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July 13, 2016

*SUBMITTED ELECTRONICALLY*

Paul Lewis, Ph.D.  
Director of Standards Division  
National Organic Program, USDA-AMS-NOP  
Room 2646-So., Ag Stop 0268,  
1400 Independence Ave., SW, Washington, DC  
20250-0268

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

Dear Dr. Lewis,

The National Chicken Council (NCC) represents vertically integrated companies that produce and process more than 95 percent of the chicken marketed in the United States. NCC and its members support providing choice in the marketplace for consumers purchasing chicken meat and the freedom to make purchasing decisions based on their personal values. NCC appreciates the goal of the Agricultural Marketing Service (AMS) and National Organic Program (NOP) to define which practices may be expected from organic production methods for broiler chickens. AMS has requested comments regarding the clarity of the proposed comments, and whether farmers, handlers, and certifying agents may readily determine how to comply with the proposed regulations. We would like to take the opportunity to address this question, as well as outline a number of concerns which will directly affect NCC members.

Fundamentally, NCC is concerned that the proposed rule imposes unreasonable costs and requirements of doubtful benefit on Organic farmers, presents grave risks to animal health in the face of an avian disease outbreak, and undermines ongoing international efforts to develop poultry welfare standards. NCC supports the Organic program and the choices it offers consumers, but these issues must be addressed for this proposal to proceed further and benefit Organic producers.

**Living conditions require flexibility and clarity**

*Outdoor Access*

The changes proposed by the agency would define “outdoors” as any area in open air with at least 50% soil, outside a building or shelter where there are no solid walls or solid roof attached to the

indoor living space.<sup>1</sup> Outdoor areas would exclude porches, which are defined by the Food and Drug Administration (FDA) in the context of its shell egg rule as an area “enclosed with fence material, such as poultry wire; the porch’s roof can be solid or made of wire or netting. The porch’s floor is often concrete, but can be dirt or grass.”<sup>2</sup> Porches are frequently used in organic poultry production and provide external access to sun while protecting birds from excessive exposure to disease and predation.

Porches are a well-accepted means of providing chickens access to the outdoors while helping to control for bird health and promoting final product safety. Requiring that porches be eliminated and replaced with soil access introduces potential bird-health and food-safety risks and imposes significant capital costs on Organic producers with unclear benefit to the product category. Specifically, porches let producers provide outdoor access while controlling for animal-health and food-safety risks such as *Salmonella* Enteritidis and avian influenza (AI).<sup>3</sup> Eliminating porches would make it more difficult for Organic producers to maintain healthy and safe flocks, which increases costs to these producers and risks undermining the integrity of the Organic brand. Moreover, many producers would be required to invest substantial capital to significantly reconfigure their housing to eliminate porches and incorporate the proposed soil requirements. We are concerned that such stringent measures will serve to contract rather than expand the National Organic Program.

Further, it is unclear what benefit NOP believes is achieved by eliminating porches. We request that the NOP provide supplemental information more fully explaining the rationale behind this proposal. If this change stems from a desire for the birds to more readily express “natural behaviors” outside of the chicken house, NCC recommends that the agency consider instead revising the requirements for existing porches to provide enrichment. Such requirements could include having a scratching and dustbathing area with appropriate substrate available for the birds within the porch, or requiring that enrichment encouraging the birds to exit the house be located on the porch. These requirements would promote “natural behavior” while enabling Organic producers to continue to protect bird and product health and safety.

Moreover, the 50 percent soil requirement raises practical questions that the proposal leaves unanswered. Fundamentally, it is unclear how NOP arrived at the 50 percent figure. Further, NOP would need to clarify several issues for the soil requirement to facilitate implementation:

- Will all grass be prohibited from the soil area?
- Will farmers be required to clear grassy outdoor areas to create open soil?

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<sup>1</sup> United States Department of Agriculture-Agricultural Marketing Service. “National Organic Program; Organic Livestock and Poultry Practices”. (81 FR 21955) April 13, 2016.

