



National Association of State Departments of Agriculture

4350 North Fairfax Drive
Suite 910
Arlington, VA 22203
Tel: 202-296-9680 | Fax: 703-880-0509
www.nasda.org

July 6, 2016

Ms. Elanor Starmer
Administrator, Agricultural Marketing Service
U.S. Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20250-0268

Re: **Docket ID No: AMS-NOP-15-0012; NOP-15-06PR** (*National Organic Program; Organic Livestock and Poultry Practices; Proposed Rule*)

Administrator Starmer:

The National Association of State Departments of Agriculture (NASDA) is pleased to submit the following comments on the United States Department of Agriculture (USDA) Agricultural Marketing Service (AMS) proposed amendments to the National Organic Program's Organic Livestock and Poultry Practices, which would add new provisions for livestock handling and slaughter, avian living conditions, and expand and clarify existing requirements covering livestock health care practices and mammalian living conditions. In addition, we appreciate AMS extending the comment period for an additional thirty days.

I. About NASDA

NASDA represents the Commissioners, Secretaries, and Directors of the state departments of agriculture in all fifty states and four U.S. territories. State departments of agriculture are responsible for a wide range of programs including food safety, combating the spread of disease, and fostering the economic vitality of our rural communities.

Promoting their state's agriculture producers—including organic farmers, ranchers, and value-added food producers—is a key responsibility for NASDA members, as is implementing a host of programs that support those producers and processors. For example, NASDA members engage in outreach to the organic community to disseminate \$11.6 million in organic cost share funds and fifteen states serve as organic certifying agents under the National Organic Program (NOP).

In a recent [report](#),¹ *U.S. Organic Hotspots and their Benefits to Local Economies*, prepared for the Organic Trade Association, state departments of agriculture were recognized as one of two key drivers of organic "hotspot" formations. In the report, organic agriculture activity is found to increase median

¹ E.C. Jaenicke, (2016). "U.S. Organic Hotspots and their Benefits to Local Economies," http://ota.com/sites/default/files/indexed_files/OTA-HotSpotsWhitePaper-OnlineVersion.pdf, (June 27, 2016)

household income and lower poverty rates. State departments of agriculture are a critical partner with USDA with respect to organic agriculture.

In addition, NASDA members have significant regulatory responsibilities related to animal disease outbreaks and response. In forty states, the state animal health official resides within the state department of agriculture.

It is important to note that state departments of agriculture are not simply stakeholders, but instead are co-regulators with federal agencies in the implementation of programs. NASDA supports enhanced federalism consultations that occur early in the regulatory process.

II. General Comments

NASDA supports the National Organic Program (NOP), as well as recommendations that enhance the program and increase growth of the organic industry. Organic agriculture is one critical tool to the future of feeding our growing global population. We must work in partnership to maintain or expand, not reduce, both farmer and consumer choice in the marketplace.

Through consultations with organic farmers and ranchers across a broad range of states, regions, and commodity groups, as well as state animal health officials and other state regulatory officials, NASDA has identified the following concerns with the proposed rule related to animal health, biosecurity, and the economic impacts these changes will impose upon organic producers. We therefore ask AMS to significantly rework these elements of the proposal and re-issue an updated proposal.

III. Sound Science in Agriculture Regulation

Regulations imposed on farmers and ranchers, no matter what production method they choose, must be based on the best available, sound, validated, and peer-reviewed science and rely on science-based risk assessments. Moreover, regulatory agencies must ensure policymakers do not misuse or inappropriately apply invalidated or unrelated scientific findings to policy determinations.

The proposed rule flies in the face of modern, peer-reviewed science on animal husbandry practices which should be the driving principles behind safe, efficient, sustainable, and profitable food production.

IV. Animal Health & Biosecurity

After an in-depth review of the proposed rule with state animal health officials and organic livestock and poultry producers, NASDA identified several significant concerns with the proposed rule's inherent increased risks to animal health and biosecurity measures. NASDA requests AMS work with the Animal and Plant Health Inspection Service (APHIS) Veterinary Services (VS), state departments of agriculture, state animal health officials, and livestock and poultry producers to amend the proposed rule to

incorporate the necessary animal health and biosecurity measures needed to protect the health and welfare of livestock and poultry populations across the U.S.

