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National Organic Program
United States Department of Agriculture
1400 Independence Avenue SW
Room 2646-So., Stop 0268
Washington, DC 20250-0268

Docket Number: AMS-NOP-21-0073

Re. Organic Livestock and Poultry Standards — proposed rule

These comments are submitted on behalf of the members of OrganicEye, an organic industry watchdog. We represent the interests of the public with a constituency that includes certified organic farmers, certified organic businesses, and consumers willing to pay a premium for food produced to standards that meet their expectations.

Thank you for the opportunity to provide public input on the Organic Livestock and Poultry Standards. Unfortunately, we do not support this ill-advised effort to close the “loopholes” that have allowed the continued confinement of organic laying hens and broilers. USDA's inaction on enforcement, based on the current regulations, has violated the spirit and letter of the organic law, allowing factory farm livestock operations to manage their flocks using practices that are not environmentally sustainable, do not promote the health of their livestock, and fail grievously on meeting the expectations of eaters/consumers and the common working definition of “organic” agriculture.

In terms of the provisions focusing on the management of organic poultry, the proposed draft rule is woefully inadequate to address current improprieties in the production of organic eggs and meat birds. In some regards, it will codify the current violations of the spirit and letter of the law, and other elements might actually undermine the intent that all organic livestock have the opportunity to go outdoors.

Here are a few of our concerns:

1. **Allowing porches with concrete floors**, as are currently used in giant factory-sized buildings, some housing as many as 200,000 birds, **to be counted as outdoor space means virtually no birds will actually get outside** because they would first have to pass through this buffer zone where there is no vegetation, no food, no water, and no reason to enter. These buildings are being operated by corporations who have testified that for the “health and safety” of the birds they don’t want to let them outside—and right now they are producing the vast majority of the organic eggs in this country.
2. Once outside, depending on the size and age of the bird, **broilers and layers will only have one or two square feet each** to roam around. In Europe they are required to have 43 square feet. In the UK, an organic house can hold a maximum of 3000 birds (with multiple houses allowed on each farm).
3. **Up to 50% of the outdoor space can be paved over with concrete or gravel.** This means the birds will first have to exit through a series of small doors, then traverse a semi-enclosed porch. Depending on the construction and configuration of the space, the birds might then have to leave the porch through more tiny doors or step over a concrete curb or parapet wall (these are installed on modern buildings in varying heights to prevent intrusions by rodents). Some birds may even have to go down ramps if the porch is on a two-story building. The animals would then need to walk across a paved or graveled surface before they reach any semblance of a natural environment (so they can engage in their natural instinctive behaviors of foraging).
4. When the birds are indoors, the same porches can be counted as part of the indoor space requirements. **Indoors, birds will also only have one or two square feet each, depending on their weight at any point in their development. And by counting the porches, they will even have less.** Again, they are unlikely to exit through small doors into an area which is barren. Imagine living an entire life in a space that size! Even in certified organic egg production, the USDA is allowing laying hens to be raised in aviaries (glorified cages) **stacking them, on multiple levels, floor-to-ceiling** (see photo below of certified organic flock—larger houses are typically two-story and have as many

as five vertical tiers on each floor). There is no way that any birds that aren't in close proximity to the small doors will ever be able to make their way through thousands of other animals to access the outdoors.



In the course of my work, I have likely visited more certified hen houses, **of every scale**, than probably anyone in the US. And even with adequate space outside and doors open, usually only 1-10% of the birds ever venture out. And certifiers allow that normally happens for a very limited number of hours each day.

I've never seen even one bird out at larger commercial broiler operations. Zero animals outside.

There are number of reasons birds don't currently go outside even if outdoor space is provided. None of them are addressed in the draft rule.

The vast preponderance of organic eggs are coming out of houses/systems with two vastly different scales: the vertically-integrated, large corporate agribusiness operations, almost exclusively utilizing aviary structures (with as many as 200,000 birds in each building – Cal Maine, Eggland's Best, etc.) and marketers that contract with independent farmers, many Amish and Mennonite families, for production with houses typically in the 20,000-30,000-bird range (Egg Innovations, Pete and Gerry's, etc.).

Buildings in those scales typically require flow-through ventilation where large fans exist on one end of the building and makeup air comes through louvers on the other. When they open small doors, so the birds can theoretically exit, the animals face gale-force winds when trying to venture out.

And if they do go out, there is no food or water and little, if any, shade. There's not much of an incentive to venture outdoors. If any appreciable number do consistently exit the building, they turn the ground into a "moonscape" by compacting the soil and urinating and defecating on it. It's far from a healthy ecosystem (poor management, over stocking, and degrading the ecological value and soil fertility is, of course, a violation of the existing standards).

In addition to there being no minimum standard for the number of doors or how large the doors need to be, small doors near the floor of the building typically open outwards and up. The birds are naturally fearful of avian predators and many will not exit the building unless they can see the sky and know it is safe. Farmers who have installed vertical exit doors, like the passage a human being would require, typically find more birds going outdoors.

