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Erin Healy, MPH, Director, Standards Division  
National Organic Program  
USDA-AMS-NOP  
Room 2646-So. Ag Stop 0268  
1400 Independence Ave, SW  
Washington, DC 20250  
Docket # AMS-NOP-21-0073

Re: Organic Livestock and Poultry Standards Proposed Rule

*Submitted electronically*

Dear Ms. Healy:

Thank you for the opportunity to comment on the Organic Livestock and Poultry Standards (OLPS) proposed rule.

#### **Who we are**

The Ohio Ecological Food and Farm Association (OEFFA) is a grassroots coalition of more than 4,200 farmers, gardeners, retailers, educators, and others who since 1979 have worked to build a healthy food system that brings prosperity to family farmers, safeguards the environment, and provides safe, local food. Certified organic farmers make up the bulk of our membership, as well as the bulk of our policy steering committee. OEFFA's Certification program has been in operation since 1981. OEFFA certifies more than 1,100 organic producers and food processors, in a twelve-state region, ensuring that these operations meet the standards established for organic products, and collaborates with partners such as the Accredited Certifiers Association (ACA) and International Organic Inspectors Association (IOIA) to foster consistency and clarity both in the way we conduct ourselves, and in what we expect from producers and handlers we certify, as well as from our colleagues at the NOP and NOSB.

OEFFA employs education, advocacy, and grassroots organizing to promote local and organic foods, helping farmers and eaters connect to build a sustainable food system. We work collaboratively with groups such as the Organic Farmers Association (OFA), the National Organic Coalition (NOC), and the National Sustainable Agriculture Coalition (NSAC) to affect positive food systems change. We want to support our farmers in their efforts to protect organic integrity and educate their communities about its benefits, its rigor, and its strong values of transparency and continuous improvement.

#### **The Big Picture**

We would like to thank Secretary Vilsack and the National Organic Program for guiding the OLPS back to rulemaking. The principle of **care** is a core principle of the global organic movement. It applies to both humans and non-human animals. The principle of care is also embedded in the values of organic producers in the National Organic Program who have long awaited clear, consistent standards on animal welfare. **OEFFA eagerly awaits the implementation of OLPS to improve animal welfare standards for organic livestock and poultry.** The proposed rule draws on the long-standing work of the organic community to address the market failure noted in the preamble to the proposed rule, and to improve

consistency for organic producers and meet consumer expectations. Further, the rule may enable organic producers holding multiple certifications (such as Animal Welfare Approved or Certified Humane) to simplify their work by encompassing animal welfare concerns under the organic label.

**A 3-year implementation period is more than sufficient, especially given the many years organic producers and consumers have already waited for the loopholes in the organic standards on this topic to be addressed. A 3-year implementation period is also consistent with the requirements of producers transitioning to organic production.**

There is overwhelming support for this rule, and its timely implementation. Businesses that do not want timely compliance to this voluntary market program, should not drive the process so formative for organic integrity.

**OEFFA does NOT support a 15-year implementation period for outdoor access for poultry.** That timeframe is ludicrous, considering outdoor access for ALL organic animals is currently required in the organic standards at 205.239(a)(1) which have been in place since 2002. A 15-year implementation period would perpetuate the existing double-standard, further erode consumer trust in the organic label, and make the work of organic certifiers difficult.

**While noting the clear and overwhelming support for this rule among the organic community, there remain some portions of OLPS which must be clarified to match the intent of the rule, which will make it clear, enforceable, and bring it in line with the existing animal welfare certifications utilized by organic producers.** Key areas for improvement are outlined in our comments below. We also participated in the drafting of comments on OLPS by NOC, OFA, and the Accredited Certifiers Association and are largely supportive of their comments, with exceptions noted below.

## The Details

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## PROPOSED OLPS: PREAMBLE FOR IMPLEMENTATION APPROACH AND TIMEFRAMES

AMS seeks comment on the following implementation approach and timeframes:

(a) One year for all proposed changes, except for the indoor space requirements for broiler operations and the outdoor space requirements for layer operations;

(b) Three years for the indoor space requirements for broilers; and

(c) Outdoor space requirements for layers (three options):

*Option 1: Layer operations certified at the time of the rule's effective date (typically 60 days after publication) or within three years of the effective date will have five years to comply with the rule's outdoor space requirements concerning stocking density, exit doors, soil, and vegetation. Those operations certified more than three years after the rule's effective date will need to comply with all of the rule's outdoor access requirements immediately; or*

