

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 205**

[Doc. No. AMS–NOP–21–0073]

RIN 0581–AE06

**National Organic Program (NOP);
Organic Livestock and Poultry
Standards****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

SUMMARY: The United States Department of Agriculture’s (USDA) Agricultural Marketing Service (AMS) amends the organic livestock and poultry production requirements by adding new provisions for livestock handling and transport, slaughter, and avian (poultry) living conditions; and expanding and clarifying existing requirements covering livestock care and production practices and non-avian living conditions. These changes will ensure organically produced foods meet a transparent and consistent standard to allow the industry to maintain consumer confidence in USDA organic products, to align with consumer expectations regarding outdoor access, and to further facilitate interstate commerce in organic products.

DATES:

Effective Date: This rule is effective January 2, 2024.

Compliance Dates: All organic operations must comply with the requirements of this rule by January 2, 2025, except:

(1) Currently certified organic layer operations and layer operations that are certified before January 2, 2025, must comply with the §§ 205.241(c)(2), (c)(4), and (c)(5), concerning outdoor stocking density requirements and soil and vegetation requirements, by January 2, 2029.

(2) Currently certified organic broiler operations and broiler operations that are certified before January 2, 2025, must comply with §§ 205.241(b)(10), (c)(2), and (c)(6), concerning indoor and outdoor stocking density requirements and soil and vegetation requirements, by January 5, 2029.

(3) Currently certified organic poultry operations and poultry operations that are certified before January 2, 2025 must comply with § 205.241(b)(4), concerning poultry house exit area requirements, by January 2, 2029.

For more information, see the IMPLEMENTATION AND

COMPLIANCE DATES FOR THE FINAL RULE section of this document.

FOR FURTHER INFORMATION CONTACT: Erin Healy, Director, Standards Division, Telephone: (202) 720–3252; Email: erin.healy@usda.gov.

SUPPLEMENTARY INFORMATION:**Table of Contents**

- Executive Summary
 - A. Introduction
 - B. Summary of Provisions
 - C. Costs and Benefits
- I. General Information
 - Does this action apply to me?
- II. Background
 - A. Purpose and Need for the Rule
 - B. Statutory Authority To Issue Final Rule
 - C. NOSB Recommendations on Livestock Production
 - D. Organic Livestock Regulatory History
- III. Overview of Public Comments
 - A. Responses to Comment on Statutory Authority
 - B. Responses to Comment on Market Failure
- IV. Overview of Final Rule and Responses to Comments
 - A. Terms Defined (§ 205.2)
 - B. Livestock Care and Production Practices Standard (§ 205.238)
 - C. Mammalian and Non-Avian Livestock Living Conditions (§ 205.239)
 - D. Avian Living Conditions (§ 205.241)
 - E. Transport and Slaughter (§ 205.242)
 - F. Implementation and Compliance Dates for the Final Rule
 - G. Severability
- V. Regulatory Analyses
 - A. Summary of Economic Analyses
 - B. Executive Order 12988
 - C. Executive Order 13132
 - D. Executive Order 13175
 - E. Civil Rights Impact Analysis
 - F. Paperwork Reduction Act
 - G. Related Documents

List of Subjects in 7 CFR Part 205 Part 205—National Organic Program

Executive Summary**A. Introduction**

The Organic Livestock and Poultry Standards (OLPS) final rule amends the USDA organic regulations (7 CFR part 205) related to the production of livestock, including poultry, marketed as organic. The rule adds detailed regulations related to animal health care, indoor and outdoor space standards, manure management, temporary confinement of livestock, access to the outdoors, transportation conditions, and humane euthanasia and slaughter. USDA expects that the detailed regulations established by this final rule will clarify aspects of the existing USDA organic regulations that are not interpreted or enforced in a consistent manner. In turn, the detailed regulations in this final rule will better

assure consumers that organic livestock products meet a consistent standard, as intended by the Organic Foods Production Act (OFPA or “the Act”).

The OLPS proposed rule received extensive public comment that indicated broad support for its policy changes. Ninety-four percent of the public comments and petition signatures that AMS received support the rule and its goals. Many comments also suggested policy revisions and provided helpful economic data, which AMS took into account when writing this final rule.

B. Summary of Provisions

Livestock that are certified organic under the USDA organic regulations include mammalian species (e.g., cattle, swine, sheep, goats), avian or poultry species (e.g., chickens, turkeys, ducks), and other animal species used for food or in the production of food, fiber, feed, or other agricultural-based consumer products. The changes in this rule address a range of topics related to the care of organic livestock, including:

Livestock health care practices—the rule specifies which physical alteration procedures are prohibited or restricted for use on organic livestock. The livestock health care practice standards include requirements for euthanasia to reduce suffering of irreversibly sick or disabled livestock;

Living conditions—the rule sets livestock living condition standards that reflect the needs and behaviors of different types of animals and consumers’ expectations about the living conditions of animals in organic production. The avian (or poultry) livestock living standards include indoor and outdoor space requirements and require that housing provides sufficient exit areas for birds to access the outdoors;

Transport of animals—the rule adds new requirements for the transport of organic livestock to sale or slaughter;

Slaughter—the rule adds a new section to clarify how organic facility slaughter practices and USDA Food Safety and Inspection Service (FSIS) regulations work together to support animal welfare.

C. Costs and Benefits

AMS analyzed the rule’s impact on the organic broiler market and the organic egg market. Table 1 summarizes the full range of benefits and costs related to the implementation of this rule. AMS has sought to quantify these benefits and costs to the greatest extent possible in Section F of the RIA.

TABLE 1—QUALITATIVE SUMMARY OF RULE’S BENEFITS AND COSTS

Benefits	Costs
<p><i>Reduces information asymmetries between producers and consumers, resulting in a more optimal distribution of organic and other value-added products. Reduces consumer search costs for consumers aware of these inconsistencies.</i></p> <p><i>Adds value to organic products: consistent minimum animal welfare standards, increased space for organic broilers*, and increased outdoor access for organic layers.*</i></p> <p><i>Reduces risk to the integrity of the organic label, increasing the likelihood of sustained demand and continued growth of organic sales.¹</i></p>	<p><i>On-going compliance costs: more indoor space for organic broilers and more outdoor space for organic layers.*</i></p> <p><i>Temporary losses of economic welfare: total surplus in organic egg market decreases more than total surplus increases in the cage-free egg market as organic egg production unable to comply with the rule shifts to cage-free markets.*</i></p>

* These benefits/costs are quantified in the analysis.

Table 2 below captures the monetized costs, benefits, and net benefit in these markets. AMS estimates annual costs for organic layer operations of \$28.1–\$32.9 million and costs for organic broiler operations of \$4.8–\$5.5 million. Additionally, AMS estimates that organic egg production exiting for the cage-free egg market will lead to a

temporary economic welfare loss of approximately \$8.7–\$16.0 million over the first 20 years of the rule. AMS estimates annual benefits for layer operations of \$76.6–\$89.6 million and benefits for organic broiler operations of \$31.5–\$35.6 million. In total, AMS anticipates this rule will produce an annualized net benefit ranging from

\$59.1 million (assuming a 7% discount rate overall) to \$78.1 million (assuming a 3% discount rate overall). For more detailed discussion of the economic analysis, including its assumptions and methods, see the Regulatory Impact Analysis for this rule.

TABLE 2—EXECUTIVE SUMMARY: UNIT COSTS AND BENEFITS FOR EGGS AND BROILERS

	Eggs	Broilers
Unit Benefits and Costs		
Avg. Benefit Per Unit (Consumer Willingness to Pay) *	0.205/dozen	0.14/lb.
Cost Change in Average Total Cost of Production Per Unit	0.06/dozen	0.02/lb.
Net Benefit per Unit Gaining Outdoor Access	0.145/dozen	0.16/lb.
Total Annualized Benefits and Costs		
20-Year Annualized Discounted Benefits (3%) (\$1,000) *	\$89,564	\$35,641
20-Year Annualized Discounted Benefits (7%) (1,000) *	76,641	31,467
20-Year Annualized Discounted Costs (3%) (1,000)	32,893	5,491
20-Year Annualized Discounted Costs (7%) (1,000)	28,147	4,848
20-Year Annualized Discounted Economic Welfare Loss (3%) (1,000)	8,709	0
20-Year Annualized Discounted Economic Welfare Loss (7%) (1,000)	16,046	0
Total Annualized Net Benefits		
20-Year Annualized Discounted Net Benefits (3%) (1,000)	47,962	30,149
20-Year Annualized Discounted Net Benefits (7%) (1,000)	32,448	26,619
<i>One-time Domestic Information Collection Cost (1,000)</i>		4,930

* Layer benefit reports the mid-point benefits of the two estimates (\$0.16/dz. and \$0.25/dz.).

I. General Information

Does this action apply to me?

You may be affected by this action if you are engaged in the meat, egg, poultry, dairy, or animal fiber industries. Potentially affected entities may include, but are not limited to:

- Individuals or business entities that are considering organic certification for a new or existing livestock farm or slaughter facility;
- Existing livestock farms and slaughter facilities that are currently certified organic under the USDA organic regulations; and

—Certifying agents accredited by USDA to certify organic livestock operations and organic livestock handling operations.

This listing is not intended to be exhaustive but identifies key entities likely to be affected by this action. Other types of entities could also be affected. To determine whether you or your

¹ AMS finds it likely that controversy or confusion about one product under the organic scheme will cause secondary effects to the overall label and other products, including, but not limited to, risk to consumer confidence, trust, and demand. Because of the unique nature of the organic label, quantifying or monetizing this risk based on existing literature is not possible. See further

discussion in Section F. For general information on the relationship between trust reputations and labels see: Jahn, G., Schramm, M., & Spiller, A. (2005). The reliability of certification: Quality labels as a consumer policy tool. *Journal of Consumer Policy*, 28, 53–73. For more on the relation between trust and organic label sales see: Janssen, M., & Hamm, U. (2014). Governmental and private

certification labels for organic food: Consumer attitudes and preferences in Germany. *Food Policy*, 49, 437–448. For more information on the erosion of trust see: Golan, E., Kuchler, F., Mitchell, L., Greene, C., & Jessup, A. (2001). Economics of food labeling. *Journal of Consumer Policy*, 24(2), 117–184.

business may be affected by this action, you should carefully examine the regulatory text. If you have questions regarding the applicability of this action to a particular entity, consult the person listed above under **FOR FURTHER INFORMATION CONTACT**.

II. Background

A. Purpose and Need for the Rule

The purpose of this rule is to address several inconsistencies in organic livestock production that have arisen due to varying interpretations of the current livestock standards. This rule will add detail to the organic livestock health care and living conditions standards and add new standards specific to avian species. This additional detail will help producers and certifiers interpret and apply the organic livestock regulations more consistently, ensuring fair competition between producers and bolstering consumer confidence in the organic label.

In 2021, U.S. sales of organic livestock and poultry were \$2.2 billion, and sales of organic livestock and poultry products were \$2.9 billion.² Compared to 2011, this represents a 715 percent increase in sales of organic livestock and poultry and a 175 percent increase in sales of organic livestock and poultry products.³ The organic regulations have included general standards for livestock production since they were first published in 2000, however, the regulations lack specific standards for certain topics such as physical alterations, euthanasia, transport, slaughter, and avian-specific living conditions. This means producers and certifying agents must interpret and apply these general standards to different livestock production systems, each of which has its own unique needs and practices. This has led to different interpretations of the organic regulations—both differences in how some operations produce organic livestock and differences in how some certifying agents enforce the organic livestock standards.

Production practices may differ substantially among different producers and certifiers, and a key purpose of this rule is to resolve widely divergent interpretations of existing organic production standards. For example, the existing regulation at § 205.239(a)(1)

requires “[y]ear-round access for all animals to the outdoors.” Some operations and certifying agents have interpreted this general requirement for outdoor access to mean that organically managed poultry need only to have access to fresh air and sunlight, and this can be satisfied by screened, elevated patio structures known as “porches.” Other certifying agents require operations to provide outdoor spaces with soil and vegetation, but even then, may differ in their interpretations of how much space must be provided outdoors. The final rule also details requirements for other aspects of organic livestock production for the purpose of reducing divergent interpretations of the regulations and divergent practices among organic livestock producers. These aspects include living conditions (both indoors and outdoors), health care practices, transport, and slaughter conditions.

Inconsistencies in livestock practices and enforcement such as these have several detrimental effects on the organic market: producers can have significantly different production costs for the same organic product, and in some cases, consumers are unaware that not all organic products are produced with attributes they desire (e.g., outdoor access), resulting in consumers paying for an attribute they are not receiving.⁴ If consumers become aware that they are paying for an attribute that does not exist, like access to soil and vegetation, they are likely to lose confidence in the organic label.

AMS has found that inconsistent application of the organic livestock standards has likely produced a market failure, that has been in some part allowed to exist through government failure (action or inaction). “Market failure” occurs when the free market does not allocate resources efficiently—in other words, there is some market distortion such as information asymmetry—despite consumers making rational economic choices; analogously, “government failure,” for the purposes of this document, is the government’s failure to refine its approach to addressing information asymmetry through regulation or through other government action. For example, if consumers are paying for an attribute that they believe they are receiving, such as an animal’s full access to the

outdoors, the money they spend on an attribute they do not receive is likely associated with the combination of information asymmetry from market and government failure. After reviewing the economic data, AMS believes that inconsistent application of the organic program standards has led to information asymmetry within the organic egg market and could be present in other organic livestock markets.⁵ For more discussion of market failure, see Section II.D, ORGANIC LIVESTOCK REGULATORY HISTORY, and this rule’s Regulatory Impact Analysis (RIA).

As a result of these failures, some consumers are losing trust in the organic label. In public comments, consumers conveyed they lost trust when they became aware that the organic label has not necessarily meant animals are raised under the conditions they expected. During the public comment period for the proposed OLPS rule, over 26,000 members of the public submitted letters that specifically referenced their diminished trust in the organic label. For example, AMS received more than 6,000 thousand copies of one letter saying, “the lack of clear standards undermines consumer confidence in the organic label,” and more than 700 copies of another saying, “I expect the USDA Organic seal to include robust standards for animal welfare and outdoor access . . . without [that], I’m left wondering what I’m really getting when I purchase products with the USDA Organic seal.” Similarly, the extensive and detailed comments submitted by several organic producers and trade groups identified loss of consumer confidence in the organic label as a primary concern. For more information on the relationship between trust and demand for labels, see Section F of the RIA.

Additionally, public comments highlighted the uneven production costs due to the inconsistencies in outdoor access.⁶ One comment specifically stated that “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

² USDA, National Agricultural Statistics Service, 2021 Certified Organic Survey (released December 15, 2022), https://www.nass.usda.gov/Surveys/Guide_to_NASS_Surveys/Organic_Production/.

³ USDA, National Agricultural Statistics Service, 2011 Certified Organic Survey (released October 2012), https://www.nass.usda.gov/Surveys/Guide_to_NASS_Surveys/Organic_Production/.

⁴ Recent survey data shows that 65% of frequent organic purchasers and 54% of all organic purchasers think that all organic animals have outdoor access throughout the day. See ASPCA and the Animal Welfare Institute survey, September 2022. https://www.aspc.org/sites/default/files/awi_aspc_organic_consumer_survey_summary_2022_final.pdf.

⁵ For example, based on data from the ASPCA/AWI Organic Consumer Survey, AMS estimates that at least 31.5% of organic eggs are purchased by consumers who mistakenly think the chickens producing their eggs have outdoor access that includes soil or pasture. See Section II Subsection D for more detail.

⁶ See <https://www.regulations.gov/comment/AMS-NOP-21-0073-39096> and <https://www.regulations.gov/comment/AMS-NOP-21-0073-39082>.

evidence of inconsistent products in the stream of commerce.”⁷

Market failure, uneven production costs, and loss of trust in the organic label are three consequences that AMS seeks to address with this rule. The rule will establish avian-specific living conditions for poultry and provide more detail on living conditions and health care standards for all organic livestock. As a result of this rulemaking, AMS predicts that producers and certifying agents will be able to interpret and apply the organic regulations more consistently, assuring consumers that organically produced products meet a consistent and uniform standard, and safeguarding confidence in the organic label.

B. Statutory Authority To Issue Final Rule

Introduction

USDA is issuing these regulations under its authority as delegated by OFPA and described below. In particular, USDA has statutory authority to promulgate the regulations in the final rule pursuant to USDA’s authority: (1) to better assure consumers that organic livestock products meet a consistent standard (7 U.S.C. 6501); (2) to establish a national organic certification program (7 U.S.C. 6503(a)); (3) to promulgate “other terms and conditions as may be determined by the Secretary to be necessary” to the organic program (7 U.S.C. 6506(a)(11)); and (4) to develop and implement standards for livestock production under the organic program (7 U.S.C. 6509). A discussion of public comments received on the topic of USDA’s authority, and AMS’s responses, can be found below in Section III., OVERVIEW OF PUBLIC COMMENTS.

Reasons for Changing Interpretation From the OLPP Withdrawal Rule

USDA acknowledges that its position on USDA’s statutory authority to issue this rule differs from the rationale that USDA relied on for the withdrawal of the Organic Livestock and Poultry Practices (OLPP) final rule (Withdrawal Rule) in March 2018 (83 FR 10775). The sequence of events related to this rule is outlined below in the section titled “OLPP Rule and Legal Challenges.” USDA discusses the reasons for its change in position following a brief discussion of USDA’s previous rationale for the withdrawal of the OLPP final rule.

In the Withdrawal Rule, USDA stated it withdrew the OLPP rule based on its

then-interpretation of 7 U.S.C. 6509, which it believed did not “authorize the animal welfare provisions of the OLPP final rule” (83 FR 10776). At the time, USDA held that its authority under sec. 6509 to issue regulations for the “care” of livestock was limited to physical health care issues for livestock like those described in sec. 6509(d)(1), *i.e.*, relating to the “ingestion of chemical, artificial, or non-organic substances” (83 FR 10776). Based on this interpretation, USDA stated that the OLPP final rule had included “stand-alone animal welfare regulations” that Congress had not specifically authorized under sec. 6509. Additionally, the Withdrawal Rule reasoned that if the statutory text could be construed as “silent or ambiguous,” its interpretation was entitled to deference and based on a permissible statutory construction” (83 FR 10776).

USDA now disagrees with the rationale and narrow textual reading in the Withdrawal Rule, and USDA finds it has ample authority to issue this final rule based on the text and structure of sec. 6509 and the statute’s plain meaning (at sec. 6509 and elsewhere, including 7 U.S.C. 6501, 7 U.S.C. 6503(a), 7 U.S.C. 6506(a)(11)). Additionally, USDA’s longstanding interpretation of OFPA both prior to and since the Withdrawal Rule, as reflected in numerous regulations promulgated by AMS, confirms USDA’s statutory authority to issue this rule (see “D. Organic Livestock Regulatory History”).

With this rule, USDA is using its authority to address regulatory issues that (1) prevent fair competition among producers (as the regulations are not interpreted consistently or applied equally to producers), and (2) lead to such widely varying practices among some producers that consumers cannot be assured an organic product meets a consistent standard—a key purpose of OFPA. The promulgation of this final rule is preferred to the alternative of relying on current regulations that are inconsistently interpreted and enforced (see Purpose and Need for the Rule). Data indicates that nothing since the withdrawal of the OLPP final rule has changed to reduce the inconsistency in practices, which continues to cause harm to consumers (see additional discussion of Market/Government Failure in the RIA for this final rule). Taking no action when known inconsistencies exist would run counter to a fundamental purpose of OFPA to assure consumers that organically produced products meet a consistent standard (7 U.S.C. 6501). This final rule addresses these inconsistencies and, in turn, satisfies OFPA’s purposes. For

these reasons above and others discussed throughout this final rule, USDA finds that it has good reasons to revise its previous position from the Withdrawal Rule and issue this final rule.

Long-Standing Interpretation of OFPA and Promulgation of Livestock Regulations

Since the implementation of the December 2000 final rule (65 FR 80548) that established the AMS National Organic Program (NOP) and the USDA organic requirements, organic livestock producers have been required to meet requirements related to origin of livestock (§ 205.236), livestock feed (§ 205.237), livestock health care practice standards (§ 205.238), and livestock living conditions (§ 205.239). These regulations address measures to avoid disease and illness; provisions about feed and pasture; principles governing housing, pasture conditions, sanitation practices; and requirements for access to the outdoors and a natural environment. As described in the December 2000 final rule, a producer must, “establish and maintain livestock living conditions for the animals under his or her care which accommodate the health and natural behavior of the livestock. The producer must provide access to the outdoors, shade, shelter, exercise areas, fresh air, and direct sunlight suitable to the species, its stage of production, the climate, and the environment.” These regulations that have been effective since April 2001 (66 FR 15619) reflect our longstanding interpretation of care of livestock, and necessarily implicate animal welfare considerations.

USDA, through its National Organic Program (NOP), oversees the entirety of the national organic certification program, from production standards to accreditation of USDA-accredited certifying agents, to noncompliance and appeal procedures, to international organic agreements, and more. The NOP does this through its comprehensive regulations at 7 CFR part 205. While the bulk of these specific regulations were published by USDA in December 2000, the NOP has elaborated on the regulations regularly since December 2000 under its authority delegated by OFPA.

AMS has updated the organic livestock regulations, specifically, multiple times since 2000. Notably, the 2010 Access to Pasture final rule (75 FR 7153) expanded the organic regulations to, “satisfy consumer expectations that ruminant livestock animals are grazing pastures and that pastures are managed to support grazing throughout the

⁷ <https://www.regulations.gov/comment/AMS-NOP-21-0073-39082>.

grazing season.”⁸ The rule specifically addressed areas related to production of organic ruminants (*e.g.*, cattle, sheep, goats), including pasture management, recordkeeping, access to the outdoors, temporary confinement from the outdoors and pasture, and the amount of pasture required in proportion to the total diet or ration. More recently, a 2022 Origin of Livestock final rule (87 FR 19740) clarified the manner in which organic dairy operations can transition livestock to organic production to increase uniformity in production practices for organic dairy animals and reduce variance between certifying agents. The regulatory history demonstrates a long precedent of AMS promulgating detailed regulations on organic livestock production. Similarly, this rule clarifies requirements for livestock production and supports the purposes of OFPA (7 U.S.C. 6501).

Congress has also amended OFPA multiple times, but amendments to OFPA have never sought to restrict the types of organic livestock production practices that USDA may regulate under its delegated authority. In fact, Congress has occasionally urged USDA to finalize certain livestock regulations rather than clarify requirements through amendments to OFPA. For example, in the Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94, div. B, title VII, sec. 756, Dec. 20, 2019, 133 Stat. 2654), Congress directed USDA to issue a final rule based on the “Origin of Livestock” proposed rule that AMS published in April 2015.

OFPA Provisions and OFPA History

The plain language and the legislative history of OFPA and USDA’s longstanding interpretation of the statute support USDA’s authority to issue these regulations. OFPA includes few details about organic livestock production, organic crop production, and handling of organic products. In all cases, the USDA organic regulations (7 CFR part 205) have, since their inception, include more detailed requirements than included in OFPA, as Congress authorized and intended. For livestock, Congress was particularly clear in stating that the livestock requirements in OFPA were not fully developed, and delegated rulemaking authority to USDA to develop more detailed livestock production requirements and standards (7 U.S.C. 6509(g)).

As stated in the Conference Report of October 22, 1990 (p. 1177):

The Conference substitute adopts the House provision with an amendment which requires the Secretary to hold hearings and develop regulations regarding livestock standards in addition to those specified in this title . . . the Managers recognize the need to further elaborate on the standards set forth in the title and expect that by holding public discussions with interested parties and with the National Organic Standards Board, the Secretary will determine the necessary standards . . .

Moreover, as stated in the Senate Report, Congress made clear that USDA would develop “more detailed” livestock production standards, as well as implement them:

More detailed standards are enumerated for crop production than for livestock production. This reflects the extent of knowledge and consensus on appropriate organic crop production methods and materials. With additional research and as more producers enter into organic livestock production, the Committee expects that USDA, with the assistance of the National Organic Standards Board will elaborate on livestock criteria. The Committee recommends as well that, over time, USDA and the Organic Standards Board develop standards for aquaculture products.

S. Rep. No. 101–357, at 292 (1990).

In addition, OFPA grants USDA authority to establish standards for the national organic program. Sec. 6503(a) states: “The Secretary shall establish an organic certification program for producers and handlers of agricultural products that have been produced using organic methods as provided for in this chapter,” and 7 U.S.C. 6506(a)(11) which provides: “A program established under this chapter shall require such other terms and conditions as may be determined by the Secretary to be necessary.”

OFPA also specifically authorizes USDA to develop detailed requirements for animal production practices (7 U.S.C. 6509). 7 U.S.C. 6509(a) specifies that “Any livestock that is to be slaughtered and sold or labeled as organically produced shall be raised in accordance with this chapter.” “Organically produced,” as defined by OFPA, is broad. It is defined as “an agricultural product that is produced and handled in accordance with this chapter.”⁹ Sec. 6509(d)(1) addresses a handful of specific prohibited health care practices related to use of medications and feed on organic farms. Notably, OFPA specifies at subsection 6509(d)(2): “The National Organic Standards Board shall recommend to the Secretary standards in addition to those in paragraph (1) [titled “Prohibited practices”] for the care of

livestock to ensure that such livestock is organically produced.” Finally, 7 U.S.C. 6509(g) also provides that “the Secretary shall hold public hearings and shall *develop detailed regulations*, with notice and public comment, to guide the implementation of the standards for livestock products provided under this section” (*italics added*). USDA has long interpreted these provisions to grant the authority to address animal welfare as part of the organic standards, regularly developing and promulgating detailed regulations that implicate animal welfare through the statutorily outlined process of consulting NOSB and offering notice and public comment on additional standards developed.

In withdrawing the OLPP Rule, USDA at that time asserted that standards for animal care practices are limited to physical health care practices similar to those specified in 7 U.S.C. 6509(d)(1) and could not encompass concerns about animal welfare. However, sec. 6509(d)(2) provides that the NOSB shall consider and propose additional standards, and the language of that section broadly allows the NOSB to recommend standards for the “care of livestock”, and nowhere explicitly limited to provisions that prohibit the ingestion or administration of chemical, synthetic, or non-naturally occurring substances for livestock. Indeed, the two subsections of sec. 6509(d) address certain prohibited health care practices and other types of care separately, suggesting Congress’s intent that the NOSB consider and propose standards for each type of care. Sec. 6509(d)(1) lists “prohibited practices” in health care of livestock, including prohibiting administering routine antibiotics, synthetic internal parasiticides, or any medication beyond vaccines, in the absence of illness. Sec. 6509(d)(2) instead provides that NOSB shall recommend “standards in addition to” those prohibited practices “for the care of livestock to ensure that such livestock is organically produced.” (7 U.S.C. 6509(d)(2)). That Congress went to the effort of distinguishing certain prohibited medical practices from the general “care” for which NOSB can recommend standards reflects an intent that USDA’s authority to regulate livestock production practices extends beyond the medication and feed examples in sect. 6509(d)(1).

In addition, OFPA did not define “raised,” “health care,” or “care,” and instead authorized USDA to promulgate regulations and implement standards for the organic program, generally, and for organic livestock products more specifically. Moreover, the plain meaning of the terms “care,” (7 U.S.C.

⁸ <https://www.federalregister.gov/d/2010-3023/p-453>.

⁹ 7 U.S.C. 6502(15).

6509(d)(2)) “raised,” (7 U.S.C. 6509(a) and (e)) and “health care,” (7 U.S.C. 6509(d)) includes considerations of animal welfare. Merriam-Webster defines “care” as “charge, supervision . . . especially: responsibility for or attention to health, well-being, and safety.”¹⁰ Similarly, the American Heritage Dictionary defines “care” as “watchful oversight; charge or supervision,”¹¹ and the Cambridge Dictionary defines “care” as “the process of protecting or providing for the needs of someone or something.”¹² Merriam-Webster defines “raise” as “to breed and bring (an animal) to maturity,”¹³ and the American Heritage Dictionary defines “raise” as “to breed and care for to maturity: *raise cattle*.”¹⁴ In addition, “health care” is defined as “efforts made to maintain or restore physical, mental, or emotional well-being especially by trained and licensed professionals.”¹⁵

In contrast to the narrow interpretation of the OFPA term “health care” used in the Withdrawal Rule, the OLPS final rule returns to USDA’s longstanding interpretation of “health care” which goes beyond specific healthcare practices for organic livestock and can reasonably encompass production practices related to the welfare and well-being of livestock. This interpretation aligns with longstanding organic regulations related to health care at 7 CFR 205.238 titled “Livestock health care practice standard” and included in the 2000 final rule. Section 205.238(a) includes provisions that support livestock health, including provisions related to housing, feed, sanitation, species selection, exercise and movement, and conditions which allow for reduction of stress.

The aforementioned terms (“care,” “raised,” and “health care”) connote a broader conception of livestock health care and livestock care that includes livestock living conditions and considerations of welfare, and these terms allow USDA to prescribe modes of caring for livestock that extend beyond prohibiting specific health care

practices such as the “ingestion of chemical, artificial, or non-organic substances.” (83 FR 10776). The language in sec. 6509, including allowing the NOSB to recommend regulations “in addition to” those in subsection 6509(d)(1) “for the care of livestock” indicates that the scope of USDA’s authority extends beyond regulations prohibiting the ingestion of chemical, artificial, or non-organic substances. Sec. 6509(e)(1) and (2) describe “additional guidelines” for “rais[ing] and handl[ing]” poultry and dairy livestock, respectively. The use of the phrase “[r]aised and handled in accordance with this chapter” (6509(e)(1), (2)(A)) suggests a more comprehensive understanding of care that goes beyond narrow conceptions of medical care of organic livestock and can reasonably encompass production practices related to livestock living conditions and welfare. Thus, USDA believes that sec. 6509 supports the promulgation of these regulations concerning the humane raising of livestock. However, even if the text of sec. 6509 were silent or ambiguous about this issue, USDA believes that its interpretation is a permissible reading, an interpretation that is entitled to deference.

Animal Welfare

This rule’s focus on animal welfare, especially outdoor access requirements, supports the organic regulations’ existing principles of resource cycling and ecological balance (see “organic production” defined at 7 CFR 205.2 and § 205.239(e)). Nevertheless, USDA recognizes that NOSB recommendations and public comments that have shaped this final rule may have intended to enhance the welfare or well-being of animals marketed as organic. Many in the contemporary organic industry do not view animal welfare as distinct from the concerns expressly reflected in the statutory text of OFPA. A growing body of research is showing that livestock and poultry with access to pasture and the outdoors to forage and engage in natural behaviors may be positively associated with the following outcomes: improved well-being of the animals, environmental benefits, and healthier livestock and poultry products¹⁶ for human consumption.¹⁷

Public perception and the expectations of organic consumers parallel this research. For example, a 2021 study found that consumers expect less need for antibiotics and other medications that sec. 6509(d) expressly limits when animals are raised with practices that improve the health and welfare of livestock.¹⁸ Since OFPA was enacted, expectations for the conditions under which animals are raised (*i.e.*, animal welfare) have become an integral part of organic production, as evidenced by the hundreds of thousands of public comments that USDA has received on this topic over three decades, as well as an emerging body of research on the motivations that drive consumers to buy organic livestock products. Several studies point to animal welfare concerns as significant or even primary drivers for organic consumers.¹⁹ Likewise, consumers perceive organic livestock to be raised according to higher animal welfare standards than non-organic livestock.²⁰ Literature also suggests government-sponsored ecolabels provide the highest levels of consumer confidence.²¹

The March 2018 Withdrawal Rule reasoned that OFPA did not authorize “stand-alone animal welfare regulations.” USDA’s current position is that the OLPS final rule is not a stand-alone animal welfare regulation. Some provisions of the rule may improve animal welfare, but USDA’s primary objective is to clarify requirements for products sold as “organic.” This role and its corresponding authority are clearly intended by OFPA, where Congress delegated authority to USDA “to establish an organic certification program for producers and handlers of agricultural products” (7 U.S.C. 6503(a)) and develop standards for the care of

the Science of Food and Agriculture, Vol. 92, pp. 2774–2781. <https://pubmed.ncbi.nlm.nih.gov/22430502/>.

¹⁸ Wemette, M., Safi, A.G., Wolverson, A.K., Beauvais, W., Shapiro, M., Moroni, P., . . . & Ivanek, R. (2021). Public perceptions of antibiotic use on dairy farms in the United States. *Journal of Dairy Science*, 104(3), 2807–2821 <https://pubmed.ncbi.nlm.nih.gov/33455793/>.

¹⁹ Alonso, Marta E.; González-Montaña, José R.; and Lomillos, Juan M. (2020) “Consumers’ Concerns and Perceptions of Farm Animal Welfare,” *Animals*, Vol. 10, pp. 385–397. McEachern, M.G.; Willock, J. (2004) “Producers and consumers of organic meat: A focus on attitudes and motivations.” *British Food Journal*, Vol. 106, pp.534–552.

²⁰ Harper, Gemma C; Makatouni, Aikaterini (2002) “Consumer perception of organic food production and farm animal welfare.” *British Food Journal*; Vol. 104, Iss. 3–5, pp. 287–299.

²¹ Kim Mannemar S. Ånderskov, and Carsten Daugbjerg. “The State and Consumer Confidence In Eco-labeling: Organic Labeling In Denmark, Sweden, The United Kingdom and The United States.” *Agriculture and human values*, v. 28.,4 pp. 507–517. doi: 10.1007/s10460–010–9295–5.

¹⁰ Merriam-Webster Dictionary, available at <https://www.merriam-webster.com/dictionary/care>.

¹¹ American Heritage Dictionary, available at <https://www.ahdictionary.com/word/search.html?q=care>.

¹² Cambridge Dictionary, available at <https://dictionary.cambridge.org/dictionary/essential-american-english/care>.

¹³ Merriam Webster, available at <https://www.merriam-webster.com/dictionary/raise>.

¹⁴ American Heritage Dictionary, available at <https://www.ahdictionary.com/word/search.html?q=raise>.

¹⁵ Merriam Webster, available at <https://www.merriam-webster.com/dictionary/health%20care>.

¹⁶ Is Grassfed Meat and Dairy Better for Human and Environmental Health? Frederick D. Provenza, Scott L. Kronberg, and Pablo Gregorini, *Front Nutr.* 2019; 6: 26. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6434678/>.

¹⁷ Palupi, Eny; Jayanegara, Anuraga; Ploegera, Angelika and Kahla, Johannes (2012) “Comparison of nutritional quality between conventional and organic dairy products: a meta-analysis,” *Journal of*

livestock (7 U.S.C. 6509) to meet the purposes of the OFPA, including “to assure consumers that organically produced products meet a consistent standard” (7 U.S.C. 6501(2)). Since the enactment of OFPA, the USDA has worked to establish, develop, and administer standards on numerous aspects of organic production, including standards for the care of livestock that extend beyond the Withdrawal Rule’s narrow interpretation of “health care.” USDA maintains that, notwithstanding the novel interpretation of the Withdrawal Rule, the authority of its national organic certification program to establish, develop, and administer livestock standards—including those that implicate the welfare of animals used in organic production—is confirmed by USDA’s present and longstanding interpretation of OFPA.

NOSB Consultation (OFPA) and Development of OLPS

Congress directed USDA to consult with the NOSB to establish a national organic certification program (7 U.S.C. 6503(c), 6509(d)) and develop detailed livestock regulations with notice and public comment (7 U.S.C. 6509(g)). USDA has done just that in developing this and previous livestock regulations (see, for example, “History of AMS Livestock Policy” in Section D; to see recommendations related to the OLPS rule, see “C. NOSB Recommendations on Livestock Production”). The vast majority of NOSB recommendations and public comments agree with and support the USDA’s decision to establish the regulations included in the OLPS final rule.

Conclusion

AMS is issuing this rule after determining, in consultation with the National Organic Standards Board (NOSB) and following notice and public comment, that regulations are necessary to clarify the existing livestock production standards. This follows the process intended for livestock standards development authorized by OFPA at 7 U.S.C. 6503 and 6509. USDA determined that existing organic livestock production regulations have not been interpreted or enforced in a consistent manner among certifiers to assure consumers that organic livestock and products from livestock (*e.g.*, eggs) meet a consistent standard. Under the authority granted by OFPA, AMS is issuing this rule with clearer standards to address inconsistencies in livestock production regulations.

Comment summaries and AMS responses on the topic of USDA’s statutory authority to promulgate these

regulations can be found below in Section III, OVERVIEW OF PUBLIC COMMENTS.

C. NOSB Recommendations on Livestock Production

The NOSB is a federal advisory committee established by OFPA (7 U.S.C. 6518) to provide recommendations to USDA on the development of organic standards and regulations. NOSB recommendations are developed through a rigorous process involving technical information, stakeholder input through public comment, open meetings, and a decisive two-thirds majority vote of the Board. Although the Board cannot direct or bind USDA through its recommendations, USDA utilizes the NOSB recommendations to inform rulemaking, including this rulemaking.

Between 1994 and 2011, the NOSB made nine recommendations regarding livestock health care, living conditions, and welfare in organic production. Between 1997 and 2000, AMS issued two proposed rules and a final rule regarding national standards for the production and handling of organic products, including livestock and their products. Members of the public commented on these rules regarding the health care and welfare of livestock. Summarized below are the key actions from that period that led to the development of the existing standards for organic livestock and that have informed this OLPS final rule.

(1) In June 1994, the NOSB recommended a series of provisions to address the care and handling of livestock on organic farms. Within this recommendation, the NOSB developed much of the framework for organic health care and welfare of livestock, including health care standards, living conditions, and transportation of livestock practices.

(2) In April and October 1995, the NOSB made a series of recommendations as addenda to the June 1994 recommendations. These recommendations further addressed various health care practices, a requirement for outdoor access, and the use of vaccines.

(3) On December 16, 1997, AMS incorporated the 1994 and 1995 NOSB recommendations in a proposed rule to establish the NOP (62 FR 65850). Consistent with the NOSB’s recommendation, the proposed language would have required that organic livestock producers develop a preventive health care plan and use synthetic drugs only if preventive measures failed. The 1997 proposed rule also included standards for livestock

living conditions, including when livestock could be confined. That proposed rule was not finalized.

