



November 10, 2022

Erin Healy, MPH
USDA-AMS-NOP, Room 2646-So., Ag Stop 0268
1400 Independence Ave. SW
Washington, DC 20250-0268

Docket: AMS-NOP-21-0073

RE: Organic Livestock and Poultry Standards (OLPS) Proposed Rule

Dear Ms. Healy:

Thank you for this opportunity to provide comment on the Organic Livestock and Poultry Standards (OLPS) Proposed Rule.

The Organic Trade Association (OTA) is the membership-based business association for organic agriculture and products in North America. OTA is the leading voice for the organic trade in the United States. Our members include growers, shippers, processors, consumer brands, certifiers, farmers' associations, distributors, importers, exporters, consultants, retailers and others. OTA's mission is to promote and protect organic with a unifying voice that serves and engages its diverse members from farm to marketplace.

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(1) Executive Summary

The 2022 Organic Livestock and Poultry Standards (OLPS) rule proposes to correct the most egregious errors of the *Final Withdrawal Rule* of the 2017 Organic Livestock and Poultry Practices (OLPP) rule, but on an unacceptable timeline. This Comment focuses on directing AMS away from a plan that will lead to more litigation and towards a rulemaking that comports with the Organic Foods Production Act¹ and will bring about an end to the unlawful use of “porches” in poultry production and improve the livestock rearing practices across all organic operations.

OTA continues our longstanding support for rulemaking to clarify and strengthen existing livestock and poultry practice standards in the organic regulations to create greater consistency among organic producers and certifiers and respond to consumer expectations and demand for organic livestock products. The Organic Foods Production Act not only contains the **statutory authorization** for the measures appearing in the proposed rule but mandates that such measures be developed. The standards clarifications with the rule are necessary to alleviate **market failure**, level the playing field for organic producers, and help eliminate consumer confusion about the meaning of the USDA organic label. This rulemaking effort is based on a long history of public and transparent work and is supported by a wide cross-section of stakeholders.

OTA **supports key provisions** within the practice standards of the proposed rule that prohibit enclosed porches as outdoor access for poultry, support producers in protecting flocks from biosecurity and food safety risks, and protect soil and water quality while providing meaningful outdoor access.

Our comments also identify several **minor but critical revisions** to the proposed practice standards that will strengthen alignment with third-party animal welfare certification and minimize producer cost while retaining all benefits of the rule, such as:

- ✓ Broiler stocking density should be revised to 6 lbs/sqft for both indoor and outdoor space
- ✓ Minimum scratch area for layers in slatted/mesh floor housing should be revised to 15%
- ✓ Ammonia action limits from broilers should be revised to 20ppm

Timely implementation is critical. OTA accepts a 5-year implementation time only for currently-certified poultry operations to comply with outdoor space requirements. The excessively long 15-year implementation option is unacceptable as it would amplify the existing consumer confusion and extend the market failure that USDA acknowledges in the proposed rule. OTA recommends limiting the 5-year implementation time frame only to currently-certified operations, applying a consistent approach across layers and broilers, and removing extended implementation times for new entrants. Provided that USDA adopts our recommended broiler stocking density of 6 lbs/sqft, OTA supports a 1-year implementation time for broiler operations to comply with indoor space requirements. All new entrants must comply with all provisions within 1 year of publication of the final rule. OTA’s recommendations seek to expediently end market failure and consumer confusion while minimizing costs and disruptions to operations and the marketplace.

¹ Organic Foods Production Act of 1990, Pub. L. No. 101-624, § 2102, 104 Stat. 3359 (1990)(codified at 7 U.S.C. §§ 6501-6522) (“OFPA”); 7 C.F.R. pt. 205 (National Organic Program); S. Rep. No. 101-357 (1990), as reprinted in 1990 U.S.C.C.A.N. 4656, 4949.

OTA Statement Legal Disclaimer

This Comment addresses and should be construed solely in light of the analysis and policy choices presented in the Organic Livestock and Poultry Standards proposed rule appearing at 87 Fed. Reg. 152, 48562 (August 9, 2022). It is submitted without prejudice to, contravention of or waiver regarding any of the arguments presented and pending in *OTA v. Vilsack*, Case No. 1:17-cv-1765 (U.S.D.C.D.C) (2017). OTA continues to seek complete *vacatur* of the unlawful *Final Withdrawal Rule*, 83 Fed. Reg. 10775-83 (March 13, 2018), and the policies it expressed, and nothing in this Comment conflicts with that purpose.

(2) Introduction

This Comment is the latest in a multi-year effort by OTA to support USDA in refreshing and updating its existing organic livestock and poultry practice standards². The existing standards have been a central component of the federal regulation of the organic products marketplace from the outset, of the National Organic Program. Mandatory requirements have *always* included “Year-round access for all animals to the outdoors, shade, shelter, exercise areas, fresh air, clean water for drinking, and direct sunlight, suitable to the species, its stage of life, the climate, and the environment.”³ Unfortunately, in the years after promulgation, these foundational directives were not fully or consistently applied resulting in a disrupted organic marketplace, including commerce in inconsistent organic products, unequal enforcement and informational market failure.

In 2017 the Organic Livestock and Poultry Practices (OLPP) Final Rule clarified and extended sections of the livestock and poultry regulations and was signed by then-Secretary Vilsack. That final rule defines appropriate requirements for space, density and outdoor access in organic poultry production, among other clarifications for how producers and handlers must treat livestock and chickens to ensure their health and well-being throughout life, including transport and slaughter, and physical alterations. Shortly after inauguration in 2017 USDA initiated administrative procedures to block and then withdraw the OLPP in 2018 (See Appendix 1 for timeline). USDA’s withdrawal of that rule is the subject of ongoing litigation.

Longstanding and widespread support for stronger organic animal welfare regulations expands across an extremely broad cross-section of stakeholders throughout the public-private partnership. Public comment opportunities related to the OLPP Rule solicited approximately 119,550. Comments in support for implementation of the OLPP exceeded 95% and could easily be as high as 99%. Supporters represent a wide cross-section of organic stakeholders, including organic producers, certifiers, advocacy groups, egg companies, retailers, consumers, and thousands of other stakeholders. Congress, the Accredited Certifiers Association, and hundreds of producers submitted letters to USDA in the wake of the 2017 delay of OLPP rule indicate steadfast support of the rule and urgency of implementation.

² 82 Fed. Reg. at 7042-92 (January 19, 2017) (hereinafter “OLPP”); 82 Fed. Reg. at 9967 (February 9, 2017) (“First Delay Rule”); 82 Fed. Reg. at 21,677 (May 10, 2017) (the Second Delay Rule); 82 Fed. Reg. 21,742 (May 10, 2017) (“Proposed Third Delay Rule”); 82 Fed. Reg. 52,643 (November 14, 2017) (“Third Delay Rule”); 82 Fed. Reg. 59,988-992 (Dec. 18, 2018) (the “Proposed Rescission”); 83 Fed. Reg. 10,775-783 (March 13, 2018) (“Rescission”); 85 Fed. Reg. 22664-677 (April 23, 2020) (“Initial Review”) (Remand proceeding); 85 Fed. Reg. 57937-944 (Sept. 17, 2020) (“Final Review”) (Remand proceeding).

³ The regulations specifically designated for livestock are set forth at 7 C.F.R. §§’s 205.236-39,

In the time since USDA blocked implementation of the OLPP Final Rule, NOSB has passed three unanimous resolutions urging immediate issuance of final animal welfare regulations (spring 2017, spring 2021, fall 2022). In April 2022, NOP requested comments on prioritization of organic standards development activities, and commenters continued the consistent drumbeat that organic animal welfare standards are a top priority. The U.S. Senate (20 Senators, bipartisan) and House (57 Representatives) submitted letters to USDA in 2022 in response to the OLPS Comment Period urging timely implementation.

The 2022 Organic Livestock and Poultry Standards (OLPS) Proposed Rule carries forward substantive policies in that are largely identical to the 2017 OLPP Final Rule and are based on the same unanimous National Organic Standards Board (NOSB) recommendations and a decade of public NOSB meetings, lengthy discussions, public comment periods and consultation with the organic community. The practice standards within the OLPS rule reflect the long history of public and transparent work to develop animal welfare for organic livestock, and reflects significant stakeholder engagement, feedback and support from consumers, farmers, processors, retailers, veterinarians, and experts in animal welfare and animal science.

(3) Scope of Statutory Authority

The question of the scope of authorization from Congress to the Secretary to adopt regulations for organic livestock animal care has been at the center of the legal dispute between USDA and OTA. In *OTA v. Vilsack* OTA has consistently and repeatedly argued that the OFPA not only contains the authorization for the measures appearing in the proposed rule but mandates that such measures be developed.⁴ Further, the failure to read the statute correctly has caused collateral harm to the organic marketplace that contravenes other provisions of the OFPA. Accordingly, OTA agrees with the proposed reversal of the Final Withdrawal Rule’s unlawful conclusion that (1) the USDA lacked statutory authority under the OFPA to promulgate *any* animal production standards (beyond restrictions on certain synthetic medications and production aids) and its conclusion that (2) a single national standard for organic animal care was not required by the OFPA.⁵

The presently proposed amendments to the existing regulations are extensions and clarifications of existing organic livestock rearing requirements. OFPA was enacted in 1990 to correct a market failure arising from a patchwork of state and private organic production and processing standards that resulted in inconsistent definitions for organic products, consumer confusion, and fragmented markets for organic producers, processors and products. The purpose of OFPA is “(1) to establish national standards governing the marketing of certain agricultural products as organically produced products; (2) to assure consumers that organically produced products meet a consistent standard; and (3) to facilitate interstate commerce in fresh and processed food that is organically produced” (7 U.S.C. § 6501). OFPA establishes an “opt-in” approach to regulating organic products by creating “national standards” solely for those persons who voluntarily choose to produce and market products bearing an “organic” marketing claim.

The following sections of OFPA, inter alia, authorize the updated and refreshed animal rearing provisions in the OLPS.

⁴ The statutory construction arguments appear in ECF 98, ECF 121 and ECF 140-1 and ECF 154.. They are adopted herein by reference and attached hereto as Attachment 1.

⁵ See 87 Fed. Reg. at 48569 (“OFPA does provide the requisite authority for regulations regarding livestock and poultry health care practices and living conditions, including regulations regarding animal welfare.”)

- **7 U.S.C. § 6509** establishes statutory minima for organic livestock production practices and materials. It further mandates the Secretary of Agriculture adopt requirements in addition to those in the statute for raising organic livestock. The pathway for such additions was chosen by Congress when it mandated the National Organic Standards Board shall “recommend to the Secretary standards in addition” to those in the statute regarding “the care of livestock.” The standards adopted must also serve the purpose of ensuring “that such livestock is organically produced.”⁶ Thus Congress directed standards be developed that both affirmatively restrict certain practices and facilitate certification and enforcement so consumers know the product is “organically produced.” Congress further described the need for and the pathway to these regulations-- “The Secretary shall...develop detailed regulations, with notice and public comment, to guide the implementation of the standards for livestock products provided under this section.”⁷
- **7 U.S.C. § 6512** authorizes the Secretary to restrict conventional agricultural production practices addresses not specifically addressed in prior statutory sections and upon reaching a determination that “such practice would be inconsistent” with the federal certification scheme, to exclude them. Clarification of existing requirements to expressly exclude practices that were erroneously or mistakenly allowed is the heart of this statutory authorization. The affirmative livestock rearing practices in the OLPS are designed to restrict practices now determined inconsistent with the *existing* federal regulations and to clarify the meaning of the prior livestock rearing regulations around which misunderstanding had arisen.
- **7 U.S.C. § 6506** mandates many general elements of the federal organic scheme and includes a plenary authorization: “A program established under this chapter shall...require such other terms and **conditions as may be determined by the Secretary to be necessary.**” This authority is as broad as any authorization Congress can delegate and easily encompasses the updating of the existing organic livestock rearing regulations.
- **7 U.S.C. § 6518** addresses the structure and responsibilities of the National Organic Standards Board and expressly requires NOSB advise USDA about the implementation of standards and practices for organic livestock production. This section must be read in *pari materia* with Section 6509. Read together it is beyond dispute that the OFPA requires rather than prohibits the development of detailed recommendations pertaining to practices used in raising organic livestock.

The authority of USDA to promulgate standards for animal welfare is also clearly supported in the legislative history. The Senate Report⁸ that accompanied the OFPA legislation in 1990 demonstrates the Senate’s intent and expectation that **continual updating** of the organic standards keep pace with our evolving knowledge of production systems. The Senate also acknowledged that that there was, at the time, limited knowledge, or consensus on appropriate organic livestock standards, and explicitly stated the need for need for additional evaluation of organic livestock production standards by the NOSB: “[T]he Committee expects that USDA, with the assistance of the National Organic Standards Board will **elaborate on livestock criteria**” and “The Board **shall recommend livestock standards**, in addition to those specified in this bill, to the Department.” When the House and Senate were reconciling⁹ their respective versions of the OFPA, Congress stated that

⁶ See Section 6509(d)(2)

⁷ *Id.* At Section 6509(g)

⁸ S. REP. NO. 101-357 (1990)

⁹ H.R. Rep. 101-916 at 1177-78 (Oct. 22, 1990)

the “Conference substitute adopts the House provision with an amendment which requires the Department to hold hearings and **develop regulations regarding livestock standards** in addition to those specified in this title.”

Examples where USDA has already exercised its statutory authority to develop livestock practice standards include:

- Final Rule 65 Fed. Reg. at 80547; December 21, 2000);
- Final Rule 75 Fed. Reg. 7154; February 17, 2010 (clarifying the pasture and grazing requirements for organic ruminant livestock)

Failure to Consult the NOSB Violates OFPA and APA

The Organic Foods Production Act (“OFPA”) imposes unique pre-rulemaking duties on the Department that are in addition to the requirements of the Administrative Procedure Act (“APA”). The statutory duties require the Department to consult with the National Organic Standards Board (“NOSB”) and obtain its recommendation for standards “for the care” of livestock.¹⁰

In stark contrast to the language of the statute, the Department claimed in the pending litigation that, “Although the OFPA requires USDA to consult with the NOSB on specified topics, livestock production practices are not one of those topics.”¹¹ OTA objected: “The Department’s crabbed construction of the Act conflicts with unambiguous statutory obligations to consult the NOSB.”¹² The Department’s failure to consult the NOSB in the instant rulemaking is an unfortunate extension of an unlawful policy adopted by the prior administration.

The prior and current administration’s refusal to consult the NOSB breaks sharply with USDA’s previously well-settled application of the OFPA. Since the creation of the NOSB and the inception of the National Organic Program, the Department has observed a well-settled practice of publishing proposed and final organic livestock standards *solely* following the receipt and consideration of recommendations from the NOSB.¹³ The NOSB recommendations are always preceded by significant internal development, public comment and public deliberations. The Department failed to consult with the NOSB on each of the three *OLPP* delay rules; failed to consult the NOSB on the *Proposed Withdrawal Rule* and *Final Withdrawal Rule*; and failed to consult regarding the two administrative proceedings following court ordered remands to reconsider its economic analyses. In June 2021 the Department issued a press statement that it would

¹⁰ See 7 U.S.C. § 6503(a) and (c); § 6509(d)(2).

¹¹ See ECF No. 150, at p. 31; *see also* 83 Fed. Reg. at 10,779 (March 13, 2018) (stating all pre-*OLPP* organic livestock regulations may be *ultra vires*.)

¹² See ECF No. 140-1, at p. 31.

¹³ The administrative record includes the declarations of twelve former NOSB chairpersons whose service covers nearly the entire period since creation of the NOSB in 1990. The declarations are bipartisan, with the declarants having served under both Republican and Democratic administrations. Each declaration condemned the position now taken up by the present administration that the NOSB need not be consulted by the Department and that rules for “organically produced” livestock do not include the measures adopted in the *OLPP*. (See Attachment 2: Declarations)

“reconsider” the prior administration’s legal positions.¹⁴ However, more than one year passed before the present proposed rule was published in August 2022 and no consultation with the NOSB occurred during that fourteenth month period.¹⁵

For the foregoing reasons, OTA objects to the failure to consult the NOSB and the Department’s position that the OFPA does not require consultation on this rulemaking. The proposed rule and any final rule based thereon are in excess of the Department’s “statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2).