The proposal will require direct outdoor exposure and contact with wild birds and animals that are known vectors for Highly Pathogenic Avian Influenza (HPAI) and exotic Newcastle disease. This provision of the proposed rule is also in direct conflict with the Food & Drug Administration's (FDA) Egg Safety Rule requirements to prevent the introduction of *Salmonella enteritidis* from wild birds and other sources.

Furthermore, the proposed rule's elimination of "porches" in poultry houses will require organic producers to either discontinue their organic certification production or violate the USDA-APHIS-VS request to enhance biosecurity measures by mitigating exposure to wild birds. These enhanced biosecurity protocols are essential to minimize transmission risks from highly pathogenic and low pathogenic avian influenza, and these risks are not insignificant.

According to USDA, last year's HPAI (H5N2) outbreak included 223 confirmed cases of HPAI in domestic flocks across fifteen states that resulted in more than 48 million chickens, turkeys, and other poultry to be euthanized. This response effort required the active engagement of 400 USDA staff, nearly 3,000 USDA-contracted personnel, and countless state resources to mitigate the animal health and economic impacts of this outbreak. These federal, state, and industry response efforts included: outreach; education; biosecurity; surveillance; laboratory diagnostics; depopulation & disposal activities; indemnification actions; and standing-up Incident Command Structures (ICS) across the country to oversee these response efforts. The direct and indirect costs associated with this outbreak are difficult, if not impossible, to quantify, but as of July 2015, APHIS had committed over \$500 million of the \$700 million to help producers control the spread of HPAI, including \$190 million for indemnity payments. The economic value of turkey and laying hen losses was estimated at nearly \$1.6 billion, and economy-wide losses were estimated at \$3.3 billion. U.S. trading partners imposed bans on all shipments of U.S. poultry and products, and thirty-eight trading partners imposed partial or regional bans on shipments from states or parts of states with HPAI cases. China, Russia, and South Korea, three of the top ten destinations for U.S. poultry meat in 2014, banned all imports of U.S. poultry. In short, last year's HPAI was the most devastating animal health incident in our nation's history.

As written, the proposed rule changes will effectively create a contradictory regulatory framework where organic producers will have to expose their poultry and livestock to enhanced mortality, predation, animal health, and biosecurity risks or allow their organic certification to lapse. NASDA notes increased animal health and biosecurity risks will not only impact organic producers but may result in increased transmission risks across a broad range of producers, states, and regions.

NASDA requests AMS work with APHIS-VS, state departments of agriculture, state animal health officials, and livestock and poultry producers to improve the proposed rule by including the necessary animal health and biosecurity measures needed to protect the health and welfare of livestock and poultry populations across the U.S.

NASDA stands ready to assist USDA in developing and implementing scientifically-sound policy and regulatory initiatives that benefit organic producers, meet APHIS regulatory requirements and guidance, and therefore mitigate the animal health and economic impacts of future HPAI or other animal disease incidents.

V. Mammalian Living Conditions

AMS proposes amending § 205.239(a)(4)(i) to require organic livestock producers provide “sufficient space and freedom to lie down in full lateral recumbence, turn around, stand up, fully stretch their limbs without touching other animals or the sides of the enclosure, and express normal patterns of behavior.”

This proposed change is based in consumer perception, not science. Requiring organic dairy cows be housed in such a manner to allow full lateral recumbence would eliminate virtually all organic dairy producers using freestall barns from the program. Stall systems are built at very specific dimensions for cow comfort, to allow cows to be kept as sanitary as possible, and provide for efficient manure removal. This proposal, which would effectively double the size requirements for dairy stalls, would lead to unsanitary living conditions and increased rates of mammary infection due to pathogen exposure.

NASDA requests eliminating this revision and keeping the current standard to allow “natural maintenance, comfort behaviors, and opportunity to exercise” or develop species specific standards regarding mammalian living conditions which allow for the continued use of freestall barns for dairy cows which are built using science-based animal health standards.

VI. Avian Living Conditions

The poultry industry is also dramatically impacted by this proposal. By eliminating porches as an acceptable practice for outdoor access and by prescribing stocking densities for year-round access to the soil, mortality in the poultry industry will increase by 60 percent according to USDA estimates in the proposed rule.