<sup>2</sup> U.S. Department of Health and Human Services-Food and Drug Administration. “Guidance for Industry: Questions and Answers Regarding the Final Rule, Prevention of *Salmonella* Enteritidis in Shell Eggs During Production, Storage, and Transportation (Layers with Outdoor Access) *Draft Guidance*”. July 2013.

<sup>3</sup> U.S. Department of Health and Human Services-Food and Drug Administration. “Guidance for Industry: Prevention of *Salmonella* Enteritidis in Shell Eggs During Production, Storage, and Transportation”. December 2011.

- Will farmers be able to use herbicides to prevent weed growth if the area must be soil? If so, which types will be permitted under the NOP?
- How will the 50 percent of soil be measured?
- Will there be allowances for reasonable variation from the 50 percent soil threshold due to natural movement and shifting of soil?
- Will there be allowances for farmers to limit/avoid bird access to the 50% soil area due to specific seasonal conditions (extreme climatic changes or weather) or due to veterinary recommendation in response to disease situations (parasites, viral infection, etc.)? If so, how will these allowances be defined and how will they be enforced?

The 50 percent soil requirement has strong potential to be costly and onerous for farmers. Increased soil cover presents greater potential for the birds to come into contact with soil-borne parasites and pathogens, while also increasing potential for unintended soil and water deterioration due to manure exposure to soil. Preventing pathogen exposure to poultry, in addition to shielding manure from contributing to soil and water contamination, will be extremely difficult for farmers with dubiously beneficial impacts on poultry health and welfare. Thus, NCC respectfully requests that NOP eliminate or modify this requirement for porches.

### *Stocking Density*

It is not clear that the stocking density proposal is appropriate for Organic production. Stocking density remains a significant research area in poultry science, with little conclusive evidence on ideal density available. Indeed, environmental factors (such as feed and water availability and air and litter quality) and animal-based measures (such as footpad lesions, bruising, scratching, and lameness) are better and more informative indicators of bird welfare.<sup>4</sup>

We also respectfully remind NOP that in revising regulations that define organic poultry, concerns regarding the welfare of flocks must be balanced against environmental considerations. Significantly expanding access to outdoor space in the absence of data that substantiates the amount of outdoor space mandated is in contravention to the efforts of federal and state environmental agencies over the past decade to safeguard surface and groundwater, and not in the best interest of broader public policy.

With this in mind, we believe it is important that NOP provide supplemental information explaining how the proposed standard of 5 pounds of bird per square foot was reached. Given that one of the most significant differences between conventional and Organic production methods is the provision of outdoor access, it is unclear what value is provided by limiting bird density to 5 pounds per square foot versus, say, 6.5 pounds, assuming that the birds are provided with ample food, water, and shelter. This seemingly arbitrary requirement, in addition to the removal of porches, would reduce the number of birds that may be raised per flock, increase manure content on and in soil, and result in economic hardship either through the requirement to build another barn or reducing the

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<sup>4</sup> Jones, T.A., C.A. Donnelly, M. Dawkins. 2005. Environmental and Management Factors Affecting the Welfare of Chickens on Commercial Farms in the United Kingdom and Denmark Stocked at Five Densities. *Poultry Sci.* 84: 1155-1165.

number of birds that a farmer can raise at a time. It is important for the viability of the Organic program that NOP not take arbitrary actions that could cause Organic producers to leave the program or deter potential entrants from joining.

### *House Exit Requirements*

NCC recognizes the importance that regularly available outdoor access plays in Organic chicken production. It is unclear, however, why the proposed changes would require that more than one bird must be able to exit at one time and why the birds must be able to all leave the house within one hour. Such standards may be challenging to measure and risk disparate interpretation by certifying agents. For example, the relative size of the exit and the ability of the flock to exit the house will be highly dependent on the age and size of the birds throughout production. Four or more 600 gram chicks may be able to easily exit using the same exit through which one 2 kg bird may fit. Furthermore, expanding a house exit opens potential for predator damage and disease spread by pests. NCC respectfully suggests that it is of greater value to focus on the ability and safety of the birds to freely enter and exit the house, rather than how many may exit at one time.