(4) Economic Analysis & Market Failure

The *OLPS RIA* Understates the Benefits and Overstates the Costs Associated with Extended Implementation Periods. A Correct Analysis Supports a Revised Implementation Period that is Shorter, but is in No Case Longer, than the One Supported by OTA.¹⁶

The following sub-sections review the cost-benefit analysis offered in the *Regulatory Impact Analysis and Initial Regulatory Flexibility Analysis* (“RIA”) for the *OLPS*. OTA’s principal issue is the singular focus on a willingness to pay analysis (“WTP”) to determine the “benefit” of the proposed rule, which is then weighed against a thicket of projected “costs.” This approach delinked the time interval for implementation from the question of ongoing harm/cost caused by retaining the existing regulatory approach. In other words, the many benefits arising from the elimination of the misbegotten use of “porches” in organic poultry production (while often stated and restated in the *OLPS*) were largely overlooked when assessing how long to let the present enforcement forbearance against “porches” to persist. The qualitative benefits listed in 2017 in the *OLPP RIA* were not catalogued or considered a material factor in the cost-benefit analysis in the *OLPS RIA*.¹⁷ The “baseline” conditions thus caused the “costs” to be overstated and the “benefits” understated. As is more fully discussed below, this caused AMS to fail to consider relevant data and statutory factors

¹⁴ “We intend to reconsider the prior Administration’s interpretation that the Organic Foods Production Act does not authorize USDA to regulate the practices that were the subject of the 2017 Organic Livestock and Poultry Practices (OLPP) final rule.” See <https://www.usda.gov/media/press-releases/2021/06/17/statement-agriculture-secretary-tomvilsack-organic-livestock>.

¹⁵ See Press Release No. 117-22 (August 5, 2022) (announcing release of new proposal).

¹⁶ The *OLPS RIA* carried forward some of the information in the existing administrative record but not all. This selective approach to the existing record includes a notable omission: reference to the Comments describing the many qualitative benefits for society and farm animals. See e.g. *OLPS RIA*, at fn 27 (citing prior materials in the administrative record). The Comment of the ASPCA, AWI and the Humane Society of the United States in the *OLPP* record referenced both qualitative and quantitative support for concluding that improved animal welfare provides societal benefits, as well as improves economic outcomes for livestock producers. This analysis included reduced use of synthetic medications, a key statutory goal of the OFPA according to the *Final Withdrawal Rule*. See e.g. 83 Fed. Reg. at 10,776; see also *OLPP* Comment of ASPCA and AWI at pp. 1-12.

¹⁷ See *OLPP RIA* at p. 9 (“qualitative benefits”) In 2017 the *OLPP* the qualitative benefits: Protects the value of the USDA organic seal to consumers; Facilitates level enforcement of organic livestock and poultry standards; Alleviates the need to maintain additional third- party animal welfare certification and the associated costs and resources.

Congress intended be at the forefront of organic rulemaking. See *Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

A. The *OLPS RIA* Failed to Give Appropriate Weight to the Qualitative Benefits of the *OLPS*.

The *OLPS RIA* recognized benefits of extinguishing the current regulatory approach to “porches” that it did not account for when comparing costs to benefits.

The benefits of this proposed rule would be the real improvements in attributes (e.g., animal welfare) for society.¹⁸

This rule will have broad, important benefits for the organic sector as a whole that are difficult to quantify. Standards that more closely align to consumer expectations will sustain demand and support the growth of the \$62 billion U.S. organic market. Furthermore, clear parameters for production practices ensure fair competition among producers by facilitating equitable certification and enforcement decisions.¹⁹

[U]niform organic standards and certification procedures are essential to maintain consumer trust in the validity of organic labels and willingness to pay for such products.²⁰

The foregoing *RIA* excerpts establish that the animal welfare provisions of the *OLPS* will provide “benefits” to society and will “sustain demand and support the growth” of the organic marketplace.²¹ AMS correctly found the proposed rule necessary to ensure “fair competition” and to provide the twin benefits of consistent and accurate “certification and enforcement decisions.” Each of these findings comports with the relevant data and statutory factors Congress determined to be prerequisites to a National Organic Program (“NOP”).²² The predicted outcomes of the proposed *OLPS* will fulfill mandatory statutory minima for a federal NOP as envisioned by Congress, yet the *RIA* does not expressly place these obvious benefits on the scale as “benefits” of the *OLPS* in this *RIA*.²³ With regard to the implementation time interval, the *OLPS RIA* makes no attempt to measure the difference in these benefits delivered today versus in 3, 5 or 15 years. “The timing of a regulation may also have an important effect on its net benefits.”²⁴ These benefits are more valuable

¹⁸ *OLPS RIA* at p. 43.

¹⁹ *OLPS RIA* at p. 5.

²⁰ *OLPS RIA* at p. 43 (citing secondary literature).

²¹ Other sections reiterate the ongoing harm/cost of extended implementation timelines. See e.g. *OLPS RIA* at p. 19 (existing situation requires immediate reform because the present regulatory approach: “...could contribute to negative publicity about the organic label and further reduce consumer trust in the organic label.”); *Id.* at 43 (elimination of existing approach is necessary to “sustain consumer demand and support the growth”).

²² OTA supports the rejection of the failed approach taken in the *Final Withdrawal Rule* where AMS said, “AMS finds that the qualitative benefits are speculative . . .”. But for some reason the *OLPS RIA* does not complete the analysis by actually weighing these “benefits” against projected compliance costs in any meaningful way. See e.g. 7 U.S.C. §6501; §§’s 6503--§6506.

²³ See 83 Fed. Reg. at 10,779.

²⁴ See *Economic Analysis of Federal Regulations Under Executive Order 12866* at p. 5/19 (Jan. 11, 1996)

today than tomorrow because of the ongoing harm/costs associated with *continuing* the present regulatory enforcement forbearance approach during the proposed lengthy implementation periods.

The approach taken in the *OLPS RIA* conflicts with that required by Executive Order 12866 (“EO 12866”), OMB directives and the OFPA. EO 12866 Section 1(a) states: “Costs and benefits should be understood to include. . . qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider.” It is also beyond dispute that the “benefits” posited in the *RIA* and excerpted above comport directly with statutory factors which Congress imposed. This brings the *RIA*’s willingness to extend the current regulatory approach into stark conflict with the OFPA.²⁵ The *RIA*’s approach also conflicts with *OMB’s Economic Analysis of Federal Regulations Under Executive Order 12866* (Jan. 1996) (“OMB Guidelines”). The OMB Guidelines direct regulators to determine that: “[T]he potential benefits to society justify the potential costs, recognizing that not all benefits and costs can be described in monetary or even in quantitative terms, unless a statute requires another regulatory approach.” *Id.* At p. 2. This directive is especially important to rulemaking conducted under marketing program authorizations from Congress.

Government intervention in labeling in the United States has served three main purposes: to ensure fair competition among producers, to increase consumers’ access to information, and to reduce risks to individual consumer safety and health . . . a motivation for many government labeling laws has been to ensure fair competition.²⁶

Rulemaking under marketing program statutes, like the OFPA, require special consideration because the statutory purposes mandate real-world outcomes for the market participants and their consumers that cannot be ignored because of a projected cost.²⁷ It is especially true when the participation in the regulated marketplace is voluntary. Voluntary-participation marketing programs create gateways to marketplaces, the costs of which participants are free to accept or decline. Under these statutory conditions, the cost of compliance is not subject to a simple quantitative-only, cost-benefit analysis because no cost is being *imposed* by the proposed rule. On the other side of the coin, the very market failures that prompted passage of the OFPA in 1990 are restored by present inaction and again by the lengthy delays proposed for implementation of measures designed to bring the NOP into compliance with OFPA mandates.

When Congress requires consistent standards that are consistently applied as the hallmark of the marketing program, the economic analysis lacks structural integrity when it does not materially account for these purposes in a cost-benefit calculus and when considering the implementation timeline. Bolstering this view is Section 6509 of the OFPA wherein Congress directed livestock standards be carefully and comprehensively developed but did not require they be assessed or delayed based on cost grounds.²⁸

Despite the clear benefits of extinguishing the existing regulatory forbearance approach to “porches” and the awareness that there is ongoing cost/harm to producers, consumers and to the organic seal from the present

²⁵ See e.g. 7 U.S.C. §6501; §6503; §6504.

²⁶ See [A Report Summary from the Economic Research Service, Beyond Nutrition and Organic Labels—30 Years of Experience with Intervening in Food Labels](#), Report No. 39 at p. 1 (November 2017) (“*ERS Report No. 39*”)

²⁷ See *OLPS*, 87 Fed. Reg. at 48562, at 48569 (“While different practices are not inherently a market failure—and in many markets a sign of healthy market innovation—in a marketing label, varying practices can create inefficient outcomes if they allow for producers to benefit from information failures.”).

²⁸ See e.g. 7 U.S.C. §6509.

approach, the *OLPS RIA* conducted only a “willingness-to-pay for outdoor access” analysis to weight the “benefits” of this proposed rule against anticipated costs.²⁹

B. The *OLPS RIA* Understates the Cost of Continuing the Regulatory Forbearance Policy for “outdoor access” during the Proposed Implementation Scenarios.

The *OLPS* found that the current regulatory enforcement forbearance regarding “access to the outdoors” has “allowed producers that use lower-cost and less-stringent practices to benefit from the same organic labeling and premium as producers than use more costly or robust practices.”³⁰ Yet these factors are overlooked by the *OLPS RIA* when assessing the impact of lengthy implementation timelines on fair competition, enforcement and certification matters, improving consumer access to information and consistency of product identity. The suggested approach in the *OLPS* and the *OLPS RIA* conflicts with the recognized purposes of marketing programs. USDA’s own Economic Research Service³¹ concludes:

1. “Government intervention in labeling in the United States has served three main purposes: to ensure fair competition among producers, to increase consumers’ access to information, and to reduce risks to individual consumer safety and health ... a motivation for many government labeling laws has been to ensure fair competition.” ERS Report No. 239 at 1;
2. “Once a single, mandatory, federally set standard is achieved, it does not automatically result in improved consumer understanding.” ERS Report No. 39 at 1;
3. “If consumers are skeptical about claims they cannot verify, their skepticism is likely to reduce their willingness to pay, and... markets for attributes may vanish.” ERS Report No. 39, at 5;
4. “Consumers sometimes confuse Government standards with other standards. For example, the USDA Organic seal is often confused with other label claims, such as ‘natural’ or ‘raised without antibiotics’ that have fewer and/or lower standards and lower production costs.” ERS Report No. 239 at 2;
5. “Setting a national organic standard ended variance among State standards. This gave the organic sector more access to interstate and international markets, increasing sales.” ERS Report No. 239 at 2;
6. OFPA was designed to regulate “competition” and “information.” ERS Report No. 239 at 5, Table 1;
7. “[O]rganic labeling cases illustrate the strong role that the Federal Government may play in setting standards, establishing certification, and providing enforcement mechanisms.” ERS Report No. 239 at vi.

²⁹ *OLPS RIA* at p. 6.

³⁰ See *OLPS*, 87 Fed. Reg. at 48569.

³¹ See [A Report Summary from the Economic Research Service, Beyond Nutrition and Organic Labels—30 Years of Experience with Intervening in Food Labels](#), Report No. 39 (November 2017) (“ERS Report No. 39”)

Reading these conclusion together with the market failure analysis in the *OLPS RIA* leads inescapably to the conclusion that longer implementation intervals will exacerbate rather than remediate the deleterious impact on consumer confidence and trust; unmet consumer information needs; unfair competition in the marketplace; reduced enforcement consistency and accuracy by accredited certifying agents and on the integrity of the USDA organic seal as the proxy for the government’s standards setting mechanisms and their eventual enforcement. OTA’s proposed implementation timelines best conform to the record, the secondary literature and the OFPA.

C. The Ongoing “Cost” of Consumers’ Unmet Expectations, Confusion, and Information Search Costs are not Properly Weighted in the *OLPS RIA*.

The proposed *OLPS* acknowledged that the current regulatory forbearance policy that allows “porches” increases “consumer search costs” and leaves “the risk to consumer confidence brought on by these costs” undiminished.³² This is an ongoing cost that is not abated by lengthy implementation timelines.

Consumer trust and confidence in the USDA Organic seal are the foundation of this industry. A study³³ published in 2018 in the National Library of Medicine’s PubMed Central examined U.S. shoppers’ changing attitudes (and willingness to pay for) humanely raised meat, eggs and dairy. It found that most people (78%) thought it important that animal welfare assessments be made by an independent third party or the federal government – rather than by, or on behalf of, the producer. While shoppers are seeking assurances about animal welfare, they are not reliably finding them in the organic label.

Research shows a marked decline in consumer confidence in the USDA Organic label as it pertains to animal welfare standards. OTA’s long-running U.S. *Families’ Organic Attitudes and Beliefs Study* showed that, in 2009, 37% of shoppers agreed with the statement, “Animals used in the production of organic food are treated humanely, fed an organic diet and are not raised in confinement. By 2017, the percentage of respondents that strongly agreed with the statement had dropped to 21%.

More recently, in 2022, Organic Trade Association partnered with global communications firm Edelman to benchmark and analyze consumer trust in the organic seal, both in the U.S., and in key markets outside the country. The findings demonstrate consumer confusion and mistrust of the USDA and organic label.

³² See *OLPS*, 87 Fed. Reg. at 48582.

³³ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6116027/>

Americans Think That Organic Practices Are Better for Farmers and Livestock

Perceptions About Organic Products—US Gen Pop

(Shown: % Top 2 Agree)



Q14: How much do you agree or disagree with the following statements about organic products?
Base sizes: US Gen Pop n=2000



Produced by Edelman exclusively for Organic Trade Association, 2022

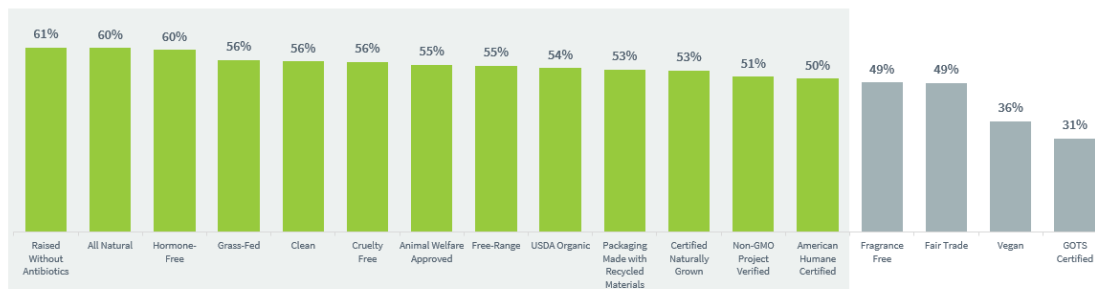
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Staying with the 2022 Edelman analysis, the research showed that labels were a very powerful driver of consumer purchase decisions, even when the labels were unregulated. Fifty-four percent indicated a likeliness to purchase organic products. However, sixty-one percent indicated they would purchase a product that was “raised without antibiotics,” and fifty-five percent indicated they would be inclined to purchase a product labeled, “animal welfare approved.” Each of these production practice claims are attributes of the larger USDA Organic seal’s promise to shoppers about animal husbandry practices.

