



Consumer Federation of America

July 13, 2016

Miles McEvoy
Deputy Administrator, USDA National Organic Program
AMS/USDA
1400 Independence Avenue, SW
Washington, DC 20250

RE: Docket ID: AMS-NOP-15-0012—Proposed rule to amend the organic livestock and poultry production requirements by: adding new provisions for livestock handling and transport for slaughter and avian living conditions; and expanding and clarifying existing requirements covering livestock health care practices and mammalian living conditions.

Consumer Federation of America (CFA) appreciates the opportunity to submit comments on the above referenced United States Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) proposed rule. CFA is a longtime supporter of organic farming, the development of markets for organically grown products, and the active involvement of small to medium organic producers, processors, and retailers in USDA's standards and accreditation processes. For these reasons, CFA urges AMS to move expeditiously towards implementing the animal welfare standards recommended by the National Organic Standards Board (NOSB), and in particular, to shorten the proposed five-year grace period for poultry facilities to meet avian outdoor space requirements in § 205.241(c).

Consumers depend on the integrity of the National Organic Program (NOP). Consistent with the Organic Foods Production Act, certified organic farms and processors must follow a defined set of standards governing soil and water quality, pest control, livestock practices, and allowable food additives. USDA verifies producers' adherence to those standards via annual onsite inspections by third parties.¹ Consequently, even critics of the organic program concede that "the organic label is the most stringently regulated and trustworthy label on foods in the marketplace."²

The organic program represents a significant public investment. USDA spends millions of dollars each year on initiatives such as help for farms transitioning to organic practices, certification cost assistance, seed breeding and other organic agriculture research, and risk management tools. This investment has resulted in a rapidly growing, globally recognized standard and a U.S. retail market for organic products valued at over \$39 billion.³

¹ "Organic Agriculture," *USDA.Gov*, last modified June 2, 2016, <http://www.usda.gov/wps/portal/usda/usda-home?contentidonly=true&contentid=organic-agriculture.html>.

² "Frequently Asked Questions," *Cornucopia.org*, accessed July 13, 2016, <http://www.cornucopia.org/faq/>.

³ "Organic Agriculture," *supra* note 1.

The tremendous demand for organic products, however, has led some producers to adopt practices that deviate from many consumers' expectations. In some cases, the practices also appear to conflict with the current rules. Under the rules, organic producers must provide "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 Exceptions apply, but they contemplate "*temporary* confinement or shelter."⁵ In reality, roughly half of the nation's 12 million organic laying hens never go outside.⁶ As the AMS notice references, many large organic production facilities employ "roofed enclosures, i.e., porches with no access to soil or vegetation," in order to satisfy the rules' outdoor access provisions.

The proposed regulation rightly aims "to ensure that porches and similar structures are not considered outdoor areas."⁷ However, it allows certified producers to continue marketing the eggs produced in these facilities as "organic" for a full five years following publication of the final rule. By contrast, the agency plans to implement all of the other provisions of the proposed rule within one year. AMS should set the compliance period at one year for the entire rule.

A shorter compliance period for the rule's "outdoor access" provisions would strike a better balance between the interests of consumers and the large operators most affected by the requirements. According to the AMS notice, "the five-year period reflects the average time remaining to fully depreciate an average barn for laying hens." The notice also acknowledges, however, that the "disparity in amounts of outdoor access" for poultry on organic farms "has economic implications for producers and lessens consumer confidence in the organic label." This is undoubtedly true. Prolonging the disparity for another five years will continue to penalize compliant producers and erode consumers' trust. The plain language of the existing organic regulations gave producers sufficient warning that relying on "porches" to meet outdoor access requirements was a risky business strategy. If one of these large, sophisticated business operations cannot now retrofit a facility to meet the new standards, it can nonetheless continue to produce "conventional" eggs and avail itself of the AMS process verified program to label them "produced with organic feed." Such a label would allow consumers to make an informed choice and avoid diluting organic certification standards.

AMS should take into account that over 14 years have already elapsed since the NOSB first recommended rule changes to expressly disallow porches. As the AMS notice points out, the NOSB recommended in May of 2002 that "outdoor access" should mean access to open air and sunshine and exclude bare surfaces other than soil.⁸ Trust in the organic label hinges in large part on the role of the 15-member NOSB. Under the Organic Foods Production Act, NOSB members must include consumer interest advocates, environmental protection experts, and organic farmers, among others. The NOSB's composition provides some assurance to the public that it will resist industry capture

⁴ 7 C.F.R. 205.239.

⁵ *Id.* (emphasis added).

⁶ Georgina Gustin. "Animal Welfare Rule Exposes Cracks in Organic Egg Industry," *National Geographic*, April 15, 2016, accessed July 13, 2016, <http://theplate.nationalgeographic.com/2016/04/15/animal-welfare-rule-expose-cracks-in-organic-egg-industry/>.

⁷ "Organic Livestock and Poultry Practices Proposed Rule," *AMS.USDA.Gov*, last modified April 6, 2016, <https://www.ams.usda.gov/sites/default/files/media/NOP%20Livestock%20Poultry%20Practices%20Proposed%20Rule%20QAs.pdf>.

⁸ "NOSB Recommendations," *AMS.USDA.Gov*, accessed July 13, 2016, <https://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations>.

as it makes its policy recommendations. But the Act designates the NOSB as a mere advisory body “to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of this chapter.” AMS must ultimately decide how to run the NOP.

The proposed rule takes many important steps towards implementing the NOSB’s recommendations on outdoor access for poultry, and on animal welfare standards more broadly. CFA applauds these steps forward. CFA recommends that AMS consider factors that go beyond immediate economic impacts when analyzing the costs and benefits associated with the NOSB’s recommendations. These factors must include consumer confidence in the organic standard, the need to foster a competitive organic market that encourages new entries of small and medium size producers, and the need to maintain consistency with organic standards in other jurisdictions, such as Europe and Canada.

CFA appreciates the opportunity to provide comments on this important proposed rule. We urge AMS to issue a final rule as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas Gremillion', with a stylized flourish extending to the right.

Thomas Gremillion
Director, Food Policy Institute
Consumer Federation of America