### *Enrichment*

The proposal would benefit from further clarification about enrichment requirements to account for differences in behaviors among broiler chickens and laying hens. For example, it is unclear whether the flat roost requirement would apply to broilers as well as layers; however, the behavior of broilers and layers differs significantly and must be accounted for if perches are required for each. Laying hens will perch at greater heights than broiler chickens and will exhibit stronger hierarchy behaviors that motivate perching. Further, we request that NOP provide supplemental information explaining what would count as “suitable enrichment” outdoors for broiler chickens. Specific, reasonable examples of “suitable enrichment” would help farmers comply with the standards and would facilitate uniform auditing by certifying agents. In addition to examples of enrichment, we request that NOP consider providing guidance on the number of enrichments recommended by density of birds, if a variety of different types of enrichments are needed, and how to protect flock biosecurity with the inclusion of enrichments. For example, it is normally recommended that bales of straw, like other in-house equipment, be treated or fumigated prior to contact with chickens – would such treatment be allowed for enrichments? Specific guidance will provide clear parameters for farmers opting to participate in organic production, and will also serve as important guidance to veterinary or poultry health specialists that work with Organic producers to safeguard the health and well-being of their flocks.

### *Poultry Slaughter*

The proposed rule outlines a new section, §205.242(c), allowing for the National Organic Program, certifying agents and State organic programs to initiate compliance action if certified organic operations have violated the Poultry Products Inspection Act (PPIA) or Food Safety and Inspection Service (FSIS) regulations concerning good commercial practices in the slaughter of poultry.<sup>5</sup>

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<sup>5</sup> 81 FR 21955

Compliance to the PPIA and good commercial practices lie under the jurisdiction of FSIS, as does monitoring of compliance actions taken by a given slaughter establishment. Given that FSIS already performs these actions, it is unclear what benefit is achieved in having them duplicated by the Agricultural Marketing Service, a sister agency within the USDA. FSIS personnel are specifically trained in identifying and responding to PPIA and good commercial practice regulations, whereas NOP, certifying agents, and State organic programs are not. NCC recommends that identifying and responding to non-compliance events remain exclusively under the oversight of trained FSIS personnel in order to protect the welfare of poultry during slaughter in a meaningful manner.

## **Robust healthcare and biosecurity promote bird welfare**

### *Medical Care and Treatment of Seriously Ill Birds*

We agree with many of the proposed changes to ensure appropriate healthcare is provided to birds, such as administering non-organic treatments if a flock is sick and organic-approved medication is not applicable. NCC also agrees that producers should not be required to try using homeopathic remedies or botanicals before consulting with a poultry veterinarian and using appropriate synthetic medications, as this would delay the effective treatment of sick birds. Although a flock may lose Organic status, the health and welfare of the birds must be considered first.

Unfortunately, situations occasionally arise when an ill or injured bird will not improve with medical treatment and humane euthanasia is necessary to prevent further injury and suffering. NCC concurs that producers must have routine monitoring programs and written plans for timely, humane euthanasia of sick or injured birds. We strongly recommend that the method of humane euthanasia used must be approved by the American Veterinary Medical Association (AVMA). AVMA-approved procedures have been researched and proven effective by veterinary authorities and ensure that euthanasia is rapid and irreversible. Therefore, we recommend that proposed Section 205.238 be revised to include the text added in bold:

- (e) Euthanasia. (1) Organic livestock operations must have written plans for prompt, humane euthanasia for sick or injured livestock. **The euthanasia method must be approved by the American Veterinary Medical Association.**

### *Overall Bird Health and Increased Mortality*

We are concerned about NOP's assumption that the proposed rule would increase the mortality rate for laying hens and broilers to 8% from 5%. NCC agrees that mortality would likely increase in a material way under the proposal and that increased mortality would "chiefly be attributed to increased predation, disease and parasites from greater outdoor access".<sup>6</sup> It is troubling that NOP acknowledges these consequences, yet chooses to propose the changes to outdoor access discussed above, specifically removing porches and requiring a minimum soil cover. NOP predicts negative consequences which are directly in opposition to OIE outcome-based measurables for broilers provided outdoor areas, including: incidence of disease, metabolic disorders and parasitic

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<sup>6</sup> 81 FR 21955

infestations, predation, and mortality.<sup>7</sup> Furthermore, the National Organic Standards Board “recognized mortality rates as a key indicator of animal welfare and important to the economic viability of an operation”, and yet the Board proposes changes that would increase mortality, thereby significantly decreasing bird welfare and economic viability.