Labels Have an Impact on Purchase Decisions—and Most Americans Lack a Fundamental Understanding of What the USDA Organic Standard Means

Impact on Purchase Likelihood—US Gen Pop

(Shown: % Top 2 More Likely To Purchase)



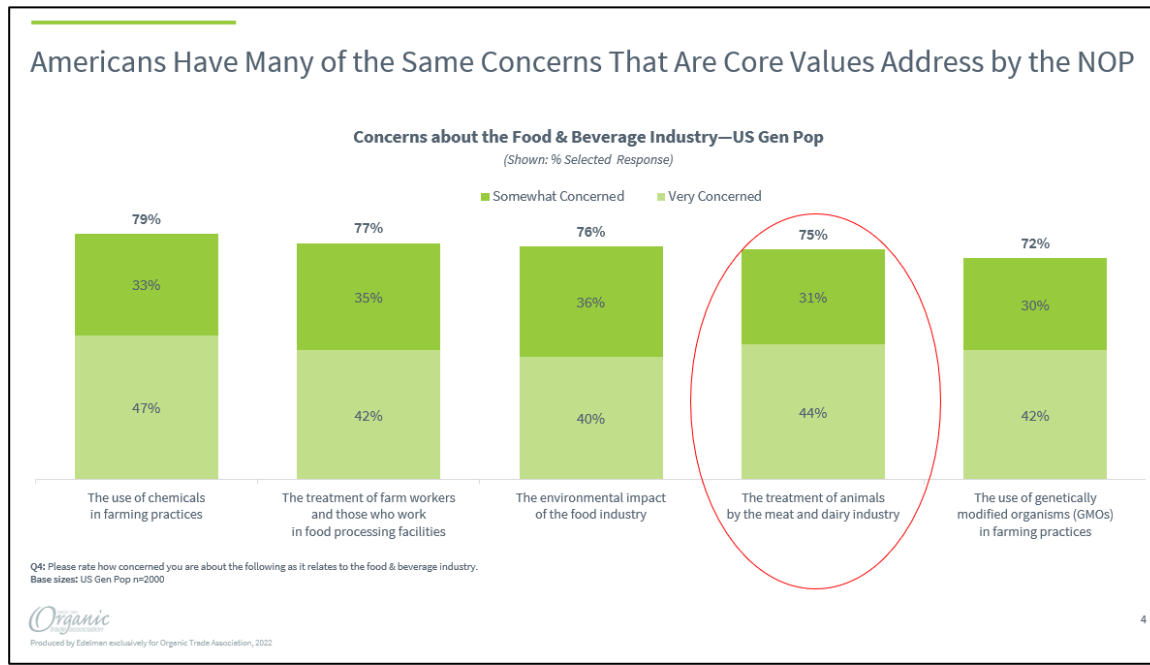
Q23: Are you generally more or less likely to purchase products that have the following labels?
Base sizes: US Gen Pop n=2000



Produced by Edelman exclusively for Organic Trade Association, 2022

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Finally, Seventy-five percent of Americans are concerned about the treatment of animals by the meat and dairy industries.³⁴ Due to shoppers’ lack of trust that USDA Organic addresses these concerns, a new crop of labels has flourished that compete with organic in the marketplace, diminish market share for organic farmers, and contribute to consumer confusion. As it stands, the onus is on shoppers to research and select brands with additional animal welfare standards. However, those diverted from organic by labels boasting humane treatment practices alone miss out on the wider range of verified benefits the organic seal offers.



D. The “Benefit” of Reducing the Use of Costly, Additional Animal Welfare Claims by Organic Producers is not Fully Cognized in the Cost-Benefit Analysis.

The majority of certified organic poultry operations are obligated to seek additional add-on animal welfare certifications to meet retailer/buyer requirements.³⁵ OTA’s 2022 Poultry Producer Survey (Appendix 2) indicates that 90% of organic layer operations and 99.5% of organic broiler operations have third-party animal welfare certifications in addition to organic certification.

This is a direct consequence of the current regulatory forbearance approach to “access to the outdoors” for poultry under the existing organic regulations and is a “cost” that will continue unabated during the lengthy implementation periods proposed. AMS should treat this outcome as a “benefit” of the *OLPS* and weigh it against any anticipated costs.

³⁴ Edelman, at p. 7 (2022).

³⁵ *OLPS RIA* at 59 (citing research that concluded “100% of responding broiler operations participate in private, third-party animal welfare certification.”); *Id.* (“the majority of organic broiler producers participate in third-party animal welfare certification programs...”)

E. The Department’s Willingness to Pay Analysis Understates the Benefits of the Proposed Welfare Measures and When Corrected it Demonstrates a Short Implementation Period and in No Case Longer than the One Supported by OTA is Proper.

To quantify the benefits of this proposed rule, AMS focused on research that estimated consumers’ willingness-to-pay for outdoor access.³⁶ AMS relied on the same research it relied upon in the past administrative proceedings. “To quantify the benefits, AMS is using previous research by *Heng et al.*”³⁷ OTA emphasizes here ERS excerpts (c) and (d) cited above. The skepticism that comes from confusion can suppress consumers’ willingness to pay. Thus the choice of WTP as the principal measure of the “benefit” of the *OLPS* is too limited. The suppression of WTP because of informational market failures was not accounted for. This important factor (which echoes the statutory factors set forth in Section 6501 of the OFPA) means using WTP as the principal measure of the “benefit” of the policy changes is inadequate.

The *OLPS RIA* “benefits” calculation principally relies on the WTP analysis appearing in *Heng, Peterson and Li* (2013) (“*Heng*”). There are several reasons why this is too limited. First the WTP numbers for outdoor access in Table 8 in *Heng* (2013) are obtained using the estimated coefficient for “access” from Table 7 of 0.08 with the standard error of 0.32 which is statistically insignificant. As the result, the computed WTP measures are also insignificant at the standardly adopted level of significance (1% or 5%).

Second, the estimated WTP for outdoor access for the group of respondents who received additional information on environmental impacts of outdoor access is higher (\$0.25 per dozen eggs) than in the group of respondents that did not receive additional information on environmental impacts (\$0.16 per dozen eggs). This outcome is obviously anomalous and was recognized by the authors themselves: “We hypothesized that respondents with additional information would become more conflicted about management practices and might value these attributes lower than respondents without additional information.”³⁸ The results also contradict *Schmiess and Lusk* (2022) who found that, to the extent that environmental considerations are in conflict with animal welfare attributes, the consumers are willing to trade environment for animal welfare, but the extent of this trade-off strongly depends on how the information is conveyed to consumers. They found that participants are far more willing to pay for animal welfare attributes than for environmental efficiencies, and that the use of pro-animal welfare information in the text design produced a significant increase in WTP for animal welfare attributes and that the pro-environment information had no effect on any design.

Other Secondary Literature is Available and More Useful than the Focus on *Heng*.

The relevant literature can be divided in two groups: (i) Studies that address WTP for outdoor access in other animals or animal products, and (ii) Studies that address WTP for outdoor access directly related to egg laying hens. Each is examined below.

- (i) *Pozo, Tonsor and Schroeder* (2012) (Pozo) use the choice experiment design to evaluate various production characteristics used in the swine industry. A key attribute examined was “pasture access” which illuminates the same consumer concern that underpins outdoor access for laying hens. In their example, a “one-pound boneless pork chop” was offered to consumers under 6 different design combinations of 5

³⁶ *OLPS RIA* at p. 6.

³⁷ *OLPS RIA* at p. 43.

³⁸ *Heng*, at p. 421.

production attributes (crate-free, pasture access, small farm, antibiotic free, thin cut) and the corresponding price. Depending on the design, the estimated WTP for pasture access varied between \$0.47 per pound and \$1.53 per pound. Given that the average price per pound offered for that one-pound pork chop was \$4.99, the WTP expressed as the percent of the average price varied between 9.4% and 30.7%.

Olynk, Widmar and Ortega (2014) evaluated consumer preferences for two dairy products (ice cream and yogurt) and two pork products (smoked ham and ham lunchmeat). A key product attribute evaluated was “pasture access.”³⁹ The results show that the average WTP for pasture access of pigs based on the smoked ham is \$2.23 per pound and based on ham lunchmeat is \$1.96. Given that the average price for smoked ham was \$5.79 per pound and \$6.74 for ham lunchmeat, the WTP for pasture access was between 38.5% and 29%.

- (ii) *Dunne and Sietto* (2020) conducted an investigation that is directly comparable to *Heng* (2013) because it based on essentially the same hypothetical experimental approach. The study assessed preferences towards various egg attributes such as color, size, freshness, and production system (colony, free-range and organic). The study participants received an educational extract and the investigators found very similar WTP estimates before and after the exposure.

The results show that the WTP for free-range attribute is £1.57 for a box of six eggs before seeing the educational extract and £1.53 after seeing the educational extract. At the time of writing this report, the exchange rate between British £ and U.S. \$ was almost on par. Given that the average offered price in the experiment was £1.25 per box of 6 eggs, the percent WTP for free-range eggs ranged from 125.6% and 122.4%. While this is obviously an extremely high number relative to what has been found elsewhere in the literature, it is important because it confirms the general understatement of consumer WTP in the *OLPS RIA*.

Although these are brief examples it is obvious that *OLPS RIA* seriously under-estimated the WTP for benefits of outdoor access.

F. The *OLPS RIA* Overstates Certain Costs Associated with Implementation of the *OLPS*.

Certain of the operational “costs” that are ascribed to the requirements of the proposed *OLPS* are overstated.

(F.1) The Poultry Mortality Rate used in the OLPS RIA is not Supported by the Literature and Distorted the Cost-Benefit Analysis.

The mortality rate of 8%, based on The National Animals Health Monitoring Survey Layers, 2013, appears too high and should be revised downwards in light of the newer literature. The mortality rate is a very important parameter in the benefit-cost analysis of the *OLPS* rule because it influences both the cost and the benefits side of the evaluation. On the cost side, a lower mortality rate would reduce costs via the reduction in the effective feed conversion ratio and on the benefits side, lower mortality rate would increase the benefits of the policy proposal via the increased number of eggs produced under the enhanced organic

³⁹ Due to attribute nonattendance (a methodologic problem related to high dispersion of estimated coefficients for some attributes) in two dairy products, OTA focuses on the results for the two pork products where attribute nonattendance was not an issue.

scenario. Therefore, assuming even slightly lower mortality rate could significantly improve the benefit-cost ratio of the evaluated proposal.

The mortality rate in various cage-free systems, including free-range, are highly variable and dependent upon the effectiveness of the husbandry/management practices. The following **scientific studies** confirm this point.

- In a comprehensive meta-analysis of 10 studies, *Weeks, Lambton and Williams (2016)* collected data from ten sources comprising 3,851 flocks to identify variation in levels of mortality in laying hens. The predicted increase with age was nonlinear with significant variation between the seven breed categories. Cumulative mortality (CM) was higher in flocks with intact beaks than in those with trimmed beaks. There was no robust evidence for a difference in CM between organic and non-organic free-range flocks. Mortality was higher in loose housing systems than in cages but highly variable within system. Most data were available for free-range systems (2,823 flocks), where producers recorded the cumulative mortality at 60–80 weeks of age averaged 10% but with a range from 0% to 69.3%. Importantly, the variability in CM for the free-range system is the highest of all systems, where the lower quartile of CM ranged from 0.6% to 5.0% and the upper quartile ranged from 11.6% to 53.3%. The data confirm that good management will likely result in most free-range flocks achieving lower levels of mortality than proposed.
- *Schuck-Paim, Negro-Calduch and Alonso (2021)* conducted a meta-analysis of data from commercial farms from 6040 commercial flocks and 176 million hens in 16 countries. The study examined mortality rates in laying hens across different indoor production systems (conventional cages, furnished cages and cage-free aviaries). The data show that except for conventional cages, mortality gradually drops as experience with each system builds up: since 2000, each year of experience with cage-free aviaries was associated with a 0.35–0.65% average drop in cumulative mortality (or 4–6% over a decade), with no differences in mortality between caged and cage-free systems in more recent years. These results speak against the notion that mortality is inherently higher in cage-free production and illustrate the importance of considering 16here16e of maturity of production systems in any investigations of farm animal health. Extrapolating these results to the 8% rate used by the OLPS RIA which dates back to the 2013 survey, a reasonable mortality rate in 2023 for the free-range flocks should be around 4% or lower.
- A recent experimental study by *Wurtz et al. (2022)* found exceptionally low mortality rate in outdoor access flocks. The investigators focused on the suitability of two hybrids, the Dekalb White (DW) and the Bovans Brown (BB), for organic production with outdoor access with special emphasis on ranging behavior. A total of 1,200 hens were housed according to organic regulations across 12 flocks of 100 birds for a total of 5 months. When experiment ended the hens were 38 weeks of age. Range and shelter use, effect of weather, vegetation cover, egg production and quality, and mortality were assessed in addition to a range of clinical welfare indicators. Out of the 1,200 hens that entered the study, 9 were found dead and 4 were culled during the experimental period. DW had a higher mortality compared to BB hens (11 vs. 2). The total mortality during this period was remarkably low, only $13/1200 = 1.08\%$.

USDA’s assumed flock mortality rate of 8% is significantly higher than what is shown in actual **industry records**, as demonstrated by the following 2 surveys by OTA of original and current data that constitutes industry’s best evidence regarding organic poultry production.

- **2020:** OTA’s review of actual flock records shows that that actual mortality rates are lower than the baseline value cited in the Economic Analysis. In 2020, OTA collected business records from organic egg producing operations that provide outdoor access in compliance with the OLPS proposed rule. Such flock records included their actual performance data for their most recent completed cycle of organic laying hens. In total, these flock records represent 5.62 million laying hens as an observed sample, representing egg production across all geographic regions of the United States. The results show a weighted average mortality rate of **6.07% for laying hens**.
- **2022:** OTA conducted a survey of poultry producers in 2022. Refer to Appendix 2 for full Results Summary. Our survey indicates a weighted average mortality rate of **6.67% for laying hens**. In total, these survey results represent 5.65 million laying hens across 360 Operations. Our survey indicates a weighted average mortality rate of **4.6% for broilers**. In total, these survey results represent 80.75 million broilers across 220 Operations.

(F.2) The Exclusion of “Breaker Eggs” from the Calculations in the OLPS RIA is not Supported by Market-Based Evidence and Distorted the Cost-Benefit Analysis.

In the *OLPS RIA* USDA reduced the volume of eggs moving to outdoor access by 20% to account for the breaker market—“Only table market eggs are assumed to receive a price premium for the newly gained outdoor access attribute because breaker eggs, which go to the food service market, do not have any labeling, making it reasonable to assume that the final consumers are not willing to pay a premium for organic eggs with outdoor access”⁴⁰ This assumption is unsupported. Publicly available market-based evidence is to the contrary. Organic liquid egg products are directly marketed to consumers and breaker eggs are used as ingredients in further processed foods sold at retail, as well as organic liquid egg products at retail.

The NOP Organic Integrity Database identifies over a dozen organic liquid egg products. Wilcox Farms Inc, Organic Valley, Chino Valley Ranches, and Michael Foods are all examples of operations that are certified for organic liquid egg products and egg products in retail markets using organic breaker eggs as ingredients:



⁴⁰ *OLPS RIA* at p. 45.

Eggs are also used in a wide range of process products, such as baked goods, baking mixes, mayonaise, ice cream, eggnog, and pasta – all of which may use breaked eggs as ingredients.

In addition to public evidence described above, OTA egg members report that very little organic breaker eggs are downgraded. One company reports that over 90% of organic breaker eggs receive an organic price premium. This information suggests that USDA’s reduction of egg volume by 20% because of breaker market is an erroneous over-estimate that results in an underestimate of benefits in the economic analysis. Our members estimate that a reasonable industry average for use in USDA’s analysis would be less than 10%. USDA needs to conduct research and collect data from industry to arrive at a more accurate data point.

(F.3) The Assumption that the Feed Conversion Rate Increases for Birds with Outdoor Access is Unsupported and Distorted the Cost-Benefit Analysis

“Feed is the variable cost that would increase the most from the rule’s implementation.”⁴¹ USDA’s economic analysis assumes an increase in feed costs per bird due to increased energy expenditure outdoors and estimates the feed conversion rate would move from the baseline 3.8 pounds per dozen to 4.0 pounds per dozen as a result of the new requirement for outdoor access. However, data from OTA’s 2022 Poultry Producer Survey (See Appendix 2) shows that most poultry operations that provide outdoors access are not increasing feed to account for extra energy expenditure when birds are outdoors. Based on our survey of 360 Layer Operations (representing 5,654,436 layers), 92.5% of operations do not reformulate diets (e.g. increase feed) to account for extra energy expenditure when birds are outdoor (representing 89.6% of birds). Based on our survey of 220 Broiler Operations (representing 80,752,600 broilers), 100% of broiler operations that we surveyed do not reformulate diets (e.g. increase feed) to account for extra energy expenditure when birds are outdoors. Thus the *OLPS RIA* overestimates the “costs” associated with the proposed regulations in the *OLPS*.

G. The Use of “Porches” Arose from Regulatory Enforcement Forbearance of the “access to outdoors” Requirement in 7 C.F.R. §205.239 Following a Site- Specific Enforcement Case.

The USDA organic regulations at 7 C.F.R. §205.239 have required “access to the outdoors” and adequate space for freedom of movement for organic livestock and poultry since 2002. However, the organic industry has seen an inconsistent application of the regulations, leading to a wide variation in the products that consumers purchased and confusion amongst consumers regarding the meaning of the USDA organic seal. The 2010 OIG Report confirmed the problem and the statutory deficiencies introduced.⁴²

As noted above, this outcome has also caused anti-competitive outcomes for producers. The allowance by some ACAs of “porches” to satisfy the outdoor access requirements, created an uneven competitive landscape as well as “certifier shopping” which is unrebutted evidence of inconsistency in the federal standards as well as evidence of inconsistent products in the stream of commerce.

