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: Proposed rule.

SUMMARY: The United States Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) proposes to amend the organic livestock and poultry production requirements by adding new provisions for livestock handling and transport for slaughter and avian living conditions; and expanding and clarifying existing requirements covering livestock care and production practices and mammalian living conditions.

DATES: Comments must be received by October 11, 2022.

AMS will host a virtual listening session on August 19, 2022, from 12:00 p.m. to approximately 2:00 p.m. Eastern Time (ET) to hear comments regarding this proposed rule. The deadline to register for oral comment is 11:59 p.m. ET, August 15, 2022. Access information will be published on the AMS website prior to the listening session at *https://www.ams.usda.gov/event/listening-session-organic-livestock-and-poultry-standards.*

ADDRESSES: Interested persons may comment on this proposed rule using one of the following methods:

Oral Comments: Each commenter wishing to address AMS must pre-register by 11:59 p.m. ET on August 15, 2022. Each commenter will be allotted a speaking slot during the virtual listening session. Instructions for registering for the listening session can be found at *https://www.ams.usda.gov/event/listening-session-organic-livestock-and-poultry-standards.*

Federal eRulemaking Portal: https://www.regulations.gov. Follow the instructions for submitting written comments. The deadline to submit written comments is 11:59 p.m. ET, October 11, 2022.

Mail: AMS strongly prefers comments be submitted electronically. However, written comments may be submitted (*i.e.,* postmarked) via mail to Erin Healy, MPH., Director Standards Division, National Organic Program, USDA–AMS–NOP, Room 2646-So., Ag Stop 0268, 1400 Independence Ave. SW, Washington, DC 20250–0268. Mailed comments must be postmarked by October 11, 2022.

Transcript: The listening session will be recorded, and a transcript will be posted on the AMS website and on *https://www.regulations.gov* (search for docket ''AMS–NOP–21–0073'') following the session.

Meeting Accommodations: The listening session will be held virtually. If you are a person requiring a reasonable accommodation, please make requests by the registration deadline (which is 11:59 p.m. ET on August 15, 2022) for sign language interpretation or other reasonable accommodation to the person listed under **FOR FURTHER INFORMATION CONTACT**. Determinations for a reasonable accommodation will be made on a case-by-case basis.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''What Should I Consider as I Prepare My Comments for AMS?'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket, including background documents and comments received, go to *https://www.regulations.gov* (search for docket ''AMS–NOP–21–0073''). Comments submitted in response to this proposed rule will also be available for viewing in person at USDA–AMS, National Organic Program, Room 2646-South Building, 1400 Independence Ave. SW, Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this proposed rule are requested to make an appointment in advance by calling (202) 720–3252.

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

Executive Summary

A. Purpose of the Proposed Rule

AMS is writing this proposed rule to clarify and ensure consistent application of the USDA organic standards and therefore mitigate information asymmetries and associated costs amongst certifying agents, producers, and consumers. This action will augment the USDA organic livestock production regulations with clear provisions to fulfill the purposes of the Organic Foods Production Act (OFPA) (7 U.S.C. 6501–6524): to assure consumers that organically produced products meet a consistent, uniform standard and to further facilitate interstate commerce of organic products. OFPA mandates that detailed livestock regulations be developed through notice and comment rulemaking (7 U.S.C. 6509(g)) and USDA did so when it published the final rule on the National Organic Program (65 FR 80547; December 21, 2000). In 2010, AMS published a final rule (75 FR 7154; February 17, 2010) clarifying the pasture and grazing requirements for organic ruminant livestock. This proposed rule would provide clarity for the production of organic livestock and poultry, consistent with recommendations provided by USDA's Office of Inspector General and nine separate recommendations from the National Organic Standards Board (NOSB).

B. Summary of Provisions

This proposed rule would update the USDA organic regulations for livestock production. The proposed changes would address a range of topics related to the care of organic livestock, including:

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

Living conditions—this proposed rule would set separate standards for mammalian and avian livestock living conditions to better reflect the needs and behaviors of the different species, as well as related consumer expectations. The proposed mammalian livestock standards would cover both ruminants and swine. The proposed avian livestock living standards would set maximum indoor and outdoor stocking densities to ensure the birds have sufficient space to engage in natural behaviors;

Transport of animals—this proposed rule would add new requirements on the transport of organic livestock to sale or slaughter;

Slaughter—this proposed rule would add a new section to clarify how organic slaughter facility practices and USDA Food Safety and Inspection Service

(FSIS) regulations work together to support animal welfare.

C. Costs and Benefits

Much of the proposed rule focuses on clarifying and codifying existing practices, and AMS assumes no costs or benefits are accumulated for those changes. We do expect costs and benefits to occur in broiler production through increased indoor space for broilers and in egg production through increased outdoor access for layers. In summary, AMS estimates that the rule would increase discounted net benefits between $99 million and $119 million annually. This range spans three producer response scenarios, two implementation periods for the outdoor space requirements, and a no-rule scenario (see Table 1, Table 2, and Table 3).

TABLE 1—EXECUTIVE SUMMARY: COSTS AND BENEFITS FOR EGGS AND BROILERS

	Proposed rule (5-year compliance—No Growth)	Proposed rule (5-year compliance—Growth)	Proposed rule (15-year compliance)	Proposed rule
	Eggs (per dozen)	Eggs (per dozen)	Eggs (per dozen)	Broilers (per pound)
Benefits (Consumer Willingness to Pay)	0.21	0.21	0.21	0.34
Benefits with 80% Breaker Egg Adjustment	0.16	0.16	0.16	.....
Cost (Change in Average Total Cost of Production)	0.05	0.05	0.05	0.02
Net Benefit per Unit	0.11	0.11	0.11	0.32
20-Year Annualized Net Benefits (3%) ($1,000)	10,429	18,757	10,278	101,011
20-Year Annualized Net Benefits (7%) ($1,000)	9,236	16,132	8,027	91,418
Average Discounted Domestic Information Collection Cost	.....	.....	$194,777	

AMS estimates that the discounted costs for layer operations would range between $3.6 million and $8.4 million annually. To monetize the benefits of this rule, AMS used research that measured consumers' willingness-to-pay for outdoor access at a premium of between $0.16 and $0.25 per dozen eggs, controlling for other factors, including the organic label. Based on this, AMS estimates the annually discounted benefits falling between $11.6 million to $27.1 million.[1]

TABLE 2—EXECUTIVE SUMMARY OF ANNUALIZED DISCOUNTED NET BENEFITS FOR EGGS

[Thousands of $]

Discount rate	No rule		Growth prevented and exit in year 6 (5-year co-proposal)		Growth and exit in year 6 (5-year co-proposal)		Growth and exit in year 16 (15-year co-proposal)	
	3%	7%	3%	7%	3%	7%	3%	7%
Annualized Benefits	$0.00	$0.00	$15,651	$13,860	$27,110	$23,315	$14,858	$11,605
Annualized Costs	0.00	0.00	5,222	4,625	8,352	7,183	4,580	3,578
Annualized Net Benefits	0.00	0.00	10,429	9,236	18,757	16,132	10,278	8,027

AMS estimates that the total annual discounted costs for broiler compliance would be between $5.7 million and $6.3 million. The benefits for broilers are calculated using a willingness-to-pay at a premium of $0.34/lb. With this willingness-to-pay, the annual discounted benefits range between $97 million and $107 million.[2]

TABLE 3—EXECUTIVE SUMMARY OF ANNUALIZED DISCOUNTED NET BENEFITS FOR BROILERS

[Thousands of $]

Discount rate	Broiler			
	No rule		With rule	
	3%	7%	3%	7%
Annualized Discounted Values:				
Benefits	$0.00	$0.00	$107,295	$97,105
Costs	0.00	0.00	6,284	5,687
Net Benefits	0.00	0.00	101,011	91,418

[1] These ranges capture the discounted high and low estimates across all three layer scenarios, which vary in use of growth and implementation time. All three of the layer models account for approximately 50% of initial production leaving due to difficulty for some pit-litter and aviary houses to comply with the proposed requirements, if finalized.

[2] The broiler model assumes that all broiler production is able to comply with the rule because of the prevalence of single story housing and existing land near production houses. Therefore, exiting is not considered in the broiler model and a standard 3-year compliance is used with growth continuing at the historic average.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information
A. Does this proposed action apply to me?
B. What should I consider as I prepare my comments for AMS?
II. Background
A. Current Organic Livestock Standards
B. NOSB Recommendations
C. AMS Policy, Regulatory History, and Withdrawal
D. Related Issues
III. Overview of Proposed Amendments
A. Definitions
B. Livestock Care and Production Practices Standard
C. Mammalian Livestock Living Conditions
D. Avian Living Conditions
E. Transport and Slaughter
F. Slaughter Requirements
IV. Related Documents
V. Executive Orders 12866 and 13563—Executive Summary
VI. Executive Order 12988
VII. Executive Order 13175
VIII. Paperwork Reduction Act
IX. Civil Rights Impact Analysis
List of Subjects in 7 CFR Part 205

I. General Information

A. Does this proposed action apply to me?

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

B. What should I consider as I prepare my comments for AMS?

Specifically, AMS seeks comment on the following topics:

1. Do the proposed amendments provide enough clarity to farmers, handlers, and certifying agents to be able to comply with the proposed requirements?

2. Do the assumptions and estimates outlined in the Regulatory Impact Analysis and Regulatory Flexibility Analysis accurately reflect the current practices and production rates among organic poultry and egg producers? Specifically, to what degree do the proposed requirements align with third-party animal welfare certification programs and current industry practices? Are assumptions about welfare surplus valid? Is the period of analysis and the estimates about the useful life of a poultry house appropriate? Are AMS's benefit estimates for broilers appropriate? Are AMS's cost estimates for small producers accurate? Are AMS's estimates for the paperwork burden accurate?

3. Do the proposed amendments to § 205.239 related to mammalian livestock reflect current practices among organic mammalian livestock producers or impose new requirements on these operations?

4. What is an appropriate and feasible implementation timeframe for the proposed changes? Specifically, AMS seeks comment on the following implementation approach and timeframes:

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

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

(c) Outdoor space requirements for layers (three options):

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

Option 2: Layer operations certified at the time of the rule's effective date will have 15 years to comply with the rule's outdoor space requirements concerning stocking density, exit doors, soil, and vegetation. Fifteen years was selected in order to allow previously built facilities to fully depreciate under the Internal Revenue Service (IRS) depreciation schedule. New entrants certified within three years of the rule being effective must comply with the outdoor space requirements within five years of the effective date. Those operations certified more than three years after the rule's effective date will need to comply with all of the rule's outdoor access requirements immediately.

Option 3: AMS seeks comments on alterative timeframes to those presented above for the outdoor space requirements for layer operations, including justification for alternatives and data on the costs and benefits.

These options and their costs and benefits are discussed below in Section V (''Executive Orders 12866 and 13563—Executive Summary''). Detailed information can be found in the Regulatory Impact Analysis for this proposed rule.

II. Background

This proposed rule addresses health care, transport, slaughter, and living conditions for organic livestock. Furthermore, the provisions for outdoor access for poultry have a long history of agency and NOSB actions and are a focal issue in this proposed rule. Outdoor access practices, particularly for organic layers, vary among certified operations: some operations provide large, open-air outdoor areas, while other operations provide minimal outdoor space or use screened, covered enclosures commonly called ''porches'' to provide outdoor space. An audit conducted by the USDA Office of the Inspector General (OIG) identified inconsistencies in certification practices regarding the use of porches as outdoor space.[3] To address this finding, AMS issued draft guidance [4] but determined that rulemaking was preferable to resolve the divergent outdoor access practices for organic poultry. To assist with the rulemaking, the NOSB developed a series of recommendations to clarify organic livestock health care, transport, slaughter, and living conditions, including outdoor access for poultry. The NOSB deliberation process revealed broad support within the organic community and consumer expectations for specific guidelines for meaningful outdoor access for organically-produced poultry.

A. Current Organic Livestock Standards

The purpose of the OFPA, 7 U.S.C. 6501 *et seq.,* is to ''to establish national

[3] USDA, Office of the Inspector General. March 2010. Audit Report 01601–03-Hy, Oversight of the National Organic Program. Copies may be available at *https://www.usda.gov/oig/reports/audit-reports* or by contacting the Office at *https://www.usda.gov/oig/foia.* A copy of the report is also available in the docket for this proposed rule and can be found be searching for the docket number ''AMS–NOP–21–0073'' at *https://www.regulations.gov/.*

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

standards governing the marketing of certain agricultural products as organically produced products''; ''assure consumers that organically produced products meet a consistent standard''; and ''facilitate interstate commerce in fresh and processed food that is organically produced.'' 7 U.S.C. 6501. To that end, Congress broadly authorized the Secretary of Agriculture to promulgate and implement regulations related to the national organic program. 7 U.S.C. 6506(a)(11).

AMS administers the National Organic Program (NOP), which oversees the development and implementation of the national standards for the production, handling, and marketing of organically produced agricultural products. OFPA at 7 U.S.C. 6509, among other sections, authorizes the USDA to develop and implement regulations regarding standards for organic livestock products. 7 U.S.C. 6509(g). Furthermore, OFPA authorizes the creation of the NOSB to advise USDA about the implementation of standards and practices for organic production. 7 U.S.C. 6518.

The NOSB is a 15-member Federal Advisory Board appointed by the Secretary of Agriculture that meets in public twice annually. OFPA specifies the composition of the NOSB and reserves four NOSB seats for producers/growers and two seats for handlers/processors. The NOSB solicits public comment on topics related to the USDA organic regulations to inform its public deliberations and decision making at public meetings. If AMS agrees with an NOSB recommendation, a recommendation to amend the USDA organic regulations must be implemented through the notice-and-comment rulemaking process. A summary of the NOSB recommendations on livestock production practices follows in the NOSB RECOMMENDATIONS section.

Consistent with the Secretary's authority to promulgate regulations for organic livestock products, 7 U.S.C. 6509, USDA organic regulations include broad and general requirements for ensuring the living conditions associated with certified organic livestock. For example, the USDA organic regulations currently require organic producers to provide year-round access to the outdoors, shade, shelter, exercise areas, fresh air, clean drinking water, and direct sunlight (7 CFR 205.239(a)(1)). For all livestock, the regulations also require: (1) An environment that allows animals to express natural behaviors; (2) preventive health care to reduce the likelihood of illness; and (3) protection from conditions that jeopardize an animal's well-being, such as predators and adverse weather.

USDA-accredited certifying agents inspect organic operations and decide whether the operation's practices comply with the USDA organic regulations. Certifying agents must consider site-specific conditions, including prevalent pests and diseases, weather, and natural resources of the operation when determining the acceptability of a particular management practice. Certifying agents must also determine if organic operations provide ''access to the outdoors'' in a manner that meets the current requirements. 7 CFR 205.239(a)(1). This flexibility results in significant variation in the manner by which producers meet the requirements. For example, in organic poultry production, producers meet the requirement for outdoor access by providing animals with extensive pasture and also by providing a small roofed enclosure (including porches with no access to soil or vegetation). To complicate the assessment of access to the outdoors, a certifying agent generally only inspects an organic operation during limited and discrete periods of time.

The disparities in amount and quality of outdoor access have economic implications for producers. This disparity also increases consumer search costs and has been identified by USDA as a possible consumer welfare loss.[5] Consumer welfare loss could result in reduced confidence in and demand for organic eggs, as the organic label may inconsistently signal its attributes and provide less-consistent value. This may create additional search costs as consumers seek to understand and choose the marketing claim or label that most closely matches their preferences. In addition, a growing body of research shows that outdoor and pasture access encourages foraging and supports the natural behaviors of livestock and poultry. These behaviors may be positively associated with improved health and well-being, may be better for the environment, and may result in healthier livestock products for human consumption and poultry.[6] [7]

To resolve the divergence in practices under the organic label, the NOSB, organic trade groups, and consumer groups have asked AMS through multiple public meetings and public comment periods to revise the organic regulations.

The organic regulations also include more specific requirements for livestock production. These have existed since publication of the USDA organic regulations in December 2000 (65 FR 80547) and have been revised intermittently. Additional specificity was added by a 2010 final rule (75 FR 7153; 76 FR 26927) to require that ruminants, specifically, graze at least 120 days per year and receive 30 percent of dry matter intake from grazing (7 CFR 205.239) and to describe situations that warrant denying ruminants access to pasture or the outdoors (*e.g.,* for newborn dairy cattle up to six months) (7 CFR 205.239(c)(2)). This proposed rule seeks to similarly elaborate on the current regulations, especially for avian species and mammalian, non-ruminant livestock. For example, the proposed rule elaborates on the current requirements for year-round access to the outdoors, fresh air, and direct sunlight by including requirements for outdoor space (per bird), establishing thresholds for ammonia gas, and requiring doors in poultry houses to ensure all birds may access the outdoors. The proposed rule also elaborates on current standards (7 CFR 205.239) related to situations that may warrant temporary confinement of animals.