We disagree with the statement that “the tradeoff between a higher mortality rate for greater outdoor access generally reflects the preferences of the organic community”, and would argue that farmers at any scale would prefer to have the ability to balance mortality with greater outdoor access by utilizing logical housing and healthcare. We anticipate that most American consumers of Organic or conventional poultry products place a high value on bird health, safety, and welfare, and we are troubled by an apparently cavalier approach to bird health. Therefore, we strongly recommend that the agency consider our previously stated suggestions for provisions of scratch areas, dustbathing and enrichment outdoors on a porch, and flexibility to bring birds inside due to threat of disease such as HPAI.

### *Biosecurity Practices*

Preventative biosecurity measures are critical to promoting flock welfare and health. We were alarmed to find that the proposed standards are in direct opposition to Animal and Plant Health Inspection Service (APHIS) recommendations for biosecurity, particularly in light of the recent, devastating outbreak of highly pathogenic avian influenza (HPAI) in 2014-2015. APHIS Veterinary Services states that the outbreak resulted in the depopulation of 7.5 million turkeys and 42 million egg-producing chickens, a direct cost to Federal taxpayers of more than \$950 million,<sup>8</sup> and a direct economic hardship to turkey producers and egg producers of \$1.6 billion, not including clean-up costs, restocking costs, and lost production. Across the economy, the outbreak cost approximately \$3.3 billion, including significant lost international trade opportunities due to sanitary-phytosanitary trade restrictions that affected all poultry exports. Although the majority of flocks affected by HPAI were commercial operations, 21 of the 232 flocks were backyard flocks. Indeed, several counties experienced simultaneous incidents in both commercial and backyard flocks.<sup>9</sup>

The National Organic Program had previously provided reasonable guidance on the confinement of livestock and poultry, specifically stating: “...a producer could utilize his or her own experience supported by research data to show that confinement during peak water fowl migration is a reasonable approach in preventing catastrophic health problems caused from outside exposure to

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<sup>7</sup> OIE Terrestrial Animal Health Code. *Chapter 7.10: Animal Welfare and Broiler Chicken Production*. Article 7.10.4.

<sup>8</sup> United States Department of Agriculture. Animal and Plant Health Inspection Service. Veterinary Services. *2016 HPAI Preparedness and Response Plan*. January 11, 2016. [https://www.aphis.usda.gov/animal\\_health/downloads/animal\\_diseases/ai/hpai-preparedness-and-response-plan-2015.pdf](https://www.aphis.usda.gov/animal_health/downloads/animal_diseases/ai/hpai-preparedness-and-response-plan-2015.pdf).

<sup>9</sup> United States Department of Agriculture. Animal and Plant Health Inspection Service. “Figure 4. All HPAI Detections in Poultry and Captive Wild Birds, as of 8/31/2015”. [https://www.aphis.usda.gov/animal\\_health/emergency\\_management/downloads/hpai/premstatusdetailstate.pdf](https://www.aphis.usda.gov/animal_health/emergency_management/downloads/hpai/premstatusdetailstate.pdf).

disease vectors.”<sup>10 11</sup> The proposed rule directly contradicts this clear guidance, jeopardizes the health of Organic bird flocks, increases the risk that avian disease becomes established thereby jeopardizing all poultry production, and prevents Organic poultry farmers from taking swift and appropriate action to protect their flocks in the face of a potential HPAI outbreak. Given the highly sporadic nature of avian influenza incidents in 2014 and 2015, there is strong evidence that restricting outdoor access for Organic poultry would be most protective for both individual flocks and neighboring farms. In an epidemiological report conducted by APHIS, results indicated that the HPAI virus from infected flocks could become and stay aerosolized, allowing it to travel.<sup>12</sup> Organic farmers must be allowed—and indeed, encouraged—to bring flocks indoors to minimize potential exposure to an avian disease outbreak.

