

# Livestock Healthcare Practice Standards

## Preamble

The current regulations require access to the outdoors. There is no reason not to enforce the current law. If the goal of this rule is to create an environment wherein certifiers, and the accreditation staff at the USDA, are better able to determine whether an operator is complying with the law, the motives behind this proposed rule are fine. However, if there are zero birds outdoors and zero space available for them outdoors, then those producers are clearly breaking the law. It is the responsibility of the USDA (as charged by Congress) to protect ethical industry participants and consumers from this type of fraud.

## Summary

The Cornucopia Institute **opposes** the passage of the draft rule, as it is proposed, to amend the Organic Livestock and Poultry Practices animal welfare standards, because the current rule is, in many regards, superior to what is being proposed. Though the National Organic Program (NOP) argues that this proposed rule would create greater consistency among organic livestock practices, a guidance on the current rule would serve the same purpose.

In fact, a guidance clarifying the perceived ambiguities in the current rule would be preferable, because the proposed rulemaking enshrines loopholes and practices that would continue to economically disadvantage producers following the current law.

Despite the NOP's continued insistence that maintaining "consumer confidence" in organics is one of the reasons for this proposed rulemaking, Cornucopia believes that consumer deception will continue under the draft rule.

We have specific comments and criticisms on some areas of the proposed rule. In summary, Cornucopia's stance is that:

- The *current regulations*, if they were enforced as they should be, provide greater consideration for animal welfare and consumer confidence than would the proposed rule.
- The proposal codifies loopholes that are detrimental to animal welfare.
- The minimal requirements for indoor and outdoor space allotted for poultry do not allow for the expression of natural behaviors or environmental protection.
- Consumers expect organic food to impart much higher standards for animal welfare than conventional food and, while the outdoor access requirement guarantees this for all organic food, the stocking density requirements are otherwise similar to the conventional production model.
- Many areas in the proposed rule lack the specificity needed to make the rule meaningful. Ambiguous language will lead to the same inconsistencies that concern the NOP and the public, and will certainly lead to abuse of the rule.

## Introduction

### *The Current Rule and Its Faulty Implementation*

From the outset, it should be clear that much of this proposed rule only attempts to clarify policy **already in place**. The primary sections that the NOP intends to revise and expand are 7 CFR §205.238 (Livestock health care practice standard) and §205.239 (Livestock Living Conditions). The origin of the livestock section does not have any proposed changes.

In particular, the standing rules regarding the health care, transport, and living conditions for organic livestock already require that all organic livestock have year-round access to the outdoors and living conditions that promote natural behaviors.<sup>1</sup> Unfortunately, proper implementation of that rule has been either lax or non-existent.

The USDA Office of the Inspector General identified inconsistencies in certification practices in 2010. Inconsistencies in how poultry were housed were a chief concern. In response to these findings, the NOP issued a draft guidance, based on recommendations the NOSB made in 2002, that would have prohibited the use of “porches” to meet the requirement for outdoor access.<sup>2</sup>

The NOP now states that, after public comment, they determined that rulemaking was “necessary to resolve the divergent outdoor access practices for organic poultry...” The draft guidance was never finalized and now, six years later, the public is presented with this proposed rulemaking for animal welfare standards. What’s more, the rulemaking process, and proposed implementation timeline, could result in a total of 12 to 14 years, or more, of delay to the enforcement of the law.

The NOP states that *“For all livestock, the regulations require: an environment that allows animals to express natural behaviors; preventive health care to reduce the likelihood of illness; and protection from conditions that jeopardize an animal’s well-being, such as predators and adverse weather.”* The NOP also rightly acknowledges that the organic regulations *“require housing and living conditions that allow animals to freely exercise their natural behaviors.”*

What the NOP did not mention in their review of the current standards is that the current organic livestock standards require year-round access to the outdoors. The emphasis on natural behaviors should *require* access to the outdoors. For example, poultry display natural behaviors of dust and sun bathing, hunting for insects, eating grass, scratching and pecking at the ground, and socializing with their flock mates. Screened porches do not allow for *any* natural behaviors.

In many respects, the current standards are comprehensive, requiring that all livestock have access to the outdoors (and “livestock” is defined to include poultry, as

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<sup>1</sup> 7 CFR 205.239(a)(1)

<sup>2</sup> NOSB 2002. [Recommended Clarification on Access to the Outdoors for Poultry \(PDF\)](https://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations/spring2002). Available at: <https://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations/spring2002>

we will discuss in more depth later). At worst, the current standards lack a comprehensive definition section.

Many organic livestock and poultry producers have suffered economically due to the lack of enforcement of the current rules. While ethical farmers give their livestock ample access to the outdoors – and not just the “outdoors”, but vegetation, enrichment, and the ability to perform natural behaviors without restriction – they have had to compete with those producers only paying lip service to the rules.

As revealed in the NOP’s discussion, these issues are most prevalent among organic poultry producers. Industrialized producers often use “porches” to meet the requirement for outdoor access. We maintain that these “porches” do not meet the requirements of the *current* rules, and should be disallowed already.

