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July 13, 2016

Miles McEnvoy
Deputy Administrator
National Organic Program, Agricultural Marketing Service
U.S. Department of Agriculture
1400 Independence Avenue, SW
Washington, DC 20205

RE: Docket No. AMS-NOP-15-0012 National Organic Program: Organic Livestock and Poultry Practices

Dear Mr. McEnvoy:

New York Farm Bureau (NYFB), New York state's largest general farm organization, appreciates the opportunity to comment on the proposed rule to amend program criteria for organic livestock and poultry production. NYFB represents the great diversity of New York agriculture from row crops, specialty crops, vintners, orchards, livestock, dairy and both conventional production and organic production and a wide range of operation sizes.

U.S. Department of Agriculture's (USDA) National Organic Program (NOP) is a useful marketing tool that provides many farmers with an opportunity to diversify their operation and provide specialized products which they can sell to their consumers at a premium. NYFB has many members who are USDA certified organic, however, our organization has concerns with the proposed revisions to the National Organic Program (NOP) Organic Livestock and Poultry Practices and does not support this proposal.

In a concurrence with our national organization, the American Farm Bureau Federation, we urge the department to clarify organic label information, educate consumers about organic food products, create flexibility in standards for livestock and poultry production practices and encourage participation in science-based animal welfare certification programs outside the NOP. The standards of a food-marketing program should not compromise the safety of food products or the health and welfare of animals.

Food marketing program standards should not compromise the safety of food products or the health and welfare of animals. We understand that quality standards add integrity and reliability to a marketing program; however, livestock and poultry production practices should not be codified.

This proposal would exclude existing certified organic farms, many farms that have made long-term investment decisions based on longstanding precedents for acceptable organic livestock and poultry facilities.

NYFB would like to specifically comment on the following areas: animal welfare standards, increased risk to food safety and the spread of infectious diseases, environmental regulation compliance issues, and the economic impact on organic producers and consumers.

We offer the following comments to the Agricultural Marketing Service (AMS) expressing our concerns and suggestions.

Animal Welfare Standards in the National Organic Program

In the rule, AMS asserts that animal welfare attributes are synonymous with organic attributes, NYFB strongly disagrees with this assertion. The term “organic” is most simply defined as grown or made without the use of artificial chemicals. Merriam-Webster’s definition includes more specifics like “... involving plant or animal origin without employment of chemically formulated fertilizers, growth stimulants, antibiotics, or pesticides.”¹ The 1990 authorizing statute, which created the NOP, unfortunately did not provide a succinct definition of organic, but rather a vague deferral to the subsequent provisions of the chapter.² The 1995 National Organic Standards Board (NOSB) definition and the NOP definition from 2002 are based in ecological elements of biodiversity, biological cycles, and soil quality and health.³ None of the definitions provided in statute, subsequent agency and board action, or laymen’s terms suggest that animal welfare is inherently part of an organic production system.

This should not be misconstrued as NYFB does not think animal welfare standards are important. In fact, we strongly advocate for the proper care of livestock and poultry and our members are strongly committed to ensuring the well-being of the animals on their farms. Our objection is with the codification of standards that are not based on sound veterinary science. We strongly support the ability of livestock and poultry organizations, both organic and conventional, to develop voluntary national production standards that are properly researched and are recommended by animal production specialists and veterinary experts. The Pork Quality Assurance Plus, Beef Quality Assurance, and the National Dairy FARM Program are good examples of programs that are created by experts who understand the nutritional, physical and health needs of livestock. Are producers already widely participating in these programs and making long-term investments in meeting these standards. Any standards should be rooted in science and define good production practices that are flexible to size and housing systems.

