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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 regarding Organic Livestock and Poultry Practices (OLPP). The Obama Administration rule amended National Organic Program (NOP) regulations for USDA-certified organic livestock and poultry practices. It addressed 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 supported these new requirements, others in Congress and in the poultry industry opposed the rule, especially its animal welfare provisions.

On February 9, USDA's Agricultural Marketing Service (AMS) announced a delay in the effective date of the final rule, which was followed by a series of additional extensions effectively delaying implementation of the rule. This action provided the Trump Administration time to review the rule and decide whether to proceed with the rulemaking begun under the Obama Administration. Effective May 13, 2018, USDA announced in the *Federal Register* that it was withdrawing the OLPP rule based on its assessment that the "OLPP final rule would exceed USDA's statutory authority" and also its revised assessment of the OLPP rule's costs and benefits.

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.

Summary of 2017 OLPP Final Rule Provisions

USDA's NOP regulation broadly addressed care and production practices, transport, slaughter, and living conditions for organic livestock and poultry. Accordingly, the 2017 OLPP final rule:

1. Clarified how producers/handlers participating in the NOP must treat livestock and poultry to ensure their well-being.
2. Clarified when and how certain physical alterations may be performed on organic livestock and poultry to minimize stress. Prohibited some forms of physical alterations.
3. Set maximum indoor and outdoor stocking densities for organic chickens, which would vary depending on the type of production and stage of life.
4. Defined outdoor space and required that outdoor spaces for organic poultry include soil and vegetation.
5. Added new requirements for transporting organic livestock and poultry to sale or slaughter.
6. Clarified the application of USDA Food Safety and Inspection Service (FSIS) requirements regarding the handling of livestock and poultry slaughtered at certified organic livestock and poultry establishments. Also provided for the enforcement of USDA organic regulations based on FSIS inspection findings.
7. Established indoor space requirements for chickens. Provided that AMS could propose space requirements for other avian species in the future in addition to required other indoor requirements (e.g., exit doors, ammonia levels, lighting).

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

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 about 3% of total organic retail food sales. At the time of the original rulemaking, USDA reported that organic egg sales totaled \$514 million, or about 10% of all U.S. retail sales (organic and nonorganic). Organic poultry meat sales 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 data were not available for organic beef and pork meats but likely comprised 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).

U.S. Organic Egg and Poultry Production

USDA published its proposed OLPP rule regarding organic livestock and poultry practices in April 2016. After considering public comments, USDA published final regulations in January 2017. The final NOP regulation broadly addressed care and production practices, transport, slaughter, and living conditions for organic livestock and poultry (see **text box**). Amended requirements covered 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 OLPP rule's care and production provisions addressed medical treatments, animal health care, and euthanasia. The rule clarified that hormones are not allowed in organic production and that forced molting is not permitted. Certain physical animal alterations were prohibited, including, for example, debeaking of birds and docking of cow's tails (with limited exception for certain physical alterations). For poultry, the rule covered 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 rule also covered humane handling requirements for transporting and slaughtering animals, and prohibits certain practices.

The final OLPP rule addressed 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 covered 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 rule also addressed **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 addressed the need for shade, shelter, exercise areas, fresh air, direct sunlight, and clean water for drinking. For poultry, the rule specified 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 final OLPP rule did allow for temporary confinement of birds indoors when soil and water quality could put animals at risk.

The final OLPP rule clarified 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)). Enclosed porches would no longer be considered to provide outdoor space in organic poultry production, consistent with NOSB recommendations.

At the time of the original rulemaking, USDA estimated the cost to poultry producers at \$8.2 million to \$31.0 million annually. Similar cost estimates to livestock producers were 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. The Trump Administration's *Federal Register* notice announcing its plans to withdraw the OLPP rule, in part,

justified its decision claiming "the costs of the OLPP final rule outweigh potential benefits" and that implementation would result in a reduction in the number of organic egg producers, thus hurting consumers, among other claims.

Support/Opposition to NOP Regulation

USDA received nearly 6,700 comments on its proposed rule. The organic foods industry generally supported 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 viewed these changes as "essential" to maintain the integrity and value of the organic seal/label to consumers. USDA under the Obama Administration further claimed that the amended requirements are needed to "ensure consumer confidence ... by promoting consistency across the organic industry." However, some in the industry claimed that the requirements are not restrictive enough and would erode consumer confidence in the organic seal.

Much of the disagreement over the rulemaking centered on the rule's animal outdoor access requirements. At the time, USDA claimed that consumers value outdoor access for organic animals. The 2017 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 regulations were also controversial and opposed by some in the U.S. dairy industry. Those NOP changes now require that organic ruminant animals 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 strongly opposed the OLPP rule. In May and June 2016, several Members of Congress sent letters to USDA criticizing USDA's proposed rule. In addition, House report language on the FY2017 agriculture appropriations bill (H.Rept. 114-531) specifically addressed the proposal, expressing concerns "about the potential disruption to existing organic producers and their supply chains, as well as ensuring that animal health is fully protected" and directing USDA to conduct a "thorough assessment on the costs of compliance and alternatives" for existing producers. Much opposition was directed at changes in the NOP egg standards, especially elimination of poultry porches. Those opposed to the changes cited biosecurity and avian disease concerns by potentially exposing animals to soil-borne parasites, wild birds and rodents, and increased predation. Some claimed producers were 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 the amended requirements. Many expressed concerns about the rule's overall cost.

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