. Leading animal welfare groups have requested minimum weaning ages of three months for beef cattle, and six weeks for dairy cattle.²¹ Indeed, the Animal Welfare Approved ("AWA") label requires that calves not be weaned from their mothers before six months of age for beef cattle or six weeks of age for dairy cattle.²² We urge AMS to address this omission and adopt minimum weaning ages consistent with these recommendations.

II. Space Requirements

- a. *We support, with reservations, the adoption of space requirements for poultry, but finds that the proposed requirements do not ensure sufficient space.*

¹⁵ *Organic Livestock and Poultry Practices: Proposed Rule*, *supra* note 10, at 21973.

¹⁶ *Id.*

¹⁷ *2011 NOSB Recommendation*, *supra* note 6, at 8.

¹⁸ *Organic Livestock and Poultry Practices: Proposed Rule*, *supra* note 10, at 21967.

¹⁹ *2011 NOSB Recommendation*, *supra* note 6, at 7.

²⁰ *Letter to Secretary Vilsack, Re: Recommendations for the National Organic Program's Rulemaking on Animal Welfare*, ASPCA, HSUS, FOOD AND WATER WATCH, ORGANIC CONSUMER'S ASSOCIATION, ET AL (Mar. 18, 2015), <https://awionline.org/sites/default/files/uploads/documents/OrganicCoalitionSign-onLettertoNOP3-6wlogos-Final.pdf>.

²¹ *Id.*

²² *Beef Cattle and Calves Standards*, ANIMAL WELFARE APPROVED (2015), <http://animalwelfareapproved.org/standards/beef-cattle-2015/>; *Dairy Cattle and Calves Standards*, ANIMAL WELFARE APPROVED (2015), <http://animalwelfareapproved.org/standards/dairy-cattle-2015/>.

Consumers paying premiums for organic poultry and egg products expect that birds are afforded more space, both indoors and outdoors, than the intensely confined birds under conventional management.²³ High stocking densities impede birds' ability to engage in natural behaviors, such as resting, preening, walking, and ground pecking.²⁴ In addition, birds raised in intense confinement are more susceptible to disease, and outbreaks are harder to contain; this can have serious implications for both animal and human health.²⁵ Adoption of minimum space requirements is essential to meeting consumer expectations that birds in the NOP have "significantly more space" than those in conventional systems.²⁶

We applaud the proposed adoptions of both indoor and outdoor space requirements for poultry. At the same time, we are concerned that the proposed indoor space requirements fall below the NOSB's recommendations and the requirements utilized by third party certifiers. The NOSB recommended 2.0 square feet of indoor space per laying hen,²⁷ but the Proposed Rule gives laying hens approximately one square foot of indoor space for the most commonly used housing structures.²⁸ Animal Welfare Approved requirements provide hens with 1.8 square feet of indoor space for all structures, and 4.0 square feet of indoor space when birds do not have access to a ranging and foraging area.²⁹ We understand that AMS is proposing the lesser space requirements in order to minimize disruption to the egg market.³⁰ Yet, we believe that this standard will continue to erode the very consumer confidence that AMS seeks to build and urges AMS to adopt the NOSB's recommendation of 2.0 square feet per hen.

III. Transportation, Physical Alterations, and Humane Slaughter

- a. *We support the addition of minimum standards for livestock transportation, including requirements for the provision of food and bedding, and the ban on transport of downed or injured animals.*

Existing federal protections for animals in transit are extremely minimal.³¹ As a result, the Proposed Rule's minimum standards of care for animals in transit represent a crucial improvement in the lives of animals under organic management. The proposed ban on transport of ill and injured animals is consistent with consumer expectations of humane animal treatment. It will also help to ensure the superior quality and safety of organic products by preventing the slaughter and sale of infirm animals. We urge AMS to adopt the proposed regulations.

²³ *Research on Consumer Perceptions of Organic Standards for Treatment of Animals*, AMERICAN SOCIETY FOR THE PROTECTION OF ANIMALS (Apr. 2014), https://www.aspc.org/sites/default/files/aspc_organic_labeling_public_memo_4-10-14.pdf; *see also* Twilight Greenaway & Adrien Schless-Meier, *Just Because Your Chicken Is Organic Doesn't Mean It Was Raised Humanely*, MOTHER JONES (5:00 ET, Apr. 23, 2015), <http://www.motherjones.com/environment/2015/04/organic-standards-animal-welfare>.

²⁴ ANIMAL WELFARE INSTITUTE, *THE WELFARE OF CHICKENS RAISED FOR MEAT 2* (2010), <http://www.awionline.org/sites/default/files/uploads/legacy-uploads/documents/Web-WelfareofChickensRaisedforMeatfactsheet-1279568551-document-22539.pdf>.