Certifying agents were identified by the NOP as a source of disparity in how the current regulations are enforced. However, the NOP’s understanding of certification is nonsensical, apparently accepting that “numerous combinations of environmental, cultural, and economic factors” result in variation in the manner in which the regulations are applied.

While certifying agents can take into account site-specifics, the fact remains that the current standards *require certain things*. The rules for outdoor access and natural behavior are not terms of infinite flexibility to be interpreted in whatever way the producer prefers.

It is the position of The Cornucopia Institute that some sites, and climates, are not conducive for organic livestock management. The request for certification by every operator, if they cannot meet the legal requirements for certification, cannot be accommodated.

All laws mean something. If certifying agents are interpreting the standard irresponsibly, then the cure is a guidance, not a new rulemaking.

### *Reconciling the Costs*

The NOP performed many cost calculations with the information they had, determining that costs would increase for some organic producers. The NOP acknowledges that, for some producers, the costs would increase quite a bit and may even lead to some exiting the organic industry altogether.

However, this economic analysis was disproportionate and focused almost entirely on larger organic livestock producers (CAFOs) that employ intensive confinement systems. These producers do not represent all of organics. An economic analysis that does not take into account the *harm perpetuated* when welfare rules are not enforced on small and medium producers is incomplete, at best. Many organic farmers have been economically injured by the lack of enforcement of the current standards for animal welfare, particularly outdoor access. True enforcement would help these farmers in the competitive market, and these economies need to be taken into account in the NOP’s analysis,

Poultry productions with “aviary” style housing were the NOP’s primary concern in their economic analysis, because aviary houses, accommodating massive populations of birds, may not have sufficient land adjacent to the poultry barns to meet the proposal’s outdoor access requirements.

Cornucopia believes that, while these cost accountings are valuable, the NOP did not go far enough in tallying the costs associated with this proposed rule and the organic animal welfare standards in general. Our chief concern is that the NOP acknowledge the **unknown, but significant, costs to family-scale famers** who struggle to compete against prices from industrial-scale operations, due to the USDA’s refusal to enforce the standing rule on outdoor access. Up to this point, these family-scale producers have carried the financial and ethical burdens of the organic egg and broiler markets. This cost should have been calculated and included in the NOP decision-making process but, unfortunately, it was not.

**The benefits of enforcing animal welfare standards to small and moderate organic livestock operations should also be taken into account.**

In their comments on the proposed rule, the NOP states that they believe most organic producers will “meet or exceed” the proposed rule’s requirements. The NOP’s conclusion shows that the proposed rules are not a step forward. Instead, it indicates that the majority of production is taking place in conditions that are typically found in conventional operations, **violating both the letter and the spirit of the law with respect to animal living conditions and health.**

**Claims by industry that it is too burdensome to prohibit porches and require true outdoor access are faulty.** Organic livestock have always legally been required to have access to the outdoors. Banning practices that are not compatible with organic ideals should be a goal of evolving rules and guidance. Maintaining organic integrity is more important than a possible expense to some producers, particularly with respect to porches and outdoor access for poultry.

This rulemaking and, in particular, the express banning of porches as “outdoor access” is not a surprise to industrial-scale poultry producers. Producers using porches as a perceived loophole, providing for “outdoor access,” should have known that strict enforcement could come at any time, invalidating the infrastructure these producers built with the expectation that lax enforcement would continue. Many of the large industrial-scale producers and their industry lobby group, United Egg Producers (UEP), have actively engaged in the NOSB rulemaking process and associated debate. The controversy regarding porches has also been covered extensively in the trade by popular media. There is no plausible excuse for not being aware of the inherent risks involved in building infrastructure in this politically charged environment. Any reduced production will be offset by higher market prices.

We must correct the economic wrong perpetuated on organic producers who already follow the letter and spirit of the standing regulations. Continuing to allow some producers to take advantage of the current standards only extends the economic and social inequity

### *“Does This Action Apply to Me?”*

The NOP asks: “Does this action apply to me?” without acknowledging that **consumers are impacted by animal welfare regulations too**. Consumers pay a premium for organics and have certain assumptions about humane animal management and nutritional superiority. Any changes to the treatment of animals within the organic label is of strong interest to consumers and their input should be considered.

### *NOSB Recommendations*

The NOSB has made many recommendations regarding livestock health and living conditions since the early 2000s. The NOSB has advocated many times that housing must allow animals to perform natural behaviors and have access to the outdoors. In May 2002, specific recommendations were made to the NOP to clarify the rule regarding access to the outdoors for poultry,<sup>3</sup> specifically noting that *“surfaces other than soil do not meet the intent of the organic standards.”*

Between 2009 and 2011, the NOSB issued another series of recommendations on animal welfare. The November 2009 recommendation suggested revisions and additions to the livestock health care practice standards and living conditions standards. The NOSB recommended banning or restricting certain physical alterations, and requiring organic producers to keep records on animals which were lame and/or sick, including how they were treated.