(4) In March 1998, the NOSB reaffirmed its earlier recommendations on livestock health care and living conditions. The 1998 NOSB recommendation also stressed the importance of treating sick livestock by recommending that any organic producer who did not take specified actions to provide care for a diseased animal would lose certification. This recommendation also included provisions to clarify when livestock could be confined indoors and defined “outdoors” as having direct access to sunshine.

(5) On March 13, 2000, AMS published a second proposed rule to establish the National Organic Program (65 FR 13512) that incorporated public feedback on the December 1997 proposed rule. AMS also incorporated the NOSB’s March 1998 recommendations related to livestock health care and living conditions. AMS proposed that organic producers must use disease prevention practices first, then approved synthetic medications only if preventive measures failed. However, a producer would need to use all appropriate measures to save the animal even if the animal lost organic status. In addition, AMS proposed that the living conditions for organic livestock must maintain the health of the animals and allow for natural behaviors, including access to the outdoors.

(6) On December 21, 2000, AMS published a final rule establishing the USDA organic regulations (65 FR 80548) (“NOP Rule”). Through this action, AMS finalized the standards for health care practices and livestock living conditions. This rule addressed a range of matters related to organic livestock production, including organic feed; use of hormones and supplements; measures to avoid disease and illness; veterinary biologics, medications, synthetic parasiticides, and other drugs; and general principles governing housing, pasture conditions, sanitation practices, and physical alterations. The NOP Rule also generally required producers to provide organic livestock with “access to the outdoors, shade, shelter, exercise areas, fresh air, and direct sunlight suitable to the species, its stage of production, the climate, and the environment,” but allowed producers to satisfy those criteria in different ways. That rule became effective on April 21, 2001 (correction of effective date; 66 FR 15619) and was fully implemented on October 21, 2002.

(7) In May 2002, the NOSB again addressed outdoor access, stating this should include open air and direct access to sunshine.²² In addition, the May 2002 recommendation stated that bare surfaces other than soil do not meet the NOP Rule's intent for outdoor access for poultry. This recommendation also included clarifications as to when livestock could be temporarily confined.

(8) In March 2005, the NOSB recommended that the temporary confinement provision for "stage of production" be changed to "stage of life."²³ The NOSB reasoned that confinement for a "stage of life" would limit producers from confining animals for long periods, such as confinement during the entire period that a dairy animal is lactating. "Stage of life" was reasoned to be more specific than "stage of production."

(9) On October 24, 2008, AMS published a proposed rule on access to pasture for ruminant livestock (73 FR 63584), based on several NOSB recommendations regarding ruminant livestock feed and living conditions and public comments. AMS published the final rule, *Access to Pasture (Livestock)*, on February 17, 2010 (75 FR 7154). This rule amended numerous areas of the organic livestock regulations, including 7 CFR 205.237, 205.239, 205.240, as described below in Section D, "Organic Livestock Regulatory History."

(10) Between 2009 and 2011, the NOSB issued a series of recommendations on livestock welfare. These were intended to incorporate prior NOSB recommendations that AMS had not addressed. The November 2009 recommendation suggested revisions and additions to the livestock health care practice standards and living conditions standards.²⁴ The NOSB recommended banning or restricting certain physical alterations and requiring organic producers to keep records on livestock that were lame and/or sick and how they were treated. This recommendation proposed to separate mammalian living conditions from avian living conditions sections of the USDA organic regulations so that the provisions could be more directly tailored to various livestock species. In

the mammalian section, the NOSB proposed mandatory group housing of swine and a requirement for rooting materials for swine. In the avian section, the NOSB proposed a variety of provisions, including maximum ammonia levels, perch space requirements, and outdoor access clarifications.

(11) In October 2010, the NOSB passed a recommendation on the use of drugs for pain relief.²⁵ The NOSB recommended changing the health care practice standards to allow the administration of drugs in the absence of illness to prevent disease or alleviate pain. In April 2010, the NOSB passed a recommendation to clarify that milk from animals treated with allowed synthetic medical treatments and annotated with a milk withholding time may be fed to young organic livestock still receiving milk in their diet.²⁶ The NOSB stated that such changes would improve the welfare of organic livestock.

(12) In December 2011, the NOSB passed an additional livestock welfare recommendation.²⁷ The 2011 recommendation added definitions for terms related to livestock production and provisions for health care standards and living conditions. The NOSB also revised its prior recommendation on physical alterations to provide a broader list of prohibited procedures. In the mammalian living conditions section, the NOSB recommended that outdoor access for swine include a minimum of 25 percent vegetative cover at all times. For avian species, the NOSB recommended specific indoor and outdoor space requirements, *e.g.*, stocking densities, among other provisions for living conditions specific to poultry. For layers, the NOSB recommended a minimum of 2.0 ft² per bird indoors and outdoors.

(13) In December 2011, the NOSB passed a separate recommendation to add standards for the slaughter process, including transportation of livestock to slaughter facilities.²⁸ The NOSB's recommendation for transport included

provisions for veal calves and the trailers/trucks used to transport animals to ensure continuous organic management. The NOSB recommended that slaughter facilities meet certain performance-based standards assessed via observations of animal handling and any slips, falls or vocalizations before and during slaughter.

The series of recommendations described above demonstrate the collective effort of NOSB to develop specific standards for certain livestock production topics such as physical alterations, euthanasia, transport, slaughter, and avian-specific living conditions. AMS has utilized these recommendations to inform standards set forth in the OLPS rule. In doing so, NOSB and AMS have followed the process required by OFPA to consult with the NOSB (7 U.S.C. 6503(c)) to develop detailed regulations for livestock production (7 U.S.C. 6509(d) and (g)).

D. Organic Livestock Regulatory History *History of AMS Livestock Policy*

This final rule clarifies and expands on the original December 2000 organic requirements (the "NOP Rule") to support consistent interpretation and enforcement of organic livestock standards. USDA has revised the regulations related to organic livestock production since December 2000. On October 29, 2002, AMS issued a memorandum to clarify outdoor access and temporary confinement requirements for livestock under the USDA organic regulations.²⁹ The memorandum stated that producers are required to balance accommodations for an animal's health and natural behavior with measures to ensure an animal's safety and well-being. It further explained that the USDA organic regulations do not specify an outdoor space allowance or stocking rate, nor do they require that all animals in the herd or flock have access to the outdoors at the same time. This memorandum explained how producers could provide evidence of compliance to support temporary confinement.³⁰ However, NOP determined that additional specificity was required to improve compliance and enforcement and satisfy consumer expectations.

On July 15, 2002, an operation applied for organic certification of its

²² NOSB, 2002. Recommendation Access to Outdoors for Poultry. Available at: <http://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations>.

²³ NOSB, 2005. Formal Recommendation by the NOSB to NOP. NOSB recommendation for Rule change—"Stage of Production" to "Stage of Life." Available at: <http://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations>.

²⁴ NOSB, 2009. Formal Recommendation by the NOSB to the NOP, Animal Welfare. Available at: <http://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations>.

²⁵ NOSB, 2010. Formal Recommendation by the NOSB to the NOP, Clarification of 205.238(c)(2). Available at: <http://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations>.

²⁶ NOSB, 2010. Formal Recommendation by the NOSB to the NOP, Clarification of 205.238(c)(1). Available at: <http://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations>.

²⁷ NOSB, 2011. Formal Recommendation by the NOSB to the NOP, Animal Welfare and Stocking Rates. Available at: <http://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations>.

²⁸ NOSB, 2011. Formal Recommendation by the NOSB to the NOP, Animal Handling and Transport to Slaughter. Available at: <http://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations>.

²⁹ National Organic Program, 2002. Access to the Outdoors for Livestock. Retained as Policy Memo 11-5. Available in the NOP Handbook: https://www.ams.usda.gov/sites/default/files/media/Program%20Handbk_TOC.pdf.

³⁰ This memorandum was incorporated into the NOP Handbook (as "PM 11-5") on January 31, 2011.

egg laying operation with a USDA-accredited certifying agent. As part of the application, the operation's organic system plan (OSP) stated that outdoor access would be provided through covered and screened "porches" (enclosed, covered, and screened areas attached to a poultry house, either elevated or at ground level). The certifying agent denied certification for failing to provide hens with access to the outdoors. The certifying agent stated that a porch did not provide outdoor access as required by the USDA organic regulations. The operation appealed the Denial of Certification to the AMS Administrator on October 22, 2002. The Administrator sustained the appeal on October 25, 2002, and directed the certifying agent to grant organic certification to the operation retroactively to October 21, 2002.

The certifying agent objected to the Administrator's decision and appealed to the USDA Office of the Administrative Law Judge (ALJ). On November 4, 2003, the USDA ALJ dismissed the appeal. On December 11, 2003, the certifying agent appealed to the USDA Judicial Officer. On April 21, 2004, the USDA Judicial Officer dismissed the appeal. On September 27, 2005, the certifying agent filed an appeal with the U.S. District Court, District of Massachusetts. On March 30, 2007, the U.S. District Court granted USDA's motion to dismiss the case (*Massachusetts Independent Certification, Inc. v. Johanns*, 486 F. Supp. 2d 105). As a result of these adjudications, use of porches to meet the requirement in the USDA organic regulations for outdoor access expanded, and certain producers have settled on production practices that rely on porches, leading to inconsistencies with producers that offer animals access to outdoor spaces with soil, vegetation, direct sunlight, and considerable space per animal.

While the use of porches was expanding in the organic poultry industry, AMS was more precisely defining outdoor access for other species. On February 17, 2010, AMS published a final rule adopting new provisions relating to organic livestock production. The Access to Pasture Rule was informed by NOSB's 2005 recommendation and extensive public input requesting clear outdoor access requirements for ruminant livestock. It required that ruminants graze at least 120 days per year, described situations that warrant denying ruminants access to the outdoors (e.g., birthing cows or newborn calves), required that ruminants receive not less than 30 percent of dry matter intake from

grazing, and addressed several other matters related to the management of pasture and feeding yards, pads, and lots. The Access to Pasture Rule also clarified that the requirements for outdoor access and species-appropriate access to shade, shelter, exercise, fresh air, and direct sunlight required by the NOP Rule must be provided for all organic livestock, including poultry, on a year-round basis.

In March 2010, the USDA Office of the Inspector General (OIG) issued a report concerning, in part, AMS guidance on outdoor access for organic livestock.³¹ The OIG found inconsistent certification practices regarding outdoor access for poultry. For example, one operation they visited provided a total of 300 square feet of outdoor access for approximately 15,000 chickens, while two other operations provided large pasture areas. Of the four certifying agents OIG visited, only one had developed stocking density requirements for livestock. The OIG recommended that AMS issue further guidance on outdoor access for livestock, especially poultry.

In response, AMS published draft guidance, *Outdoor Access for Organic Poultry*, on October 13, 2010 and sought public comment.³² The draft guidance advised certifying agents to use the 2002 and 2009 NOSB recommendations as the basis for certification decisions regarding outdoor access for poultry.³³ It informed certifying agents and producers that maintaining poultry on soil or outdoor runs would demonstrate compliance with the outdoor access requirement in 7 CFR 205.239.

AMS received 69 comments on the draft guidance. Comments varied widely. Several commenters, including organic poultry producers, requested a change to the draft guidance language to say that poultry, when outdoors, should be maintained on soil, pasture, or vegetation. They described health benefits and protection of the environment that a pasture or other vegetated outdoor access area would afford. Additionally, some supported more specific and stringent stocking densities. Commenters suggested a maximum stocking rate of 1.75 square feet per bird in henhouses that provide access to perches, with an additional 5 square feet per bird available in vegetated outdoor runs accessible to all birds at the same time.

³² On October 13, 2010, AMS also published a Notice of Availability of Draft Guidance and Request for Comments in the *Federal Register* (75 FR 62693).

³³ The 2002 and 2009 NOSB recommendations included daily outdoor access from an early age and access to direct sunlight, open air and soil.

On the other hand, some commenters favored allowing porches as acceptable outdoor access, citing biosecurity and animal health concerns. One trade association, some organic egg producers, and consultants described several benefits in the use of production systems that limit outdoor access via the use of enclosed porches that keep poultry from contact with soil or pasture. These benefits included protection from predation and parasites, and seclusion from contact with pathogens that cause food safety problems and wild birds that could carry diseases. The commenters asserted that these systems are consistent with the 2002 NOSB recommendation and noted that organic egg producers had made substantial investments in facilities with porches. Some also expressed concerns that placing birds on soil would affect their ability to comply with the Food and Drug Administration's *Salmonella* prevention food safety regulations (21 CFR part 118). Several producers expressed concern with the 2009 NOSB recommendation that pullets be given outdoor access at 6 weeks of age, because layers are not fully immunized (including for protection against *Salmonella*) until 16 weeks of age. These producers said that pullets should not be exposed to uncontrolled environments until that time.

However, many comments suggested that AMS's draft guidance was unenforceable, and rulemaking would be a better action. These stated that certifying agents would be able to enforce a rule more clearly and decisively than guidance. Given this request that USDA address the issue of outdoor access for poultry through the rulemaking process, AMS determined to pursue rulemaking and did not finalize the draft guidance.

OLPP Rule and Legal Challenges

In April 2016, AMS published a proposed rule, *Organic Livestock and Poultry Practices (OLPP)*, which incorporated NOSB recommendations. The proposed rule included provisions related to livestock health care practices (such as physical alteration procedures, euthanasia, and treatment of sick animals), living conditions for mammalian and avian livestock (including minimum indoor and outdoor space requirements for avian livestock), and requirements for care during transport and for slaughter practices. It received 6,675 written comments during the 90-day comment period, and petition signatures numbering in the tens of thousands. Comments were received from

producers, producer associations, handlers, certifying agents, consumers and consumer groups, animal welfare organizations, veterinarians, state government agencies, foreign government agencies, and trade associations or organizations. They provided insight on topics such as regulatory authority, import impact, trade agreements, and alternatives to regulation. Comments generally found the rule beneficial for the industry and the organic label, but several raised challenges with the proposed standards.

In response to public comment, AMS made a number of changes to the proposed rule to further clarify the requirements and mitigate economic impact on the industry. AMS published the Organic Livestock and Poultry Practices final rule (OLPP Rule) on January 19, 2017 (82 FR 7042). Prior to the OLPP Rule becoming effective, USDA (under a new Administration) delayed the effective date of the rule to allow the Administration to review it.³⁴

After delaying the OLPP Rule's effective date and conducting its review, AMS proposed withdrawing the OLPP Rule. It determined that the agency lacked the legal authority to issue the rulemaking, cited substantive errors in OLPP's economic analysis, and maintained that there was no market failure (82 FR 59988, December 18, 2017). On March 13, 2018, AMS published a final rule withdrawing the OLPP Rule for those reasons (Withdrawal Rule; 83 FR 10775). Plaintiffs challenged USDA's delay and subsequent withdrawal the OLPP Rule. The Center for Food Safety (CFS) and Center for Environmental Health (CEH) sued USDA, and the Organic Trade Association (OTA) separately filed a suit, *see Organic Trade Association v. USDA*, No. 17-cv-1875-RMC (D.D.C.); *CEH v. USDA*, No. 3:18-cv-1763 (N.D. Cal.).

In March 2020, the U.S. District Court for the District of Columbia granted USDA's motion to remand to USDA for purposes of clarifying and supplementing the records regarding the economic analyses underlying the OLPP Rule and the Withdrawal Rule. The District Court set a deadline of 180 days for USDA to complete these economic analysis actions.

AMS reviewed the economic analyses for both the OLPP Rule and the Withdrawal Rule. It discovered additional errors in the OLPP Rule, beyond those already cited by the Withdrawal Rule, and substantive errors

in the economic analysis of the Withdrawal Rule itself. AMS published the Organic Livestock and Poultry Practice Economic Analysis Report on April 23, 2020, describing all the errors and seeking public comment on the Report (85 FR 22664). After considering the comments, AMS published the Final Decision on Organic Livestock and Poultry Practices Rule and Summary of Comments on the Economic Analysis Report on September 17, 2020 (85 FR 57937). In the Final Decision, AMS concluded that “[t]o the extent the Withdrawal Rule formed an assessment of the likely costs and benefits of the OLPP Rule based on that flawed analysis, AMS hereby modifies that assessment and concludes simply that the Final RIA does not support promulgation of the OLPP Rule in light of its significant flaws.” AMS further concluded that “[i]mplementing the OLPP Rule based on such a flawed economic analysis is not in the public interest” and decided not to take any further regulatory action with respect to the OLPP Rule (85 FR 57944).

In June 2021, Secretary Vilsack announced that USDA would “reconsider the prior Administration’s interpretation that [OFPA] does not authorize USDA to regulate the practices that were the subject of the [OLPP Rule].” He further directed NOP “to begin a rulemaking to address this statutory interpretation and to include a proposal to disallow the use of porches as outdoor space in organic production over time and on other topics that were the subject of the OLPP Final Rule.”

Economic Analysis and Market Failure

In the Economic Analysis Report, AMS described the three errors that had been identified in the economic analysis of the Withdrawal Rule: (1) the incorrect application of the discounting formula; (2) the use of an incorrect willingness to pay value for eggs produced under the new outdoor access requirements; and (3) the incorrect application of a depreciation treatment to the benefit calculations. The Report explained that although the economic analysis of the Withdrawal Rule correctly identified these errors and properly addressed the first two errors (incorrect discounting methodology and willingness-to-pay values), it had not fully removed the incorrect depreciation treatment from the cost and benefit calculations, which erroneously reduced the calculation of both costs and benefits.

The Report went on to identify and discuss four categories of additional errors in the economic analysis of the OLPP Rule that were previously undetected and therefore inadvertently

carried forward to the economic analysis of the Withdrawal Rule. These were: (1) inconsistent or incorrect documentation of key calculation variables; (2) an error in the volume specification affecting benefits calculations in two of three scenarios considered; (3) the incorrect use of production values in the benefits calculations that do not account for projected increased mortality loss; and (4) aspects of the cost calculations that resulted in certain costs being ignored, underreported, or inconsistently applied. In addition, the Report described certain minor errors that did not have a material impact on the cost and benefit calculations (85 FR 57938).

In this OLPS final rule, AMS has worked to ensure that the RIA addresses these concerns. Some of the mathematical or descriptive concerns were addressed with rewriting the rule. AMS specifically addressed issues with discounting and depreciation in the analysis and fixed various errors found by the report. Additionally, AMS adjusted the willingness to pay for outdoor access in eggs to the more precise measure suggested by the economic analysis report. While AMS maintains the use of enterprise budgets in the original rule to model costs, AMS updated costs in the rule to the extent possible based on data availability, as they provide the most detailed estimates for the organic industry and USDA ERS has shown that both feed and land costs have remained approximately steady since their development.^{35 36}

Based on data provided through public comment, AMS determined that there is inconsistent application of outdoor access requirements for organic livestock, leading to information asymmetry.³⁷ This inconsistency and information asymmetry threatens both consumer confidence in the organic label and future industry growth. One of the primary purposes of OFPA is “to assure consumers that organically produced products meet a consistent standard (7 U.S.C. 6501).” Therefore, USDA must issue additional regulations to ensure that organic livestock products meet a consistent, nationwide standard across the industry. This rule will

³⁵ USDA ERS. Farmland Value. <https://www.ers.usda.gov/topics/farm-economy/land-use/land-value-tenure/farmland-value>.

³⁶ USDA NASS. Paid Indexes by Farm Origin and Month, Feed and Livestock & Poultry. https://www.nass.usda.gov/Charts_and_Maps/Agricultural_Prices/prod3.php.

³⁷ For example, based on data from the ASPCA/AWI Organic Consumer Survey, AMS estimates that at least 31.5% of organic eggs are purchased by consumers who mistakenly think the chickens producing their eggs have outdoor access that includes soil or pasture. See below for more detail.

³⁴ See 82 FR 9967 (February 9, 2017); 82 FR 21677 (May 19, 2017); and 82 FR 52643 (November 14, 2017).

minimize the inconsistency and information asymmetry in the organic livestock industry and meet one of OFPA's main purposes.

Third-party certification can result in different certifiers interpreting the standards differently. In the case of organic animals, including organic poultry, there has been significant divergence among certifiers in how the "access to the outdoors" requirement in 7 CFR 205.239(a)(1) is interpreted and enforced. As a matter of practice, certifiers determine how much outdoor access is needed to meet the rule's requirements, and this has led to divergent certification and production practices.

While differing practices within a given industry do not necessarily constitute a market failure, highly varied practices under a single marketing label can create a market failure through information asymmetry. Information asymmetry occurs because consumers may not know how their organic livestock products are being produced but producers do, resulting in some organic consumers paying a premium for organic products that they incorrectly believe contain specific attributes (e.g., outdoor access). When consumers pay for a product that does not include certain attributes they expect, this may represent a market failure caused by an information asymmetry between consumers and organic operations. The existence of this information asymmetry has been a driver of the creation and operation of USDA's organic certification program, and organic labeling thus communicates product attributes in accordance with the program's "organic" definition, standards, and enforcement; as a result, suboptimal past program choices may have contributed to the baseline market distortions.

In the organic egg industry, AMS estimates that approximately 30% of organic egg production comes from hens with access to outdoor areas that include soil or pasture, while approximately 70% of organic egg production only has access to the outdoors through enclosed porches with no soil or pasture. Recent survey data shows that 65% of frequent organic purchasers and 54% of all organic purchasers think that all organic animals have access to "outdoor pastures and fresh air throughout the day."³⁸ Using this data, AMS estimates that 31.5% of organic eggs are

purchased by consumers who mistakenly think the chickens producing their eggs have outdoor access that includes soil or pasture. This survey also demonstrates consumers may face similar information asymmetries about space and welfare requirements in organic agriculture, with 59% of consumers believing organic animals have more space and 45% of consumers believing organic animals are prohibited from having their beaks and tails removed.

In summary, rulemaking is the best solution to resolve the market/government failure and meet the OFPA purpose of "assur[ing] consumers that organically produced products meet a consistent standard"—in this case assuring consumers that organic livestock products are produced using consistent animal welfare and outdoor access standards. Given that third-party labels are not regulated by USDA, it would be difficult to attain informational consistency needed to address the information asymmetry. Additionally, stakeholders have expressed concerns about the additional producer costs and consumer confusion these labels may create.^{39 40} This rulemaking aligns with existing third-party labels regarding outdoor access, easing the burden on producers (relative to a hypothetical rulemaking with similar goals but no such alignment). AMS also believes that rulemaking is a better option than increased consumer education about the livestock attributes of the organic label. Consumer education may help consumers know what to expect from the organic label, but it would not address inconsistent production practices among organic livestock producers, which undermines AMS's statutory mission to ensure that products produced and sold under the organic label are meeting a consistent national standard. AMS believes rulemaking is the best option.

Summaries of comments received on the topic of market failure and AMS's responses to comments on the topic are below. Many of the comments received supported AMS's conclusion that there is a market failure caused by a lack of clear standards.

III. Overview of Public Comments

AMS published the OLPS proposed rule on August 9, 2022, opening a 60-day public comment period. On August 19, AMS held an online public listening session on the proposed rule to gather

additional feedback; 132 listeners attended the listening session, and 19 gave oral comments. At the request of several organic stakeholders, AMS extended the public comment period another 30 days to allow more time for the public to develop detailed comments on the rule's requirements. By the close of the 90-day public comment period on November 10, 2022, AMS had received 40,336 written comments from a variety of stakeholders, including consumers, operations, certifying agents, retailers, trade associations, and advocacy groups. Some of these comments (which can be found at *Regulations.gov*) included signed petitions, which totaled 57,000 signatures to petitions (in addition to the written comments). The subjects of the comments (including petitions) are discussed below. The organic industry demonstrated considerable interest in this rule and provided AMS detailed feedback on this rule.

By a large majority (94%), public comments and petitions supported the rule, with many saying that consumers already expect outdoor access to be part of the organic label in keeping with animals' natural behaviors. Several organic operations, certifying agents, and organic trade groups asserted the rule is necessary to ensure all producers have a consistent interpretation of what qualifies as outdoor access under the organic regulations. Most of the comments opposing the rule did not think it went far enough in protecting animal welfare and asked AMS to include additional animal welfare protections in the rule. Other comments disputed the need for the rule, AMS's authority to promulgate the rule, and the effect of the rule on animal safety and organic markets. AMS responds to these comments below.

In addition to soliciting general comments, AMS sought specific feedback on USDA's statutory authority to issue this rule, the rule's clarity, the accuracy of its Regulatory Impact Analysis (RIA) and Regulatory Flexibility Analysis (RFA), its consistency with current organic livestock production practices, and on specific implementation timeline options. The implementation timeline received by far the most public comment, with the nearly all commenters on that topic requesting implementation timelines shorter than the 15-year option. Poultry space requirements received the second most attention, and commenters responded in detail to several other livestock production practices and to issues regarding food and animal safety. AMS took public comments into

³⁸ ASPCA and the Animal Welfare Institute. Survey. September 2022. https://www.aspc.org/sites/default/files/awi_aspc_organic_consumer_survey_summary_2022_final.pdf.

³⁹ Producer costs under the various requirements are estimated in Section F of the RIA.

⁴⁰ Theoretical discussion about the relations between consumer confusion and label trust can be found in Section F of the RIA.

consideration when revising the policy and setting the implementation timeline.

AMS also received many public comments on the specific policies and livestock production practices we proposed. The revisions to this final rule took those public comments into account. Discussion of comments specific to the rule's policy follow in Section IV, OVERVIEW OF FINAL RULE.

A. Responses to Comment on Statutory Authority

(Comment) Many comments posited that AMS is appropriately exercising its authority under OFPA to establish regulations regarding livestock and poultry health care practices, living conditions, and welfare. Comments asserted that OFPA directs AMS to regulate the care of farmed animals, which broadly encompasses animal welfare. Specifically, comments stated that OFPA commands AMS to “establish an organic certification program for producers and handlers of agricultural products that have been produced using organic methods” and to consult with the NOSB in development of that program.⁴¹ Comments stated that OFPA provides that the NOSB may recommend standards specifically for the “care of livestock to ensure that such livestock is organically produced” in addition to provisions related to animal health care.⁴² As OFPA does not define “care,” comments argued that it should be interpreted by its ordinary use definition⁴³ to include animal welfare.

Comments asserted that the legislative purpose and history demonstrate that Congress unambiguously intended for animal welfare practices to be required at certified organic operations. These comments argued that to meet OFPA's broad purposes of establishing “national standards governing the marketing of [organically produced] agricultural products,” assuring consumers that “organically produced products meet a consistent standard,” and facilitating interstate commerce with fresh and processed [organically produced] food,⁴⁴ AMS must regulate animal welfare to align with consumer expectations.

Comments also cited AMS's historical interpretation that OFPA grants the authority to regulate animal welfare through NOSB recommendations, as AMS did in the 2010 Access to Pasture

rule. The Pasture rule was promulgated “in response to the 2005 NOSB recommendation and extensive public input requesting clear outdoor access requirements for ruminant livestock,”⁴⁵ and received over 4,000 public comments.⁴⁶ Comments noted the Pasture rule, which regulates animal welfare, was promulgated through the same process as this rule, based on recommendations, public hearings, and public comments.⁴⁷ Similarly, commenters said the OLPS proposed rule is based on NOSB recommendations, so both rulemaking precedent and NOSB recommendations reinforce AMS's authority to regulate animal welfare in the OLPS final rule.

Finally, comments cited concepts of statutory construction to support the notion that both OFPA and current livestock regulations authorize OLPS. One comment argued that “the accepted canons of statutory construction” support the interpretation that OFPA “expressly give[s] USDA authority to set the Organic Livestock Rule standards.”⁴⁸ This comment details how these “three core canons of statutory construction”—ordinary meaning, whole text, and surplusage—each support AMS's legal authority to regulate animal welfare under OFPA. The *ordinary meaning canon* holds that absent specific definitions, words in a statute must be interpreted using “their ordinary, contemporary, common meaning.”⁴⁹ Comments stated that the terms “care,” “health,” and “health care,” which are referenced but not defined in OFPA, are broad in their ordinary meanings to include animal welfare. The *whole text canon* calls for interpretation of statutory language to be based on consideration of the entire text and its logical relations.⁵⁰ Comments stated that this canon supports USDA's authority to issue this final rule, as OFPA provisions work together to require USDA to expand livestock care standards beyond prohibitions of certain substances: USDA cited §§ 6509(d)(2) and (g) when it promulgated the rule, explaining that § 6509(d)(2) authorizes the NOSB to recommend standards in addition to the OFPA provisions for livestock health care to ensure that

livestock is organically produced. Sec. 6509(g) directs the Secretary to develop detailed regulations through notice and comment rulemaking to implement livestock production standards. Comments found that when read as a whole, OFPA's structure supports the USDA's authority to issue this final rule. The *surplusage canon*, which commands that “every word and every provision is to be given effect,”⁵¹ prevents interpretations that would render a provision pointless; instead, courts should interpret a provision in a way that “leaves both provisions with some independent operation.”⁵² Comments found that this provision allows for the agency to adopt additional standards “for the care of livestock,” including standards that promote animal welfare.

(Response) “Care of livestock” necessarily includes livestock wellbeing and welfare. AMS agrees that ordinary definitions of “care” and “health care”—which are not explicitly defined in OFPA nor its regulations—encompass living conditions included in the rule, and that “care of livestock” includes animal welfare.⁵³ Additionally, as OFPA provides, NOSB has previously issued recommendations regarding organic livestock production, and AMS has revised the organic regulations in response to the recommendations (e.g., “Access to Pasture” and “Origin of Livestock”). Several NOSB recommendations are relevant to this final rule. At its Fall 2009 meeting, NOSB issued a final recommendation on animal welfare,⁵⁴ which was updated by subsequent recommendations. These recommendations set the framework for this final rule.

(Comment) Several comments disagreed with AMS's statutory authority to regulate organic livestock welfare. These comments posited that AMS lacks the legal authority to promulgate the rule, arguing that OFPA authority is limited to livestock and poultry feeding and medication practices. In this view, animal handling practices are not a defining characteristic of organic agriculture and are not germane to the NOP as authorized by Congress. Comments also referenced a previous rulemaking that was withdrawn in March 2018, specifically AMS's rationale for withdrawing the OLPP Final Rule. Reasons cited include AMS's own stated

⁴⁵ 87 FR at 48567.

⁴⁶ National Organic Program (NOP)—Access to Pasture (Livestock) Proposed Rule: <https://www.regulations.gov/document/AMS-TM-06-0198-0001>.

⁴⁷ 75 FR 7154, 7154–56 (Feb. 17, 2010).

⁴⁸ <https://www.regulations.gov/document/AMS-NOP-21-0073-39096>.

⁴⁹ *Perrin v. United States*, 444 U.S. 37, 42 (1979); see generally A. Scalia & B. Garner, *Reading Law* 69–77 (1st ed. 2012).

⁵⁰ *Mont v. United States*, 139 S. Ct. 1826, 1833–34 (2019).

⁵¹ Scalia & Garner, *supra* at 174.

⁵² Scalia & Garner, *supra* at 176.

⁵³ 7 U.S.C. 6509(d)(2).

⁵⁴ 2009 NOSB Sunset Recommendation: <https://www.ams.usda.gov/sites/default/files/media/NOP%20Final%20Sunset%20Rec%20Animal%20Welfare.pdf>.

⁴¹ 7 U.S.C. 6503(a), (c).

⁴² 7 U.S.C. 6509(d)(2).

⁴³ *F.D.I.C. v. Meyer*, 510 U.S. 471, 476 (1994).

⁴⁴ 7 U.S.C. 6501.

lack of statutory authority to promulgate the OLPP Final Rule, errors in calculating estimated benefits, and a lack of evidence of market failure to justify prescriptive regulatory action.⁵⁵

Many of these comments stated that because OFPA is limited in scope to organic production, regulations enacted pursuant to its authority must be narrowly tailored to specific practices that differentiate organic from any other method of agricultural production—and that animal welfare is not unique to organic production. One comment referenced the NOSB definitions of organic agriculture that omit mention of animal welfare.⁵⁶ Additionally, the definition of *organic production* at 7 CFR 205.2 does not explicitly mention animal welfare.⁵⁷ Another comment referenced a 2006 USDA Sustainable Agriculture Research and Education bulletin *Transitioning to Organic Production* that describes organic farming as an ecologically focused, input-based system as well as a 2007 USDA Cooperative State Research, Education, and Extension Service publication *Organic Agriculture Overview* that emphasizes biological diversity and economic sustainability. This comment questioned the justification of the proposed rule under OFPA given the cited publications do not mention nor consider animal welfare as a defining characteristic of organic agriculture.

(*Response*) AMS finds that as animal health and welfare are intertwined, OLPS provisions for both fall under the statutory authority of OFPA. Given OFPA's plain language, legislative purpose and history, and historical regulatory interpretations, OLPS is consistent with the purposes of OFPA, and it establishes standards similar to existing organic standards. As animal welfare is intrinsically part of animal

management,⁵⁸ AMS is clearly within its statutory bounds to mandate specific animal welfare requirements as part of organic animal management.

Further, the 1990 Senate Report that accompanied OFPA demonstrates Congressional expectation that USDA would update organic standards as organic production systems evolve.⁵⁹ The report states that “with additional research and as more producers enter into organic livestock production, the [Senate Committee on Agriculture, Nutrition, and Forestry] expects that USDA, with the assistance of the [NOSB] will elaborate on livestock criteria.”⁶⁰ The report further states that “[t]he Board shall recommend livestock standards, in addition to those specified in this bill, to the Secretary.”⁶¹ Furthermore, in its October 1990 Conference Report, conference members noted, “[t]he Conference substitute adopts the House provision with an amendment which requires the Secretary to hold hearings and develop regulations regarding livestock standards in addition to those specified in this title.” (p. 1177). This amendment is reflected in OFPA at sec. 6509(g). For further discussion of the statutory authority to issue this rule, see Section II.B, STATUTORY AUTHORITY TO ISSUE FINAL RULE.

B. Responses to Comment on Market Failure

AMS received approximately 300 comments discussing the market failure addressed by the rule. Discussion of specific themes and AMS's responses are below. Additional discussion of market failure can be found in the rule's Regulatory Impact Analysis.

(*Comment*) Many comments agreed there is market failure, citing confusion over multiple certifications, cost of maintaining certifications, and consumer expectation that the organic label requires meaningful outdoor access for poultry. Some comments argued that market failure has not occurred in the organic poultry industry, pointing to the industry's rapid growth in the last five years. Most of these comments asked for additional justification of the claim of market failure in the organic label. However, most comments agreed that uneven compliance with and enforcement of the outdoor access requirement in organic

livestock regulations creates a market failure. Some comments highlighted the possible negative impacts of this market failure, including loss of consumer confidence in the organic label and economic harm to producers.

Some comments provided context on consumer confusion about organic animal welfare requirements by sharing recent survey results. Several comments cited a 2017 Consumer Reports survey that found 83 percent of organic consumers “think it's highly important that organic eggs come from hens that were able to go outdoors, and have enough space to move around freely.”⁶² Others cited a 2022 ASPCA survey finding that 65% of “frequent purchasers” (respondents who purchased organic animal products once a week or more) believed that “all animals raised on organic farms have access to outdoor pastures and fresh air throughout the day,” with another 23% indicating they were not sure.⁶³

(*Response*) AMS agrees with comments that some combination of market failure and government failure (action or inaction) exists in poultry products under the organic label. Market failure can occur even when a market experiences rapid growth because consumers could be paying for attributes they are not receiving. As some organic broilers and layers are not currently raised with “access to outdoor pastures and fresh air throughout the day,” AMS concludes, based on the survey data submitted in public comments, that some organic consumers are not receiving attributes they believe they are paying for (for example AMS estimates that at least 31.5% of organic eggs are purchased by consumers who mistakenly think the chickens producing their eggs have outdoor access that includes soil or pasture).⁶⁴ This gap in the organic poultry market could impact the entire organic label, as lowered consumer confidence in one product can impact consumer confidence across the label and

⁵⁵ 82 FR 59990, Dec. 18, 2017.

⁵⁶ “Organic agriculture is an ecological production management system that promotes and enhances biodiversity, biological cycles and soil biological activity. It is based on minimal use of off-farm inputs and on management practices that restore, maintain and enhance ecological harmony.” & “‘Organic’ is a labeling term that denotes products produced under the authority of the Organic Foods Production Act. The principal guidelines for organic production are to use materials and practices that enhance the ecological balance of natural systems and that integrate the parts of the farming system into an ecological whole.” (April 1995 NOSB meeting).

⁵⁷ “A production system that is managed in accordance with the Act and regulations in this part to respond to site-specific conditions by integrating cultural, biological, and mechanical practices that foster cycling of resources, promote ecological balance, and conserve biodiversity.” (7 CFR 205.2 “Organic production”).

⁵⁸ <https://www.avma.org/resources/animal-health-welfare/animal-welfare-what-it#:~:text=Good%20animal%20welfare%20requires%20disease,humane%20handling%2C%20and%20humane%20slaughter.>

⁵⁹ Sen. Rep. No. 101–357 (July 1990).

⁶⁰ Sen. Rep. No. 101–357, at 292 (July 1990).

⁶¹ Sen. Rep. No. 101–357, at 303 (July 1990).

⁶² “Consumer Reports Survey Finds Consumers think it's Important to Have High Animal Welfare Standards for Food Labeled Organic,” Consumer Reports, April 20, 2017, https://www.consumerreports.org/media-room/press-releases/2017/04/consumer_reports_survey_finds_consumers_thin_its_important_to_have_high_animal_welfare_standards_for_food_labeled_organic/.

⁶³ Organic Consumer Survey, Animal Welfare Institute, 2022, https://www.aspc.org/sites/default/files/awi_aspc_organic_consumer_survey_summary_2022_final.pdf.

⁶⁴ Based on data from ASPCA and the Animal Welfare Institute survey, September 2022. https://www.aspc.org/sites/default/files/awi_aspc_organic_consumer_survey_summary_2022_final.pdf.

