



THE VOICE OF FOOD RETAIL

Feeding Families  Enriching Lives

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RE: National Organic Program; Organic Livestock and Poultry Practices  
[AMS–NOP–15–0012; NOP–15–06PR] RIN 0581–AD44

Dr. Lewis:

On April 13, 2016 the United States Department of Agriculture (USDA) Agricultural Marketing Service (AMS) published in the *Federal Register* a proposed rule to amend the requirements for production of organic poultry and livestock. As AMS is well aware, the organic market is increasing in growth and relies on a high level of consumer confidence due to the standards in place from USDA and the rigorous certification process currently in place. The proposed rule would amend the organic livestock and poultry production requirements by: adding new provisions for livestock handling and transport for slaughter and avian living conditions; and expand existing requirements covering livestock health care practices and mammalian living conditions. FMI appreciates the opportunity to submit comments on the proposed rule on the “National Organic Program; Organic Livestock and Poultry Practices”, but is concerned with a number of proposals, as stated below.

The Food Marketing Institute (FMI) proudly advocates on behalf of the food retail industry. FMI’s U.S. members operate nearly 40,000 retail food stores and 25,000 pharmacies, representing a combined annual sales volume of almost \$770 billion. Through programs in public affairs, food safety, research, education and industry relations, FMI offers resources and provides valuable benefits to more than 1,225 food retail and wholesale member companies in the United States and around the world. FMI membership covers the spectrum of diverse venues where food is sold, including single owner grocery stores, large multi-store supermarket chains and mixed retail stores. For more information, visit [www.fmi.org](http://www.fmi.org) and for information regarding the FMI foundation, visit [www.fmifoundation.org](http://www.fmifoundation.org).

FMI members are not involved in direct production agriculture in most cases. However, as retailers, FMI members work closely with both suppliers of products and consumers of products. Retailers often have the first-hand knowledge of what consumers want and expect regarding the food they purchase and respond to these demands through expanded product offerings. We appreciate the efforts of AMS and support the goal to promote consistency in organic livestock practices, but wish to register our concerns about the details and unintended consequences that may follow if this rule is enacted as proposed. FMI members are also quite concerned that

changing the organic standards without sufficient scientific basis sets a dangerous precedent that could later adversely impact other livestock practices not covered under the proposed rule.

Under the proposal AMS seeks to:

1. Clarify how producers and handlers must treat livestock and poultry to ensure their health and well-being.
2. Clarify when and how certain physical alterations may be performed on organic livestock and poultry in order to minimize stress. Additionally, some forms of physical alterations would be prohibited.
3. Set maximum indoor and outdoor stocking density for avian species, which would vary depending on the type of production and stage of life.
4. Define outdoor access to exclude the use of structures with solid roofing for outdoor access and require livestock and poultry to have contact with soil.
5. Add new requirements for transporting livestock and poultry to sale or slaughter.
6. Clarify the application of USDA Food Safety and Inspection Service (FSIS) requirements regarding the handling of livestock and poultry in connection with slaughter to certified organic livestock and poultry establishments and provide for the enforcement of USDA organic regulations based on FSIS inspection findings.

FMI is incredibly concerned that the proposed changes will significantly disrupt the organic foods market, will increase costs to consumers and potentially drive small farms out of business. FMI also believes that the proposals cited above are redundant since the Food Safety and Inspection Service (FSIS) branch of USDA already has regulatory oversight to ensure animal health and well-being under humane handling statutes. FMI urges AMS to recognize the current animal welfare requirements already established by FSIS.

We also urge AMS to consider the costs associated with the proposed changes, the sheer number of products that would no longer be considered “organic” under the rule and the cost and time associated with understanding and complying with a new set of unnecessary and onerous regulations. Our members believe the existing human handling standards that FSIS has in place are sufficient and the incorporation of additional standards is outside the scope the intended organic standards. As an alternative to expanding the scope of the organic standards under the proposed rule, FMI believes that a separate AMS Process Verified Program would be a more appropriate place to ensure consumers who are seeking verifiable information related to certain animal handling welfare practices that may be different from FSIS’ requirements. The USDA Process Verified Program would provide a more appropriate way for applicants to market their products to customers using clearly defined, implemented, and transparent process points. A Process Verified Program would be welcomed by those consumers seeking specific information, enabling them to make more informed decisions on the products that they buy.

### Economic Analysis

In the preamble, AMS states that organic egg sales were \$514 million in 2014 and have been experiencing double digit growth for several years. FMI members expect this trend to continue and retailers are responding to consumer interest in organic products by continuing to support the

growth of the product lines and the market for organic products. The proposed rule will have a significant impact on the availability of organic products currently on the market. Organic egg sales continue to grow and AMS should not implement a policy that would limit the availability of products that consumers are demanding. Indeed, the existence, and marketability of such a private standard demonstrates that a separate AMS requirement is unnecessary and may, in fact, be disruptive to producers' participation or consumers' interest in such programs.

In the proposed rule, USDA defines outdoor access to exclude the use of structures with solid roofing for outdoor access and would also require livestock and poultry to have contact with soil. AMS should recognize that changes to existing housing structures are very expensive and involve capital expenses that are cost prohibitive for many family-owned and small farms. Other unintended costs include diverting production and the costs at retail of shortages, changes in packaging, customer service and consumer education if products change, or are not available.

The experience of the industry has been that the cost of complying with regulations always exceeds the estimates. In the proposed rule, it was stated that the mammalian health care and living conditions, transportation or slaughter provisions will not impose additional cost. It is always costly for industry to comply with regulations as opposed to simply operating under industry standards and AMS should recognize these additional costs and weigh those with the purported benefits of the proposed rule.