In December 2011, the NOSB released suggested changes to the animal welfare standards.<sup>4</sup> These recommendations included providing definitions for terms that were undefined in the animal welfare standards, including “outdoor access” and “soil” **The NOSB also reiterated that outdoor access is the basic tenet of organic production.**

**However, Cornucopia feels that the 2011 NOSB recommendations did not go far enough, recommending language changes that would enshrine loopholes and animal welfare problems.** In a side-by-side comparison of the 2011 NOSB recommendations and the proposed rule, there were many differences between the two.

While the NOSB made some recommendations to avian living conditions, the new draft animal welfare standards create an entirely new section for these issues. In general, the new draft goes into more detail and makes many changes that were not recommended by the NOSB. These changes and additions land on each end of the spectrum, significantly weakening the requirements recommended by the NOSB, while developing new language proposals. This new language is something that the

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<sup>3</sup> NOSB, 2002. [Recommended Clarification on Access to the Outdoors for Poultry \(PDF\)](https://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations/spring2002). Available at: <https://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations/spring2002>

<sup>4</sup> NOSB, 2011. Formal Recommendation by the NOSB to the NOP, Animal Welfare and Stocking Rates. Available at: <https://www.ams.usda.gov/rules-regulations/organic/nosb/recommendations/fall2011>

Board has never discussed, nor has the public ever been made privy to – and they create onerous requirements that (in the case of dairy) might not be feasible.

### *Standing AMS Policy*

Another issue with how the current standards are being interpreted is standing NOP policy. The 2002 NOP memorandum explained that organic regulations do not require all animals in the herd or flock to have access to the outdoors at the same time.<sup>5</sup> This interpretation of the current standards is not the most obvious interpretation, and it makes no sense that this would be specified in NOP policy.

The current standards for outdoor access will be discussed in more detail later in this document, but the language states that organic livestock must have living conditions that accommodate “***year-round access for all animals to the outdoors...***” [Emphasis added].<sup>6</sup>

### *Implementation of the Proposed Rule*

The proposed timing for the implementation is unacceptable. If this proposed rule is put into effect as recommended by the NOP, it will extend the injustice and economic discrimination against producers already following the law.

The phase-in timeline is unacceptable, particularly with respect to poultry. At most, organic poultry producers should be allotted three years. In commercial production, flocks are generally kept in chicken houses for only one year.

Organic poultry houses with adjacent land that can be immediately certified should be given no more than one year to implement the outdoor access requirement for poultry. Phase-in for poultry houses needing to transition to qualify for organic should only be permitted if the buildings can actually be converted to organic use (i.e., if there is adjacent land that could be utilized for outdoor access).

If there is no appreciable outdoor space to convert, the operation should not be allowed to continue producing organic eggs after one year (or the end of the productive life of the existing flock, whichever comes first). That space availability can be calculated based on whether or not the available land surrounding a building meets the minimum parameters, reconciling the size of the building and the specifications for which it was designed, in terms of flock size.

These producers should not be allowed a three-year transition period, because they would not be able to use the buildings after three years, as designed. It is true that some facilities may need a 3-year window to convert the land around the building to organic management to meet the “outdoor access” requirement and be free from prohibited materials. However, if certifiable land is available, they should be allowed to make that transition more quickly.

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<sup>5</sup> National Organic Program, 2002. Access to the Outdoors for Livestock. Retained as Policy Memo 11-5. Available in the NOP Handbook. Available at: <https://www.ams.usda.gov/sites/default/files/media/NOP-PM-11-5-AccessstoOutdoors.pdf>

<sup>6</sup> 7 CFR §205.239(a)(1)

In some cases, the operator could file an amended organic systems plan, indicating a reduction in flock size to appropriately correspond with the amount of outdoor space available. Parameters for this scenario should be developed that would eliminate “fairytale” chicken houses (for example, a chicken house designed to hold 100,000 birds on paper). Such an OSP could be amended to indicate the number of birds would be downsized to 50,000. That would not be an economically viable formula and manipulations like this example can be avoided by having firm parameters already in place. An alternative would be to require a bond be posted in assurance of continued organic production after a three-year transition.

The NOP appears to have concerns that a shorter implementation period will chase some producers out of the organic egg and poultry market altogether. However, this view panders to the lowest common denominator, supporting those producers who are currently not in compliance with the law, while harming those producers already providing appropriate animal welfare. The reality is that many industrial-scale producers frequently switch between organic and conventional production based on market demand. These producers will not lose all value in their infrastructure if they cannot immediately switch their facilities to organic production. Instead, they can remain in the “cage-free” or “free-range” markets with little economic loss.

If some industrial-scale (conventional/organic) producers (such as Herbruck’s, whose representatives have testified before the NOSB) truly believe that their birds are healthier indoors and that they create safer eggs, they can market these perceived advantages directly to consumers and label their eggs “produced with organic feed.” Because of the potential tightening in the market after this rule goes into effect, it is likely that organic egg pricing will moderately increase. Any organizations creating their own niche (produced with organic feed) would likely be able to maintain their prices, market shares, and profit margins.

