



Animal Welfare Institute

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

Submitted electronically to www.regulations.gov

**Re: Docket No. AMS-NOP-15-0012; NOP 15-06PR; RIN 0581-AD44
National Organic Program; Organic Livestock and Poultry Practices Proposed Rule**

Dear Dr. Lewis:

On behalf of the Animal Welfare Institute (AWI), I am pleased to submit comments on the *Organic Livestock and Poultry Practices Proposed Rule* (Docket # AMS-NOP-15-0012), published in the *Federal Register* on April 13, 2016.

AWI strongly supports policy initiatives that promote higher welfare, sustainable farming. AWI created the Animal Welfare Approved (AWA) certification program, which is generally viewed as representing the “gold standard” for animal welfare farming practices in the United States. A large percentage of AWA-certified farmers are also certified as USDA Organic; consequently, AWI has worked with many organic farmers over the years.

I. General Comments on the Proposed Rule

AWI commends the National Organic Program (NOP) for proposing requirements for the welfare of animals raised under the Certified Organic label. The proposed regulations are desperately needed, given that no substantive standards for the raising of animals have existed since the national organic regulations went into effect in February 2001. The lack of specific requirements for animal welfare has resulted in great variability in the level of animal care provided by organic producers. Some producers raise animals on pasture with high welfare, while others raise animals in a manner similar to conventional, intensive agriculture. In some instances organically raised animals are never even given the opportunity to go outdoors, for example.

One of the chief reasons shoppers choose to pay more for organic foods is because they believe animals raised under organic systems are treated better. However, because this is not always the case, animal welfare organizations in the United States typically do not recommend the Certified Organic label to consumers. The National Organic Standards Board (NOSB) has acknowledged that imprecise language in the organic regulations has created production practices “which could allow the welfare of some animals to be compromised.”

AWI participated in the process conducted by NOSB to draft animal welfare recommendations for the NOP regulations. AWI attended several NOSB meetings, submitted comments on multiple NOSB Livestock Committee proposals, and facilitated the submission of comments from AWI members and supporters on more than one occasion. While the final NOSB recommendations on animal welfare are far from ideal, AWI views those recommendations as acceptable and supports their enactment in regulation.

AWI is generally supportive of the proposed rule, given that it is based on the NOSB recommendations. AWI's primary concerns are related to provisions of the proposed rule that deviate significantly from the recommendations of the NOSB. These include: 1) pain relief is not required for dehorning or disbudding of livestock, 2) ammonia levels do not apply to mammal (pig) housing, 3) no space allowances are provided for pigs, 4) vegetation is not required outdoors for pigs or poultry, 5) concrete or gravel is allowed to make up 50 percent of the outdoor area, and 6) willful acts of abuse are not defined and/or prohibited.

II. Comments on Specific Provisions of the Proposed Rule

§ 205.2 We observed that the terms “debeaking” and “toe clipping” are defined but not the terms “beak trimming” and “toe trimming.”

We also noted that “willful acts of abuse” is not defined and/or prohibited. NOSB included the term in its December 2011 recommendations on Animal Handling and Transport to Slaughter. While the NOSB prohibition on willful acts of abuse appears to apply only to the handling of animals during transport, the prohibition should also apply to the handling of animals on the farm and at slaughter. We strongly encourage NOP to add the term “willful acts of abuse” in the definition section and to prohibit such acts in the on-farm, transport, and slaughter sections for both mammals and birds.

§205.238(a)(5) The section on physical alterations requires that they be conducted on animals
§205.238(a)(7) “at a reasonably young age, with minimal stress and pain by a competent person.” In addition, a later section requires analgesics and sedatives to minimize the pain, stress, and suffering of surgical procedures “necessary to treat an illness.” However, neither section requires that pain relief be provided for routine physical alterations. This is inconsistent with the December 2011 recommendations for rulemaking from NOSB that included a requirement of effective pain relief for dehorning or disbudding livestock. AWI recommends that both short-term anesthesia and long-term analgesia be required for the performance of disbudding and castration procedures.

§205.238(a)(5)(ii) We recommend that “dehorning” be added to the list of prohibited procedures, except when necessary for the health of the animal.

