



**Comments from the Ohio Ecological Food and Farm Association on**  
**Docket # AMS-NOP-15-0021; NOP-15-06**

The Ohio Ecological Food and Farm Association (OEFFA) is a nonprofit grassroots coalition of more than 4,500 farmers, gardeners, educators, researchers, and citizens who share a desire to build a healthy food system that brings prosperity to family farmers and rural communities, meet the growing consumer demand for local food, and safeguard the environment. OEFFA also operates one of the country's oldest and largest USDA-accredited organic certification agencies and is directly responsible for ensuring over 1250 operations comply with NOP standards. OEFFA represents the interests of organic producers, handlers, and the public choosing foods produced under the standards codified through the Organic Foods Production Act of 1990 and enforced by the National Organic Program.

We respectfully submit comments in response to the 12/18/2017 Federal Register notice and strongly encourage the USDA to allow the Organic Livestock and Poultry Practices (OLPP) rule to become effective immediately.

**The Department's current interpretation detailed in the withdrawal notice is incorrect and in conflict with both the statutory language of the law and the report language intended to provide more detailed guidance on the direction of the legislation.**

**1. AMS finding that OFPA does not authorize the animal welfare provisions of the OLPP final rule is incorrect.**

The Organic Foods Production Act (OFPA) states in Sec. 2110 [7 U.S.C. 6509] Animal Production Practices and Materials:

g) Notice and Public Comment – The Secretary shall hold public hearings and shall develop detailed regulations, with notice and public comment, to guide the implementation of the standards for livestock products provided under this section.

Additionally, according to; 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).

The English Oxford definition for care is "***The provision of what is necessary for the health, welfare, maintenance, and protection of someone or something.***" Overwhelmingly, veterinarians believe that "care" means "husbandry" and that "husbandry" includes an animal's environment bedding, space, air, feed, movement and so on.

Further clarification is provided in the report language accompanying the statute. The text acknowledges the lack of specificity in the rule regarding organic livestock production and calls for this detail to be provided by the NOSB in upcoming years. Under livestock standards that language states that the agricultural committee “...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” (emphasis added).

This quote makes quite clear that the intent of Congress in passing the OFPA was that additional care standards should be defined and be broader than simply health care practices. It is also worth noting that animal welfare and health care provisions are not mutually exclusive. If, in fact, the “threshold question” as stated in the notice of withdrawal is whether Congress has authorized the proposed action, the statute and report language show clearly that livestock care includes welfare and protection and that the intent of Congress was that these additional provisions be defined in regulation.

## **2. Citations of legal regulatory precedent and costs to industry are insufficient**

The legal precedents cited do not provide a direct correlation to implementation of the Organic Foods Production Act. The legal cases cited in the withdrawal notice Section B. (Impact of OLPP final rule on Producers) pp.10, speak to the imposition of unnecessary regulatory burdens. OFPA is distinct from mandatory regulation. This is a voluntary, opt-in program based on market demand and perceived value of food produced in a way that conforms to the standards of the law and responsive to the public value placed on the integrity inherent in organic production systems.

Additionally, the estimated costs to industry are incurred only if individual businesses decide to continue their **voluntary** participation in the organic marketplace. The value of this market has been established by two groups: (1) producers who, over decades and through large personal and financial investment, created systems of production that are largely free of synthetic inputs, that are responsive to local and regional communities, and that incorporate provisions for animal care and welfare, and (2) by the public that places market value on those principles.

**All operations that wish to capitalize on that value must commit to the law and the principles that created the marketplace so as not to devalue the market for all participants.**

It cannot be overemphasized that the organic market is voluntary and based on environmental and social metrics for quality, separate and distinct from non-organic food production.

## **3. The necessity of market failure for implementation of OLPP is unsupported**

As noted above, the statute for OFPA is distinct from other types of regulation as it is **voluntary**. The basis for USDA regulation was to enhance market development and assure consistency of standards. It is not based on or altered as a result of market failures and the legal and regulatory framework is distinct.

Organic farmers ask to be regulated by the USDA. Both they and organic consumers have asked for animal welfare standards to be strengthened and codified to ensure consistency and protect the value of the organic market. This is clear in the number of public comments requesting implementation of the rule through the repeated delay and comment periods. It is also evident by the 2010 report from the USDA Office of the Inspector General which found inconsistent application of outdoor access requirements and recommended that USDA clarify requirements regarding outdoor poultry access for poultry.

As an organization that offers organic certification, we see first-hand that having strong, clear rules is the basis for a strong organic industry. OEFFA Certification has found that the livestock and poultry standards as currently written are inadequate and are open to interpretations not fully consistent with the national organic standards. The OLPP will bring clarity needed to ensure fairness in the certification process.

#### **4. Applicability of the Regulatory Flexibility Act is not justified**

*Per the notice of withdrawal "The Regulatory Flexibility Act (5 U.S.C. 601-612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market."*

The articulation of the voluntary nature of the Organic Foods Production Act and the rules that accompany OFPA are stated in section 2. Citations of legal regulatory precedent and costs to industry also hold here. There is inherent regulatory flexibility in OFPA. If entities--small or large--decide that the rules provide an undue burden then they have the ability to not comply simply by exiting the organic marketplace. There is nothing that requires them to continue to seek the organic label, and there are many market outlets for agricultural products that do not require industry to be subject to the rules of OFPA.

In fact, the very nature of the organic industry requires that not all entities can or should participate in the organic market.

#### **5. Experience as an Accredited Certifier implementing the draft rule provides important guidance**

When the draft rules were announced, organic certification agencies such as OEFFA realized the upfront time it would take to set up a process for certifying to the OLPP, educating farmers about the standard and being ready to inspect operations. In an effort to be proactive, OEFFA conducted education and outreach and developed forms and systems that would be OLPP compliant.

Since that time we have found a very limited number of producers who would be required to change their production systems to be fully compliant with OLPP. These farmers are demonstrating that complying with the OLPP is feasible, but more so, this shows they are put at a severe economic disadvantage by not bringing clarification to the standards. This major change in course of the USDA, to withdraw the OLPP, will cause additional confusion for producers and require certifiers to once again change course with their educational efforts and operational systems. In other words, the economic impact of withdrawing the OLPP, a proposal not justified

by the argument regarding statutory authority, could be greater than the economic impact of its implementation.

**In closing, we reiterate our very strong opposition to withdrawal of the OLPP rule. This action betrays the trust of the public and the interests and viability of organic producers who represent a bright spot in American agriculture.**