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USDA's Organic Livestock and Poultry Practices Regulations

On January 19, 2017, the U.S. Department of Agriculture (USDA) published a final rule amending National Organic Program (NOP) regulations for USDA-certified organic livestock and poultry practices. The rule addresses four broad areas of organic livestock and poultry practices: living conditions, animal health care, transport, and slaughter. While some in Congress and in the organic foods industry generally support these new requirements, others in Congress and in the poultry industry strongly oppose these provisions. In particular, there is little consensus about the rule's organic animal welfare provisions.

On February 9, USDA's Agricultural Marketing Service (AMS) announced a delay in the effective date of the final rule by 60 days to May 19, 2017 (originally March 20). This action provides the Trump Administration more time to review the rule and decide whether to proceed with the rulemaking begun under the Obama Administration. This action is consistent with the January 20 memorandum, "Regulatory Freeze Pending Review," directing agencies to extend the effective dates of regulations that have been published in the *Federal Register* but have not taken effect.

USDA's National Organic Program

NOP is a voluntary organic certification program administered by USDA for producers and handlers of agricultural products who use certain approved organic methods codified in regulation under USDA's oversight.

Organic production refers to a production system that is managed in accordance with the Organic Foods Production Act (OFPA) and USDA regulations intended to "respond to site-specific conditions by integrating cultural, biological, and mechanical practices that foster cycling of resources, promote ecological balance, and conserve biodiversity" (7 C.F.R. 205). Producers, processors, and handlers who wish to market their products as organic must follow production practices spelled out in regulation. USDA-approved organic standards address the methods, practices, and substances used in producing and handling crops, livestock, and processed agricultural products. They also describe the types of approved methods farmers and ranchers may use to grow crops and raise farm animals and the types of materials used in production. These standards must be verified by a USDA-accredited certifying agent before products can legally be labeled "USDA Organic."

Under the program, the National Organic Standards Board (NOSB) is a 15-member advisory board that makes recommendations to USDA on a range of organic production issues as authorized under OFPA. NOSB thus assists in the development and maintenance of organic standards and regulations. However, USDA retains primary responsibility for setting regulatory standards as well as for compliance, enforcement, and auditor accreditation.

U.S. Organic Livestock and Poultry Production

Foods certified by USDA as organic account for a small but growing share of the U.S. agricultural industry. Retail sales of organic foods in the United States totaled nearly \$40 billion in 2015 (not including non-food products), or about 5% of total food sales. There are roughly 14,000 certified or exempt organic farms in the United States (2014 data). (Exempt farms have less than \$5,000 in gross annual sales.)

Organic livestock and poultry products account for less than 3% of total organic retail food sales. In 2014, organic egg sales totaled \$514 million, accounting for nearly 10% of all U.S. retail egg sales (organic and nonorganic). Sales of organic poultry meat totaled \$453 million, or less than 1% of U.S. retail broiler meat sales. There were 1,065 organic and exempt egg laying operations and 309 organic broiler farms. Precise retail sales data are not readily available for organic beef and pork meats, but they likely comprise a much smaller share of total organic and total market sales. There were 748 certified and exempt organic beef farms and 239 organic hog farms (2014 data).

Summary of Final NOP Provisions

USDA's NOP regulation broadly addresses care and production practices, transport, slaughter, and living conditions for organic livestock and poultry. Accordingly, the USDA rule:

1. Clarifies how producers and handlers participating in the NOP must treat livestock and poultry to ensure their well-being.
2. Clarifies when and how certain physical alterations may be performed on organic livestock and poultry in order to minimize stress. Additionally, some forms of physical alterations are prohibited.
3. Sets maximum indoor and outdoor stocking densities for organic chickens, which vary depending on the type of production and stage of life.
4. Defines outdoor space and requires that outdoor spaces for organic poultry include soil and vegetation.
5. Adds new requirements for transporting organic livestock and poultry to sale or slaughter.
6. Clarifies the application of USDA Food Safety and Inspection Service (FSIS) requirements regarding the handling of livestock and poultry in connection with slaughter at certified organic livestock and poultry establishments and provides for the enforcement of USDA organic regulations based on FSIS inspection findings.
7. Establishes indoor space requirements for chickens only in this final rule. AMS may propose space requirements for other avian species in the future. Other avian species must meet all other indoor requirements including exit doors, ammonia levels, and lighting.

Source: 72 *Federal Register* 7042, January 19, 2017.

U.S. Organic Egg and Poultry Production

In April 2016, USDA published a proposed rule regarding organic livestock and poultry practices. After considering public comments, USDA published final regulations in January 2017. The final NOP regulation broadly addresses care and production practices, transport, slaughter, and living conditions for organic livestock and poultry (see **text box**). Amended requirements cover definitions (7 C.F.R. 205.2), livestock health care practice standards (205.238), livestock and avian living conditions (205.239, 205.241), and transport and slaughter (205.242).