§205.238(a)(8) While we applaud the addition of the requirement that lameness levels be routinely monitored and recorded, it is of very limited value without also requiring that action is taken if lameness is observed to be unacceptably high. At a minimum, organic

producers should be required to develop a plan to address lameness when it exceeds a particular level (such as 5 percent of the herd or flock).

- §205.238(a)(9)** The standard for maximum ammonia levels for poultry houses should be moved to the section on avian living conditions (205.241), or the word “poultry” should be removed to allow the standard to apply to all animal housing. If the standard is moved to the poultry section, then an ammonia standard should be set for pigs in the section on mammalian livestock living conditions (205.239). The NOSB recommendation of December 2011 included a general ammonia limit for all animals in the Livestock Health Care Practice Standard section: “Ammonia levels should be less than 10 ppm and must be less than 25 ppm.” Because the NOSB recommendation was not specific to poultry, it should apply to all animals typically housed indoors (including pigs).
- §205.238(c)(10)** The section on forced molting requires revision or clarification. Birds may be “forced” to molt through several practices, one of which is withdrawal or reduction of feed. AWI recommends that either the prohibited forms of forced molting be included in a definition of the term in section 205.2 or that this section (205.238) specify which methods are disallowed. If all methods are to be prohibited, then the wording should be changed to “practice forced molting, including withdrawal of feed and other interventions to induce molting.”
- §205.238(e)(2)** We appreciate the two exceptions to acceptable euthanasia methods; however, the reference to “blow to the head by blunt instrument” requires clarification. While we do not want animals subjected to blows to the head by certain blunt instruments (such as a piece of wood or metal), it should be clear that non-penetrating captive bolt devices, specifically designed to deliver a blow to the head of suckling pigs, neonatal ruminants and poultry, are allowed. It should also be clear that “manually applied blunt force trauma to the head” is not allowed. Moreover, this section should reference permitted euthanasia methods, such as the guidelines of the American Veterinary Medical Association (with the noted exceptions of manually applied blunt force trauma and use of equipment that crushes the neck).
- §205.239(a)(10)** It is essential that minimum space allowances, both indoors and outdoors, be established for pigs. NOSB originally included minimum space allowances for pigs in its draft recommendations for rulemaking, before deciding to remove those standards and place them in guidance documents instead. Now that the decision has been made not to create species-specific guidance documents, it is imperative that space allowances for pigs be included in regulation. The fact that the raising of pigs for organic production does not currently appear problematic does not guarantee that issues will not arise in the future. Moreover, the current regulations and proposed regulation provide specific requirements for pasture access for ruminants and for outdoor access for birds, but are silent on the extent of outdoor access for pigs (other than that rooting must be provided). AWI recommends that NOP utilize the NOSB Livestock Committee Minority Opinion of October 2011, or, alternatively, the pig space requirements for Step 3 under the Global Animal Partnership (GAP)

program. Also consistent with GAP Step 3, AWI recommends that pigs with access to outdoor areas have access to wallows, showers, or sprinklers when the temperature exceeds 70°.

- §205.239(a)(12)** This section requires only 50 percent soil for outdoor areas, and a vegetation requirement is missing altogether. Allowing 50 percent concrete or gravel, and not requiring a minimum level of vegetation, are major departures from the NOSB proposal for rulemaking, which recommended 100 percent soil and 25 percent vegetative cover for pigs. We strongly urge NOP to remain consistent with the NOSB proposal in this regard.
- §205.241(a)(3)** Research has shown that natural light and dark cycles are very important to the health and welfare of birds. The proposed rule limits day length to 16 hours, but only for “layers and mature birds.” This seems to indicate that NOP intends to allow unrestricted lighting for pullets, meat turkeys, and meat chickens. All third-party animal welfare certification programs require a daily period of continuous darkness for meat birds. AWI recommends that a minimum of 8 hours of continuous darkness be required daily for all birds.
- §205.241(c)(3-5)** NOP has adopted the lower end of the NOSB’s outdoor space recommendations for birds. NOSB was well aware when it drafted the recommendation that 2 square feet per bird is likely inadequate to maintain vegetation, to provide for optimal bird health, and to allow performance of natural bird behaviors. Consequently, NOSB’s proposal stated that the amount of space provided “was to be dependent upon the producer’s ability to manage vegetation and provide cover, shelter, and blinds; manage erosion and bird boredom/aggression; minimize mortality, lameness, and disease, maintain good feather cover, hygiene, body condition, and low levels of mortality.” NOSB also recommended that the outdoor area for birds have 50 percent vegetative cover, which is not realistic when providing only 2 square feet per bird. Clearly more space per bird is required to meet the outcome measures identified by NOSB. Therefore, AWI strongly urges NOP to add a transition period to reach 5 square feet per bird and 50 percent vegetative cover.
- §205.241(c)(6)** AWI strongly supports the decision to disallow “space that has a solid roof overhead” (such as an enclosed porch or winter garden) from the calculation of outdoor space. We are concerned, however, about the inclusion of porch-type space in the calculation of the amount of indoor space per bird. AWI opposes the use of porch areas as indoor space unless it can be demonstrated that birds have continuous, ready access to the space, and that the space is utilized by the birds in the same manner as other indoor space throughout the entire year.
- §205.241(c)(8)** As noted above, NOSB recommended that the outdoor space for birds contain 50 percent vegetative cover. Not only is vegetation not required in the proposed rule, but the rule allows half of the outdoor space to be covered by concrete or gravel. There is no indication that NOSB intended the outdoor area to be only 50 percent soil with no vegetation. AWI urges NOP to increase the soil requirement to a