### Livestock Health Care practice Standard

In general, the changes to the livestock practice were less significant than those in the avian section of the proposed rule. However, because “livestock” is defined to include poultry, these sections of the proposal apply to mammalian and avian species. This proposed rule does not alter the standards for “origin of livestock” or what has been termed the “pasture rule.”

#### *Physical alterations*

The NOP’s proposal regarding physical alterations were significant. The current regulations at §205.238(a)(5) limit physical alterations to those needed to “promote the animal’s welfare.” The NOP draft standards *expand* the use of physical alterations for hygiene, identification, and safety purposes. The draft also provides more specificity regarding how physical alterations on livestock should be performed.

Unfortunately, the statement that “[p]hysical alterations must be performed on livestock at a reasonably young age, with minimal stress and pain and by a competent person” lacks the specificity needed to be meaningful. Without defining the above terms, the regulations don’t set any kind of line determining when physical

alterations may *not* be performed due to the age of the animal, the level of stress and pain, or the competency of the person performing the alteration.

These definitions would, of course, be species-specific. However, there are certain life stages that can be used as qualifiers if it is too burdensome to define these terms with more specificity. For example, some alterations could be performed “before weaning” or “within five months of weaning.” In addition, a more specific definition of the “competent person” intended to carry out these functions would benefit animal welfare. Some physical alterations should be performed by a veterinarian, for example.

Section 205.238(a)(5) also states that alterations can be “*performed to benefit the welfare or hygiene of the animals...*” [emphasis added]. Cornucopia agrees with the Federation of Organic Dairy Farmers’ (FOOD Farmers) comments that allowing alterations for hygiene may create a loophole within which dairy farmers might justify docking tails even though that practice is prohibited elsewhere. Alterations should not be allowed exclusively for hygiene reasons.

The new animal welfare standards also add multiple new sections to the regulations regarding physical alterations. Needle teeth trimming and tail docking in pigs are listed as practices that should not be used routinely (to be listed in §205.238(a)(5)(i)). In their companion explanation to the proposed rule, the NOP explained these practices “*may only be performed in response to documented animal welfare reasons when alternative steps to prevent harm fail.*” This specificity is not in the rule itself; for example, how many alternative methods and which alternative methods must be tried before these alterations are allowed?

**Teeth trimming and tail docking are unnecessary when other animal welfare considerations are applied; both practices should be prohibited on certified operations.**

Teeth trimming is performed to reduce injuries among piglets and sows’ teats. However, sows and piglets are less prone to injury in high-welfare systems.<sup>78</sup> This is especially true when sows are kept in spacious and clean farrowing areas. Teeth clipping *and* tail docking are prohibited by both the Animal Welfare Approved<sup>9</sup> program and Global Animal Partnership’s 5-Step welfare standards<sup>10</sup>.

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<sup>7</sup> Literature Review on the Welfare Implications of Teeth Clipping, Tail Docking and Permanent Identification of Piglets, July 15, 2014. American Veterinary Medical Association. Available at: [https://www.avma.org/KB/Resources/LiteratureReviews/Documents/practices\\_piglets\\_bgnd.pdf](https://www.avma.org/KB/Resources/LiteratureReviews/Documents/practices_piglets_bgnd.pdf)

<sup>8</sup> An HSUS Report: The Welfare of Piglets in the Pig Industry. The Humane Society of the United States. Available at: [http://www.humanesociety.org/assets/pdfs/farm/welfare\\_piglets.pdf](http://www.humanesociety.org/assets/pdfs/farm/welfare_piglets.pdf)

<sup>9</sup> Pig Standards, 5.9.17 & 5.9.3. Animal Welfare Approved. Available online at: <http://animalwelfareapproved.org/standards/pig-2015/>

<sup>10</sup> 5-Step® Animal Welfare Rating Standards for Pigs v2.1. Global Animal Partnership. PDF for pig requirements accessible at: <http://www.globalanimalpartnership.org/5-step-animal-welfare-program/standards>

The proposed rule also specifies that a long list of practices must not be performed on certified operations. In general, Cornucopia supports narrowing the list of allowed physical alterations because they pose stressors for livestock.

In addition, Cornucopia agrees with FOOD Farmers' comments regarding the addition of §205.238(a)(5)(ii), stating that the proposed new language "*...must not be performed on a certified operation...*" is misleading and not as definitive as possible. We believe this could lead to livestock producers taking advantage of various loopholes. FOOD Farmers gives the example of how this phrasing could mislead producers thinking of transitioning livestock to organic, potentially performing these alterations immediately prior to becoming certified organic or before transitioning individual animals. These practices should not be allowed and greater clarity in this section is needed to prevent these expected abuses.