NYFB also contends that the authors of the original Organic Foods Production Act did not intend for animal welfare standards to be part of the National Organic Program. A review of the legislative history reveals that animal welfare was never included in bill sponsor remarks⁴,

¹ Merriam-Webster. Available: <http://www.merriam-webster.com/dictionary/organic>

² U.S. Code, Title 7, Chapter 94, §6502-Definitions

³ U.S. Department of Agriculture, “Guide for Organic Livestock Producers”

⁴ 135 Cong.Rec. S15863-03 (daily ed. Nov. 16, 1989)

debates, or report language for the legislation⁶. It was comments that Kathleen Merrigan (then of Tufts University) made to the NOSB on November 28, 2007 that as a former congressional staffer who had worked on the legislation, she presumed that animal health and welfare would be included in the standards even though the Senate's report text on "livestock criteria" did not explicitly discuss health and welfare. This lack of Congressional direction therefore makes us question whether AMS and NOSB have exceeded the intended scope of the National Organic Program by attempting to implement animal health, living conditions and welfare standards. Should the Department want to implement such standards, it must work with congressional leadership to bring a legislative remedy to clarify the Organic Foods Production Act.

Increased Risks to Food Safety and Spread of Infectious Diseases

NYFB has heard from poultry industry sources that the Food and Drug Administration (FDA) was not consulted on the proposed rule for organic eggs and the requirement that outdoor access for the organic hens be on dirt without a roof overhead. This is clear in the proposed rule, as covered porches meet the food safety and sanitary guidelines set forth in FDA's Final Rule, Prevention of Salmonella Enteritidis in Shell Eggs During Production, Storage, and Transportation. The Department's interpretation of the FDA guidelines on page 21985 of AMS-NOP-15-0012 states that: "The stipulation that porches are not outdoor space is consistent with the U.S. Food and Drug Administration (FDA)." To be clear, FDA considers the porch to be a part of the poultry house, however it does not specify that a porch is not an outdoor area. Instead, FDA describes porches as "outdoor access areas that are part of the poultry house."⁷

FDA biosecurity requirements include provisions to prevent stray poultry, wild birds, cats and other animals from entering the poultry house and to remove debris outside of the poultry house that may provide harborage for pests. To meet NOP requirements for outdoor access and soil, organic egg producers are in many cases likely to become noncompliant with FDA guidelines. It is also concerning that the proposal requires outdoor access to accommodate 100 percent of the flock with at least 50 percent soil. In order to accommodate outdoor access for all of the flock, additional access points may be required, increasing the risk of stray poultry, wild birds, cats and other animals entering the poultry houses. Further, the Department defines soil as the outermost layer of the earth comprised of minerals, water, air, organic matter, fungi and bacteria in which plants may grow roots. The presence of soil bacteria and fungi in areas with a high traffic of hens would become a vector for parasites and pathogens that could not be appropriately sanitized per FDA guidelines.

⁵ 136 Cong. Rec. H6535-05 (daily ed. Aug. 1, 1990)

⁶ See both S. Rep. 101-357, at 302(1990) and H. Rep. 101-916, at 1177-78(1990)

⁷ Food and Drug Administration. Draft Guidance for Industry: Questions and Answers Regarding the Final Rule, Prevention of Salmonella Enteritidis in Shell Eggs During Production, Storage, and Transportation (Layers with Outdoor Access). Available:

<http://www.fda.gov/downloads/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Eggs/UCM360302.pdf>

The implications for the spread of infectious disease and non-compliance with FDA guidelines for biosecurity and food safety are real and should not be marginalized.

Although the risk of a disease outbreak is an inexact number, the probability of an avian influenza outbreak or other disease impacting an outdoor flock is not insignificant. Outdoor flocks are susceptible to a number of sources which could increase the risk of disease transmission including stray poultry, wild birds, cats and other animals; standing water on premises; and exposure to a virus from shoes, clothing, equipment or vehicles. Many viruses are transmitted by coming in contact with an infected bird's fecal matter or secretions from the nose, mouth and eyes. Fecal matter is the most common bird-to-bird transmission vector and enables the transfer of highly pathogenic strains of avian influenza. The current proposal's definition of outdoors would make it difficult for producers to limit the exposure to wild and migratory bird fecal deposits.