B. Prior NOSB Recommendations

Between 1994 and 2011, the NOSB made nine recommendations regarding livestock health care 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. The NOSB, as well as members of the public, commented on these rules with regard to the health care and welfare of livestock. The key actions from that period that have led to the development of the existing standards on organic livestock are summarized below.

(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

[5] Mojduszka, Eliza M. (2018) ''An Analysis of the Specialty Egg Market: Hedonic Price with Fixed Brand Effects vs. Random Coefficient Discrete Choice Model.'' *https://www.usda.gov/sites/default/files/documents/Mojduszka%202018%20An%20Analysis%20of%20the%20Specialty%20Egg%20Market.pdf.*

[6] 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/.*

[7] Phillips HN, Heins BJ. Effects of Outdoor Stocking Density on Growth, Feather Damage and Behavior of Slow-Growing Free-Range Broilers. *Animals (Basel).* 2021;11(3):688. *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7998225/.*

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 addendums to the June 1994 recommendations. These recommendations further addressed various health care practices, a requirement for outside access, and the use of vaccines.

(3) On December 16, 1997, AMS responded to 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 would be permitted to be confined. This 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). AMS responded to the NOSB's March 1998 recommendation on livestock health care and living conditions in this proposed rule. 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 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 baseline criteria in different ways. That rule became effective on February 20, 2001, 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.[8] In addition, the May 2002 recommendation stated that bare surfaces other than soil do not meet the NOP Rule's intent of 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.'' [9] 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). AMS published the final rule, Access to Pasture (Livestock) on February 17, 2010 (75 FR 7154). This rule was based on several NOSB recommendations regarding ruminant livestock feed and living conditions. This rule set a requirement that ruminants obtain a minimum of 30 percent dry matter intake from grazing during the grazing season (7 CFR 205.237(c)).

(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.[10] 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.[11] 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. The NOSB stated that such a change would improve the welfare of organic livestock.

(12) In December 2011, the NOSB passed an additional livestock welfare recommendation.[12] The 2011 recommendation added definitions for terms related to livestock production and provisions for health care standard and living conditions. The NOSB also revised its prior recommendation on physical alterations to provide a more inclusive 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

[8] NOSB, 2002. Recommendation Access to Outdoors for Poultry. Available at: *http://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations.*

[9] 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.*

[10] NOSB, 2009. Formal Recommendation by the NOSB to the NOP, Animal Welfare. Available at: *http://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations.*

[11] 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.*

[12] 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.*

recommended a minimum of 2.0 ft^2 per bird indoors and outdoors.

(13) In December 2011, the NOSB passed a separate recommendation to add standards for transportation of livestock to slaughter facilities and the slaughter process.[13] 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 must meet certain performance-based standards assessed via observations of animal handling and any slips, falls or vocalizations before and during slaughter.

C. AMS Policy, Regulatory History, and Withdrawal of OLPP

(1) AMS Policy Regarding Animal Welfare

On October 29, 2002, AMS issued a memorandum to clarify outdoor access and temporary confinement requirements for livestock under the USDA organic regulations.[14] 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. The memorandum 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. This memorandum was incorporated into the NOP Handbook (as ''PM 11–5'') on January 31, 2011, and is retained as current policy.

On February 17, 2010, AMS published a final rule on Access to Pasture (Livestock). The final rule was in response to the 2005 NOSB recommendation and extensive public input requesting clear outdoor access requirements for ruminant livestock. The Access to Pasture Rule adopted new provisions relating to organic livestock production, addressing such matters as animal feed; dry matter intake; access to and management of pasture as an organic crop; organic bedding; and use and management of feeding yards, feeding pads, and feedlots. 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. The final rule established that ruminant livestock obtain at least 30 percent dry matter intake from grazing during the grazing season (7 CFR 205.237(c)). The rule provided clarity to correct inconsistent application and enforcement of the outdoor access provisions for ruminant livestock. While AMS was able to rely on stakeholder feedback about consistent application of regulations to inform this proposed rule, AMS was unable to look at regulatory impacts from the rule like production levels because USDA's Economic Research Service stopped releasing that data in 2011, and available data sources would not be sufficient to estimate any causality or impact.

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.[15] The OIG found inconsistent certification practices regarding outdoor access for poultry. The OIG recommended that AMS issue guidance on outdoor access for livestock.

On October 13, 2010, AMS published draft guidance, Outdoor Access for Organic Poultry, for public comment.[16] 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.[17] The draft guidance 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. Comments received by AMS on the draft guidance are summarized below. Given the comments and the request that USDA address this issue through the rulemaking process, AMS determined to pursue rulemaking to clarify outdoor access for poultry and did not finalize the draft guidance.

AMS received 69 comments on the draft guidance. Comments varied widely. Some supported more specific and stringent stocking densities and soil-based outdoor access, citing animal health and environmental benefits. Other comments favored maintaining an allowance for porches as acceptable outdoor access, citing biosecurity and animal health concerns.

Furthermore, commenters stated that the draft guidance was unenforceable and would not ensure year-round outside access for poultry. These commenters suggested a minimum stocking rate of 1.75 square feet per bird in henhouses that also provide access to perches, with an additional 5 square feet per bird available in vegetated outdoor runs, which should be accessible to all birds at the same time. Some comments from poultry producers supported outdoor access on pasture or other vegetation and described health benefits and protection of the environment that a pasture or other vegetated outdoor access area would afford. A number of commenters, including organic poultry producers, requested a change to the draft guidance language to say that poultry, when outdoors, should be maintained on soil.

One trade association, some organic egg producers, and consultants described the use of production systems that limit outdoor access via the use of enclosed porches, so that poultry are not in contact with soil or pasture. These commenters described the benefits of these systems: protection from predation, pathogens that cause food safety problems, exposure to parasites, and contact with wild birds that could carry diseases. The commenters asserted that these systems are consistent with the 2002 NOSB recommendation. They noted that organic egg producers have 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 and should not be exposed to uncontrolled environments until that time.

(2) Regulatory History of the OLPP Rule

A proposed rule that incorporated NOSB recommendations was then published in April 2016. The proposed rule included provisions related to health care practices, such as physical alteration procedures, euthanasia, and

[13] 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.*

[14] 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.*

[15] USDA, Office of the Inspector General. March 2010. Audit Report 01601–03–Hy, Oversight of the National Organic Program. Available at: *http://www.usda.gov/oig/rptsauditsams.htm.*

[16] 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).

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

treatment of sick animals. It also addressed living conditions for mammalian and avian livestock, including minimum indoor and outdoor space requirements for avian livestock. Finally, the rule addressed requirements for transport and for slaughter practices. It received 6,675 written comments during the 90-day comment period. There were nearly 1,500 individual comments on the proposed rule, excluding form letters and signatures on petitions (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. Comments provided insight on the public's questions about regulatory authority, import impact, trade agreements, and educational avenues. Additionally, comments about the clarity of the rule generally found it beneficial for the industry and its impact on the label but acknowledged some challenges with universal standards.

AMS made a number of changes to this proposed rule based on comments in order to mitigate impacts and improve the clarity of the requirements. 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 decided to delay that date to allow the new Administration to review the Rule.

(3) Withdrawal of OLPP Final Rule

After delaying the effective date of the final rule,[18] AMS proposed withdrawing the OLPP rule because of its emergent view that the agency lacked the legal authority for the rulemaking, substantive errors in the economic analysis for the rule, and a lack of market failure (82 FR 59988, December 18, 2017). On March 13, 2018, AMS published a final rule (Withdraw Rule) withdrawing the OLPP Rule for those reasons (83 FR 10775). After discovering additional errors in the economic analysis for the OLPP Rule and the Withdraw Rule, AMS published the Organic Livestock and Poultry Practice Economic Analysis Report on April 23, 2020, to describe all the errors and sought 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.''

(a) Economic Analysis

In the Economic Analysis Report, AMS described the three errors that had been identified in the economic analysis of the Withdraw 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 open 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 Withdraw 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 Withdraw 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 proposed rule, AMS worked to ensure that the RIA for the proposed rule addressed these concerns. Some of the mathematical or descriptive concerns were addressed with rewriting the proposed 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, we updated costs to the extent possible based on data availability and believe these models are appropriate, 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.[19] [20]

(b) Market Failure

The Withdraw Rule said that the OLPP Rule failed to meet the requirements of Executive Order 12866, that the agency ''propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs'' and that there was no clear market failure for the need for the rule as referenced in Executive Order 13563. Although it is not necessary for rulemaking, AMS is reconsidering this rationale in the Withdraw Rule.

In reviewing the available information, AMS does believe a market failure exists in the organic label. Specifically, consumers have varying understanding of the degree to which the organic label requires indoor/outdoor space, health, and welfare provisions for animals used in organic production. Specifically, space and outdoor access are required in 7 CFR 205.239(a)(1), but this requirement has been interpreted by producers and certifying agents in different ways, allowing producers to provide indoor space and outdoor access through

[18] *See* 82 FR 9967 (February 9, 2017); 82 FR 21677 (May 19, 2017); and 82 FR 52643 (November 14, 2017).

[19] USDA ERS. Farmland Value. *https://www.ers.usda.gov/topics/farm-economy/land-use-land-value-tenure/farmland-value/.*

[20] 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.*

several different metrics and methods. While different practices are not inherently a market failure—and in many markets a sign of healthy market innovation—in a marketing label, varying practices can create inefficient outcomes if they allow for producers to benefit from information failures.

Consumers are increasingly interested in the treatment of animals raised for food, as evidenced by the proliferation of animal welfare certification labeling claims. These animal welfare certification programs have varying requirements, even within individual programs, creating a range of standards in the marketplace.[21] For example, these programs may include standards for pastured, cage-free and free-range production. High participation rates among organic livestock and poultry producers in these third-party animal welfare certification programs indicates that the organic label does not provide the level of information consumers need to assess whether a specific brand meets their expectations for animal welfare practices. Consumers who purchase these doubly certified products would likely not be satisfied with private animal welfare certification alone because organic certification addresses other unique attributes they seek, *e.g.,* animals receive only organic feed. While the proliferation of ecolabels may not dilute the value of the organic label, literature shows consumer confusion may be associated with ecolabel proliferation.[22]

The various production practices used to meet requirements like outdoor access have allowed producers that use lower-cost and less-stringent practices to benefit from the same organic labeling and premium as producers than use more costly or robust practices. Through public comment and literature reviews outlined in the RIA, AMS has observed that consumers need to expend additional effort and seek out additional label information if they wish to purchase animal products with outdoor access to soil and flora. AMS seeks comment on this analysis that market failure exists.

(c) Statutory Authority

In 2018, AMS withdrew the OLPP Rule, in part, based on its view that the OFPA did not provide authority for the OLPP Rule. AMS stated that the statutory authority for the OLPP Rule was insufficient because the ''reference in 7 U.S.C. 6509(d)(2) to additional regulatory standards 'for the care' of organically produced livestock does not encompass stand-alone concerns about animal welfare, but rather is limited to practices that are similar to those specified by Congress in the statute''—*e.g.,* restrictions on the use of antibiotics, synthetic internal parasiticides, administration of medication, and certain feed substances and practices—''and necessary to meet congressional objectives outlined in'' section 6501. *Id.* at 10,776. AMS further stated that ''standards promulgated pursuant to section 6509(d)(2) and section 6509(g) must be relevant to ensuring that livestock is 'organically produced.' '' *Id.* USDA reasoned that dictionary definitions of the word ''organic'' generally relate to the use of ''artificial chemicals in the growing of plan[t]s and animals for food and other products,'' and that ''[t]he surrounding provisions in section 6509 demonstrate that Congress had a similar understanding of the term 'organic.' '' *Id.* Based on this analysis, AMS concluded that ''the authority granted in section 6509(d)(2) and section 6509(g) for the Secretary to issue additional [livestock care] regulations fairly extends only to those [regulations] that . . . relate to the ingestion or administration of non-organic substances, thus tracking the purposes of the OFPA[.]'' *Id.* at 10776–77. AMS determined that ''stand-alone concerns about animal welfare'' did not meet this standard. *Id.* at 10,776. In so concluding, USDA explained that it would not ''regulate outside the boundaries of legislative text,'' *id.* at 10,776, such that even if the OFPA were ''silent or ambiguous with respect to the authority issue,'' it believed that its interpretation was a ''permissible'' one. *Id.* at 10,777; *see also id.* at 10,778 (referring to agency's ''interpretation of the scope of its statutory authority'' as ''permissible'').

This aspect of the Withdraw Rule was in tension with the USDA's view of its authority in issuing the OLPP Rule, as well as the regulatory authority USDA has traditionally exercised in this area. With this rulemaking action, AMS is reconsidering the determination in the Withdraw Rule. Based on the analysis below, the agency is proposing to adopt the position that OFPA does provide the requisite authority for regulations regarding livestock and poultry health care practices and living conditions, including regulations regarding animal welfare.

OFPA at 7 U.S.C. 6509 addresses practices and materials that may be used in organic livestock production. Subsection (c) of that provision, entitled ''Practices,'' requires producers to use organic feed, prohibits certain types of feed, such as plastic pellets and manure refeeding, and prohibits the use of growth promoters and hormones. Subsection (d), entitled ''Health care,'' restricts the use of subtherapeutic doses of antibiotics, the routine use of synthetic internal parasiticides, and the administration of medication absent illness. *Id.* § 6509(d)(1). In addition, subsection (d)(2) requires the NOSB to ''recommend to the Secretary standards in addition to those [specified in subsection (d)(1)] for the care of livestock to ensure that such livestock is organically produced.'' 7 U.S.C. 6509(d)(2).

While 7 U.S.C. 6509 addresses specific animal production practices for the organic program, OFPA does not prohibit the Secretary from adopting additional requirements about practices used in raising organic livestock. For example, much of Section 6509 dictates what organic producers ''shall not'' do and contains prohibitions of specific livestock production practices while not limiting the Secretary's authority to promulgate regulations about how organic livestock shall be ''raised.'' *See, e.g.,* 7 U.S.C. 6509(a) (''Any livestock that is to be slaughtered and sold or labeled as organically produced shall be raised in accordance with this chapter.''). Indeed, Section 6509(d)(2) recognizes that the NOSB will recommend standards ''in addition'' to the practices specified in subsection (d) ''for the care of livestock.''

In addition to the specific authority regarding livestock in section 6509, Congress also provided the Secretary with broad rulemaking authority to ''require such other terms and conditions'' for the organic program that he may deem necessary. 7 U.S.C. 6506(a)(11). This section, along with section 6509(g)'s charge to the Secretary to ''develop detailed regulations . . . to guide the implementation of the standards for livestock products provided under this section,'' would provide ample authority for the detailed requirements in this proposed rule.

In any event, even if the statutory text were ambiguous, USDA's interpretation is reasonable because the proposed rule would be consistent with the purposes of the OFPA. Commenters noted in the OLPP Rule that it would be reasonable

[21] The Humane Farm Animal Care program has compiled a table comparing the requirements of selected third-party animal welfare certification programs for laying hens. This includes stocking density and outdoor standards. The comparison table is available at: *http://certifiedhumane.org/how-we-work/fact-sheet/.*

[22] Magali A. Delmas, Olivier Gergaud, Sustainable practices and product quality: Is there value in eco-label certification? The case of wine, Ecological Economics, Volume 183, 2021, *https://doi.org/10.1016/j.ecolecon.2021.106953.*

for AMS to adopt regulations that address animal welfare as part of OFPA's overall design.[23] Consistent with this design, AMS has promulgated regulations addressing livestock production and living conditions that affect the health and welfare of livestock, including measures to avoid disease and illness; provisions about feed; principles governing housing, pasture conditions, and sanitations practices; and requirements for access to the outdoors and an the natural environment.

Over the years since OFPA was enacted, animal welfare has 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 the years 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,[24] and likewise that non-organic consumers perceive organic livestock to be raised according to higher animal welfare standards than non-organic livestock.[25] Literature also suggest state sponsored ecolabels provide the highest levels of consumer confidence.[26]

Notably, many in the contemporary organic industry do not view animal welfare as distinct from the concerns expressly reflected in the statutory text of OFPA. For example, by promoting animal natural behaviors and practices that maximize the health and welfare of organic livestock, producers reduce the need for antibiotics and other medications that section 6509(d) expressly limits.[27] The Senate report that accompanied the OFPA legislation set the expectation for greater specificity in the future for organic livestock standards as the industry matured: ''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.'' [28]

In addition, a growing body of research is showing that livestock and poultry with access to pasture and the outdoors forage and engage in natural behaviors, which may be positively associated with their improved health and well-being, be better for the environment, and result in healthier livestock and poultry [29] products for human consumption.[30] AMS believes that promoting animal welfare through the practices addressed in the OLPS Rule, and particularly with respect to outdoor access, would contribute to cycling of resources and ecological balance values reflected in the regulation.