⁴¹ *OLPS RIA* at p. 54.

⁴² USDA, Office of the Inspector General. March 2010. Audit Report 01601–03-Hy, Oversight of the National Organic Program.

But the persistent theme of the *OLPS* and the *OLPS RIA* is that additional clarity is needed rather than enforcement of the existing regulations.

[C]lear parameters for production practices ensure fair competition among producers by facilitating equitable certification and enforcement decisions.⁴³

The *OLPS RIA* proposed rule traces the problem to a single enforcement decision made in October 2002.

[A]MS issued an administrative appeal decision that allowed continued certification of one operation that used porches as outdoor access to protect water quality. This decision specifically addressed a site-specific environmental concern, but it led to certifying agents using this appeal decision to grant certification to other organic poultry operations that use porches to provide outdoor access, *regardless of water quality issues at the site in question.*⁴⁴ (emphasis added)

OTA maintains that the use of the administrative appeal decision to permit a production practice (“porches”) on operations where it is unrelated to a “site specific” characteristic is facially erroneous. To permit reliance on the narrowly resolved appeal decision over the next twenty years to certify approximately seventy percent of all organic poultry production is evidence of a practice of regulatory non-enforcement, not a settled policy.⁴⁵ This enforcement forbearance was clearly out of step with the plain terms of the regulation and the NOSB recommendations.⁴⁶ AMS further demonstrated the disconnect between the “access to outdoors” requirement and the appeal decision in October, 2010 by publishing a draft guidance document in the Federal Register that directed its certifying agents to “use the 2002 and 2009 NOSB recommendations as the basis for certification decisions regarding outdoor access for poultry.”⁴⁷ As noted above, these recommendations foreclosed the use of “porches.” In sum, the 2002 appeal decision has been repeatedly misapplied, and no statutory provision or regulation supports the construction of “access to the outdoors” that underpins the use of “porches” in organic poultry production. Although this decision has been relied upon to support the ongoing approval of “porches” in organic poultry production at the certification level, AMS has never clarified whether the decision was correctly decided. What can be said with certainty is that no regulation exists that authorizes the use of “porches.”

OTA conducted a survey of USDA-accredited certifiers in 2022 to assess the extent to which certifiers are allowing porches (See Appendix 3). One hundred percent (100%) of surveyed certifiers that responded to the survey do not consider poultry porches to be compliant with current organic regulations for access to the outdoors. Of the 1,573 certified operations represented in the survey, only 0.7% of operations still have porches as their only outdoor access area and each of these exist solely because they were “grandfathered” in by certifiers that have since prohibited porches for all new applicants or additions to existing operations (i.e.,

⁴³ *OLPS*, 87 Fed. Reg. at 48583.

⁴⁴ *OLPS RIA* at 9-10.

⁴⁵ *OLPS RIA* at 24 (“AMS estimates that about 70% of organic egg production comes from operations that use porches exclusively to provide outdoor access.”).

⁴⁶ See e.g. *OLPS*, 87 Fed. Reg. at 48566. (noting NOSB recommended “bare surfaces other than soil do not meet the NOP Rule’s intent of outdoor access for poultry.”)

⁴⁷ *OLPS*, 87 Fed. Reg. at 48567. On May 6, 2011, AMS declined to finalize the draft guidance. Saying instead “a separate rulemaking on the outdoor access requirements for poultry in 2011” would be forthcoming. Available at <https://www.regulations.gov/document?D=AMS-NOP-10-0048-0001> (last visited September 12, 2017).

new entrants). These results clearly demonstrate that vast majority of the ACAs did not accept the enforcement decision as an exception to the outdoor access requirement but rather as an out-of-step anomaly. This is persuasive evidence that the decision was flawed and never became settled policy. The *OLPS* will extinguish whatever discretion ACAs claimed permitted their approval of “porches” in the past, ensuring that the use of “porches” is not part of the organic future. OTA supports this long overdue change.

H. Inconsistent Certification and Enforcement Decisions Harmed Producers

The OLPP implicitly accepted and attempted to resolve the market failure identified by the Inspector General’s report on outdoor access for poultry.⁴⁸ After USDA reversed course and rejected the OLPP OTA submitted a market failure analysis in its comment submitted in the Final Withdrawal Rule proceeding.

This argument was rejected and the Final Withdrawal Rule concluded no market failure existed.⁴⁹ Now the OLPS concludes “that consumer confusion and market failure does exist in the organic label” (FR p. 48568-48569) and that the OLPS Rule is needed to “to clarify and ensure consistent application of the USDA organic standards and therefore mitigate information asymmetries and associated costs amongst certifying agents, producers, and consumers (FR p. 48562).” OTA agrees that the market failure exists, but disagrees that the OLPS remediates the problem on an acceptable timeline.

Economic Disadvantages for producers

Varying practices and inconsistent enforcement of animal welfare provisions of the organic standards, particularly regarding poultry outdoor access, had created economic disparities and competitive disadvantages among producers. Operations that utilize porches as their only form of outdoor access have lower costs and less robust animal welfare practice than operations that provide outdoor areas with soil, vegetation, and larger quantity of land per bird – yet the lower-cost porch operation gets the same benefits from the organic label and associated price premiums than the higher-cost / more robust operations. The organic label claim does not communicate information to consumers that distinguish the differences between these two disparate practices. As described by USDA in the OLPP Proposed Rule, this situation is a textbook example of market failure in which varying practices allow for producers to benefit from information failures (FR p. 48658).

Additional animal welfare certifications currently viewed as a necessity

The absence of clear animal welfare standards in the organic regulations had resulted in a proliferation of add-on animal welfare certifications. Many organic operations are obligated to seek additional add-on animal welfare certifications to meet retailer/buyer requirements. Additional animal welfare certifications are functionally a **necessity** for organic producers in order to access markets. These other certifications communicate animal welfare attributes to consumers are otherwise silent or unclear under the organic seal.

⁴⁸ See OTA Comment, at pgs. 4-7.(June 17, 2018)

⁴⁹ See 83 Fed. Reg. at 10,779 (“AMS did not identify a market failure in the OLPP final rule RIA and AMS has now concluded that regulation is unwarranted.”; *Id.* at 10,782 (“The RIA for the OLPP final rule did not identify a significant market failure to justify the rule. * * * Variance in production practices and participation in private, third-party certification programs, however, do not constitute evidence of market failure.”))

OTA's 2022 Poultry Producer Survey (Appendix 2) indicates that 90% of organic layer operations and 99.5% of organic broiler operations have third-party animal welfare certifications in addition to organic certification.

If organic regulations contained stronger and clearer animal welfare standards, then these add-on animal welfare certifications would become a **choice rather than a necessity**. This would be a significant positive step towards remedying the market failure and additional costs for producers. Although some companies may **choose** to keep their add-ons (e.g. as back-up claims for eggs that might be downgraded from organic to conventional cage-free, for example), that decision would be based on their own internal business decision outside of organic rather than a required additional expense to backfill a known deficiency in the organic standards.

I. Non-regulatory alternatives are insufficient: Regulatory clarity is necessary

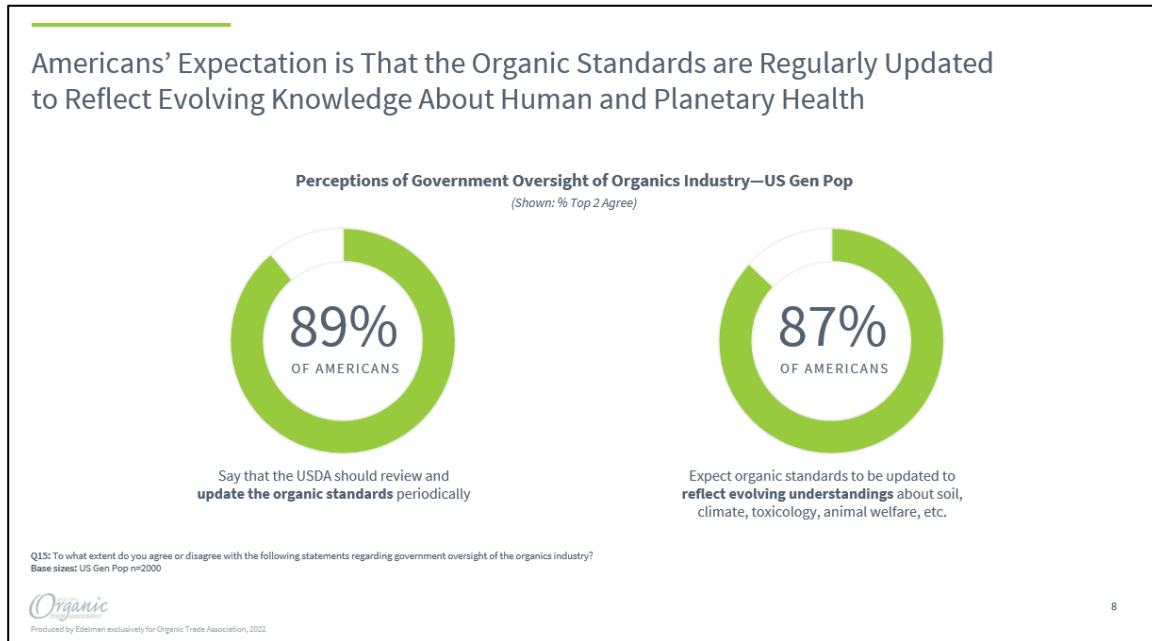
USDA identified the non-regulatory alternatives that it could pursue instead of publishing the OLPS final rule. Alternatives such as guidance or education is completely insufficient to correct the market failure and consumer confusion in the organic label. Guidance has proven to be insufficient to achieve consistent implementation across producers and certifiers or to resolve consumer confusion. In 2017, certifiers developed best practices based on the content of the withdrawn OLPP Final Rule. Since these best practices are not binding, certifiers have continued with their divergent practices, producers have continued with divergent practices, consumers continue to be confused and need to seek alternative labels for information about animal welfare attributes. To choose anything other than regulatory action would fail to meet the intention of the act by perpetuating inconsistent interpretations of the national standard and thereby fail to assure consumers that organically produced products meet a consistent standard. No amount of information dissemination can give shoppers the assurance of a strong standard that is uniformly applied.

Organic is a choice. The voluntary National Organic Program relies upon strong regulations that are consistent, clearly enforced, and renovated over time. Market demand for organic is driven by the distinction and differentiation that the standards provide. Without the regulatory clarifications in the proposed rule, organic producers will continue experiencing a direct competitive disadvantage and be forced to add unnecessarily duplicative third-party certifications to differentiate their products. Regulatory action is the only solution that will fix market failure, level the playing field among organic producers, and ensure consumer trust and confidence in the organic label. The OLPS rule would provide clear standards that certifiers have been asking for to ensure consistent implementation and enforcement of the standards for all organic livestock and poultry operations.

Despite the rapid growth and success of the organic sector, one of the largest challenges facing the industry is the lack of progress in implementing updates to the organic standards to keep pace with the changing marketplace and consumer needs. OTA submitted extensive [comments](#) about the importance of continuous improvement in the organic standards in March 2022 in response to NOP's Request For Comments on Rulemaking Priorities (AMS-NOP-21-0085). We refer readers to those comments for additional information and references about the need for the organic standards to be regularly updated to keep pace with consumers' expectations and to ensure a level playing field and fair competition for the organic industry.

Updating standards is not only a basic tenet to ensure relevance of a standard, it is also a basic consumer expectation. This statement is strongly supported by data in an Edelman survey conducted in November of

2021. The survey shows that 89% of shoppers say that USDA should review and update the standards periodically and 87% expect that they be updated to reflect evolving understandings about **animal welfare**, as well as soil, climate, and toxicology (Edelman, 2022).



J. Baseline Data Source: OTA 2022 Poultry Survey

One of the Baseline Data Sources cited by USDA in the OLPS Economic Analysis is the Organic Egg Farmers of America (OEFA), Organic Poultry Industry Animal Welfare Survey, 2014 (RIA p. 15). That survey was conducted by OTA on behalf OEFA. To support USDA with an updated comparable dataset and to inform OTA’s comments, OTA conducted a repeated cross-sectional survey in 2022 using the **same methodology**, sampling procedure, and data analysis as the 2014 survey. OTA distributed the survey in September 2022 and the results are presented in Appendix 2 of this comment. The survey results represent 360 Layer Operations (5.65 million laying hens) and 220 Broiler Operations (80.75 million broilers, Annual Production).

K. OTA Opposes “No Rule” (Scenario 1)

OTA strongly opposes Scenario 1 in which the OLPS rule is not published at all, and the status quo (no rule) is allowed to continued. USDA states that there are no costs and no benefits to Scenario 1 because the status quo is maintained.

However, the status quo actually does have significant costs associated with the negative impacts of market failure, which USDA has acknowledged. *See OTA comments above on Market Failure.*

USDA also explains that it considered alternatives to rulemaking, and concluded that none of the alternatives were sufficient. This further supports the argument that Scenario 1 is unacceptable.

L. OTA Accepts the 5-year model

See Section 10 of these comments for additional OTA Comments regarding implementation timelines.

OTA accepts the 5-year model as the best of the presented options, and it should be even better than presented because the costs are overestimated, and the benefits are underestimated.

Beyond the 5-year inflection point, the benefits begin to go down and the costs begin to go up. The 15-year option within Scenario 4 produces the lowest net benefits because delayed compliance with the outdoor space requirement means fewer benefits accrue. (RIA p. 57)

M. Price Effects and Transfer of Value

USDA requested comments on a range of questions related to the “Transfers of value from organic production to cage free” (RIA p. 27) and “Price Effects and Impact of Rule on Organic Chicken and Egg Sectors” (RIA p. 3-39) and posed specific questions based on the work of Boardman, et al. (RIA p. 39).

OTA, with the support of an expert economist, was able to conduct an initial analysis to these issues developed with the support of an expert economist. To the extent that we were able to analyze the information, we can conclude that **there are errors in the analysis, and the net welfare effects of the production transfer from organic to cage-free markets are for the most part ambiguous.** Computing the welfare effects precisely would require having reliable estimates of the demand and supply shifts as well as the own price and cross-price elasticities of both organic and cage-free demands which is either currently underestimated or not known nor presented in the economic analysis.

N. Conclusion

Congress determined that the organic market was failing in 1990 and adopted the OFPA to require that organic livestock products must meet a single, mandatory, national standard that must be consistently applied by the USDA and its certifying agents.⁵⁰ With specific regard to organic livestock standards Congress imposed a continual updating mechanism as represented by the NOSB’s role under Section 6509. Although the *OLPS RIA* correctly notes a market failure has occurred with regard to “outdoor access” under the OFPA, the foregoing review demonstrates that the costs of implementation have been overstated on all the proposed implementation timelines and the benefits have been understated. Only the proposed OTA implementation timeline, or a shorter one, comports with the record, the applicable guidances and the OFPA.

⁵⁰ See 7 U.S.C. § 6501(purposes of enactment); see also Senate Committee on Agriculture, Forestry and Nutrition, Report of the Committee on Agriculture, Forestry and Nutrition to Accompany S. 2830 Together with Additional and Minority Views, S. Rep. No. 101-357, (1990) (discussion of need for single national standard; inability of marketplace to solve the problem).

(5) Biosecurity & Food Safety

Outdoor access for organic chickens is not new. OTA's 2022 Certifier Survey (Appendix 3) demonstrated that 99.3% of operations are already in compliance with outdoor access standards proposed in OLPS (no porches), and 580 operations (86.4 million birds) represented in OTA's 2022 Poultry Producer Survey (Appendix 2) have outdoor access that allows poultry to contact the soil (no porches). The operations are already successfully managing compliance with biosecurity, food safety and egg safety rules and requirements.

(A) The Organic regulations and the OLPS Proposed Rule support biosecurity and food safety measures.

The organic standards, under the current regulations, and as clarified by OLPS Proposed Rule, support organic producers' ability to mitigate biosecurity risks and prevent disease outbreaks in their organic flocks. The OLPS Proposed Rule does not in any way compromise biosecurity measures and food safety requirements.