See Section II Subsection D for more detail.

threatening organic integrity.⁶⁵ AMS revised the discussion on market failure for this final rule in response to comments arguing that a market failure likely exists under the current organic regulations. AMS included references to surveys provided in comments where appropriate and discussed concerns from commenters about how to address market distortions in the organic context. Additional information regarding market failure can be found in the RIA.

(*Comment*) Some comments expressed the view that third-party labels allowed for flexibility in the market, however, most who commented on this topic felt that third-party labels do not address the problem and cause additional consumer confusion. Several comments pointed out that it costs producers to maintain additional third-party animal welfare certifications and asserted that consumers were confused by the various competing labels. A few comments stated that third-party labeling may be sufficient to address the market failure. Comments pointed to the many animal welfare certifying and labeling programs available for both organic and conventional producers, offering flexibility to producers and a range of options for consumers; these represent the diversity of livestock and poultry production, differing priorities of certifying organizations, and evolving scientific understanding of animal welfare.

(*Response*) AMS believes the existing combination of market failure and government failure cannot be solved solely through third-party labeling. Many organic poultry producers currently incur additional costs by using third-party labels to solve the issue of different production practices between operations. This rule's additional specificity would improve the consistency of production practices and could reduce the need for and cost of additional third-party labels. Further, AMS agrees with other commenters who claim that third-party labels cannot address the problem because they create more consumer confusion. AMS revised the discussion on market failure in this final rule to include discussion of the inability of third-party labels to efficiently solve the observed information asymmetry. (See Section A,

⁶⁵ AMS finds it likely that controversy or confusion about one product under the organic scheme will cause secondary effects to the overall label and other products, including, but not limited to, risk to consumer confidence, trust, and demand. Because of the unique nature of the organic label, quantifying or monetizing this risk was not possible.

See Section F of the RIA for more detail.

“Need for the Rule,” in the Regulatory Impact Analysis.)

IV. Overview of Final Rule and Responses to Comments

AMS provides a detailed description of the final rule below, section by section, and responds to comments received on each section. The descriptions of the requirements are meant to explain AMS's intent and provide examples of how to comply with the requirements.

A. Terms Defined (§ 205.2)

This rule adds seventeen new terms to 7 CFR 205.2: *beak trimming*, *caponization*, *cattle wattling*, *de-beaking*, *de-snooding*, *dubbing*, *indoors or indoor space*, *induced molting*, *mulesing*, *non-ambulatory*, *outdoors or outdoor space*, *perch*, *pullet*, *religious (or ritual) slaughter*, *stocking density*, *toe clipping*, and *vegetation*. The definitions are discussed below.

Eight New Terms To Define Prohibited Physical Alterations

Current organic regulations permit “physical alterations” of animals “as needed to promote the animal's welfare and in a manner that minimizes pain and stress” (7 CFR 205.238(a)). This rule elaborates on this requirement and prohibits some specific types of physical alterations. Defining these physical alterations supports common understanding of the meaning of the terms, as some terms could otherwise be interpreted in various ways (e.g., “caponization” may be referred to as “castrating” in some regions). AMS prohibits some alterations because they do not promote animal welfare or may be overly painful or stressful without a corresponding benefit to animal welfare. NOSB recommended prohibiting these specific physical alterations in 2009.

The following terms are defined in this rule: *beak trimming*, *caponization*, *cattle wattling*, *de-beaking*, *de-snooding*, *dubbing*, *mulesing*, and *toe clipping*.

Indoors or Indoor Space

The rule defines “indoors or indoor space” as the space inside of an enclosed building or housing structure that is available to livestock. The definition includes four examples of structures that are commonly used in poultry production. These indoor housing types are defined, in part, because space requirements are based on the housing type. AMS also includes an indoor space requirement at § 205.241(b)(8)(v) for housing that does not fit within one of the specific types defined in § 205.2. While all organic livestock must be provided with

species-appropriate shelter, structures providing indoor space are not necessarily required. For example, beef cattle raised on pasture or range in mild climates may not need to be provided with indoor space.

The final rule uses the term “enclosed” to establish if a space should be considered indoors or outdoors. Under the definition, the space within the building or structure that can be enclosed is considered the indoor space. The rule defines “outdoors or outdoor space” separately (see discussion below).

Induced Molting

The rule defines “induced molting” as molting that is artificially initiated. The term is broadly defined to include the various methods a producer may use to induce, or force, molting in a flock, such as withdrawal of feed or manipulation of light. The term aligns with the definition that currently appears in FDA requirements related to the production, storage, and transportation of shell eggs at 21 CFR 118.3.

Non-Ambulatory

The rule adds the term “non-ambulatory” and references FSIS regulations at 9 CFR 309.2(b). FSIS describes non-ambulatory as “livestock that cannot rise from a recumbent position or that cannot walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column, or metabolic conditions.” The rule now requires that any non-ambulatory livestock on organic farms must be medically treated—even if the treatment causes the livestock to lose organic status—or be humanely euthanized.

Outdoors or Outdoor Space

The rule defines “outdoors or outdoor space” to clarify the meaning of outdoor areas for mammalian and avian species. “Outdoors or outdoor space” is defined as any area outside of an enclosed building or enclosed housing structure. In this definition, “outdoors or outdoor space” includes all the non-enclosed space encompassing soil-based areas such as pastures, pens, or sacrifice lots; hardened surface areas such as feedlots, walkways, or loafing sheds; and areas providing outdoor shelter such as windbreaks and shade structures. For avian species, the definition specifies that pasture pens are considered outdoor space. These are floorless pens that are moved regularly and provide direct access to vegetation, soil, and direct sunlight. These pens (often

referred to as “chicken tractors”) may include roofing to provide shelter for the birds, so long as birds are still able to express natural behaviors (*e.g.*, scratching) and meet all applicable requirements at § 205.241. To assist with the mitigation of biosecurity and predation risks, fencing, netting, or other materials are permitted over all or part of the outdoor areas to prevent predators and other wild birds from entering. For example, bird netting above a chicken pasture, where the chickens still have access to soil underneath, would be permitted. This area would qualify as outdoor space because it is not enclosed and allows access to soil. In contrast, a structure that is enclosed and has a hard floor (*i.e.*, no soil) would not qualify as outdoor space.

The definition also clarifies that enclosed open sided structures do not qualify as outdoors or outdoor space. This includes freestall barns and “open” sided poultry housing (enclosed by gates and/or wire, respectively). While housed in these structures, animals cannot be “outdoors.” Similarly, screened poultry “porches” or “verandas” attached to poultry houses and enclosed by wire on the sides, are not considered outdoors.

In this definition, “outdoors or outdoor space” includes all the non-enclosed space encompassing soil-based areas such as pastures, pens, or sacrifice lots; hardened surface areas such as feedlots, walkways, or loafing sheds; and areas providing outdoor shelter such as windbreaks and shade structures. For avian species, the definition specifies that pasture pens are considered outdoor space. These are floorless pens that are moved regularly and provide direct access to vegetation, soil, and direct sunlight. These pens (often referred to as “chicken tractors”) may include roofing to provide shelter for the birds, so long as birds are still able to express natural behaviors (*e.g.*, scratching) and meet all applicable requirements at § 205.241. To assist with the mitigation of biosecurity and predation risks, fencing, netting, or other materials are permitted over all or part of the outdoor areas to prevent predators and other wild birds from entering.

Many producers also use portable or permanent shade structures throughout their pastures, and the definition clarifies that unenclosed structures used for shade are considered outdoor space. For example, the area within a stand-alone, roofed shade structure in a pasture could be included as outdoor space area. Non-enclosed areas under the eaves or the awning of a building

can also be considered outdoors. While these areas may have solid roofs overhead, they offer the same quality of outdoor space as uncovered outdoor areas, including natural ventilation/open air and open access to uncovered areas with direct sunlight, soil, and vegetation.

Perch

The rule defines the term “perch” as a rod- or branch-type structure above the floor or ground that accommodates roosting and allows birds to utilize vertical space. Perches may be indoors or outdoors. The final rule includes specific requirements for perch space for layers (*Gallus gallus*) indoors.

Pullets

AMS modified the definition of pullets, which is used by the AMS Livestock, Poultry, and Seed Program, to include species other than chickens. This rule defines “pullets” as female chickens or other avian species being raised for egg production that have not yet started to lay eggs. Once avian females begin laying eggs, AMS refers to them as layers. The term “pullets” is not used to describe young broilers used for meat production; broilers of any age are referred to as broilers in this rule.

Religious (or Ritual) Slaughter

The rule adds the term “religious (or ritual) slaughter.” This definition is very similar to a description in the Humane Methods of Slaughter Act (7 U.S.C. 1902(b)), which allows for ritual slaughter in accordance with religious faith. This method of slaughter relies on the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument. Organic livestock and handling operations may use religious (or ritual) slaughter to convert their mammalian or avian livestock to meat or poultry without loss of organic status.

Stocking Density

The rule defines “stocking density” as the liveweight or number of animals on a given area or unit of land. This term is used to describe the indoor and outdoor space requirements for organic livestock. For example, this rule establishes maximum stocking densities for chickens, and the producer must ensure that the area provided is large enough to not exceed the maximum stocking density when all birds in the flock are in the area (*i.e.*, assume all birds are either indoors or all birds are outdoors when calculating space available to each bird).

Vegetation

The rule adds the term “vegetation” and defines it as living plant matter that is anchored in the soil by roots and provides ground cover. This term applies to the requirement for vegetation in outdoor areas, which is central to protecting soil and water quality as well as providing for livestock to exhibit their natural behaviors. The roots of vegetation provide stability and structure to soil. Vegetation helps water soak into the soil rather than running off, which can cause erosion. Livestock also have natural behaviors such as grazing, rooting, nesting, etc., which require vegetation.

Changes From Proposed to Final Rule

AMS has made several changes to the regulatory text of the OLPS proposed rule when writing this final rule. Changes to the final rule are discussed below and are followed by specific topics and themes from public comment.

- AMS added the defined term “induced molting.” This term was added to clarify the rule’s prohibition on induced molting, as described at § 205.238, Livestock care and practice standards. This term aligns with FDA regulations and includes all methods used to artificially initiate molting.
- AMS revised the definition of “mobile housing” to more clearly state that this type of housing must allow birds continuous access to outdoors during the daytime.
- AMS revised the definition of “outdoors or outdoor space” to clarify that open-sided but enclosed structures, such as freestall barns, are not considered outdoor space. The revised definition also clarifies that unenclosed shade structures are considered outdoor space.
- AMS revised the definition of avian “pasture pens” to clarify that they must allow birds to express natural behaviors.
- AMS revised the definition of “perch”, so it more broadly applies to perches in indoor and outdoor spaces.
- AMS changed the term “ritual slaughter” to “religious (or ritual) slaughter.” AMS amended this term for clarification and to better align with current and preferred language.
- AMS restructured the definition of “slatted/mesh flooring” into a single paragraph to improve clarity.
- AMS removed the definition of “soil.” Soil is a commonly understood term and a definition is not necessary to understand or implement this rule.

Responses to Public Comment

AMS received many public comments from stakeholders across the organic

industry discussing this section of the proposed rule. The majority of comments generally supported AMS's proposed revisions. Many commenters requested further clarification of the proposed changes, particularly regarding the definitions of soil and vegetation, and what qualifies as indoor or outdoor space.

Soil

(Comment) Many of the comments that discussed soil requested either modifying or removing the definition of "soil" included in the proposed rule. Some commenters stated that because it did not originate from an NOSB recommendation, it should not be included in the rule. Others argued that defining "soil" for the purposes of livestock production standards could lead to unintended effects on other organic production areas, such as crop production.

(Response) AMS agrees that a regulatory definition of "soil" should take the entire organic standard into consideration and that defining the term only for use in the livestock area of operation may affect other areas of organic production. Because soil is generally a well-understood term, a regulatory definition is not necessary for the successful implementation of this rule. AMS has removed the definition of "soil" from the final rule.

Vegetative Cover

(Comment) Some commenters requested a new definition for the term "maximal vegetative cover." This term was used in the proposed rule to describe a requirement for outdoor areas, but the term was not defined. Comments requested a more exact description of the term to support consistent enforcement of the proposed requirement.

(Response) AMS has elected to maintain the proposed language in the definition of "vegetation" and does not define "maximal vegetative cover" in this rule. The word "maximal" is removed in the final rule from § 205.239(a)(12) and § 205.241(c)(2). Removing "maximal" gives operations the necessary flexibility to maintain vegetation in outdoor areas that is appropriate to their region, climate, and other site-specific conditions. See the "Mammalian and non-avian livestock living conditions" and "Avian living conditions" sections of this preamble for further information about vegetation in outdoor spaces.

Mobile Housing

(Comment) Several commenters stated that the definition of "mobile housing"

should be revised to better align with the industry's current use of this type of avian indoor living space, and to ensure that these types of structures allow appropriate outdoor access to outdoor areas.

(Response) AMS revised the definition of "mobile housing" to specify that mobile housing structures must allow birds to continuously access areas outside the structure during the daytime. AMS also removed the previous term "during the grazing season" to clarify that mobile housing is commonly used year-round. These changes better align with how the organic industry uses mobile housing and will allow operations to meet this rule's avian indoor living requirements with this type of structure.

Pasture Pens (Avian)

(Comment) Commenters expressed concern with the definition of "pasture pen," stating that some types of pasture pens (e.g., those with wire or partial floor covering) should not be counted as outdoor space because these pens may prevent the natural behaviors of birds or limit movement of birds.

(Response) AMS recognizes the concerns and has revised the definition of "pasture pens" to include the phrase "allow birds to express their natural behaviors." To be considered outdoor space, pasture pens must provide direct access to soil and allow birds to express natural behaviors, such as scratching and dust bathing. Producers with pasture pens must also meet requirements at § 205.241(a).

Stocking Density

(Comment) Some commenters requested changing the word "animal" in the proposed definition to "bird" because the rule only defines stocking density for poultry, not other types of livestock.

(Response) AMS has chosen to continue using "animal" in the definition of "stocking density." The word "animal" includes birds and is therefore suitable for discussing and describing stocking densities of birds.

Euthanasia and Death

(Comment) Several comments requested clarification on what the term "euthanasia" means, and asked AMS to develop a definition for "euthanasia," "death" or "dead" to clarify what methods can be used to verify death following a euthanasia procedure.

(Response) AMS has elected not to define "euthanasia," "death," or "dead" in the rule. Section 205.238, Livestock care and production practices standard, addresses euthanasia, including how

operations must ensure animals are dead following euthanasia. The final rule does not require operations to use a specific method to verify death. However, AMS does recommend that operations use methods of euthanasia and confirmation of death consistent with the American Veterinary Medical Association (AVMA) Guidelines for the Euthanasia of Animals. See § 205.238(e) of this rule for more information on euthanasia and livestock care practices.

Outdoor Space

(Comment) One comment expressed concern that the proposed rule's definition of outdoor space may allow operations to consider freestall or hoop barns with the sides up as outdoor space. The commenter requested such structures be counted as indoor space only.

(Response) AMS amended the definition of *outdoor space* to specifically clarify that "enclosed housing structures with open sides (e.g., open-sided freestall barns) are not to be considered outdoors or outdoor space." The definition was amended to remove language about roofed areas that are not enclosed being permitted as outdoor space. The language was replaced with a specification that open-sided enclosed structures are not considered outdoor space. Because such structures may not always allow animals free access to outdoor areas, the space is enclosed and therefore considered indoor space, not outdoor space.

B. Livestock Care and Production Practices Standard (§ 205.238)

Description of Final Policy

This final rule updates § 205.238 of the USDA organic regulations. This section discusses requirements for the care and management of organic livestock that apply to all species of livestock. The two following sections of this rule (§§ 205.239 and 205.241) cover living condition requirements specific to mammalian/non-avian and avian species, respectively. The following discussion describes the changes that this final rule makes to § 205.238.

Updates to § 205.238(a) require that producers select a species suitable for the conditions of their site, establish appropriate housing, and provide a feed ration sufficient to the nutritional requirements of the animal. During on-site inspections, certifying agents must verify the suitability of the breed to its housing and living conditions and the adequacy of the animals' diet.

AMS revises § 205.238(a)(5) to clarify the conditions under which operations may perform physical alterations on

livestock. Physical alterations may be performed for identification purposes or the safety of the animal. Alterations must be done at a young age for the species, and in a manner that minimizes the animals' pain and stress during and after the procedure. Alterations may only be performed by an individual who is capable of doing so in a manner that minimizes stress and pain. Operations may use an individual's training or experience to demonstrate that individual's capability to perform physical alterations.

A 2009 NOSB recommendation allowed teeth clipping and tail docking in piglets, but this proposal was retracted in the 2011 NOSB recommendation.⁶⁶ Section 205.238(a)(5)(i) of this final rule restricts needle teeth clipping and tail docking. These two types of physical alterations may not be performed on a routine basis, but they are not prohibited in all cases. As § 205.238(a)(5)(i) specifies, needle teeth clipping and tail docking may only be performed in response to documented instances of harm, and only with documentation that alternative steps to prevent such harm failed. For example, an organic swine producer who clipped needle teeth or performed tail docking would need to document excessive needle teeth scarring on the underline of a sow or piglets, or document tail biting on piglets in the litter. In this case, the producer also must document that alternative methods to prevent scarring had failed. Such alternative methods may include, but are not limited to, cross-fostering prior to teat fidelity across litters to minimize weight variation, providing sufficient enrichment materials, and providing vegetation for rooting. Teeth clipping, if performed, is limited to the top third of each needle tooth.

AMS adds new paragraph (a)(5)(ii) to list the physical alterations that an organic operation must not perform. Based on 2011 NOSB recommendations, the following physical alterations to avian species are prohibited: de-beaking, de-snooding, caponization, dubbing, toe clipping of chickens, toe clipping of turkeys unless with infra-red at hatchery, and beak clipping after 10 days of age. In addition, the following physical alterations to mammalian species are prohibited: tail docking of cattle, wattling of cattle, face branding of cattle, tail docking of sheep shorter than the distal end of the caudal fold, and mulesing of sheep.

AMS adds new requirements at § 205.238(a)(7) to specify that surgical procedures on livestock to treat illness or injury must be done in a manner that minimizes pain, stress, and suffering. The NOSB recommended that all surgical procedures for livestock be done with the use of anesthetics, analgesics, and sedatives. USDA organic regulations require that all surgical procedures for treatment of disease be undertaken in a manner that employs best management practices in order to minimize pain, stress, and suffering. Operations may only use synthetic anesthetics, analgesics, and sedatives if listed on the National List of Allowed and Prohibited Substances ("National List") at § 205.603(a) and (b), which lists the synthetic substances that are allowed in organic livestock production.

The final rule adds new § 205.238(a)(8) that requires organic producers to actively monitor lameness within the herd or flock and to undertake timely and appropriate treatment and mitigation strategies. Lameness can be an issue in various livestock species, including broilers, sheep, and dairy cattle. This requirement for producers to create a plan for monitoring and treating lameness in the OSP will enable them to identify and address potential problems among animals before they become widespread.

The final rule amends § 205.238(b) to state that synthetic medications allowed under § 205.603 of the National List may be administered to alleviate pain or suffering, as well as when preventive practices and veterinary biologics are inadequate to prevent sickness. Similarly, parasiticides allowed by the National List may be used on breeder stock, dairy animals, and fiber bearing animals, as allowed under § 205.603. When using these substances, operations must follow all applicable limitations of use as listed in § 205.603, including any withholding or withdrawal periods.

AMS amends § 205.238(c)(1) to clarify that milk from an animal treated with a substance that is allowed on the National List and has a withdrawal period may not be sold, labeled, or represented as organic during that withdrawal period. However, that milk may be fed to organic calves on the same operation during the withdrawal period. 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 period should not lose organic status. For example, if an organic cow became injured and was treated with lidocaine to minimize pain,

she could continue to nurse her organic calf during lidocaine's seven-day withholding period, and the calf would not lose its organic status.

The final rule revises § 205.238(c)(2) to clarify that producers may administer allowed synthetic medication (*i.e.*, those on the National List at § 205.603) to alleviate pain and suffering, in addition to use for the treatment of illness.

AMS revises § 205.238(c)(3) to clarify that organic livestock producers are prohibited from administering synthetic or non-synthetic hormones to promote growth, or for production or reproductive purposes. Hormones listed in § 205.603 could be used as medical treatments (*e.g.*, oxytocin). Stakeholders have noted that the USDA organic regulations fail to address use of hormones to stimulate production or for reproductive purposes. AMS is not aware of any hormones used by organic producers for these purposes, and no hormones are included on the National List for these uses. Therefore, the final rule's change maintains the status quo; that is, it affirms and supports the current prohibition on using hormones to promote growth, production, or reproduction. All hormones—unless used as medical treatments and included on the National List—are prohibited in organic production.

The final rule adds new § 205.238(c)(8) to prohibit organic livestock producers from withholding treatment designed to minimize pain and suffering for injured, diseased, or sick animals. Injured, diseased, or sick animals may be treated with any allowed natural substance or synthetic medication that appears on the National List without losing their organic status. However, if no medication allowed for organic production suffices to ease the animal's suffering, organic livestock producers are required to administer treatment even if the animals subsequently lose their organic status. Euthanasia is an acceptable practice for minimizing pain and suffering only when the animal is suffering from disease or injury that cannot be healed by other treatments, including treatments that would cause an animal to lose its organic status.

AMS adds new § 205.238(c)(9), which requires livestock producers to identify and record treatment of sick and injured animals in animal health records. Early identification can lead to more effective prevention or treatment, which can enhance the overall health of the livestock on that operation. Certifiers should review treatment during on-site inspections to verify that operations are individually identifying treated animals

⁶⁶ Available at <https://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations>.

and that treatments comply with the organic regulations.

AMS adds new § 205.238(c)(10) prohibiting induced molting in poultry production. This rule also defines induced molting at § 205.2 as any type of molting that is artificially induced. Section 205.238(a)(2) of this rule requires a nutritionally sufficient feed ration for livestock. Induced molting, a practice by which feed restriction, severe light manipulation, or other management practices are used to rejuvenate egg production, runs counter to the welfare intent of this final rule. An explicit prohibition on induced molting is consistent with the organic regulation's general animal welfare requirements, and the fall 2009 NOSB recommendation.⁶⁷

AMS adds new § 205.238(d) requiring organic livestock operations to have a plan to minimize internal parasite problems in livestock. The plan must include preventive measures such as pasture management, fecal monitoring, and emergency measures in the event of a parasite outbreak. Certifying agents must approve a livestock operation's parasite control plan as part of the operation's OSP.

In certain cases, livestock may suffer from an illness or injury where recovery is unlikely. AMS adds new § 205.238(e) to address euthanasia based on the 2011 NOSB recommendations. Section 205.238(e)(1) requires livestock producers to maintain written plans for euthanizing sick or injured livestock suffering from irreversible disease or injury. Section 205.238(e)(2) prohibits the following methods of euthanasia: suffocation, manual blows to the head by blunt instrument or manual blunt force trauma, and use of equipment that crushes the neck (*e.g.*, killing pliers or Burdizzo clamps). In the event of an emergency situation where a local, State, or Federal government agency requires the use of a non-organic method of euthanasia, organic livestock operations would not lose organic certification or face other penalties for that instance of euthanasia. The NOSB recommended listing the allowable methods of euthanasia; however, given that new humane euthanasia methods may emerge, AMS does not intend to discourage producers from using these techniques. AMS therefore directs organic livestock producers to use methods of euthanasia consistent with the most recent editions of the American Veterinary Medical Association (AVMA) Guidelines for the

Euthanasia of Animals.⁶⁸ The list of specifically prohibited methods could be amended to include other techniques, if needed, through future rulemaking. AMS also requires in § 205.238(e)(3) that organic producers carefully examine livestock to ensure they are dead following a euthanasia procedure.

Changes From Proposed to Final Rule

AMS has made several changes to the regulatory text of the OLPS proposed rule when writing this final rule.

Changes to the final rule are discussed below and are followed by specific topics and themes from public comment.

- AMS removed the phrase "resulting in appropriate body condition" from the feed ration requirement in § 205.238(a)(2) because some comments found this phrase to be unnecessarily prescriptive or confusing. Removing this phrase reinforces that this requirement is meant to ensure operations provide adequate and nutritional feed to organic livestock.

- AMS amended the requirements in § 205.238(a)(5) regarding physical alterations. AMS removed the phrase "to benefit the welfare of the animal" as this is redundant with "for . . . the safety of the animal." In response to public comment, the final rule clarifies who may perform alterations ("a person . . . capable of performing the physical alteration in a manner that minimizes stress and pain") and when the alteration may be performed ("at a young age for the species").

- In response to public comment, AMS amended the surgical procedure requirements in § 205.238(a)(7). AMS clarified that surgical procedures may be required to treat "illness or injury." AMS also clarified that the reason for using surgical best practices is to "promote the animal's wellbeing."

- AMS removed a requirement to record lameness and the percent of herd suffering from lameness at § 205.238(a)(8) and revised the section to focus on a more general requirement to monitor, treat, and prevent lameness as appropriate to the species. This provides additional flexibility because some species are more prone to lameness.

- To align with changes made by AMS's Origin of Livestock final rule (April 5, 2022; 87 FR 19740) to the preventive medicine and parasiticide livestock practice standards, AMS amended § 205.238(b).

- In response to public comment, AMS clarified in § 205.238(c)(1) that milk from animals treated with synthetic substances that "have associated withdrawal periods" cannot be sold, labeled, or represented as organic during the withdrawal period.

- AMS revised the language in § 205.238(c)(10) that prohibits induced molting. The proposed rule used the term "forced molting or withdrawal of feed to induce molting." AMS finds that "induced molting" is a more common and comprehensive term that better captures AMS's intent for a total ban on this practice, and it also aligns with the FDA definition of induced molting (21 CFR 118.3).

- AMS removed the sentence in § 205.238(d)(1) stating that "Parasite control plans shall be approved by the certifying agent." Because parasite control plans are part of an OSP, and certifying agents must approve organic systems plans, the sentence was unnecessary, and AMS removed the language to avoid confusion.

- In response to public comment, AMS revised § 205.238(e)(1) to state that euthanasia is for "sick or injured livestock suffering from irreversible disease or injury." This change clarifies that euthanasia should be used only if treatment is not an option.

Responses to Public Comment

AMS received many public comments from stakeholders across the organic industry discussing this section of the proposed rule. The topics that received the most public comment were physical alterations, body condition, induced molting, monitoring of lameness, medicines with withholding periods, and euthanasia. AMS summarizes and responds to those comments below.

Physical Alterations

(Comment) Several commenters requested that AMS clarify the requirements in § 205.238(a)(5) for when physical alteration is permitted and who may perform it. Commenters found "reasonably young age" (the language in the proposed rule) vague and requested a definition or species-specific listing of ages. Similarly, commenters said the requirement that alterations be performed "by a competent person" was vague. Some proposed alternative definitions of "competent person" while others asked that the regulation specify the person must be a veterinarian or that the phrase be replaced with language such as "a person skilled in the procedure."

(Response) AMS agrees that "reasonably young age" is too vague and has instead required that alterations

⁶⁷ Available at <https://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations>.

⁶⁸ <https://www.avma.org/resources-tools/avma-policies/avma-guidelines-euthanasia-animals>.

must be performed “at a young age for the species.” This clarifies that operations should choose an age that is appropriate to the species of livestock. Similarly, AMS has added a phrase to clarify who may perform physical alterations: “a person who is capable of performing the physical alteration in a manner that minimizes stress and pain.” This language avoids being overly prescriptive and leaves flexibility to operations and certifiers while emphasizing that an operator’s ability to minimize the animals’ stress and pain during the alteration is the key qualification. Operations should choose a person capable of performing physical alterations based on their training and experience. This means that the capability of the person performing the physical alteration should scale with the complexity of the alteration. For example, ear tagging of cattle is a simple procedure that requires minimal knowledge and training, while a physical alteration that necessitates a permitted sedative and pain reliever may require the expertise of a more experienced or specially trained individual such as a veterinarian. These revisions clarify the use of permitted physical alterations, but also provide appropriate flexibility for operations to choose safe and responsible methods that best match their species of livestock.

(Comment) Several comments asked AMS to require that pain relief be administered—some said by a licensed veterinarian—both before and after physical alterations.

(Response) While AMS agrees that pain relief is an important element of physical alteration procedures, we believe that the final rule adequately addresses this concern. The final rule at § 205.238(a)(5) requires that “physical alterations must be performed . . . in a manner that minimizes stress and pain.” Operations should provide pain relief before and after physical alterations if this is necessary to minimize the stress and pain of the livestock.

(Comment) Some commenters objected to the proposed requirement to use anesthetics, analgesics, and sedatives for surgical procedures in cattle and sheep. Commenters interpreted the proposed requirement as requiring these drugs for *all* surgical procedures and stated the requirement was, “inappropriate given that FDA has not approved any post-surgical analgesic products for pain management.”

(Response) Section 205.238(a)(7) of the final rule requires that surgical procedures be conducted using best practices to promote animal well-being

and to minimize pain, stress, and suffering. In response to comments about the requirement to use medications for surgical procedures, AMS revised the final rule to clarify that medications should be used, “as appropriate”. This section does not require use of anesthetics, analgesics, and sedatives for *all* procedures, although some surgical procedures may require medication to minimize pain, stress, and suffering. As to the commenters’ point about lack of FDA approval for analgesics, AMS is aware that the National List (§ 205.603) includes animal drugs that are not necessarily labeled (*i.e.*, FDA approved) for use on all species. AMS also understands that the Animal Medicinal Drug Use Clarification Act (AMDUCA) allows veterinarians to prescribe “extra-label” use of drugs under certain conditions (see <https://www.fda.gov/animal-veterinary/guidance-regulations/animal-medicinal-drug-use-clarification-act-1994-amduca>), which may include use of a drug on a species that is not included on the approved drug label. AMS anticipates that operations will work with veterinarians to determine the appropriate, legal, and safe drugs for surgical procedures to minimize pain, stress, and suffering. The use of any individual substance in § 205.603 in a formulated product that is intended or used as a medical treatment is under the authority of FDA and must comply with all FDA regulations.

(Comment) Several comments requested that AMS add detusking to the list of prohibited pig management practices. Commenters cited that prohibiting tusk removal would align with third party boar welfare standards, namely the Certified Animal Welfare Approved by AGW (AWA), Global Animal Partnership (GAP), Regenerative Organic Certified (ROC), and Certified Humane Standards for pigs. They argued that physical alterations should be limited to those only necessary for an animal’s well-being.

(Response) Consistent with NOSB recommendations, the final rule prohibits needle teeth clipping and tail docking as routine procedures and allows them only “with documentation that alternative methods to prevent harm failed.” AMS elected not to include detusking among the prohibited practices listed at § 205.238(a)(5)(ii). The NOSB recommendations did not address detusking or recommend that the practice be prohibited, and most pigs are slaughtered prior to an age when tusks would be present. Although not expressly prohibited by the final rule, an operation could only detusk if

it could demonstrate it meets the requirements at § 205.238(a)(5).

Body Condition

(Comment) Several commenters pointed out that the proposed rule’s requirement in § 205.238(a)(2) that feed and nutrition result in “appropriate body condition” was unclear. Many found the term “appropriate” too subjective. Others warned that the phrase “body condition” could be confused with “body condition scoring” as used in the livestock industry and be interpreted to mean that an animal’s body condition score would establish whether a producer complied with the requirement.

(Response) AMS appreciates and agrees with these comments and has removed the phrase “resulting in appropriate body condition” from the final rule. By removing the phrase, the requirement correctly focuses on an operation’s ability to meet nutritional needs by providing an appropriate food ration. Certifying agents and inspectors should verify that operations are meeting this requirement by reviewing an operation’s feeding and nutrition practices. In some cases, a body condition score may be an appropriate measure of compliance.

Milk From Animals Treated With Substances That Have a Withdrawal Period

(Comment) Many commenters noted that the proposed regulatory text at § 205.238(c)(1) lacked helpful language from the preamble, which specified that milk from an animal treated with an allowed substance “which has a withholding time” could not be sold, labeled, or represented as organic “during that withholding time.” Commenters suggested that the language from the preamble should be included in the regulatory text.

(Response) AMS appreciates and agrees with this editorial suggestion. In the final rule, § 205.238(c)(1) specifies that milk from animals treated with substances “that are allowed under § 205.603 but have associated withdrawal periods” may not be sold, labeled, or represented as organic “during the withdrawal period.” Additionally, the regulatory text now says “withdrawal period” rather than “withholding time” for consistency with the language in the National List.

Preventive Medicines and Parasiticides

(Comment) Several comments noted that the OLPS proposed language at § 205.238(b) had not been updated to reflect changes to this section of the regulations by a recent AMS final rule

on the “Origin of Livestock” (April 5, 2022; 87 FR 19740).

(Response) AMS acknowledges the error and has revised the language at §§ 205.238(b)(2) and (b)(3) to reflect the regulatory text finalized by the Origin of Livestock final rule. The regulatory text now simplifies the reference to dairy and includes a reference to fiber bearing animals.

Induced (Forced) Molting

(Comment) Several comments requested a definition of the term “forced or induced molting,” as the term is used but not defined in the rule. Many commenters found it unclear whether all induced molting was prohibited, or only certain practices to induce molting. Some comments noted that the phrase “or withdrawal of feed to induce molting” may suggest that some methods of induced molting may be allowed. Commenters overwhelmingly requested that AMS prohibit any form of induced molting.

(Response) The final rule adopts the term “induced molting” as it better aligns with existing industry standards. AMS also added “induced molting” as a defined term in § 205.2 to mean “molting that is artificially initiated.” This term aligns with the FDA’s definition of the term (21 CFR 118.3). The definition of induced molting and the language at § 205.238(c)(10) that “An organic livestock operation must not . . . practice induced molting,” clarifies that no form of artificially initiated molting is permitted in organic production.

Euthanasia

(Comment) Several commenters requested definitions for the terms “death” and “euthanasia,” which are used several times in the rule but not defined. Some wanted clarity on how death should be properly assessed following euthanasia.

(Response) AMS has chosen not to define “death” or “euthanasia” in the rule. AMS appreciates the feedback on this topic; however, commenters asked AMS to require very specific methods of confirming death. AMS believes that requiring such specific ways to confirm death would limit the options available to operations and make the requirement difficult to meet. AMS has chosen to keep the proposed rule’s language, which requires that euthanized livestock “must be carefully examined to ensure that they are dead.” This will give operations the flexibility needed to confirm death in a way that best matches their livestock, production system and practices, and site-specific conditions. AMS recommends that

operations use methods of euthanasia and confirmation of death consistent with the American Veterinary Medical Association (AVMA) Guidelines for the Euthanasia of Animals.

(Comment) Several commenters requested that the language in § 205.238(e) clearly state that euthanasia should only be used in cases where there is incurable illness or disease and cannot be used in lieu of treatment that would cause an animal to lose its organic status. Some commenters also believed that the proposed rule could be interpreted to suggest that euthanasia is the only or preferred option for sick or injured animals.

(Response) The final rule adds a phrase to clarify that organic operations must have written plans for “prompt, humane euthanasia for sick or injured livestock suffering from irreversible disease or injury.” Sick or injured livestock must be treated if recovery is possible, even if treatment would cause the animal to lose its organic status. Section 205.238(c)(7) clearly states that operations must not withhold medical treatment to protect organic status. AMS intends for euthanasia to be used in the humane management of irreversibly diseased or injured animals, not as a way to conveniently dispose of sick or injured animals.

Lameness

(Comment) One commenter noted that the proposed rule only required producers to monitor for lameness but that the rule did not require producers to treat animals for lameness or to modify conditions on the operation that might contribute to lameness. The comment requested that AMS include these additional requirements in the final rule to better align OLPS with third-party welfare standards.

(Response) AMS revised § 205.238(a)(8) to require that, in addition to monitoring lameness, operations provide “timely and appropriate treatment of lameness” and “mitigation of the causes of lameness.” Like all requirements in § 205.238 and subpart C of the organic regulations, an operation must describe in their OSP how they meet this requirement. However, AMS is not prescribing specific types of recordkeeping or documentation regarding lameness. The requirement in the final rule is sufficient to address monitoring, prevention, and treatment of lameness, while also being flexible enough that producers can choose options that best fit their operation, species of livestock, and site-specific conditions.

(Comment) Several comments suggested revising or removing

§ 205.238(a)(8). One commenter stated that interpretations of lameness can vary greatly, so additional clarification would be needed. Another commenter stated that this requirement is redundant, as recording sick livestock is already required in § 205.238(c)(9), and recordkeeping is required in § 205.103.

(Response) AMS agrees that other recordkeeping requirements in the rule and the existing organic regulations are sufficient to address lameness. AMS has removed the proposed rule’s requirement to keep “records of the percent of the herd or flock suffering from lameness and the causes.” The final rule replaces the recordkeeping language with requirements for “timely and appropriate treatment of lameness for the species; and mitigation of the causes of lameness.”

Vaccines

(Comment) Two certified operations and a veterinarian suggested that poultry vaccines should be allowed regardless of how they are produced.

(Response) Like the existing regulations and the proposed rule, the final rule in § 205.238(a)(6) continues to allow “vaccines and other veterinary biologics” as part of a producer’s preventive health care practices. The status of specific vaccine manufacturing processes under § 205.603(a) (National List) or § 205.105(e) (Excluded Methods) is outside the scope of practice standards addressed in this rule.

C. Mammalian and Non-Avian Livestock Living Conditions (§ 205.239)

Description of Final Policy

The final rule separates the organic regulation’s livestock living condition requirements into two distinct sections: one for mammalian and non-avian livestock species and one for avian species. Using two distinct sections acknowledges that these types of animals have different physiologies and therefore require certain unique husbandry practices. Section 205.239 includes requirements for mammalian and non-avian species. Avian living conditions are addressed in new § 205.241. Applicable sections of § 205.239 may be used for the certification of non-avian and non-mammalian livestock defined as “livestock” at § 205.2. For example, this may include certification of honeybees for the production of organic honey and honey products. However, livestock as defined in § 205.2 does not include aquatic animals for the production of food, fiber, feed, or other agricultural-based consumer products.