Additionally, as the USDA Office of the Inspector General noted, certifiers have been inconsistent in their application of livestock access to outdoor space, a requirement stemming from the 2010 Access to Pasture Rule. This proposed rule would address the inconsistent application of the requirement by specifying a minimum size for outdoor access areas, clarifying circumstances when animals do not require outdoor access, and specifying records that operations must keep to disclose their activities, including records of temporary confinement from the outdoors.

In sum, USDA believes that, as a policy matter, regulation is warranted. USDA is also proposing to determine, for the reasons identified above, that it may exercise this authority under the OFPA. USDA is requesting comment on the identified disagreement over whether OFPA authorizes regulations on animal welfare and livestock production practices that are part of this proposed rule.

D. Related Issues

If finalized, this rule would supersede the appeal decision described below and impose the requirements set out in a final rule with respect to avian living conditions.

On July 15, 2002, an operation applied for organic certification of its 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.'' Porches are elevated areas (with solid or slatted floors) that have access to/from the poultry house and do not typically provide any means for birds to descend to ground level. The certifying agent denied certification for failure 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.

III. Overview of Proposed Amendments

Below AMS provides a summary and discussion of all proposed changes in

[23] Comments for all OLPP rulemaking can be found at *https://www.regulations.gov/docket/AMS-NOP-15-0012/document.*

[24] 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.

[25] 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.

[26] Kim Mannemar SÃnderskov, 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

[27] Wemette, M., Safi, A. G., Wolverton, 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/*

[28] Senate Committee on Agriculture, Forestry and Nutrition, *Report of the Committee on Agriculture, Forestry and Nutrition to Accompany S. 2830 Together with Additional and Minority Views, 101st Congress,* S. REP. NO. 101–357, at 289 (1990).

[29] 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/*

[30] 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 the Science of Food and Agriculture,* Vol. 92, pp. 2774–2781. *https://pubmed.ncbi.nlm.nih.gov/22430502/*

the proposed rule. The proposed regulatory text, in its entirety, can be found at the end of this document. The proposed changes in this rule are similar to requirements included in the OLPP Rule, except AMS removed a provision related to natural light in poultry houses that required an inspector to be able to read and write with lights turned off on a sunny day (see additional discussion below in the section on avian living conditions at § 205.241), as well as made edits for clarity. Below we summarize areas of the proposed rule.

A. Definitions (§ 205.2)

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

1. 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)). The proposed rule would elaborate on this requirement and prohibit some specific types of physical alterations. These physical alterations would be defined in the regulations to support 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). These alterations are not understood to promote animal welfare or may be overly painful or stressful without a corresponding benefit to animal welfare. The prohibition of specific physical alterations was recommended by the NOSB in 2009.

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

2. Indoors or Indoor Space

The proposed rule would define ''indoors or indoor space'' as the space inside of an enclosed building or housing structure that is available to livestock. The proposed definition includes four examples of structures that are commonly used in poultry production. These indoor housing types would be defined, in part, because the proposed 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 would need to be provided with species-appropriate shelter, structures providing indoor space would not be required. For example, beef cattle raised on pasture or range in mild climates may not be provided with indoor space.

The proposal relies on the term ''enclosed'' to establish if a space should be considered indoors or outdoors. Under the proposed definition, the space within the building or structure that can be enclosed would be considered the indoor space. The proposed rule defines ''outdoors or outdoor space'' separately (see discussion below). AMS welcomes public comment on whether the proposed definitions clearly and adequately distinguish the two types of spaces.

Specifically, AMS seeks comments on whether the proposed definitions sufficiently address spaces that may be enclosed by fences and/or overhead netting. The definition of ''indoors or indoor space'' is not intended, as proposed, to include fenced areas outside of a building or structure or to include fenced outdoor areas that may also have overhead netting. AMS recognizes that, in most cases, animals are also ''enclosed'' within outdoor spaces by fencing and/or overhead netting, and AMS seeks comments on whether the proposed definitions would allow for consistent implementation of the indoor and outdoor space requirements.

One of the key considerations for distinguishing indoor space from outdoor space would be how the livestock are managed in that space, which may determine whether the space could 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. If the screens were removed from that porch so that the birds could freely access other outdoor space, then the porch would be considered outdoor space (see ''Outdoors or outdoor space ''in section III.A.3). These distinctions would provide flexibility for producers to work with their certifying agents when developing their organic system plans (OSPs), yet still aligns with the position that enclosed porches are not considered to be outdoor space.

The proposed rule would also define the term ''perch'' as a rod- or branch-type structure above the floor of the house that accommodates roosting, allowing birds to utilize vertical space in the house.

3. Outdoors or Outdoor Space

The proposed rule would define ''outdoors or outdoor space'' to clarify the meaning of outdoor areas for mammalian and avian species. ''Outdoors or outdoor space'' would be defined as any area outside of an enclosed building or enclosed housing structure, but including roofed areas that are not enclosed. For example, a screened poultry ''porch,'' enclosed by wire on the sides, would not be considered outdoors. In this definition, ''outdoors or outdoor space'' would include all of 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 proposed definition includes pasture pens, which are floorless pens that are moved regularly and provide direct access to soil and vegetation. These pens (also referred to as ''chicken tractors'') may consist of solid roofing over all or part of the pen to provide shelter for the birds.

The outdoor space would have species-specific requirements. For example, this proposed rule sets the requirement that 50 percent of the outdoor space for avian species must be soil-based and that the soil be maximally covered with vegetation appropriate to the specific local conditions. Depending on the outdoor space and local conditions, a producer could rotate poultry around outdoor areas to allow vegetation to recover, or a producer might need to periodically reseed an outdoor area. Vegetative cover would need to be maintained in a manner that would not provide harborage for rodents and other pests. For additional description of the proposed requirements, see section below ''Avian Living Conditions.''

The proposed rule would define ''soil'' as the outermost layer of the earth comprised of minerals, water, air, organic matter, fungi, and bacteria in which plants may grow roots. Soil would be defined to distinguish these areas from impervious areas such as concrete or pavement. Soil may consist of bare ground but is generally covered with vegetation. As described in the

mammalian and avian living condition sections, maximum vegetative cover should be maintained on the soil as appropriate for the species, season, geography, and climate. Designated sacrifice areas or dry lots would be permitted. Outdoor areas would need to be maintained in a manner that maintains or improves natural resources, including soil and water quality (7 CFR 205.200). Temporary confinement may be provided to protect soil and water quality.

To assist with the mitigation of biosecurity and predation risks, fencing, netting, or other materials would be permitted over all or part of the outdoor areas to prevent predators and other wild birds from entering the outdoor area. Many producers also use portable or permanent shade structures throughout their pastures. Structures for shade would also be permitted in the outdoor space. For example, the area within a stand-alone, roofed shade structure could be included as outdoor space area. Areas under the eaves or the awning of a building, with a roof attached to the outer wall of the indoor space structure, can also be considered outdoors. While these areas may have solid roofs overhead, they can offer the same quality of outdoor space as uncovered outdoor areas, including natural ventilation/open air, direct sunlight, soil, vegetation, and open access to uncovered areas beyond.

4. Non-ambulatory

The proposed rule would add the term ''non-ambulatory'' and references the definition in 9 CFR 309.2(b). FSIS defines 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.'' Any non-ambulatory livestock on organic farms would need to be medically treated, even if the treatment causes the livestock to lose organic status or be humanely euthanized.

5. 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 proposed rule would define ''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'' would not describe young broilers used for meat production.

6. Stocking Density

The proposed rule would define ''stocking density'' as the weight 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, the proposed rule would establish maximum stocking densities for avian species, and the producer would need to ensure that the area provided is large enough to not exceed the established maximum stocking density when all birds in the flock are on the given area (*i.e.,* indoors) or unit of land.

7. Ritual Slaughter

The proposed rule would add the term ''ritual slaughter'' and references the definition in the Humane Methods of Slaughter Act (7 U.S.C. 1902(b)). This Act defines ritual slaughter as ''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.''

Organic livestock and handling operations may use ritual slaughter to convert their livestock to meat or poultry without loss of organic status.

8. Vegetation

The proposed rule would add 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 of grazing, rooting, nesting, etc., which require vegetation.

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

AMS proposes to amend current provisions and add new provisions to the organic livestock care and production practice standards. The proposed amendment to § 205.238(a)(2) specifies that the sufficiency of the feed ration be demonstrated by appropriate body condition of the livestock. Livestock producers would be required to monitor their animals to ensure body condition is being maintained. In addition, certifying agents would need to verify the nutritional adequacy of the animals' diet by assessing the body condition of organic livestock during inspection. Suitable body condition varies between species, between breeds, and between production types. For example, a suitable condition for dairy cattle may be considered too thin in beef cattle.

AMS proposes to revise § 205.238(a)(5) to clarify the conditions under which physical alterations may be performed on livestock. Physical alterations may only be performed for an animal's welfare, identification, or safety. Alterations must be done at a reasonably young age with minimal pain or stress to the animal and may only be performed by an individual who can competently perform the procedure. Competency in performing physical alterations may be demonstrated by appropriate training or experience of the individual.

A 2009 NOSB recommendation allowed teeth clipping and tail docking in piglets, but this revision was retracted in the 2011 NOSB recommendation.[31] This proposed rule would add § 205.238(a)(5)(i), which would restrict needle teeth clipping and tail docking in pigs. These two types of physical alterations may not be performed on a routine basis but may be performed as needed to improve livestock welfare, as listed below.

Needle teeth clipping and tail docking in pigs may only be performed in response to documented animal welfare reasons after alternative steps to prevent harm fail. Teeth clipping, if performed, is limited to the top third of each needle tooth. 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. Swine producers would also need to 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.

AMS proposes to add a new § 205.238(a)(5)(ii) to list the physical alterations that would be prohibited in an organic operation. Based on the 2011 NOSB recommendations, the following

[31] Available at *https://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations.*

physical alterations to avian species would be 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 would be 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 proposes to add new requirements at § 205.238(a)(7) to specify that surgical procedures on livestock to treat an illness 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, and only with the use of anesthetics, analgesics, and sedatives as listed in § 205.603(a) and (b).

AMS is proposing a new § 205.238(a)(8) that would require organic producers to actively monitor and document lameness within the herd or flock. Lameness can be an issue in various livestock species, including broilers, sheep, and dairy cattle. This proposed requirement for producers to create a plan for monitoring and recording instances of lameness in the organic system plan would enable organic livestock producers to identify and address potential problems among animals before they become widespread. In addition, documentation of lameness would provide an auditable trail for certifying agents to verify that livestock producers are monitoring these potential causes of animal suffering.

AMS proposes to add § 205.238(b) to state that synthetic medications allowed under § 205.603 may be administered to alleviate pain or suffering. In addition, synthetic medications allowed under § 205.603 may be administered when preventive practices and veterinary biologics are inadequate to prevent sickness.

AMS proposes to amend § 205.238(c)(1) to clarify that milk from an animal treated with an allowed substance in § 205.603, which has a withholding time, may not be sold, labeled, or represented as organic during that withholding time. However, organic animals or breeder stock may continue to provide milk for organic calves on the same operation during the withholding time. This is consistent with the 2010 NOSB recommendation that a calf nursing a cow treated topically with lidocaine or other approved synthetic with a withdrawal time would not lose organic status. For example, if an organic beef cow was nursing her organic calf and the cow became injured, her calf could continue to nurse the cow even during the seven-day withholding period if lidocaine was used to minimize pain and stress during her treatment. In this scenario, the calf would not lose organic status.

AMS proposes to revise § 205.238(c)(2) to clarify that other veterinary biologics, in addition to vaccines, would be exempt from the prohibition on administering animal drugs in the absence of illness. This change would be consistent with the definition for biologics in § 205.2 and supports § 205.238(a)(6), which identifies the use of vaccines and other veterinary biologics as a required practice to improve animal health.

AMS proposes to revise § 205.238(c)(3) to clarify that organic livestock producers would be 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 none are included on the National List for these uses). The proposed changes would maintain the status quo; however, the proposed changes affirm and support the current prohibition on hormones in organic production. This addition would clarify that all hormones—unless used as medical treatments—are prohibited in organic production.

AMS proposes to add a new § 205.238(c)(8) that would 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. However, if no appropriate medication is allowed for organic production, organic livestock producers would be required to administer treatment even if the animals subsequently lose their organic status. Furthermore, as recommended by the American Veterinary Medical Association, some forms of euthanasia may be an acceptable practice for minimizing pain and suffering.

AMS proposes to add a new § 205.238(c)(9) that would require 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 would enhance the overall health of the livestock on that operation.

AMS proposes to add a new § 205.238(c)(10) that would prohibit the practice of forced molting in poultry. Section 205.238(a)(2) of this proposed rule requires a nutritionally sufficient feed ration for livestock. Forced molting, a practice in which feed is severely restricted for a period of time in order to rejuvenate egg production, runs counter to this proposed addition. The proposed new § 205.238(c)(10) would be consistent with the fall 2009 NOSB recommendation.[32]

AMS proposes to add a new § 205.238(d) that would require organic livestock operations to have a plan to minimize internal parasite problems in livestock. The plan to minimize internal parasites must include preventive measures such as pasture management, fecal monitoring, and emergency measures in the event of a parasite outbreak. Livestock producers would also be required to work with their certifying agents to approve a parasite control plan.

In certain cases, livestock may suffer from an illness or injury where recovery is unlikely. AMS proposes to add a new § 205.238(e) to address euthanasia based on the 2011 NOSB recommendations. Proposed § 205.238(e)(1) would require livestock producers to maintain written plans for euthanizing sick or injured livestock. Proposed § 205.238(e)(2) would prohibit 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 the use of non-organic methods 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 proposes to direct

[32] Available at *https://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations.*

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.[33] The list of specifically prohibited methods could be amended to include other techniques, if needed, through future rulemaking. AMS also proposes to add a new § 205.238(e)(3), which would require organic producers to examine livestock to ensure they are dead following a euthanasia procedure.

C. Mammalian Livestock Living Conditions (§ 205.239)

AMS is proposing to separate the mammalian living conditions section from avian living conditions section due to the different physiology and husbandry practices for birds and mammals. As a result, AMS proposes revising the title of § 205.239 from ''Livestock Living Conditions'' to ''Mammalian Livestock Living Conditions.'' By creating clear living condition requirements for mammalian livestock and avian livestock, organic operations and certifying agents are better equipped to implement the USDA organic regulations in a consistent manner. Information regarding avian living conditions is addressed in new § 205.241.

AMS proposes to revise § 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 would provide organic ruminant producers with more flexibility and options to manage their farm and livestock in farm-specific methods.

AMS proposes to maintain 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 that may provide crops and forage from land included in the organic system plan of the dairy farm that is in the 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)(i)).

AMS proposes to revise § 205.239(a)(4)(i) to specify that shelter must be designed to accommodate natural behaviors over every 24-hour period. 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. AMS recognizes that there are times when animals will be constrained for livestock handling or management purposes. An animal may be limited in its freedom of movement during parts of the day for a variety of reasons, including milking, feeding, or other handling purposes. Livestock may be constrained for limited amounts of time to ensure hygiene and wellbeing of the 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 organic system plan 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 or other confinement systems in which swine would be housed individually in stalls for months at a time. However, if livestock are temporarily confined indoors as permitted in § 205.239(b), livestock must be able to move around, turn around, and stretch their limbs indoors for part of the day. Operations would need to fully describe the use of any stalls, methods used in stall management, and how livestock are able to express their normal patterns of behavior.

AMS proposes to add § 205.239(a)(4)(iv) to set requirements for an indoor space for bedding and resting that is sufficiently large and comfortable to keep livestock clean, dry, and free of lesions, with the exception of animals raised on pasture or range. AMS recognizes that while livestock do need to be provided with shelter (defined in § 205.2), livestock on pasture or range may not have access to traditional barns or bedded areas and therefore may not be provided with indoor space. These types of operations may use windbreaks or other methods to provide shelter for the livestock. Additionally, not all manufactured shelters are designed to hold bedding; for example, a shelter designed to provide shade may be portable and thus incompatible with holding bedding. Operations need to describe in their OSP how they will provide shelter to their livestock in a manner suitable for the species, stage of production, and environment.

AMS proposes to add new requirements in § 205.239(a)(7) concerning the individual housing of dairy young stock. Section 205.239(a)(7) would allow for the individual housing of animals until the weaning process is complete but no longer than six months, 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, the individual housing of young stock would need to be designed so that animals can see, smell, and hear other animals.

AMS proposes to add 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) would allow for sows to be individually housed at farrowing and during the suckling period; (2) § 205.239(a)(8)(ii) would allow for boars to be individually housed to reduce the likelihood of fights and injuries; and (3) § 205.239(a)(8)(iii) would allow for swine to be individually housed after multiple documented instances of aggression or to allow an individual pig to recover from a documented illness.