The current organic regulations (§205.239(b)) & [Policy Memo 11-12](#) provide explicit allowances for organic producers to **temporarily confine** poultry indoors for conditions under which the health, safety, or wellbeing of the animal could be jeopardized, which includes threat of a disease outbreak, e.g. Avian Influenza. Organic producers and their certifiers work together and consult with animal health officials to determine appropriate method and duration of confinement. The OLPS Proposed Rule retains this provision at §205.241(d)(3). The OLPS Proposed Rule does not in any way require producers to subject their animals to higher risks of disease or infection, and comments suggesting that is the case are inaccurate and should be disregarded.

Limiting exposure to migrating waterfowl that may transmit these diseases is acknowledged by USDA APHIS, FDA and State veterinarians as an important step in preventive approaches to avoid disease outbreaks. Accordingly, the organic regulations and the OLPS proposed rule take this into account and include provisions that ensure that organic poultry operations will not be putting their flocks at a greater risk for exposure or infection by complying with organic regulations. The OLPS proposed rule further strengthens the organic producer's ability to implement biosecurity and food safety measures. The OLPS proposed rule requires: "Vegetative cover in outdoor access area must be maintained in a manner that **does not provide harborage for rodents and other pests** per §205.241(c)(2)" and "Producers subject to requirements in 21 CFR part 118 Production, Storage, and Transportation of Shell Eggs must take steps to **prevent stray poultry, wild birds, cats, and other animals from entering poultry houses**" per §205.241(b)(4). To further support producers in protecting flocks from biosecurity and predation risks, **fencing, netting, or other materials is permitted over all or part of the outdoor areas** to prevent predators and other wild birds from entering the outdoor area" as explained in the OLPS preamble. Furthermore, the rule allows for **covered outdoor space (provided it is not also enclosed) to count towards the outdoor space calculation** for the outdoor stocking density requirements.

(B) The Organic regulations and the OLPS Proposed Rule are alignment with FDA Egg Safety Rule.

Organic producers have the same goals and must meet the same requirements as all other farmers: safe food, healthy animals, and profitable farms. Organic producers achieve this through required implementation of preventive controls but still must meet all other USDA and FDA requirements along with reasonable and appropriate exceptions to accommodate for disease outbreaks, food safety concerns, and predation prevention measures. FDA and USDA National Organic Program (NOP) coordinated with each other to develop harmonized rules and to ensure there are no conflicts between FDA and NOP requirements.

The 2009 FDA Egg Safety rule is based on the conclusion that food safety and year-round outdoor access for poultry are compatible. In developing the rule, FDA was seeking to reduce *Salmonella enteritidis* (SE) in eggs. One of its strategies was to prevent SE by limiting the exposure of poultry to potential disease vectors. Wild birds, wild animals, rodents and flies were all identified as concerns for SE contamination. FDA focused on prevention measures in both the poultry house and adjacent grounds. The NOP requirement for outdoor access was expressly considered in the Egg Safety rulemaking. During the comment period for the final rule, FDA highlighted the compatibility of the organic outdoor access standard and the Egg Rule with the following comment: "We agree that it would be difficult to prevent stray poultry and other animals from entering the grounds of the farm, and we believe it is sufficient to keep stray animals out of the poultry house. Therefore, in the final rule, we have changed the requirement for stray animals so that it applies only to poultry houses rather than the entire grounds. Further, we have consulted with AMS, which administers the National Organic Program, and AMS has informed us that this requirement would not make it impossible for eggs to qualify as organic." [74 Fed. Reg. 33030, 33038-33039 (July 9, 2009)].

FDA considered NOP requirements when it adopted the Egg Safety Rule. FDA crafted the final rule to be consistent with NOP requirements for outdoor safety, and concluded that doing so did not compromise food safety. Additionally, numerous production scale organic egg producers currently provide outdoor access aligned with the final Organic Livestock and Poultry Practices rule and maintain compliance with FDA's Egg Safety Rule. Comments suggesting that outdoor access will jeopardize the organic industry's ability to provide safe food are not grounded in the facts and should be disregarded.

The new FDA Final Guidance published on August 10, 2022, "[Prevention of *Salmonella Enteritidis* in Shell Eggs During Production, Storage, and Transportation \(Layers with Access to Areas Outside the Poultry House\): Questions and Answers Regarding the Final Rule](#)" continues to recognize that food safety and year-round outdoor access for poultry are compatible. The guidance states that porches are considered to be outside of the poultry house, along with outdoor runs and pastures, which means that producers must prevent introduction of SE from porches into poultry houses (per 21 CFR 118.4(b)). This **aligns with OLPS proposed requirement that porches are not "indoor space"** where birds are protected from the biosecurity risks. In the guidance, the **FDA specifically states that it considered NOP requirements** when developing the guidance and that the FDA's guidance **should not have any bearing on interpreting NOP requirements**. The FDA even changed their terminology from "outdoor access" to "access to areas outside of the poultry house" for the specific purpose of avoiding confusion with NOP Regulations for outdoor access.

(C) Poultry with outdoor access do not have higher food safety risk than those kept indoors.

Outdoor access is fundamental to the organic regulations, and it is what the market expects. Organic producers not only support outdoor access but have done so with an excellent food safety record, and will be able to comply with the outdoor requirements of the OLPS Rule without a negative impact on food safety or biosecurity efforts.

Scientific Evidence

To the best of our knowledge, no conclusive scientific evidence has been presented by UDSA or FDA showing that certified organic poultry with outdoor access as required under the OLPS Rule (and as already implemented by the vast majority of production scale livestock and poultry farmer) will cause any increase in biosecurity or food safety risks than those kept indoors.

In 2011, OTA, in partnership with [The Organic Center](#), conducted a literature review on the impact of organic production (access to outdoors) systems on egg safety. The review examined 13 studies from the United States and 10 studies from Europe, varying from small to very large operations, that evaluated the effect of the housing system on the occurrence of *Campylobacter* and *Salmonella* (see Attachment: OTA Egg Safety Literature Review). These studies have variable results going from a reduced risk of *Salmonella* contamination in cage systems, to no influence of the housing system, to an increased risk. It is difficult to summarize all these results into one single conclusion concerning the effect of the type of housing as a result of both the variable study design and the variable outcome.

Although the majority of the studies indicate that cage systems have an increased risk of testing positive for *Salmonella*, this does not necessarily mean that there is a causal relationship between the housing type and infection. On the contrary, it is more likely that the effect attributed to the housing system is, in reality, influenced by several other production characteristics, such as the magnitude of the flock or the herd, age of the building, pest infestations, probability of previous *Salmonella* infections on the farm, etc. Overall, there is no consensus demonstrating the superiority of one housing situation over another regarding food safety and egg quality.

More recently, OTA examined the studies in [Peter Holt's Centennial Review from August 2021](#). In this review (many of which were included in OTA's review), the author investigates the impact of outdoor access on hen welfare and on the safety of the eggs produced by these individuals. The review calls into question the advisability of *mandating* outdoor access across the board for an organic designation and urges NOP to proceed cautiously with regards to implementation of this practice for organic egg production. The author also concludes that the review is by no means meant to be an indictment of free range/pasturing husbandry for poultry, and under many scenarios, outdoor access will be greatly beneficial for the hens and the eggs they produce.

The Centennial Review is a revisiting of hen welfare and egg safety literature as it relates to mandatory outdoor access for certified organic egg production. It does not offer any new or conclusive science demonstrating an increase in biosecurity or food safety risks correlated to outdoor access on certified organic poultry farms. In reference to the susceptibility of laying hens in different housing systems, the research shows an increase to SE susceptibility in both systems depending on the site where the research was conducted. European research in general indicates that caged layers are more susceptible, most likely due to the relative age of the facilities (cage-free facilities are newer).

Overall, the studies continue to demonstrate:

- There is no inherent difference in susceptibility to any one kind of housing system. Instead, it is the management of the facility that is key.
- There is a shortage of published peer-reviewed studies specific to the prevalence of *Salmonella* in certified organic poultry farms in the United States.
- Wild animals, such as rodents, can be carriers of *Salmonella*. However, no evidence suggests chickens raised outdoors are any more susceptible than poultry raised exclusively indoors.
- Ultimate U.S. poultry housing decisions need to be based on sound scientific data, and this information currently does not exist.

Past Outbreaks not caused by outdoor access

Epidemiological data from past outbreaks does not implicate poultry access to the outdoors as a cause of introduction or spread of disease to commercial poultry flocks. In the last twenty years, there have been four significant outbreaks in the egg industry, and epidemiological work shows that the big megacomplexes are where most birds die. Birds did not die in dramatic amounts or have food safety issues in free range and pasture. Even breeder producers with shower-in shower-out still got outbreaks. This leads to the conclusion that outdoor access is not the determining factor in disease outbreaks and death.

For example, during the **2015 outbreak of HPAI** in poultry flocks in the U.S., APHIS conducted extensive investigations of outbreak patterns and developed conclusions around what vectors caused the outbreak and how producers can best guard against exposing their flocks to disease vectors moving forward. In its June 15, 2015, report (See Attachment), APHIS suspects that wild birds were responsible for the initial introduction of HPAI into commercial poultry. Still, it concludes that the disease was spreading between operations through other means. The report points to several potential routes for disease proliferation including “sharing of equipment between an infected and non-infected farm, employees moving between infected and non-infected farms, lack of cleaning and disinfection of vehicles moving between farms, and reports of rodents or small wild birds inside poultry houses.” Notably, APHIS did not implicate poultry access to the outdoors as a cause of introducing HPAI to commercial poultry flocks, nor did it indicate that poultry access to the outdoors was a factor in the spread of the disease.

Under the existing USDA organic regulations, organic layers may be temporarily confined during states of emergency. At these times, the risk for an organic operation is no greater than any cage-free operation once an outbreak has been detected. To date, the majority of the birds impacted by outbreaks have come from large complexes of a million birds or more in total, spread over 5-20 houses on a farm. Most organic production by certificate holders are single house family owned and operated farms. This means the exposure to outside traffic is next to zero, and the attraction to wild birds is much lower. The lower risk is best explained by a correlation to employee count, traffic on and off the farms, and lower bird counts per farm, causing less attraction to wild birds in the area. Many organic layer operations exist in Michigan, Wisconsin, Iowa, Illinois, Missouri and Arkansas, all through the Mississippi flyway. An additional consideration is that the FDA requirements for

Mortality Rates

The USDA’s Economic Analysis assumes that the mortality rate for hens would increase to 8 percent from 5 percent if this proposed rule is finalized. The increased mortality would chiefly be attributed to increased

predation, disease and parasites from greater outdoor access. Production scale organic producers who are already complying with the requirements of this final regulation experience mortality below expected breed averages. For further discussion on baseline mortality rates used in the USDA Economic Analysis, refer to above *Section 4 of these comments*.

(6) Key Areas of Support in the Regulatory Text

OTA generally supports the substantive areas of the OLPS practice standards, with a special emphasis of support in the following key areas. We have identified several minor yet critical items that must be revised in the final rule (*Section 7*). We also identify areas for further clarification (no change to regulatory text) through preamble or NOP Handbook instruction or guidance (*Section 8*), and non-substantive technical corrections needed to the regulatory text (*Section 9*).

(A) Prohibiting poultry porches

OTA supports the OLPS Proposed Rule that prohibits enclosed porches as outdoor access for poultry.

The OLPS Preamble defines porches as “elevated areas (with solid or slatted floors) that have access to/from the poultry house and do not typically provide any means for birds to descend to ground level” (p. 48570). As previously described in our comments (*See Section 4 of these comments*), porches were the subject of sustained appeal that became the primary driver of market failure in organic eggs. Although a majority of organic livestock operations are already meeting the proposed standards for outdoor access, some operations (representing a significant egg market share) are only providing outdoor access via enclosed porches. The regulatory clarification in the OLPS Rule that enclosed porches are not outdoor access is critical for resolving the market failure, alleviating the direct competitive disadvantage experienced by many organic producers, and supporting consumer confidence and expectations of animal welfare under the USDA organic seal. OTA’s surveys of certifiers and poultry producers (See Appendix 2 & 3) indicate the majority of certifiers and producers are already complying with policy to prohibit porches.

USDA asked for comments on whether the proposed definitions clearly and adequately distinguish the two types of spaces (indoor vs. outdoor) and if the proposed definitions sufficiently address spaces that may be enclosed by fences and/or overhead netting. **OTA supports the definitions presented in the OLPS Proposed Rule for “outdoors or outdoor space” and “indoors or indoor space.”** These definitions are clear and adequate to distinguish the two types of spaces while prohibiting porches from being counted as outdoor space. Based on the definitions and the explanations in the preamble, spaces that are enclosed by fences and/or overhead netting for biosecurity protection may be counted as outdoor space because fencing and netting is not considered to be a “building or housing structure” per the proposed definition of outdoor space.

OTA recommends that the Preamble in the final rule carry forward the explanation in the preamble regarding the types of spaces that qualify as indoors, outdoors, or neither. In particular as it relates to porches, key phrases include, “Enclosed porches are not considered to be outdoor space,” and “A screened poultry 'porch,' enclosed by wire on the sides, would not be considered outdoors” (p. 48571).

(B) Mitigating biosecurity risks

The OLPS proposed rule includes provisions that further strengthen the organic producer's ability to implement biosecurity and food safety measures, including:

- Retains the allowances for organic producers to temporarily confine poultry indoors for conditions under which the health, safety, or wellbeing of the animal could be jeopardized, which includes threat of a disease outbreak, e.g., Avian Influenza.
- Harmonizes with FDA Egg Safety Rules Guidance by requiring producers to manage vegetative areas and in a manner that does not provide harborage for rodents and other pests, and to take steps to prevent stray poultry, wild birds, cats, and other animals from entering poultry houses.
- Allows fencing, netting, or other materials over all or part of the outdoor areas to prevent predators and other wild birds from entering the outdoor area.

OTA supports the provisions in OLPS that further support producers in protecting flocks from biosecurity and predation risks. Many organic producers that already comply with the outdoor requirements have done so with an excellent food safety record. The OLPS Proposed Rule does not in any way compromise biosecurity measures and food safety requirements. *See also our comments in Section 5: Biosecurity & Food Safety.*

(C) Protecting soil and water quality

OTA supports the OLPS provisions that requires producers to maintain maximal vegetative cover in outdoor spaces with soil. This requirement, in combination with existing organic regulations for protecting soil and water quality and improve the natural resources, will ensure that the organic producers are maximizing the environment benefits within their production systems. The rule also allows producers to temporarily confine flocks when there are risks to soil or water quality. This flexibility ensures that producers are not forced to put livestock and poultry onto ground under conditions that could jeopardize soil and water quality or risk animal health and safety.

(7) Minor but Critical Revisions to Regulatory Text

OTA identifies the following **minor but critical revisions** to the proposed practice standards that will strengthen alignment with third-party animal welfare certification and minimize producer cost while retaining all benefits of the rule.

(A) Broiler stocking density

The OLPS Proposed Rule establishes the maximum stocking density for broilers (*Gallus gallus*) at 5.0 pounds of bird per square foot (lbs/sqft) for both indoor and outdoor space. The 5 lbs/sqft stocking density for broilers indoors is not in line with current practice of organic broiler producers nor leading third-party animal welfare certifications. USDA acknowledges that broiler operations would need to incur costs to come into compliance with this provision. It is a primary driving costs in USDA's Economic Analysis and is driving USDA's proposed 3-year extended compliance timeline for broilers inside.

USDA explains in the OLPS Preamble that the 5 lbs/sqft limit is based on an NOSB Recommendation. However, NOSB recommendations fluctuated over course of 3 NOSB meetings and there is a lack of clear explanation or justification why the 5 lbs/sqft was recommended.

USDA explains in the OLPS Preamble that the proposed limits also align with third party animal welfare certification. However, the proposed 5 lbs/sqft stocking density is lower (i.e. requiring more space) than what is currently required the leading third-party animal welfare certifications used by organic broiler producers. HFAC and GAP both require **6 lbs/sqft** maximum stocking density. This demonstrates animal welfare benefits are supported at 6 lbs/sqft, and that consumer expectations for animal welfare can be met at 6 lbs/sqft stocking density.

- **Certified Humane (HFAC)**: Must not exceed **6 lbs/sqft**
- **GAP** Step 3: Must not exceed **6 lbs/sqft**

The 6 lbs/sqft limit also aligns with certifier best practices endorsed by the Accredited Certifiers Association, demonstrating that leading certifiers that are members of ACA are already practicing enforcement activities at an equivalent limit:

- **ACA best practices**: 1 sq. ft. per bird (equivalent to **6 lbs/sqft** for average size 6-lb broiler)

Based on OTA's 2022 Poultry Producer Survey (Appendix 2), **99.5%** of broiler operations are certified to the GAP standards, and therefore **already comply with 6 lbs/sqft** maximum stocking density. 99.5% of operations provide 6 lbs/sq ft indoor space (219 operations representing 80,752,600 birds (99.9% of broilers surveyed)). 96.4% of operations provide 6 lbs/sq ft outdoor space (212 operations representing 78,672,600 birds (97.4% of broilers surveyed)).