*Option 2: Layer operations certified at the time of the rule's effective date will have 15 years to comply with the rule's outdoor space requirements concerning stocking density, exit doors, soil, and vegetation....*

*Option 3: AMS seeks comments on alternative timeframes to those presented above for the outdoor space requirements for layer operations, including justification for alternatives and data on the costs and benefits.*

**OEFFA supports a 3-year timeframe for implementation of outdoor space requirements for layers as this rule is long-awaited, much needed to improve consistency and improve animal welfare, and in short, not a surprise.** Many certifiers, including OEFFA, have been utilizing the previous version of these standards as draft, internal guidance since they were rescinded by the Trump Administration. Our producers have seen these changes coming since 2017. A 3 year implementation period is more than sufficient.

## PROPOSED REGULATIONS: DEFINITIONS

### § 205.2 TERMS DEFINED

#### **MAXIMAL VEGETATIVE COVER DEFINITION**

The OLPS does not define "maximal vegetative cover." This definition must be added to 205.2. "Maximal vegetative cover" is found in 205.241(c)(2): "At least 50 percent of outdoor space must be soil. Outdoor space with soil must include maximal vegetative cover appropriate for the season, climate, geography, species of livestock, and stage of production."

OEFFA requests this definition be added to 205.2 to increase clarity and consistency of enforcement : ***"Maximal vegetative cover- Vegetation at the height and density that provides quality foraging opportunities and is managed to prevent damage to the extent that it cannot regenerate. Use of rotation, reseeding, renovation, mowing and irrigation can be part of the organic system plan to install and maintain this vegetation. Vegetation must be managed in full accordance with all crop production standards and not proliferate the spread of noxious weeds."***

## PASTURE PENS

OEFFA serves a number of pastured poultry producers and we would benefit from additional clarity to support the natural behaviors of poultry in pastured poultry production systems. Wire flooring for pasture pens can be considered outdoor space but would prevent birds from expressing their natural behaviors of scratching and dust-bathing. We recommend the following revision to the definition:

“Pasture pens. Floorless pens, with full or partial roofing, that are moved regularly and provide direct access to soil and vegetation, while permitting the animal(s) to fully exhibit their natural behaviors.”

## SOIL DEFINITION

OEFFA applauds the inclusion of a soil definition. This definition is essential in order to accomplish meaningful outdoor access. The definition of “soil” should be improved to clarify that gravel and concrete cannot be included in the 50% outdoor access area that is devoted to soil and vegetative growth.

We at OEFFA feel very strongly that a definition of soil is essential to OLPS. USDA’s stated primary purpose for this rule is to grant consistent, **meaningful** outdoor access to poultry as well as to address a variety of additional animal welfare considerations. Meaningful outdoor access, which facilitates birds’ well-being and natural behaviors, necessarily includes soil as well as vegetation, fresh air, and sunshine. We agree with ACA’s draft comments that adding management “in full accordance with all organic crop production standards” to 205.239(a)(12) is an important specification that aligns the letter of the rule with its intent – namely, for poultry to have unencumbered access to pasture. Due to the natural behaviors of birds (scratching and dust bathing), poultry pasture is inherently managed differently from ruminant pasture (the latter of which ought not have any areas of bare soil). So, it is appropriate for the OLPS to specify that poultry outdoor access must include soil, as well as vegetation managed in accordance with crop production standards. That soil, covered as it should be with maximal well-managed vegetation, represents a living organism replete with invertebrates, microbiota, plant roots and phytochemicals, minerals and diverse opportunities for birds’ enrichment; it should not be considered equal in quality or effect to a non-living substrate.

ACA makes a cogent point that defining soil has implications beyond livestock outdoor access, including for the controversial certification of hydroponic and container-based systems. However, the argument that hydroponic-interested stakeholders have not had a chance to offer feedback on this definition of soil holds no water, since the definition is unchanged from what was proposed six years ago in the Organic Livestock and Poultry Practices. Further, concerns over implications for a production practice with no standards should not govern rules related to animal welfare for organic production systems.