AMS proposes to add two new provisions in § 205.239(a)(9) and (10) concerning swine housing. Section 205.239(a)(9) would prohibit the use of flat decks or piglet cages. This provision would prohibit 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. AMS is proposing specific language to prohibit the practices and affirm that these systems do not and cannot meet the living conditions requirements of the organic regulations. In addition, § 205.239(a)(10) would require both indoor and outdoor areas for swine to include space for the livestock to root. Rooting is a natural behavior that must be accommodated by organic swine producers and could be done in soil, deep packed straw, or other materials. Organic swine producers would also be required to update their OSP to address how swine will be allowed to root during temporary confinement periods.

AMS proposes to add 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 a sufficient number of stalls to allow for the natural behaviors of the animals. A cage would not be

[33] *https://www.avma.org/resources-tools/avma-policies/avma-guidelines-euthanasia-animals.*

considered 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 wellbeing of organic livestock. Therefore, the proposed § 205.239(a)(11) would provide 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 proposes to add specific allowances for a variety of cattle barns, including tie stall barns, stanchion barns, and free stall barns. However, while these barns can all be suitable for organic certification systems, the specific procedures used by producers with these barns may be incompatible with organic production. For example, it would not be permitted for a producer to leave an animal tied up for 24 hours per day in a tie stall barn.

AMS proposes to add a new requirement for outdoor access in § 205.239(a)(12). Organic livestock would be required to have unencumbered access to the outdoors year-round, unless temporary confinement is justified under a specific reason described in the USDA organic regulations (*e.g.,* nighttime confinement for protection from predators). When the outdoor space includes soil, then maximal vegetative cover must be maintained as appropriate for the season, climate, geography, species of livestock, and stage of production. Ruminants must have access to graze during the growing season. Swine are not required to have access to the 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 as much vegetative cover as possible given the natural behavior of swine to root, the season, and local environmental conditions.

AMS proposes to revise § 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 or artificial breeding. A group of livestock may be confined before the procedures and while the various individuals are bred; afterward, the group shall be returned to living spaces that allow outdoor access. This provision would prohibit livestock from being confined indoors to observe estrus, or until they are determined to be pregnant. Proposed § 205.239(c)(1) further describes the time when ruminants may be denied access to pasture, but not access to the outdoors, before and after a breeding attempt.

AMS proposes to revise § 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 proposed revision includes an exemption to the proposed § 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 could 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 proposes to include this exception to encourage the next generation of organic farmers.

AMS proposes to revise § 205.239(d) to reflect the similar proposed changes in § 205.239(a)(1). Use of self-feeding and creep-feeding would be allowed to provide ruminants with access to feed continuously over a 24-hour period.

D. Avian Living Conditions (§ 205.241)

AMS is proposing to add a new section to the organic regulations, § 205.241, entitled ''Avian living conditions,'' which includes requirements for all organic avian (''bird'' or ''poultry'') species, including but not limited to, chickens, turkeys, geese, quail, pheasant, and any other species that are raised for organic eggs, organic meat, or other organic agricultural products.

Section 205.241(a) proposes to establish general requirements for organic poultry production. These general principles are further clarified in § 205.241(b), (c), and (d). Section 205.241(a) would require organic poultry operations to establish and maintain living conditions that accommodate the wellbeing and natural behaviors of the 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. The living conditions provided should be appropriate to the species, its stage of life, the climate, and the environment. These proposed requirements are based upon a 2009 NOSB recommendation [34] and are largely identical to previously established livestock requirements at § 205.239(a)(1), although AMS proposes to add additional requirements, including materials for dust bathing and adequate outdoor space to escape aggressive behaviors. These additional requirements are necessary to provide for the basic needs of poultry.

Section 205.241(b) proposes to specify the indoor space requirements for avian species. This proposed provision would require operations to provide shelter to birds, and if an operation provides indoor space to birds, this space would need to meet the proposed indoor space requirements. Proposed § 205.241(b)(1) would require that indoor space be sufficiently spacious to allow all birds to move freely, stretch their wings, stand normally, and engage in natural behaviors. Cages or environments that limit free movement within the indoor space would be prohibited. In addition, the indoor space must allow birds to engage in natural behaviors such as dust bathing, scratching, and perching. These proposed requirements are adopted from a 2009 NOSB recommendation and modify previously established requirements for organic livestock at § 205.239(a)(4)(i) that required, ''shelter designed to allow for. . .natural maintenance, comfort behaviors, and opportunity to exercise.''

AMS proposes to add a new § 205.241(b)(2) to require producers to monitor ammonia levels at least monthly and implement practices to maintain ammonia levels below 10 ppm. Should ammonia levels exceed 10 ppm, producers would be required to implement additional practices and additional monitoring to reduce ammonia levels below 10 ppm. Ammonia levels above 25 ppm would not comply with the requirements. Ammonia is a natural breakdown product of manure from livestock and is harmful to birds when inhaled, especially at concentrations above 25 ppm.[35] Inhalation of high levels of ammonia has a negative impact on welfare in poultry, causing irritation and inflammation, as well as contributing to negative production outcomes like reduced growth. In most

[34] 2009 NOSB Sunset Recommendation: *https://www.ams.usda.gov/sites/default/files/media/NOP%20Final%20Sunset%20Rec%20Animal%20Welfare.pdf.*

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

cases, high levels of ammonia indicate that litter is damp, or litter management practices require modification.

Proposed § 205.241(b)(3) would clarify the lighting requirements for organic layers and fully feathered birds. Organic producers could use artificial light for up to 16 hours per day (24-hour period). The 16-hour period would need to be calculated as a single continuous time period. Artificial light would need to be lowered gradually to encourage hens to move to perches or otherwise settle for the night. AMS is not including a requirement from the 2017 OLPP final rule (subsequently withdrawn in 2018) that required, ''Natural light must be sufficient indoors on sunny days so that an inspector can read and write when all lights are turned off.'' AMS determined that it would not be feasible for inspectors to verify a producer's compliance with this requirement, so the requirement was removed from this proposed rule.

Proposed § 205.241(b)(4) would require exit areas, or doors, on shelters to be designed in such a way that the birds could easily access both indoor and outdoor areas. Access and utilization of outdoor areas is a core principle of organic production systems. Organic avian systems must be designed so birds have ready access to outdoor areas and so birds are able to return indoors to roost in the evening. Producers must provide exit doors and door sizes to enable all birds to access outdoor and indoor areas. Door size and appropriate placement must provide meaningful outdoor access to the birds. 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, and other animals from entering poultry houses. AMS invites comments on how organic producers provide exit doors for meaningful outdoor access while simultaneously preventing animals (that could introduce or transfer SE) from entering poultry houses.

Proposed § 205.241(b)(5) would require perches for chicken layers at a rate of six inches per bird for all housing, with the exception of aviary housing. Perch space could include the alighting rail in front of nest boxes. Perches would not be required for broilers, meat birds, or layers of non-*Gallus gallus* species. Aviary housing would need to provide 6 inches of perch space for only 55 percent of the flock (*i.e.,* 3.3 inches of perch for each bird in flock) because birds in aviary housing are also able to escape aggressive behavior by moving between tiers in the house. These proposed requirements are adopted from 2009 and 2011 NOSB recommendations.

Proposed § 205.241(b)(6) would specify indoor requirements to allow for certain natural behaviors. Indoor space would be required to include areas that allow for scratching and dust bathing. Litter (*i.e.,* bedding), such as wood shavings or straw, must also be provided indoors. Manure excreted by birds in a poultry house alone, without additional litter, would not be sufficient to meet this requirement. The proposed provisions would also require that litter be maintained in a dry manner, since wet litter can lead to a variety of problems for birds, including excess ammonia, lameness, and pest problems.[36] High moisture content in poultry litter can cause negative health and welfare outcomes, including foot pad dermatitis [37] and increased populations of house fly leading to disease in the birds.[38] Wet litter also promotes bacterial growth, which can further lead to disease and negative health outcomes in birds.[39] Litter may be topped off when needed to maintain sufficient dryness. The proposed requirements described in § 205.241(b)(6) are adopted from 2009 and 2011 NOSB recommendations.

Proposed § 205.241(b)(7) would add specific flooring requirements for indoor avian housing with slatted/mesh floors. These houses must provide at least 30 percent solid flooring to allow birds indoors to engage in natural behaviors, including scratching and dust bathing, without crowding. This proposed requirement is adopted from a 2009 NOSB recommendation.

Sections 205.241(b)(8), 205.241(b)(9), and 205.241(b)(10) propose minimum indoor space requirements for different types of housing. These are minimum standards, and organic producers may choose to provide more indoor space than required. The indoor space requirements would apply to chickens (*Gallus gallus*), with layer requirements at § 205.241(b)(8), pullet requirements at § 205.241(b)(9), and broiler requirements at § 205.241(b)(10). The proposed indoor space requirements for layers vary by the type of housing provided. The types of housing are further defined in § 205.2 and include: mobile housing, aviary housing, slatted/mesh floor housing, and floor litter housing. For housing that does not fit into any of these defined types, the proposed indoor space requirement is no more than 2.25 pounds of hen per square foot. Pasture pens that are moved regularly and provide direct access to soil and vegetation would not be considered indoors (see definition of ''outdoors'' in § 205.2). These proposed requirements are adapted from 2009 and 2011 NOSB recommendations, and made in consideration of third-party animal welfare standards.

AMS proposes to establish indoor space requirements for common types of poultry housing. Less indoor space will be required per bird in houses that provide more access to vertical space in the house, as birds have more room to move around (*e.g.,* aviary and slatted/mesh floor housing). Housing where birds have more limited access to vertical space (*e.g.,* floor litter housing) must provide more indoor space per bird. AMS proposes to allow 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.

AMS is using the unit of measurement as ''pounds per square foot'' to establish space requirements. In other words, the minimum space that must be provided depends on the average weight of birds at that time. All weight references proposed in § 205.241(b) and (c) refer to the weight of live birds and not the weight of processed birds, for example. By stating the requirement in pounds per square foot, the application of the space requirement is more consistent between breeds, where the average weight per bird can vary significantly. This unit of measurement (pounds per square foot) was recommended by the NOSB in 2011 for pullets and broilers, and AMS proposes to extend this same unit of measurement to layers. This use of measurement allows birds to receive similar spacing densities physically no matter the breed's size. Under this proposed rule, larger breeds (*i.e.,* heavier on a per-bird basis) must be provided with more indoor space than smaller birds, on a per bird basis. For example, Rhode Island Red birds are heavier than White Leghorns or ISA

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

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

[38] ''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.

[39] ''Broiler Litter: Odor and Moisture Concerns'', Tom Tabler, Yi Liang, Jonathan Moon, and Jessica Wells, Mississippi State University Extension, Publication: P352020.

Browns, and thus cannot be stocked as densely, in terms of number of birds per unit area.

An example of how space requirements can be calculated is as follows: a layer in a floor litter housing system that is 32 weeks of age and weighs 4.3 pounds must be provided with 1.43 square feet per bird (equivalent to 3.0 pounds of bird for each one square foot); however, at 80 weeks of age and a weight of 4.5 pounds, each bird must be provided with 1.5 square feet per bird (3.0 pounds of bird for each one square foot). In other words, for each 10,000 square feet, a 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). Although older and heavier birds require more space, natural mortalities over time may result in compliance with the space requirements over a production cycle.

To calculate the weight of birds, an average weight may be established for the flock by taking weights of a representative sample of the flock. The 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 need to establish the weight of birds based on objective criteria to determine the space required indoors and outdoors. Certifiers may also weigh birds at inspections to verify compliance with the requirements.

Proposed § 205.241(b)(11) specifies how the area of the indoor space is calculated. Indoor space must be calculated to ensure that birds are provided with adequate indoor space to meet the proposed space requirements at § 205.241(b)(8) through (10). The total size of the indoor space is calculated by including all flat areas in a house, excluding nest boxes. Elevated round perches, for example, are not flat areas and could not be included as indoor space. Nest boxes are excluded from the calculation, as they are distinct from useable floor areas of the house where birds can move around freely. This aligns with the 2009 and 2011 NOSB recommendations.

Proposed § 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. The same porch must not be counted as indoor space if the birds do not have continued access to the space during temporary confinement events. This would ensure that enclosed porches that are not fully accessible to birds are not counted in indoor space calculations.

Proposed § 205.241(c) establishes the requirements for outdoor areas for organic avian species, including the amount of outdoor space that must be provided to organic avian species. The requirements of proposed § 205.241(c) are adapted from previously established requirements at § 205.239, 2009 and 2011 NOSB recommendations, and third-party animal welfare organization standards. Proposed § 205.241(c)(1) requires that the outdoor space be designed to promote and encourage outdoor access for all birds. Producers are required to provide access to the outdoors at an early age. This section requires door spacing to be designed to promote and encourage outdoor access and requires outdoor access to be provided on a daily basis (further described at proposed § 205.241(b)(4)). Outdoor access may only be temporarily restricted in accordance with proposed § 205.241(d).

Proposed § 205.241(c)(2) would require outdoor areas for poultry to have a minimum of 50 percent soil and that the soil portion of the outdoor area include maximal 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 50 percent of the outdoor area may be gravel, concrete, or surfaces other than soil or soil with vegetative cover. Maximal vegetation would be 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 would depend on the season, climate, geography, species, and the stage of production.

Proposed § 205.241(c)(3) clarifies how producers may provide shade to meet the general requirements of proposed § 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 would not permit structures that do not meet the definition of ''outdoors'' (§ 205.2) to be included in calculations of outdoor space.

This proposed rule would require organic layer producers to 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. Organic pullet producers must provide at least one square foot of outdoor space for every 3.0 pounds of bird in the flock. Organic broiler producers must provide at least one square foot of outdoor space for every 5.0 pounds of bird in the flock. The total outdoor space that must be provided per flock is to be calculated by multiplying the total number of birds in the flock by the space required per bird (*i.e.,* not by multiplying the number of birds actually in the outdoor area at a given moment by the space requirement per bird). All weight references in proposed § 205.241(b) and (c) refer to the weight of live birds and not the weight of processed birds.

Proposed § 205.241(c)(7) would clarify that porches and lean-to type structures that are not enclosed (*e.g.,* with a roof, but with screens removed) and allow birds to freely access other outdoor areas can be counted as outdoor space. This would ensure that enclosed porches are not counted as outdoor space, while providing flexibility for producers to use modified porches as outdoor space when they are open to larger outdoor areas that the birds can access.

Proposed § 205.241(d) describes the conditions under which organic avian livestock producers may temporarily confine birds indoors (''temporary'' and ''temporarily'' further defined at § 205.2). Producers must record confinement, and should do so in a manner that will demonstrate compliance with the USDA organic regulations (also see § 205.103). Records could 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 proposed § 205.241(d) are adapted from previously established requirements for organic livestock at § 205.239(b), 2009 and 2011 NOSB recommendations, and third-party animal welfare organization standards.

Proposed § 205.241(d)(1) would provide an allowance for temporary confinement in response to inclement weather, which is defined at § 205.2. In addition, this provision would allow birds to be confined indoors when the temperature does not exceed 40° F. It would also allow birds to be denied outdoor access or be brought inside when the daytime temperature exceeds 90° F. In this case, producers have to provide outdoor access during parts of the day when temperatures are between 40–90°F, unless other forms of

inclement weather occur. Weather may still qualify as inclement weather (§ 205.2) within the 40–90° F temperature range. For example, excessive precipitation and very violent weather can occur when temperatures are within 40° F and 90° F. Likewise, weather may meet the definition of inclement weather within the range of 40° F and 90° F if the relative humidity is very high and the air temperature is nearing 90° F, or under extremely windy conditions. As inclement weather is defined, in part, as weather that can cause physical harm to a species, a producer would still be in compliance with proposed § 205.241(d)(1) if birds were confined at temperatures that did not exceed 90° F, if the weather could cause physical harm.

Proposed § 205.241(d)(2) would provide an allowance for temporary confinement indoors due to a bird's stage of life. In this section, AMS proposes specific requirements for confining chicken broilers and chicken pullets due to their stage of life (''stage of life'' previously 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 would be in accordance with proposed § 205.241(d).

Proposed § 205.241(d)(3) would provide an allowance for temporary indoor confinement under conditions in which the health, safety, or well-being of the birds could be jeopardized. Temporary confinement would be required to be recorded, and to confine birds under this proposed 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. Certifying agents would verify compliance with this requirement. Producers and certifying agents 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 certifying agents and to AMS to discuss specific health concerns. AMS would continue to engage animal health officials, including State Departments of Agriculture and State Veterinarians, about risks to bird health and provide appropriate guidance to certifying agents or producers, as necessary.

Proposed § 205.241(d)(4) would provide an allowance for indoor confinement to prevent risk to soil or water quality. This provision would allow for confinement of birds when the outdoor area is being managed to reestablish vegetation. As outdoor areas must be maximally vegetated, producers may need to occasionally confine birds to meet the vegetation requirement at § 205.241(c)(2).