The proposed standards state that birds may be kept indoors if there are conditions under which health, safety, or well-being is jeopardized; however, a farmer’s ability to make this decision in a timely manner is extremely curtailed, as the proposed rule would require that “a documented occurrence of a disease in the region or relevant migratory pathway must be present” before outdoor access can be restricted. In many instances, waiting until there is “documented occurrence” in the region or flyway would be too late to prevent exposure of the flock or establishment of the disease. Moreover, unclear definitions of terms such as “region,” what constitutes a “documented occurrence,” and other aspects of this provision increase the risk that a certifying agent would disagree with a farmer’s decision, thus jeopardizing the farmer’s ability to market Organic birds. Any lack of certainty under a final rule as to when outdoor access may be restricted and the potential ramifications on a farmer’s or flock’s Organic status could create the wrong incentives, ultimately jeopardizing bird health.

In the interest of preventing disease occurrence and spread on any farm, NCC strongly recommends that Organic producers be permitted to restrict outdoor access preemptively to prevent illness and requests greater detail on which types of documentation would be accepted in order to bring Organic poultry inside. We additionally recommend more defined parameters for allowing organic poultry to regain outdoor access following a disease incident. An example of such parameters could include those provided by the World Organization for Animal Health (OIE), which is the “absence of infection with avian influenza viruses or with high pathogenicity avian influenza viruses during the preceding 12 months in susceptible poultry populations” as monitored by a surveillance program.<sup>13</sup> Susceptible populations may be set apart by physical or geographic zones as defined by the OIE Terrestrial Animal Health Code. Incorporation of OIE science-based standards for identifying a zone as “disease-free” would lend consistency to decisions made on permitting outdoor access.

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<sup>10</sup> United States Department of Agriculture. Agricultural Marketing Service. National Organic Program. “Policy Memorandum 11-5 Access to the Outdoors for Livestock”. January 31, 2011.

<sup>11</sup> United States Department of Agriculture. Agricultural Marketing Service. National Organic Program. “Biosecurity in USDA Organic Poultry Operations”. March 2016.

<sup>12</sup> United States Department of Agriculture. Animal and Plant Health Inspection Service. Veterinary Services. Epidemiologic and Other Analyses of HPAI-Affected Poultry Flocks: June 15, 2015 Report. Page 15.

<sup>13</sup> OIE. Terrestrial Animal Health Code. *Chapter 10.4: Infection with Avian Influenza Viruses*. Article 10.4.30.

NCC also urges NOP to consult with animal disease experts at APHIS to ensure that the outdoor access provisions in this proposal do not in any way contradict APHIS recommendations or impair APHIS's and the industry's ability to respond to, mitigate, and contain an avian illness outbreak. Specifically, we request NOP solicit for this rulemaking docket written feedback from APHIS addressing the following questions:

1. Are the proposed outdoor-access provisions consistent with current poultry biosecurity best practices?
2. Do the proposed outdoor-access provisions increase the risk that an Organic flock could become infected as part of an avian illness outbreak?
3. Do the proposed outdoor-access provisions increase the likelihood that an avian disease agent could become established in a region of the U.S.?
4. Are the proposed outdoor-access provisions fully consistent with APHIS recommendations for flock management and biosecurity when there is a potential avian illness outbreak?
5. Are the proposed outdoor-access provisions consistent with APHIS's statutory mission to protect bird health?
6. Does APHIS recommend any changes to the criteria for how and when an Organic farmer may restrict outdoor access for poultry to better protect bird health or provide better clarity?

We appreciate the important role that Organic marketing plays in promoting Organic agriculture and offering consumers meaningful choices, but protecting bird health and the vitality of the American poultry industry must come first. We accordingly urge NOP to collaborate with its sister agency to ensure this proposal is appropriately protective of animal health.