#### *General comments and criticisms on the livestock healthcare practice standard*

- Cornucopia supports the recommendation by FOOD Farmers to change the term "*sickness*" to "*illness or to alleviate pain and suffering*" in the proposed §205.238(b). We agree that this will reflect consistency with the rest of the regulation.
- The revised §205.238(c)(3) would prevent producers of organic livestock from "*[a]dminister[ing] hormones for growth promotion, production or reproduction.*" Oxytocin is currently listed as a synthetic substance, allowed for use in organic livestock production, used in post-parturition therapeutic applications.<sup>11</sup> Our understanding is that oxytocin is in regular use by some dairy producers to help cows recover after birth. This use could possibly fall under the ambiguous umbrella of "reproduction" listed in the proposed rule. Therefore, the proposal may conflict with the National List of Prohibited and Allowed Substances and create more confusion for certifiers and producers.
- Cornucopia agrees that natural behaviors are species-specific. However, natural behaviors are better-defined for ruminant livestock than for poultry, swine, or other species (for example, ruminants are required to graze for the entire growing season, but not less than 120 days per year). Defining each species' natural behaviors may be too restrictive if an exhaustive list, as defined by animal behaviorists, is not included. For example, a natural behavior of poultry is to consume insects and vegetation, but this degree of specificity is not found anywhere in the proposed regulations.

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<sup>11</sup> 7 CFR §205.603(17)

## Mammalian Living Conditions

### *Access to soil*

As part of the definition of the “outdoors”,<sup>12</sup> the NOP is proposing to add a new requirement for outdoor access in §205.239(a)(12). Specifically requiring “[a]t least 50 percent of outdoor access space must be soil, except for temporary conditions which would threaten the soil or water quality when outdoor access must be provided without contact to the soil.”

The NOP states that “[t]o make access to soil meaningful, at least 50 percent of all the outdoor access area must be comprised of soil.” However, soil alone is not an indicator of good animal welfare or good outdoor access. A better indicator would be a requirement for vegetation during all times of the year when vegetation could be present and at an appropriate growth stage for harvesting by animals. The presence of vegetation itself indicates that issues of soil, water, and air quality are being taken into account, that stocking densities are appropriate, and that the animals have access to vegetation to graze or browse.

Bare soil may allow for some natural behaviors and is certainly better for animal joints and lameness issues than surfaces like concrete. However, as an animal welfare solution, requiring that mammals have access to the soil year-round may not provide the benefit intended by this section. In many regions, outdoor access to soil results in muddy and unsanitary conditions during the winter or rainy seasons. Bare dirt, packed down by animals, will become covered in manure because of the density of livestock confined in the outdoor area.

A surface of soil is not conducive to the scraping and removal of manure and urine. This buildup will lead to environmental problems from runoff, erosion, and a high manure load. This problem will be particularly serious for large poultry barns and other livestock operations where the specific area and contiguous land does not have the capacity to handle the stocking density at a given time.

Cornucopia agrees that all livestock should have year-round access to the outdoors and that access to soil (and particularly vegetation) is important. However, a blanket statement that outdoor areas must be 50% soil is misleading and confusing to consumers and organic producers. The exceptions to the “soil rule” might allow practices currently common in the organic livestock market to continue, such as confining livestock to an outdoor concrete “yard” during the non-grazing season to protect soil and water quality.

The rule with its exceptions is not clear. For example, would a dairy have to let their cattle out on a dirt paddock that has not been torn up with the expectation that the quality of the paddock will rapidly degrade, and *then* the producer can pull their cattle off to protect the soil? The rule and its exceptions do not answer these questions with specificity. Adopting the NOSB’s 2011 recommendation (noting that yards, feeding

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<sup>12</sup> §205.2

pads, and feedlots may be used to provide ruminants with access to the outdoors during the non-grazing season), without specifying that the access to soil must be year-round for ruminant livestock, may be a better approach.<sup>13</sup>

While the NOP comments that soil is good for swine because it allows them to root and engage in other natural behaviors, the same behaviors could also be supported by giving pigs deep bedding material in their other housing — during temporary periods of time when outdoor access would pose a threat to the environment.

### *Confinement*

The proposed rules states that all livestock must have “[s]ufficient space and freedom to lie down in full lateral recumbence, turn around, stand up, fully stretch their limbs without touching other animals or the sides of the enclosure, and express normal patterns of behavior.”<sup>14</sup> This language appears to ban stalls, stanchions, and tie stalls for cattle. Housing with stalls is very common in the dairy industry and has never been expressly prohibited in the organic standards or discussions on animal welfare rules.

Cattle stalls must be carefully sized to ensure that manure and urine are deposited in the alleyway or gutter, and not in the stall itself. This draft proposal would require stalls to be sized nearly double (in width) the current dairy industry standard, in order to allow an animal to lie in full lateral recumbence with limbs stretched and not touch another animals or the sides of their enclosure. Sizing stalls this large would mean that animals could lie sideways or possibly backwards in most stalls, allowing cattle to defecate and urinate in their stall and on their bedding.

The vast majority of dairy farmers, regardless of scale, utilize stalls to manage their cattle in a safe and sanitary manner. No existing regulatory language would indicate that their management practices are incompatible with current legal expectations. Requiring all NOP-certified dairy operators to reconfigure or replace every stall-based dairy cow and heifer facility would be economically unfeasible. This change would also be an unexpected rulemaking, never previously discussed by the NOSB or the public, creating radically different standards than have existed since 2002 (and prior to that under the voluntary/private certification programs that existed). This situation is unlike the poultry producers who claim this rulemaking is onerous, because having their birds outdoors has always been part of the organic rules.