The alternatives to “soil” proposed by ACA, “certified ground” or “earth,” will not result in the desired outcome of this rule. “Certified ground,” if taken as anything other than “the outermost layer of the earth comprised of minerals, water, air, organic matter, fungi, and bacteria in which plants may grow roots,” would simply mean a piece of terrestrial land (i.e. not aquatic) verified by a certifier as having had no prohibited substances applied for 3 years. Terrestrial land includes concrete and gravel, which are permitted as up to 50% of an outdoor access area under the proposed rule but not in the 50% minimum of meaningful outdoor access covered with maximal vegetation which is repeatedly referenced in the rule and AMS’ discussion. **If “soil” were replaced with “certified ground,” the primary goals of the outdoor access provisions would be nullified** (namely, meaningful access to areas to engage in natural behaviors such as foraging, pecking, dust-bathing, scratching, etc. in which management practices maintain and improve natural resources, including soil and water quality) because “outdoors” would just mean “outside a building.”

On the other hand, if “soil” were replaced with “earth,” we would suffer the same confusion and inconsistent interpretation as occurred with the June 3, 2019 USDA memo on Certification of Organic Crop Container Systems; ACA

had seemingly endless debates about whether “land” meant the outermost layer of the earth in which plants can grow roots or simply “land as opposed to water.” Some certifiers would interpret “earth” as “land” (vs. water/aquatic/maritime portions of the planet’s surface). Others would take it to mean the same thing as “soil” is currently defined to be. Still others might say that it could be scooped up and put in a container and still called “earth” as a substance rather than a layer of the planet (the crux of the container/hydroponic controversy). Scooping some dirt into a concrete trough would not provide the meaningful outdoor access intended by the rule.

In short, there is no way to have meaningful outdoor access, as intended by this rule, without fundamentally defining what that is access to – and that has to involve soil. If we don’t define it, then we have beneficial provisions about various aspects of animal welfare but we miss the major point of this rule.

As such, we urge the NOP to retain the existing language, and add the following language to this definition to add clarity of intent:

*Soil: The outermost layer of the earth comprised of minerals, water, air, organic matter, fungi and bacteria in which plants may grow roots. “Gravel, concrete, or other surfaces that do not typically grow plants cannot be included in the percentage of land in outdoor access areas that must be comprised of soil.”*

#### § 205.238 LIVESTOCK CARE AND PRODUCTION PRACTICE STANDARD: **BODY CONDITION**

*(a) Preventive health care practices. The producer must establish and maintain preventive health care practices, including:*

*(1) Selection of species and types of livestock with regard to suitability for site-specific conditions and resistance to prevalent diseases and parasites.*

*(2) Provision of a feed ration sufficient to meet nutritional requirements, including vitamins, minerals, proteins and/or amino acids, fatty acids, energy sources, and fiber (ruminants), **resulting in appropriate body condition.***

As “*resulting in appropriate body condition*” is currently worded, OEFFA anticipates confusion and inconsistency in the industry. Some qualified people will be using the term “body condition” to refer to a very precise set of standards. Others could use it to mean the same standard, but apply it to a different breed or point in the lactation cycle, and accidentally misjudge the health of the animal. Still others won’t even enforce it at all. We have two options. Either we could leave it in the rule and train inspectors and file reviewers in body conditions of multiple breeds, or we could remove the word “body” condition and rephrase it to state “appropriate condition of the animal.”

#### §205.238 LIVESTOCK CARE AND PRODUCTION PRACTICES STANDARD: **PHYSICAL ALTERATIONS**

*(a)(5) Physical alterations may be performed to benefit the welfare of the animals, for identification purposes, or for safety purposes. Physical alterations must be performed on livestock at a reasonably young age, with minimal stress and pain and by a competent person.*

*(i) The following practice may not be routinely used and must be used only with documentation that alternative methods to prevent harm failed: needle teeth clipping (no more than top one third of the tooth) in pigs and tail docking in pigs.*

OEFFA agrees with the approach articulated in 205.238(a)(5)(i). To clarify it further to match what we perceive to be the intent of the rule, we request language be used outlining some of the methods that have been used to prevent harm.

For example, decreased stocking rates, changes in feeding to prevent fighting, and environmental enrichment. The noted physical alterations (needle teeth clipping and tail docking in pigs) should be an absolute last resort.

#### §205.239(A)(4)(I) AND 205.239(A)(11) : TIE STALL BARN

OEFFA estimates that approximately 20% of the dairy operations we certify (roughly 90 dairies) utilize tie-stall and stanchion barns. These are primarily small dairies operated by Plain Community members (orders of the Amish and Brethren). These barns are not set up for animals to turn around during a 24-hour period, should the animals already be confined due to inclement weather. The requirement that this freedom of movement occur in a 24-hour period was not part of the original proposed rule and was added into the final withdrawn rule. While we appreciate the additional benefits to livestock well-being that this addition will promote, OEFFA requests clarification that confinement during an inclement weather event would be allowed in a tie stall barn, recognizing that animals can still stretch, stand up, lie down, and be in contact with other animals. Alternately, if an exception will not be made, a three-year implementation time-frame for this provision would be fair and consistent with other new requirements for indoor space.