In the survey, broiler producers describe the following challenges that would be incurred with a requirement to increase space requirements to comply with lower stocking density from 6 to 5 lbs/sqft:

Indoors:

- We would have to pull down production until we can get more housing
- We would need substantial increases in additional housing in order to maintain current production
- It would increase the price per bird

Outdoors

- Some of our farms could adapt but the majority would not have enough available land. This would require they drop the number of birds per flock and create economic hardship such that some of our growers may not stick with organic certification. This is a more difficult than indoor space as you can't "build" more land and there are restrictions on space at most farms due to property boundaries, driveways, outbuildings, and other infrastructure.
- Most range areas will need to be resized at an additional cost
- Would need to add new land to comply
- Some farms would not be able to comply because at 6 lb stocking density outdoors we have already maximized land available for pasture

If broiler operations were required to change their stocking density from 6 lbs/sqft (current practice) to 5 lbs/sqft (OLPS Proposed Rule), broiler operations would incur significant additional costs for compliance in both indoor and outdoor space. These increased costs do not appear to have meaningful improvement in animal welfare, since the leading third-party animal welfare certifications establish stocking density at 6 lbs/sqft. Furthermore, USDA has not provided an explanation of the scientific basis of 5 lbs/sqft nor the animal welfare benefits beyond what is already required by leading third-party animal welfare certifications

OTA recommends that the stocking density for broilers is revised to 6 lbs/sqft for both indoor and outdoor space to align with leading third-party animal welfare standards and current practices used by organic broiler producers. Utilizing a stocking density of **6 lbs/sqft** would eliminate the need for producers to undertake new construction costs because most broiler operations will already be in compliance. This would allow cost savings without loss of integrity because the organic standards would meet consumer expectations for animal welfare as demonstrated by aligning third-party animal welfare certifications. It would remove the cost driver in economic analysis, further justifying that the benefits of the OLPS Rule outweigh the costs.

OTA Recommended Revisions:

- §205.241(b)(10) For broilers (*Gallus gallus*), indoor stocking density must not exceed **56.0** pounds of bird per square foot.
- §205.241(c)(6) For broilers (*Gallus gallus*), outdoor space must be provided at a rate of no less than one square foot for every **56.0** pounds of bird in the flock.

OTA also recommends combining the revision on broiler stocking density with a shortened implementation timeline for broiler operations to comply with **indoor** stocking density (from 3-years to 1-year). Having a rule that aligns with current practice and current third-party certifications would eliminate the need for new construction cost, therefore, no need for extended implementation timeframes, while still delivering animal welfare benefits and meeting consumer expectations for organic animal welfare. *See also revised implementation time frame in Section 10 of our comments.*

(B) Scratch area in Slatted/Mesh floor housing

Slatted/mesh floor housing is defined in the OLPS Proposed Rule (§205.2) as "A fixed structure for avian species that has both: (i) A slatted floor where perches, feed, and water are provided over a pit or belt for manure collection; and (ii) Litter covering the remaining solid floor."

The OLPS Proposed Rule would require that “Houses with slatted/mesh floors must have 30 percent minimum of solid floor area available with sufficient litter available for dust baths so that birds may freely dust bathe without crowding (§205.241(b)(7)).” USDA explains in the OLPS Preamble that the 30% minimum scratch area is based on an NOSB Recommendation. However, there is a lack of clear explanation or justification why the 30% limit was recommended by NOSB.

USDA explains in the OLPS Preamble that the proposal aligns with third party animal welfare certification. However, the 30% proposal is higher (i.e. requiring more space) than what is currently required by the leading third-party animal welfare certifications used by organic layer operations utilizing slatted/mesh floor housing. HFAC and American Humane both require 15% minimum scratch area. This demonstrates animal welfare benefits are supported at 15%, and that consumer expectations for animal welfare can be met at 15% scratch area.

- **Certified Humane (HFAC):** E10
 - a. The area of substrate/litter provided must be sufficient to allow the birds to: 1. Dust bathe; and 2. Forage freely.
 - b. For housing systems which include a completely slatted or grid floor, the opportunity to forage and dust bathe must be provided by suitable substrate (litter) areas distributed throughout the system of a size that allows multiple hens to dust bathe simultaneously.
 - c. When hens are enclosed in a house, whether barn raised or free range when housed indoors seasonally, a minimum of **15%** available floor space must be suitable substrate.
- **American Humane Certified:** E21
 - Hens must have access at all times to a well-maintained litter/ scratch area within the house. A minimum of **15%** of the total usable area of the house (excluding nest space) must be devoted to litter area.

Based on OTA’s 2022 Poultry Producer Survey (Appendix 2), **90%** of layer operations are certified to the HFAC (Certified Humane) and **68%** are certified to American Humane Certified standards, therefore are **already complying with 15%** minimum scratch area.

The OTA 2022 Poultry Producer Survey included 344 operations that indicated they have slatted/mesh floor housing. Of these 344 operations, **60%** (206 operations) say they **could not comply with the 30%** requirement for solid floor area as proposed by OLPS. They describe the following challenges that would be incurred with a requirement to increase from 15% to 30% scratch area:

- We have some older infrastructure that will not meet the requirement
- Will be difficult to modify the equipment layout of the barns to comply
- Bird numbers would have to be decreased and equipment removed to open up a larger floor area

If layer operations were required to change their housing infrastructure from 15% to 30% scratch area, layer operations would incur significant additional cost to increase scratch area space. Construction costs would be significant because there are permanent fixtures in barns that don’t allow for easy modification, and these structures are important for removing manure, which helps control ammonia issues. These increased costs do not appear to have meaningful improvement in animal welfare, since the leading third-party animal welfare certifications establish the limits at 15%. The 30% would be a significant hardship to farmers already compliant with 15% scratch area without scientific basis or welfare benefit.

OTA recommends that the minimum scratch area for slatted/mesh housing is revised to 15% to align with leading third-party animal welfare standards and current practices used by organic layer operations.

This revision avoids additional costs not accounted for in economic analysis without loss of integrity or animal welfare because 15% is already utilized by leading third-party animal welfare certifications used by layer operations and trusted by consumers.

OTA Recommended Revision:

- §205.241(b)(7): Houses with slatted/mesh floors must have **3015** percent minimum of solid floor area available with sufficient litter available for dust baths so that birds may freely dust bathe without crowding.

(C) Ammonia Limits

The OLPS Proposed Rule establishes the following limits for ammonia in poultry housing at (§205.241(b)(2)): “Producers must monitor ammonia levels at least monthly and implement practices to maintain ammonia levels below 10 ppm. When ammonia levels exceed 10 ppm, producers must implement additional practices and additional monitoring to reduce ammonia levels below 10 ppm. Ammonia levels must not exceed 25 ppm.”

Broilers

The OLPS proposed “action limits” of **10ppm is not appropriate for broiler production** where moisture levels indoors are much higher than other poultry species, therefore making it more difficult to control ammonia. Broilers consume much more water than pullets, layers, and other species mostly because they are consuming much more feed to support their growth as a meat species. The majority of that water ends up on the floor of the poultry barn causing the moisture levels to increase. Moisture creates ammonia that needs to be moved out of the barn through ventilation systems. Due to these high-moisture conditions, broiler producers have much greater challenges to maintain low ammonia levels in the barns compared to other species.

Leading third-party animal welfare certifications for broiler operations establish **20ppm** as the ammonia action limit to accommodate high-moisture conditions in broiler houses. This demonstrates animal welfare benefits are supported at the 20ppm limits, and that consumer expectations for animal welfare can be met at the 20ppm limits.

- **GAP** Level 3: Must not exceed **20ppm**. If action is required (score more than 20 ppm), make any necessary adjustments to ventilation, management, etc. to improve air quality in your barn(s).

Based on OTA’s 2022 Poultry Producer Survey (Appendix 2), **99.5%** of broiler operations are certified to the GAP standards, indicating that nearly all operations are **already complying with 20ppm** ammonia limits. In the survey, broiler producers describe the following challenges that would be incurred with a requirement to decrease ammonia levels from 20ppm to 10ppm:

- We would have to burn high volumes of propane and incur excessive cost in order to keep the birds warm and healthy while also keeping ventilation open. If it’s too cold there could be serious repercussions on the health of the birds, countering the intention of animal welfare rules.
- Our current heating infrastructures do not have the capacity to burn that high of BTUs and it would require the build out of new heating systems
- There will be additional costs to mitigate ammonia levels through the use of additional ammonia control products, increased fuel usage, and increased ventilation and adding new bedding more often.

If broiler operations were required to change their practices from 20ppm to 10ppm ammonia management limits, broiler operations would incur significant additional energy costs to heat air and increase ventilation systems in attempting to manage ammonia below 10ppm. These increased costs do not appear to have meaningful improvement in animal welfare, since the leading third-party animal welfare certifications establish the limits at 20ppm.

OTA recommends that a species-specific “action limit” of 20ppm is established for broilers to align with leading third-party animal welfare certification and accommodate species-specific housing conditions. This revision avoids additional costs not accounted for in economic analysis without loss of integrity or animal welfare because 20ppm is already utilized by leading third-party animal welfare certifications used by broiler operations and trusted by consumers.

OTA Recommended Revision:

- §205.241(b)(2): Producers must monitor ammonia levels at least monthly and implement practices to maintain ammonia levels below 20 ppm for broilers or 10 ppm for other species. When ammonia levels exceed ~~10 ppm these limits~~, producers must implement additional practices and additional monitoring to reduce ammonia levels below ~~10 ppm these limits~~. Ammonia levels must not exceed 25 ppm.

Layers

OTA supports the 10ppm “action limit” for layers as it aligns with leading third-party animal welfare certification standards for laying hens:

- **Certified Humane (HFAC):** Must be no more than **10ppm** on average. Must not exceed 25ppm except during brief periods of severe inclement weather when ventilation is affected. When ammonia concentrations exceed 25ppm, reasons must be recorded and corrective actions must be taken and recorded. Must be objectively (i.e., via ammonia strips, an electronic reader, or an ammonia gun) measured in each house at least once every 2 weeks.
- **American Humane Certified:** Ammonia levels should ideally be less than **10ppm** but must not exceed 25 ppm. If any monthly ammonia test result is in excess of 25 ppm, records must show that a program of ammonia mitigation was adopted. Along with a description of the steps taken to reduce ammonia levels, the records must show that ammonia testing was performed daily until ammonia levels dropped below 25ppm.

Based on OTA’s 2022 Poultry Producer Survey (Appendix 2), **90%** of layer operations are certified to HFAC Certified Humane standards and therefore **already comply with 10ppm** action limit. However 34% of operations identified a challenge in complying during the winter months, explaining that,

- Keeping ammonia levels are 10ppm is pretty tough if we are having a really cold day, like below freezing. It’s hard to keep the birds warm enough if you are changing air over that much. 95% of the time 10 ppm is doable but those cold harsh days (typically for us 2 weeks in the winter) it would be nearly impossible. If the birds get too cold it will increase feed consumption which will raise costs.

OTA acknowledges that there are challenges for layer operations in complying with 10ppm action limit year-round, especially in winter months. We recommend that certifiers work with layer operations to develop an OSP that retains 10ppm as a target while understanding that mitigation methods may have limited efficacy in winter months.

(D) Water and feed during transportation

The OLPS Proposed Rule at §205.242(a)(5) requires that “Arrangements for water and organic feed must be made if transport time, including all time on the mode of transportation, exceeds 12 hours.” The OLPS Preamble further explains that, “In cases such as poultry slaughter in which requirements do not allow feed 24 hours before slaughter, producers and slaughter facilities would need to ensure that transport time does not exceed 12 hours. After 12 hours of transport, the birds would need to be fed, which may prolong the time to slaughter,” and “The certified operation would need to present records—which verify that transport times meet the 12-hour requirement—to the certifying agent during inspections or upon request.”

The OLPS proposed language has far-reaching impacts on all transportation events throughout the animals’ lifetime, not just final transportation to slaughter facility. For many operations, the effects of this requirement will practically limit transportation to less than 12 hours, in order to avoid a range of challenges, including: conflict with slaughter requirements to not to feed 24 hours prior to slaughter; logistical challenges that arise from needing to unload for feeding, especially if certified organic locations are required; adding stress to animals that arise from stopping during transportation; additional FSIS testing requirements when unloading after crossing state lines; and more. The maximum transportation limit is likely to be even less than 12 hours when counting time for loading and unloading, which may take 4 hours total.

Complying with this proposal will require significant changes in operator practices. For example, day-old chicks travel from a hatchery over 12 hours and do not require additional feed since they have an absorbed yolk sac. Pullets travel from the pullet house to the layer house which often requires over 12 hours of transportation. Layer operations report they may have to change the location of the pullet operations from which they source pullets.

OTA is concerned that the transportation time limits will put organic producers, especially small-scale producers, at a significant disadvantage in accessing **already-limited** organic hatcheries and slaughter facilities. We are also concerned that this requirement is not neutral in terms of scale or geographic location of certified organic operations, and it would conflict with slaughter requirements not to feed 24 hours prior to slaughter in cases where transportation exceed 12 hours.

Organic regulations should be scale neutral and not supersede or conflict with other federal requirements. **OTA recommends that the regulations are revised to remove prescriptive requirements while still ensuring oversight of transportation in a manner that supports animal welfare.** Some certifiers are already requiring livestock operators to explain in their Organic System Plan how they will provide food and water if traveling over 12 hours, and the information can be used by certifiers and inspectors to assess whether the management plan would be detrimental to animal welfare. Note that the current regulations at §205.239(b)(6) already allow temporary confinement for livestock during shorting and shipping provided that the animals are maintained under continuous organic management.

OTA Recommended Revision:

- §205.242(a)(5): ~~“Arrangements for water and organic feed must be made if transport time, including all time on the mode of transportation, exceeds 12 hours,~~ operators must demonstrate how organic management and animal welfare are maintained which may include feed and water.”

(Note - We recognize that this revised language may be somewhat ambiguous for certifiers to enforce consistently, so we would support alternative revisions that are effective to overcome the concerns we have described above and removes the mandatory requirement for feed and water.)

(E) Poultry Total Confinement

The current organic regulations at §205.239(a)(1) include the statement, “Continuous total confinement of any animal indoors is prohibited” and this statement is applicable to all livestock including mammalian and avian species. However, in the OLPS Proposed Rule, this statement is only retained in the mammalian livings conditions section and is *not* carried over to the avian living conditions section.

OTA recommends adding the statement that prohibits total confinement back in the to the OLPS Rule for avian living conditions. Effectively, this should not result in any change of practice because it already is in the current organic regulations and already applies to poultry. It is important that the organic regulations include the strong overarching policy statement that that total confinement is prohibited, so that the temporary confinement provisions are seen as *exceptions* to that overarching requirement. We recognize that there may be instances when temporary confinement provisions may be applicable for the duration of an animal’s life on an operation. These are exceptions and are subject to scrutiny by the certifier to ensure compliance with the temporary confinement provisions.

OTA Recommended Revision:

- §205.241(a) The producer of an organic poultry operation must establish and maintain year-round poultry living conditions that accommodate the health and natural behavior of poultry, including: year-round access to outdoors; shade; shelter; exercise areas; fresh air; direct sunlight; clean water for drinking; materials for dust bathing; and adequate outdoor space to escape aggressive behaviors suitable to the species, its stage of life, the climate, and environment. Continuous total confinement of any animal indoors is prohibited. Poultry may be temporarily denied access to the outdoors in accordance with paragraph (d) of this section.

(F) Invertebrates

The OLPS Proposed rule replaces the existing section for “livestock living conditions” (which apply to all livestock regardless of species) with two new sections, one for “Mammalian livestock living conditions” and one for “avian livestock living conditions.” In doing so, it removes the possibility to apply the living conditions standards to livestock species that are included in the definition of livestock⁵¹ and are neither mammalian nor avian – i.e. “other nonplant life.” Invertebrates such as **honeybees, crickets, and silkworms** are currently being certified organic under the livestock standards. Certifiers are actively relying on the existing livestock living conditions standards for these species including access to the outdoors, shade, shelter, exercise areas, fresh air, clean water for drinking, and direct sunlight, suitable to the species, its stage of life, the climate, and the environment.