If the NOP would like to move towards banning stanchions, and tie stalls, they must take into account all the dairy producers who rely on their existing stall-based infrastructure to operate their businesses. A better approach would be to maintain the standing production model, while simultaneously reinforcing the animal outdoors and, outside of their stalls whenever conditions permit (appropriate conditions would have to accommodate the natural instinctive behaviors of the species — as an

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<sup>13</sup> The NOSB recommended this language revised in §205.239(a)(1)(ii)

<sup>14</sup> Proposed rule at §205.239(a)(4)(i)

example ruminants spend a considerable amount of their day lying down and should have access to their stalls and bedding on an appropriate schedule).

The proposed rule revises §205.239(b)(7) to state that “...*animals shall not be confined any longer than necessary to perform the natural or artificial insemination...*” This is too stringent, and highly impractical, for many producers. Cattle are often bred using artificial insemination (AI), often by AI technicians who travel from farm to farm to provide the service, as needed by each producer. The AI tech’s schedule will vary from day to day, making it difficult, if not impossible, to know precisely when the breeder will arrive each day.

An animal may need to be confined for a few hours before the breeder arrives. In addition, requiring that the bred animal be let out to pasture right after the breeding has occurred is highly impractical and creates a logistical nightmare for a family-scale farm operator (as opposed to a large industrial-scale operation that might have designated staff to perform these functions).

For example, the rule as written would mean someone would need to watch for when the breeder arrives on the farm and then take that cow (or group of cows, if more than one was bred that day) out to, or from, the day’s pasture, which could be a half a mile or more away, when the rest of the herd is already there. Doing so will not only create problems in getting the bred cows in through the gate when the rest of the herd is already there, but will also be disruptive to the rest of the herd. Allowing livestock to be confined for 12 to 24 hours at the time of breeding, as well as allow the cow to go out of estrous (as injuries can happen to cows in estrous from their riding behavior) will remove the related problems with this proposal. Confinement, related to breeding, for more than 24 hours can and should be prohibited.

Though the NOP, in their accompanying comments, states that a “*group of livestock may be confined while the various individuals are bred...*,” it is not clear in the language of the proposed rule itself what would be allowed. According to the NOP’s explanation, a producer could confine a large number of cows (as long as they are a “group”) when all of them are not open for breeding. Neither extreme is realistic nor reflects industry practices today. Cornucopia does not want to see a loophole created where operators of large herds (often with staggered reproductive cycles), could confine a large percent of their animals because a minority of them were ready to breed.

Other concerns regarding the provisions on confinement include:

- The term in §205.239(c)(4), allowing confinement for short “periods for milking,” needs to be better defined, because in large cow herds, the process of bringing cows in and out of the milking parlor, where some industrial dairies are now milking three and four times a day, may lead to animals confinement for the majority of the day. This obviously violates many other provisions in the current rule and the pasture standard, which requires that *all* animals graze and get meet the minimum requirement for pasture.
- The proposal revises §205.239(d). This section exempts ruminant slaughter stock from the pasture requirement. There is a loophole in the proposed

standards requiring ruminants be maintained on pasture during finishing period. More specifics are needed in this section if it is retained.

### *Swine*

In the mammalian section, the NOSB proposed mandatory group housing of swine and a requirement for rooting materials for swine. These are both beneficial changes for the welfare of the animal, as current practices allow slatted and concrete flooring. However, **there is no minimum space allowance for pigs**. Just as poultry should have a minimum space allowance, other species should as well.

As already discussed, needle teeth clipping and tail docking should not be permitted. These alterations are only utilized to prevent stressed animals from doing themselves and their fellows harm.

Another concern in the section on swine is that pigs can be separated from group housing and confined due to “aggression” in the proposal at §205.239(a)(8)(iii). Aggression in pigs is a function of stress and genetics, and alternatives should be tried before those animals are separated. The same is true for other species (such as chickens) and should not be used as an excuse to keep very social animals from being housed in groups.

### *Euthanasia*

The proposed livestock health care practice standards include requirements for euthanasia to reduce suffering of any sick or disabled livestock. Unfortunately, the current standard at §205.238(c)(7) does not speak of euthanasia or animal suffering at all. Like much of the current regulation, this section is vague and open to multiple interpretations.

With respect to euthanasia, the NOP proposes to leave open which forms of euthanasia are applied and, instead, just list those forms that are prohibited. However, new technologies may be developed that are not compatible with organic agriculture and they would not be automatically prohibited because of how the rule is written. Instead, the rule should cite the methods that are currently allowable and encourage producers to petition NOSB when new methods of euthanasia enter the market.

The proposed §205.238(c)(8) should read “*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 or the advice of an attending veterinarian*” [underlined language added].