minimum of 75 percent (and to phase-in a requirement of more outdoor space per bird and 50 percent vegetation).

§205.242(a)(2) Points (i) and (ii) of this section do not provide an adequate description of animal fitness for transport. AWI recommends adoption of the international standards of the World Organization for Animal Health (“OIE”) for the transport of animals by land. The OIE considers 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 travelling 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.

§205.242(a)(5) The proposed rule requires that arrangements for water and organic feed be made if transport time exceeds 12 hours. This provision is adequate for mammals. For poultry, we request clarification as to whether the 12 hour limit includes or excludes slaughter plant holding time.

§205.242(a)(5)(i) While we appreciate NOP including a reference to the federal Twenty-Eight Hour Law for transport, research suggests that animals suffer adverse effects from traveling 28 consecutive hours. This law was enacted more than 100 years ago, long before the full impact of long-distance transport on animals was known. The AWA and GAP certification programs set considerably shorter transport limits. For example, the AWA standard is 4 hours for birds and 8 hours for mammals. Moreover, it should be noted that the Twenty-Eight Hour Law does not cover birds. At a minimum, the organic regulations should provide a transport limit for birds, perhaps even before any limit for mammals, since poultry are not currently covered by any other federal regulation.

§205.242(a)(5)(ii) The term “non-compliant records” should be changed to “noncompliance records (NR),” as this is the typical title of enforcement documents issued by the USDA Food Safety and Inspection Service (FSIS), as well as state departments of agriculture. (This change should also be made to sections 202.242(b)(3) and 202.242(c)(2).) As this section applies to both mammals and birds, “Memorandum of Interview (MOI)” should be added for incidents related to the transport of poultry. (NRs are not issued for incidents involving poultry because the transport and slaughter of birds is not covered by any federal regulation.)

- §205.242(a)(6)** AWI supports the requirement that organic operations have emergency plans to address animal welfare problems that might occur during transport. We also encourage NOP to add a requirement that “all animals arriving at the slaughter plant in a non-ambulatory condition, as well as all animals becoming non-ambulatory after arrival, be promptly and humanely euthanized.”
- §205.242(c)(2)** As noted above, the term “non-complaint records” should be replaced with “noncompliance records (NR),” and “good manufacturing practices” should be replaced with “good commercial practices” (this is the term used in FSIS regulations). In addition, “Memorandum of Interview (MOI)” should be added to the reference to Noncompliance Records. Because poultry welfare is not addressed in FSIS regulations, MOIs are used to document non-regulatory violations of poultry industry good commercial practices.
- §205.242(c)(3)** As mentioned above, the welfare of birds is not currently addressed in any FSIS regulations, including those under the Poultry Products Inspection Act (PPIA). (FSIS has interpreted the PPIA prohibition on birds drowning in the scald tank to only apply to large numbers of birds. Live birds entering the scald tank is viewed by FSIS as a process control issue, not an animal welfare concern.) As written, the proposed rule applies the welfare standards contained in this section to only the very few organic producers that are exempt from or otherwise not covered by the PPIA. Therefore, it is vitally important that NOP indicate that this section applies to *all* poultry slaughter by removing the qualifying phrase “but are exempt from or not covered by the requirements of the Poultry Products Inspection Act.” In addition, because birds in the United States are not required to be humanely slaughtered, we strongly urge NOP to include additional humane handling and slaughter criteria, such as:
- (i) Birds with dislocated or broken legs or wings must be humanely killed and not shackled;
 - (ii) No live birds are to be placed in the trash or DOA bin;
 - (iii) Birds must not be dropped or dumped from transport containers onto conveyor belts;
 - (iv) For stunning systems that involve conscious shackling, birds must be shackled with minimal force and suspended by both legs;
 - (v) All birds must be adequately stunned to ensure they are rendered insensible to pain prior to cutting;
 - (vi) An effective manual back-up cutting system must be in place to ensure that no live birds enter the scalding tank;
 - (vii) Birds must not be injured or killed, other than through the slaughter process.