The final rule revises § 205.239(a)(1) to remove the requirement that all ruminant livestock must be able to feed simultaneously. One method of feeding livestock, including ruminants, is the use of a self-feeder or a creep-feeder. With creep-feeding and self-feeding, feed is accessible to all livestock at all times though they may not feed at the exact same time. Allowing self-feeding and creep-feeding systems provides organic ruminant producers with more flexibility and options to manage their farm and livestock in farm-specific methods.

AMS is making no changes to the current § 205.239(a)(3), which requires the use of appropriate, clean, dry bedding. If roughages are used as bedding, they must be organically produced and handled by certified operations, with the exception of transitioning dairy producers, who may provide crops and forage from third-year transitioning land—that is, land included in the OSP of the dairy farm in its third year of organic management, during the 12-month period immediately prior to the sale of organic milk and milk products (7 CFR 205.236(a)(2)(iii)).

Section 205.239(a)(4) describes the requirements for livestock shelter. Shelter must have sufficient space for the animals to lie down, stand up, and fully stretch their limbs and allow livestock to express their normal patterns of behavior over a 24-hour period. Shelter for livestock must provide temperatures, ventilation, and air circulation that is appropriate to the species using the shelter. This means that shelter must be designed to protect animals from extreme weather conditions they may face, including extreme cold, heat, precipitation, wind, or other conditions that could endanger the physical safety or well-being of the animal. Shelter must also be designed and managed in a way that reduces the potential for livestock to be injured when using the shelter.

AMS recognizes that there are times when an animal's freedom of movement may need to be temporarily limited for handling or management purposes. For example, an operation may need to temporarily limit freedom of movement for short periods of time for milking, feeding, or to ensure the well-being of animals. Stalls for organic dairy cattle are often designed to limit the animals from turning to the sides. This stall design directs manure and urine into a collection system to prevent mastitis and maintain low somatic cell counts in the milk. Mammalian livestock may be housed for part of the day in stalls as described in the OSP as long as they

have complete freedom of movement during significant parts of the day for grazing, loafing, and exhibiting natural social behavior. This allowance does not permit the use of gestation crates, farrowing crates, or other confinement systems in which swine are housed individually in stalls that do not allow for sufficient space and freedom to lie down, turn around, stand up, fully stretch their limbs, and express normal patterns of behavior. If livestock are temporarily confined indoors as permitted in § 205.239(b), livestock must be able to move around (stand up and lie down) and stretch their limbs. Operations must fully describe in their OSP the use of any stalls, including their methods of stall management and how livestock will be able to express their normal patterns of behavior.

AMS adds § 205.239(a)(4)(iv) to set requirements for indoor bedding and resting areas. Bedding and resting areas must be sufficiently large and comfortable to keep livestock clean, dry, and free of lesions. This requirement does not apply to animals raised on pasture or range. AMS recognizes that while livestock must be provided with shelter (defined in § 205.2), sometimes livestock on pasture or range do not have access to traditional barns or bedded areas and therefore do not have access to indoor space. These types of operations may provide animals with natural forms of shelter (*e.g.*, trees) to serve the same purpose as indoor shelter. Operations must describe in their OSP how they provide shelter to their livestock in a manner suitable for the species, stage of production, and environment.

AMS adds new requirements in § 205.239(a)(7) concerning the individual housing of dairy young stock. Section 205.239(a)(7) allows for the individual housing of animals until the weaning process is complete, as long as the animals have sufficient room to turn around, lie down, stretch out while lying down, get up, rest, and groom themselves. In addition, individual pens for young stock must be designed so that animals can see, smell, and hear other animals.

Once weaning is complete, an operation may no longer confine dairy young stock for this reason. An operation may confine dairy young stock for other reasons permitted under § 205.239(c), if applicable. For example, § 205.239(c)(2) permits temporary confinement of young dairy cattle from pasture for up to six months (prior to development of the rumen). Certifying agents must review any confinement practices following completion of the weaning process to determine if the

temporary confinement is justified and allowed, especially when animals continue to be housed individually.

AMS adds three new provisions in § 205.239(a)(8) to require the group housing of swine, with three listed exceptions: (1) § 205.239(a)(8)(i) allows for sows to be individually housed at farrowing and during the suckling period, except gestation and farrowing crates are prohibited; (2) § 205.239(a)(8)(ii) allows for boars to be individually housed to reduce the likelihood of fights and injuries; and (3) § 205.239(a)(8)(iii) allows for swine to be individually housed after multiple documented instances of aggression or to allow an individual pig to recover from a documented illness. Certified operations should not use individual housing as the only remedy to aggressive behavior. Operations should also attempt to mitigate aggressive behavior by modifying practices or living conditions that could reduce this behavior. If these fail to correct the behavior, animals may be individually housed.

AMS adds two new provisions in § 205.239(a)(9) and (10) concerning swine housing. Section 205.239(a)(9) prohibits the use of flat decks or piglet cages. This provision prohibits the stacking of piglets in flat decks in multiple layers. AMS is not aware of any organic producers currently using these methods for organic production but prohibits the practices to affirm that these systems do not and cannot meet the living conditions requirements of the organic regulations. In addition, § 205.239(a)(10) requires that rooting materials be provided at all times, except during the farrowing and suckling period. Rooting is a natural behavior that organic swine producers must accommodate. Rooting can be done in soil, deep packed straw, or other materials.

AMS adds a new provision in § 205.239(a)(11) to further clarify the use of barns or other structures with stalls. If indoor shelter is provided by a structure with stalls, this structure must have enough stalls to allow for the natural behaviors of the animals. A cage does not qualify as a stall. AMS is aware that some operations use systems that robotically feed animals that take turns entering an individual feeding stall. AMS does not intend to prohibit such systems since they could enhance the well-being of organic livestock. Therefore, § 205.239(a)(11) provides an exception for this type of system: more animals than feeding stalls may be allowed for group-housed swine as long as all animals are fed routinely every day.

AMS also adds specific allowances for a variety of cattle barns, including tie-stall barns and stanchion barns, as long as an operation uses them in a way that is compatible with organic production. That means that animals must be given space to lie down, turn around, stand up, fully stretch their limbs, and express normal patterns of behavior over a 24-hour period (see the requirement at § 205.239(a)(4)(i)). Because tie-stall and stanchion barns do not allow an animal to turn around, an operation cannot leave an animal tied up in this type of indoor space for more than 24 hours. Operations must describe their practices in their OSP and demonstrate to an accredited certifying agent that their use of these structures complies with other applicable organic regulations.

AMS adds a new requirement for outdoor access in § 205.239(a)(12). Organic livestock must have unencumbered access to the outdoors year-round, unless temporary confinement is justified under a specific reason described at § 205.239(b)–(d) (e.g., nighttime confinement for protection from predators). When the outdoor space includes soil, then vegetative cover must be maintained as appropriate for the season, climate, geography, species of livestock, and stage of production. Ruminants must have access to pasture during the grazing season. Swine are not required to have access to soil or vegetation; however, if a swine producer chooses to allow swine to have access to the soil as a rooting material, then the producer must maintain vegetative cover that is appropriate to the season, the local environmental conditions, and the natural rooting behavior of swine.

AMS revises § 205.239(b)(7) to clarify the exemption for temporary confinement for the purpose of breeding livestock. Livestock may only be confined for the time required for natural breeding or to perform artificial insemination. A group of livestock may be confined before the procedures and while individual animals are bred; afterward, the group must be returned to living spaces that allow outdoor access. Livestock must not be confined to observe estrus, or after breeding to confirm pregnancy.

AMS revises § 205.239(b)(8) to clarify the temporary confinement exception for youth livestock projects. Because many youth livestock projects include the sale of market animals, organic animals that were under continuous organic management may be sold as organic animals at youth fairs, even if the sales facility is not certified organic. Thus, the revision includes an exemption to the § 205.239(b)(6)

requirement that a livestock sales facility be certified as an organic operation. As an example, if a youth exhibition and sale is held at a livestock sales facility that is not certified organic, the livestock may be temporarily confined indoors during the event. In this case, the youth may still sell the organic animal as an organic animal, provided all other requirements for the organic management of livestock are met. Otherwise, non-certified sales facilities, such as auction barns or fairgrounds, may not sell or represent livestock as organic. AMS includes this exception to encourage the next generation of organic farmers.

AMS revises § 205.239(d) to mirror a revision at § 205.239(a)(1). Specifically, the revisions remove a requirement that ruminant slaughter stock be able to feed simultaneously during the finishing period. The update does not require space for simultaneous feeding but simply requires that all animals be able to feed without crowding and without competition for feed.

Changes From Proposed to Final Rule

AMS has made several changes to the regulatory text of the OLPS proposed rule when writing this final rule. Changes to the final rule are discussed below and are followed by specific topics and themes from public comment. For discussion of comments about the economic impacts of the rule, please see the Regulatory Impact Analysis (RIA) included in the docket.

- AMS revised the title of § 205.239 from “Mammalian livestock living conditions” to “Mammalian and non-avian livestock living conditions” to ensure that operations producing organic invertebrates (e.g., honeybees) can continue to do so under the applicable standards of this rule.

- In § 205.239(a)(4)(iv), AMS added language to clarify that the indoor housing standards for “clean and dry” bedding and resting areas should be applied as appropriate to the species of livestock. This acknowledges that different species have different bedding and resting area requirements and gives operations greater flexibility when applying the requirement to different species.

- In response to public comment, AMS removed from § 205.239(a)(7) the six-month time limit for temporary confinement of dairy young stock during the weaning process, authorizing temporary confinement only until the weaning process is complete. This change was made because the weaning process is typically much shorter than six months.

- AMS added language in § 205.239(a)(8)(i) to explicitly prohibit the use of gestation and farrowing crates for sows at farrowing and during the suckling period. This change was made in response to public comments requesting the explicit prohibition of these methods of individual confinement.

- AMS revised language in § 205.239(a)(8)(iii) to limit individual confinement of swine to only animals who have shown *multiple* instances of aggression or for recovery from an illness.

- AMS removed the word “maximal” relating to vegetative cover in § 205.239(a)(12). AMS removed this term because comments stated that the proposed rule’s use of “maximal vegetative cover” was unclear and would be difficult to implement consistently. AMS refers to “vegetation” because that is a defined term.

- In response to requests in public comment, AMS added language to § 205.239(b)(7) to clarify that animals cannot be confined after breeding to confirm pregnancy.

Responses to Public Comment

Naming of Section

(Comment) Several comments requested changes to the title of this section to include non-mammalian species of livestock (e.g., invertebrates). Commenters indicated that many operations are currently certified to produce organic invertebrates, such as honeybees. Those operations have used the existing requirements at § 205.239, and comments noted that AMS’s proposed revision to split § 205.239 into only mammalian and avian sections would leave out standards for non-avian and non-mammalian operations.

(Response) AMS revises the title of this section from “Mammalian livestock living conditions” to “Mammalian and non-avian livestock living conditions” to avoid unintentionally excluding non-mammalian and non-avian species of livestock (e.g., invertebrates) from this rule. Adding “non-avian” clarifies that operations may use the applicable livestock standards at § 205.239 to produce organic livestock that is not avian or mammalian (e.g., invertebrates). Adding this term ensures that operations producing organic invertebrates can continue to do so without interruption and allows future operations to enter the market and produce non-mammalian and non-avian livestock under the organic label.

Ammonia Monitoring

(Comment) Some comments requested that AMS set ammonia testing

requirements for mammals in addition to poultry.

(Response) AMS acknowledges that ammonia is an air contaminant that can impact all livestock. This rule sets limits on ammonia in poultry houses and requires regular monitoring. Compared to other livestock, poultry are more susceptible to ammonia accumulation due to the physical layout of poultry housing and the decomposition of uric acid from poultry droppings. Additionally, the NOSB has not recommended monitoring or limiting ammonia levels in mammalian livestock production, and AMS did not propose to do so in the proposed rule. Therefore, AMS has elected not to set ammonia requirements for mammals in the final rule.

Bedding

(Comment) Some comments requested clarification on the use of “clean and dry” in relation to the requirement for bedding and resting areas in indoor housing. Commenters explained that the interpretation of “clean” is both subjective and species dependent.

(Response) AMS acknowledges that what is considered “clean and dry” depends on the species of livestock. AMS revises the language in the final rule to clarify that operations must use clean and dry bedding “as appropriate for the species.” This change gives operations the flexibility to manage bedding in a way that fits the specific type of livestock they are raising.

Swine Standards

(Comment) Several commenters requested more specific standards for swine, including minimum stocking density requirements and a requirement for access to soil and vegetative cover.

(Response) This final rule includes swine-specific standards at § 205.239(a)(8)–(11). The rule requires that swine must be housed in a group, limits when swine can be housed individually, requires rooting materials, prohibits the use of flat decks and piglet cages, and describes allowable types of feeding techniques. This rule also includes many other requirements that apply to all livestock, including swine. At this time, AMS believes these requirements are adequate to ensure the welfare of organically raised swine, and AMS has not included the additional swine-specific criteria in the final rule.

(Comment) Several commenters asked that the final rule’s regulatory text allow swine to be housed individually only after *multiple* instances of aggression, as stated in the preamble.

(Response) AMS revises the final rule’s regulatory text to specify that

swine may be individually housed only after *multiple* documented instances of aggression to clarify AMS’s intent. Certified operations should not use individual housing as the only remedy to aggressive behavior. Operations should also attempt to mitigate aggressive behavior by modifying practices or living conditions that could reduce this behavior. If these fail to correct the behavior, animals may be individually housed.

(Comment) Several commenters requested that AMS specifically prohibit gestation and farrowing crates, citing that these crates can cause pain, reduce the weaning rate of piglets, and increase the rate of stillbirths.

(Response) AMS revises the final rule to clarify that gestation and farrowing crates are prohibited in organic production. AMS did not use these terms in the proposed rule, but AMS recognizes that *gestation* and *farrowing crates* are commonly used terms so is including them in the final rule. Sows may be housed individually for farrowing and during the suckling period, as proposed, and the final rule clarifies that sows may not be confined to gestation or farrowing crates during these time periods.

(Comment) Many commenters noted that rooting materials are not explained, nor specific materials defined in the proposed rule. The commenters requested additional clarification on the standard for rooting materials. Advocacy organizations and some certifiers also asked for clarification on whether rooting materials must be provided both indoors and outdoors, including during temporary confinement.

(Response) AMS discusses the use of rooting materials and § 205.239(a)(10) in the “Description of final policy” section above. Operations must provide rooting materials to allow swine to express their natural behavior, which includes rooting (see § 205.239(a)(1) and (4)). The final rule does not specify the allowed types of rooting materials or where, exactly, rooting materials must be available. For a producer to comply with general requirements to accommodate natural behaviors at § 205.239, AMS expects producers will provide rooting opportunities in all locations, as well as during periods of temporary confinement, when feasible. However, the rule provides operations flexibility to choose materials and management techniques that best accommodate natural swine rooting behavior and that best fit site-specific conditions.

Temporary Confinement of Cattle

(Comment) Several comments asked if tie-stall and stanchion barns are allowed in organic production. These comments noted that tie-stall and stanchion barns do not allow animals to turn around, and that this may conflict with the rule’s requirement that animals must be able to turn around within a 24-hour period.

(Response) Tie-stall barns and stanchion barns are permitted in organic certification systems if an operation uses them in a way that is compatible with organic production. That means that animals must be given space to lie down, turn around, stand up, fully stretch their limbs, and express normal patterns of behavior over a 24-hour period (see the requirement in § 205.239(a)(4)(i)). Because tie-stall and stanchion barns do not allow an animal to turn around, an operation cannot leave an animal tied up in this type of indoor space for more than 24 hours. However, during periods of temporary confinement, animals may remain in stalls. In this case, AMS recognizes that animals may not be able to turn around.

(Comment) Commenters requested that some specific references to cattle in the proposed rule be broadened so the requirements would apply to any species. Specifically, comments requested that AMS revise requirements related to individual housing for young dairy animals at § 205.239(a)(7) and § 205.239(c)(2).

(Response) AMS agrees that animals of all species should have sufficient space and freedom of movement. However, § 205.239(a)(7) and § 205.239(c)(2) address production practices specific to dairy animals and to dairy cattle, respectively. The more general requirement that all organically managed animals should have “sufficient space and freedom to lie down, turn around, stand up, fully stretch their limbs, and express normal patterns of behavior” is set in § 205.239(a)(4)(i).

Temporary Confinement To Confirm Breeding

(Comment) Several comments requested that AMS clarify animals may not be confined after breeding to confirm pregnancy, as this could allow producers to confine animals for long periods of time without any corresponding benefit to animal health or welfare.

(Response) AMS agrees that this change would benefit the welfare of the livestock and has added language to § 205.239(b)(7) to clarify that animals may not be confined after breeding to confirm pregnancy.

Individual Housing of Calves

(*Comment*) Several commenters disliked that the proposed rule allowed an operation to individually house dairy young stock for up to six months, citing that this practice does not align with consumer expectations or third-party welfare standards. One commenter requested a shorter time limit for individual housing of calves, referencing an eight-week limit in both European Union organic standards and Certified Humane standards. Other comments requested that AMS clarify how long an operation can confine for weaning (§ 205.239(a)).

(*Response*) AMS removed the phrase “but no later than six months of age” in the requirements related to housing for weaning at § 205.239(a)(7). This section of the rule now specifies that dairy young stock (of any species) may be housed individually only until completion of the weaning process. Once weaning is complete, an operation may no longer confine dairy young stock for this reason. An operation may confine dairy young stock for other reasons permitted under § 205.239(c), if applicable. For example, § 205.239(c)(2) permits temporary confinement of young dairy cattle from pasture for up to six months (prior to development of the rumen). AMS is not revising the maximum time requirement for confinement from pasture at § 205.239(c)(2) in the final rule. Certifying agents must review any confinement practices following completion of the weaning process to determine if the temporary confinement is justified and allowed, especially when animals continue to be housed individually.

(*Comment*) One commenter requested the removal of the requirement for calves to see other calves, as this may not be feasible in some cases where an operation has very few calves.

(*Response*) AMS has elected to revise this language. During temporary confinement in individual pens, it is important for young dairy animals to be able to see, smell, and hear other calves, or other animals in cases where this is not feasible, such as an operation with a single offspring.

Outdoor Space

(*Comment*) One commenter requested AMS set a minimum amount of outdoor space for mammalian livestock. The commenter also asked AMS to specify what this outdoor space should be composed of (*i.e.*, specify what percentage of outdoor space be soil and vegetation).

(*Response*) AMS had not proposed minimum outdoor space requirements

for mammalian livestock, and the NOSB has never provided minimum space recommendations for mammals. Similarly, the final rule does not include minimum space requirements for mammals. However, the USDA organic regulations have included and will continue to include many provisions related to outdoor space requirements for mammalian livestock. Section § 205.239(a) specifies that operations must provide living conditions that accommodate the well-being and natural behavior of mammalian livestock. This includes year-round access for all animals to the outdoors, shade, shelter, exercise areas, fresh air, and direct sunlight, suitable to the species, stage of life, climate, and environment. Additionally, ruminant livestock must be provided with daily grazing throughout the grazing season to meet feed intake requirements (§§ 205.237 and 205.239), and yards, feeding pads, and feedlots must be large enough to allow all ruminant livestock to feed without competition for food (§ 205.239). Finally, this rule adds a requirement that operations maintain vegetation on outdoor space that includes soil, and that vegetation must be appropriate for the season, climate, geography, species of livestock, and stage of production (§ 205.239(a)(12)). Together these requirements for outdoor conditions support the welfare of organic mammalian species.

D. Avian Living Conditions (§ 205.241)

Description of Final Policy

The final rule adds new § 205.241, “Avian living conditions,” to the organic regulations. This section includes requirements for all organic avian species, including but not limited to chickens, turkeys, geese, quail, pheasants, and any other bird species that are raised for organic eggs, organic meat, or other organic agricultural products.

Section 205.241(a) establishes general requirements for organic poultry production and more detailed requirements in paragraphs (b), (c), and (d). Section 205.241(a) requires organic poultry operations to establish and maintain living conditions that accommodate the well-being and natural behaviors of birds. These living conditions include year-round access to the outdoors, soil, shade, shelter, exercise areas, fresh air, direct sunlight, clean water for drinking, materials for dust bathing, and adequate space to escape aggressive behaviors. Continuous total confinement of animals is prohibited. The living conditions provided should be appropriate to the

species, its stage of life, the climate, and the environment. These requirements, based upon a 2009 NOSB recommendation,⁶⁹ are largely identical to previously established livestock requirements at § 205.239(a)(1), although they now require materials for dust bathing and adequate outdoor space to escape aggressive behaviors.

Section 205.241(b) requires that indoor space be sufficiently spacious to allow all birds to move freely, stretch both wings simultaneously, stand normally, and engage in natural behaviors. Cages or environments that limit free movement within the indoor space are prohibited. In addition, the indoor space must allow birds to engage in natural behaviors such as dust bathing, scratching, and perching. The requirements are adopted from a 2009 NOSB recommendation and modify previously established requirements for organic livestock at § 205.239(a)(4) that required “shelter designed to allow for . . . natural maintenance, comfort behaviors, and opportunity to exercise.”

Section 205.241(b)(2) requires producers to monitor ammonia levels in poultry houses and implement practices to maintain ammonia levels below 20 ppm. When ammonia levels exceed 20 ppm, producers must implement additional practices and additional monitoring to reduce ammonia levels below 20 ppm. Ammonia levels must not exceed 25 ppm. Ammonia is a natural breakdown product of manure from livestock and is harmful to birds when inhaled, especially at concentrations above 25 ppm.⁷⁰ Inhalation of high levels of ammonia has a negative impact on poultry welfare, causing irritation and inflammation, as well as contributing to negative production outcomes like reduced growth. In most cases, high levels of ammonia indicate that litter is damp, or litter management practices require modification. For producers with more than one poultry house, the producer should monitor ammonia levels in each house.

Section 205.241(b)(3) clarifies the indoor lighting requirements for organic layers and fully feathered birds. Organic producers may provide artificial light for up to 16 continuous hours per day (24-hour period). Operations must provide at least eight hours of

⁶⁹ <https://www.ams.usda.gov/sites/default/files/media/NOP%20Final%20Sunset%20Rec%20Animal%20Welfare.pdf>.

⁷⁰ “Ammonia production in the poultry houses and its harmful effects” IU Sheikh, SS Nissa, Bushra Zaffer, KH Bulbul, AH Akand, HA Ahmed, Dilruba Hasin, Isfaquul Hussain and SA Hussain, *International Journal of Veterinary Sciences and Animal Husbandry*, 3(4): 30–33, 2018.

continuous darkness per day, unless an operation's geographic location does not allow for eight hours of darkness (for example, an operation in Alaska during summer months). In that case, an operation should provide as many dark hours as feasible for the season. The 16-hour period must be calculated as a single continuous time period rather than as intermittent periods. Artificial light should be lowered gradually to encourage hens to move to perches or otherwise settle for the night. Operations must not manipulate the light spectrum to increase feed intake or growth rates.

Section 205.241(b)(4) describes requirements for exit areas, or doors, on shelters so all birds can easily access both indoor and outdoor areas. Access and utilization of outdoor areas is a core principle of organic production systems. The organic regulations have required "Year-round access for all animals to the outdoors" since the organic regulations were established in 2001 (see 7 CFR 205.239(a)(1)). Organic avian systems must be designed so birds have ready access to outdoor areas and are able to return indoors to roost in the evening. Producers must provide exit doors of sufficient number and size to enable all birds to access outdoor and indoor areas. The standard for exit doors is set at one (1) linear foot of exit area space for every 360 birds.

If an operation does not provide at least one linear foot of exit area per 360 birds ratio, the operation may comply with the requirement if it: (1) describes (in their OSP) their exit areas and how they enable all birds to access outdoor areas; and (2) demonstrates how ready access to the outdoors is provided for all birds. In that case, the certifier must review the description in the OSP and verify that exit areas meet the standard for outdoor access to determine an operation complies with the exit area requirement. A certifier could, for example, review time lapse videos, pictures (with time stamp data), and/or conduct on-site inspections to verify that exit areas ensure all birds have ready access to the outdoors.

In any case, a certifier will determine if doors are appropriately distributed and sized, as required, by assessing if all birds have ready access to the outdoors. This section also notes that shell egg producers may be subject to FDA requirements in 21 CFR part 118 intended to prevent Salmonella Enteritidis (SE). Specifically, these FDA regulations require producers to maintain biosecurity measures that prevent stray poultry, wild birds, cats, rodents, and other animals from entering poultry houses. AMS directs

producers to consult with the FDA's August 2022 final guidance on this subject for more information on how to comply with the requirements while providing access to areas outside the poultry house.⁷¹

Section 205.241(b)(5) requires perches for chicken layers at a rate of six inches per bird for all housing. Perch space may include the alighting rail in front of nest boxes, but it may not include floors in houses with slatted floors. Perches are not required for broilers, meat birds, or layers of species other than *Gallus gallus*. All layers must be able to perch at the same time, except in aviary housing (see the definition of indoor space in § 205.2). Aviary housing is permitted to have less perch space because birds in aviary housing are also able to escape aggressive behavior by moving between tiers in the house. Aviary housing must provide six inches of perch space for 55 percent of the flock (*i.e.*, 3.3 inches of perch for each bird in the flock). These requirements are adopted from 2009 and 2011 NOSB recommendations.

Section 205.241(b)(6) specifies indoor requirements to allow for certain natural behaviors. Except for mobile housing (defined at § 205.2), indoor space must include areas that allow for scratching and dust bathing. For mobile housing, producers may meet this requirement by providing scratch areas and dust bathing areas outside of the mobile housing. In that case, a mobile house may include 100% slatted or mesh flooring (which do not allow for scratching and dust bathing). For other types of indoor housing, litter or bedding such as wood shavings or straw must be provided indoors. If litter or bedding will be consumed by animals, it must be organic. Manure excreted by birds in a poultry house alone, without additional litter material, would not be sufficient to meet this requirement. This section also requires that litter be maintained in a dry condition, because wet litter can lead to a variety of problems for birds, including excess ammonia, lameness, and pest problems.⁷² High moisture content in poultry litter can cause negative health and welfare outcomes, including foot pad dermatitis⁷³ and

⁷¹ Available at: <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-questions-and-answers-regarding-final-rule-prevention-salmonella-enteritidis-shell-0>.

⁷² "Broiler Litter: Odor and Moisture Concerns", Tom Tabler, Yi Liang, Jonathan Moon, and Jessica Wells. Mississippi State University Extension, Publication: P3515, 2020.

⁷³ "Wet litter not only induces footpad dermatitis but also reduces overall welfare, technical performance, and carcass yield in broiler chickens", Ingrid C. de Jong, H. Gunnink and J. van Harn,

increased populations of house fly leading to disease in the birds.⁷⁴ Wet litter also promotes bacterial growth, which can further lead to disease and negative health outcomes in birds.⁷⁵ Litter may be topped off when needed to maintain sufficient dryness. These requirements are adopted from 2009 and 2011 NOSB recommendations.

Section 205.241(b)(7) includes specific flooring requirements for non-mobile indoor avian housing with slatted/mesh floors. These houses must provide at least 15 percent solid flooring to allow birds indoors to engage in natural behaviors, including scratching and dust bathing, without crowding. This requirement does not apply to mobile houses which, by definition (see § 205.2), allow continuous access to areas outside the structure where birds may scratch and dust bathe. The requirement is adopted from a 2009 NOSB recommendation.

Sections 205.241(b)(8), (9), and (10) list the required minimum indoor space for chickens (*Gallus gallus*) in different types of housing. These are minimum standards, and organic producers may choose to provide more indoor space than required. Sections 205.241(b)(8), (9), and (10) list requirements for layers, pullets, and broilers, respectively. Indoor space requirements for layers vary by the type of housing provided. Section 205.2 further defines the types of housing, including mobile housing, aviary housing, slatted/mesh floor housing, and floor litter housing. For housing that does not fit into any of these defined types, producers must comply with standards for "other housing" at § 205.241(b)(8)(v). Pasture pens that are moved regularly and provide direct access to soil and vegetation are not considered indoors (see definition of "outdoors" in § 205.2). AMS has adapted these requirements from 2009 and 2011 NOSB recommendations and in consideration of third-party animal welfare standards.

The rule requires less indoor space per bird in houses that provide more access to vertical space (*e.g.*, aviary and slatted/mesh floor housing), as birds have more room to move around in those types of housing. Housing where birds have more limited access to vertical space (*e.g.*, floor litter housing)

Journal of Applied Poultry Research, 23(1): 51–58, 2014.

⁷⁴ "Pests in Poultry, Poultry Product-Borne Infection and Future Precautions", Hongshun Yang, Shuvra K. Dey, Robert Buchanan, and Debabrata, Biswas Practical Food Safety: Contemporary Issues and Future Directions, 1, 2014.

⁷⁵ "Broiler Litter: Odor and Moisture Concerns", Tom Tabler, Yi Liang, Jonathan Moon, and Jessica Wells, Mississippi State University Extension, Publication: P352020.

must include more indoor space per bird. AMS allows for higher stocking densities in mobile housing, as birds managed in these systems spend more time outdoors, and mobile housing must be relatively small and light, as it is moved frequently.

The final rule expresses the space requirements for birds in two different ways, and producers may use either metric to demonstrate compliance with the requirements. In the first metric, producers may demonstrate compliance with the requirements by using the known weight of birds in a flock. This metric is expressed as the maximum *pounds of bird allowed per square foot* of indoor space. The minimum space required under this alternative metric depends on the average weight of birds at that time. All weight references in §§ 205.241(b) refer to the weight of live birds and not the weight of processed birds. This metric accommodates for differences between different breeds and also adapts for birds as they age and become heavier. Under this metric, larger breeds (*i.e.*, heavier individual birds) must be provided with more indoor space than smaller breeds, on a per bird basis. For example, Rhode Island Red birds are heavier than White Leghorns or ISA Browns, and thus cannot be stocked as densely, in terms of number of birds per unit area.

The second metric is an alternative that establishes the minimum space that must be provided per animal in *square feet per bird*. In some cases, AMS expects this will be a simpler method to calculate the required space, particularly when individual bird weights differ within a flock (*e.g.*, because of a mixture of breeds or ages within a flock). For this method, producers simply multiply the number of birds in a flock by the space required per bird to obtain the minimum total space required for the flock. Equivalently, producers can divide the available area by the required space per bird to arrive at the maximum number of birds allowed in that area.

To provide additional context, consider the following example of layers in a floor litter housing system. At 32 weeks of age, these layers weigh 4.3 pounds each and must be provided with 1.4 square feet per bird (or 3.0 pounds of bird for each one square foot, as required at § 205.241(b)(8)(iv)). At 80 weeks of age, each layer weighs 4.5 pounds and the flock would require 1.5 square feet per bird (or 3.0 pounds of bird per square foot). If a producer has 10,000 square feet available to raise these birds, this producer could stock 6,993 birds at 32 weeks of age (bird weight of 4.3 pounds) but only 6,667

birds at 80 weeks of age (bird weight of 4.5 pounds). In comparison, a producer that uses the alternative metric of 2.2 square feet per bird could stock no more than 4,545 birds in the same 10,000 square foot floor litter house. A producer with a small number of birds may prefer to use the alternative metric (square feet per bird), especially when the space provided easily exceeds the requirements. This eliminates the need to weigh birds and estimate the average weight per square foot.

When calculating the weight of birds to assess pounds per square foot, an average weight may be established for the flock by taking weights of a representative sample of the flock. The space requirement is not specific to each individual bird in a flock. AMS understands that many producers already monitor and track bird weight closely during the production cycle to monitor bird development and health and calculate feed requirements. However, if weight is not monitored by a producer, the producer will either need to establish the weight of birds or comply with the alternative metric (expressed as square feet per bird).

The weight metric (pounds per square foot) requires the producer to know the total weight of birds. The simpler alternative method (square feet per bird) requires the producer to know only the number of birds in a flock. This simpler alternative method will, in almost all cases, require more space per bird than the weight metric of pounds per square foot. Producers may demonstrate compliance by using either metric. A certifying agent does not need to compare a producer's compliance with both metrics if compliance with either one can be demonstrated.

Section 205.241(b)(11) specifies how to calculate the area of the indoor space. Producers must calculate indoor space accurately to ensure that their housing systems meet the requirements in §§ 205.241(b)(8) through (10). The total area of the indoor space is calculated by including the square footage of all flat areas in a house, excluding nest boxes (areas provided to layers for laying eggs). Elevated round perches, for example, are not flat areas and could not be included as indoor space. Nesting areas are excluded from the calculation, as they are distinct from useable floor areas of the house where birds can move around freely. This method of calculation aligns with the 2009 and 2011 NOSB recommendations.

Section 205.241(b)(12) clarifies that indoor space may include enclosed porches and lean-to type structures (*e.g.*, screened in, roofed) provided that the birds always have access to the space,

including during temporary confinement events. If the birds do not have continuous access to a porch or enclosed structure, including during temporary confinement events, that space may not be considered indoor space and may not be included in an operation's indoor space calculation.

Section 205.241(c) establishes the outdoor space requirements for organic avian species, including the amount of outdoor space that operations must provide for the birds. The requirements of § 205.241(c) are adopted or adapted from 2009 and 2011 NOSB recommendations, third-party animal welfare standards, and existing organic regulations previously in § 205.239. Section 205.241(c)(1) requires that operations use outdoor space designed to promote and encourage daily outdoor access for all birds. Producers must provide access to the outdoors at an early age. Exit areas are described previously in § 205.241(b)(4), but this section requires that door spacing promote and encourage outdoor access and requires that operations provide outdoor access daily. Outdoor access may only be temporarily restricted in accordance with § 205.241(d).

Section 205.241(c)(2) requires that outdoor areas for poultry have a minimum of 75 percent soil and that the soil portion of the outdoor area must include vegetative cover. Vegetative cover must be maintained in a manner that does not provide harborage for rodents and other pests. For example, a producer may mow vegetation to ensure that tall vegetation does not provide harborage for pests. A maximum of 25 percent of the outdoor area may be gravel, concrete, or surfaces other than soil. Vegetation is required, as vegetation protects soil and water quality and allows birds to engage in natural behaviors, including foraging, pecking, and scratching. The amount of vegetation present will depend on the season, climate, geography, species, and the stage of production.

Section 205.241(c)(3) clarifies how producers may provide shade to meet the general requirements of § 205.241(a). Shade may be provided in outdoor areas by trees, shade structures, or other appropriate objects. This section is specific to shade in outdoor areas; it does not permit structures that do not meet the definition of "outdoors" (§ 205.2) to be included in calculations of outdoor space.

Sections 205.241(c)(4) through (6) specify minimum outdoor space requirements for chickens (*Gallus gallus*). As described above for the indoor space requirements (§ 205.241(b)), the final rule includes

two methods for determining compliance with space requirements. One method relies on bird weights to establish the maximum stocking density (expressed as maximum *pounds of bird per square foot*). The other method requires only knowing the number of birds and the area of the space to establish the maximum stocking density (expressed as minimum *square feet per bird*). Either method is acceptable to demonstrate and evaluate compliance with the outdoor spacing requirements.

Organic layer producers must provide at least one square foot of outdoor space for every 2.25 pounds of bird in the flock. For example, if birds average 4.5 pounds, a producer must provide 2.0 square feet of outdoor space for each bird in the flock. Alternatively, if bird weights are not known, a producer may provide at least 3.0 square feet of outdoor space per layer. Organic pullet producers must provide at least one square foot of outdoor space for every 3.0 pounds of bird in the flock. Alternatively, a producer may provide at least 1.7 square feet of outdoor space per pullet. Organic broiler producers must provide at least one square foot of outdoor space for every 5.0 pounds of bird in the flock. Alternatively, a producer may provide at least 2.0 square feet of outdoor space per broiler.

All weight references in §§ 205.241(c) refer to the weight of live birds and not the weight of processed birds. The total outdoor space that an operation must provide must be calculated based on the total number of birds in a flock, not the number of birds in outdoor space at a given moment. Related discussion on this topic can be found above in the discussion on the indoor space requirements at §§ 205.241(b)(8)–(10), such as the calculation of bird weight and the usefulness of this method to accommodate for differences over the flock lifespan as birds become heavier.

Section 205.241(c)(7) clarifies that unenclosed roofed areas (*i.e.*, having a roof but no walls to contain birds) can be counted as outdoor space when these areas allow birds to freely move between the roofed area(s) and other outdoor space. This ensures that enclosed porches are not counted as outdoor space. If a producer were to modify an enclosed porch to permanently remove the walls and provide birds with free access to other outdoor spaces, the area would be considered outdoor space.

One of the key considerations for distinguishing indoor space from outdoor space is how the livestock are managed in that space, which may determine whether the space should be defined as indoors, outdoors, or neither

indoors nor outdoors. As an example, a screened-in and roofed porch to which the (enclosed) birds always have access, including during temporary confinement events, would be considered indoor space. That same porch would be considered neither indoors nor outdoors if the birds do not have continuous access to the space during temporary confinement events.

Section 205.241(d) describes the conditions under which organic avian livestock producers may temporarily confine birds indoors (“temporary” and “temporarily” are defined at § 205.2). Producers must document confinement in a manner that demonstrates compliance with the recordkeeping requirements in § 205.103. Records should include the reason for the confinement, the duration of the confinement, and the flocks that were confined. Records should be sufficient for a certifier to determine if birds were confined in compliance with this section. The requirements of § 205.241(d) are adopted or adapted from previously established requirements for organic livestock at § 205.239(b), and from 2009 and 2011 NOSB recommendations and third-party animal welfare organization standards.

Section 205.241(d)(1) provides an allowance for temporary confinement in response to inclement weather, which is defined at § 205.2 as weather that is violent or characterized by temperatures (high or low) or excessive precipitation that can cause physical harm to livestock. Inclement weather does not include weather that is sub-optimal for production, such as weather that may reduce growth rates or reduce production yields. In addition to specifying “inclement weather,” as defined at § 205.2, the final rule also establishes a lower (32 degrees Fahrenheit) and upper temperature threshold (90 degrees Fahrenheit) for temporary confinement. Producers may temporarily confine animals and maintain their organic certification when animals are temporarily confined for inclement weather. The term “inclement weather” is defined at § 205.2 as, “Weather that is violent, or characterized by temperatures (high or low), or characterized by excessive precipitation that can cause physical harm to a given species of livestock. Production yields or growth rates of livestock lower than the maximum achievable do not qualify as physical harm.” AMS recognizes that a narrower range of temperatures may define the optimal temperature conditions for birds (of different ages and species), but § 205.241(d)(1) may not be used as justification for confinement of birds to

the narrow range to maximize growth or production.