The final rule's care and production provisions relate to medical treatments, animal health care, and euthanasia. The rule also clarifies that hormones are not allowed in organic production and that forced molting is not permitted. Certain physical animal alterations are prohibited, including, for example, debeaking of birds and docking of cow's tails (with limited exception for certain physical alterations). For poultry, the rule covers organic avian (bird or poultry) species, including (but not limited to) chickens, turkeys, geese, quail, pheasant, and other species that are raised for organic eggs, organic meat, or other product. The regulation also covers humane handling requirements for transporting and slaughtering animals, and prohibits certain practices.

The regulation addresses animal living conditions including **indoor** minimum space requirements for animal to "accommodate the wellbeing and natural behaviors" of the animals, requiring, for example, that they be able to lie down, turn around, stand up, and fully stretch. It also covers indoor air ammonia levels, natural light, indoor stocking densities, access to scratching areas and perching space for birds, and specific housing requirements for hogs, piglets, dairy calves, and birds. The regulation also addresses **outdoor** living requirements, such as soil content and vegetative cover, year-round access to the outdoors, and access to pasture during the grazing season. It further addresses the need for shade, shelter, exercise areas, fresh air, direct sunlight, and clean water for drinking. For poultry, the rule also specifies the need for materials for dust bathing and outdoor stocking densities to provide adequate space "to escape aggressive behaviors" and to accommodate the species' stage of life. The rule does allow for temporary confinement of birds indoors when soil and water quality could put animals at risk.

The regulation further clarifies that "porches and lean-to type structures that are not enclosed (e.g., with a roof, but with screens removed), and which allow birds to freely access other outdoor areas, can be counted as outdoor space" (7 C.F.R. 205.241(c)(7)). Accordingly, enclosed porches would no longer be considered as providing outdoor space in organic poultry production. This change is consistent with NOSB recommendations that did not consider porches as providing for adequate outdoor access.

Overall, estimated cost of the regulation could cost poultry producers between \$8.2 million to \$31.0 million annually. Similar cost estimates to livestock producers are not available, with the exception of costs associated with the rule's paperwork burden, estimated at \$3.9 million annually for all organic livestock and poultry farms.

Support/Opposition to NOP Regulation

USDA received nearly 6,700 comments on its proposed rule. Many in the organic foods industry generally support USDA's rulemaking—in some cases referring to the changes as a "clarification" rather than a new regulation. Some Members of Congress likewise supported USDA's proposal and pushed for the regulations to be finalized, according to some press reports. Many in the industry view these changes as "essential" to maintain the integrity and value of the organic seal/label to consumers. USDA further claimed that the amended requirements are needed to "ensure consumer confidence ... by promoting consistency across the organic industry." However some in the industry claim that the requirements are not restrictive enough and will erode consumer confidence in the organic seal.

Much of this disagreement centers on the rule's animal outdoor access requirements. USDA claims that consumers value outdoor access for organic animals. The proposed rule and the rulemaking docket details NOP's long-standing emphasis on animal welfare issues, including outdoor access for organic livestock and poultry, dating back to the early 2000s. A previous 2010 rule similarly amended NOP regulations and required access to pasture for organic dairy and ruminant livestock (7 C.F.R. 205.239). Those amended regulations were also controversial and opposed by some in the industry, particularly dairy farmers. Changes under that NOP rule now require organic ruminant animals to graze pasture for at least 120 days per year. USDA's docket on 2016 proposal further highlights NOSB recommendations regarding outdoor access for organic animals.

Others in Congress and in the poultry industry strongly opposed the proposed regulations. In May and June 2016, several Members of Congress sent letters to USDA criticizing the NOP rule. In addition, House report language on the FY2017 agriculture appropriations bill (H.Rept. 114-531) specifically addressed the proposal, stating the committee is "concerned about the potential disruption to existing organic producers and their supply chains, as well as ensuring that animal health is fully protected." It directs USDA to conduct a "thorough assessment on the costs of compliance and alternatives" for existing producers. Some Members of Congress have indicated that they will continue to actively oppose USDA's amended NOP requirements.

Much of this opposition is directed toward certain changes in the organic egg standards. Some oppose the elimination of poultry porches in the production of organically raised eggs, citing biosecurity and avian disease concerns by potentially exposing animals to soil-borne parasites, wild birds and rodents, and increased predation. Some claim that many producers are already complying with third-party animal welfare standards, such as the Animal Welfare Approved and Certified Humane standards, which they claim are equivalent to or stricter than USDA's amended requirements. Others worry that the changes will be costly, rendering existing capital investment in the industry obsolete, and could slow growth in the industry.

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