#### §205.241(A): CONTINUOUS CONFINEMENT

*§205.241 (a) Avian year-round living conditions. The producer of an organic poultry operation must establish and maintain year-round poultry living conditions that accommodate the health and natural behavior of poultry, including: year-round access to outdoors; shade; shelter; exercise areas; fresh air; direct sunlight; clean water for drinking; materials for dust bathing; and adequate outdoor space to escape aggressive behaviors suitable to the species, its stage of life, the climate, and environment. Poultry may be temporarily denied access to the outdoors in accordance with paragraph (d) of this section.*

Though mammalian living condition standards such as **205.239(a)(1)** clearly indicate that **“continuous total confinement of any animal indoors is prohibited,”** this statement is not included in avian living condition standards. While it is possible for avian species to be confined for extended periods, for instance due to avian influenza, these events are approved only as allowable reasons for *temporary* confinement and not as continuous total confinement. OEFFA requests language in the avian living conditions standard indicating that **“continuous total confinement of poultry is prohibited”** to match the mammalian standard. We recommend adding this language to 205.241(a).

#### §205.241(B)(2): AMMONIA

*§205.241 (b) (2) Producers must monitor ammonia levels at least monthly and implement practices to maintain ammonia levels below 10 ppm. When ammonia levels exceed 10 ppm, producers must implement additional practices and additional monitoring to reduce ammonia levels below 10 ppm. Ammonia levels must not exceed 25 ppm.*

To minimize the need for multiple animal welfare certifications, OEFFA requests ammonia levels to be measured **weekly** rather than monthly. Additionally, we request these levels be **measured at the height(s) of the animal(s)** in question to ensure the true levels that affect the animals’ well-being are being taken into account and responded to accordingly.

### §205.241(b)(3): LIGHTING

*§205.241 (b) (3) For layers and fully feathered birds, artificial light may be used to prolong the day length, to provide up to 16 hours of continuous light. Artificial light intensity must be lowered gradually to encourage hens to move to perches or settle for the night.*

Housing for poultry must include natural light. Artificial light must be used to positively impact and not negatively manipulate the birds. OEFFA suggests the following language additions for clarification to 205.241(b)(3): *For layers and fully feathered birds, artificial light may be used to prolong the day length, to provide up to 16 hours of continuous light. Artificial light intensity must be lowered gradually to encourage hens to move to perches or settle for the night. **Indoor housing for adult birds must include natural light. Lighting, other than at the end of the day, must not be manipulated through darkness, low intensity or less than full spectrum for any reason, such as to encourage weight gain.***

### §205.241(b)(4): EXIT AREAS

*§205.241 (b) (4) Exit areas—poultry houses must have sufficient exit areas that are appropriately distributed to ensure that all birds have ready access to the outdoors; producers subject to requirements in 21 CFR part 118 Production, Storage, and Transportation of Shell Eggs must take steps to prevent stray poultry, wild birds, cats, and other animals from entering poultry houses.*

In order to bring the meaning in closer concert with existing animal welfare certifications, and to address a key goal of this proposed rule--outdoor access for poultry--OEFFA recommends the following sentence in bold be added:

*§205.241 (b) (4) Exit areas—poultry houses must have sufficient exit areas that are appropriately distributed to ensure that all birds have ready access to the outdoors; **exit areas for birds to get outside must be designed so that more than one bird at a time can get through the opening and to have a combined length of at least 12 ft per 1,000 ft<sup>2</sup> area of the house available to the birds.** Producers subject to requirements in 21 CFR part 118 Production, Storage, and Transportation of Shell Eggs must take steps to prevent stray poultry, wild birds, cats, and other animals from entering poultry houses.*

### PREAMBLE AND §205.241(b)(8), (9), (10), (11): STOCKING RATES

*(8) For layers (*Gallus gallus*), indoor stocking density must not exceed (live bird weight):*

*(i) Mobile housing: 4.5 pounds per square foot.*

*(ii) Aviary housing: 4.5 pounds per square foot.*

*(iii) Slatted/mesh floor housing: 3.75 pounds per square foot.*

*(iv) Floor litter housing: 3.0 pounds per square foot.*

*(v) Other housing: 2.25 pounds per square foot.*

*(9) For pullets (*Gallus gallus*), indoor stocking density must not exceed 3.0 pounds of bird per square foot.*

*(10) For broilers (*Gallus gallus*), indoor stocking density must not exceed 5.0 pounds of bird per square foot.*

*(11) Indoor space includes flat areas available to birds, excluding nest boxes.*

The preamble states that, "Although older and heavier birds require more space, natural mortalities over time may result in compliance with the space requirements over a production cycle."