AMS recognizes that some weather may qualify as inclement weather when temperatures are within the 32- to 90-degree range. For example, many types of violent weather that may cause physical harm to animals will occur within this range (*e.g.*, extreme wind, violent precipitation, etc.). Temporary confinement of animals for these events is appropriate under this section of the rule. Finally, the rule does not require that birds be confined when temperatures are below 32 degrees or above 90 degrees Fahrenheit to be in compliance with the requirement. For example, a sunny 30-degree Fahrenheit day may allow birds to go outdoors without any harmful effects, and outdoor access would be acceptable and encouraged. Certifiers will need to evaluate an operation’s practices and temporary confinement records to determine if an operation complies with the allowance to temporarily confine animals for inclement weather.

Section 205.241(d)(2) provides an allowance for temporary confinement indoors due to a bird’s stage of life. In this section, AMS has established specific requirements for confining chicken broilers and pullets due to their stage of life (“stage of life” defined at § 205.2). Additionally, the section includes a general provision for confining other avian species until fully feathered. Chicken broilers may be confined through 4 weeks of age and chicken pullets may be temporarily confined indoors through 16 weeks of age. The NOSB recommended 16 weeks of age as the age after which outdoor access is required to provide adequate time for pullets to complete their vaccination program before exposure to pathogens outdoors. Any confinement beyond the time when birds are fully feathered must be in accordance with § 205.241(d).

Section 205.241(d)(3) provides an allowance for temporary indoor confinement for conditions under which the health, safety, or well-being of the birds could be jeopardized. Temporary confinement under this provision must be recorded; records must clearly state the reason(s) for confinement (per § 205.241(d)(3)), with a detailed and robust justification demonstrating how the birds’ health, safety, or well-being could be jeopardized. To confine birds under this provision, a producer must have sufficient justification to demonstrate that an animal’s health, safety, or well-being could be jeopardized by access to the outdoors. A producer’s practices and justification must be included in their OSP

(§ 205.201), and records must be sufficient to demonstrate compliance (§ 205.103). Certifiers will verify compliance with this requirement. Producers and certifiers should consult with animal health officials, as appropriate, to determine when confinement of birds is warranted to protect the health, safety, or well-being of the birds. Animal health officials are also encouraged to reach out to certifiers and to AMS to discuss specific health concerns. AMS will continue to engage animal health officials, including the USDA's Animal and Plant Health Inspection Service (APHIS), State Departments of Agriculture and State Veterinarians, about risks to bird health and provide appropriate directions to certifiers or producers, as necessary.

AMS recognizes that this section allows operations to temporarily confine animals for a variety of reasons, but operations may not justify ongoing or long-term confinement for reasons that do not pose significant and specific risks to animal health, safety, or well-being. This section provides an allowance for organic operations to temporarily confine animals. AMS directs producers and certifiers to reference § 205.2 (Terms defined) when evaluating confinement under § 205.241(d)(3), which defines "temporary and temporarily" as, "Occurring for a limited time only (e.g., overnight, throughout a storm, during a period of illness, the period of time specified by the Administrator when granting a temporary variance), not permanent or lasting." For example, an operation may not confine birds in an attempt to avoid any and all predation and bird mortality that may result from time outdoors. Additionally, an operation may not confine animals indoors to simply maximize growth and/or production. Access to the outdoors is a key principle of the organic livestock standards (see § 205.241(a)). Therefore, AMS expects producers to maximize access to outdoors to the greatest degree possible to support the health and natural behavior of poultry and the requirement at § 205.241(a).

Section 205.241(d)(4) provides an allowance for temporary indoor confinement in the case of risk to soil or water quality. This provision mirrors an existing allowance at § 205.239 and allows producers to avoid damage to soil or water quality. This means that an operation may temporarily confine poultry to prevent damage to soil or water quality. For example, an operation may choose to temporarily confine animals after a very heavy rainfall to help minimize soil erosion and runoff.

However, confinement for this reason must be temporary (see the definition of *temporary* in § 205.2) and must be documented so that the certifying agent can assess if the operation's use of confinement complies with the organic regulations. Frequent or prolonged confinement to prevent damage to soil or water quality is not permitted because it is not temporary. The need to frequently confine animals for long periods to avoid damage to soil and water quality may also indicate that an operation's outdoor access practices fail to meet the general requirements to maintain or improve the natural resources of the operation, including soil and water quality (§ 205.200). This provision is not intended to allow producers to avoid those requirements and is only allowed to justify temporary (i.e., not permanent or lasting) confinement.

Section 205.241(d)(5) provides an allowance for indoor confinement for preventive health care procedures and for the treatment of illness or injury. Neither life stages nor egg laying are considered an illness for confinement purposes. For example, this provision allows producers to briefly confine a flock to administer a vaccine or to confine an individual animal that requires medical treatment.

Section 205.241(d)(6) provides an allowance for indoor confinement for sorting, shipping, and poultry sales. Birds must be managed organically during the entire time of confinement. For example, any feed provided during confinement must be organic. Confinement must be no longer than necessary to sort or catch the birds, place them in shipping containers, and conduct the sale.

Section 205.241(d)(7) provides an allowance for indoor confinement to train pullets to lay eggs in nest boxes, with a maximum period of five weeks over the life of the bird allowed for such confinement. The training period must not be any longer than required to establish the proper behavior. As soon as the behavior is established, birds must be provided with access to the outdoors, except when confined in accordance with other provisions under § 205.241(d).

Section 205.241(d)(8) provides an allowance for indoor confinement with specified time frames for youth exhibitions, such as with 4-H or the National FFA Organization. This provision also includes an exemption to the requirement that a livestock sales facility be certified as an organic operation. As an example, if a youth exhibition and sale is held at a livestock sales facility that is not certified organic,

a youth may sell birds there as organic, provided all other requirements for organic management are met. During the youth event, the livestock may be temporarily confined indoors. Otherwise, non-certified sales facilities, such as auction barns, may not sell or represent livestock as organic. AMS is adding these provisions at § 205.241(d)(8) to encourage the next generation of organic producers.

Section 205.241(e) requires organic poultry producers to manage manure in a manner that does not contribute to contamination of crops, soil, or water quality by plant nutrients, heavy metals, or pathogenic organisms. Organic poultry producers must manage the outdoor space in a manner that does not put soil or water quality at risk. In addition, organic poultry producers must comply with all other governmental agency requirements for environmental quality. The requirements of this section are adapted from previously established requirements for organic livestock at section 205.239(e).

Changes From Proposed Rule to Final Rule

AMS has made several revisions to the proposed requirements at § 205.241 in response to comments and to clarify the requirements. A brief description of the changes follows; additional discussion can be found in AMS's responses to comments.

- AMS included a prohibition on continuous total confinement. This requirement has existed in the regulations at § 205.239 but was not included in the proposed rule. It is carried into the final rule at § 205.241(a).
- AMS added a clarification to the final rule that a bird should be able to stretch both wings simultaneously when indoors (§ 205.241(b)(1)). This change elaborates on the proposed requirement that birds be able to "stretch wings" indoors.
- AMS revised requirements related to monitoring of ammonia to increase the frequency of monitoring and raise the action limit from 10 ppm to 20 ppm ammonia, with the maximum level remaining at 25 ppm, as proposed (§ 205.241(b)(2)). The final rule also specifies that monitoring is to be done at bird head height.
- AMS revised the proposed lighting requirements to clarify that manipulation of artificial light to increase growth is not permitted and to clarify the length of time that artificial light may be provided over a 24-hour period (§ 205.241(b)(3)).

- In response to public comment, AMS offered greater specificity on the requirements related to exit doors. The final rule requires that producers provide one linear foot of exit door space per 360 birds with some flexibility for compliance if an alternative configuration provides ready access to the outdoors for all birds (§ 205.241(b)(4)).

- AMS included additional detail on what may be counted as perch space. The final rule specifically prohibits counting floor space as perch space (§ 205.241(b)(5)).

- AMS reduced the amount of solid flooring required in the final rule from 30 percent to 15 percent and clarifies that mobile housing is exempt from this requirement (§ 205.241(b)(7)).

- AMS added a second method for calculating space requirements that does not rely on the weight of birds (§§ 205.241(b)(7)—(10) and (c)(4)—(c)(6)).

- AMS reduced the amount of non-soil ground that may be in outdoor areas from 50 percent to 25 percent (*i.e.*, 75 percent must be soil in the final rule), at § 205.241(c)(2).

- AMS revised the temperature range included in the proposed rule related to inclement weather (§ 205.241(d)(1)). AMS clarified that inclement weather for avian species may include temperatures below 32 degrees (rather than 40 degrees as proposed) and above 90 degrees (unchanged from the proposed rule).

- Finally, AMS removed the proposed allowance to temporarily confine birds to reseed outdoor areas. The final rule allows for confinement due to risk to soil or water quality (§ 205.241(d)(4)).

Responses to Public Comment

General Conditions (Avian)

(*Comment*) Some comments noted that the proposed rule's section on avian living conditions did not include the specific phrase, "Continuous total confinement of any animal indoors is prohibited." The commenters noted that the prohibition was included in the section on mammalian living conditions at § 205.239(a) and requested that it also be included in the final rule's section on avian living conditions at § 205.241(a).

(*Response*) AMS agrees with these comments and has added the phrase, "Continuous total confinement of any animal indoors is prohibited" to the avian living condition requirements at § 205.241(a). Prior to this final rule, the USDA organic regulations prohibited continuous total confinement for all organic livestock, and AMS agrees it

should continue to apply to all organic livestock in the final rule.

(*Comment*) A comment requested that AMS modify the proposed requirement that birds be able to "stretch their wings" indoors to instead require space that allows birds to "fully stretch both wings simultaneously."

(*Response*) AMS agrees that this modification better describes the intent and meaning of the requirement. The final rule, at § 205.241(a)(1), requires that poultry housing be sufficiently spacious to allow all birds to, "stretch both wings simultaneously."

Ammonia

(*Comment*) AMS received numerous comments on the proposed requirements related to monitoring ammonia in poultry houses and ammonia compliance thresholds included in the proposed rule. Comments argued that monthly ammonia monitoring, as proposed, would not be sufficient to identify problems and could result in longer-term exposure to elevated ammonia levels and have harmful effects. Many of these comments requested weekly (rather than monthly) testing, and that ammonia monitoring must be done at the height of the birds' heads, to ensure that testing reflects the birds' actual exposure to ammonia. In terms of the ammonia thresholds proposed by AMS, many comments requested that AMS increase the action limit from 10 ppm to 20 ppm or 25 ppm. Comments noted that these higher levels would align with third-party standards and still support bird health.

(*Response*) In response to comments, the final rule increases the frequency of required testing from monthly to weekly and requires that testing be done at bird head height. AMS expects these revisions to § 205.241(b)(2) will result in better outcomes for bird health. AMS has also increased the action limit in the proposed rule of 10 ppm to 20 ppm in the final rule. If ammonia levels exceed 20 ppm, producers must implement additional practices to reduce ammonia levels below 20 ppm and perform more frequent monitoring. Ammonia levels must not exceed 25 ppm.

Lighting

(*Comment*) Several commenters requested that poultry have access to sufficient natural light indoors, citing animal health and welfare. Commenters requested natural light be provided during daylight hours for mature avian species; in cases where this would be difficult to achieve, commenters requested that lighting must be full spectrum to mimic a natural system.

(*Response*) As a general requirement at § 205.241(a), the final rule requires that birds have year-round access to outdoors and direct sunlight. AMS finds that these provisions address commenters' concern for sufficient access to natural light and the expression of natural behaviors.

(*Comment*) Commenters asked AMS to require a minimum of eight hours of continuous light (daylight or artificial) over a 24-hour period.

(*Response*) AMS finds that artificial light sources can be permitted to help meet the minimum light intensity during cloudy weather or darker seasonal conditions but should not prolong daylight more than 16 continuous hours. AMS finds that continuous low level or no light does not mimic a natural system, nor does it allow birds to express their natural instincts and thus is not appropriate for organic management. AMS has decided not to specify a particular amount of required light to provide operations flexibility for their site-specific conditions. Further, AMS recognizes that not all organic operations have lighting systems that allow for gradual lowering of light intensity. Therefore, AMS clarified that artificial light intensity *should* (rather than *must*) be lowered gradually to encourage hens to move to perches or settle for the night.

(*Comment*) Several comments noted that artificial light should be used only to mimic daylight and encourage natural behaviors, and not to manipulate weight gain or laying habits.

(*Response*) AMS agrees that artificial light should be used only to mimic daylight and encourage natural behaviors. AMS added the statement at § 205.241(b)(3) that "Artificial light spectrum may not be manipulated to increase feed intake and growth rate."

(*Comment*) Commenters asked AMS to require a minimum of eight hours of continuous darkness over a 24-hour period.

(*Response*) The final rule adds the statement at § 205.241(b)(3) that operations must provide a minimum of eight hours of continuous darkness per 24-hour period.

(*Comment*) Several comments noted that the proposed rule did not establish a minimum requirement for indoor light intensity. Some commenters requested a requirement that an inspector be able to read and write with lights turned off on a sunny day to create a standard of measurement. Some commenters stated that third-party certifications require at least one foot candle of light throughout the building.

(*Response*) AMS determined that it would not be feasible for inspectors to

verify a producer's compliance with this requested requirement and has not included such a requirement in the final rule.

(Comment) Commenters asked AMS to confirm that the proposed artificial lighting standards at § 205.241(b)(3) covered all types of fully feathered birds, not just layer chickens.

(Response) The artificial lighting standards at § 205.241(b)(3) are applicable to the production of all types of fully feathered birds. AMS updated the regulatory text to clarify this standard applies to all fully feathered birds.

Exit Areas

(Comment) Stakeholders requested more specificity for exit areas, arguing the proposed rule does not provide clarity for implementation to ensure sufficient outdoor access. Comments focused on minimum size, spacing, and quantity of exit doors. Many comments requested a requirement that exit areas must be designed so that more than one bird at a time can pass through each opening. Many comments also suggested specific sizing and dimensions for exit areas, with most suggesting a combined exit area length be at least 12 feet per 1,000 square feet of the house available to the birds. This standard would align with European Union organic standards (4 m per 100 m²). Others suggested a requirement for at least one exit for every 50 feet (15 meters) along the two longest sides of the house, while others recommended that exit doors be placed so any bird could be no farther than 50 feet from an exit door. This standard would align with Canadian organic standards and some third-party welfare standards. Other comments also requested more specificity for how to encourage birds to go outside and to include a requirement that operations demonstrate that birds access the outdoors (e.g., demonstrate all birds exit the house within an hour of opening doors).

(Response) AMS recognizes that exit areas have been unregulated and that ready access to the outdoors—a primary intent of this rule—has not always been provided to all certified flocks. AMS also recognizes the need for a consistent understanding throughout the industry to support a competitive playing field. The final rule confirms and clarifies that poultry houses must have sufficient exit areas to allow birds to access the outdoors. AMS is also making two modifications to the proposed requirements based on comments. First, AMS is requiring that exit areas be “appropriately distributed and sized” rather than “appropriately distributed”

in response to comments that the size of doors (in addition to the distribution of doors) is important for providing access to the outdoors. For example, a very narrow door might restrict passage of birds and restrict access to the outdoors.

Second, AMS is referencing a quantitative standard for exit areas in the final rule, as requested by numerous comments. The final rule requires producers to provide at least 1 linear foot of exit area per 360 birds, and no less than 1 linear foot for flocks that have fewer than 360 birds. Theoretically, this quantity of exit area allows all birds in a house to exit (or enter) a house within one hour (60 minutes), assuming one bird passes through a door every 10 seconds (360 birds × 10 seconds/bird = 3,600 seconds or 60 minutes). This requirement is comparable to a third-party animal welfare standard that requires five inches of doorway per 100 hens.⁷⁶

While AMS is providing a quantitative requirement in the final rule, the rule also provides flexibility for operations to provide less exit space, so long as they and their certifier ensure that exit areas allow all birds to have ready access to outdoor space. AMS is providing this flexibility because we understand there might be houses that do not meet the ratio but can demonstrate all birds have ready access to the outdoors. Because of the wide variety of housing provided by poultry producers and possible differences in bird behavior between farms, AMS believes that compliance is best determined by organic certifying agents during their annual on-site inspections and reviews of operations. A specific standard will, however, provide a common reference point for certifying agents to assess compliance with the outdoor access requirement.

AMS evaluated the standard proposed by commenters for 12 linear feet of door per 1,000 square feet of poultry house, but AMS determined this would not be an appropriate metric. Specifically, this requirement did not scale appropriately for houses of all sizes (due to a non-linear relationship between the perimeter of an object and the area of the object). In other words, a large house would have been required to have more doors than is practical or feasible. Instead, AMS is adopting a standard for the final rule that relies only on the

⁷⁶ Global Animal Partnership standards for laying hens require 8 inches for every 100 hens when doors are only open on one side of the house. When doors are open on both sides of the house, the standards require 5 inches for every 100 hens. Available at: <https://globalanimalpartnership.org/standards/laying-hen/>.

number of birds to calculate the necessary door number.

AMS also considered comments that recommended birds not be farther than 50 feet from an exit door. AMS chose not to adopt this recommendation because some poultry houses may only provide doors along one side of the house, and houses can be 50 feet wide or more.⁷⁷ Ultimately, AMS determined that a standard based on the number of birds in the house would be the most scale-neutral option across the various housing types using for organic production. The final rule establishes a standard of one linear foot of exit area per 360 birds. Together with the requirement in this section (§ 205.241(b)(4)) that exit areas be appropriately distributed and sized, AMS believes this standard is an appropriate baseline. In the case a producer can demonstrate an alternative ratio meets the requirement for ready access to the outdoors, a producer would be in compliance if the certifier accepts the deviation.

Flooring and Dust Bathing

(Comment) Many comments requested that AMS revise the amount of solid floor area required in indoor housing with slatted or mesh floors. Comments asked AMS to lower the minimum required solid floor area to 15 percent of total floor space (the proposed rule would have required 30 percent). Comments acknowledged that the proposed 30 percent minimum was an NOSB recommendation but noted that a 15 percent minimum would be more consistent with current practice in the organic industry and more consistent with third-party animal welfare standards.

(Response) Solid floor areas provide birds with a space to dust bathe and scratch. AMS has reduced the minimum amount of solid floor space from 30 percent to 15 percent in § 205.241(b)(7). AMS agrees with comments that 15 percent solid floor area will support animal welfare and the natural behaviors of scratching and dust bathing. The final rule not only requires that birds will have access to areas indoors for these activities but also requires that birds have access to outdoor areas. These outdoor areas will also be available for birds to express these natural behaviors and to maintain animal health (by allowing for dust bathing).

(Comment) One commenter requested a higher indoor stocking density limit

⁷⁷ Available at: https://www.nass.usda.gov/Surveys/Guide_to_NASS_Surveys/Ag_Resource_Management/ARMS_Broiler_Factsheet/Poultry%20Results%20-%20Fact%20Sheet.pdf.

for mobile housing that provides year-round access to large amounts of pasture. This commenter also stated that these types of mobile housing should not be required to provide indoor areas for dust bathing and scratching, as the outdoor space provides these areas.

(Response) AMS agrees that outdoor areas can provide sufficient space for birds to engage in natural behaviors such as dust bathing and scratching. The final rule in § 205.241(b)(6) exempts mobile housing from the scratching and dust bathing requirements inside of the house if there is sufficient outdoor space that can provide area for these behaviors. AMS elects not to change the stocking density requirements for mobile housing. The final rule permits a higher indoor stocking density for mobile housing than it does for other housing systems, except for aviary housing (which provides access to the vertical space in a house). The maximum stocking density for mobile housing already considers that birds have greater access to outdoor space in these systems, so further reduction of space per bird is not warranted.

Space Requirements

(Comment) Some comments requested that AMS express space requirements in terms of square feet per bird rather than maximum pounds of bird per square foot, as AMS proposed. Comments argued this method for space calculations aligns better with third-party standards and that calculations would be simpler under this method. Comments noted that the proposed method (which relies on bird weight) is more burdensome, as bird weights constantly change, especially when birds are young, and some producers do not track the weight of their birds. Comments also stated that requirements based on the weight of birds could result in an excessive recordkeeping burden and require additional time to verify at inspections.

(Response) AMS recognizes that verification of compliance could be simpler in some cases by expressing the space requirements in terms of square feet required per bird. This may be especially true in cases where bird weights are not known, or a producer has variously sized breeds within the flock. Therefore, the final rule offers an alternative method for calculating space requirements in terms of minimum required *square feet per bird*. These calculations will require producers and certifying agents to know only the number of birds and the area of the space (indoor or outdoor).

AMS has established the alternative to be equivalent to the space required for

a heavy bird for the type (layer, broiler, or pullet). For layer standards, AMS assumed a 6.7 lb. bird; for broilers, a 10.0 lb. bird; and for pullets, a 5.0 lb. bird.⁷⁸ For example, the alternative of 1.5 square feet per bird (aviary housing) is equivalent to the requirements for a 6.7 lb. layer at 4.5 lbs. per square foot. Many producers will comply with the space requirements expressed in these terms, even though a higher stocking density would likely be allowed by calculating the weight of birds per square foot. However, the alternative will simplify the calculations for some producers, especially smaller producers, and the addition responds to the many comments that requested a standard expressed as square feet required per bird.

The final rule also retains the proposed rule's space requirements that are expressed in terms of maximum *pounds of bird per square foot*. Producers and certifiers may use either method to demonstrate compliance; they need not demonstrate compliance with both methods. AMS provides more extensive discussion of this topic in the above subsection titled "Description of Final Policy."

(Comment) Some commenters believed that AMS should require more indoor space per bird to reduce crowding. On the other hand, other commenters believed that less space should be required indoors, especially for broilers. Many comments on broiler indoor space requested that AMS raise the stocking density to a maximum of six pounds per square foot for broilers, rather than the five pounds per square foot limit set by the proposed rule. Some of these comments also requested that if the final rule did adopt a standard of five pounds per square foot, AMS provide a five-year implementation period instead of the three-year period discussed in the proposed rule. These comments stated that five years would be necessary to construct new houses and avoid supply disruption.

(Response) AMS is maintaining the indoor space requirements for the various housing types, as proposed. For pullets and layers, the indoor space requirements largely reflect the current industry standard for organic producers and various third-party humane and animal care standards. For broilers, AMS anticipated in the proposed rule that broilers would need to be provided

with more space, and the costs associated with those changes are described in the Regulatory Impact Analysis for this rule. In acknowledgement of comments that construction of new poultry houses will require time, AMS is allowing five years for compliance with the broiler indoor and outdoor space requirements in the final rule. AMS believes that the stocking densities established by this rule balance NOSB recommendations, public input, and industry best practices to establish a reasonable national standard for organic production and to assure consumers that organically produced eggs and broilers meet a consistent standard, as required by OFPA (7 U.S.C. 6501).

(Comment) Some commenters believed that AMS should require more outdoor space per bird than proposed, while other commenters believed that less outdoor space could be required. Comments supporting more outdoor space noted that international organic standards and third-party certifications require more space per bird, and they asserted that more space would be necessary to provide animals with vegetation in outdoor areas. Comments in favor of less outdoor space noted that all birds do not go outdoors at once, even if large outdoor areas are provided.

(Response) The final rule maintains the outdoor stocking densities, as proposed, and added an alternative method for measuring compliance based on square feet per bird, which avoids the need to weigh birds. The stocking densities established by this rule balance NOSB recommendations, public input, and industry best practices to establish a reasonable baseline for organic production and, in turn, support the purposes set forth in OFPA, *i.e.*, to assure consumers that organic products are produced according to a consistent standard (7 U.S.C. 6501). The new standard represents an upward harmonization of outdoor space requirements under the organic rule while still providing for a robust organic poultry market.

(Comment) Some comments requested a revision to AMS's discussion on how to calculate and verify compliance with indoor and outdoor space requirements. In the proposed rule, AMS described that a producer could stock a poultry house to exceed minimum space requirements in anticipation of mortalities that would reduce the number of birds and eventually increase the space available per bird. Commenters were concerned that adopting this approach would lead to houses with higher stocking densities

⁷⁸ AMS established the alternative space requirements (expressed as square feet per bird) by considering the average weight of breeds, weight of birds at time of sale, relative use of breeds in the industry, and the standard deviation of weights by breed.

and reduce a certifier's ability to enforce the requirements.

(Response) AMS has reconsidered its position and is adopting the position that a producer must always comply with the minimum standards established by the final rule. The final rule establishes minimum space requirements for chickens based on bird type, age, and housing system, and producers must meet these standards to comply with the rule.

(Comment) Some comments requested that AMS expand the rule to include minimum requirements for species other than chickens (*Gallus gallus*), including turkeys, ducks, and other animals.

(Response) AMS has not added specific minimum space requirements for species other than chickens in this final rule. The NOSB did not finalize recommendations for other avian species and AMS did not propose any such requirements, so AMS is not including minimum space requirements for other species in the final rule. However, the final rule includes many requirements that do apply to all avian species in §§ 205.238, 205.241, and 205.242. Similarly, the final rule includes many requirements that apply to all mammalian and non-avian species at §§ 205.238, 205.239, and 205.242.

Indoor Conditions (Other)

(Comment) Comments asked AMS to clarify that flooring in slatted/mesh floor poultry houses cannot be included as perch space for layers.

(Response) The slatted floors of some houses are physically similar to perches, but floor space may not be counted as perch space. In response to comments, AMS specifies in the final rule at § 205.241(b)(5) that floors in slatted/mesh floor housing cannot be counted as perch space. Additionally, the definition of perch at § 205.2 describes that a perch is above the floor or ground to clarify that flooring is not a perch for the purposes of this rule.

(Comment) Some comments objected to AMS's proposed requirements at § 205.241(b)(12) and § 205.241(c)(7) that describe what may be considered indoor space and outdoor space. The proposed rule described that a porch could be included in the calculation of space available. Some comments argued that AMS should not allow porches to ever count as outdoor space and that a prohibition of porches as outdoor space would better fit with the objective of the rule. Another suggested that these sections brought more confusion than clarity about what should count as indoor or outdoor space. Others expressed concern that the proposed

rule might allow a producer to reduce both the indoor and outdoor space provided to birds by claiming porches as both indoor and outdoor space. Finally, some comments noted the description could cause interpretation issues for the organic mammalian standards, as some common mammalian housing structures are roofed with open sides (such as a freestall barns for dairy cattle) but are considered indoors.

(Response) AMS has revised § 205.241(c)(7) to further clarify acceptable types of outdoor space. AMS removed the words "porches and lean to type [structures]" from the paragraph to avoid confusion. The term "porch" is not defined by these regulations, and AMS wants to avoid inconsistent interpretation of the term. The revised language focuses on what qualifies a structure as outdoor space: (1) the structure must be unenclosed; and (2) birds must be able to move freely from the structure to other outdoor areas. A certifier must assess if an unenclosed roofed structure may be considered outdoor space. AMS believes this decision is best left to certifiers working in conjunction with producers and in evaluation of an operation's practices related to use of these areas. AMS chose to leave the words "enclosed porches" at § 205.241(a)(12) because we believe this is helpful guidance for the industry: in some cases, an area previously used as a porch might qualify as indoor space. Finally, AMS has updated the definition of "outdoors" in § 205.2 to clarify that enclosed structures with open sides, such as the freestall barns and hoop barns commonly used in non-avian production, do not qualify as outdoors.

Outdoor Conditions (Other)

(Comment) Several comments requested an increase in the percentage of soil required in outdoor space from 50 to 75 percent, stating that a higher amount of soil is needed to encourage birds to utilize outdoor space. Commenters also noted that birds may not use the outdoor space if much of it is concrete, as it may burn their feet in higher temperature climates. Other commenters suggested that soil be required within a certain distance from housing exit areas to encourage the use of outdoor space by birds. Comments ranged from general guidelines to more specific requests, such as requiring that vegetated and soil areas should be no farther than 30 feet away from exit doors.

(Response) AMS has revised the outdoor space soil requirement in § 205.241(c)(2) to better align with commenter and consumer expectations.

The final rule requires that 75 percent of outdoor space must be soil. AMS elects not to establish specific regulations for how far away soil and vegetation should be from exit doors. The increase in percentage of soil cover will encourage the use of outdoor space by birds without the need for prescriptive distance requirement. The final rule continues to allow some outdoor areas to not be soil. AMS believes this allowance is necessary, as some houses may have adjacent non-soil areas for drainage or to prevent rodents from entering houses. The allowance for 25 percent non-soil outdoor area also supports producer efforts and FDA recommendations for preventing rodents in outdoor areas, such as a 6-foot strip along the periphery of an outdoor area that is filled with gravel or another non-soil substance.⁷⁹

(Comment) Many commenters requested that AMS add a requirement in § 205.241 that producers include "suitable enrichments" in outdoor areas to encourage birds to utilize outdoor space.

(Response) AMS has not added language requiring "suitable enrichments" to encourage the use of outdoor space. Instead, AMS increased the required amount of soil in outdoor areas to 75 percent. This change is meant to encourage greater use of outdoor space. AMS encourages producers to adopt practices that encourage birds to go outdoors—see § 205.241(c)(1), which require producers to provide outdoor access at a young age. AMS determined that a requirement for "suitable enrichment" in this rule would be difficult to measure or enforce and could vary greatly from one operation to another.

(Comment) Several comments requested that the definition of outdoor space be clarified. Specifically, commenters requested a clear definition of "maximal vegetative cover," arguing that the term "maximal" is subjective and that operations located in drought-prone or water restricted areas have limited ability to ensure maximal vegetative cover.

(Response) AMS clarifies the requirements for outdoor space by removing the term "maximal vegetative cover" from the vegetation requirement at 205.241(c)(2). AMS recognizes that "maximal" vegetative cover is not

⁷⁹ "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: Guidance for Industry," FDA, Center for Food Safety and Applied Nutrition, August 2022, <https://www.fda.gov/media/86276/download>.

defined by the rule and varies based on season, climate, geography, stage of production, etc. The change allows operations flexibility to meet the vegetation requirement across various conditions and provides additional clarity of composition of outdoor space.

(Comment) Many commenters requested that the definition of “pasture pens” be revised to clarify that floored (e.g., wire mesh) structures are prohibited, and that animals should be able to move around and express natural behaviors when inside of pasture pens.

(Response) The definition of “pasture pens (avian)” describes that pasture pens are floorless pens. In response to public comment, AMS revises the definition of “pasture pens” to note that they allow birds to express natural behaviors. Birds in pasture pens must have direct access to the ground without intervening floor, including wire or mesh, so they can scratch, dust bathe, roost (for pullets and layers), etc. AMS also clarifies that the definition of pasture pens applies to avian species, as ruminant producers may also use the term but with a different meaning.

Confinement

(Comment) AMS received many comments related to temporary confinement of birds due to outdoor temperatures. The proposed rule would have allowed producers to confine birds for inclement weather, including when outdoor temperatures are below 40 degrees Fahrenheit or above 90 degrees Fahrenheit. Many comments requested that AMS reduce the lower threshold for confinement from 40 degrees to 32 degrees, arguing that birds would not be harmed by outdoor temperatures in that range. Other comments requested AMS narrow the temperature for outdoor access, so outdoor access would only be required for outdoor temperatures between 60 degrees and 80 degrees, for example. Comments in favor of a narrower range for outdoor access noted that opening exit doors on poultry houses would strain ventilation systems, waste fuel and electricity, increase the litter moisture content (and thereby increase ammonia levels), and increase deaths due to severe stress.

(Response) AMS has revised the final rule to reduce the low temperature threshold from 40 degrees to 32 degrees (F) in § 205.241(d)(1). The lower threshold better describes the conditions that may qualify as “inclement weather,” a term that was added to the organic regulations by a February 2010 final rule (“Access to Pasture (Livestock),” 75 FR 7153). The existing term is defined as weather “characterized by temperatures (high or

low) . . . that can cause physical harm to livestock,” but it does not specify thresholds for high or low temperatures that might cause harm. This final rule provides temperature ranges for avian (not mammalian or non-avian) livestock to clarify when temporary confinement of birds for heat or cold is appropriate.

For additional discussion on this requirement please see the Overview of Policy (§ 205.241) section above.

AMS is not adopting recommendations from comments to allow producers to confine animals if temperatures are outside of a narrower range (e.g., 60–80 degrees). While AMS recognizes that growth or production may increase when birds are maintained within a narrower temperature range, existing regulations (see § 205.239(b)(1) and the definition of “inclement weather” at § 205.2) do not permit confinement for this reason. The final rule seeks to clarify the bounds of the term to allow producers to confine animals for dangerous weather, but not misuse that allowance to confine animals for weather that is less than ideal for production or growth. Neither existing requirements nor this final rule permit temporary confinement within a narrow range of temperatures to maximize production yields or growth rates. The final rule aligns with AMS’s intent when AMS added the term “inclement weather” to the organic regulations (75 FR 7159). AMS does not believe that an allowance to confine animals outside a narrow range would satisfy consumer expectations.

(Comment) Many comments requested that AMS remove language in § 205.241(d)(4) that would have allowed operations to temporarily confine birds during reseeding of outdoor areas. Comments expressed concern that this language may enable prolonged confinement, potentially for the entire life of the animal. One comment stated that the certifying agent should have the authority to determine if reseeding is the appropriate course of action for mitigating soil or water quality issues.

(Response) AMS has removed the phrase “including to establish vegetation by reseeding outdoor space” from § 205.241(d)(4). This means that operations may not confine birds solely to reseed and reestablish vegetation in outdoor access areas. Additionally, this rule prohibits continuous total confinement of poultry indoors (see the general requirements for avian living conditions at § 205.241(a)). The rule does permit operations to temporarily confine birds when there is a risk to soil and water quality. However, this confinement must be temporary, must be done only to correct a risk to soil and

water quality, cannot be continuous throughout the life of the birds, and is subject to the certifying agent’s review of the operation’s management of outdoor space.

Additional Animal Welfare Requirements

(Comment) Some comments requested that AMS impose additional animal welfare requirements for broiler production, such as maximum growth rates and breed requirements (for use of slower growing breeds).

(Response) AMS has not received recommendations from the NOSB related to this topic and did not include such restrictions in the proposed rule; therefore, the final rule adopts no additional requirements on this subject. However, AMS notes that § 205.238(a)(1) requires selection of species and types of livestock that are suitable for site-specific conditions and resistant to prevalent diseases and parasites.

Biosecurity and Food Safety

(Comment) Most commenters who discussed poultry biosecurity stated that increased outdoor access will have negative health outcomes for birds. Some commenters argued the rule would contradict the U.S. Food and Drug Administration’s protocols requiring producers to prevent contact with *Salmonella enteritidis*. In support of the use of porches, commenters stated that producers use outdoor porches to both provide outdoor access under the existing standard and help safeguard flocks from vermin and indigenous birds that can be vectors for diseases. Comments cited research suggesting outdoor access can subject poultry to disease. Additionally, some comments suggested that outdoor access would jeopardize the organic industry’s ability to provide safe food. A few comments asserted that under-utilized or barren outdoor areas could have a negative impact on pathogen and disease control. They noted that bare soil can result in dust containing dried fecal matter, which could be blown into nearby crops and present food safety concerns.

On the other hand, some commenters found that the proposed rule would support biosecurity and food safety measures, including organic producers’ ability to mitigate biosecurity risks and prevent disease outbreaks in their organic flocks. These comments argued the rule aligns with FDA guidance on the Egg Safety Rule,⁸⁰ and referenced

⁸⁰ “FDA Issues Final Guidance for Shell Egg Producers who Provide Laying Hens with Access to Areas Outside the Poultry House,” U.S. Food &

research indicating that outdoor access can improve bird and flock health. They argued that outdoor access is not the determining factor in disease outbreaks and deaths and found the research and scientific data on the topic to be inconclusive. One commenter noted that operations are already successfully managing compliance with biosecurity, food safety, and egg safety requirements. Another noted that physical alterations provide one way for organic producers to maintain proper biosecurity for their flocks.⁸⁰ These comments concluded that outdoor access is still consistent with the Egg Safety rule.

(Response) AMS recognizes the importance of protective measures to avoid disease outbreaks and contact with *Salmonella enteritidis*. The rule includes provisions for strengthening biosecurity and food safety measures to ensure that organic poultry operations do not put their flocks at greater risk for exposure or infection. These include allowing temporary confinement for conditions under which the “health, safety, or well-being of the animal could be jeopardized,” including for specific disease outbreaks. The rule also requires producers to manage vegetative areas to mitigate harborage for rodents and other pests as well as prevent stray poultry, wild birds, cats, and other animals from entering poultry houses. It allows fencing, netting, or other materials over all or part of the outdoor areas (provided the areas are not “inside of an enclosed building or housing structure,” which is the definition in § 205.2 of “indoor space”) to prevent predators and other wild birds from entering. AMS understands that biosecurity response is a comprehensive action.

At this time, AMS finds the research is inconclusive regarding the correlation between outdoor access and decreased food and animal safety. AMS receives regular updates from APHIS regarding Highly Pathogenic Avian Influenza (HPAI) and other potential outbreaks. The USDA website remains a resource for certifying agents seeking information on HPAI detection. Additionally, AMS may provide future guidance to clarify the Agency’s expectations in the event of diseases or threats. Ultimately, AMS recognizes that meaningful outdoor access is fundamental to the organic regulations and is expected by the market. This rule allows organically raised birds room to express natural behaviors and advances OFPA’s

purpose of creating consistent organic standards.

E. Transport and Slaughter (§ 205.242)

Description of Final Policy

AMS has added a new section to the organic regulations at § 205.242 titled “Transport and slaughter” to address the care of organic animals during transport and throughout the slaughter process, including care prior to slaughter and methods of slaughter. Section 205.242 is divided into three subsections: transportation, mammalian slaughter, and avian slaughter.