Cornucopia supports the addition of §205.238(e) in the rule, with some exceptions. It is unclear in §205.238(e)(1) whether livestock producers would be required to euthanize their animals when they are sick or injured, or if they are just required to have a written plan of some kind in place regarding sick or injured animals. It is unnecessary and harmful to require euthanasia whenever an animal is sick or injured. For one, both “sick” and “injured” are broad and subjective terms. Adding

unnecessary or unclear requirements for further paperwork to a livestock producer's busy schedule should be avoided.

### *Other points of concern*

Cornucopia has various concerns regarding the proposed rule regarding mammalian living conditions that must be addressed before anything is finalized.

- There is no definition of “clean” at §205.239(a)(6). While the proposed rule states that animal’s living conditions should be kept clean, there is no description of “properly clean, as needed.” The term “clean” is completely subjective, if meant to include natural behaviors. For example, swine prefer wallowing and rooting in mud (though not manure) and could not be called “clean” by any common sense of the word. Even on a new pasture, cows may lay on a fresh manure patty and become soiled. The NOP commentary acknowledges some of these realities of keeping livestock, yet the proposed rule wording does not acknowledge, or appear to allow for, less than fully clean animals — a normal consequence in operating a pasture-based system.
- In the proposed §205.239(a)(1), the NOP lumps together “[y]ards, feeding pads, and feedlots” together with pasture, soil, and other surfaces the animals may have contact with when they are “outdoors.” There should be a differentiation between these surfaces, as they all have very different implications for animal welfare.
- Also in the proposed §205.239(a)(1), the language states that “[y]ards, 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 in a manner that maintains all animals in a **good body condition**” [emphasis added]. Because “good body condition” is not defined and is highly variable, depending on the species and stage of production (for example, a dairy cow may be lean during peak milking), Cornucopia recommends that that language “appropriate body condition” be substituted whenever this issues comes up.

Body scoring is a quantitative measure that may not work well in pasture-based organic systems, because it is highly variable, subjective, and requires training and experience that organic inspectors often lack.

- There should be more specificity regarding gates that give outdoor (and pasture) access for grazing livestock. If there are only one or two gates giving thousands of animals pasture access, then it will take too long for each animal to get the required 30% dry matter intake (DMI). Just like in poultry confinement buildings, gates leading to pasture have to be evenly distributed and readily accessible to livestock. Otherwise, operators of large feedlots or dairy barns could conceivably confine thousands of animals with one or two gates open on the far end of a facility. Just as with poultry, the majority of the animals would have no effective access to pasture.

## Avian Living Conditions

If the cumulative effect of the rules on livestock health and avian living conditions do not result in birds *actually* going outdoors, they are a gross betrayal of consumer goodwill and their understanding of the organic label. Many consumers think the birds are going outside today, and are they being deceived by the lax enforcement that allows porches.

### *Stocking density concerns*

**The proposed stocking density requirements for poultry are completely inadequate and conflict with other sections of the proposed rule.** The NOP should accept no less than a minimum of *5 square feet per bird* outdoors for laying hens and broilers, and 5 square feet per 7.5 lbs. for turkeys inside, to meet the welfare needs of the birds and the expectations of organic consumers. Outdoors, the standard for animal welfare should be even greater.

Research on laying hens shows that each bird needs much more space to stretch one wing, to preen, and to turn around than conventional systems allow.<sup>15</sup> In addition, research shows that a grown hen needs about 2 square feet to flap and stretch both her wings – another natural behavior impacted by overcrowding. Despite this, the NOP rejects the NOSB recommendation that 2 square feet be allotted to birds indoors, stating that that requirement is “too liberal.”

Cornucopia disagrees. In fact, evidence supports a space requirement much higher than two feet indoors, and an even higher stocking density outdoors. The NOP’s own proposed rule requires that “[p]oultry housing must be sufficiently spacious to allow all birds to move freely, **stretch their wings**, stand normally, and engage in natural behaviors” [Emphasis added].<sup>16</sup> A requirement is not “too liberal” for organic production when the requirement is compatible with current industry averages in conventional poultry operations.

*High stocking density leads to many specific welfare issues in poultry. The organic rules should strive for superior animal welfare at all times, not just because it is something consumers expect, but because producers will benefit from healthier birds. The organization Compassion in World Farming summarizes some of the research on the connection between animal welfare and stocking density in broiler chickens, finding that high stocking density leads to a **reduced ability to exhibit natural behaviors**, restricted movement, and poor environment.<sup>17</sup> These considerations lead to problems with walking, preening, eating, and drinking.*

*Birds in overcrowded situations are interrupted when they are trying to rest, leading to poor development. These “interruptions” also lead to unhealthy animals, more*

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<sup>15</sup> The Welfare of Chickens Raised For Meat. Animal Welfare Institute. Available online at: [http://www.fao.org/fileadmin/user\\_upload/animalwelfare/20910.pdf](http://www.fao.org/fileadmin/user_upload/animalwelfare/20910.pdf)

<sup>16</sup> Proposed rule at §205.241(b)(11).