⁵¹ §205.2: Livestock. Any cattle, sheep, goats, swine, poultry, or equine animals used for food or in the production of food, fiber, feed, or other agricultural-based consumer products; wild or domesticated game; or other nonplant life, except such term shall not include aquatic animals for the production of food, fiber, feed, or other agricultural-based consumer products.

OTA recommends a revision to the OLPS Proposed Rule that retains general living condition standards that can be applied to livestock species other than mammals and birds. The purpose of this revision is to avoid losing the requirements that **already apply** to all livestock and are currently in use by certifiers for non-mammalian and non-avian species. This revision is not intended to take the place of future efforts to develop specific standards for these species, e.g apiculture. This revision is also not intended to apply to aquatic animals because the definition of livestock at §205.2 does not include aquatic animals.

OTA Recommended Revision:

- §205.239(a) Mammalian (and other non-avian livestock species) livestock living conditions.

(Note - We would support alternative revisions that are effective to overcome the concerns we have described above and retains living conditions livestock species that are included in the definition of livestock but that are neither mammalian nor avian.)

(G) Soil definition

The OLPS Proposed Rule includes a proposed definition for “**soil**” at §205.2, “The outermost layer of the earth comprised of minerals, water, air, organic matter, fungi, and bacteria in which plants may grow roots.” The term soil is used in the OLPS Propose Rule practice standards for avian living conditions at §205.234(c)(2): “At least 50 percent of outdoor space must be **soil**. Outdoor space with soil must include maximal vegetative cover appropriate for the season, climate, geography, species of livestock, and stage of production. Vegetative cover must be maintained in a manner that does not provide harborage for rodents and other pests.” And for mammalian living conditions at §205.239(a)(12) Mammalian living conditions: “Outdoor space must be provided year-round. When the outdoor space includes **soil**, maximal vegetative cover must be maintained as appropriate for the season, climate, geography, species of livestock, and stage of production.”

USDA explains in the preamble that the purpose of defining soil in the OLPS Proposed Rule is so that soil can be distinguished from impervious areas such as concrete or pavement. This assessment is needed when calculating the percentage of soil coverage in poultry outdoor access areas and for identifying which spaces in the outdoor access must be maximally vegetative cover must be maintained.

OTA does not take issue with the definition itself that is being proposed, but rather we are concerned about the *process* by which the definition would be added to regulations.

- This definition was not part of the previous NOSB recommendations on animal welfare and therefore has not been vetted through the NOSB and stakeholder engagement process.
- This definition has not been vetted for impact in other scopes of production. Definitions that appear in §205.2 apply to all instances of the term when used throughout the regulation. Soil is referenced 55 times in NOP Regulations; only 6 apply to livestock. It is unwise to develop a definition for soil in context of livestock standards when it is much more often referenced in the crop production standards. It unlikely that crop producers are fully aware that an animal welfare rule could have significant implications on soil requirements within the crop scope.
- This definition has not been vetted against new information and heightened focus on the need for clear standards regarding the use of soil in crop production that has occurred since 2016 when the soil definition was included in the first OLPP proposed rule. It is unclear how this definition will impact types of crop production for which there are not clear standards about the extent to which soil is

required, and we are concerned that this would circumvent and/or complicate much-needed standards development in this area.

It is for these reasons that OTA recommends withdrawing the definition from §205.2. OTA recognizes and values the importance of soil in the organic regulations. Soil is a foundational issue and as such it needs time and care in crafting the appropriate definition within the context of all other processes that the organic sector relies on to develop standards. It would be inappropriate for the organic standards to include a soil definition without exercising these processes, including the NOSB and stakeholder engagement process.

OTA recommends retaining the definition of “vegetation” as proposed: “Living plant matter that is anchored in the soil by roots and provides ground cover.” Certifiers confirm that the proposed definition of ‘vegetation’ is sufficient for purposes of implementing and enforcing the OLPS provisions as it relates to soil without the need to also define soil.

OTA Recommended Revision:

- §205.2 Soil. ~~The outermost layer of the earth comprised of minerals, water, air, organic matter, fungi, and bacteria in which plants may grow roots.~~
- §205.2 Vegetation. Living plant matter that is anchored in the soil by roots and provides ground cover.

(8) Areas for Clarification (Does Not Require Revisions to Regulatory Text)

The following areas are identified for needing further clarification of the existing regulatory text in order to support consistent implementation of the final rule by certifiers, and so operators have clear information about how to comply. Such clarifications can be provided through the preamble of the OLPS Final Rule, or through NOP Handbook instruction or guidance.

(A) Cattle housing during temporary confinement events

The Proposed Rule also states at §205.239(a)(11): “For group-housed cattle, **bedded packs, compost packs, tie-stalls, free-stalls, and stanchion barns** are all acceptable housing as part of an overall organic system plan.” The OLPS Proposed Rule at §205.239(a)(4)(i) also requires that shelter is designed to allow for “**Over a 24-hour period**, sufficient space and freedom to lie down, **turn around**, stand up, fully stretch their limbs, and express normal patterns of behavior,” while also continuing to allow producers to provide **temporary confinement** of animals as permitted under §205.239(b).

OTA agrees with the regulatory provisions proposed above. Clearly it is NOP’s intent to continue allowing the use of the barn styles specifically mentioned in the proposed rule text including tie-stall barns and stanchion barns. Tie-stall and stanchion barns include stalls that foster a clean environment for the cows and allow for better manure management, which can support animal welfare and comfort, and are used by many organic dairy farms in the Midwest and Northeast regions of the U.S.

However, OTA is concerned with the interpretative language presented in the OLPS Preamble that appears to conflict with the NOP’s intent of allowing tie-stalls and stanchion barns and also allowing temporary

confinement. The OLPS Preamble states that “If livestock are temporarily confined indoors as permitted in §205.239(b), livestock must be able to move around, **turn around**, and stretch their limbs indoors for part of the day.” The requirement to turn around during a temporary confinement event presents a challenge for tie-stall and stanchion barns. These barn styles allow animals to move, stretch and lie down, but not to fully turn around within the stalls.

Letting animals out of the stalls during temporary confinement events so they can turn around would involve significant change of practice by many currently-certified operations that currently utilize tie-stalls and stanchion barns during temporary confinement events. In these types of barn structures, there is no additional indoor or sheltered space for animals to go during times when the animals are temporarily confined as permitted in §205.239(b). Providing such space would also involve barn reconstruction and expansion costs for the many currently-certified operations whose barns are not built with room for the 40-60 cows to move and turn around. These changes of practice and increased costs were not accounted for in the Economic Analysis.

OTA recommends keeping the regulatory text as-is but revising the interpretation presented in the preamble to allow for use of ties/stanchions during temporary confinement events as permitted in §205.239(b) as part of an overall organic system plan. This clarification would align with current practices by organic operators, support animal welfare, and avoid additional costs not accounted for in economic analysis. USDA should communicate the new interpretation in the final rule preamble and provide additional instruction to certifiers as needed for consistent implementation. This could also be an opportunity for further clarification for mammalian temporary confinement during inclement weather for consistent implementation during winter and cold weather events.

(B) Calf housing during temporary confinement events

The OLPS Proposed Rule at §205.239(a)(7) includes a new provision that “Dairy young stock may be housed in individual pens until completion of the weaning process but no later than 6 months of age, provided that they have enough room to turn around, lie down, stretch out when lying down, get up, rest, and groom themselves; individual animal pens shall be designed and located so that each animal can see, smell, and hear other calves.” This new provision is largely the same as the existing regulation for temporary confinement at §205.239(c)(2) that states, “In the case of newborn dairy cattle for up to six months, after which they must be on pasture during the grazing season and may no longer be individually housed: Provided, That, an animal shall not be confined or tethered in a way that prevents the animal from lying down, standing up, fully extending its limbs, and moving about freely.” The current regulations also require at §205.239(a)(4)(iii) that livestock shelter must be designed to allow for “Reduction of potential for livestock injury.”

OTA agrees with the regulatory provisions proposed above. Based on the regulatory text, there does not appear to be any regulatory revisions that would change the current practice of operations that tether calves in a way that they have enough room to move freely, turn around, lie down, stretch out, while also preventing them getting injured by the tether. This is current practice for dairy young stock less than 6 months of age that is allowed under current regulations at §§205.239(c)(2) and §205.239(a)(4)(iii) and aligns with new OLPS proposed text at §205.239(a)(7).

OTA recommends keeping the regulatory text as-is and providing a clarification in the preamble that producers may continue the practice of tethering calves provided that tethers are long enough to allow the calves to exhibit behaviors in at §205.239(a)(7) and §205.239(c)(2) and avoid injury per §205.239(a)(4)(iii). This clarification would align with current practices by organic operators, support animal welfare, and avoid additional costs not accounted for in economic analysis. USDA should communicate the new interpretation in the final rule preamble and provide additional instruction to certifiers as needed for consistent implementation.

(C) Body conditioning and other preventive healthcare assessments

The OLPS Proposed Rule includes a new requirement for monitoring body condition. At §205.238(a)(2), the underlined text is proposed to be added: “Provision of a feed ration sufficient to meet nutritional requirements, including vitamins, minerals, proteins and/or amino acids, fatty acids, energy sources, and fiber (ruminants), resulting in appropriate body condition.” The Preamble explains that “Livestock producers would be required to monitor their animals to ensure body condition is being maintained” and “Certifying agents would need to verify the nutritional adequacy of the animals’ diet by assessing the body condition of organic livestock during inspection. Suitable body condition varies between species, between breeds, and between production types. For example, a suitable condition for dairy cattle may be considered too thin in beef cattle.”

OTA agrees with the proposed language and recommends that NOP provide additional information to support consistent implementation and enforcement by certifiers and inspectors about what is considered “appropriate” body condition and the methods used to monitor and measure body condition across species. Third-party animal welfare standards and/or the F.A.R.M. program may be useful references (but not requirements) for developing best practices used by certifiers and inspectors, communicated through NOP Handbook instructions to support for consistent implementation and options for demonstrating compliance. We do not see this as a requirement for certifiers to do “body scoring.” If a farm can demonstrate that they have already conducted and passed an audit under a standard that sets the same health care criteria as outlined in this proposed rule, we suggest that their certifier should be able to recognize these third-party verifications and use the results of these audits to verify compliance.

There are several other areas of the OLPS Proposed Rule for preventive healthcare where additional clarification would be helpful to support consistent enforcement and reduce ambiguity for certifiers, inspectors, and operators. Examples include but are not limited to: monitoring of lameness, defining a “reasonably young age” for certain physical alterations, and trainings or experience that demonstrate a “competent person” for performing physical alterations.

(D) Temporary confinement of poultry during reseeded

The OLPS Proposed Rule at §205.241(d)(4) allows for temporary confinement of avian species when the following condition exists: “Risk to soil or water quality, including to establish vegetation by reseeding the outdoor space.”

OTA agrees that vegetation needs to be maintained to support soil and water quality, and also operators should not force poultry onto ground under conditions that could jeopardize soil and water quality or risk

animal health and safety. However, OTA questions whether the regulatory text is sufficiently clear to ensure consistent enforcement by certifiers. What is an appropriate timeframe for “reseeding”? At which point is “reseeding” over and the operator can no longer use it to justify temporary confinement?

OTA recommends that USDA provide clarification to ensure consistent enforcement and prevent prolonged “reseeding” events to justify extended confinement of poultry. USDA should communicate the new interpretation in the final rule preamble and provide additional instruction to certifiers as needed for consistent implementation. OTA also would not take issue if the phrase “including to establish vegetation by reseeding the outdoor space” was removed from the regulatory text, because it is not necessary to achieve the goal of allowing temporary confinement for the purpose of reseeding to correct soil or water quality issues. If an operation has a soil or water issue, then a certifier could determine that reseeding is an appropriate measure to correct it.

(E) Rooting materials for swine

The OLPS Proposed Rule at §205.23910) requires that, “For swine, rooting materials must be provided, except during the farrowing and suckling period.”

OTA supports this requirement but is concerned by the Preamble that provides overly prescriptive requirements. The NOP Preamble states that “This would require **both indoor and outdoor areas** for swine to include space for the livestock to root.” Organic producers report that their current practice is to only provide rooting materials *indoors* including during temporary confinement events.

OTA recommends keeping the regulatory text as-is but revising the interpretation in the preamble to remove the requirement for rooting materials in both indoor and outdoor areas. This would allow maximum flexibility for operators to support animal welfare and align with current practices that may only provide rooting materials indoors including during temporary confinement events.

(9) Technical Corrections to Regulatory Text

(A) Convert layer stocking density to “square feet per hen”

The OLPS Proposed Rule uses the unit of measurement of “pounds per square foot” to establish maximum stocking density space requirements for laying hens. OTA generally **does not support** utilizing a pounds per square foot approach for **egg laying poultry**. The challenges to this approach include variable growth rates and sizes, variable mortality from flock to flock, and a belief that animal welfare concerns that pertain to layers do not stem from pounds of bird per square foot, but rather from the space provided for each bird regardless of the specific weight of the bird. It also does not align with leading third-party animal welfare certifications that are widely used by poultry producers and referenced throughout the NOSB and NOP’s rulemaking efforts. As such, **OTA suggests revising the section on layer stocking densities to take a “square foot per bird approach.”** This would also align with other third-party animal welfare standards which would support easier comparison between standards and reduce burden on operators to have to do unit conversions.

The recommended revisions below are based on NOP's conversion chart presented in the 2016 OLPP Proposed Rule:

OTA Recommended Revisions:

- §205.241(b)(8) For layers (*Gallus gallus*), indoor stocking density must not exceed (live bird weight):
 - o (i) Mobile housing: ~~4.5 pounds per square foot~~ **1.0 square foot per hen.**
 - o (ii) Aviary housing: ~~4.5 pounds per square foot~~ **1.0 square foot per hen.**
 - o (iii) Slatted/mesh floor housing: ~~3.75 pounds per square foot~~ **1.2 square feet per hen**
 - o (iv) Floor litter housing: ~~3.0 pounds per square foot~~ **1.5 square feet per hen**
 - o (v) Other housing: ~~2.25 pounds per square foot~~ **2.0 square feet per hen**
- §205.241(c)(4) For layers (*Gallus gallus*), outdoor space must be provided at a rate of no less than ~~one square foot for every 2.25 pounds of bird in the flock~~ **2.0 square feet per hen.**

(B) Add “having withholding time” at §205.238(c)(1)

The OLPS Proposed Rule includes a statement that “Milk from animals undergoing treatment with synthetic substances allowed under §205.603 cannot be sold as organic.” A revision is needed to ensure that this prohibition only applies treatments **that have withholding times.**

This would align with the intent of the NOP as explained in the 2022 preamble (Fed. Reg. page 48573) that repeatedly references treatments **that have withholding times:**

“Milk from an animal treated with an allowed substance in §205.603, **which has a withholding time**, may not be sold, labeled, or represented as organic **during that withholding time.** This is consistent with the 2010 NOSB recommendation that a calf nursing a cow treated topically with lidocaine or other approved synthetic **with a withdrawal time** would not lose organic status. For example, if an organic beef cow was nursing her organic calf and the cow became injured, her calf could continue to nurse the cow even during the seven-day **withholding period** if lidocaine was used to minimize pain and stress during her treatment. In this scenario, the calf would not lose organic status.”

This would also align with common sense and current practice of operators and certifiers that permit organic sale of milk from animals treated with substances on §205.603 that do not have withhold periods, including common substances such as aspirin or iodine teat dips. The phrase “having withhold time” was in 2016 OLPP Proposed Rule but appears to be inadvertently omitted from the 2017 OLPP Final Rule and 2022 OLPS Proposed rule.

OTA Recommended Revision:

- §205.238(c)(1): Milk from animals undergoing treatment with synthetic substances allowed under §205.603 **having withholding time** cannot be sold as organic but may be fed to calves on the same operation. Milk from animals undergoing treatment with prohibited substances cannot be sold as organic or fed to organic livestock.

(C) Replace outdated language at §205.239(a)(3)

In the OLPS Proposed Rule at §205.239(c)(3), a revision is needed to align with the current regulatory text that was just recently updated by the Origin of Livestock Final Rule (published Dec 2018). This ensures accurate regulatory text and avoids unintended negative consequences.