Consistent with the principle of care, stocking rates should focus on and plan for healthy life, not for expected mortalities. The idea of over-stocking a poultry barn with the expectation that "natural mortalities" will reduce the population to an allowed stocking density as birds grow is inconsistent with OEFFA's interpretation of organic management systems. Such a practice would not be recommended with any other species of which we are aware. To ensure this rule truly supports animal welfare and the global organic principle of care, please add the following sentence:

*§205.241(b)(11) Indoor space includes flat areas available to birds, excluding nest boxes. **The stocking density of poultry housing must be determined at the weight of the fully mature birds of that type.***

#### §205.241 (D): **TEMPORARY CONFINEMENT OF POULTRY**

*§205.241 (d) Temporary confinement. The producer of an organic poultry operation may temporarily confine birds. Confinement must be recorded. Operations may temporarily confine birds when one of the following circumstances exists:*

- (1) Inclement weather, including when air temperatures are under 40 degrees F or above 90 degrees F.*
- (3) Conditions under which the health, safety, or well-being of the animal could be jeopardized.*

OEFFA suggests the following bolded recommendations, which we see as in keeping with systems of organic agriculture and which are consistent with wording in the definition of inclement weather:

- (1) Inclement weather, including when air temperatures are under ~~40~~ **32** degrees F or above 90 degrees F.*
- (3) Conditions under which the health, safety, or well-being of the animal could be jeopardized. **Poultry production yields or growth rates lower than the maximum achievable do not qualify as physical harm.***

#### §205.242: **TRANSPORT AND SLAUGHTER**

*§ 205.242 Transport and slaughter.*

*(a)(4) Bedding must be provided on trailer floors and in holding pens as needed to keep livestock clean, dry, and comfortable during transport and prior to slaughter. Bedding is not required in poultry crates. When roughages are used for bedding, they must be certified organic.*

Bedding should be required for transport lasting more than 12 hours. For short trips, bedding can be more of a slip hazard than a comfort to animals being transported. Further, OEFFA recommends the word "clean" be deleted from this section. Clean is a very subjective assessment and is dependent upon many factors including weather, time of year, number of animals being transported, and type of bedding. Humane transport is more important than pristine transport.

*(a)(4) Bedding must be provided on trailer floors and in holding pens as needed to keep livestock ~~clean~~, dry, and comfortable during transport and prior to slaughter. Bedding is not required in poultry crates. When roughages are used for bedding, they must be certified organic.*

### **ADDITIONAL CLARIFICATION: PORCHES**

OEFFA appreciates the language regarding when porches would or would not be included in the square footage per pound of bird of either the indoor space or outdoor access area. OEFFA requests clarification that if the porches do not meet either of these requirements, they could still be used by the operation, but would not be counted in square foot per bird calculations.

### **ADDITIONAL WORK TO BE DONE: SWINE**

The OLPS has only a few areas that address humane management of swine. Third party certifications that address animal welfare and humane treatment have details that include a variety of issues such as: lighting, housing ventilation, restricted feeding, weaning, wallowing, farrowing, outdoor area requirements, housing temperatures, reduction of heat stress strategies, ear notching, nose rings, and both indoor and outdoor stocking rates. Since these issues have not been fully discussed with all stakeholders able to participate in the development of these standards for organic swine, **we ask the NOP and NOSB to place this issue on the NOSB work agenda.** To expand the organic pork industry and better serve consumers and producers of organic pork, more clarity is needed to promote high quality animal welfare of swine on organic farms.

When Origin of Livestock rule was repeatedly delayed, organic producers suffered unnecessarily, and organic businesses were lost. Let's not repeat that process. We owe it to organic producers and eaters to close identified loopholes efficiently and to require consistent implementation of the organic standards. Timeliness is required of both organic certifiers and producers. We expect the same of the rules and programs governing organic.

On behalf of the Ohio Ecological Food and Farm Association and OEFFA Certification,

*Amalie Lipstreu*

Amalie Lipstreu, Policy Director