



January 17, 2018

Paul Lewis, PhD, Director  
Standards Division, National Organic Program,  
USDA-AMS-NOP  
1400 Independence Ave. SW  
Room 2642 – So. Ag Stop 0268  
Washington, DC 20250-0268

**RE: AMS-NOP-15-0012; NOP-15-06; RIN 0581-AD75**

**Dr. Lewis:**

Founded in 1983, the Northeast Organic Farming Association – New York (NOFA-NY) is the premier statewide organization growing a strong organic and sustainable agriculture movement in New York State. NOFA-NY provides education and assistance to local organic and sustainable farmers; connects consumers with organic and sustainable farmers; advocates policies that support a sustainable food and farm system at both the state and federal levels. In addition, NOFA-NY is the largest USDA-accredited organic certifier in New York certifying over 1,000 organic operations.

NOFA-NY supports strong and clear organic standards that provide both producers and consumers with a transparent and consistent definition of organic, and thereby brings organic integrity to the USDA organic label. In that light we have always supported a clarification of the organic livestock and poultry production regulations by adding new provisions for livestock handling and transport for slaughter, avian living conditions as well as expanding and clarifying existing requirements covering livestock care and production practices and mammalian living conditions.

**NOFA-NY strongly objects to USDA’s proposal to withdraw the Organic Livestock and Poultry Practices (OLPP) Final Rule, and urges USDA to implement the final rule immediately. This Rule has been developed and vetted for over a decade and has overwhelming support throughout the organic industry including producers, processors, and consumers.**

**We find the reasoning put forth for the withdrawal to be inaccurate from its references to the founding legislation of the Organic Foods Production Act (OFPA) to its economic analyses.**

**1. It is not true that the “final rule would exceed USDA’s statutory authority.”**

- Contrary to the rationale for the proposed withdrawal, organic requirements were never intended to be severely limited to only preventing illness or designating allowable animal drugs, but to provide for the overall health and wellbeing of certified organic animals. The plain language of OFPA directs AMS to provide for additional, detailed standards for the care of livestock, beyond those limited to animal drugs, following NOSB recommendations and public input.<sup>1</sup>
- Specifically, NOFA-NY supports the comments of the Ohio Ecological Food and Farm Association (OEFFA) which reference:
 

7 U.S.C. 6509 (d) Health care, Standards “The National Organic Standards Board shall 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” (emphasis added) .
- In addition, OEFFA refers to the Senate Report Language <sup>2</sup> which specifically calls for the National Organic Standards Board (NOSB) to further clarify livestock standards:
 

“...expects that after due consideration and the reception of public comment, the Board will best determine the necessary balance between the goal of restricting livestock medications and the need to **provide humane conditions for livestock rearing**. The Board shall recommend livestock standards, in addition to those specified in this bill, to the Secretary”
- We support comments by the Center for Food Safety that “the current organic regulations require certified producers to account for the wellbeing of animals in their care, and state outright that producers “must establish and maintain year-round livestock living conditions which accommodate the health and natural behavior of animals.” <sup>3</sup> The OLPP provides a necessary elaboration on this standard for poultry, just as NOP did for ruminants in 2010.<sup>4</sup>”
- Organic animal welfare standards in their broadest sense, and as specifically outlined in both outdoor access standards as well as space requirements, are exactly factors of health care practices that must be specifically detailed in order to produce healthy animals. It is the purview of these regulations to go beyond the prohibition of medications or other materials outlined in §§6509(d)1(). Animals treated with humane welfare standards are healthier.

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<sup>1</sup> 7 U.S.C. §§ 6509(d)(2); (g).

<sup>2</sup> Senate Report 101-357. July 6, 1990. “Report of the Committee on Agriculture, Nutrition, and Forestry, United States Senate, to accompany S. 2830 together with Additional and Minority Views.” 101st Congress – 2nd Session P. 292.

<sup>3</sup> 7 C.F.R. §205.239(a); Johnson, Renee. November 25, 2008. “Organic Agriculture in the United States: Program and Policy Issues” *CRS Report for Congress Order Code RL31595*. P. CRS-5.