²⁵ HUMANE SOCIETY INTERNATIONAL, *BIOSECURITY CHALLENGES OF INDUSTRIAL FARM ANIMAL PRODUCTION 1* (2013), http://www.hsi.org/assets/pdfs/hsi-fa-white-papers/biosecurity_challenges_of.pdf.

²⁶ *Research on Consumer Perceptions of Organic Standards for Treatment of Animals*, AMERICAN SOCIETY FOR THE PROTECTION OF ANIMALS (Apr. 2014), https://www.aspc.org/sites/default/files/aspc_organic_labeling_public_memo_4-10-14.pdf.

²⁷ *2011 NOSB Recommendation*, *supra* note 6, at 8.

²⁸ *Organic Livestock and Poultry Practices: Proposed Rule*, *supra* note 10, at 21972.

²⁹ *Laying Hen Standards*, ANIMAL WELFARE APPROVED, <http://animalwelfareapproved.org/standards/layinghens-2015/>.

³⁰ *Organic Livestock and Poultry Practices: Proposed Rule*, *supra* note 10, at 21984.

³¹ *See* 49 U.S.C. § 80502.

- b. *We support, with reservations, the improved regulation of physical animal procedures, including the elimination of painful and medically unnecessary physical alterations and the provision of pain relief during medical procedures.*

The existing regulations allow farmers to indiscriminately perform painful physical alterations on their animals without anesthesia, including toe trimming, debeaking, de-snooding, and caponization of poultry, tail docking of cattle, and mulesing of sheep. Many of these procedures address the symptoms, but not the cause, of stress resulting from intense confinement and boredom. We support the proposed limitations on the use of many of these practices.³² Likewise, we support the requirement for best practices to reduce pain, stress, and suffering during surgical procedures, including the allowance for approved anesthetics, analgesics, and sedatives.³³ *However*, we are disappointed that this requirement applies only to “surgical procedures necessary to treat an illness.”³⁴ We urge AMS to extend the requirement for pain management best practices to *all* surgical procedures, as recommended by the NOSB.³⁵

- c. *We support minimum standards for humane poultry slaughter.*

Inhumane slaughter standards are not only out of line with consumer expectations, but also raise the risk of disease. Because the Humane Methods of Slaughter Act³⁶ does not currently extend coverage to poultry, it is important that the NOP adopt equivalent standards for birds under organic management—the minimum required by humane considerations. The Proposed Rule’s requirements that birds be stunned prior to exsanguination and rendered insensible before being scalded also serve an important safety function; the meat from birds scalded alive is particularly prone to contamination with bacteria.³⁷ In addition, the practice of shackling conscious birds or scalding birds alive can increase the likelihood of defecation, furthering the risk of contamination.³⁸ We support the proposed regulations for more humane poultry slaughter and urges their adoption.

IV. Conclusion: long-overdue animal welfare standards should be passed without further delay, but there is still room for AMS to adopt more stringent standards, particularly those that reflect NOSB recommendations.

AMS’s proposed action to improve animal welfare standards in the NOP is a welcome development. We urge AMS to quickly adopt more robust standards that bring the program in line with the expectations of consumers paying hefty premiums for animal products they believe were raised under more humane conditions. In those instances, outlined above, where the proposed regulations are less robust than the unanimous recommendations provided by the NOSB, we urge AMS to adopt the NOSB’s recommendations in order to ensure greater accountability and higher standards in the NOP.

³² *Organic Livestock and Poultry Practices: Proposed Rule*, *supra* note 10, at 21962.

³³ *Id.*

³⁴ *Id.*

³⁵ 2009 NOSB Recommendations, *supra* note 1, at 4.

³⁶ 7 U.S.C. § 1901.

³⁷ See Kimberly Kindy, *USDA plan to speed up poultry-processing lines could increase risk of bird abuse*, WASHINGTON POST (Oct. 29, 2013), https://www.washingtonpost.com/politics/usda-plan-to-speed-up-poultry-processing-lines-could-increase-risk-of-bird-abuse/2013/10/29/aeeffe1e-3b2e-11e3-b6a9-da62c264f40e_story.html.

³⁸ See, e.g., *Playing Chicken: The Human Cost of Inadequate Regulation of the Poultry Industry*, CTR. SCI. PUB. INTEREST (Mar. 1996), <https://www.cspinet.org/reports/polit.html>.

Sincerely,

A handwritten signature in black ink that reads "Michael F. Jacobson". The signature is written in a cursive style with a prominent loop at the end of the last name.

Michael F. Jacobson, Ph.D.
President, Center for Science in the Public Interest

A handwritten signature in black ink that reads "Emily Broad Leib". The signature is written in a cursive style with a prominent loop at the end of the last name.

Emily Broad Leib
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