In addition to the biosecurity concerns articulated above, NASDA is concerned these changes will impose significant costs and production challenges on organic producers. Constructing new infrastructure will be costly and could be cost-prohibitive for a number of producers, especially small-scale producers with limited access to credit. In addition, these requirements may be physically impossible for some producers to meet due to lack of available land.

NASDA is concerned the five-year implementation period included in the proposal is inadequate for producers to make the financial investments to acquire additional land and/or modify existing structures to meet outdoor space requirements for their birds. In addition, NASDA is very concerned that a USDA-estimated 45 percent of organic egg production would leave the NOP and transition to a conventional, cage-free market if the proposed rule is finalized. While some producers might have both the finances

and land availability to make changes to infrastructure and stocking densities to comply, a certain number of producers will never have the ability to comply.

NASDA requests that USDA not finalize the “Avian Living Standards” portion of the proposed rule at this time and instead revisit these requirements to develop workable, science-based guidelines in a manner that does not exclude those producers who wish to remain certified under the NOP.

VII. Statutory and Regulatory Authority

There are substantive questions as to whether, and to what extent, USDA has the authority under the Organic Foods Production Act of 1990 (OFPA) to regulate producers by prescribing practices that it believes will promote animal welfare—especially practices as to which USDA has provided little, if any, science-based explanation or evidentiary support for any animal health benefits. Examination of the statutory text, its legislative history and USDA’s regulatory basis for asserting jurisdiction casts considerable doubt on whether the proposed animal welfare amendments are within USDA’s authority.

The structure and text of the OFPA provide clarity and specificity to the principles of organic production, but contain no hint that USDA may impose “welfare” or “living conditions” requirements that are not thoroughly and rigorously justified as necessary for animal health care. The operable provisions of the statute imply just the opposite: that USDA must confine its mandatory requirements to those substantive aspects of agricultural production (e.g., feed, the use of chemicals, and veterinary practices), as well as the procedures (certification of organic farms and adherence to an “organic plan”) actually set forth in the statute.

NASDA requests USDA explain where its authority to expand these requirements under the OFPA rests in the statute or legislative record.

VIII. Economic Impact

There are over 3,500 certified livestock and poultry producers in the United States who are committed to upholding the standards of the organic farming system. The wellbeing of these producers and their families is derived from the success of their business. NASDA is concerned elements of this proposal could negatively impact these farm families. But the impact of this proposed rule does not stop there. With over 5,000 certified organic handlers using these products in the recipes of value-added foods and American consumers purchasing over \$43 billion² of organic products in 2015, the potential impact to the organic industry is widespread.

NASDA requests USDA conduct a more thorough economic analysis of the proposed rule using species-specific data to determine the cost producers will incur to continue participation in the organic system and how those costs will be passed down to consumers. Proposed changes to the

² “2016 U.S. Organic Industry Survey,” <https://www.ota.com/resources/market-analysis>, (June 27, 2016)

Mammalian Living Conditions standards referenced above should not be neglected in this economic analysis.

Additionally, international trade has positive effects on the U.S. organic market. Any changes to the standards of the National Organic Program must be implemented in a manner which does not conflict with the six organic equivalency agreements, or any future agreements, the United States maintains. This includes compliance with the new Food Safety Modernization Act Final Rule on Foreign Supplier Verification Programs (FSVP) for Importers of Food for Humans and Animals.

USDA must ensure a level playing field for American producers competing with imported product certified under equivalency agreements.

IX. Conclusion

NASDA appreciates the opportunity to comment on this important issue. A robust NOP is tremendously important to the economic viability of agricultural producers across the country.

Notwithstanding NASDA's strong support for the NOP, as referenced above, NASDA has significant concerns with elements of the proposed rule and the implications those changes could have on animal health, biosecurity, and the economic viability of organic producers. We therefore ask AMS to significantly rework these elements of the proposal and re-issue an updated proposal for public comment.

As regulatory partners with USDA and advocates for all forms of agriculture, NASDA stands ready to assist USDA in maintaining the integrity of the coveted organic seal. Please contact Amanda Culp (amanda@nasda.org) if you have any questions or would like additional information.

Sincerely,



Barbara P. Glenn, Ph.D.
Chief Executive Officer
NASDA