<sup>4</sup> 3 National Organic Program; Access to Pasture (Livestock), 75 Fed. Reg. 7154-01 (Feb. 17, 2010).

## 2. USDA's cost burden analysis is inaccurate on several grounds:

- USDA's concerns that "prescriptive codification ...could have the unintended consequence of preventing or stunting future market-based innovation," or "hamper market-driven innovation" are precisely the opposite of what we have seen in the organic marketplace. The desire to comply in a wholly voluntary regulatory landscape has driven innovation in organic. Producers and processors alike find new methods in order to enter the organic market.
- From new milking parlors and chicken houses with 'spoke and wheel' pasture access, to new natural products or the development of new varieties to prevent plant and animal diseases, organic has been in the forefront of pushing innovation through requiring high standards that comport to the significant values outlined in the founding legislation and detailed in the regulations.
- Compliance with this Act is entirely voluntary, and therefore, cost burdens are inappropriate – if the cost is too much, producers don't need to comply. They are free to leave the organic market.

## 3. The majority of producers already do comply with the proposed OLPP Rule.

- NOFA-NY has always required our poultry producers to provide outdoor access on the ground, because meaningful outdoor access is the intent of the rule, and is important for organic integrity. The implementation of this Rule will level the playing field with those who have been denying meaningful outdoor access to animals. As a certifier anticipating the implementation of this Final Rule for the past year, all of our producers have been notified of the new regulations, and it is the withdrawal of the Rule will cause additional confusion and cost to their systems.
- As outlined by L. Bunin and P. Tomaselli<sup>5</sup>, and further detailed by Center for Food Safety, "According to USDA, small (<16,000 birds) and medium (16,000-100,000 birds) organic egg and broiler producers would have "negligible" additional costs as a result of implementing the NOSB's proposed regulations, and large (>100,000 birds) broiler producers would require only a 2.5 percent increase in price to cover additional costs.<sup>6</sup> Only a few large (>100,000 birds) organic egg producers, which account for only 1% of total organic egg producers in the U.S., would have significant costs. "

## 4. Documented Support for the OLPP is undeniable.

- During the 14 years of the development and review of these clarifications to the existing animal welfare standards, nearly the entire organic industry and community has come to support the implementation of these standards.
- Yet despite the fact that the OLPP had already undergone full regulatory and public

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<sup>5</sup> L. Bunin & P. Tomaselli (2014). *USDA Stalls Regulations to Improve Organic Poultry Living Conditions*, Washington, D.C.: Center for Food Safety (April), available at: <https://www.centerforfoodsafety.org/issues/306/organic-and-beyond/reports/3103/usda-stalls-regulations-to-improve-organic-poultry-living-conditions-agency-hides-behind-faulty-economic-impact-assessment>.

review and was scheduled to be implemented nearly a year ago, this Department felt it necessary to open yet another comment period asking for guidance as to whether the Rule should be implemented in November 2017. During this 30-day comment period, more than 47,000 comments were received by USDA – Over 40,000 of those comments supported implementing the Rule, and only 28 supported the option of withdrawing the Rule.

- It is a clear violation of principles of democratic participation, as well as the process outlined in the organic law to now propose that this rule should be withdrawn.

The Organic Livestock and Poultry Practices (OLPP) Final Rule has taken over a decade to be developed, vetted, negotiated, and finally supported by the majority of stakeholders in the organic community. Farmers who are already complying -- farmers who are just now entering the industry -- and farmers who don't comply, but could change their practices to do so -- processors who depend on these organic products -- as well as consumers who have been led to expect clear, transparent and high-integrity organic standards -- all deserve to see these rules be implemented.

NOFA-NY urges USDA to re-consider its decision to withdraw this Rule, and immediately re-instate its May 2018 implementation date.

Sincerely,

A handwritten signature in black ink that reads "Liana Hooded". The signature is written in a cursive, flowing style.

Liana Hooded,  
NOFA-NY Policy Advisor