Proposed § 205.241(d)(5) would provide 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 would allow producers to briefly confine a flock to administer a vaccine or confine an individual animal that requires medical treatment.

Proposed § 205.241(d)(6) would provide an allowance for indoor confinement for sorting, shipping, and poultry sales. Birds would be required to 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 the birds or to catch the birds, place them in shipping containers, and conduct the sale.

Proposed § 205.241(d)(7) would provide an allowance for indoor confinement to train pullets to lay eggs in nest boxes, with a maximum period of five weeks allowed for confinement (over the life of the bird). The training period would be required to 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 proposed § 205.241(d).

Proposed § 205.241(d)(8) would provide an allowance for indoor confinement for youth exhibitions, such as with 4–H or the National FFA Organization. This provision would also include 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 proposed § 205.241(d)(8) to encourage the next generation of organic producers.

Proposed § 205.241(e) would require 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 would be required to manage the outdoor space in a manner that does not put soil or water quality at risk. In addition, organic poultry producers would be required to comply with all other governmental agency requirements for environmental quality. The proposed requirements of this section are adapted from previously established requirements for organic livestock at § 205.239(e).

E. Transport and Slaughter

AMS is proposing to add a new section to the organic regulations at § 205.242 titled ''Transport and Slaughter,'' to address the care of organic animals during transport and up to the time of slaughter. Proposed § 205.242 is divided into three subsections on transportation, mammalian slaughter, and avian slaughter.

The proposed changes are made in response to a December 2011 NOSB recommendation [40] and 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 killed, existing organic regulations for handling operations become relevant for the processing, packaging, and sale of organic animal products. The proposed requirements would apply to the care of live animals.

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, ''to avoid animal mistreatment on the farm, during transport to, or at the slaughter plant.'' The NOSB noted that their recommended regulatory language reflect third-party animal welfare

[40] *https://www.ams.usda.gov/sites/default/files/media/NOP%20Livestock%20Final%20Rec%20Animal%20Handling%20and%20Transport%20to%20Slaughter.pdf*

certification standards and common practices within the industry. The NOSB also specifically recommended that AMS adopt the ''necessary'' requirements from the recommendation to avoid increasing paperwork burden or certification costs, and to avoid discouraging small slaughter plants from seeking or maintaining 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 proposal 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. Specific requirements are also included, as recommended by the NOSB.

Proposed § 205.242(a)(1) would require that animals are clearly identified during transport. AMS's approach requires that livestock are clearly identified but provides flexibility on how the identity is maintained during transport. Proposed § 205.242(a)(2) would set minimum fitness requirements for livestock to be transported. Proposed § 205.242(a)(2)(i) would require that calves have a dry navel cord and the ability to stand and walk without assistance if they are to be transported. This provision would apply to transport to buyers, auction facilities, or slaughter facilities. Beef cattle and dairy cattle producers may transport calves on the farm before the navel is dried and the calves can walk. Proposed § 205.242(a)(2)(ii) would prohibit transport of non-ambulatory animals to buyers, auction facilities, or slaughter facilities. These animals may either be given medical treatments and cared for until their health conditions improve, so that they are able to walk, or they may be euthanized.

Proposed § 205.242(a)(3) and (4) would set minimum standards for the trailer, truck, or shipping container used for transporting organic livestock. The mode of transportation would be required to provide seasonally appropriate ventilation to protect livestock against cold or heat stress. This provision would require that air flow be adjusted depending on the season and temperature. In addition, bedding would be required to be provided on trailer floors as needed to keep livestock clean, dry, and comfortable. If roughage is used as bedding, the bedding would need to be organically produced and handled. Bedding would not be required for poultry crates.

Proposed § 205.242(a)(5) would require that all livestock be provided with organic feed and clean water if transport time exceeds 12 hours. The 12-hour time period includes all times during which the livestock are on the trailer, truck, or shipping container, even if these modes of transportation are not moving. In cases such as poultry slaughter in which requirements do not allow feed 24 hours before slaughter, producers and slaughter facilities would need to ensure that transport time does not exceed 12 hours. After 12 hours of transport, the birds would need to be fed, which may prolong the time to slaughter. The certified operation would need to present records—which verify that transport times meet the 12-hour requirement—to the certifying agent during inspections or upon request.

Proposed § 205.242(a)(6) would require that operations that transport livestock to sales or slaughter have emergency plans in place that adequately address problems reasonably possible during transport. Such emergency plans could include how to provide feed and water if transport time exceeds 12 hours, what to do if livestock escape during transport, or how to euthanize an animal injured during transport. Shipping and/or receiving operations would also be required to include these plans in their OSPs.

F. Slaughter Requirements (§ 205.242(b) and (c))

1. Slaughter and the Handling of Livestock in Connection With Slaughter

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. The proposed rule reiterates that compliance with these regulations, as determined by FSIS, is required for certified organic livestock operations. The proposed requirements defers, in large part, to existing regulations and law while also aiming to ensure that USDA-accredited certifying agents have access to relevant records. The proposal seeks to avoid undue burden on certified organic slaughter facilities which could have the effect of reducing the availability of certified organic slaughter facilities. Proposed § 205.242(b) regarding mammalian slaughter would clarify 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 mammalian and avian livestock are handled and slaughtered). This new subsection (proposed § 205.242(b)), titled ''Mammalian Slaughter,'' would govern 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.

Proposed § 205.242(b)(1) would require certified organic slaughter facilities to be in full compliance with the Humane Methods of Slaughter Act (HMSA) of 1978 (7 U.S.C. 1901 *et seq.*) and its implementing FSIS regulations, as determined by FSIS. 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.'' The HMSA is referenced in the Federal Meat Inspection Act (FMIA) at 21 U.S.C. 603 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.[41] The regulations at 9 CFR part 309 govern ante-mortem inspection and ensure that only healthy ambulatory animals are slaughtered, and that non-ambulatory 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.[42] 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 proposes to add a new § 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 part 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.

Proposed § 205.242(b)(3) would require that all certified organic slaughter facilities provide any FSIS noncompliance 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. These records would be required to be provided to certifying agents during inspection or upon request to verify that the slaughter facility is in full compliance and has taken 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 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, the relevant humane slaughter noncompliance records and corrective action records would be required to be provided to certifying agents during the inspections or upon request.

2. Slaughter and the Handling of Poultry in Connection With Slaughter

AMS proposes to add § 205.242(c) regarding avian slaughter facilities. Proposed § 205.242(c)(1) would clarify the authority of AMS, certifying agents, and State organic programs to review noncompliance records related to the use of good manufacturing 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 proposed organic standards for avian slaughter would apply to all species biologically considered avian or birds. The NOSB did not directly address avian slaughter requirements. However, AMS is proposing to add 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 other means 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 FSIS Directives 6100.3 and 6910.1, as determined by FSIS, would be required under the proposed 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.[43]

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

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

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

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

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 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 scalder.[44] 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.[45]

Proposed § 205.242(c)(2) would require 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 manufacturing 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. These records must be provided to the certifying agent at inspection or upon request to 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, the relevant noncompliance records and corrective action records would be required to be provided to the certifying agent during inspections or upon request.

Unlike the proposed requirements for livestock slaughter inspection, 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 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 is proposing to add handling and slaughter standards for such poultry that is either exempt from or not covered by the inspection requirement of the PPIA. These proposed requirements would 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, for example. Specifically, proposed § 205.242(c)(3)(i) would prohibit 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 would be required to either be euthanized or made insensible before being shackled. AMS also is proposing (§ 205.242(c)(3)(ii)) to include a requirement that all birds that were hung or shackled on a chain or automated slaughter system be stunned prior to exsanguination (bleeding). This proposed requirement would not apply to small-scale producers who do not shackle the birds or use an automated system but who instead place the birds in killing cones before exsanguinating them without stunning. This proposed requirement would not apply to ritual 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, proposed § 205.242(c)(3)(iii) would require that all birds be irreversibly insensible prior to being placed in the scalding tank.

IV. Related Documents

Documents related to this proposed 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 proposal 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.

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); and 75 FR 7154 (February 17, 2010). AMS activities and documents that followed publication of the January 19, 2017 OLPP final rule (82 FR 7042) are detailed above in the AMS POLICY section.

V. Executive Orders 12866 and 13563—Executive Summary

The Regulatory Impact Analysis and Regulatory Flexibility Analysis are available at *https://www.regulations.gov* in the ''docket'' for this proposed rule. The docket can be found by searching for ''AMS–NOP–21–0073'' at *https://www.regulations.gov.* Below is an executive summary of the analyses.

AMS is writing this proposed rule to clarify and ensure consistent application of the USDA organic standards and therefore mitigate information asymmetries and associated costs amongst certifying agents, producers, and consumers. This action will augment the USDA organic livestock production regulations with clear provisions to fulfill the purposes of the Organic Foods Production Act (OFPA) (7 U.S.C. 6501–6524): to assure consumers that organically produced products meet a consistent, uniform standard and to further facilitate interstate commerce of organic products. OFPA mandates that detailed livestock regulations be developed through notice and comment rulemaking (7 U.S.C. 6509(g)) and USDA did so when it published the final rule on the National Organic Program (65 FR 80547; December 21, 2000). In 2010, AMS published a final rule (75 FR 7154; February 17, 2010) clarifying the pasture and grazing requirements for organic ruminant livestock. This proposed rule would provide clarity for the production of organic livestock and poultry, consistent

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

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

with recommendations provided by USDA's Office of Inspector General and nine separate recommendations from the NOSB.

This proposed rule would add requirements for the production, transport, and slaughter of organic livestock and poultry. The proposed provisions for outdoor access and space for organic poultry production are the focal areas of this rule. Currently, organic poultry are already required to have outdoor access, but this varies widely in practice.[46] Some organic poultry operations provide large, open-air outdoor areas, while other operations provide minimal outdoor space or use screened and covered enclosures commonly called ''porches'' to meet outdoor access requirements. This variability leads to additional costs for some producers and consumers, and may also create consumer confusion about the meaning of the USDA organic label.

The proposed changes would better define standards of outdoor access for poultry, taking into account stakeholder input, as mandated by OFPA. Specifically, the changes address the wide disparities in production practices within the organic poultry sector. These provisions support an open, fair, and equitable market for producers who choose to pursue organic certification by providing standards that would apply to all organic livestock operations. Similarly, these provisions would reduce consumer search costs and welfare loss by standardizing the attributes of organic livestock and poultry products. In the long run, these provisions may help minimize the risk to consumer confidence brought on by these costs.

This economic impact analysis describes the cost impacts and benefits of the proposed rule, with a focus on organic egg and broiler producers, because these types of operations may face additional production costs as a result of this proposed rule. AMS is evaluating this proposed rule's potential benefits against the costs of:

- Additional indoor space for broilers
- Additional outdoor space for layers

To project costs, AMS assessed current (baseline) conditions and considered how producers might respond to the proposed requirements. Based on NOSB deliberations, surveys of organic poultry producers, and public comments on previous proposed rules, we determined that the outdoor access/stocking density requirements for layers and indoor stocking density requirements for broilers would drive the costs of this proposed rule. For organic layers, the key factor affecting compliance is the availability of land to accommodate all birds at the required stocking density. In our assessment of projected costs and benefits of the proposed rule and policy alternatives, we consider four scenarios that represent a combination of policy options and market responses to policy implementation:

Scenario 1: No Rule. There are no costs and no benefits because the status quo is maintained.

Scenario 2: Growth Prevented and Exit in Year 6 (5-year Co-Proposal). Existing producers and those certified within three years of the rule's effective date have five years from the effective date (*e.g.,* 60 days after publication of final rule) to comply with the outdoor space requirements for layers. Those certified more than three years after the rule's effective date must comply immediately. Producers that account for approximately half of existing organic egg production are assumed to comply with the outdoor space requirement on the fifth anniversary of the rule's effective date while maintaining current production levels; the other half move from organic to the cage-free, non-organic market at that time. There is assumed to be no growth in impacted organic egg production once the final rule is effective.

Scenario 3: Growth and Exit in Year 6 (*5-year Co-Proposal*). The policy is the same as in Scenario 2, it is assumed that producers accounting for approximately half of existing organic egg production leave organic production to join the cage-free, non-organic market five years after the rule's effective date (lesser amounts of cage-free production are new in the meantime). The other half of production is assumed to come into compliance with the rule at that time. Organic egg production grows at a slower rate than in Scenario 1 (*i.e.,* if there was no rule) in the five years after the rule's effective date as there is assumed to be only growth among those producers that plan to come into compliance with the rule, not among those planning to leave for the cage-free market. In Scenario 3 there is a significantly higher level of organic egg production than in Scenario 2 at the end of five years because there is growth in organic egg production after the rule's effective date. Costs and benefits include, among others, effects calculated starting in year four for new entrants certified more than three years after the rule's effective date, and starting in year six for existing producers and new entrants starting within three years of the rule's effective date.

Scenario 4: Growth and Exit in Year 16 (*15-year Co-Proposal*). The rule is implemented with a 15-year grace period for implementation of the layer outdoor space requirement for existing operations and those certified within three years of the rule's effective date. Organic egg production among operations that will not be compliant in year 16 is frozen at year 1 levels. The proportion of existing production that will become compliant in year 16 grows at historical rates for the industry. Costs and benefits include, among others, effects calculated starting in year four for new entrants certified more than three years after the rule's effective date.

Regarding the organic broiler industry, AMS assumed that organic broiler producers would build enough new facilities to comply with the new indoor stocking density requirement and maintain their current production level while remaining in the organic market.[47]

Costs incurred by new entrants after the rule's publication are counted for all new production starting in year two. Costs for all other operators do not accrue until this rule is fully implemented (*i.e.,* three years after the effective date for broiler producers and five years after the effective date for layer producers).

In summary, AMS estimates that the rule will increase total production costs for broiler and layer operations between $9.3 million and $14.6 million annually. This range spans three producer response scenarios, two implementation periods for the outdoor space requirements, and a no-rule scenario (see Table 2).

We estimate the annual costs for organic egg production are $4.6 million to $8.3 million (discounted annualized value) if 50% of organic egg production in 2022 transitions to the cage-free egg market by the 5-year implementation date. Under this scenario the shift would also result in approximately $113.6 million to $172.6 million

[46] The 2013 NAHMS poultry survey reports that 36% of organic hens covered in the survey have at least 2 sq. ft. per bird (equivalent to 2.25 lbs./sq. ft.) of outdoor space and 35% of hens have outdoor access via a porch system or covered area. Other studies have found between 15.5–59% of organic egg production has at least 2 sq. ft. of outdoor space. *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/monitoring-and-surveillance/nahms/NAHMS_Poultry_Studies.*

[47] Additional land needed to meet indoor space requirements in broiler production is on average much smaller than the land needed for those adjusting to the requirements for outdoor access. Additionally, past public comment and stakeholder feedback have indicated that broiler producers would seek to maintain current levels of production.

(discounted annualized value) in production that moves from organic to cage-free egg production. We estimate the annual costs for organic egg production are $3.6 million to $4.6 million (discounted annualized value) with the co-proposed 15-year implementation date; under this scenario, the shift would also result in approximately $62.2 million to $77.8 million (discounted annualized value) in production that moves from organic to cage-free egg production.

We estimate that the annual costs for organic broiler production account for $5.7 million to $6.3 million of the above totals. This reflects costs to build additional housing for more space per bird to meet the indoor stocking density requirement. This rule will have broad, important benefits for the organic sector as a whole that are difficult to quantify. Standards that more closely align to consumer expectations will sustain demand and support the growth of the $62 billion U.S. organic market.[48] Furthermore, clear parameters for production practices ensure fair competition among producers by facilitating equitable certification and enforcement decisions.

To quantify the benefits of this proposed rule, AMS used research that estimated consumers' willingness-to-pay for outdoor access to be between $0.16 and $0.25 per dozen eggs. Based on this, AMS estimates that the benefits for layer operations would range between $11.6 to 14.9 million (under Scenario 4) and $23.3 to 27.1 million annually (under Scenario 3).

The benefits for broilers are calculated using a willingness-to-pay of $0.34/lb. Based on this, AMS estimates that the annual discounted benefits for broiler operations would range between $97 million and $107 million. AMS estimates that the total annualized discounted benefits would be between $109 million and $134 million for eggs and broilers.

In the Regulatory Flexibility Analysis, AMS reports that large poultry operations would have higher compliance costs than small operations on average. Many larger organic layer operations will need more land to comply with the outdoor access requirements, and some operations will not be able to modify their houses to meet the proposed outdoor access requirements due to how they are arranged on the farm.

Table 1 presents estimated net benefits for the models AMS calculated. These models use the 5-year and 15-year implementation periods (with growth) for the layer outdoor access/stocking density requirements and the 3-year implementation period for the broiler compliance horizon. Total annual discounted net benefits range between $99 million and $119 million.