### **American poultry standards must align with International agreements and expectations**

NCC is concerned that establishing new animal welfare expectations through the guise of Organic production standards risks moving the U.S. out of alignment with the poultry welfare framework currently being developed by the World Organization for Animal Health (OIE). OIE has been working with global stakeholders to develop international standards for animal welfare and raising practices. This work remains ongoing but is nearing completion, and it is extremely likely the standards proposed in this rulemaking will not be consistent with OIE's final recommendations. The U.S. has been a key leader in the OIE process, and it would be counterproductive for the U.S. to strike out on its own so late in the OIE process. Not only would doing so undermine the work of OIE, it would risk creating standards for American Organic poultry that are not consistent with poultry raising practices recognized and required by our international trading partners. We therefore urge NOP to collaborate with other USDA agencies and stakeholders in the OIE process to ensure that U.S. requirements remain in line with the final OIE recommendations and that any Organic production standards do not undermine international trade.

### **NOP drastically underestimates the costs of the proposed requirements**

The proposal drastically underestimates, or neglects to estimate, the costs of the proposed requirements and the impact of those costs on consumer access to organic poultry products. It is somewhat difficult to ascertain the complete total cost NOP estimates the proposal would impose on the U.S. economy, but even the highest estimates understate the economic harm by orders of

magnitude. Critically, NOP is proposing outdoor access requirements that will increase bird mortality due to increased disease exposure, reduce flock numbers, and increase stress on environmental systems such as soil and water. NOP acknowledges that “the increased outdoor access requirements for all birds drives the costs of the proposed rule by reducing production volume and increasing operating expenses (land and feed).”<sup>14</sup> NOP does not, however, include the cost of an avian illness outbreak, the likelihood and magnitude of which is materially increased through the proposed outdoor access requirements. In other words, avian illness outbreaks like the 2015 HPAI outbreak will be more likely to occur, and the effects will be more likely to be greater, under the proposal. The direct economic consequences of the 2015 HPAI outbreak were estimated to be approximately \$3.3 billion, far overshadowing the anticipated maximum benefit of \$62.6 million per year in the proposed rule. NCC recommends that NOP consult with APHIS on the potential harm to avian health and organic sustainability that the proposed rule poses.

NOP additionally acknowledges in the proposed rule that the following critical factors were not accounted for in the economic analysis:

- Cost of implementing the requirement that poultry have access to 50% soil outdoors;
- Outdoor alternatives such as requiring outdoor accommodation for a percent of a flock, or allowing porches;
- Cost of proposed changes to mammalian health and living conditions, transportation, or slaughter;
- Maintenance of increased outdoor areas (e.g. fencing); or,
- Key differences in the cost assumptions that can be made for broiler chickens versus layer chickens.<sup>15</sup>

Given that NOP recognizes that the proposal will increase disease risk, decrease stocking capacity, increase environmental stress, and shrink the Organic marketplace, NOP must include all associated costs in the economic impact analysis. We request that NOP conduct a full economic impact analysis for the proposed requirements, including those assumptions above that were not calculated and the impact of increased costs on consumer access to the products, and make that analysis available for public comment before determining how next to proceed with this rulemaking. NCC contends that those producers who would be affected by the proposed rule have the right to an in depth analysis of all of the associated costs and benefits to organic production.

## **Conclusion**

NCC recommends revising or clarifying several key aspects of the proposed rule to enhance bird health, protect food safety, and maintain a viable Organic program. We hope that the recommendations provided above will be useful in strengthening the proposed standards while providing better flock health and welfare, increased farmer participation, and enhanced transparency in Organic broiler production.

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<sup>14</sup> 81 FR 21955

<sup>15</sup> 81 FR 21955

The National Chicken Council appreciates the opportunity to provide comment on the National Organic Program's proposed standards for organic livestock and poultry practices. If you have questions regarding the above comments, please feel free to contact me. Thank you for your consideration.

Respectfully submitted,

A handwritten signature in black ink that reads "Ashley B. Peterson". The signature is written in a cursive style with a large initial 'A' and a stylized 'P'.

Ashley B. Peterson, Ph.D.  
Senior Vice President, Scientific and Regulatory Affairs  
National Chicken Council