The changes are made in response to a December 2011 NOSB recommendation⁸¹ and public comments received in response to the August 2022 OLPS proposed rule, under AMS’s authority to promulgate standards “for the care of livestock” (7 U.S.C. 6509(d)(2)). AMS understands that “care of livestock” is relevant up to the time of slaughter and that some practices during transport and/or slaughter should affect an animal’s organic certification. Once an animal is killed, existing organic regulations for handling organic products become relevant for the processing, packaging, and sale of organic animal products. The requirements of this rule apply to the care of live animals.

Transport Requirements (§ 205.242(a))

The December 2011 NOSB recommendation noted that additional regulations for the transport and slaughter of organic animals were appropriate to assure consumers that animal products sold as organic are produced with “a high level of animal welfare” and organic operations “avoid animal mistreatment on the farm, during transport to, or at the slaughter plant.”⁸² The NOSB noted that their recommended regulatory language reflects third-party animal welfare certification standards and common practices within the industry. The NOSB also specifically recommended that AMS adopt the “necessary” requirements from their recommendation to avoid increasing paperwork burden or certification costs

and to encourage small slaughter plants to seek or maintain organic certification.

AMS agrees that additional requirements are appropriate to cover the time period(s) during which organic livestock are transported and slaughtered. As noted above, products sold as organic must be managed and processed in accordance with detailed organic regulations. AMS believes that it is appropriate to clarify the requirements for transport and slaughter in the organic regulations. This final rule seeks to minimize paperwork burden and increases in certification costs, when possible, by referring to existing regulations and laws that apply to transport and slaughter. However, some specific requirements that were recommended by the NOSB and not already detailed in existing regulations and laws are also included.

Section 205.242(a)(1) requires that organic animals are clearly identified during transport but provides flexibility on how the identity is maintained during transport. Section 205.242(a)(2) sets minimum fitness requirements for livestock to be transported to buyers, auction facilities, or slaughter facilities. Limiting the scope of the requirements to these destinations means the regulation does not limit transport on the farm where the animal is managed. Section 205.242(a)(2)(i) requires that calves have a dry navel cord and the ability to stand and walk without assistance before they are transported to buyers, auction facilities, or slaughter facilities.

Section 205.242(a)(2)(ii) prohibits transport of seriously crippled and non-ambulatory animals to buyers, auction facilities, or slaughter facilities. These animals must be treated until their health condition improves and they can walk (*i.e.*, they are ambulatory), or if an animal’s recovery is not possible, it may be euthanized (see also § 205.238(c)(7) and (8), and § 205.238(e)).

Sections 205.242(a)(3) and (4) set minimum standards for the trailer, truck, shipping container, or other mode used for transporting organic livestock. The mode of transportation must provide seasonally appropriate ventilation to protect livestock against cold or heat stress. This provision requires that air flow be adjusted depending on the season and temperature. In addition, bedding is required to be provided on trailer floors and in holding pens as needed to keep livestock clean, dry, and comfortable. AMS recognizes that in some cases keeping clean and dry bedding is impossible or even unsafe; therefore, use of bedding must be appropriate to the species and type of transport. If

⁸¹ <https://www.ams.usda.gov/sites/default/files/media/NOP%20Livestock%20Final%20Rec%20Animal%20Handling%20and%20Transport%20to%20Slaughter.pdf>.

⁸² Formal Recommendation by the National Organic Standards Board (NOSB) to the National Organic Program. December 2, 2011. <https://www.ams.usda.gov/sites/default/files/media/NOP%20Livestock%20Final%20Rec%20Animal%20Handling%20and%20Transport%20to%20Slaughter.pdf>.

Drug Administration, August 2022, <https://www.fda.gov/food/cfsan-constituent-updates/fda-issues-final-guidance-shell-egg-producers-who-provide-laying-hens-access-areas-outside-poultry>.

roughage is used as bedding, the bedding needs to be organically produced and handled. Bedding is not required for poultry crates.

Section 205.242(a)(5) requires an operation to describe how organic management and animal welfare will be maintained for transport that exceeds eight hours, measured from the time all animals are loaded onto a vehicle until the vehicle arrives at its final destination. This may include arrangement for water and organic feed. AMS also finds that an eight-hour transportation threshold better aligns with transportation time limits established by third-party animal welfare standards.

Section 205.242(a)(6) requires that operations transporting livestock to sale or slaughter have emergency plans in place that adequately address problems reasonably possible during transport. Such emergency plans could include how animal welfare would be maintained, what to do if livestock escape during transport, or how to euthanize an animal injured during transport. Shipping and/or receiving operations are also required to include these plans in their OSPs.

Slaughter and the Handling of Livestock in Connection With Slaughter (§ 205.242(b))

The requirements regarding slaughter and the handling of livestock in connection with slaughter are governed by separate authority applicable to both certified organic and non-organic livestock products. This final rule reiterates that compliance with these regulations, as determined by FSIS, is required for certified organic livestock operations. The requirements defer, in large part, to existing regulations and law while also aiming to ensure that USDA-accredited certifying agents have access to relevant records. The rule seeks to avoid undue burden on certified organic slaughter facilities, as undue burden could have the effect of reducing the availability of certified organic slaughter facilities. Section 205.242(b) regarding mammalian slaughter clarifies the authority of AMS, certifying agents, and State organic programs to review records related to humane handling and slaughter issued by the controlling national, federal, or state authority, and records of any required corrective actions if certified operations are found to have violated FSIS regulations governing the humane handling of mammalian livestock in connection with slaughter. (Note that AMS has separated mammalian from avian slaughter requirements due to the differences in how they are handled and

slaughtered). This new subsection (§ 205.242(b)), titled “Mammalian slaughter,” governs mammals defined as “livestock” or “exotic animals” under the FSIS regulations. Under the FSIS regulations, “livestock” are cattle, sheep, swine, goat, horse, mule, or other equines. “Exotic animals” include antelope, bison, buffalo, cattalo, deer, elk, reindeer, and water buffalo. These regulations govern the handling and slaughter of most mammalian animals used for food in the United States and apply to all operations that slaughter these animals.

Section 205.242(b)(1) requires certified organic slaughter facilities to be in full compliance, as determined by FSIS, with the Humane Methods of Slaughter Act (HMSA) of 1978 (7 U.S.C. 1901 *et seq.*) and FSIS’s implementing regulations. The HMSA requires that humane methods be used for handling and slaughtering livestock and defines humane methods of slaughter. In the HMSA, Congress found “that the use of humane methods in the slaughter of livestock prevents needless suffering; results in safer and better working conditions for persons engaged in the slaughtering industry; brings about improvement of products and economies in slaughtering operations; and produces other benefits for producers, processors, and consumers which tend to expedite an orderly flow of livestock and livestock products in interstate and foreign commerce” (7 U.S.C. 1901). The HMSA is referenced in the Federal Meat Inspection Act (FMIA) at 21 U.S.C. 603 and 21 U.S.C. 610(b), and is implemented by FSIS humane handling and slaughter regulations found at 9 CFR parts 309 and 313. The FMIA provides that, for the purposes of preventing inhumane slaughter of livestock, the Secretary of Agriculture will assign inspectors to examine and inspect the methods by which livestock are slaughtered and handled in connection with slaughter in slaughtering establishments subject to inspection (21 U.S.C. 603(b)).

All establishments that slaughter livestock, which include any certified organic operations that slaughter livestock, must meet the humane handling and slaughter requirements the entire time they hold livestock in connection with slaughter. FSIS provides for continuous inspection in livestock slaughter establishments, and inspection program personnel verify compliance with the humane handling regulations during each shift that animals are slaughtered, or when animals are on site, even during a processing-only shift. The regulations at 9 CFR part 313 govern the maintenance

of pens, driveways, and ramps; the handling of livestock, focusing on their movement from pens to slaughter; and the use of different stunning and slaughter methods. Notably, FSIS inspection program personnel verify compliance with the regulations at 9 CFR part 313 through the monitoring of many of the same parameters proposed by the NOSB in 2011, including prod use, slips and falls, stunning effectiveness, and incidents of egregious inhumane handling.⁸³ The regulations at 9 CFR part 309 govern ante-mortem inspection and ensure that only healthy ambulatory animals are slaughtered, and that non-ambulatory animals are euthanized and disposed of promptly. FSIS has a range of enforcement actions available regarding violations of the humane slaughter requirements for livestock, including noncompliance records, regulatory control actions, and suspensions of inspection.

Further, FSIS encourages livestock slaughter establishments to use a systematic approach to humane handling and slaughter to best ensure that they meet the requirements of the HMSA, FMIA, and implementing regulations.⁸⁴ With a systematic approach, establishments focus on treating livestock in such a manner as to minimize excitement, discomfort, and accidental injury the entire time they hold livestock in connection with slaughter. Establishments may develop written animal handling plans and share them with FSIS inspection program personnel.

AMS added a new section (§ 205.242(b)(2)) for those certified organic facilities that slaughter exotic animals and voluntarily request FSIS inspection. FSIS also provides, upon request, voluntary inspection of certain exotic animal species on a fee-for-service basis under the authority of the Agricultural Marketing Act of 1946. FSIS regulates the humane handling of the slaughter of exotic animals under the regulations at 9 CFR 352.10, which require that exotic animals be slaughtered and handled in connection with slaughter in accordance with the requirements for livestock at 9 CFR part 309 and 9 CFR part 313. Violation of these regulations can result in a denial of service by FSIS.

Section 205.242(b)(3) requires that all certified organic slaughter facilities provide any FSIS noncompliance

⁸³ FSIS Directive 6900.2, Revision 2, *Humane Handling and the Slaughter of Livestock*, August 15, 2011.

⁸⁴ *Humane Handling and Slaughter Requirements and the Merits of a Systematic Approach to Meet Such Requirements*, FSIS, 69 FR 54625, September 9, 2004.

records or corrective action records relating to humane handling and slaughter to certifying agents during inspections or upon request. Not all violations of FSIS regulations result in a suspension of FSIS inspection services. In some cases, FSIS will issue a noncompliance record, and the slaughter facility must perform corrective actions to bring the slaughter facility back into compliance. Operations must provide these records to certifying agents during inspection or upon request so that the certifying agent may verify that the slaughter facility is in compliance and has taken all corrective actions. If records reveal that an organic operation had not taken corrective actions required by FSIS within the time period allowed by FSIS, the certifying agent may initiate actions to suspend the facility's organic certification. While this action would be separate from any FSIS actions, it would impact the facility's capacity to handle organic animals.

In addition, AMS recognizes that in the United States, some slaughter facilities are regulated by the State for intra-state meat sales. In foreign countries, foreign governments may be the appropriate regulatory authority for humane slaughter inspections. In all cases, operations must provide the relevant humane slaughter noncompliance records and corrective action records to certifying agents during the inspections or upon request. Slaughter and the Handling of Poultry in Connection With Slaughter (§ 205.242(c))

The final rule addresses avian slaughter facilities at § 205.242(c). Section 205.242(c)(1) clarifies the authority of AMS, certifying agents, and State organic programs to review noncompliance records related to the use of good commercial practices in connection with slaughter issued by the controlling national, federal, or state authority, and records of subsequent corrective action if certified operations are found to have violated the Poultry Products Inspection Act (PPIA) requirements regarding poultry slaughter, violated the FSIS regulations regarding the slaughter of poultry, or failed to use good commercial practices in the slaughter of poultry, as determined by FSIS. Under the PPIA and the FSIS regulations, poultry are defined as chickens, turkeys, ducks, geese, guineas, ratites, and squabs. These species constitute most avian species slaughtered for human food in the United States. However, the organic standards for avian slaughter apply to all species biologically considered avian

or birds. The NOSB did not directly address avian slaughter requirements. However, AMS added avian slaughter requirements for consistency with the new mammalian slaughter requirements and to provide consistent slaughter requirements for certified organic operations.

While the HMSA does not apply to poultry, under the PPIA at 21 U.S.C. 453(g)(5), a poultry product is considered adulterated if it is in whole, or in part, the product of any poultry that has died by means other than slaughter. FSIS regulations, in turn, require that poultry be slaughtered in accordance with good commercial practices in a manner that will result in thorough bleeding of the poultry carcass and will ensure that breathing has stopped before scalding (9 CFR 381.65(b)). Compliance with applicable FSIS Directives, as determined by FSIS, are required under the rule.

In a 2005 **Federal Register** Notice, FSIS reminded all poultry slaughter establishments that live poultry, . . . must be handled in a manner that is consistent with good commercial practices, which means they should be treated humanely. Although there is no specific federal humane handling and slaughter statute for poultry, under the PPIA, poultry products are more likely to be adulterated if, among other circumstances, they are produced from birds that have not been treated humanely, because such birds are more likely to be bruised or to die other than by slaughter.⁸⁵

FSIS also suggested in this Notice that poultry slaughter establishments consider a systematic approach to handling poultry in connection with slaughter. FSIS defined a systematic approach as one in which establishments focus on treating poultry in such a manner as to minimize excitement, discomfort, and accidental injury the entire time that live poultry is held in connection with slaughter. Although the adoption of such an approach is voluntary, it would likely better ensure that poultry carcasses are unadulterated.

FSIS inspection program personnel verify that poultry slaughter is conducted in accordance with good commercial practices in the pre-scald area of slaughter establishments, where they observe whether establishment employees are mistreating birds or handling them in a way that will cause death or injury, prevent thorough bleeding, or result in excessive bruising. Examples of noncompliant mistreatment

⁸⁵ *Treatment of Live Poultry before Slaughter*, FSIS, 70 FR 56624, September 28, 2005.

could include breaking the legs of birds to hold the birds in the shackle, birds suffering or dying from heat exhaustion, and breathing birds entering the scald.⁸⁶ Also, in 2015, FSIS issued specific instructions to inspection program personnel for recording noncompliance with the requirement for the use of good commercial practices in poultry slaughter.⁸⁷

Section 205.242(c)(2) requires that all certified organic slaughter facilities provide, during the annual organic inspection, any FSIS noncompliance records and corrective action records related to the use of good commercial practices in the handling and slaughter of poultry in order to determine that slaughter facilities have addressed any outstanding FSIS noncompliances and are in good standing with FSIS. Not all violations of FSIS regulations result in a suspension of inspection services. In some cases, FSIS will issue a noncompliance record, and the slaughter facility must perform corrective actions to bring the slaughter facility back into compliance. The operation must provide these records to the certifying agent at inspection or upon request so that the certifying agent may verify that the slaughter facility is operating in compliance with FSIS regulations and is addressing/has addressed all corrective actions. If records revealed that an organic operation had not taken corrective actions required by FSIS within the time period allowed by FSIS, the certifying agent could initiate actions to suspend the facility's organic certification. While this action would be separate from any FSIS actions, it would impact the facility's capacity to handle organic animals. In addition, AMS recognizes that some poultry slaughter facilities in the United States are regulated by the State for intra-state poultry sales. In foreign countries, foreign governments may be the appropriate regulatory authority for poultry slaughter inspections. In all cases, operations must provide the relevant noncompliance records and corrective action records to the certifying agent during inspections or upon request.

Exemptions from poultry slaughter inspection exist for some poultry that is going to be sold to the public. The PPIA exempts from continuous inspection some establishments that slaughter poultry based on various factors, such as

⁸⁶ FSIS Directive 6100.3, Revision 1, *Ante-Mortem and Post-Mortem Poultry Inspection*, April 30, 2009.

⁸⁷ FSIS Notice 07-15, *Instructions for Writing Poultry Good Commercial Practices Noncompliance Records and Memorandum of Interview Letters for Poultry Mistreatment*, January 21, 2015.

volume of slaughter and the nature of operations and sales. This includes persons custom slaughtering and distributing from their own premises directly to household consumers, restaurants, hotels, and boarding houses, for use in their own dining rooms, or in compliance with religious dietary laws (21 U.S.C. chapter 10).

AMS added handling and slaughter standards for such poultry that is either exempt from or not covered by the inspection requirement of the PPIA. These requirements serve to establish a consistent and basic standard for the humane handling of organic poultry, regardless of an operation's size or method of sales. Specifically, § 205.242(c)(3)(i) prohibits hanging, carrying, or shackling any lame birds by their legs. Birds with broken legs or injured feet may suffer needlessly if carried or hung by their legs. Such birds are required to either be euthanized or made insensible before being shackled. AMS also added § 205.242(c)(3)(ii) to require that all birds hung or shackled on a chain or automated slaughter system must be stunned prior to exsanguination (bleeding). This requirement for stunning prior to exsanguination only applies to producers who shackle birds on a chain or automated system; therefore, it does not prohibit the practice more common among small-scale producers of placing the birds in killing cones before bleeding them without stunning. Additionally, this requirement does not apply to religious slaughter establishments (*e.g.*, Kosher or Halal slaughter facilities), who are required to meet all the humane handling regulatory requirements except stunning prior to shackling, hoisting, throwing, cutting, or casting. Finally, § 205.242(c)(3)(iii) requires that all birds be irreversibly insensible prior to being placed in the scalding tank.

Changes From Proposed to Final Rule

AMS has made several changes to the regulatory text of the OLPS proposed rule when writing this final rule. Changes to the final rule are discussed below and are followed by specific topics and themes from public comment.

- In the transport fitness requirements in § 205.242(a)(2)(ii), AMS added that “seriously crippled” animals, in addition to “non-ambulatory” animals, must not be transported for sale or slaughter. This language is commonly used by the industry and prevents the inhumane and potentially unsafe slaughter of unwell animals that are still able to move.

- To provide greater flexibility in transport, AMS added to § 205.242(a)(4) that “Use of bedding must be appropriate to the species and type of transport.” This change addresses public comment concerns about keeping clean, dry bedding and potential animal safety concerns.

- AMS removed the requirement to always provide feed and water after 12 hours of transport. The final rule includes a general requirement that operations must describe how they maintain organic management and animal welfare when transport time exceeds 8 hours. This time period better aligns with third-party animal welfare certifications. Additionally, AMS added the phrase “measured from the time all animals are loaded onto a vehicle until the vehicle arrives as its final destination” to clarify that transport time does not include unloading and offloading, which commenters noted could take three to four hours.

- AMS removed specific reference to FSIS Directives 6100.3 and 6910.1 at § 205.242(c)(1), as newer versions of these Directives could someday supersede these Directives. Instead, the final rule requires that slaughter operations comply with “applicable FSIS Directives.”

- In response to public comment, AMS replaced in § 205.242(c)(3)(ii) the term “ritual slaughter” with “religious (or ritual) slaughter” and exempted this method of slaughter from some requirements.

Responses to Public Comment

AMS received many public comments from stakeholders across the organic industry discussing this section of the proposed rule. The majority of comments generally supported AMS's proposed revisions. Many commenters requested further clarification of the proposed changes, particularly regarding the requirement for feed and water after 12 hours of transport and verification of compliance with slaughter requirements.

Transport Time and Water and Organic Feed Requirements

(*Comment*) AMS received many comments stating that it would be very difficult to meet the proposed requirement to provide water and organic feed if transport time exceeded 12 hours. Commenters noted that transport times could exceed 12 hours due to unforeseen circumstances such as weather, natural disasters, traffic, and equipment breakdown. Comments discussed the practical challenges of stopping and offloading animals to provide them with water and feed en

route to a destination. For example, these comments noted the challenge of locating and accessing a certified organic stopping point to unload and feed livestock. They also noted that offloading animals after crossing state lines would activate other federal requirements such as FSIS testing. Commenters also discussed the potential added stress that stopping and unloading (and reloading) could cause animals compared to continuous transportation to the destination. Other comments noted that loading and unloading could take up to four hours and that a 12-hour limit would only allow for 8 hours of transport. Some commenters recommended changing the time threshold to align with the standards of third-party certification labels while others requested a prohibition on all transport beyond a specific time cap.

Another comment stated that the time restriction would result in sourcing lesser quality pullets for their operation, which could potentially reduce production and/or increase costs. Some commenters stated that this requirement could disproportionately impact small-scale producers and would not be neutral in terms of scale or geographic location. Comments also noted that the 12-hour feed requirement would conflict with slaughter requirements to not feed 24 hours prior to slaughter. Several comments from certifiers, organic livestock producers, and a trade association requested that the rule not prescribe feed and water during transport but require operations to demonstrate organic management and animal welfare, which may include feed and water.

(*Response*) AMS agrees that the proposed water and organic feed requirement may be difficult for some operations to meet. To provide greater flexibility for certified operations, the final rule removes the specific requirement in § 205.242(a)(5) for water and organic feed when transportation exceeds 12 hours. Instead, livestock operations must explain in their OSP how they will maintain organic management and animal welfare if transport time exceeds eight hours. AMS agrees with commenters that this eight-hour threshold better aligns with existing third-party animal welfare standards. To address commenters' concerns about loading time, AMS has also clarified that transport time is measured from the time all animals are loaded onto a vehicle until the vehicle arrives at its final destination. AMS understands that some certifying agents already require livestock operators to explain in their OSP how they will

provide feed and water if traveling over 12 hours. Under this rule, AMS expects operators to explain in their OSP how they will maintain organic management and animal welfare, which may include descriptions of access to feed and water. Certifying agents and inspectors may use this information to assess whether the management plans satisfy this rule's requirements to maintain animal welfare during transport. AMS agrees with commenters that providing feed and water are examples of how an operation may maintain animal welfare, but the rule does not explicitly require the provision of feed and water to alleviate the challenges described above.

(Comment) Some commenters noted that day-old chicks, which do not require additional feed since they have an absorbed yolk sac, often travel more than 12 hours from the hatchery to the final destination. Furthermore, commenters stated that providing chicks feed and water would be especially burdensome as well as time-consuming and requested AMS exempt day-old chicks from the requirement.

(Response) AMS acknowledges that day-old chicks are sustained by their yolk sac and do not require feed or water for extended time periods. While most day-old chicks are not organic (organic management of poultry is required no later than the second day-of-life at § 205.236), AMS recognizes that some chicks are certified organic and can travel for 12 hours or more without feed and water. The final rule does not require feed or water during transport. Instead, operations must “describe how organic management and animal welfare will be maintained” during transport. As for all species and types of livestock, an operation should describe in its OSP how it ensures the welfare of day-old chicks during transport, which may include feed and water.

Fitness for Transport

(Comment) Several comments requested clarification and additional criteria regarding an animal's fitness for transport. They asked AMS to add categories of animals that should not be transported, such as newborn, pregnant, and recently calved animals. Others asked AMS to align the rule with international transport fitness standards or third-party animal welfare standards.

(Response) AMS recognizes commenters' request for additional clarify on an animal's fitness for transport. The final rule states that “all livestock must be fit for transport.” The rule also addresses transport of young or newborn calves in at § 205.242(a)(2)(i): “calves must have a dry navel cord and

be able to stand and walk without human assistance.” Additionally, AMS added the term “seriously crippled” to § 205.242(a)(2)(ii) to clarify that seriously crippled and non-ambulatory animals must not be transported for sale or slaughter. Seriously crippled is a commonly used and understood industry term that will help operations and certifying agents understand the scope of fitness for transport. AMS acknowledges some commenters' desire for the rule to align with more prescriptive third-party animal welfare standards. However, AMS believes that the current regulatory text is sufficient to ensure the humane transport of organic livestock, while also providing operations with necessary flexibility to meet the standard.

Bedding in Transport

(Comment) Several comments discussed the proposed rule's requirement to use bedding during transport. Some comments expressed concern that it may be difficult, impossible, or even dangerous (e.g., slip risk for livestock) to provide bedding in some situations. Others pointed out that operations need flexibility to use bedding in a way that is appropriate to the type of livestock and transport. Others mentioned that “clean” bedding is subjective and may not be necessary or feasible given the variability of transport time, transport type, and number and type of livestock.

(Response) AMS recognizes that in certain circumstances, bedding is not ideal for trailer transport and that, in some cases, keeping clean, dry bedding is impossible or even unsafe (e.g., slip risk for certain animals). Therefore, the final rule allows for flexibility by requiring that bedding must be provided “as needed” and “as appropriate to the species and type of transport.” This will allow operations to provide bedding that is beneficial to animal welfare but also appropriate to the type of livestock and transport, reducing undue burden and possible risk to livestock.

Emergency Plans

(Comment) A few comments requested clarification on the conditions under which an emergency plan is required and how certifying agents should evaluate such plans.

(Response) The final rule requires emergency plans to address animal welfare problems that may occur during transport. Such emergency plans must describe how animal welfare will be maintained in emergencies, such as what to do if livestock escape during transport, or how to euthanize an animal injured during transport.

Shipping and/or receiving operations must also have these emergency plans. Like all other applicable production and handling requirements in subpart C of the organic regulation, operations should describe their emergency plans in their OSP. To evaluate if an operation's emergency plans comply with the rule, certifying agents should review this part of the OSP and verify its use during on-site inspection.

Identification of Livestock in Transport

(Comment) Several commenters noted that some operations may not currently meet the proposed requirement in § 205.242(a)(1) that animals be clearly identified during transport and asked AMS to consider removing this requirement.

(Response) AMS is retaining this requirement in the final rule because identification and traceability of all organic agricultural products, including livestock, is necessary to maintain traceability within supply chains and demonstrate organic integrity. The organic regulations require all certified operations to include audit trail documentation for the organic products they handle (§ 205.103(b)(3)). Audit trail documentation includes records that are “sufficient to determine the source, transfer of ownership, and transportation of any agricultural product labeled as [organic]” (see definition of audit trail at § 205.2).

Additionally, operations are already required to “maintain records sufficient to preserve the identity of all organically managed animals, including . . . transitioned animals” (§ 205.236(c)). This includes preserving the identity of organic livestock during transport. Therefore, this rule's requirement to clearly identify and trace organic livestock during transport reinforces existing recordkeeping and traceability requirements, which are vitally important to maintaining and demonstrating the integrity of organic livestock.

Recordkeeping and Compliance

(Comment) One commenter argued that it is difficult to precisely track and record exact times that livestock spend in transit and that it is burdensome for livestock transporters to complete additional recordkeeping to verify that animals have been in transit for less than 12 hours.

(Response) AMS revised § 205.242(a)(5) to no longer require feed and water when transport time exceeds 12 hours. Instead, this section requires that operations describe in their OSP how organic management and animal welfare will be maintained during

transport that is longer than eight hours. Because this change requires operations to plan and prepare for long transport times, rather than precisely track and record transport times, AMS does not believe this requirement will add repetitive recordkeeping burden for operations or transporters.

(*Comment*) Several commenters were concerned that the rule's limit on transport times may conflict with U.S. Department of Transportation (DOT) Federal Motor Carrier Safety Administration's "hours of service" regulations and/or the Twenty-Eight Hour Law, which requires that animals transported for 28 consecutive hours must be offloaded for at least five consecutive hours to get feed, water, and rest.⁸⁸

(*Response*) After reviewing the appropriate DOT regulations and law, AMS does not believe that the rule's requirements conflict with other statutes or regulations pertaining to transport of organic livestock. The rule requires that operations describe in their OSP how organic management and animal welfare are maintained when transport time exceeds eight hours. Because the rule requires operations to plan and prepare for long transport times, rather than precisely track and adhere to transport times, this requirement does not pose a compliance conflict with the Twenty-Eight Hour Law and does not interfere with a driver's ability to comply with the DOT Hours of Service regulations. Operations transporting organic livestock must still comply with the Twenty-Eight Hour Law and any other applicable livestock transport statute or regulation.

Other Statutory and Regulatory Slaughter Requirements

(*Comment*) Several comments expressed concern that the rule's reference to other statutes and regulations in § 205.242(b) and (c) would require certifying agents to verify and enforce requirements beyond the scope of organic production and handling. Other commenters asked how certifying agents should initiate actions to suspend a facility's organic certification if slaughter records reveal that an operation has not taken corrective actions required by FSIS.

(*Response*) The rule requires that operations comply with other statutory and regulatory requirements related to the humane slaughter of livestock. AMS chose to reference these existing requirements because operations are already following these requirements. This prevents undue burden for

operations to understand and comply with additional slaughter requirements unique to organic production and handling.

Certifying agents and organic inspectors are not expected to determine an organic slaughter facility's compliance with these laws and regulations, as that is the responsibility of government regulatory authorities such as FSIS. However, organic slaughter facilities must provide records of noncompliance and corrective actions that resulted from FSIS regulatory and enforcement action. These FSIS records are a valuable source of additional information that certifying agents can use to determine an operation's compliance with the organic regulation and this rule's animal welfare requirements.

Medical Treatment and Humane Euthanasia Linked To Transport and Slaughter

(*Comment*) One comment noted that § 205.242(a)(2)(ii) requires medical treatment or euthanasia prior to transport but does not explicitly require this upon arrival at a slaughter facility.

(*Response*) Although the rule does not explicitly require medical treatment and euthanasia at this point, the rule more generally requires that certified operations provide humane medical treatment and appropriate use of euthanasia at all times (see § 205.238(a), (b), and (e)). In this case, the certified slaughter facility, upon receiving a sick or injured animal, is responsible for that animal's welfare and must provide the appropriate medical treatment or humanely euthanize the animal.

F. Implementation and Compliance Dates for the Final Rule

In the proposed rule, AMS requested public comments on the most appropriate and feasible implementation approach for the final rule. AMS also proposed timeframes for various aspects of the rule and specifically requested comments on two implementation options, namely 5 years or 15 years, for the outdoor space requirements for layer operations. AMS also invited comments on implementation timelines other than those proposed by AMS.

For the final rule, AMS selected an implementation approach that requires compliance with the final rule as described below. Implementation or compliance dates are calculated from the effective date of the final rule; the specific dates that correspond with the descriptions below are listed in the **DATES** section at the beginning of this document.

Certified operations must comply with the requirements of the final rule within one (1) year from the effective date, except:

(a) Organic broiler operations already certified or certified within one year following the effective date of the final rule have an additional four years (*i.e.*, five years from the effective date) to comply with the indoor and outdoor stocking density requirements for broilers in §§ 205.241(b)(10) and (c)(6), and the outdoor space requirements related to soil and vegetation in § 205.241(c)(2).

(b) Organic layer operations already certified or certified within one year following the effective date of the final rule have an additional four years (*i.e.*, five years from the effective date) to comply with the outdoor space requirements for layers concerning outdoor stocking density, soil, and vegetation in §§ 205.241(c)(2) and (4)–(5).

(c) Organic avian operations already certified or certified within one year following the effective date of the final rule have an additional four years (*i.e.*, five years from the effective date) to comply with the applicable exit area requirements for avian operations in § 205.241(b)(4).

Operations applying for organic certification more than one year after the rule's effective date will need to comply with all the rule's requirements to become certified organic. AMS discusses and responds to public comments received on implementation of the final rule below.

Response to Public Comment: Implementation for Layer Operations

(*Comment*) AMS received many public comments about the implementation timeline for the outdoor requirements for layer operations, including many that supported alternative implementation timeframes (not Option 1 or Option 2 proposed by AMS). The majority of those commenters requested the shortest timeline possible—either an immediate implementation or a one-year implementation period. Nearly all comments argued that 15 years would be an excessively long implementation period for the final rule. Commenters stated that producers are already familiar with the proposed requirements and that consumers should not need to wait for products to meet their expectations. Commenters pointed out that many organic producers already comply with OLPS's outdoor access standards, as they have understood those standards to be what was intended in the existing organic regulations. They

⁸⁸ 49 U.S.C. 80502.

felt it would be unfair to allow non-compliant producers 15 more years to benefit from cheaper production systems. Other comments noted that producers should have expected the requirements because of the regulatory history of the rule. Comments also emphasized the widespread support of the proposed rule and noted an immediate need to remedy the imbalance in the marketplace.

Several comments wrote in support of the five-year implementation option (Option 1) for outdoor requirements for layer operations. These comments generally supported swift implementation, with many indicating that five years should be the maximum amount of time that AMS allows for producers to comply with the final rule. Many comments also stated that extending implementation of this rule past five years would erode trust in the organic label and contribute to further market failure.

(Response) Despite the broad popularity of an implementation period shorter than Option 1 (e.g., immediate or one-year period), AMS has determined that the most appropriate implementation period for the outdoor space requirements for layer operations is five years. The Regulatory Impact Analysis that accompanies this final rule reflects this timeframe for the purposes of calculating the costs and benefits of this rule. AMS recognizes that a very brief implementation period would most quickly resolve the widely divergent outdoor layer practices that currently exist among organic layer operations. However, some currently certified organic operations will need to acquire land, build new facilities, and transition nonorganic land to organic production to meet the requirements of the final rule. Many of the comments favoring longer implementation periods highlighted these costs or the ability to recoup costs as a reason to allow for more time.⁸⁹ AMS estimates that up to 70% of production will need to modify facilities or exit.⁹⁰

⁸⁹ For example see: <https://www.regulations.gov/comment/AMS-NOP-21-0073-29374>; <https://www.regulations.gov/comment/AMS-NOP-21-0073-27673>.

⁹⁰ Because larger operations, like aviaries, tend to use porches, the level of production using porches is higher than the number of producers. Originally AMS had estimated this to be approximately 90%, but industry feedback during the OLPP rulemaking process stated that it was closer to 70% with the three other practices being about equal in the marketplace. However, during the OLPS Proposed Rule comment period, the only information AMS identified related to the number of operations with porches would indicate less than 37.7% of production has porches. See: <https://www.regulations.gov/comment/AMS-NOP-21-0073-39082>.

Because of these costs, AMS has determined that allowing currently certified organic layer operations (and operations obtaining certification within one year of the effective date) five years from the effective date to comply with the final rule is warranted and appropriate and would not cause excess burden. AMS also recognizes that some businesses will require capital to meet the requirements of the final rule, and time is required to adjust business and operational practices. The final rule adopts a five-year implementation for layer operations because AMS believes it fulfills the OFPA's purpose to ensure consistency in standards in a timely manner, while also providing sufficient time for operations to complete activities to remain in compliance with outdoor space requirements. With five years to implement the outdoor requirements, layer operations will have sufficient time to acquire and transition land for outdoor areas (land requires a minimum of three years to transition to organic) and to build or modify facilities to meet the new requirements. If an operation chooses not to meet the requirements after five years, it may stop operating as organic or switch to another market.

In response to comments that organic operations should have been aware of possible changes to the requirements (and should require less time to comply), AMS recognizes there is a lengthy regulatory history associated with this rule, as evidenced by the NOSB recommendations on these topics starting as early as 2009. However, AMS does not expect that producers should have anticipated the requirements in this final rule and modified their practices, nor could they have known the specific requirements of this final rule. Therefore, AMS believes that the five-year implementation period for the final rule is both appropriate and reasonable.

(Comment) Many comments suggested that three years would be sufficient for existing organic layer operations to come into compliance with the rule without undue hardship. Comments noted that three years is the typical transition timeframe for operations to make capital and management investments to become certified organic. Some comments asked that AMS allow currently certified operations three years to comply, as this aligns with the three-year transition period for an operation transitioning to organic production. These commenters stated that existing organic layer operations should be treated the same as

any new operation that seeks certification. A related comment suggested that AMS set a three-year compliance date, but allow an additional fourth year only for operations that could demonstrate they had made capital purchases and had been actively seeking certification prior to the final rule's effective date.

(Response) AMS recognizes that transition of land (for outdoor access) only requires three years and that some operations may be able to comply with this final rule within three years. Additionally, AMS recognizes that many organic operations have made significant investments in facilities that are currently certified by USDA-accredited certifying agents as meeting the current requirements. While three years may be sufficient for some operations to meet the requirements of the final rule, other operations could require more than three years to comply with the final rule. For example, operations may need to identify and acquire land, research, plan, build facilities, transition land for three years (for outdoor space), and secure certification. In consideration of the time required to complete these activities, AMS is providing for a five-year implementation period to allow layer operations to comply with the outdoor space requirements in this final rule.

(Comment) Very few commenters wrote in support of a 15-year implementation for the outdoor requirements for layer operations. These commenters argued that this timeframe would better coincide with the 15-year IRS depreciation schedule for single-purpose agricultural buildings (i.e., facilities that provide outdoor access via porches). They argued that operations built their facilities in "good faith" and should be able to realize the benefits of those investments. AMS also received comments suggesting a slightly shorter implementation timeline of 12.5 years. Similarly, these comments stated that some producers have made significant investments in systems that were permitted under previous policy interpretations and that the timeframe would allow producers to depreciate the value of existing facilities according to IRS depreciation schedules.

On the other hand, most comments were strongly opposed to AMS adopting a 15-year implementation for the final rule. Comments noted that a 15-year implementation period would perpetuate the existing double standard, further erode consumer trust in the organic label, and make the work of organic certifiers difficult. AMS believes this length of implementation would

contradict OFPA's purpose to assure consumers that organic products meet a consistent standard. Another noted that a 15-year implementation period would be exceedingly long and be at odds with the purpose of the statute. Others noted that the long timeframe would extend the economic burden and costs incurred by producers that already comply with the requirements in the final rule. These costs include costs of obtaining extra labels (e.g., third-party animal welfare certifications), extra advertising and marketing expenses (to differentiate their eggs under the same label), and extra expenses on the production level (such as the cost of maintaining appropriate outdoor pasture). Others argued that organic certification is a voluntary program, and that AMS should not allow additional time to operations that cannot meet the requirements that consumers expect. As noted by a commenter, it is a privilege afforded by the organic label's robust standards and certification, not a right, to sell into the organic market.

(Response) AMS has chosen not to adopt a 15-year or a 12.5-year implementation period for layer requirements in the final rule. Instead, AMS is providing five years for layer operations to comply with outdoor space requirements. AMS recognizes that a five-year implementation may not allow some operations to fully depreciate the value of their facilities. However, AMS is addressing several concerns by issuing this final rule, and mitigation of economic impacts to operations certified prior to the effective date of this final rule is only one of AMS's objectives. AMS is also seeking to balance any impacts with an implementation timeframe(s) that will remedy the inconsistent interpretation and enforcement of the organic regulations. AMS appreciates that a long implementation timeframe would be least impactful for some operations, but AMS is not selecting this approach because it would likely undermine AMS's other objectives in this final rule. Specifically, this option would pose a continued risk to consumer confidence in the organic label.