TABLE 1—EXECUTIVE SUMMARY: COSTS AND BENEFITS FOR EGGS AND BROILERS

	Proposed rule (5-year compliance—No Growth)	Proposed rule (5-year compliance—Growth)	Proposed rule (15-year compliance)	Proposed rule
	Eggs (per dozen)	Eggs (per dozen)	Eggs (per dozen)	Broilers (per pound)
Benefits (Consumer Willingness to Pay)	$0.21	$0.21	$0.21	$0.34
Benefits with 80% Breaker Egg Adjustment	0.16	0.16	0.16	
Cost (Change in Average Total Cost of Production)	0.05	0.05	0.05	0.02
Net Benefit per Unit	0.11	0.11	0.11	0.32
20-Year Annualized Discounted Net Benefits (3%) ($1,000)	10,429	18,757	10,278	101,011
20-Year Annualized Discounted Net Benefits (7%) ($1,000)	9,236	16,132	8,027	91,418
Average Annual Domestic Information Collection Cost				$194,777

TABLE 2—FOUR SCENARIOS: MARKET RESPONSES TO OUTDOOR ACCESS POLICIES FOR LAYERS

Assumed conditions	Affected population	Costs	Benefits	Eggs newly labeled cage-free
		Millions of Dollars		
Scenario 1: No Rule/No Change	No producers or consumers	$0.0	$0.0	$0.0
Scenario 2: 50% of organic layer production in year 6, moves to the cage-free market. Growth prevented.	Organic layer production at full implementation of rule (after year 5).	$4.6–$5.2	$13.9–$15.7	$146.4–$172.6
Scenario 3: 50% of organic layer production in year 6, moves to the cage-free market.. Growth considered	Organic layer production at full implementation of rule (after year 5). Compliance from growth starting in year 4.	$7.2–$8.3	$23.3–$27.1	$113.6–$131.6
Scenario 4: Organic layer populations continue historical growth rates after rule and existing firms are grandfathered until the end of year 15.	Organic layer and production at full implementation of rule (after year 15). Compliance from growth starting in year 4.	$3.6–$4.6	$11.6–$14.9	$62.2–$77.8
All broiler production in year 4 complies with the proposed rule.	Current broiler operations at full implementation of the rule (after year 3).	$5.7–$6.3	$97.1–$107.3	N/A

[48] OTA, 2021 Industry Survey.

VI. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This proposed rule cannot be applied retroactively.

States and local jurisdictions are preempted under the 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 OFPA at 7 U.S.C. 6514. States are also preempted under OFPA at 7 U.S.C. 6503 and 6507 from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the USDA Secretary as meeting the requirements of the OFPA.

Pursuant to 7 U.S.C. 6507(b)(2), a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are 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 the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States; and (d) not be effective until approved by the Secretary.

Pursuant to 7 U.S.C. 6519, this proposed rule would not 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, 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. 301–399i), nor the authority of the Administrator of the EPA under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136–136(y)).

Furthermore, 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. The 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.

VII. Executive Order 13175

Executive Order 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. Additionally, 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 also require consultation. This regulation discloses that there are tribal implications. AMS hosted a virtual tribal consultation meeting on September 9, 2021, where this proposed rule was discussed with tribal leaders. No questions or concerns were brought to AMS's attention about this rule by any tribal leaders at the meeting. If a tribe requests consultation in the future, AMS will work with the Office of Tribal Relations to ensure meaningful consultation is provided.

VIII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA), AMS is requesting OMB approval for a new information collection totaling 102,088 hours for the reporting and recordkeeping requirements contained in this proposed rule. AMS is using the previously assigned OMB control number 0581–0293 even though this is new burden due to a proposed rule. OMB previously approved information collection requirements associated with the NOP and assigned OMB control number 0581–0191. AMS intends to merge this new information collection, upon OMB approval, into the approved 0581–0191 information collection. Below, AMS has described and estimated the new information collection and recordkeeping 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. The OFPA, as amended, provides authority for this action.

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

OMB Control Number: 0581–0293.

Expiration Date of Approval: 3 years from OMB date of approval.

Type of Request: New collection.

Abstract: Information collection and recordkeeping is necessary to implement reporting and recordkeeping necessitated by amendments to §§ 205.238 and 205.239 and the addition of §§ 205.241 and 205.242 for additional animal welfare standards for organic livestock and poultry production under the USDA organic regulations. The Organic Foods Production Act (OFPA) authorizes the further development of livestock production standards (7 U.S.C. 6509). This proposed action is necessary to address multiple recommendations provided to USDA by the NOSB to add specificity about livestock and poultry production practices with the purpose of ensuring consumers that conditions and practices for livestock and poultry products labeled as organic encourage and accommodate natural behaviors and utilize preventive health care and humane slaughter practices.

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 proposed rule, organic livestock and poultry operations would be subject to additional reporting requirements. The proposed requirements in §§ 205.238, 205.239, 205.241, and 205.242 would require livestock and poultry operations to provide specific documentation as a part of the OSP that describes livestock and poultry living conditions (including minimum space requirements, outdoor access, preventive health care practices [*e.g.,* physical alterations, euthanasia], and humane transportation and slaughter practices). This documentation would enable certifying agents to make consistent certification decisions and facilitate fairness and transparency for the organic producers and consumers that participate in this market. This proposed action and its associated information collection would promulgate changes to the USDA organic regulations consistent with the OFPA.

The PRA also requires AMS to measure the recordkeeping burden. Under the USDA organic regulations, each producer is required to maintain and make available upon request, for five years, such records as are necessary to verify compliance (§ 205.103). Certifying agents are required to maintain records for 5 to 10 years, depending on the type of record (§ 205.510(b)), and make these records

available for inspection upon request (§ 205.501(a)(9)).

The new information that livestock and poultry operations would be required to provide for certification would assist certifying agents and inspectors in the efficient and comprehensive evaluation of these operations and would impose an additional recordkeeping burden for livestock and poultry operations. Certifying agents currently involved in livestock certification are required to observe the same recordkeeping requirements to maintain accreditation. AMS expects that this proposed rule would increase the recordkeeping burden on certified operations and certifying agents during the first year of implementation and would then become routine to maintain. In addition, livestock and poultry operations that claim organic status in direct-to-consumer sales (but are exempt from organic certification because they sell $5,000 or less of organically managed animal products) must maintain records to support their claim in the event of a complaint. State organic programs enforce the OFPA in its state under the authority of AMS, and they are also impacted by these requirements. AMS expects that this proposed rule would not significantly increase the recordkeeping burden on exempt operations or state organic programs.

Reporting and recordkeeping are essential to the integrity of the organic certification system. A clear paper trail is a critical tool for verifying that practices meet the mandate of OFPA and the USDA organic regulations. The information collected supports the AMS mission, program objectives, and management needs by enabling AMS to assess the efficiency and effectiveness of the NOP. The information also affects decisions because it is the basis for evaluating compliance with the OFPA and USDA organic regulations, administering the NOP, establishing the cost of the program, and facilitating management decisions and planning. It also supports administrative and regulatory actions to address noncompliance with the OFPA and USDA organic regulations.

This information collection is only used by the certifying agent and authorized representatives of USDA, including AMS and NOP staff. Certifying agents, including any affiliated organic inspectors, and USDA are the primary users of the information.

Respondents

AMS identified four types of entities (respondents)—organic livestock and poultry operations, accredited certifying agents, inspectors, and state organic programs—that will need to submit and maintain information in order to participate in organic livestock and poultry certification. To more precisely understand the paperwork costs of this proposed rule, AMS calculates the potential impacts utilizing domestic and foreign labor rates per hour plus benefits.

For each type of respondent, we describe the general paperwork submission and recordkeeping activities and estimate: (i) the number of respondents; (ii) the hours they spend, annually, completing the paperwork requirements of this labeling program; and (iii) the costs of those activities based on prevailing domestic [49] and foreign [50] wages and benefits.[51] [52]

Total (Domestic and Foreign) Information Collection Cost (Reporting and Recordkeeping) of Proposed Rule: $4,138,397

For the 7,559 reporting and recordkeeping respondents, the total information collection for both reporting and recordkeeping is 102,088 hours with 40,673 total responses, 5.38 responses per respondent, and 2.51 hours per response at a total burden cost of $4,138,397 for both reporting (Table 1) and recordkeeping (Table 2). These are estimates of costs for respondents to develop procedures, receive training, and perform tasks for the first time. AMS estimates that as livestock and poultry producers adapt to the proposed requirements in §§ 205.238, 205.239, 205.241, and 205.242, the labor hours for the new requirements are one-time costs and will become routine to maintain. These costs will be merged into the overall information collection burden for the program. All costs are rounded.

[49] The source of the specific hourly wage rates identified below is the National Compensation Survey: Occupational Employment and Wages, May 2021, published by the Bureau of Labor Statistics. Bureau of Labor Statistics, Occupational Employment and Wages, *https://www.bls.gov/oes/current/oes_nat.htm.*

[50] The source of the data is based on average World Bank wage rates for countries with USDA-accredited certifying agents which are 70.3% of U.S. labor rates. *https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD.*

[51] Bureau of Labor Statistics News Release on Employer Costs for Employee Compensation, Wages account for 68.7% and Benefits account for 31.3% of total average employer compensation costs, June 18, 2020: *https://www.bls.gov/news.release/ecec.nr0.htm.*

[52] The source of compensation rates is based on an average of Organization for Economic Co-Operation and Development (OECD) benefits compensation rates at 34.63% of wage rates for countries with USDA-accredited certifying agents. *https://stats.oecd.org/Index.aspx?DataSetCode=AWCOMP.*

1. Operations. In order to obtain and maintain certification, domestic and foreign organic operations will need to develop and maintain an OSP. Livestock and poultry producers and handlers will need to submit the following information to certifying agents: an application for certification, detailed descriptions of specific practices, and annual updates to continue certification and to report changes in their practices. The OSP is a requirement for all organic operations and the USDA organic regulations describe what information must be included (§ 205.201). This proposed rule describes the additional information in §§ 205.238, 205.239, 205.241, and 205.242 that would need to be included in a livestock and poultry operation's organic system plan in order to assess compliance with these proposed new requirements. Certified operations are also required to keep records about their organic production and/or handling for at least five years (§ 205.103(b)(3)).

AMS estimated the number of livestock and poultry operations that would be affected by this proposed action. AMS estimates that 6,174 currently certified organic domestic and foreign livestock and poultry operations will be subject to the amendments in §§ 205.238, 205.239, 205.241, and 205.242. Based on average growth of 5.9% in livestock and poultry operations under current rules,[53] AMS expects to add 364 operations to the 6,174 operations currently certified for livestock or poultry production. In addition, AMS estimates that there are 713 livestock and poultry operations that claim organic status in direct-to-consumer sales (but are exempt from organic certification because they sell $5,000 or less of organically managed animal products) that will be impacted by the new recordkeeping requirements.[54]

AMS estimates the average collection and recordkeeping costs per organic livestock and producer poultry to be $314.47. This estimate is based on an average of 7.3 labor hours (53,018 total hours per 7,252 certified and exempt organic livestock and poultry operations) at $48.49 per labor hour,[55]

[53] Organic Integrity Database: *https://organic.ams.usda.gov/integrity/.*

[54] USDA National Ag Statistics Service, Census of Agriculture, 2019 Organic Survey: *https://www.nass.usda.gov/Publications/AgCensus/2017/Online_Resources/Organics/.*

[55] National Compensation Survey: Occupational Employment and Wage Estimates, May 2020, published by the Bureau of Labor Statistics. 11–9013 Farmers, Ranchers, and Other Agricultural Managers. *https://www.bls.gov/oes/current/oes_nat.htm.*

including 31.3% benefits,[56] and $34.95 per labor hour,[57] including 34.63% benefits,[58] for an organic domestic and foreign livestock or poultry producer, respectively. This estimate includes operations that make organic claims about their product but are exempt from certification because they only sell $5,000 or less organic animal and poultry products.

2. Certifying agents. Certifying agents are State, private, or foreign entities accredited by USDA to certify domestic and foreign livestock producers and handlers as organic in accordance with the OFPA and USDA organic regulations. Certifying agents determine if an operation meets organic requirements, using detailed information from the operation about its specific practices and on-site inspection reports from organic inspectors. Currently, there are 75 certifying agents accredited under NOP that are based in the U.S. and in foreign countries. AMS accredits 57 certifying agents for the scope of livestock to certify organic livestock and poultry operations. AMS assumes that all certifying agents accredited for the scope of livestock will evaluate livestock and poultry operations for compliance with the USDA organic regulations and will therefore be subject to the proposed requirements in §§ 205.238, 205.239, 205.241, and 205.242.

Each entity seeking to continue USDA accreditation for the scope of livestock will need to submit information documenting its business practices including certification, enforcement and recordkeeping procedures, personnel qualifications, and the provision of training for certification review personnel and inspectors (§ 205.504). AMS will review that information during their next scheduled on-site assessments, which occur at least twice every five years to determine whether to continue accreditation for the scope of livestock. Certifying agents will need to update their information, provide the results of personnel performance evaluations and the internal review of its certification activities, and document the training provided to certification review personnel and inspectors (§ 205.510) to comply with the proposed requirements.

AMS projects that the additional components of organic system plans for livestock and poultry producers may entail longer review times of documents and longer inspection times to evaluate operations under these proposed new requirements for the first time. AMS estimates the average collection and recordkeeping costs per certifying agent will be $25,759. This estimate of the average cost for each of the 57 certifying agents is based on an average of 609 labor hours (34,740 total hours across 57 certifiers) to prepare procedures to certify operations under these new requirements, certify an average of 115 livestock or poultry operations (6,539 total certified operations across 57 certifiers), provide training to their certification review personnel and inspectors, and store the records at $47.73 per labor hour,[59] including 31.7% benefits,[60] and $34.40 per labor hour,[61] including 34.63% benefits [62] for a domestic and foreign certifying agent, respectively. These are one-time costs that will become routine to maintain.

3. Inspectors. Inspectors conduct on-site inspections of organic operations and operations applying for certification and report their findings to the certifying agent. Inspectors may be the certifying agents themselves, employees of the certifying agents, or individual contractors. The USDA organic regulations call for certified operations to be inspected annually; however, a certifying agent may call for additional inspections on an as-needed basis (§ 205.403(a)).

Any individual who applies to conduct inspections of organic livestock and poultry operations will need to submit information documenting their qualifications to the certifying agent (§ 205.504(a)(3)). Inspectors will need to provide an inspection report to the certifying agent for each operation inspected (§ 205.403(e)). AMS projects that inspectors will attend at least one 5-hour training to learn about inspecting operations under the new requirements.

AMS estimates that inspectors will spend two hours longer on average to inspect an organic livestock or poultry operation and prepare an inspection report for the first time under these proposed new requirements. Inspectors do not have recordkeeping obligations; certifying agents maintain the records of inspection reports. AMS estimates the average collection cost per inspector to be $1,558. This estimate is based on an average of 57 additional labor hours at $30.70 per labor hour,[63] including 31.7% benefits,[64] and at $22.13 per labor hour,[65] including 34.63% benefits,[66] for domestic and foreign inspectors, respectively, to receive training, and to inspect and prepare inspection reports under the new requirements. These are one-time costs that will become routine to maintain.

4. State organic programs. The state organic program enforces the OFPA in its state under the authority of USDA. The California state organic program is the only state organic program at this

[56] Bureau of Labor Statistics News Release on Employer Costs for Employee Compensation, Wages account for 68.7% and Benefits account for 31.3% of total average employer compensation costs, June 18, 2020: *https://www.bls.gov/news.release/ecec.nr0.htm.*

[57] The source of the data is based on average World Bank wage rates for countries with USDA-accredited certifying agents, which were 70.3% of U.S. labor rates in 2020. *https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD.*

[58] The source of compensation rates is based on an average of Organization for Economic Co-Operation and Development (OECD) benefits compensation rates at 34.63% of wage rates for countries with USDA-accredited certifying agents. *https://stats.oecd.org/Index.aspx?DataSetCode=AWCOMP.*

[59] National Compensation Survey: Occupational Employment and Wages, May 2020, published by the Bureau of Labor Statistics. Bureau of Labor Statistics, Occupational Employment and Wages, May 2021. [59] The labor rate for certification review staff is based on Occupational Employment Statistics group 13–1041, *Compliance Officers.* Compliance officers examine, evaluate, and investigate eligibility for or conformity with laws and regulations governing contract compliance of licenses and permits, and perform other compliance and enforcement inspection and analysis activities not classified elsewhere. *https://www.bls.gov/oes/current/oes_nat.htm.*

[60] Bureau of Labor Statistics News Release on Employer Costs for Employee Compensation, Wages account for 68.7% and Benefits account for 31.3% of total average employer compensation costs, December 2020: *https://www.bls.gov/news.release/ecec.nr0.htm.*

[61] The source of the data is based on average World Bank wage rates for countries with USDA-accredited certifying agents, which are 70.3% of U.S. labor rates. *https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD.*

[62] The source of compensation rates is based on an average of Organization for Economic Co-Operation and Development (OECD) benefits compensation rates at 34.63% of wage rates for countries with USDA-accredited certifying agents. *https://stats.oecd.org/Index.aspx?DataSetCode=AWCOMP.*

[63] National Compensation Survey: Occupational Employment and Wages, May 2020, published by the Bureau of Labor Statistics. Bureau of Labor Statistics, Occupational Employment and Wages, May 2021. The labor rate for inspectors is based on Occupational Employment Statistics group 45–2011, *Agricultural Inspectors.* Agricultural inspectors inspect agricultural commodities, processing equipment, facilities, and fish and logging operations to ensure compliance with regulations and laws governing health, quality, and safety. *https://www.bls.gov/oes/current/oes_nat.htm.*

[64] Bureau of Labor Statistics News Release on Employer Costs for Employee Compensation, Wages account for 68.7% and Benefits account for 31.3% of total average employer compensation costs, December 2020: *https://www.bls.gov/news.release/ecec.nr0.htm.*

[65] The source of the data is based on average World Bank wage rates for countries with USDA-accredited certifying agents, which are 70.3% of U.S. labor rates. *https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD.*

[66] The source of compensation rates is based on an average of Organization for Economic Co-Operation and Development (OECD) benefits compensation rates at 34.63% of wage rates for countries with USDA-accredited certifying agents. *https://stats.oecd.org/Index.aspx?DataSetCode=AWCOMP.*

time. AMS estimates the collection cost $148 at $47.73 per labor hour,[67] including 31.7% benefits.[68] This estimate includes two hours to prepare the relevant procedures and one hour to store the records related to this procedure. These are one-time costs that will become routine to maintain.