OTA Recommended Revision:

- §205.239(a)(3): Appropriate clean, dry bedding. When roughages are used as bedding, they shall have been organically produced in accordance with this part by an operation certified under this part, except as provided in §§205.236(a)(2)(iii), and, if applicable, organically handled by operations certified to the NOP **under this part**.

(D) Replace outdated language at §205.238(b)

In the OLPS Proposed Rule at §205.239(c)(3), a revision is needed to align with the current regulatory text that was just recently updated by the Origin of Livestock Final Rule (published Dec 2018). This ensures accurate regulatory text and avoids unintended negative consequences.

OTA Recommended Revision:

- 205.238(b)(2) Dairy stock, when used a minimum of 90 days prior to the production of milk or milk products that are to be sold, labeled or represented as organic Dairy animals, as allowed under §205.603.
- **§205.238(b)(3) Fiber bearing animals, as allowed under §205.603**

(10) Implementation of Final Rule

Timely implementation of the OLPS Final Rule is critical. USDA acknowledges in the proposed rule that current conditions are causing consumer confusion and market failure. As detailed in previous sections of this comment, the OLPS Rule is necessary to fix market failure that exists in the organic label, ensure continued trust in the USDA Organic seal, and set a level playing field for all organic livestock and poultry producers. USDA must move expeditiously to publish and implement a final rule. OTA recommends the following implementation approach.

Effective Date

The proposed compliance dates are counted from the final rule's "effective date" which is the short window of time after the rule is published. **OTA supports an effective date that is as soon as possible (usually 60 days from publication), or earlier (immediately) if legally possible⁵².**

Implementation Dates

USDA is proposing an implementation timeframe of 1 year (from the effective date of the final rule) for operations to comply with all new provisions in the OLPS final rule, except that extended implementation timeframes are proposed for broiler operations to comply with indoor space requirements and layer operations to comply with outdoor space. These exceptions are based on the provisions of the rule that USDA estimates are driving the significant changes in practices and thereby the costs in the economic analysis. For broiler operations to comply with indoor space requirements, USDA proposes a 3-year implementation time. For layer operations to comply with outdoor space requirement USDA proposed either 5-years (Option 1), 15-years (Option 2), or other alternative (Option 3). Options 1 and 2 both include an allowance for new entrants certified within three years of the final rule's effective date to have 5 years to comply with the outdoor space requirements. **OTA's positions on implementation timeframes are as follows.**

(A) Poultry Outdoor Space

OTA recommends a modification to Option 1 for poultry outdoor space that limits the 5-year implementation time frame only to currently-certified operations, applies a consistent approach across layer and broiler operations, and removes extended implementations for new entrants.

A key factor in complying with the OLPS final rule is the ability to source and transition additional land to organic in time to fully comply with outdoor space requirements for poultry. Operators need time to conduct logistics and planning activities to source new land area prior to beginning the transition. Once land is secured, operators need to undergo 3 years of transition (36 months without prohibited inputs) for the land to become eligible for organic certification.

⁵² 58 FR 51735; October 4, 1993, <https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf>

An implementation time of no more than 5 years provides sufficient time for poultry operations to complete these activities and come into compliance with outdoor space requirements. This timeframe appropriately balances expediency to fix market failure and delivers benefits of the rule, while providing a practical timeline for businesses activities and organic certification requirements. *(See above comments in Section 4)*

The 5-year extended implementation timeframe is only for currently-certified operations (operations that are certified by the time of the rule’s publication date). Currently-certified operations are more likely to have been negatively impacted by market failure and economic disadvantages caused by the absence of clear regulations. Practical implementation time frames are needed to avoid exacerbating the economic disadvantages. These operations would be changing practices instead of starting new practices and would experience significant upheaval if sufficient implementation time is not provided.

The 5-year extended implementation timeframe should also apply consistently across layer and broiler operations that are currently certified. Because USDA is also proposing new outdoor space requirements for layers and broilers, it should not disregard the possibility that broiler operations may also need to add land to their operations, as will layer operations, which will require time to source and transition additional land to the organic standards. USDA’s current proposal for implementation time for broilers’ outdoor space is only 1 year, which does not allow enough time for new land to transition. USDA should ensure that implementation timeframes provide consistency and fairness across species.

OTA opposes the USDA’s proposed implementation options that give extended implementation timeframe to new entrants up to three years after effective date. USDA should shorten the implementation time for new entrants to minimize market failure following the publication of the final rule. *(See above comments in Section 4)*

Operations that seek organic certification after the rule’s publication date should have to comply with the OLPS final rule provisions for outdoors access and all other provisions within 1 year. Based on OTA’s Certifier Porch Survey (Appendix 3), 100% of certifier respondents are already prohibiting porches for new applicants or additions to existing operations (i.e., new entrants). This indicates that certifiers are already enforcing what would be considered “immediate implementation” of the OLPS Rule’s prohibition on poultry porches for new entrants.

According to the OLPS Proposed Rule, “**new entrants**” include new operations certified after the publication date of the final rule as well as new or replacement poultry houses added to the certification of an existing organic operation. OTA Recommends that new entrants and new or replacement poultry houses should be allowed to complete certifier-approved land transitions already in-progress.

OTA Recommended Revision:

- OTA accepts a 5-year implementation time only for currently-certified poultry operations (layer and broiler) to comply with outdoor space requirements, which is the soonest possible timeframe that still allows time for operators to conduct logistics/planning to source land area, and for the land to undergo a 3-year transition to become eligible for organic certification. OTA supports a 1-year implementation timeframe for new entrants that get certified after the final rule’s publication date, provided that accommodations are made for allowing new operations to complete certifier-approved transitions already in-progress. This provides longer time for currently-certified broilers (up from 1-yr) but shorter time for new layer entrants (down from 5-yr in Option 1).

Poultry
 Option 1: ~~Layer~~ operations certified at the time of the rule's publication ~~effective date~~

~~(typically 60 days after publication)~~ or within three years of the effective date will have five years to comply with the rule's outdoor space requirements concerning stocking density, exit doors, soil, and vegetation. Those operations certified ~~more than three years~~ after the rule's publication ~~effective~~ date will need to comply with all of the rule's outdoor access requirements within 1 year of effective date ~~immediately~~; or

(B) Broiler Indoor Space

OTA also recommends shortening implementation time for broiler operations to comply with indoor space requirements, provided that USDA adopts our recommended stocking density of 6 lbs/sqft.

The driving factor for USDA's proposed extended implementation time for broilers indoors is the additional cost to build additional housing for more space per bird to meet the indoor stocking density requirement. In these comments, OTA is recommending a revision to the broiler stocking density from 5lbs/sqft to 6 lbs/sqft that aligns with animal welfare goals without requiring significant change in practices. *(See above comments in Section 7A: Broiler stocking density).*

At 6 lbs/sqft, most broiler operations will already be in compliance and will not need to undertake new construction costs, thereby eliminating the need for extended implementation time for such construction. It would also remove the cost driver in economic analysis, further justifying that the benefits of the OLPS Rule outweigh the costs. And most importantly, it does so without loss of integrity, animal welfare, or consumer expectation because it aligns with the stocking density used in third-party animal welfare standards. At 6 lbs/sqft, organic standards will still meet consumer expectations for animal welfare as demonstrated by the alignment with third-party animal welfare certifications trusted by consumers and already used by many organic broiler operations.

OTA Recommended Revision:

- Provided that USDA adopts our recommended broiler stocking density of 6 lbs/sqft, OTA supports a 1-year implementation time for broiler operations to comply with indoor space requirements. This provides shorter time for broilers (down from 3-yr), less cost, while retaining all associated benefits.

~~(a) One year for all proposed changes, except for the indoor space requirements~~
~~for broiler operations and~~ the outdoor space requirements for Poultry operations;

~~(b) Three years for the indoor space requirements for broilers; and~~

Conclusion

For the foregoing reasons the OLPS Rule should be implemented without further delay.

Respectfully submitted,

Johanna Miranda

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Farm Policy Director
Organic Trade Association

cc: Tom Chapman
CEO
Organic Trade Association

List of Attachments

1. OTA Statutory Construction Arguments
2. OTA Declarations Packet
3. OTA Comments on 2020 OLPP Economic Analysis Report, May 26, 2020
4. OTA Comments on 2017 OLPP Proposed Rule (Withdraw), January 17, 2018
5. OTA Comments on 2017 OLPP Proposed Rule (4 Options), June 9, 2017
6. OTA Comments on 2016 OLPP Proposed Rule, July 13, 2016
7. OTA Comments on 2016 OLPP Proposed Rule, May 20, 2016 – includes HPAI Report
8. Congressional Letter to USDA, January 2018
9. ACA Letter to USDA, April 2017
10. Organic Producer Letter to USDA, April 2017
11. OTA Egg Safety Literature Review, 2011

Appendix 1: OLPP & OLPS Timeline and Quick Links

- 1995-2000 NOSB recommendations on animal welfare
- 2002 NOP regulations fully implemented
- 2002 Sustained Appeals Decision on poultry porches
- 2009-2011 NOSB recommendations, cont.
- 2010 [OIG Report](#)
- 2012-2016 [NOP Economic Impact Analysis](#)
- 2016 (Apr) [OLPP Proposed Rule](#)
 - 6,675 comments submitted
 - [OTA Comments](#) (July)
- 2017 (Jan) [OLPP Final Rule & Final RIA](#)
- 2017 (Feb) [1st Delay effective date](#)
- 2017 (Apr) [NOSB Resolution](#)
- 2017 (May) [2nd Delay effective date & 2nd Proposed Rule \(4 Options\)](#)
 - 47,000 comments submitted
 - [OTA Comments](#)
- 2017 (Nov) [3rd Delay effective date](#)
- 2017 (Dec) [3rd Proposed Rule \(Withdraw\) & Withdraw RIA](#)
 - 72,000 comments submitted
 - [OTA Comments](#)
- 2018 (Mar) [Final Rule to Withdraw](#)
- 2020 (April) [Economic Analysis Report](#)
 - 550 comments submitted
 - [OTA Comments](#)
- 2020 (Sept) [Final Decision on Economic Analysis Report](#)
- 2021 (Apr) [NOSB Resolution](#)
- 2021 (June) [Vilsack Statement to reconsider OLPP](#)
 - [OTA Response](#)
- 2022 (Aug) [OLPS Proposed Rule](#)
- 2022 (Oct) NOSB Resolution

Appendix 2: OTA 2022 Poultry Producer Survey Results

OTA developed and distributed a survey to organic poultry producers to gather organic poultry data on a number of attributes related to the OLPS Proposed Rule. The survey was distributed in September 2022. The survey was open to any NOP-certified producer or handler of egg layers or broilers. OTA Member companies and farmer organizations distributed the survey through their network of farmers, producer pool members, and certified entities.

The methodology of this 2022 Poultry Producer Survey is the same as the survey cited by USDA in the Economic Analysis as a Baseline Data Source (RIA, p. 15) that was conducted by OTA on behalf of the Organic Egg Farmers of America (OEFA). To maintain comparability to the 2014 OEFA survey, OTA used the same methodology, sampling procedure, and data analysis in the 2022 survey. This is also referred to as a repeated cross-sectional survey. OEFA is one of the members that distributed the survey to their egg layer members, further demonstrating the comparability of the 2022 survey data collection effort to the 2014 OEFA survey cited by USDA in the Economic Analysis.

Responses were compiled and analyzed by OTA and are summarized below in an anonymous format: Layers in Part A and Broilers in Part B. Efforts were taken to avoid double-counting, such as: If a producer indicated that birds in their livestock OSP are raised under contract for other operations that handle (process, handle, broker, or market) the eggs or meat, they were asked to identify the other operations and their activity. If the handler also submitted a survey response, their bird #s were reduced by # of birds reported by the producer's data.

PART A: LAYERS

Survey of responses represent **360 Operations** and **5,654,436 layers**.

- Represents 32% of USDA Baseline 17,400,000 layers (RIA p. 53, AMS Market News December 2020))
- Represents 35% of USDA Baseline 1,015 operations (RIA p. 69, NASS 2019 organic survey)

Third-party Certifications

- **90% of operations have HFAC (Certified Humane):** 324 operation (90%); 5,527,064 birds (98%)
- **68% of operations have AHA (American Humane Certified):** 243 operations (68%); 4,494,241 birds (79%)
- Other certifications mentioned to lesser extent: GAP (4), UEP (5), ROP (1), ROC (1); Several respondents also indicate they comply with California requirements.

Outdoor Space

- **100% of operations** have outdoor access that allows poultry to contact the soil (when age/seasonally appropriate). **0% of operations** use poultry porches as outdoor space
- **98% of operations** say they could comply with 2.25 lbs per square foot outdoor space (equivalent to 2sqft/hen) as proposed by OLPS.

Feed Conversion

- **92.5% of operations do not reformulate diets** (e.g. increase feed) to account for extra energy expenditure when birds are outdoor (**representing 89.6% of birds**)
- 6.6% of operations (24 operations) reformulate diets (representing 10% of birds)

Ammonia

- **61.7% of operations** say they could comply with the 10ppm limit as proposed by OLPS (representing 67% of birds).
- **34% of operations** say they could comply with the 10ppm limit except in winter months (representing 31% of birds)

Scratch Area in Slatted/Mesh Floor Housing

- Of the 344 operations that have slatted/mesh floor housing, **60% (206 operations) say they cannot comply with the requirement for 30% solid floor are as proposed by OLPS.** 40% can comply.

Mortality Rate

- **6.67% is the average mortality rate** of responding operations (weighted average by # of birds represented by each operation)

PART B: BROILERS

Survey responses represent **220 Operations** and **80,752,600 broilers** (Annual Production across 220 operations)

- Exceeds (150%) USDA baseline # Broilers of 54,000,000 broilers (RIA p. 60 (AMS livestock report July 31 2021))
- Represents 61% of USDA Baseline # Operations of 361 (RIA p. 72 (NASS 2019 organic survey))

Third-party Certifications

- **99.5% of operations have GAP:** 219 of 220 operations (99.5%); 80,752,000 of 80,752,600 birds (99.999%)
- **38% of operations have HFAC (Certified Humane):** 84 of 220 operations (38%); 20,800,000 of 80,752,600 birds (26%)
- **61% of operations have USDA Poultry Care Verified Program (USDA PCPVP):** 135 operations (61%); 59,952,000 birds (74%)

Indoor Space

- **99.5% of operations provide 6 lbs / sq ft indoor space** (219 operations representing 80,752,600 birds (99.999% of broilers surveyed))

Outdoor Space

- **96.4% of operations provide 6 lbs / sq ft outdoor space** (212 operations representing 78,672,600 birds (97.4% of broilers surveyed))
- **100% of operations** have outdoor access that allows poultry to contact the soil (when age/seasonally appropriate). **0% of operations** use poultry porches as outdoor space

Feed Conversion

- **100%** of operations do not reformulate diets (e.g. increase feed) to account for extra energy expenditure when birds are outdoor

Ammonia

- **99.5% of operations implement practices to maintain ammonia levels below 20 ppm.** (219 of 220 operations (99.5%); 80,752,000 of 80,752,600 birds (99.999%))

Mortality Rate

- **4.6% is the average mortality rate** of responding operations (weighted average by # of birds represented by each operation)

Appendix 3: OTA 2022 Certifier Survey Results

OTA developed and distributed a survey to USDA-accredited certification agencies to assess the policy positions of certifiers regarding the allowance of poultry porches as outdoor space under current organic regulations. The survey was distributed through the Accredited Certifiers Association. Responses were compiled and analyzed by OTA and are summarized below in an anonymous format. Data excludes poultry species other than *Gallus* when certifier responses indicated specific #s for those species (e.g. turkeys). Data may include some pullet operations when data was provided that combined total # layer and pullet operations.

Survey responses represent: **10** accredited certifiers that certify **1,573** poultry operations.

- Exceeds (114%) the USDA Baseline of layer and broiler operations cited on pages 69 and 72 (respectively) of the RIA (1,376 layer and broiler operations combined). Also exceeds the total # certified poultry operations identified in the NOP Organic Integrity Database (1,499 as of Oct. 2022)

Results

- **100% of certifiers that responded to the survey do not consider poultry porches to be compliant with current organic regulations for outdoor access.** 3 of these certifiers started implementing this policy between 2018-2019 for new applicants or additions to existing operations, and have “grandfathered” in a total of 9 operations (**0.7% of operations represented by total survey responses**) prior to that time that still have porches as their only outdoor access area.