Response to Public Comments: Implementation for Broilers and New Entrants, Exit Areas

(Comment) Several comments from broiler operations stated that if AMS adopted a space requirement for broilers of 5.0 lbs. per square foot that they would need more than three years to comply with the requirement, which is the timeframe in the proposed rule. These commenters noted that a 5.0 lbs. per square foot stocking density is less

than the current industry standard, and currently certified operations would need to build new poultry houses to produce at the same level and meet the requirement. Commenters were not necessarily opposed to the proposed requirement but requested five years to comply with the requirement rather than the three years proposed.

(Response) The final rule provides five years for broiler operations to comply. AMS considered this rule comprehensively and determined that a stocking density of 5 lbs. per square foot is preferred over alternatives. See additional discussion on this topic in the "Responses to public comment" section of Section D, "Avian Living Conditions." AMS recognizes that broiler operations will likely require five years to comply with the final rule's stocking density requirements, as comments indicate that current practices exceed the maximum stocking rate required by this final rule. In response to comments, AMS is providing five years for broiler operations to comply with the indoor and outdoor stocking density requirements of the final rule. AMS expects this timeframe will give operations time to source, acquire, and potentially transition new land (a three-year process). Further, while not the primary reason for AMS selecting this timeframe, the timeframe aligns that for broilers with that of layer operations, and in turn, simplifies the certifying agents' implementation of the rule.

Additionally, new entrants that become certified within one year of the final rule's effective date will have until five years after the effective date to comply with all requirements. AMS is providing this additional flexibility in recognition of operations that may have started the process to become certified organic before publication of this final rule. The implementation timelines for broiler operations will allow operations to adjust practices to meet the requirements without causing disruption to the market.

(Comment) Some comments supported the general timeline for allowing five years for implementation but requested that AMS provide less flexibility for new entrants. These commenters generally suggested that operations certified any later than one year after the final rule's effective date should be required to comply with all the requirements to achieve certification. In the proposed rule, AMS described one implementation schedule that would have required new entrants in the first three years (after the effective date of the final rule) to comply with the

final rule in five years from the effective date.

(Response) As suggested by many comments, the final rule provides new entrants certified within the first year of the final rule's effective date with five years (from the effective date) to comply. Operations certified any time after one year following the rule's effective date will need to comply with the final rule to achieve certification. AMS believes that this timeline for new entrants is reasonable, as it should allow operations that have been planning to become certified (but are not yet certified) with an extended period to comply with the final rule. At the same time, a one-year period (rather than a three-year period) may reduce the amount of organic product on the market that does not comply with all requirements in the final rule, and better reflects AMS's objective to assure consumers that organic products meet a consistent standard.

(Comment) Some comments on implementation timeframes indicated that the requirements for exit areas should also be on a delayed implementation schedule, along with outdoor space requirements.

(Response) AMS is clarifying that avian producers will have five years to comply with the requirements related to indoor space requirements related to exit areas at § 205.241(b)(4). See a discussion of this requirement in the AVIAN LIVING CONDITIONS section above. The requirements for exit areas at § 205.241(b) are included within "indoor space requirements" in the organization of the rule, but AMS recognizes these requirements are inseparable from outdoor space requirements (§ 205.241(c)), which may be implemented over a five-year period for layer and broiler operations. AMS is providing operations with five years to implement the exit area requirements at § 205.241(b). This time should allow the necessary time for certifying agents to assess operations for compliance with the requirement and allow the necessary time for operations to modify practices and facilities, as necessary, to meet the requirement. Within one year of the effective date of the final rule, all operations, except for layer operations (which have a five-year implementation period for outdoor space requirements), must still comply with requirements described at § 205.241(c)(1) that require access to outdoor space and door spacing that promotes and encourages outside access for all birds on a daily basis.

G. Severability

In this final rule, we adopt additional organic standards for livestock. The constituent elements each operate independently to ensure consistent organic livestock standards. Were any element of this scheme stayed or invalidated by a reviewing court, the elements that remained in effect would continue to provide consistent organic livestock standards. For instance, organic consumers have long benefitted from Organic Rules governing organic production and handling. The provisions we adopt today would continue to ensure that organic products meet a consistent standard even if they did not extend to all organic livestock sectors. Similarly, the different livestock care practices regulated under this rule each pose distinct concerns for different aspects of organic livestock production. Finally, the benefit of the provisions for customers of any organic livestock product does not hinge on the same standards applying to other organic livestock products. Accordingly, we consider each of the provisions adopted in this final rule to be severable, both internally and from other provisions at 7 CFR part 205. In the event of a stay or invalidation of any part of any provision, or of any provision as it applies to certain organic livestock handling or production practices, USDA's intent is to otherwise preserve the rule to the fullest possible extent.

Accordingly, AMS has added a severability provision in § 205.391 of 7 CFR part 205.

V. Regulatory Analyses

A. Summary of Economic Analyses

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (the Congressional Review Act), the Office of Information and Regulatory Affairs has determined that this action meets the criteria set forth in 5 U.S.C. 804(2).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has been designated as a significant regulatory action (Sec. 3(f)(1) under Executive Order 12866, as updated by Executive Order 14094, and therefore, has been reviewed by OMB.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market.

AMS has prepared a Regulatory Impact Analysis (RIA) and Regulatory Flexibility Analysis (RFA) to address these objectives. The following discussion summarizes the economic analysis AMS performed to estimate the impact of this rule. A complete economic analysis is available at <https://www.regulations.gov/>. You can access the economic analysis by searching for document number AMS–NOP–21–0073.

Regulatory Impact Analysis

AMS's economic impact analysis describes the benefits and costs of the rule, with a focus on organic egg and broiler production, which AMS determined will drive the benefits and costs of this rule. We anticipate many of these producers will face additional production costs in acquiring outdoor space for layers and indoor space for broilers and will likewise generate

benefits through increased consumer willingness to pay for these newly acquired organic poultry attributes. As stated above in the EXECUTIVE SUMMARY, AMS anticipates the annualized 20-year net benefit of this rule will be \$59.1–\$78.1 million. The following section will summarize some of the assumptions and methods of our analysis. For more detail, see the Regulatory Impact Analysis.

To calculate benefits and costs in the organic egg market, AMS assessed producers' current conditions and considered how producers may respond to the requirements. For organic layers, the key factor affecting compliance is the availability of land to accommodate all the birds at the required stocking density. Producers that are not already in compliance with the rule's requirements are most likely to either acquire land or exit the organic market. (They could reduce flock size to accommodate the new spacing requirements or cease production, but AMS considers these outcomes unlikely as they are less profitable than either of the alternatives.)

AMS used research that estimated consumers' willingness to pay for layers' outdoor access between \$0.16 and \$0.25 per dozen eggs.⁹¹ By multiplying the midpoint of the low (\$0.16) and high (\$0.25) points of that range by the projected number (in dozens) of organic eggs produced by layers that are estimated to newly have outdoor access as a result of this rule, AMS estimates that the 20-year annualized benefits for layer operations will range between \$76.6–\$89.6 million.

We estimate the annual costs for organic egg production are \$28.1–\$32.9 million (discounted annualized value) if 50% of egg production in 2023 transitions to the cage-free egg market by the 5-year compliance date, with an additional temporary economic welfare loss of \$8.7–\$16.0 million.

TABLE 3—EXECUTIVE SUMMARY: UNIT COSTS AND BENEFITS FOR EGGS AND BROILERS

	Eggs dozen	Broilers
Unit Benefits and Costs		
Avg. Benefit Per Unit (Consumer Willingness to Pay)*	0.205	0.14/lb
Cost Change in Average Total Cost of Production Per Unit	0.06	0.02/lb

⁹¹ Yan Heng, et al., (2013). Consumer Attitudes toward Farm-Animal Welfare: The Case of Laying Hens. *Journal of Agricultural and Resource Economics* 38(3):418–434.

TABLE 3—EXECUTIVE SUMMARY: UNIT COSTS AND BENEFITS FOR EGGS AND BROILERS—Continued

	Eggs dozen	Broilers
Net Benefit per Unit Gaining Outdoor Access	0.145	0.16/lb
Total Annualized Benefits and Costs		
20-Year Annualized Discounted Benefits (3%) (\$1,000) *	\$89,564	\$35,641
20-Year Annualized Discounted Benefits (7%) (1,000) *	76,641	31,467
20-Year Annualized Discounted Costs (3%) (1,000)	32,893	5,491
20-Year Annualized Discounted Costs (7%) (1,000)	28,147	4,848
20-Year Annualized Discounted Economic Welfare Loss (3%) (1,000)	8,709	0
20-Year Annualized Discounted Economic Welfare Loss (7%) (1,000)	16,046	0
Total Annualized Net Benefits		
20-Year Annualized Discounted Net Benefits (3%) (\$1,000)	\$47,962	\$30,149
20-Year Annualized Discounted Net Benefits (7%) (1,000)	32,448	26,619
One-time Domestic Information Collection Cost (1,000)		4,930

* Layer benefit reports the mid-point benefits of the two estimates (\$0.16/dz. and \$0.25/dz.).

In the organic broiler industry, AMS assumes that organic broiler producers will build enough new facilities to comply with the stocking density requirements and remain in the organic market at their current production level.

To calculate the benefits for broilers, AMS reviewed relevant research and established a willingness to pay of \$0.14 per pound of chicken from birds with more indoor space.⁹² Based on this, AMS estimates that the annual discounted benefits for broiler operations will range between \$31.5–\$35.6 million. We estimate the annual costs for organic broiler production at \$4.8–\$5.5 million. This reflects the costs of building additional housing to meet the indoor stocking density requirement. AMS considered several alternatives to this final rule, including different spacing and density requirements and alternatives to rulemaking altogether. These alternatives are discussed in more detail in the rule’s Regulatory Impact Analysis, but briefly, they are:

- *Guidance to the industry as an alternative to regulations*—Based on public comments to draft guidance that AMS published regarding outdoor access for poultry, AMS has determined the organic poultry market needs more prescriptive guidelines to clarify the intent of the outdoor access

⁹² Mulder, M., & Zomer, S. (2017). Dutch consumers’ willingness to pay for broiler welfare. *Journal of Applied Animal Welfare Science*, 20(2), 137–154. This estimate is adjusted for the context and reduced by the average observed premium difference between American and European consumers across all sustainable food products from Li, S., & Kallas, Z. (2021). Meta-analysis of consumers’ willingness to pay for sustainable food products. *Appetite*, 163, 105239.

requirements in the organic regulations.⁹³

- *Consumer education in lieu of rulemaking*—AMS has determined that a campaign to educate consumers would have limited effectiveness and would not fulfill NOP’s mandate under OFPA to assure consumers that organic products meet a consistent standard.

- *Alternative space and density requirements*—AMS considered a range of indoor stocking densities and outdoor space requirements. We compared NOSB recommendations with the standards of third-party animal welfare certifications and major organic trade partners like Canada and the European Union. We also considered the current operating conditions of organic producers and the risk of market disruptions if too many producers were forced out of the organic market. AMS balanced these competing interests in setting the standards for this final rule.

- *Implementation timeline*—AMS compared the costs and benefits of the two implementation options (5 years and 15 years). We determined that the 5-year option, despite slightly higher costs, resulted in greater net benefit annualized over 20 years than the 15-year option. Additionally, nearly all public comments found the 15-year option less preferable, with many stating that long implementation would erode their trust in the organic label. This public response indicates a financial risk that although we did not quantify, we did consider. AMS

⁹³ On October 13, 2010, AMS published a Notice of Availability of Draft Guidance and Request for Comments in the **Federal Register** (75 FR 62693). See Section D, “Organic Livestock Regulatory History,” for more detail.

concluded that a 5-year implementation is the most beneficial option.

AMS’s Regulatory Impact Analysis concludes that this rule is reasonably expected to provide a net benefit to the organic market. In addition, its provisions will ensure consistent standards as directed by OFPA and benefit consumers by reducing consumer welfare loss (*i.e.*, the difference in value between attributes—such as outdoor access—consumers think they are paying for and those they are actually receiving). Furthermore, these provisions help minimize the risk to consumer confidence in the organic label, which affects all organic markets, not just eggs and chicken. For further information on AMS’s economic analysis, see the Regulatory Impact Analysis for this rule.

Regulatory Flexibility Analysis

AMS also performed additional analysis to determine the rule’s impact to domestic small businesses including avian and mammalian livestock producers and slaughter facilities that currently hold or are pursuing USDA organic certification, as well as organic certifying agents. This analysis revealed that the cost of implementing this rule will fall on certified organic egg and broiler producers. AMS finds that these requirements will not add significant costs to other organic livestock sectors because these requirements seek to codify existing industry practices. AMS expects that most organic layer operations affected by this rule and about one third of all organic broiler operations are small businesses as defined by Small Business Administration criteria. AMS expects that the costs to comply with the outdoor space requirements will be

more burdensome for larger organic layer producers and they are more likely to transition to a cage-free label. These operations will require significantly more land and will be less likely to have that area available for expansion. For small egg producers, business revenues would need to be less than \$137,195 to \$154,922 per firm for the rule to cost more than 3% of revenue. For small broiler producers, business revenues would need to be less than \$117,456 to \$132,632 per firm for the rule to cost more than 3% of revenue. AMS also expects that organic producers may have some increased costs to meet the reporting and recordkeeping requirements that will be associated with this rule. These are described in the Paperwork Reduction Act section. Additionally, while certifying agents are small entities that will be affected by this rule, AMS does not expect these certifying agents to incur substantial costs as a result of this action.

A complete economic analysis of this rule is available at <https://www.regulations.gov/>. You can access this rule and the economic analysis by searching for document number AMS-NOP-21-0073.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations to avoid unduly burdening the court system. This rule cannot be applied retroactively. States and local jurisdictions are preempted under OFPA from creating programs of accreditation for private persons or state officials who want to become certifying agents of organic farms or handling operations. A governing state official would have to apply to USDA to be accredited as a certifying agent, as described in sec. 6514(b) of OFPA. States are also preempted under secs. 6503 through 6507 of OFPA from creating certification programs to certify organic farms or handling operations unless the state programs have been submitted to, and approved by, the Secretary as meeting the requirements of OFPA.

Pursuant to sec. 6507(b)(2) of OFPA, a state organic certification program that has been approved by the Secretary may contain additional requirements for the production and handling of agricultural products organically produced in the state and for the certification of organic farm and handling operations located within the state under certain circumstances. Such additional requirements must (a) further the purposes of OFPA, (b) not be inconsistent with OFPA, (c) not be

discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

In addition, pursuant to sec. 6519(c)(6) of OFPA, this rulemaking does not supersede or alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601–624), the Poultry Products Inspection Act (21 U.S.C. 451–471), or the Egg Products Inspection Act (21 U.S.C. 1031–1056), concerning meat, poultry, and egg products, respectively, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301–399), nor the authority of the Administrator of the Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136–136(y)).

OFPA at 7 U.S.C. 6520 provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

C. Executive Order 13132

Executive Order (E.O.) 13132 mandates that federal agencies consider how their policymaking and regulatory activities impact the policymaking discretion of States and local officials and how well such efforts conform to the principles of federalism defined in said order. This executive order only pertains to regulations with clear federalism implications.

AMS has determined that this rulemaking conforms with the principles of federalism described in E.O. 13132. The rule does not impose substantial direct costs or effects on States, does not alter the relationship between States and the federal government, and does not alter the distribution of powers and responsibilities among the various levels of government. States had the opportunity to comment on the proposed rule. No States provided public comment on the federalism implications of this rule. Therefore, AMS has concluded that this rulemaking does not have federalism implications.

D. Executive Order 13175

This final rule has been reviewed in accordance with the requirements of E.O. 13175, "Consultation and Coordination with Indian Tribal Governments." E.O. 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

AMS has determined that the targeted scope of this final rule does not have substantial direct effects on one or more Tribes; however, AMS continues to seek opportunities engaging Tribal nations on new rulemaking. Accordingly, AMS hosted a virtual Tribal consultation meeting on September 9, 2021, where the draft proposed rule was discussed with Tribal leaders. No questions or concerns were brought to AMS's attention about the proposed rule by any Tribal leaders at the meeting. Additionally, no public comments or form letter campaigns were received from Tribes expressing concern over Tribal implications of this rule. If a Tribe requests consultation in the future, AMS will work with the Office of Tribal Relations to ensure meaningful consultation is provided.

E. Civil Rights Impact Analysis

AMS has reviewed this rulemaking in accordance with the Department Regulation 4300–4, Civil Rights Impact Analysis, to address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. This rule will affect organic livestock producers; AMS determined that this rule has no potential for affecting organic livestock producers in protected groups differently than the general population of organic livestock producers.

Protected individuals have the same opportunity to participate in NOP as non-protected individuals. USDA organic regulations prohibit discrimination by certifying agents. Specifically, § 205.501(d) of the current regulations for accreditation of certifying agents provides that "No private or governmental entity accredited as a certifying agent under this subpart shall exclude from participation in or deny the benefits of NOP to any person due to

discrimination because of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status.” Section 205.501(a)(2) requires “certifying agents to demonstrate the ability to fully comply with the requirements for accreditation set forth in this subpart” including the prohibition on discrimination. The granting of accreditation to certifying agents under § 205.506 requires the review of information submitted by the certifying agent and an on-site review of the certifying agent’s client operation. Further, if certification is denied, § 205.405(d) requires that the certifying agent notify the applicant of their right to file an appeal to the AMS Administrator in accordance with § 205.681.

These regulations provide protections against discrimination, thereby permitting all producers, regardless of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status, who voluntarily choose to adhere to the rule and qualify, to be certified as meeting NOP requirements by an accredited certifying agent. This action in no way changes any of these protections against discrimination.

F. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA), AMS is requesting Office of Management and Budget (OMB) review and approval for a new information collection totaling 101,110 hours for the reporting and recordkeeping requirements contained in this final rule. OMB previously approved information collection requests associated with the NOP as OMB control number 0581–0191. With OMB approval, AMS intends to merge this new information collection (OMB control number 0591–0293) request into the previously approved NOP information collection request (OMB control number 0581–0191). Presented in the proposed rule (87 FR 48562, August 09, 2022) and reiterated below, AMS describes and estimates the annual burden (*i.e.*, the amount of time and cost of labor) for entities to prepare and maintain information to participate in this voluntary labeling program (USDA organic certification). OFPA provides authority for this action.⁹⁴

⁹⁴ USDA OFPA: The Organic Foods Production Act of 1990 (OFPA), 7 U.S.C. 6501–6524, is the statute from which the Agricultural Marketing Service (AMS) derives authority to administer the National Organic Program (NOP), and authority to amend the regulations as described in this rulemaking. <https://uscode.house.gov/>

Title: National Organic Program: Organic Livestock and Poultry Standards.

OMB Control Number: 0581–0293.

Expiration Date of Approval: Three years from OMB date of approval.

Type of Request: New collection.

Abstract

Information collection and recordkeeping are necessary to implement reporting and recordkeeping necessitated by amendments to standards for organic livestock and poultry production under the USDA organic regulations (§§ 205.238, 205.239, 205.241, and 205.242). This final rule clarifies and expands on existing USDA organic requirements to support consistent interpretation and enforcement of organic livestock standards. By doing so, it supports the purposes of OFPA, “to assure consumers that organically produced products meet a consistent standard” and to “establish national standards” for products marketed as organic, and to further facilitate interstate commerce of organic products (7 U.S.C. 6501). Additional information on the purpose and need for this rule is included in the BACKGROUND section of this rule.

Overview

All certified organic operations must develop and maintain an organic system plan (OSP) to comply with the USDA organic regulations (§ 205.201). The OSP must include a description of practices and procedures to be performed and maintained, including the frequency with which they will be performed. Under this final rule, organic livestock and poultry operations are subject to additional reporting requirements. The amendments to §§ 205.238, 205.239, 205.241, and 205.242 require livestock and poultry operations to provide specific documentation as a part of the OSP related to their production practices—including minimum space requirements, outdoor access, preventive health care practices (*e.g.*, physical alterations, euthanasia, parasite prevention plans), and humane transportation and slaughter practices. This documentation will enable certifying agents to make consistent certification decisions and facilitate fairness and transparency for the organic producers and consumers that participate in this market.

The PRA requires AMS to estimate the reporting and recordkeeping burden of rulemaking. Per § 205.103 of the USDA organic regulations, operations

[view.xhtml?path=/prelim@title7/chapter94&edition=prelim.](#)

must maintain and make available upon request such records as are necessary to demonstrate compliance. Sections 205.501(a)(9) and 205.510(b) also require that accredited certifying agents must maintain and make available upon request records that are necessary to verify compliance and maintain accreditation.

In response to overall public comments, and discussed in the overview of the rule above, AMS modified some reporting and recordkeeping requirements in this final rule. The final rule:

1. Removes the requirement for certified operations to record lameness in livestock.

2. Changes the ammonia monitoring requirements for poultry operations. Instead of recording ammonia levels monthly, operations must record ammonia levels weekly.

AMS expects that most of the reporting and recordkeeping burden for this rule will occur in the first year after the rule’s effective date. During this time, new operations, existing operations, exempt operations, inspectors, certifying agents, and State Organic Programs will implement the new reporting and recordkeeping requirements. The estimated reporting and recordkeeping burden is described in sections *Summary of Reporting Burden* and *Summary of Recordkeeping Burden*.

AMS expects ammonia monitoring to be the only increase in reporting and recordkeeping burden related to this rule for operations beyond the first year. Other reporting and recordkeeping requirements of this rulemaking would become routine to maintain after the first year and fall under existing reporting and recordkeeping burdens described in the NOP’s previously approved information collection request (OMB control number 0581–0191). Going forward, weekly ammonia monitoring will become a new routine activity that is not currently identified in the NOP’s approved information collection request. The new information that certified operations will be required to record and report for certification will assist certifying agents and inspectors with evaluating operations’ compliance with the USDA organic regulations.

Beyond the first year, AMS expects no increase in reporting and recordkeeping burden for inspectors and certifying agents currently involved in livestock certification, as certifying agents are required to observe the same reporting and recordkeeping requirements to maintain accreditation. These current reporting and recordkeeping requirements are routine activities that

are currently identified in the NOP's approved information collection request.

AMS expects this rule will impose only minor reporting and recordkeeping burden on exempt operations or State Organic Programs in the first year (see Table 4). Under the USDA organic regulations, some types of organic operations are exempt from the requirement for certification. This may include operations that sell less than \$5,000 in organic products annually. However, these exempt operations must maintain records of organic management to support their organic claims (§ 205.101(i)). State Organic Programs enforce OFPA in their state under the authority of AMS and must observe the same reporting and recordkeeping requirements to maintain this authority. The current reporting and recordkeeping requirements for exempt operations and State Organic Programs are routine activities that are currently identified in the NOP's approved information collection request.

Recording and reporting information is essential to the integrity of the USDA organic industry. A record trail is a critical tool that inspectors, certifying agents, State Organic Programs, and AMS use to verify that organic management practices meet the requirements of OFPA and its regulations. The collected information also supports AMS' mission, program objectives, and management needs by enabling AMS to assess the efficiency and effectiveness of the NOP. This information informs AMS decisions when evaluating compliance with OFPA and the USDA organic regulations, administering the NOP, and establishing the cost of the USDA organic program. Finally, this information supports AMS's direct enforcement and response to noncompliances with the USDA organic regulations.

Responses to Public Comment

In the proposed rule (87 FR 48562, August 09, 2022), AMS invited comments from the public on the estimated reporting and recordkeeping burden required because of this rulemaking. Public comments relating to the paperwork burden generally indicated that the reporting and recordkeeping burdens were low and that the proposed changes should be implemented.

AMS's responses to comments on five specific questions posed by AMS follow. First, AMS sought comments on:

Whether the proposed collection of information is necessary for the proper performance of the functions of the agency,

including whether the information would have practical utility.

(Comment) Two commenters indicated that the paperwork requirement associated with verifying transport times would be excessively burdensome for operations and also questioned if AMS had considered Department of Transportation (DOT) Hours of Service (HOS) regulations (49 CFR 385.1(k)(1)). AMS's complete response to this comment is discussed in more detail in TRANSPORT AND SLAUGHTER.

(Response) In the final rule, AMS removed a proposed requirement for organic food and water after more than 12 hours of transport. Instead, the final rule requires that operations describe how animal welfare is maintained if transport time exceeds eight hours. The final rule continues to require that operations keep records of transport times. AMS disagrees with comments that claimed transport records would be excessively burdensome. Long transport times for animals can negatively impact animal health and welfare if proper measures are not taken, and records are essential for certifiers to assess transport times. Furthermore, the rule does not specify or require an exact form or format for these records, to provide flexibility and reduce burden for producers to meet the requirement.

AMS also requested comments on:

The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

(Comment) A commenter indicated that implementation of the new requirements of this rulemaking will take longer than one year. AMS's response to this comment and other comments regarding the implementation timeline for this rulemaking is discussed in section IV.F, IMPLEMENTATION AND COMPLIANCE DATES. This commenter also indicated that the cost of this new burden will be higher than what was estimated in the proposed rule. They stated that this is because livestock inspectors collect more than the \$30.70 per hour rate reported in the proposed rule. Finally, the commenter indicated that additional reporting and recording at annual organic inspections was not fully accounted for, implying that inspections will take longer than AMS estimated.

(Response) In the proposed rule, AMS estimated inspector wages and benefits by referencing data from the U.S. Bureau of Labor Statistics on Agricultural Inspectors (Standard Occupational Classification (SOC) code

45–2011), and average civilian employer compensation costs.⁹⁵ ⁹⁶ The commenter did not propose a different wage rate for inspectors that AMS could verify, nor did they suggest a different estimate of how long inspections will take to account for the new requirements. Therefore, AMS has not changed the methods used to estimate wages and benefits. However, in this final rule, AMS has updated the wages, benefits, and data on the number of operations (new, existing, and exempt), certifying agents, and inspectors to update the reporting and recordkeeping burden. The estimates of reporting and recordkeeping burden are discussed in sections *Summary of Reporting Burden* and *Summary of Recordkeeping Burden*.

Additionally, AMS asked for comments on, "Ways to enhance the quality, utility, and clarity of the information to be collected."

(Comment) A commenter stated that AMS should reduce the paperwork burden on organic operations in areas where the reduction would not negatively impact animal welfare or overall compliance with the USDA organic regulations. The commenter did not state what portion(s) of the proposed reporting and recordkeeping requirements were unnecessary.

(Response) Under the PRA (44 U.S.C. 3501–3520) and in response to the comment, AMS has sought regulatory options that minimize paperwork burden. For example, AMS removed a specific requirement that would have required producers to keep detailed records related to lameness in a herd.

AMS also sought comments on:

Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

(Comment) A commenter stated that poultry stocking density definitions and standards should refer to the number of animals in addition to the weight. Other commenters also stated that requiring slaughter facilities to provide AMS with

⁹⁵ U.S. BLS Inspectors: Bureau of Labor Statistics. Mean hourly wage for Agricultural Inspectors (Standard Occupational Classification (SOC) code 45–2011) was \$22.80. *Occupational Employment and Wage Statistics*. "May 2021 National Occupational Employment and Wage Estimates United States." Published May 2021. https://www.bls.gov/oes/current/oes_nat.htm#top.

⁹⁶ U.S. BLS Benefits: Bureau of Labor Statistics. Domestic benefits were reported at 31 percent of total average civilian employer compensation costs. *Economic News Release. Employer Costs for Employee Compensation Summary*. "Employer Costs for Employee Compensation December 2022." USDL–23–0488. Published March 17, 2023. <https://www.bls.gov/news.release/ecec.nr0.htm>.

any noncompliance records or corrective actions issued by the USDA Food Safety and Inspection Service (FSIS) would be duplicative and unnecessary. They stated that FSIS inspectors are specifically trained to understand the Poultry Products Inspection Act (PPIA) and the Verification of Good Commercial Practices for Poultry, and therefore, FSIS should continue to oversee poultry slaughter, not AMS. Finally, they stated that requiring operations to report this information would possibly create jurisdictional issues between FSIS and AMS.

(Response) Organic slaughter requirements and AMS's justification for these regulatory changes are described in Section IV.E, TRANSPORT AND SLAUGHTER. As described in that section, organic certifying agents and inspectors are not expected to determine an organic slaughter facility's compliance with these laws and regulations, as that is the responsibility of other government regulatory authorities (such as FSIS). However, organic slaughter facilities must provide records of noncompliance and corrective actions that resulted from FSIS regulatory and enforcement action. These FSIS records are a valuable source of information that certifying agents can use to determine an operation's compliance with the organic regulation and this rule's animal welfare requirements. AMS has not changed the estimation of reporting and recordkeeping burden for the new information collection requirements of this rulemaking based on these comments.

Finally, AMS requested comments on its estimates and assumptions:

AMS estimates that the total number of certified organic operations will grow by 5.6% annually, based on the increase in operations recorded in INTEGRITY during the last 12 months. Is this a reasonable and accurate projection of future growth, given the additional burdens imposed by this proposed rulemaking?

(Comment) A few commenters expressed concern with the estimated future growth presented in the proposed rule. One stated that the proposed changes will impose additional financial burdens with little benefits to organic poultry operations. Commenters expressed concern that the number of organic operations would decrease rather than increase.

(Response) AMS disagrees with the comment that this rulemaking will have little benefit on organic poultry operations. This rule clarifies and expands on regulations to support consistent interpretation and

enforcement of organic livestock and poultry standards. The final rule specifies requirements for outdoor space (per bird), access to outdoor space from poultry houses (exit areas), and indoor thresholds for ammonia gas. The rule also elaborates on the current standards (7 CFR 205.239) related to situations that warrant temporary confinement of animals, among other requirements.

AMS investigated the concern that organic operations will decrease and reevaluated the data used to estimate the growth of the organic livestock industry. In the proposed rule, data on overall organic operations was used to calculate an estimated growth rate. In response to comments, AMS refines the data in this final rule to focus on organic livestock operations. AMS searched organic livestock operations listed in the Organic Integrity Database on January 01, 2022, and January 01, 2023.⁹⁷ Based on this data—5,445 certified livestock operations in 2022 and 5,883 certified livestock operations in 2023—AMS changes the estimated future growth of organic livestock operations to eight percent (8%). AMS has updated the estimated reporting and recordkeeping burden accordingly. The estimated reporting and recordkeeping burden is discussed in Sections *Summary of Reporting Burden* and *Summary of Recordkeeping Burden*.

Public Comments Conclusion

The estimated reporting and recordkeeping burden for the new information collection requirements of this rulemaking are summarized in the Sections *Summary of Reporting Burden* and *Summary of Recordkeeping Burden* below. In general, public comment received did not dispute AMS's estimate of the information collection reporting and recordkeeping burden presented in the proposed rule.

In the proposed rule, AMS estimated that new and current organic operations would need four hours to incorporate the new reporting and recordkeeping requirements of this rulemaking into their OSPs (including one-time preparation of all practices, procedures, and information necessary to comply with these new requirements). AMS made changes in this final rule that decrease required reporting and/or recordkeeping related to lameness and increased the frequency of ammonia monitoring (see sections on Livestock Care and Production Practices Standard and Avian Living Conditions). However, AMS does not believe these changes will substantially affect the time

operations will require to incorporate the new requirements into their OSPs. Table 4 describes the reporting and recordkeeping burden in more detail.

AMS has updated the following data used to estimate reporting and recordkeeping burden:

1. Wage and benefit data from the U.S. Bureau of Labor Statistics, Organization for Economic Co-Operation and Development (OECD), and the World Bank.^{98 99 100}

2. Number of new, existing, and exempt organic operations.^{101 102}

3. Number of domestic and foreign livestock inspectors and certifying agents.¹⁰³

The estimated reporting and recordkeeping burden is discussed in Sections *Summary of Reporting Burden* and *Summary of Recordkeeping Burden*.

Calculating Reporting and Recordkeeping Burden

AMS identifies four types of entities (respondents) that will need to submit and maintain information to participate in organic livestock and poultry certification:

1. Organic livestock and poultry operations.
2. Accredited certifying agents.
3. Inspectors.
4. State Organic Programs.

To understand the reporting and recordkeeping costs of this rulemaking more precisely, AMS calculated the potential impacts utilizing domestic and foreign labor rates (per hour) plus benefits.

AMS calculates the time burden of the new reporting and recordkeeping requirements of this rulemaking by estimating the following:

1. The number of respondents.
2. Frequency of response.
3. Total number of burden hours per year.

The number of respondents is based on operation, certifier, inspector, and State Organic Program data from the Organic Integrity Database.¹⁰⁴ The frequency of responses is estimated to

⁹⁸ U.S. Bureau of Labor Statistics, <https://www.bls.gov>.

⁹⁹ Organization for Economic Co-Operation and Development (OECD), <https://www.oecd.org/>.

¹⁰⁰ The World Bank, <https://data.worldbank.org/>.

¹⁰¹ USDA NOP OID: Organic Integrity Database, <https://organic.ams.usda.gov/integrity/>.

¹⁰² USDA NASS: Surveys of organic operations report that operations exempt from certification make up 11.5% of certified organic operations. *Census of Agriculture, 2014 Organic Survey*. Updated April 2016. <https://agcensus.library.cornell.edu/wp-content/uploads/2012-Organic-Survey-ORGANICS.pdf>.

¹⁰³ USDA NOP OID: Organic Integrity Database, <https://organic.ams.usda.gov/integrity/>.

¹⁰⁴ USDA NOP OID: Organic Integrity Database, <https://organic.ams.usda.gov/integrity/>.

⁹⁷ USDA NOP OID: Organic Integrity Database, <https://organic.ams.usda.gov/integrity/>.

be the total annual responses and the number of responses per respondent in twelve months. The total number of burden hours per year is estimated to be the total annual responses multiplied by the number of hours per response.

AMS estimates the cost (financial) burden of the new reporting and

recordkeeping requirements of this rulemaking by estimating the following:

1. Total hours per respondent.
2. Total hours for all respondents.
3. Capital and other non-labor costs per respondent.
4. Total capital and other non-labor costs for all respondents.

The total hours per respondent and for all respondents were estimated

based on the number of respondents and the amount of time AMS estimates will be needed to report and record new information based on this rulemaking. Unchanged from the proposed rule, AMS describes in Table 4a and 4b the hours necessary for respondents to report and record new information required by this rulemaking.

TABLE 4—ESTIMATED HOURS FOR RESPONDENTS TO REPORT AND RECORD NEW INFORMATION

Reporting or recordkeeping requirement description	Number of reporting responses per respondent	Reporting hours per response	Annual recordkeeping hours per recordkeeper
Operations			
<i>Subpart B—Applicability</i> exempt producers and handlers (11.5% of current total certified that are exempt from organic certification) document compliance and maintain records for not less than 3 yrs	0	0	1
Certified operators maintain records for not less than 5 years	0	0	2
<i>New operations submit their initial organic system plan (OSP):</i> including one-time reading of the rule’s applicable regulatory requirements and preparation of all practices, procedures, and information necessary to comply with new livestock and poultry requirements	1	6	0
<i>Current certified operations submit updated OSP:</i> including one-time reading of the rule’s applicable regulatory requirements and preparation of all practices, procedures, and information necessary to comply with new livestock and poultry requirements	1	6	0
Livestock and poultry operations’ first on-site inspection that includes new livestock and poultry practices and procedures	1	2	0
Certifying Agents			
<i>Review of Application/Updates:</i> agents review and process OSP applications/updates from livestock and poultry operations in compliance with new requirements for the first time and maintain records	108	2	1
Provide information and training to operations regarding livestock and poultry requirements	1	3	n/a
<i>Accreditation of Certifying Agents—Form TM-10CG—</i> Provide Policies, Procedures, Evidence of Expertise and Ability, describe organizational units, primary location, areas of certification (crops, livestock, and handling), States & foreign countries where they operate, lists of currently certified operations, conduct & provide results of performance evaluations of personnel & inspectors, conduct program evaluations of their certification activities, provide procedures for residue testing, and other information that will assist in evaluating their application, and comply with any other requirements. Includes one-time preparation of practices and procedures necessary to comply with new livestock and poultry practice requirements	1	2	1
Provide training to Certification Review Personnel and Inspectors regarding new livestock and poultry practices	2	5	n/a
Certification Review Personnel receive training regarding new livestock and poultry practices	1	5	n/a
Inspectors			
Inspectors provide on-site inspection reports addressing new requirements for livestock and poultry operations to the certifying agent	33	2	n/a
Inspectors receive 5 hours of training per new livestock and poultry practices	1	5	n/a
State Organic Programs			
<i>State Organic Programs:</i> States submit proposed State Organic Program to Secretary	n/a	n/a	n/a
States update State Organic Program to the Secretary	1	2	1

To estimate the capital and other non-labor costs of the reporting and recordkeeping requirements per respondent and on all respondents, AMS uses data on prevailing domestic and foreign wages and benefits.^{105 106 107}

¹⁰⁵ U.S. BLS Benefits: Bureau of Labor Statistics. Domestic benefits were reported at 31 percent of total average civilian employer compensation costs. *Economic News Release. Employer Costs for Employee Compensation Summary. “EMPLOYER COSTS FOR EMPLOYEE COMPENSATION—December 2022.” USDL-23-0488. Published March 17, 2023. https://www.bls.gov/news.release/ecec.nr0.htm.*

¹⁰⁶ World Bank—Foreign wages: The data reports that GDP per capita for OECD member countries is 70.1% of U.S. GDP in 2021. *Accessed March 22, 2023. https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD.*

The estimated reporting and recordkeeping burden is discussed in Sections *Summary of Reporting Burden* and *Summary of Recordkeeping Burden*.

Total (Domestic and Foreign) Information Collection Cost (Reporting and Recordkeeping) of Rulemaking: \$4,929,563.

AMS estimated a total of 7,346 reporting and recordkeeping respondents, with 40,348 total responses (in the first year of implementing the new reporting and

¹⁰⁷ OECD—Foreign benefits: The source of foreign benefit rates is based on the average Organization for Economic Co-Operation and Development (OECD) member countries tax wedge rate of 34.58% in 2021. *Accessed March 22, 2023. https://stats.oecd.org/Index.aspx?DataSetCode=AWCOMP.*

recordkeeping requirements, after which there are no additional responses), and an overall total burden of 113,934 hours. This total hourly burden averages 16 hours per respondent, \$671 per respondent, and \$4,929,563 for all respondents. The data used to estimate reporting and recordkeeping burden is displayed in more detail in Table 5 and Table 6.