Please find the total information collection burden broken out as reporting and recordkeeping costs that are discussed in narrative and presented in Tables 1 and 2 below.

Total All Reporting Burden Cost: $3,537,460.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.64 hours per response.

Respondents: Certified organic and applicant livestock and poultry operations, certifying agents, inspectors, and state organic programs.

Estimated Number of Reporting Respondents: 6,846.

Estimated Number of Reporting Responses: 33,363.

Estimated Total Reporting Burden on Respondents: 88,183 hours.

Estimated Total Reporting Responses per Reporting Respondents: 5 reporting responses per reporting respondents.

AMS estimates that the public reporting burden for this information collection is estimated to be 88,183 hours at a total cost of $3,537,460 with a total number of 6,846 respondents. Respondents are comprised of currently certified operations, operations that will seek certification over the next 12 months, USDA accredited certifying agents, inspectors, and state organic programs. The reporting burden of each of the respondent categories are explained below and can be viewed in Table 1: Summary of Reporting Burden.

1. Organic Operations. There are 6,539 operations worldwide that are either currently certified to the USDA organic standards for livestock or poultry production or will be seeking certification for livestock or poultry production over the next 12 months. Based on average growth of 5.9% in livestock and poultry operations under current rules,[69] AMS expects to add 364 operations to the 6,174 operations currently certified for livestock or poultry production. AMS estimates that the average reporting burden for all domestic and foreign organic livestock and poultry producers, including new applicants is 39,229 hours at a total estimated cost of $1,684,480.

AMS estimates that 3,858 operations based in the United States, and 2,681 operations based in foreign countries, including applicants for certification under the current rules, will be impacted. Average initial reporting burden hours for both a domestic and a foreign organic operation or applicant for organic certification is 6 hours with costs averaging $291 for a domestic operation at $48.49 per labor hour,[70] including 31.7% benefits,[71] and $210 for a foreign operation at $34.95 per labor hour,[72] including 34.63% benefits.[73] Total reporting hours for 3,858 domestic operations is 23,145 hours at $48.49 per labor hour,[74] including 31.7% benefits,[75] and 16,084 hours for 2,681 foreign operations at $34.95 per labor hour,[76] including 34.63% benefits.[77]

2. Accredited Certifying Agents. There are 57 certifying agents worldwide that are USDA accredited under the livestock scope to certify livestock or poultry producers as organic. AMS estimates that the average reporting burden for all domestic and foreign certifying agents accredited for the scope of livestock is 34,625 hours at a total estimated cost of $1,463,427. Average initial reporting burden hours for a domestic certifying agent is 601 hours with costs averaging $28,679 at $47.73 per labor hour,[78] including 31.7% benefits.[79] Average initial reporting burden hours for a foreign certifying agent is 617 hours with costs averaging $21, 232 at $34.40 per labor hour,[80] including 34.63% benefits.[81]

AMS estimates that the total reporting burden of the 34 certifying agents based in the United States is $1,122,302 which is based on 20,429 hours at $47.73 per labor hour,[82] including 31.7%

[67] National Compensation Survey: Occupational Employment and Wages, May 2020, published by the Bureau of Labor Statistics. Bureau of Labor Statistics, Occupational Employment and Wages, May 2021. [67] The labor rate for certification review staff is based on Occupational Employment Statistics group 13–1041, *Compliance Officers.* Compliance officers examine, evaluate, and investigate eligibility for or conformity with laws and regulations governing contract compliance of licenses and permits, and perform other compliance and enforcement inspection and analysis activities not classified elsewhere. *https://www.bls.gov/oes/current/oes_nat.htm.*

[68] Bureau of Labor Statistics News Release on Employer Costs for Employee Compensation. Wages account for 68.7% and Benefits account for 31.3% of total average employer compensation costs, December 2020: *https://www.bls.gov/news.release/ecec.nr0.htm.*

[69] Organic Integrity Database: *https://organic.ams.usda.gov/integrity/.*

[70] National Compensation Survey: Occupational Employment and Wage Estimates, May 2020, published by the Bureau of Labor Statistics. 11–9013 Farmers, Ranchers, and Other Agricultural Managers. *https://www.bls.gov/oes/current/oes_nat.htm.*

[71] Bureau of Labor Statistics News Release on Employer Costs for Employee Compensation, Wages account for 68.7% and Benefits account for 31.3% of total average employer compensation costs, June 18, 2020: *https://www.bls.gov/news.release/ecec.nr0.htm.*

[72] The source of the data is based on average World Bank wage rates for countries with USDA-accredited certifying agents which were 70.3% of U.S. labor rates in 2020. *https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD.*

[73] The source of compensation rates is based on an average of Organization for Economic Co-Operation and Development (OECD) benefits compensation rates at 34.63% of wage rates for countries with USDA-accredited certifying agents. *https://stats.oecd.org/Index.aspx?DataSetCode=AWCOMP.*

[74] National Compensation Survey: Occupational Employment and Wage Estimates, May 2020, published by the Bureau of Labor Statistics. 11–9013 Farmers, Ranchers, and Other Agricultural Managers. *https://www.bls.gov/oes/current/oes_nat.htm.*

[75] Bureau of Labor Statistics News Release on Employer Costs for Employee Compensation, Wages account for 68.7% and Benefits account for 31.3% of total average employer compensation costs, June 18, 2020: *https://www.bls.gov/news.release/ecec.nr0.htm.*

[76] The source of the data is based on average World Bank wage rates for countries with USDA-accredited certifying agents which were 70.3% of U.S. labor rates in 2020. *https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD.*

[77] The source of compensation rates is based on an average of Organization for Economic Co-Operation and Development (OECD) benefits compensation rates at 34.63% of wage rates for countries with USDA-accredited certifying agents. *https://stats.oecd.org/Index.aspx?DataSetCode=AWCOMP.*

[78] National Compensation Survey: Occupational Employment and Wages, May 2020, published by the Bureau of Labor Statistics. Bureau of Labor Statistics, Occupational Employment and Wages, May 2021, [78] The labor rate for certification review staff is based on Occupational Employment Statistics group 13–1041, *Compliance Officers.* Compliance officers examine, evaluate, and investigate eligibility for or conformity with laws and regulations governing contract compliance of licenses and permits, and perform other compliance and enforcement inspection and analysis activities not classified elsewhere. *https://www.bls.gov/oes/current/oes_nat.htm.*

[79] Bureau of Labor Statistics News Release on Employer Costs for Employee Compensation, Wages account for 68.7% and Benefits account for 31.3% of total average employer compensation costs, December 2020: *https://www.bls.gov/news.release/ecec.nr0.htm.*

[80] The source of the data is based on average World Bank wage rates for countries with USDA-accredited certifying agents which are 70.3% of U.S. labor rates. *https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD.*

[81] The source of compensation rates is based on an average of Organization for Economic Co-Operation and Development (OECD) benefits compensation rates at 34.63% of wage rates for countries with USDA-accredited certifying agents. *https://stats.oecd.org/Index.aspx?DataSetCode=AWCOMP.*

[82] National Compensation Survey: Occupational Employment and Wages, May 2020, published by the Bureau of Labor Statistics. Bureau of Labor Statistics, Occupational Employment and Wages, May 2021, [82] The labor rate for certification review staff is based on Occupational Employment

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benefits.[83] The reporting burden of the 23 certifying agents based in foreign countries is $488,404 based on 14,196 at $34.40 per labor hour,[84] including 34.63% benefits.[85]

3. Inspectors. AMS estimates that the reporting burden for the 250 domestic and foreign inspectors inspecting livestock and poultry operations worldwide is 14,327 hours at a total estimated cost of $389,456. Average initial reporting burden hours for a domestic inspectors is 57 hours at $30.70 per labor hour,[86] including 31.7% benefits [87] and average reporting burden for foreign inspectors calculates at 58 hours at $22.13 per labor hour,[88] including 34.63% benefits.[89] AMS estimates the reporting burden of the 148 US based inspectors is $259,479 which is based on 8,453 hours at $30.70 per labor hour,[90] including 31.7% benefits.[91] The reporting burden of the 103 inspectors based in foreign countries is estimated at $129,977 based on 5,874 at $22.13 per labor hour,[92] including 34.63% benefits.[93]

TABLE 1—SUMMARY OF REPORTING BURDEN

USDA certified operations reporting burden	Number of respondents	Total reporting hours	Average hours/ respondent	Wage + benefits	Average respondent costs	Total reporting costs
USDA Certified Operations Reporting Burden						
USDA Certified Producers & Handlers—New & Existing Domestic	3,858	23,145	6	$48.49	$291	$1,122,30
USDA Certified Producers & Handlers—New & Existing Foreign	2,681	16,084	6	34.95	210	562,18
USDA Certified Operations—All	*6,539*	*39,229*				*1,684,48*
USDA Accredited Certifiers Reporting Burden						
US Accredited US-Based Certifiers	34	20,429	601	47.73	28,679	975,02
US Accredited Foreign-Based Certifiers	23	14,196	617	34.40	21,232	488,40
US Certifiers—All	*57*	*34,625*				*1,463,427*
Inspectors Reporting Burden						
US Based Inspectors	148	8,453	57	30.70	1,753	259,48
Foreign Based Inspectors	102	5,874	58	22.13	1,274	129,98
Inspectors—All	*250*	*14,327*				*389,456*
State Organic Programs Reporting Burden						
State Organic Programs	1	2	2	47.73	95.46	95
SOP—All	*1*	*2*				*95*
Total Reporting Burden—All Respondents	6,846	88,183				3,537,460

Statistics group 13–1041, *Compliance Officers.* Compliance officers examine, evaluate, and investigate eligibility for or conformity with laws and regulations governing contract compliance of licenses and permits, and perform other compliance and enforcement inspection and analysis activities not classified elsewhere. *https://www.bls.gov/oes/current/oes_nat.htm.*

[83] Bureau of Labor Statistics News Release on Employer Costs for Employee Compensation, Wages account for 68.7% and Benefits account for 31.3% of total average employer compensation costs, December 2020: *https://www.bls.gov/news.release/ecec.nr0.htm.*

[84] The source of the data is based on average World Bank wage rates for countries with USDA-accredited certifying agents which are 70.3% of U.S. labor rates. *https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD.*

[85] The source of compensation rates is based on an average of Organization for Economic Co-Operation and Development (OECD) benefits compensation rates at 34.63% of wage rates for countries with USDA-accredited certifying agents. *https://stats.oecd.org/Index.aspx?DataSetCode=AWCOMP.*

[86] National Compensation Survey: Occupational Employment and Wages, May 2020, published by the Bureau of Labor Statistics. Bureau of Labor Statistics, Occupational Employment and Wages, May 2021, The labor rate for inspectors is based on Occupational Employment Statistics group 45–2011, *Agricultural Inspectors.* Agricultural inspectors inspect agricultural commodities, processing equipment, facilities, and fish and logging operations to ensure compliance with regulations and laws governing health, quality, and safety. *https://www.bls.gov/oes/current/oes_nat.htm.*

[87] Bureau of Labor Statistics News Release on Employer Costs for Employee Compensation, Wages account for 68.7% and Benefits account for 31.3% of total average employer compensation costs, December 2020: *https://www.bls.gov/news.release/ecec.nr0.htm.*

[88] The source of the data is based on average World Bank wage rates for countries with USDA-accredited certifying agents which are 70.3% of U.S. labor rates. *https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD.*

[89] The source of compensation rates is based on an average of Organization for Economic Co-Operation and Development (OECD) benefits compensation rates at 34.63% of wage rates for countries with USDA-accredited certifying agents. *https://stats.oecd.org/Index.aspx?DataSetCode=AWCOMP.*

[90] National Compensation Survey: Occupational Employment and Wages, May 2020, published by the Bureau of Labor Statistics. Bureau of Labor Statistics, Occupational Employment and Wages, May 2021, The labor rate for inspectors is based on Occupational Employment Statistics group 45–2011, *Agricultural Inspectors.* Agricultural inspectors inspect agricultural commodities, processing equipment, facilities, and fish and logging operations to ensure compliance with regulations and laws governing health, quality, and safety. *https://www.bls.gov/oes/current/oes_nat.htm.*

[91] Bureau of Labor Statistics News Release on Employer Costs for Employee Compensation, Wages account for 68.7% and Benefits account for 31.3% of total average employer compensation costs, December 2020: *https://www.bls.gov/news.release/ecec.nr0.htm.*

[92] The source of the data is based on average World Bank wage rates for countries with USDA-accredited certifying agents which are 70.3% of U.S. labor rates. *https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD.*

[93] The source of compensation rates is based on an average of Organization for Economic Co-Operation and Development (OECD) benefits compensation rates at 34.63% of wage rates for countries with USDA-accredited certifying agents. *https://stats.oecd.org/Index.aspx?DataSetCode=AWCOMP.*

4. State Organic Programs. AMS estimates 2 reporting hours for the California State Organic Program at $43.73 per labor hour,[94] including 31.7% benefits [95] costing $95 annually.

Total All Recordkeeping Burden Cost: $600,937.

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 1.9 hours per response.

Respondents: Certified operations, exempt operations, certifying agents, and state organic programs.

Estimated Number of Recordkeeping Respondents: 7,309.

Estimated Total Recordkeeping Burden on Respondents: 13,905 hours.

Estimated Total Recordkeeping Responses per Recordkeeping Respondents: 1.

AMS estimates that the public recordkeeping burden for this information collection is estimated to be 13,905 hours per year at a cost of $600,937 with a total number of 7,309 respondents. Respondents are comprised of currently certified livestock and poultry operations, operations that will seek certification over the next 12 months, exempt livestock and poultry operations, USDA accredited certifying agents, and state organic programs. The recordkeeping burden of each of the respondent categories are explained below and can be viewed in Table 2: Summary of Recordkeeping Burden.