One only has to look at the spring 2015 outbreak of the worst epidemic in history of highly pathogenic avian influenza (HPAI). During this outbreak 7.5 million turkeys and 42.1 million egg-layer and pullet chickens were destroyed to control HPAI.⁸ The costs of USDA indemnification, depopulation and cleanup activities for the 2015 outbreak cost American taxpayers some \$879 million⁹. Other economic costs from the 2015 HPAI outbreak included supply disruption for both shell and breaker eggs; significant price increases for shell and breaker eggs; and full or partial trade bans on all poultry products (including broilers, which did not have any infections) by at least 56 trading partners^{10, 11}

Avian influenza is not the only concern with requiring outdoor space and access to soil and vegetation. This requirement also increases the risk of other infectious diseases along with a host of internal and external parasites. Consequently, any diseased animal that requires antibiotic treatment for infections must be removed from the organic system and marketed as non-organic. What is very troubling about the proposed rule is that AMS assumes that outdoor space and vegetation increases the mortality rate to 5-8 percent due to increased predation, disease and parasites. Recent literature indicates that layer mortality rates are not uniform for broilers and layers and that mortality rates are actually higher in layers, ranging from 8 to 18 percent.¹² In the proposed rule, NOSB itself uses mortality rates as a key indicator of animal welfare and important to the economic viability of an operation.

⁸ U.S. Department of Agriculture, Animal and Plant Health Inspection Service. Available: https://www.aphis.usda.gov/animal_health/downloads/animal_diseases/ai/hpai-preparedness-and-response-plan-2015.pdf

⁹ Johansson, R., Preston W., Seitzinger, A.H. (2016) *Government Spending to Control Highly Pathogenic Avian Influenza*. Agricultural & Applied Economics Association.

¹⁰ Newton, J., and T. Kuethe. "An Outbreak unlike Any Other: Perspective on the 2014-2015 Avian Influenza." *farmdoc daily* (5):85, Department of Agricultural and Consumer Economics, University of Illinois at Urbana-Champaign, May 8, 2015.

¹¹ Newton, J., and T. Kuethe. "Economic Implications of the 2014-2015 Bird Flu." *farmdoc daily* (5):104, Department of Agricultural and Consumer Economics, University of Illinois at Urbana-Champaign, June 5, 2015.

¹² Vukina, T., K. Anderson, and M.K. Muth. (2014). "Economic effects of proposed changes in living conditions for laying hens under the National Organic Program." Poultry Science Association.

NYFB recognizes that § 205.241(d)(3) adds a provision to allow for temporary confinement, but this is not possible unless there is a documented case of disease in the region or migratory flyway. However, this limited flexibility for confining animals does not seem effective for preventing the significant potential loss described previously. Further, this provision fails to address the following for temporary confinement: how long must the outbreak be present? Does a “documented case” apply to the entire migratory season? How long can the temporary confinement last? Does it cross geopolitical lines?

Agricultural Marketing Service’s proposal for outdoor soil access and space requirements for poultry does not aid in the prevention of disease, and they conflict with USDA Animal and Plant Inspection Service (APHIS) recommendations. In April of 2015, APHIS released a publication detailing how to prevent an avian influenza outbreak through protecting poultry flocks from coming in contact with wild or migratory birds and water sources that could have been contaminated by wild birds. Netting and/or fencing may prevent some direct contact; it will not prevent flocks from coming into contact with fecal droppings or standing water contaminated by wild birds. Preventative measures are paramount to preventing infections and AMS’s proposal that confinement be limited to times of a confirmed regional or flyaway outbreak undermines APHIS biosecurity guidance.

Environmental Regulation Compliance Issues

The outdoor space requirements proposed in this rule also raises concerns over whether additional compliance under the Clean Water Act (CWA) would create increased costs for organic poultry and livestock producers. Any poultry or livestock producer must comply with the CWA and other environmental laws regardless of if they are organic or conventional. The proposal lacks information on the costs of avoiding unauthorized discharges and compliance with relevant concentrated animal feeding operation (CAFO) permitting requirements. For example, how should farmers deal with stormwater management structures that come into contact with birds and pollutants like dander or fecal matter.

The Environmental Protection Agency’s (EPA) regulations for CAFOs generally define AFO’s as farms where animals are (a) confined and fed for a total of 45 days or more in any 12-month period and (b) in an area where vegetation is not sustained in a normal growing season over any portion of the lot or facility.¹³ The AMS proposed rule requires that a minimum of 50 percent of outdoor space should be soil to encourage natural behaviors like foraging and dust bathing—but it does not clarify how much of that “soil” must be vegetative, if any. In litigation, EPA has interpreted the CAFO rule term “production area” very broadly to comprise the entire farmyard (including vegetated areas between poultry houses).