III. Response to Common Arguments in Opposition to the Proposed Rule

Opposition Argument: Proposed Rule Will Increase Animal Mortality

The *Federal Register* notice accompanying the proposed rule acknowledges that mortality may increase with requiring outdoor access for birds. While higher mortality is a possibility, it is far from a necessity. An increase in mortality can be avoided by good husbandry and environmental practices. A review of

farm profiles in the Cornucopia Institute's *Organic Egg Scorecard* reveals that organic egg producers scoring the highest marks report annual death losses in the range of 2 to 5 percent. Some of the large corporate organic producers expressing concern for a potential increase in death losses were among those arguing at NOSB meetings against the need to report or even monitor mortality rates.

Opposition Argument: Proposed Rule Will Increase Disease Risk

A number of agricultural associations and state health officials have voiced concerns regarding the risk of allowing organically raised birds to have access to the outdoors. The potential for outdoor birds to contract and transmit avian influenza has been mentioned in particular. However, the former Chief Veterinary Officer of the United States, Dr. John Clifford, stated in a congressional hearing in July 2015 that the transmission of avian influenza is not affected by whether the birds are indoors or out. In fact, the 2015 avian influenza outbreak was concentrated—not on farms with birds outdoors—but on large indoor confinement operations. In addition, the proposed rule allows for indoor confinement of birds due to a disease occurrence in the region or migratory pathway.

It is not lost on AWI that those arguing against outdoor access on the basis of disease appear to have done little to address the issue on confinement operations. Some producers are becoming aware of the connection between high-density confinement and disease, however. In the recently released documentary *At the Fork*, Marcus Rust, CEO of Indiana's Rose Acre Farm, the third-largest egg producer in the country, says his bird-flu losses have led him to pasture-farming his poultry. "Five million chickens on that farm and this disease hits, they're all dead," he says. "It's made us look at it from a standpoint of we won't build farms as big [and crowded] as what we've built them in the past."

Opposition Argument: Proposed Rule Will Reduce Consumer Choice

NOP has acknowledged that the proposed rule will have a negative impact on the availability of organic products derived from animals, eggs specifically, for a period of time. We believe that other farmers will enter the organic market to fill the void, and that most consumers, if made aware of the trade-off between fewer products in the short term and higher welfare in the long run, would support the decisions made by NOP in the proposed rule. In certain markets where organic eggs are in limited supply, consumers will still be able to buy eggs from cage-free hens, which is essentially what many of them were getting in the past when they purchased organic eggs.

Opposition Argument: Organic Production Does Not Encompass Animal Welfare

Public opinion surveys conducted by Consumer Reports and others show that a large percentage of consumers believe organically certified products should come from animals who have been raised to a higher standard of welfare. This is certainly the case in countries other than the United States. Conventional animal agriculture trade associations, such as the National Pork Producers Council, the United Egg Producers, and the National Cattlemen's Beef Association, argue against increasing welfare standards for alternative production systems because they do not want consumers to have a choice. Their goal is for all production to be harmonized at the lowest level to prevent alternative systems from capturing greater market share. They also aim to avoid the establishment of legal standards for the raising, transport, and slaughter of *any* farm animals in the United States.

Thank you for your thoughtful consideration of AWI's comments. We look forward to seeing the incorporation of our recommendations, and swift finalizing of the rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Dena Jones". The signature is written in a cursive style with a large, stylized initial "D".

Dena Jones
Director, Farm Animal Program