

January 17, 2018

Paul Lewis, Ph.D.

Director, Standards Division, National Organic Program

USDA-AMS-NOP

Room 2646-So., Ag. Stop 0268

1400 Independence Ave., SW

Washington, DC 20250-0268

**SUBMITTED VIA REGULATIONS.GOV**

**Re: Docket No. AMS-NOP-15-0012-6686 Organic Livestock and Poultry Practices;  
Withdrawal. Comment from Interested Parties.**

Dear Dr. Lewis,

The undersigned animal welfare, environmental, and consumer protection organizations thank the Agricultural Marketing Service (AMS) for the opportunity to comment on the withdrawal of the Organic Livestock and Poultry Practices (OLPP) rule. These groups strongly support policy initiatives that promote higher welfare, sustainable farming. The OLPP rule reflects decades of input from interested parties to further clarify existing National Organic Program (NOP) standards. We believe the rule should not be withdrawn. Instead, the rule should be implemented, as-written, without further delay.

**The plain language of the Organic Foods Production Act (OFPA) and its legislative history confirm that AMS has authority to promulgate animal welfare regulations.** Section 6509(d)(2) of the OFPA provides “The National Organic Standards Board shall recommend to the Secretary standards in addition to those in paragraph (1) for the care of livestock to ensure that such livestock is organically produced.” Further, section 6509(g) provides: “The Secretary shall . . . develop detailed regulations . . . to guide the implementation of the standards for [organically produced foods].” AMS argues that 6509(d)(2) only applies to an animal’s “health care,” not its welfare. These two cannot be legally separated as evidenced further below. Moreover, the legislative history of the OFPA affirms USDA is authorized to regulate animal welfare when enacting organic livestock regulations.

**AMS has previously acknowledged its authority to regulate animal welfare.** AMS’s “current thinking” that it does not have authority to regulate animal welfare is clearly contrary to its previous findings. In the initial OLPP rulemaking, AMS addressed concerns regarding its authority to regulate animal welfare and living conditions and found that it did have authority under OFPA to regulate within this sphere. While an agency may reverse course, it must have a reasoned explanation for doing so. Additionally, AMS *has* regulated animal welfare under OFPA in the past—the OLPP rule merely clarifies and expounds upon requirements that were already in the original NOP regulations.

**AMS's second-guessing of the agency's assessment of the regulatory impact to farmers violates the Administrative Procedure Act.** AMS claims that the burgeoning organic market indicates that the NOP regulatory regime is sufficient to meet consumer expectations and that additional costs to producers will not be outweighed by the benefit of implementing the OLPP rule. However, as made clear in the NOSB consultation process, comments made to AMS relating to the final rule and delay, and consumer surveys, products currently certified under the NOP do not meet consumer expectations. In fact, consumers for the most part have a fundamental misunderstanding of what animal care standards are required under the NOP. It is this market failure that the OLPP rule was promulgated to correct. Agency reconsideration of a rule by flyspecking economic analysis approved by the agency and the Office of Management and Budget under a previous administration is arbitrary, capricious, and an abuse of discretion.

**Animal health and animal welfare are inextricably linked, according to the World Organization for Animal Health (“OIE”).** In its Guiding Principles for Animal Welfare, the OIE asserts that there is “a critical relationship between animal health and animal welfare.” Animal welfare standards covering transport, slaughter, and production practices for individual farm animal species comprise one section of the OIE’s Terrestrial Animal Health Code. A large body of scientific research conducted over the last half century has demonstrated that poor animal welfare can lead to increased susceptibility to disease. Canada and the European Union (EU)—OIE Member Countries and two of America’s largest organic trading partners—have adopted national organic regulations that recognize the significance of animal welfare to animal health.

**USDA acknowledges the need to maintain animal welfare to facilitate animal health.** Many USDA agencies acknowledge a critical, causal link between animal welfare and animal health, including the Animal and Plant Health Inspection Service, the Food Safety and Inspection Service, the National Institute of Food and Agriculture, the Agricultural Research Service, and—importantly—AMS, which houses the National Organic Program. In fact, some agencies have issued publications and other materials highlighting the health-welfare connection. AMS’s Guidelines for Organic Certification of Poultry, for example, state “Animal health is the result of preventative and on-going management efforts to create living soils, provide nourishing forage and feed, and improve the quality of livestock life. Animals must be kept in healthy, low stress environments.”<sup>1</sup>

As such, the undersigned groups respectfully ask AMS to not withdraw the OLPP rule. Instead, these groups urge AMS to implement the final OLPP rule as-written without further delay. Thank you for the opportunity to comment on the withdrawal of the Final Rule.

Sincerely,

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<sup>1</sup> U.S. Department of Agriculture. Guidelines for Organic Certification of Poultry. Accessed January 11, 2018 from <https://www.ams.usda.gov/sites/default/files/media/Poultry%20-%20Guidelines.pdf>.



American Society for the Prevention of Cruelty to Animals

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Animal Equality



Animal Legal Defense Fund



Animal Welfare Institute



Center for Food Safety



Compassion in World Farming



Farm Forward



Food Animal Concerns Trust



Food Integrity Campaign, Government Accountability Project



Friends of the Earth



Green America



The Humane League



The Humane Society of the United States



Lady Freethinker



Mercy For Animals



Organic Consumers Association



World Animal Protection