Then there's the all too typical problem of buildings, whether housing 5000 or 30,000 birds, having small doors along one side of the structure. (I have never observed any of the larger structures having any exits that lead outdoors.) With typical stocking densities, there is no way for birds that are any appreciable distance away from those small doors to exit the building without invading the "personal space" of others in the flock. The stress these animals are under already causes feather picking and cannibalism, and animals are not motivated enough to go outside to walk through a gauntlet.

The houses where I've witnessed the most birds going outdoors generally have doors on two sides of the building, typically large overhead garage-type doors on the end of the building and smaller doors along the length.

Even with the brands that tout "pasture" for their birds and provide over 100 square-foot per bird outdoors, rarely do they ever get more than 40-50% of the birds outside given the scenario, for doors, laid out in the prior paragraph.

Organic consumers don't expect the birds to have some token "access to the outdoors." If, as the draft rule proclaims, amendments to the regulations need to take place to meet consumers concerns and expectations—those expectations must be recognized as including birds that are actually being managed to maximize the time they spend outdoors.

5. Based on agribusiness statements claiming the birds can't go outside at a young age, **laying hens can be confined for as long as the first 21 weeks** of their lives. Since they've never gone outside for well over the first five months of their lives, they are no longer interested in, or are scared of, the outdoors. Given that Amish and other commercial-scale producers let their birds go out after just the

first few weeks of their lives—and end up with happier and healthier chickens—we find claims to the contrary to be specious.

6. **In all of our investigations, we have never seen a broiler chicken outside** of commercial-scale houses. This draft rule will not change that. Their proposal allowing for four weeks of confinement will, in many cases, equate to the vast majority of the chicken's life. At that point in their maturation, few birds that have lived in complete confinement are going to go outside—contrary to consumer expectations. (The chickens I buy from family-scale growers in my local community are outdoors almost their entire lives without any appreciable attrition due to health concerns or predation.)
7. The idea that these birds will be able to exhibit their “natural behaviors” in these grossly overcrowded conditions, as required by current law, is an attempt to deceive the public. Because the birds are under such stress, **the draft rules will allow chopping off part of their beaks** to prevent them from pecking their flock mates. At most, they should be allowed to merely take off the sharp tip (something the industry refers to as “tipping”). However, in some smaller operations, more humane conditions and lower stocking levels make these alterations unnecessary. **Without healthy beaks, birds cannot effectively engage in their customary foraging behavior, even if they do ever actually get to be outdoors.**
8. The new draft rule also **eliminates standards requiring natural light in the hen houses** substituting, effectively, 100% artificial light. This is unacceptable.
9. Various elements of the USDA proposal allow implementation to be phased in over **three, eight, and 15 years—an outrageous giveaway to factory farm interests and industrial-scale operations that are violating the existing standards!**

A one-year phase in, similar to the rulemaking that addressed pasture compliance for ruminants, would be reasonable and customary. A stair-stepped phase-in process could be developed by certifiers when land needs to be transitioned around the building. However, as concluded in the Federal Register posting, many of the largest houses do not have enough land between them to accommodate even the woefully inadequate proposal in this draft for outdoor space. Those buildings are out of compliance under the existing regulations and will never come into true compliance, even under the anemic proposal. They should be transitioned to conventional production after one year or at the end of their current organic flock, whichever comes first.

10. In terms of economic analysis, more weight should be given to both the impacts on ethical livestock producers, who are now complying with the spirit and letter of the law, and the lost “opportunity” that has prevented new entrants into certified organic poultry production.
11. Provisions related to healthcare do not adequately emphasize that it is incumbent upon organic livestock producers to prevent illness rather than to simply remediate it after it occurs. That requires healthful and humane living conditions. There is a documented, direct relationship between stocking density, being able to engage in natural instinctive behaviors, and the health of the flock.
12. The chronology of the “approval” of the first porch, illegally lacking consultation with the NOSB, as the Organic Food Production Act requires, by a career bureaucrat at the USDA who would later go to work for the same agribusiness for which he approved the porch, was inherently corrupt. That approval came within hours, whereas almost everything else that goes through USDA guidance and rulemaking takes years or decades (in terms of these rules, well over a decade).

Thanks to the current lax enforcement by the USDA, only a small percentage broilers and layers actually ever get outside (usually on smaller family farms). For the past decade, organic stakeholders have collaborated with the National Organic Standards Board in an effort to rein-in these abuses. This draft does nothing to ameliorate the problem and is loaded with boasting about protecting organic integrity and respecting the sentiments of organic shoppers.

Currently, most commercial poultry operations of all scales have no legitimate outdoor access. And because there is no financial incentive or regulatory enforcement ensuring otherwise, birds virtually never actually go outside, even when outdoor space is provided. It is typical to observe only 1-10% ever venturing outdoors.

We demand more than just token “access to the outdoors” for all certified organic livestock, including laying hens and broilers. Like legal requirements for grazing ruminants, we demand that poultry actually be encouraged and afforded the opportunity to enjoy their lives outdoors, expressing their natural instinctive behaviors—resulting in more flavorful and nutrient dense meat and eggs.

Respectfully submitted,

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