1. Organic Operations. AMS estimates there are 7,252 operations worldwide that are impacted by the new requirements for recordkeeping for organic livestock and poultry. There are 6,539 domestic and foreign operations that are either currently certified to the USDA organic standards for livestock or poultry production or will be seeking certification for livestock or poultry production over the next 12 months that are subject to these requirements. In addition, 713 livestock and poultry operations that claim organic status in direct to consumer sales but are exempt from organic certification because they sell $5,000 or less of organically managed animal products must maintain records to support their claim in the event of a complaint.[96]

AMS estimates that the total recordkeeping burden for all 7,252 domestic and foreign organic livestock and poultry producers, including new applicants and exempt operations is 13,076 hours at a total estimated cost of $596,071. Average recordkeeping burden hours for either a domestic or a foreign certified organic operation, or an applicant for organic certification is 2 hours with costs averaging $97 for a domestic operation at $48.49 per labor hour,[97] including 31.7% benefits,[98] and $70 for a foreign operation at $34.95 per labor hour,[99] including 34.63% benefits.[100] The cost of the average recordkeeping burden of the 713 domestic livestock and poultry operations that are exempt from certification [101] is $48 for one hour at $48.49 per labor hour,[102] including 31.7% benefits.[103] Total recordkeeping burden for all 4,571 domestic livestock and poultry operations is 8,428 hours at a total estimated cost of $408,678 at $48.49 per labor hour,[104] including 31.7% benefits,[105] and 5,361 hours at a total estimated costs of $187,393 for 2,681 foreign operations at $34.95 per labor hour,[106] including 34.63% benefits.[107]

2. Accredited Certifying Agents. There are 57 certifying agents worldwide that are USDA accredited under the livestock scope to certify livestock or poultry producers as organic. AMS estimates that the average annual recordkeeping burden for all domestic and foreign certifying agents accredited for the scope of livestock is 115 hours at a total estimated cost of $4,818. AMS estimates the recordkeeping burden of the 34 certifying agents based in the United States as $3,210 which is based on 68 hours at $47.73 per labor hour,[108] including 31.7% benefits.[109] The recordkeeping burden of the 23 certifying agents based in foreign countries is $1,680 based on 47 hours at $34.40 per labor hour,[110] including 34.63% benefits.[111] Average initial

[94] National Compensation Survey: Occupational Employment and Wages, May 2020, published by the Bureau of Labor Statistics. Bureau of Labor Statistics, Occupational Employment and Wages, May 2021. [94] The labor rate for certification review staff is based on Occupational Employment Statistics group 13–1041, *Compliance Officers.* Compliance officers examine, evaluate, and investigate eligibility for or conformity with laws and regulations governing contract compliance of licenses and permits, and perform other compliance and enforcement inspection and analysis activities not classified elsewhere. *https://www.bls.gov/oes/current/oes__nat.htm.*

[95] Bureau of Labor Statistics News Release on Employer Costs for Employee Compensation, Wages account for 68.7% and Benefits account for 31.3% of total average employer compensation costs, December 2020: *https://www.bls.gov/news.release/ecec.nr0.htm.*

[96] USDA National Ag Statistics Service, Census of Agriculture, 2019 Organic Survey: *https://www.nass.usda.gov/Publications/AgCensus/2017/Online_Resources/Organics/.*

[97] National Compensation Survey: Occupational Employment and Wage Estimates, May 2020, published by the Bureau of Labor Statistics. 11–9013 Farmers, Ranchers, and Other Agricultural Managers. *https://www.bls.gov/oes/current/oes_nat.htm.*

[98] Bureau of Labor Statistics News Release on Employer Costs for Employee Compensation, Wages account for 68.7% and Benefits account for 31.3% of total average employer compensation costs, June 18, 2020: *https://www.bls.gov/news.release/ecec.nr0.htm.*

[99] The source of the data is based on average World Bank wage rates for countries with USDA-accredited certifying agents which were 70.3% of U.S. labor rates in 2020. *https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD.*

[100] The source of compensation rates is based on an average of Organization for Economic Co-Operation and Development (OECD) benefits compensation rates at 34.63% of wage rates for countries with USDA-accredited certifying agents. *https://stats.oecd.org/Index.aspx?DataSetCode=AWCOMP.*

[101] USDA National Ag Statistics Service, Census of Agriculture, 2019 Organic Survey: *https://www.nass.usda.gov/Publications/AgCensus/2017/Online_Resources/Organics/.*

[102] National Compensation Survey: Occupational Employment and Wage Estimates, May 2020, published by the Bureau of Labor Statistics. 11–9013 Farmers, Ranchers, and Other Agricultural Managers. *https://www.bls.gov/oes/current/oes_nat.htm.*

[103] Bureau of Labor Statistics News Release on Employer Costs for Employee Compensation, Wages account for 68.7% and Benefits account for 31.3% of total average employer compensation costs, June 18, 2020: *https://www.bls.gov/news.release/ecec.nr0.htm.*

[104] National Compensation Survey: Occupational Employment and Wage Estimates, May 2020, published by the Bureau of Labor Statistics. 11–9013 Farmers, Ranchers, and Other Agricultural Managers. *https://www.bls.gov/oes/current/oes_nat.htm.*

[105] Bureau of Labor Statistics News Release on Employer Costs for Employee Compensation, Wages account for 68.7% and Benefits account for 31.3% of total average employer compensation costs, June 18, 2020: *https://www.bls.gov/news.release/ecec.nr0.htm.*

[106] The source of the data is based on average World Bank wage rates for countries with USDA-accredited certifying agents which were 70.3% of U.S. labor rates in 2020. *https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD.*

[107] The source of compensation rates is based on an average of Organization for Economic Co-Operation and Development (OECD) benefits compensation rates at 34.63% of wage rates for countries with USDA-accredited certifying agents. *https://stats.oecd.org/Index.aspx?DataSetCode=AWCOMP.*

[108] National Compensation Survey: Occupational Employment and Wages, May 2020, published by the Bureau of Labor Statistics. Bureau of Labor Statistics, Occupational Employment and Wages, May 2021, 1 The labor rate for certification review staff is based on Occupational Employment Statistics group 13–1041, *Compliance Officers.* Compliance officers examine, evaluate, and investigate eligibility for or conformity with laws and regulations governing contract compliance of licenses and permits, and perform other compliance and enforcement inspection and analysis activities not classified elsewhere. *https://www.bls.gov/oes/current/oes_nat.htm.*

[109] Bureau of Labor Statistics News Release on Employer Costs for Employee Compensation, Wages account for 68.7% and Benefits account for 31.3% of total average employer compensation costs, December 2020: *https://www.bls.gov/news.release/ecec.nr0.htm.*

[110] The source of the data is based on average World Bank wage rates for countries with USDA-accredited certifying agents which are 70.3% of U.S. labor rates. *https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD.*

[111] The source of compensation rates is based on an average of Organization for Economic Co-

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recordkeeping burden hours is 2 hours for both domestic and foreign based certifying agents calculated at $95 for domestic certifying agents at $47.73 per labor hour,[112] including 31.7% benefits,[113] and $70 for foreign certifying agents at $34.40 per labor hour,[114] including 34.63% benefits.[115]

3. State Organic Programs. AMS estimates 1 hour of recordkeeping for the California State Organic Program at $47.73 per labor hour,[116] including 31.7% benefits [117] costing $48.

TABLE 2—SUMMARY OF RECORDKEEPING BURDEN

	Number of respondents	Total recordkeeping hours	Average hours/ respondent	Wage + benefits	Average respondent costs	Total record-keeping costs
USDA Certified Producers & Handlers—New & Existing Domestic	3,858	7,715	2	$48.49	$97	$374,101
USDA Certified Producers & Handlers—New & Existing Foreign	2,681	5,361	2	34.95	70	187,393
Exempt Producers ((11.5% of current total certified that are exempt from organic certification))	713	713	1	48.49	48	34,577
USDA Certified Producers & Handlers—New & Existing—All	*7,252*	*13,789*				*596,071*
USDA Accredited Certifiers Recordkeeping Burden						
US Accredited US-Based Certifiers	34	68	2	47.73	95	3,210
US Accredited Foreign-Based Certifiers	23	47	2	34.40	70	1,608
US Certifiers—All	*57*	*115*				*4,818*
State Organic Programs Recordkeeping Burden						
State Organic Programs	1	1	1	47.73	48	48
SOP—All	*1*	*1.00*				*48*
Total Recordkeeping Burden—All Respondents	7,309	13,905				600,937

AMS is inviting comments from all interested parties concerning the information collection and recordkeeping required as a result of the proposed amendments to 7 CFR part 205. AMS seeks comment on the following subjects:

(1) 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.

(2) 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.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected.

(4) 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.

(5) 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? [118]

IX. Civil Rights Impact Analysis

AMS has reviewed this proposed rule in accordance with the Department Regulation 4300–4, Civil Rights Impact Analysis (CRIA), to address any major civil rights impacts the rule might have on minorities, women, and persons with

Operation and Development (OECD) benefits compensation rates at 34.63% of wage rates for countries with USDA-accredited certifying agents. *https://stats.oecd.org/Index.aspx?DataSetCode=AWCOMP.*

[112] National Compensation Survey: Occupational Employment and Wages, May 2020, published by the Bureau of Labor Statistics. Bureau of Labor Statistics, Occupational Employment and Wages, May 2021, [112] The labor rate for certification review staff is based on Occupational Employment Statistics group 13–1041, *Compliance Officers.* Compliance officers examine, evaluate, and investigate eligibility for or conformity with laws and regulations governing contract compliance of licenses and permits, and perform other compliance and enforcement inspection and analysis activities not classified elsewhere. *https://www.bls.gov/oes/current/oes_nat.htm.*

[113] Bureau of Labor Statistics News Release on Employer Costs for Employee Compensation, Wages account for 68.7% and Benefits account for 31.3% of total average employer compensation costs, December 2020: *https://www.bls.gov/news.release/ecec.nr0.htm.*

[114] The source of the data is based on average World Bank wage rates for countries with USDA-accredited certifying agents which are 70.3% of U.S. labor rates. *https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.CD.*

[115] The source of compensation rates is based on an average of Organization for Economic Co-Operation and Development (OECD) benefits compensation rates at 34.63% of wage rates for countries with USDA-accredited certifying agents. *https://stats.oecd.org/Index.aspx?DataSetCode=AWCOMP.*

[116] National Compensation Survey: Occupational Employment and Wages, May 2020, published by the Bureau of Labor Statistics. Bureau of Labor Statistics, Occupational Employment and Wages, May 2021, [116] The labor rate for certification review staff is based on Occupational Employment Statistics group 13–1041, *Compliance Officers.* Compliance officers examine, evaluate, and investigate eligibility for or conformity with laws and regulations governing contract compliance of licenses and permits, and perform other compliance and enforcement inspection and analysis activities not classified elsewhere. *https://www.bls.gov/oes/current/oes_nat.htm.*

[117] Bureau of Labor Statistics News Release on Employer Costs for Employee Compensation, Wages account for 68.7% and Benefits account for 31.3% of total average employer compensation costs, December 2020: *https://www.bls.gov/news.release/ecec.nr0.htm.*

[118] Organic Integrity Database: *https://organic.ams.usda.gov/integrity/.*

disabilities. After a careful review of the rule's intent and provisions, AMS determined that this rule would only impact the organic practices of organic producers and that this rule has no potential for affecting producers in protected groups differently than the general population of producers. This rulemaking was initiated to clarify a regulatory requirement and enable consistent implementation and enforcement.

Protected individuals have the same opportunity to participate in the NOP as non-protected individuals. The 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 the National Organic Program 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.

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, AMS proposes to amend 7 CFR part 205 as set forth below:

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'', ''Mulesing'', ''Non-ambulatory'', ''Outdoors or outdoor space'', ''Perch'', ''Pullets'', ''Religious slaughter'', ''Soil'', ''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 during the grazing season.

(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:

(i) A slatted floor where perches, feed, and water are provided over a pit or belt for manure collection; and

(ii) Litter covering the remaining solid floor.

(4) *Floor litter housing.* A fixed structure for avian species that has absorbent litter covering the entire floor.

* * * * *

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, including roofed areas that are not enclosed. Outdoor space for avian species includes, but is not limited to:

(1) *Pasture pens.* Floorless pens, with full or partial roofing, that are moved regularly and provide direct access to soil and vegetation.

(2) [Reserved]

* * * * *

Perch. A rod or branch type structure above the floor of the house that accommodates roosting, allowing birds to utilize vertical space in the house.

* * * * *

Pullets. Female chickens or other avian species being raised for egg production that have not yet started to lay eggs.

* * * * *

Ritual slaughter. Slaughtering in accordance with the ritual requirements of any other 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.

* * * * *

Soil. The outermost layer of the earth comprised of minerals, water, air, organic matter, fungi, and bacteria in which plants may grow roots.

* * * * *

Stocking density. The weight 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, including vitamins, minerals, proteins and/or amino acids, fatty acids, energy sources, and fiber (ruminants), resulting in appropriate body condition.

(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 to benefit the welfare of the animals, for identification purposes, or for safety purposes. Physical alterations must be performed on livestock at a reasonably young age, with minimal stress and pain and by a competent person.

(i) The following practice 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 shall be undertaken in a manner that employs best management practices in order to minimize pain, stress, and suffering, with the use of appropriate and allowed anesthetics, analgesics, and sedatives.

(8) Monitoring of lameness and keeping records of the percent of the herd or flock suffering from lameness and the causes.

(b) *Preventive medicines and parasiticides.* Producers may administer medications that are allowed under § 205.603 to alleviate pain or suffering, and when preventive practices and veterinary biologics are inadequate to prevent sickness. Parasiticides allowed under § 205.603 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 stock, when used a minimum of 90 days prior to the production of milk or milk products that are to be sold, labeled, or represented as organic.

(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, or any substance that contains a non-synthetic substance prohibited in § 205.604. Milk from animals undergoing treatment with synthetic substances allowed under § 205.603 cannot be sold as organic but may be fed to calves on the same operation. Milk from animals undergoing treatment with prohibited substances cannot be sold as organic or fed to organic livestock.

(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.

(3) Administer hormones for growth promotion, production, or reproduction, except as provided in § 205.603.

(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 forced molting or withdrawal of feed to induce molting.

(d) *Parasite control plans.*

(1) Organic livestock operations must have comprehensive plans to minimize internal parasite problems in livestock. The plan will include preventive measures such as pasture management, fecal monitoring, and emergency measures in the event of a parasite outbreak. Parasite control plans shall be approved by the certifying agent.

(2) [Reserved]

(e) *Euthanasia.*

(1) Organic livestock operations must have written plans for prompt, humane euthanasia for sick or injured livestock.

(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 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, 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)(i), and, if applicable, organically handled by operations certified to the NOP.

(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) If indoor housing is provided, areas for bedding and resting that are sufficiently large, solidly built, and comfortable so that animals are kept clean, dry, 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 but no later than 6 months of age, provided that they have enough room to turn around, lie down, stretch out when lying down, get up, rest, and groom themselves; individual animal pens shall be designed and located so that each animal can see, smell, and hear other calves.

(8) Swine must be housed in a group, except:

(i) Sows may be housed individually at farrowing and during the suckling period;

(ii) Boars; and

(iii) Swine with documented instance of aggression or 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, maximal 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 to perform the natural or artificial insemination. Animals may not be confined to observe estrus; 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, an animal shall not be confined or tethered in a way that prevents the animal from lying down, standing up, fully extending its limbs, and moving about freely;

(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 (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.

(b) *Indoor space requirements.*

(1) Poultry housing must be sufficiently spacious to allow all birds to move freely, stretch their wings, stand normally, and engage in natural behaviors.

(2) Producers must monitor ammonia levels at least monthly and implement practices to maintain ammonia levels below 10 ppm. When ammonia levels exceed 10 ppm, producers must implement additional practices and additional monitoring to reduce ammonia levels below 10 ppm. Ammonia levels must not exceed 25 ppm.

(3) For layers and fully feathered birds, artificial light may be used to prolong the day length, to provide up to 16 hours of continuous light. Artificial light intensity must be lowered gradually to encourage hens to move to perches or settle for the night.

(4) Exit areas—poultry houses must have sufficient exit areas that are appropriately distributed to ensure that all birds have ready access to the outdoors; 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.

(6) All birds must have access to areas in the house that allow for scratching and dust bathing. Litter must be provided and maintained in a dry condition.

(7) Houses with slatted/mesh floors must have 30 percent minimum of solid floor area available with sufficient litter available for dust baths so that birds may freely dust bathe without crowding.

(8) For layers (*Gallus gallus*), indoor stocking density must not exceed (live bird weight):

(i) Mobile housing: 4.5 pounds per square foot.

(ii) Aviary housing: 4.5 pounds per square foot.

(iii) Slatted/mesh floor housing: 3.75 pounds per square foot.

(iv) Floor litter housing: 3.0 pounds per square foot.

(v) Other housing: 2.25 pounds per square foot.

(9) For pullets (*Gallus gallus*), indoor stocking density must not exceed 3.0 pounds of bird per square foot.

(10) For broilers (*Gallus gallus*), indoor stocking density must not exceed 5.0 pounds of bird per square foot.

(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 § 205.241(d).

(2) At least 50 percent of outdoor space must be soil. Outdoor space with soil must include maximal vegetative cover appropriate for the season, climate, geography, species of livestock, and stage of production. Vegetative cover must be maintained in a manner that does not provide harborage for rodents and other pests.

(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.

(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.

(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.

(7) Outdoor space may include porches and lean-to type structures that are not enclosed (*e.g.,* with roof, but with screens removed) 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 40 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.*

(3) Conditions under which the health, safety, or well-being of the animal could be jeopardized.

(4) Risk to soil or water quality, including to establish vegetation by reseeding the outdoor space.

(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 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 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) 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) Bedding must be provided on trailer floors and in holding pens as needed to keep livestock clean, dry, and comfortable during transport and prior to slaughter. Bedding is not required in poultry crates. When roughages are used for bedding, they must be certified organic.

(5) Arrangements for water and organic feed must be made if transport time, including all time on the mode of transportation, exceeds 12 hours.

(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 FSIS Directives 6100.3 and 6910.1.

(2) Producers and handlers who slaughter organic poultry must provide all noncompliance records related to the use of good manufacturing 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 ritual slaughter; and

(iii) All birds must be irreversibly insensible prior to being placed in the scalding tank.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

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