1. Organic Livestock and Poultry Operations

AMS estimated a total of 7,095 reporting and recordkeeping respondents, with 12,824 total responses (in the first year of implementing the new reporting and recordkeeping requirements, after which

there are no additional responses), and an overall burden of 64,802 hours.

Based on eight percent (8%) projected growth in livestock operations, AMS expects to add 475 operations to the 5,937 operations currently certified for the livestock scope.¹⁰⁸ In addition, AMS estimates that 683 exempt livestock operations will be impacted by the new recordkeeping requirements.¹⁰⁹

AMS estimated nine burden hours per respondent, costing \$430 per respondent, and \$3,052,383 for all respondents. The data used to estimate reporting and recordkeeping burden is displayed in more detail in Table 5 and Table 6.

2. Accredited Certifying Agents

AMS estimated a total of 58 reporting and recordkeeping respondents, with 13,766 total responses (in the first year of implementing the new reporting and recordkeeping requirements, after which there are no additional responses), and an overall burden of 35,345 hours. AMS estimated 609 burden hours per respondent, costing \$26,013 per respondent, and \$1,508,729 for all respondents. The data used to estimate reporting and recordkeeping burden is displayed in more detail in Table 5 and Table 6.

3. Inspectors

AMS estimated a total of 192 reporting and recordkeeping respondents, with 6,604 responses (in the first year of implementing the new reporting and recordkeeping requirements, after which there are no additional responses), and an overall burden of 13,784 hours. AMS estimated 72 burden hours per respondent, costing \$1,919 per respondent, and \$368,308 for all respondents. The data used to estimate reporting and recordkeeping burden is displayed in more detail in Table 5 and Table 6. Inspectors do not have recordkeeping obligations, as certifying agents maintain the records of inspection reports, so inspectors are not included in Table 5.

4. State Organic Programs

AMS estimated a total of one reporting and recordkeeping respondent, with one response (in the first year of implementing the new reporting and recordkeeping requirements, after which there are no additional responses), an overall burden of three hours, costing the respondent \$143. The data used to estimate reporting and recordkeeping burden is displayed in more detail in Table 5 and Table 6.

Summary of Reporting Burden

Total All Reporting Burden Cost: \$4,827,105.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 hours per respondent.

Respondents: New and existing certified organic and applicant livestock and poultry operations, certifying agents, inspectors, and State Organic Programs.

Estimated Number of Reporting Respondents: 6,663.

Estimated Number of Reporting Responses: 33,194.

Estimated Total Reporting Burden on Respondents: 100,310 hours.

Estimated Total Reporting Responses per Reporting Respondents: Five reporting responses per reporting respondent.

AMS estimated a total of 6,663 reporting respondents, with 33,194 total responses (in the first year of implementing the new reporting requirements, after which there are no additional responses), and an overall burden of 100,310 reporting hours. AMS estimated 15 burden hours per respondent, costing \$643 per respondent and \$4,287,105 for all respondents. The data used to estimate reporting burden is displayed in more detail in Table 5.

1. Organic Livestock and Poultry Operations

AMS estimated a total of 6,412 reporting respondents, with 12,824 total

responses (in the first year of implementing the new reporting requirements, after which there are no additional responses), and an overall burden of 38,472 reporting hours. AMS estimated six burden hours per respondent, costing \$282 per respondent, and \$1,811,193 for all respondents. The data used to estimate reporting burden is displayed in more detail in Table 5.

2. Accredited Certifying Agents

AMS estimated a total of 58 reporting respondents, with 13,766 total responses (in the first year of implementing the new reporting requirements, after which there are no additional responses), and an overall burden of 35,229 hours. AMS estimated 607 burden hours per respondent, costing \$25,927 per respondent and \$1,503,778 for all respondents. The data used to estimate reporting burden is displayed in more detail in Table 5.

3. Inspectors

AMS estimated a total of 192 reporting respondents, with 6,604 total responses (in the first year of implementing the new reporting requirements, after which there are no additional responses), and an overall burden of 13,784 hours. AMS estimated 72 burden hours per respondent, costing \$1,919 per respondent, and \$368,308 for all respondents. The data used to estimate reporting burden is displayed in more detail in Table 5.

4. State Organic Programs

AMS estimated a total of one reporting respondent, with one response (in the first year of implementing the new reporting requirements, after which there are no additional responses), an overall burden of two hours, resulting in a total cost of \$95 to the respondent. The data used to estimate reporting burden is displayed in more detail in Table 5.

TABLE 5—SUMMARY OF REPORTING BURDEN

Organic operations reporting burden	Number of respondents ^{110 111}	Total reporting hours	Average respondent hours	Wage + benefits ^{112 96 113 114}	Average respondent costs	Total reporting costs
Certified livestock operations—new and existing—Domestic	5,334	42,673	6	\$49.40	\$395	\$1,581,036
Certified livestock operations—new and existing—Foreign	1,078	8,623	6	35.59	285	230,156

¹⁰⁸ USDA NOP OID: Organic Integrity Database, <https://organic.ams.usda.gov/integrity/>.

¹⁰⁹ USDA NASS: Surveys of organic operations report that operations exempt from certification make up 11.5% of certified organic operations. *Census of Agriculture, 2014 Organic Survey*.

Updated April 2016. <https://agcensus.library.cornell.edu/wp-content/uploads/2012-Organic-Survey-ORGANICS.pdf>.

TABLE 5—SUMMARY OF REPORTING BURDEN—Continued

Organic operations reporting burden	Number of respondents ^{110 111}	Total reporting hours	Average respondent hours	Wage + benefits ^{112 96 113 114}	Average respondent costs	Total reporting costs
Operations total	6,412	51,296	6		377	2,414,924
USDA accredited certifiers reporting burden						
Certifiers—Domestic	36	21,866	607	47.75	29,003	1,044,101
Certifiers—Foreign	22	13,363	607	34.40	20,894	459,677
Certifiers total	58	35,229	607		25,927	1,503,778
Inspectors reporting burden						
Inspectors—Domestic	113	8,555	76	29.87	2,257	255,529
Inspectors—Foreign	79	5,228	66	21.57	1,433	112,778
Inspectors total	192	13,784	72		1,919	368,308
State Organic Programs reporting burden						
State Organic Programs	1	2	2	47.75	95	95
State Organic Programs total	1	2	2		95	95
Total reporting burden—all respondents	6,663	100,310	15		643	4,287,105

Summary of Recordkeeping Burden

Total All Recordkeeping Burden Cost: \$642,458.

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average two hours per respondent.

Respondents: New and existing certified operations, exempt operations, certifying agents, and State Organic Programs.

Estimated Number of Recordkeeping Respondents: 7,154 respondents.

Estimated Total Recordkeeping Burden on Respondents: 13,624 hours.

AMS estimated a total of 7,154 recordkeeping respondents (in the first year of implementing the new recordkeeping requirements, after which there are no additional responses). AMS estimated two burden hours per respondent and 13,624 total burden hours for all respondents, costing \$90

per respondent and \$642,458 for all respondents. The data used to estimate the recordkeeping burden is displayed in more detail in Table 6.

1. Organic Livestock and Poultry Operations

AMS estimated a total of 7,095 recordkeeping respondents (in the first year of implementing the new recordkeeping requirements, after which there is no additional recordkeeping). AMS estimated two burden hours per respondent and 13,507 total burden hours for all respondents, costing \$90 per respondent and \$637,459 for all respondents. The data used to estimate the recordkeeping burden is displayed in more detail in Table 6.

2. Accredited Certifying Agents

AMS estimated a total of 58 recordkeeping respondents (in the first

year of implementing the new recordkeeping requirements, after which there are no additional responses) AMS estimated two burden hours per respondent and 116 total burden hours for all respondents, costing \$85 per respondent and \$4,952 for all respondents. The data used to estimate the recordkeeping burden is displayed in more detail in Table 6.

3. State Organic Programs

AMS estimated a total of one recordkeeping respondent (in the first year of implementing the new recordkeeping requirements, after which there are no additional responses), an overall burden of one hour, resulting in a total cost of \$48 to the respondent. The data used to estimate the recordkeeping burden is displayed in more detail in Table 6.

TABLE 6—SUMMARY OF RECORDKEEPING BURDENS

Organic operations recordkeeping burden	Number of respondents ^{115 116}	Total recordkeeping hours	Average respondent hours	Wage + benefits ^{117 96 118 119}	Average respondent costs	Total recordkeeping costs
Certified livestock operations—new and existing—Domestic	5,334	10,668	2	\$49.40	\$99	\$527,012
Certified livestock operations—new and existing—Foreign	1,078	2,156	2	35.59	71	76,719

¹¹⁰ USDA NOP OID: Organic Integrity Database, <https://organic.ams.usda.gov/integrity/>.

¹¹¹ USDA NASS: Surveys of organic operations report that operations exempt from certification make up 11.5% of certified organic operations. *Census of Agriculture, 2014 Organic Survey, Updated April 2016.* <https://agcensus.library.cornell.edu/wp-content/uploads/2012-Organic-Survey-ORGANICS.pdf>.

¹¹² U.S. BLS Inspectors: Bureau of Labor Statistics. Mean hourly wage for Agricultural Inspectors (Standard Occupational Classification

(SOC) code 45–2011) was \$22.80. *Occupational Employment and Wage Statistics. “May 2021 National Occupational Employment and Wage Estimates United States.”* Published May 2021. https://www.bls.gov/oes/current/oes_nat.htm#top.

¹¹³ U.S. BLS Operations: Bureau of Labor Statistics. Mean hourly wage for Farmers, Ranchers, and Other Agricultural Managers (Standard Occupational Classification (SOC) code 11–9013) was \$37.71. *Occupational Employment and Wage Statistics. “May 2021 National Occupational Employment and Wage Estimates United States.”*

Published May 2021. https://www.bls.gov/oes/current/oes_nat.htm#top.

¹¹⁴ U.S. BLS Certifiers and State Organic Programs (SOP): Bureau of Labor Statistics. Mean hourly wage for Compliance Officers (Standard Occupational Classification (SOC) code 13–1041) was \$36.45. *Occupational Employment and Wage Statistics. “May 2021 National Occupational Employment and Wage Estimates United States.”* Published May 2021. https://www.bls.gov/oes/current/oes_nat.htm#top.

TABLE 6—SUMMARY OF RECORDKEEPING BURDENS—Continued

Organic operations recordkeeping burden	Number of respondents ^{115 116}	Total recordkeeping hours	Average respondent hours	Wage + benefits ^{117 96 118 119}	Average respondent costs	Total recordkeeping costs
Exempt livestock operations (11.5% of certified)	683	683	1	49.40	49	33,728
Operations total	7095	13,507	2	.....	90	637,459
USDA-accredited certifiers recordkeeping burden						
Certifiers—Domestic	36	72	2	47.75	95	3,438
Certifiers—Foreign	22	44	2	34.40	69	1,514
Certifiers total	58	116	2	.....	85	4,952
State Organic Programs recordkeeping burden						
State Organic Programs	1	1	1	47.75	48	48
State Organic Programs total	1	1	1	.....	48	48
Total recordkeeping burden—all respondents	7,154	13,624	2	.....	90	642,458

G. Related Documents

Documents related to this final rule include the Organic Foods Production Act of 1990, as amended, (7 U.S.C. 6501–6524) and its implementing regulations (7 CFR part 205). The NOSB deliberated and made the recommendations described in this final rule at public meetings announced in the following Federal Register notices: 67 FR 19375 (April 19, 2002); 74 FR 46411 (September 9, 2009); 75 FR 57194 (September 20, 2010); and 76 FR 62336 (October 7, 2011). NOSB meetings are open to the public and allow for public participation.

¹¹⁵ USDA NOP OID: Organic Integrity Database, <https://organic.ams.usda.gov/integrity/>.

¹¹⁶ USDA NASS: Surveys of organic operations report that operations exempt from certification make up 11.5% of certified organic operations. *Census of Agriculture, 2014 Organic Survey. Updated April 2016.* <https://agcensus.library.cornell.edu/wp-content/uploads/2012-Organic-Survey-ORGANICS.pdf>.

¹¹⁷ U.S. BLS Inspectors: Bureau of Labor Statistics. Mean hourly wage for Agricultural Inspectors (Standard Occupational Classification (SOC) code 45–2011) was \$22.80. *Occupational Employment and Wage Statistics. “May 2021 National Occupational Employment and Wage Estimates United States.”* Published May 2021. https://www.bls.gov/oes/current/oes_nat.htm#top.

¹¹⁸ U.S. BLS Operations: Bureau of Labor Statistics. Mean hourly wage for Farmers, Ranchers, and Other Agricultural Managers (Standard Occupational Classification (SOC) code 11–9013) was \$37.71. *Occupational Employment and Wage Statistics. “May 2021 National Occupational Employment and Wage Estimates United States.”* Published May 2021. https://www.bls.gov/oes/current/oes_nat.htm#top.

¹¹⁹ U.S. BLS Certifiers and State Organic Programs (SOP): Bureau of Labor Statistics. Mean hourly wage for Compliance Officers (Standard Occupational Classification (SOC) code 13–1041) was \$36.45. *Occupational Employment and Wage Statistics. “May 2021 National Occupational Employment and Wage Estimates United States.”* Published May 2021. https://www.bls.gov/oes/current/oes_nat.htm#top.

AMS published a series of past proposed rules that addressed, in part, the organic livestock requirements at: 62 FR 65850 (December 16, 1997); 65 FR 13512 (March 13, 2000); 71 FR 24820 (April 27, 2006); 73 FR 63584 (October 24, 2008), and 81 FR 21956 (April 13, 2016). Past final rules relevant to this topic were published at: 65 FR 80548 (December 21, 2000); 71 FR 32803 (June 7, 2006); 75 FR 7154 (February 17, 2010); and 87 FR 19740 (April 5, 2022). AMS activities and documents that followed publication of the January 19, 2017 OLPP final rule (82 FR 7042) are detailed above in Section II.D., Organic Livestock Regulatory History.

On August 9, 2022, AMS published the OLPS proposed rule (87 FR 48562) to notify the public of the proposed changes to the organic livestock standards and to request comments on the proposed changes.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agricultural commodities, Agriculture, Animals, Archives and records, Fees, Imports, Labeling, Livestock, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons stated in the preamble, the Agricultural Marketing Service amends 7 CFR part 205 as follows:

PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6524.

■ 2. Amend § 205.2 by adding definitions for “Beak trimming”, “Caponization”, “Cattle wattling”, “De-beaking”, “De-snooding”, “Dubbing”, “Indoors or indoor space”, “Induced molting”, “Mulesing”, “Non-ambulatory”, “Outdoors or outdoor space”, “Perch”, “Pullets”, “Religious (or ritual) slaughter”, “Stocking density”, “Toe clipping”, and “Vegetation” in alphabetical order to read as follows:

§ 205.2 Terms defined.

* * * * *

Beak trimming. The removal of not more than one-quarter to one-third of the upper beak or the removal of one-quarter to one-third of both the upper and lower beaks of a bird in order to control injurious pecking and cannibalism.

* * * * *

Caponization. Castration of chickens, turkeys, pheasants, and other avian species.

Cattle wattling. The surgical separation of two layers of the skin from the connective tissue for along a 2-to-4-inch path on the dewlap, neck, or shoulders used for ownership identification.

* * * * *

De-beaking. The removal of more than one-third of the upper beak or removal of more than one-third of both the upper and lower beaks of a bird.

De-snooding. The removal of the turkey snood (a fleshy protuberance on the forehead of male turkeys).

* * * * *

Dubbing. The removal of poultry combs and wattles.

* * * * *

Indoors or indoor space. The space inside of an enclosed building or housing structure available to livestock. Indoor space for avian species includes, but is not limited to:

(1) *Mobile housing.* A mobile structure for avian species with solid or perforated flooring that is moved regularly and allows birds to continuously access areas outside the structure during daytime hours.

(2) *Aviary housing.* A fixed structure for avian species that has multiple tiers or levels.

(3) *Slatted/mesh floor housing.* A fixed structure for avian species that has both: a slatted floor where perches, feed, and water are provided over a pit or belt for manure collection; and litter covering the remaining solid floor.

(4) *Floor litter housing.* A fixed structure for avian species that has absorbent litter covering the entire floor.

Induced molting. Molting that is artificially initiated.

* * * * *

Mulesing. The removal of skin from the buttocks of sheep, approximately 2 to 4 inches wide and running away from the anus to the hock to prevent fly strike.

* * * * *

Non-ambulatory. As defined in 9 CFR 309.2(b).

* * * * *

Outdoors or outdoor space. Any area outside an enclosed building or enclosed housing structure. Enclosed housing structures with open sides (e.g., open-sided freestall barns) are not to be considered outdoors or outdoor space. Outdoor space for avian species includes, but is not limited to:

(1) Pasture pens (avian). Floorless pens, with full or partial roofing, that are moved regularly, provide direct access to soil and vegetation, and allow birds to express natural behaviors.

(2) Shade structures that are not enclosed.

* * * * *

Perch. A rod- or branch-type structure above the floor or ground that accommodates roosting and allows birds to utilize vertical space.

* * * * *

Pullets. Female chickens or other avian species being raised for egg production that have not yet started to lay eggs.

* * * * *

Religious (or ritual) slaughter. Slaughtering in accordance with the ritual requirements of any religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain

caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and handling in connection with such slaughtering.

* * * * *

Stocking density. The liveweight or number of animals on a given area or unit of land.

* * * * *

Toe clipping. The removal of the nail and distal joint of the back two toes of a bird.

* * * * *

Vegetation. Living plant matter that is anchored in the soil by roots and provides ground cover.

* * * * *

■ 3. Revise § 205.238 to read as follows:

§ 205.238 Livestock care and production practices standard.

(a) *Preventive health care practices.* The producer must establish and maintain preventive health care practices, including:

(1) Selection of species and types of livestock with regard to suitability for site-specific conditions and resistance to prevalent diseases and parasites.

(2) Provision of a feed ration sufficient to meet nutritional requirements of the animal, including vitamins, minerals, proteins and/or amino acids, fatty acids, energy sources, and fiber (ruminants).

(3) Establishment of appropriate housing, pasture conditions, and sanitation practices to minimize the occurrence and spread of diseases and parasites.

(4) Provision of conditions which allow for exercise, freedom of movement, and reduction of stress appropriate to the species.

(5) Physical alterations may be performed for identification purposes or the safety of the animal. Physical alterations must be performed: at a young age for the species, in a manner that minimizes stress and pain, and by a person that is capable of performing the physical alteration in a manner that minimizes stress and pain.

(i) The following practices may not be routinely used and must be used only with documentation that alternative methods to prevent harm failed: needle teeth clipping (no more than top one-third of the tooth) in pigs and tail docking in pigs.

(ii) The following practices are prohibited: de-beaking, de-snooding, caponization, dubbing, toe clipping of chickens, toe clipping of turkeys unless with infra-red at hatchery, beak trimming after 10 days of age, tail docking of cattle, wattling of cattle, face branding of cattle, tail docking of sheep

shorter than the distal end of the caudal fold, and mulesing of sheep.

(6) Administration of vaccines and other veterinary biologics.

(7) All surgical procedures necessary to treat an illness or injury shall be undertaken in a manner that employs best management practices to promote the animal's wellbeing and to minimize pain, stress, and suffering, with the use of allowed anesthetics, analgesics, and sedatives, as appropriate.

(8) Monitoring of lameness; timely and appropriate treatment of lameness for the species; and mitigation of the causes of lameness.

(b) *Preventive medicines and parasiticides.* Producers may administer medications that are allowed under § 205.603 of this part to alleviate pain or suffering, and when preventive practices and veterinary biologics are inadequate to prevent sickness. Parasiticides allowed under § 205.603 of this part may be used on:

(1) Breeder stock, when used prior to the last third of gestation but not during lactation for progeny that are to be sold, labeled, or represented as organically produced; and

(2) Dairy animals, as allowed under § 205.603 of this part.

(3) Fiber bearing animals, as allowed under § 205.603 of this part.

(c) *Prohibited practices.* An organic livestock operation must not:

(1) Sell, label, or represent as organic any animal or product derived from any animal treated with antibiotics, any substance that contains a synthetic substance not allowed under § 205.603 of this part, or any substance that contains a non-synthetic substance prohibited in § 205.604 of this part. Milk from animals undergoing treatment with synthetic substances that are allowed under § 205.603 of this part but have associated withdrawal periods cannot be sold, labeled, or represented as organic during the withdrawal period but may be fed to calves on the same operation. Milk from animals undergoing treatment with prohibited substances cannot be sold, labeled, or represented as organic or fed to organic livestock.

(2) Administer synthetic medications unless:

(i) In the presence of illness or to alleviate pain and suffering, and

(ii) That such medications are allowed under § 205.603 of this part.

(3) Administer hormones for growth promotion, production, or reproduction, except as provided in § 205.603 of this part.

(4) Administer synthetic parasiticides on a routine basis.

(5) Administer synthetic parasiticides to slaughter stock.

(6) Administer animal drugs in violation of the Federal Food, Drug, and Cosmetic Act; or

(7) Withhold medical treatment from a sick animal in an effort to preserve its organic status. All appropriate medications must be used to restore an animal to health when methods acceptable to organic production fail. Livestock treated with a prohibited substance must be clearly identified and neither the animal nor its products shall be sold, labeled, or represented as organically produced.

(8) Withhold individual treatment designed to minimize pain and suffering for injured, diseased, or sick animals, which may include forms of euthanasia as recommended by the American Veterinary Medical Association.

(9) Neglect to identify and record treatment of sick and injured animals in animal health records.

(10) Practice induced molting.

(d) *Parasite control plans.* (1) Organic livestock operations must have comprehensive plans to minimize internal parasite problems in livestock, including preventive measures such as pasture management, fecal monitoring, and emergency measures in the event of a parasite outbreak.

(2) [Reserved]

(e) *Euthanasia.* (1) Organic livestock operations must have written plans for prompt, humane euthanasia for sick or injured livestock suffering from irreversible disease or injury.

(2) The following methods of euthanasia are not permitted: suffocation; manual blow to the head by blunt instrument or manual blunt force trauma; and the use of equipment that crushes the neck, including killing pliers or Burdizzo clamps.

(3) Following a euthanasia procedure, livestock must be carefully examined to ensure that they are dead.

■ 4. Revise § 205.239 to read as follows:

§ 205.239 Mammalian and non-avian livestock living conditions.

(a) The producer of an organic livestock operation must establish and maintain year-round livestock living conditions, which accommodate the wellbeing and natural behavior of animals, including:

(1) 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: Except, that, animals may be temporarily denied access to the outdoors in accordance with paragraphs (b) and (c) of this section. Yards, feeding

pads, and feedlots may be used to provide ruminants with access to the outdoors during the non-grazing season and supplemental feeding during the grazing season. Yards, feeding pads, and feedlots shall be large enough to allow all ruminant livestock occupying the yard, feeding pad, or feedlot to feed without competition for food. Continuous total confinement of any animal indoors is prohibited. Continuous total confinement of ruminants in yards, feeding pads, and feedlots is prohibited.

(2) For all ruminants, management on pasture and daily grazing throughout the grazing season(s) to meet the requirements of § 205.237 of this part, except as provided for in paragraphs (b), (c), and (d) of this section.

(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) of this part, and, if applicable, organically handled by operations certified under this part.

(4) Shelter designed to allow for:

(i) 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;

(ii) Temperature level, ventilation, and air circulation suitable to the species;

(iii) Reduction of potential for livestock injury; and

(iv) Indoor housing must have areas for bedding and resting that are sufficiently large, solidly built, and comfortable so that animals are kept clean and dry, as appropriate for the species, and free of lesions.

(5) The use of yards, feeding pads, feedlots and laneways that shall be well-drained, kept in good condition (including frequent removal of wastes), and managed to prevent runoff of wastes and contaminated waters to adjoining or nearby surface water and across property boundaries.

(6) Housing, pens, runs, equipment, and utensils shall be properly cleaned and disinfected as needed to prevent cross-infection and build-up of disease-carrying organisms.

(7) Dairy young stock may be housed in individual pens until completion of the weaning process, 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 animals.

(8) Swine must be housed in a group, except:

(i) Sows may be housed individually at farrowing and during the suckling period; gestation and farrowing crates are prohibited;

(ii) Boars; and

(iii) Swine with multiple documented instances of aggression or for recovery from an illness.

(9) Piglets shall not be kept on flat decks or in piglet cages.

(10) For swine, rooting materials must be provided, except during the farrowing and suckling period.

(11) In confined housing with stalls for mammalian livestock, enough stalls must be present to provide for the natural behaviors of the animals. A cage must not be called a stall. For group-housed swine, the number of individual feeding stalls may be less than the number of animals, as long as all animals are fed routinely over a 24-hour period. 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.

(12) Outdoor space must be provided year-round. When the outdoor space includes soil, vegetative cover must be maintained as appropriate for the season, climate, geography, species of livestock, and stage of production.

(b) The producer of an organic livestock operation may provide temporary confinement or shelter for an animal because of:

(1) Inclement weather;

(2) The animal's stage of life, however, lactation is not a stage of life that would exempt ruminants from any of the mandates set forth in this part;

(3) Conditions under which the health, safety, or well-being of the animal could be jeopardized;

(4) Risk to soil or water quality;

(5) Preventive healthcare procedures or for the treatment of illness or injury (neither the various life stages nor lactation is an illness or injury);

(6) Sorting or shipping animals and livestock sales, provided that the animals shall be maintained under continuous organic management, including organic feed, throughout the extent of their allowed confinement;

(7) Breeding: Except, that, animals shall not be confined any longer than necessary for natural breeding or to perform artificial insemination. Animals may not be confined to observe estrus, and animals may not be confined after breeding to confirm pregnancy; and

(8) 4-H, National FFA Organization, and other youth projects, for no more than one week prior to a fair or other demonstration, through the event, and

up to 24 hours after the animals have arrived home at the conclusion of the event. These animals must have been maintained under continuous organic management, including organic feed, during the extent of their allowed confinement for the event.

Notwithstanding the requirements in paragraph (b)(6) of this section, facilities where 4-H, National FFA Organization, and other youth events are held are not required to be certified organic for the participating animals to be sold as organic, provided all other organic management practices are followed.

(c) The producer of an organic livestock operation may, in addition to the times permitted under paragraph (b) of this section, temporarily deny a ruminant animal pasture or outdoor access under the following conditions:

(1) One week at the end of a lactation for dry off (for denial of access to pasture only), three weeks prior to parturition (birthing), parturition, and up to one week after parturition;

(2) 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: Except, That, any 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;

(3) In the case of fiber bearing animals, for short periods for shearing; and

(4) In the case of dairy animals, for short periods daily for milking. Milking must be scheduled in a manner to ensure sufficient grazing time to provide each animal with an average of at least 30 percent DMI from grazing throughout the grazing season. Milking frequencies or duration practices cannot be used to deny dairy animals pasture.

(d) Ruminant slaughter stock, typically grain finished, shall be maintained on pasture for each day that the finishing period corresponds with the grazing season for the geographical location. Yards, feeding pads, or feedlots may be used to provide finish feeding rations. During the finishing period, ruminant slaughter stock shall be exempt from the minimum 30 percent DMI requirement from grazing. Yards, feeding pads, or feedlots used to provide finish feeding rations shall be large enough to allow all ruminant slaughter stock occupying the yard, feeding pad, or feed lot to feed without crowding and without competition for food. The finishing period shall not exceed one-fifth ($\frac{1}{5}$) of the animal's total life or 120 days, whichever is shorter.

(e) The producer of an organic livestock operation must manage manure in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, heavy metals, or pathogenic organisms and optimizes recycling of nutrients and must manage pastures and other outdoor access areas in a manner that does not put soil or water quality at risk.

■ 5. Add § 205.241 to read as follows:

§ 205.241 Avian living conditions.

(a) *Avian year-round living conditions.* 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. Poultry may be temporarily denied access to the outdoors in accordance with paragraph (d) of this section. Continuous total confinement of poultry indoors is prohibited.

(b) *Indoor space requirements.* (1) Poultry housing must be sufficiently spacious to allow all birds to move freely, stretch both wings simultaneously, stand normally, and engage in natural behaviors.

(2) Producers must monitor ammonia levels at least weekly by taking measurements at the height of the birds' heads and implement practices to maintain ammonia levels below 20 ppm. When ammonia levels exceed 20 ppm, producers must implement additional practices and additional monitoring to reduce ammonia levels below 20 ppm. Ammonia levels must not exceed 25 ppm.

(3) For layers and all other fully feathered birds, artificial light may be used to prolong the day length, to provide up to 16 hours of continuous light per 24-hour period (*i.e.*, minimum of 8 hours of continuous darkness per 24-hour period). Artificial light intensity should be lowered gradually to encourage hens to move to perches or settle for the night. Artificial light spectrum may not be manipulated to increase feed intake and growth rate.

(4) Exit areas—poultry houses must have at least 1 linear foot of exit area for every 360 birds, measured across the base of the exit, but no less than one linear foot of exit area for flocks with fewer than 360 birds. Exit areas must be appropriately distributed and sized to

ensure that all birds have ready access to the outdoors;

(i) If exit areas are not provided at a ratio of at least 1 linear foot per 360 birds, a certifier may approve practices that provide less than 1 linear foot per 360 birds only if an operation describes its practices (in the organic system plan) and demonstrates that ready access to the outdoors is provided for all birds;

(ii) 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.

(5) Perches—for layers (*Gallus gallus*), six inches of perch space must be provided per bird. Perch space may include the alighting rail in front of the nest boxes. All layers must be able to perch at the same time except for aviary housing, in which 55 percent of layers must be able to perch at the same time. Floors in slatted/mesh floor housing cannot be counted as perch space.

(6) All birds must have access to areas in the house that allow for scratching and dust bathing, except, that mobile housing may meet this requirement when paired with outdoor space that provides birds with areas for scratching and dust bathing. Litter must be provided and maintained in a dry condition in the house.

(7) Non-mobile houses with slatted/mesh floors must have 15 percent minimum of solid floor area available with sufficient litter available for dust baths so that birds may freely dust bathe without crowding.

(8) For layers (*Gallus gallus*), indoor stocking density must meet one or both of the following rates, expressed in different terms.

(i) Mobile housing: not to exceed 4.5 pounds per square foot; or, alternatively, a rate of at least 1.5 square feet per bird will comply with the requirement.

(ii) Aviary housing: not to exceed 4.5 pounds per square foot; or, alternatively, a rate of at least 1.5 square feet per bird will comply with the requirement.

(iii) Slatted/mesh floor housing: not to exceed 3.75 pounds per square foot; or, alternatively, a rate of at least 1.8 square feet per bird will comply with the requirement.

(iv) Floor litter housing: not to exceed 3.0 pounds per square foot; or, alternatively, a rate of at least 2.2 square feet per bird will comply with the requirement.

(v) Other housing: not to exceed 2.25 pounds per square foot; or, alternatively, a rate of at least 3.0 square feet per bird will comply with the requirement.

(9) For pullets (*Gallus gallus*), indoor stocking density must not exceed 3.0

pounds of bird per square foot; or, alternatively, a rate of at least 1.7 square feet per bird will comply with the requirement.

(10) For broilers (*Gallus gallus*), indoor stocking density must not exceed 5.0 pounds of bird per square foot; or, alternatively, a rate of at least 2.0 square feet per bird will comply with the requirement.

(11) Indoor space includes flat areas available to birds, excluding nest boxes.

(12) Indoor space may include enclosed porches and lean-to type structures (e.g., screened in, roofed) as long as the birds always have access to the space, including during temporary confinement events. If birds do not have continuous access to the porch during temporary confinement events, this space must not be considered indoors.

(c) *Outdoor space requirements.* (1) Access to outdoor space and door spacing must be designed to promote and encourage outside access for all birds on a daily basis. Producers must provide access to the outdoors at an early age to encourage (i.e., train) birds to go outdoors. Birds may be temporarily denied access to the outdoors in accordance with paragraph (d) of this section.

(2) At least 75 percent of outdoor space must be soil. Outdoor space with soil must include 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.

(3) Shade may be provided by structures, trees, or other objects in the outdoor area.

(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; or, alternatively, a rate of at least 3.0 square feet per bird will comply with the requirement.

(5) For pullets (*Gallus gallus*), outdoor space must be provided at a rate of no less than one square foot for every 3.0 pounds of bird in the flock; or, alternatively, a rate of at least 1.7 square feet per bird will comply with the requirement.

(6) For broilers (*Gallus gallus*), outdoor space must be provided at a rate of no less than one square foot for every 5.0 pounds of bird in the flock; or, alternatively, a rate of at least 2.0 square feet per bird will comply with the requirement.

(7) Outdoor space may include structures that are not enclosed (e.g., with roof but no walls) and allow birds to freely access other outdoor space.

(d) *Temporary confinement.* The producer of an organic poultry operation may temporarily confine birds. Confinement must be recorded. Operations may temporarily confine birds when one of the following circumstances exists:

(1) Inclement weather, including when air temperatures are under 32 degrees F or above 90 degrees F.

(2) The animal's stage of life, including:

(i) The first 4 weeks of life for broilers (*Gallus gallus*);

(ii) The first 16 weeks of life for pullets (*Gallus gallus*); and

(iii) Until fully feathered for bird species other than *Gallus gallus*.

(3) Conditions under which the health, safety, or well-being of the animal could be jeopardized.

(4) Risk to soil or water quality.

(5) Preventive healthcare procedures or for the treatment of illness or injury (neither various life stages nor egg laying is an illness or injury).

(6) Sorting or shipping birds and poultry sales, provided that the birds are maintained under continuous organic management, throughout the extent of their allowed confinement.

(7) For nest box training, provided that birds shall not be confined any longer than required to establish the proper behavior. Confinement for nest box training must not exceed five weeks over the life of the bird.

(8) For 4-H, National FFA Organization, and other youth projects, provided that temporary confinement for no more than one week prior to a fair or other demonstration, through the event, and up to 24 hours after the birds have arrived home at the conclusion of the event. During temporary confinement, birds must be under continuous organic management, including organic feed, for the duration of confinement. Notwithstanding the requirements in paragraph (d)(6) of this section, facilities where 4-H, National FFA Organization, and other youth events are held are not required to be certified organic for the participating birds to be sold as organic, provided all other organic management practices are followed.

(e) *Manure management.* The producer of an organic poultry operation must manage manure in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, heavy metals, or pathogenic organisms. The producer must also optimize recycling of nutrients and must manage outdoor access areas in a manner that does not put soil or water quality at risk.

■ 6. Add § 205.242 to read as follows:

§ 205.242 Transport and slaughter.

(a) *Transportation.* (1) Certified organic livestock must be clearly identified as organic, and this identity must be traceable for the duration of transport.

(2) All livestock must be fit for transport to buyers, auction or slaughter facilities.

(i) Calves must have a dry navel cord and be able to stand and walk without human assistance.

(ii) Seriously crippled and non-ambulatory animals must not be transported for sale or slaughter. Such animals may be medically treated or euthanized.

(3) Adequate and season-appropriate ventilation is required for all livestock trailers, shipping containers, and any other mode of transportation used to protect animals against cold and heat stresses.

(4) During any transport and prior to slaughter, bedding must be provided on trailer floors and in holding pens, as needed, to keep livestock clean, dry, and comfortable. Use of bedding must be appropriate to the species and type of transport. Bedding is not required in poultry crates. When roughages are used for bedding, they must be certified organic.

(5) For transport that exceeds eight hours, measured from the time all animals are loaded onto a vehicle until the vehicle arrives at its final destination, the operation must describe how organic management and animal welfare will be maintained.

(i) The producer or handler of an organic livestock operation, who is responsible for overseeing the transport of organic livestock, must provide records to certifying agents during inspections or upon request that demonstrate that transport times for organic livestock are not detrimental to the welfare of the animals and meet the requirements of paragraph (a)(5) of this section.

(ii) [Reserved]

(6) Organic producers and handlers, who are responsible for overseeing the transport of organic livestock, must have emergency plans in place that adequately address possible animal welfare problems that might occur during transport.

(b) *Mammalian slaughter.* (1) Producers and handlers who slaughter organic livestock must be in compliance, as determined by FSIS, with the Federal Meat Inspection Act (21 U.S.C. 603(b) and 21 U.S.C. 610(b)), the regulations at 9 CFR part 313 regarding humane handling and slaughter of livestock, and the

regulations of 9 CFR part 309 regarding ante-mortem inspection.

(2) Producers and handlers who slaughter organic exotic animals must be in compliance with the Agricultural Marketing Act of 1946 (7 U.S.C. 1621, *et seq.*), the regulations at 9 CFR parts 313 and 352 regarding the humane handling and slaughter of exotic animals, and the regulations of 9 CFR part 309 regarding ante-mortem inspection.

(3) Producers and handlers who slaughter organic livestock or exotic animals must provide all noncompliance records related to humane handling and slaughter issued by the controlling national, federal, or state authority and all records of subsequent corrective actions to certifying agents during inspections or upon request.

(c) *Avian slaughter.* (1) Producers and handlers who slaughter organic poultry must be in compliance, as determined

by FSIS, with the Poultry Products Inspection Act requirements (21 U.S.C. 453(g)(5)); the regulations at paragraph (v) of the definition of “*Adulterated*” in 9 CFR 381.1(b), and 9 CFR 381.90, and 381.65(b)); and applicable FSIS Directives.

(2) Producers and handlers who slaughter organic poultry must provide all noncompliance records related to the use of good commercial practices in connection with slaughter issued by the controlling national, federal, or state authority and all records of subsequent corrective actions to the certifying agent at inspection or upon request.

(3) Producers and handlers who slaughter organic poultry, but are exempt from or not covered by the requirements of the Poultry Products Inspection Act, must ensure that:

(i) No lame birds may be shackled, hung, or carried by their legs;

(ii) All birds shackled on a chain or automated system must be stunned prior to exsanguination, with the exception of religious slaughter; and

(iii) All birds must be irreversibly insensible prior to being placed in the scalding tank.

■ 7. Add § 205.691 to read as follows:

§ 205.691 Severability.

If any provision of any subpart is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of any subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2023–23726 Filed 11–1–23; 8:45 am]

BILLING CODE 3410–02–P