In the proposed rule, AMS mentions compliance with third party certification programs such as Certified Humane and therefore states that "most" egg producers could comply with the stocking density rates with minor or no changes. Expecting compliance with a private standard should not be the basis of the AMS proposed rule.

In the proposed rule, AMS outlines several types of housing systems and estimates the percentage of production in those systems. Many producers modified housing structures to meet the 2002 NOP standards. These changes would make those structures obsolete forcing producers to incur additional capital expenditures that would likely force some to exit the organic market entirely. The producers least likely to be able to make capital investment modifications are the ones who rely on USDA the most to help protect the viability of family farms.

Many retailers offer private brand shell eggs and specifically private brand organic eggs. The organic market has grown substantially in the past decade and is a significant portion of the shell egg market. Some retailers estimate that up to 50% of their private brand eggs would be cage free and will not qualify for organic certification under this rule. The consumer demand is for organic eggs, so this poses a supply and demand problem. FMI members also question the scientific basis behind the change in standards from a consumer perception point of view and an animal welfare perspective.

Retailers wish to continue to sell organic eggs at current volumes and it is not feasible or acceptable to shift this production to cage free. To make the assumption that a production shift from organic to cage free will not have a huge economic impact is dangerous and will certainly disrupt the availability of products in the marketplace. Assuming that a certain percentage of production will simply shift to non-organic will create economic distress for producers, put

producers out of business or be forced to comply with the new regulations. It will also create shifts in product availability, which will result in additional disruptions in the market.

The USDA Organic program has achieved significant market growth and also benefits from the trust of consumers who have learned to seek the USDA Organic label. Consumers want to know that their food was produced using organic production methods and contain, or do not contain, certain ingredients.

Retailers want to meet the needs of their customers. Drastically changing the requirements of the program and knowingly displacing producers from the market is not in line with the goals of USDA and is not grounded on science-based animal welfare requirements. Why would USDA promulgate a rule that knowingly increases mortality rates in animals? The USDA Organic regulations should be focused on the inherent nature of the item, not the method. Unlike the NOP, AMS Process Verified Programs exist for additional product attributes outside of FSIS humane handling regulations.

#### Animal Health

Veterinarians have submitted separate comments on this proposed rule. FMI is very concerned that the proposed rule openly assumes an increase in mortality of laying hens from 5% to 8% due to predation, disease and parasites from the increased outdoor access. Mitigation measures will also add cost to the system and for what purpose when the increase in mortality is predicted? A three percent increase is huge in animal production, and we question whether this is in line with USDA's animal welfare goals and standards?

#### Science of Space Allocations and Welfare Requirements

AMS should do a thorough review of the literature on space requirements for animal welfare for all species affected by this proposed rule.

The proposed rule includes a provision requiring at least 50% soil cover for livestock and avian species. However, in the preamble, both soil and vegetation are mentioned for outdoor space. By just specifying soil, the rule limits possible natural groundcover that might be more natural space for the region than soil alone. What is the basis for requiring 50% soil and has AMS evaluated the impact of this provision?

The proposed rule also prohibits space with a solid roof overhead. However, the rule also states that shade could be provided by structures, trees or other objects. If structures are allowed, then why not roofs with open space? This provision eliminates many housing environments and we question the science behind this prohibition.

What is the scientific basis for all birds being able to exit within one hour? How will this be measured?

The proposed rule would also require outdoor space to be designed to promote and encourage outdoor access for all birds. Producers would then be required to train birds to go outdoors from an early age. AMS further states that producers must actively and repeatedly train their birds to access the outdoors and provide sufficient enrichment so that the birds stay outdoors. FMI members are concerned that this

proposal is unnecessary and simply unworkable. What type of training would a producer need to provide? FMI urges AMS to reconsider the outdoor access proposals which could significantly limit what might be available under the organic program.

#### Transportation

The proposed rule would also impose new requirements for transporting livestock and poultry to sale or slaughter. FMI believes these requirements are redundant and unnecessary since FSIS already has regulations in place for the transportation requirements for animal food.

#### Infectious Disease Control

FMI strongly encourages AMS to consult with the Food and Drug Administration (shell egg regulations), FSIS (meat, poultry and egg products) and the USDA Animal and Plant Health Inspection Service regarding the potential impact of this rule on infectious diseases that impact food safety as well as animal health. With animal diseases such as laryngotracheitis and avian influenza increasing in recent years, it is paramount to the health and safety of animals as well as the exporting economy that an in-depth analysis of infectious disease impact is conducted.

#### Compliance Deadlines

While FMI strongly urges AMS to reconsider the proposed rule, we believe any changes to the existing regulations should be phased in over an extended period of time. The proposed changes will have a significant impact on farms of all sizes. Similarly, AMS should provide the public an opportunity to comment on any additional changes to ensure retailers and producers alike understand the real impact and costs associated with any additional changes.

#### Summary

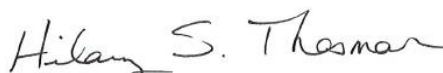
As the association representing the food retail industry, we have serious concerns about the requirements in this proposed rule. We encourage AMS to carefully evaluate the economics of the regulations and invariable market changes that will result. We also encourage AMS to carefully consider peer reviewed scientific studies to determine optimal animal welfare and outdoor access standards.

Consumers value organic products based on the volume and growth of the market. Consumers also have high levels of trust in organic certification. We appreciate the opportunity to comment on this proposed rule.

Sincerely,



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Chief Regulatory Officer



Hilary S. Thesmar  
Chief Food & Product Safety Officer &  
Vice President, Food Safety Programs