¹³ Environmental Protection Agency. Animal Feeding Operations Definitions. Available: <https://www.epa.gov/npdes/animal-feeding-operations-afos> and at 40 C.F.R. 122.23

EPA has taken enforcement actions against farmers for unlawful discharges from the farmyard when dust, feathers, dander or manure (i.e. pollutants) blown from poultry houses falls to the ground and comes into contact with stormwater that reaches navigable waters¹⁴.

Those same “pollutants” would otherwise be deposited onto soil directly by the bird in outdoor access areas and similarly would come in contact with precipitation-related stormwater.

This lack of clarity on soil and vegetation would make it difficult for an organic facility to understand its obligations and costs for environmental compliance. We are also concerned that the additional land area required to achieve stocking densities of outdoor spaces for some organic operations will likely be too cost prohibitive for those growers to remain in organic production, yet AMS provides no cost analysis to assist organic producers.

Economic Impact on Organic Producers and Consumers

The implications of this rule do not uniformly impact the industry and will have detrimental effects on the supply and consumption of organic products. NYFB believes that this proposal will not only affect organic producers and consumers, it will also adversely affect non-organic livestock and poultry producers. By taking out of the market those existing certified organic farms, the availability of organic meat, milk and egg products will decrease. In fact, in its own estimation Agricultural Marketing Service (AMS) estimates that up to 90 percent of organic aviaries may transition from organic to cage free reducing the numbers in the organic market and flooding the cage-free market, applying downward price pressure.

If financial investments are made to comply with the new standards, those monies would go toward costly expenditures such as purchasing additional land or relocating the operation to meet the outdoor space requirements, redesigning facilities to accommodate the combined footprint of the indoor and outdoor space requirements, and redesigning structures to provide access for 100 percent of the birds in the house to reach an exit area within one hour. For dairies in our state, many operations converted from conventional production to organic production and traditional tie-stall barns do not accommodate the space requirements of this proposal. This kind of upgrade would be tremendously expensive for many small family farms. Instead, the focus should be on cow comfort, as addressed in the Dairy FARM program, not on space alone. These type of additional investment costs will force many farm families to make difficult financial decisions.

Growers of organic feed grains servicing organic poultry and livestock operations will see a decrease in demand and corresponding decline in farm revenues. In addition, the three-year transition of land into organic production comes with a significant opportunity cost. Producers made this transition and investment decision based upon growing demand for organically produced crops. The Department fails to quantify the adverse impact of the proposed rule on organic growers of feed ingredients.

¹⁴ *Lois Alt v. EPA*, Docket No. 2:12-cv-42 (N.D.W.Va.). The West Virginia district court disagreed with EPA’s interpretation of the CAFO rule, but EPA publically stated it will not acquiesce to the court’s ruling and continues to interpret the “production area” to include farmyards.

In short, the rule proposal is harmful for both organic farmers and consumers, and Farm Bureau cannot support it.

Conclusion

NYFB believes that USDA should provide accurate information for consumers to distinguish that the USDA's Organic Seal is not tantamount to their perceptions of humane treatment or animal welfare standards by educating consumers not only on what is "organic," but by educating the public on national science-based voluntary animal welfare certifications. AMS should provide greater flexibility in standards for the National Organic Program to provide farmers with more workable and efficient options to raise livestock and poultry that can still achieve NOP goals.

Further, we reiterate our view that the Organic Foods Production Act does not give AMS statutory authority to write standards for welfare and living conditions and we stress that any standards for organic livestock and poultry production should not jeopardize the health of animals or compromise food safety.

New York Farm Bureau appreciates your time and consideration of these comments and we look forward to working with you to improve the National Organic Program to better meet the needs of farmers and the expectations of consumers.

Sincerely,

A handwritten signature in black ink, appearing to read "Dean E. Norton". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Dean E. Norton
President