<sup>17</sup> Welfare Sheet: Broiler chickens. Compassion in World Farming. Available online: <https://www.ciwf.org.uk/media/5235309/Welfare-sheet-Broiler-chickens.pdf>

*susceptible to disease and aberrant behaviors, such as feather picking and aggression. In addition, high stocking densities mean large amounts of manure. Without constant maintenance, both outdoor and indoor areas will not be kept clean enough for the birds to exhibit natural behaviors, such as dust and sun bathing.*

The NOP made several assumptions when they worked to calculate stocking density. Specifically, they based their weight requirements on the assumption that the predominant breed used for layers is the ISA Brown strain of chicken (with an average weight of 4.5 pounds). In reality, most egg producers use a variety of breeds and the ISA Brown strain is one of many types. Other common types include the Lohmann Brown, Hyline Brown, and LSL White strains. There is also variation within each strain that producers will select for based on their individual needs.

**Cornucopia recommends that stocking density calculations are not based on a specific strain or weight.** Many strains are used by producers, and sometimes flocks will consist of multiple strains. There is also enough variation within strains that some producers could take advantage of the rule; inspectors are not going to weigh the average bird in a producer's flock!

Organic Valley, for example, requires 1.75 square feet per bird indoors and 5 square feet per bird outdoors (though certain farms are exceptions to this rule and in violation of the current standards due to a lack of outdoor access). Even though the EU and the U.S. have an equivalency agreement, the EU has an outdoor requirement of *43 feet squared per bird*.<sup>18</sup> That is not even close to the equivalent of what is being proposed. Animal welfare labels provide much greater allowance for space per bird as well, and it is a very real fear of organic producers that consumers will turn to these labeling schemes when they learn how low the organic label sets welfare standards.

*50% soil is not enough and minimum vegetation should be required*

As already discussed with respect to mammals, the definition of "outdoors" which includes an area of 50% soil, is inadequate. If 50% of the outdoor space is soil, then the other half could be concrete or gravel, or other surfaces which offer no welfare benefits to poultry. Even litter would be preferable because it would be possible for the birds to scratch and even dust bathe in litter. As it stands, manure covered dirt does not count, and should never count, as "soil"

In 2011 the NOSB recommended that outdoor access include vegetation for poultry. The NOSB stated that "[a] minimum of two square feet of outdoor space is required to protect the soil and to minimize parasite loads. Five or more feet of outdoor area would ensure that some vegetation would be available to birds during the growing season and producers are encouraged to provide a high quality outdoor area with vegetation that will be used and occupied by all birds listed in the chart."

As part of the definition of the outdoors,<sup>19</sup> the NOP proposes to add a new requirement for outdoor access in §205.239(a)(12). Specifically, the new

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<sup>18</sup> Do people know where their chicken comes from? By Tom de Castella. BBC News Magazine, October 23, 2014. Last accessed 5/10/16: <http://www.bbc.com/news/magazine-29219843>

<sup>19</sup> §205.2

requirement would require that “[a]t least 50 percent of outdoor access space must be soil, except for temporary conditions which would threaten the soil or water quality when outdoor access must be provided without contact to the soil.”

However, it is *impossible* to stock birds so densely outside and still maintain “soil and water quality” as the proposed rule requires. Manure will build up and create a hospitable environment for disease, parasites, odors, and flies. In fact, these concerns seem to already be prevented by the existing rule, which requires that producers establish “... *appropriate housing, pasture conditions, and sanitation practices to minimize the occurrence and spread of diseases and parasites*” [emphasis added].<sup>20</sup> This clause, combined with the stocking density concerns, make the proposed rule conflict with itself. There is no way to stock birds as densely as proposed and still comply with sanitation and environmental problems or allow natural behaviors to their fullest.

The NOP’s draft guidance (though it was never finalized) informed certifying agents and producers that maintaining poultry on soil or outdoor runs would demonstrate compliance with the outdoor access requirement in §205.239. The proposed rule requires that “[a]t least 50 percent of outdoor access space must be soil” in §205.241(c)(8).

There is no requirement that the birds have access to vegetation, even though grass is the ultimate enrichment for poultry. Chickens graze, scratch, and pick up insects. Bare soil, which will rapidly be covered with manure at the suggested stocking densities, limits these natural behaviors. Ironically, in their included comments, the NOP acknowledged that vegetation was an important enrichment for poultry. If the proposed §205.241(c)(1) *requires* outdoor enrichment to “entice the birds” then the NOP should be comfortable adopting a minimum 50% vegetative cover.

Cornucopia agrees with the NOP statement that “[m]inimum vegetative cover would provide opportunities for poultry to engage in natural foraging behaviors. In addition, the vegetative cover would help to reduce soil erosion and nutrient run off.” There is no reason not to change the soil requirement to a vegetation requirement for poultry.

#### *Indoor requirements for poultry*

The NOP’s proposed rule defined “indoors” as the flat space or platform area under a solid roof, where the animals have access to both food and water and can be confined, if necessary. Unfortunately, the NOP’s calculation adds the square footage of *every* flat space to this calculation, even when those spaces may not be utilized regularly by the birds. This calculation could include nest boxes and perches.

The NOP also notes that the space found in porches can be included in the space calculations, as long as they are accessible to the birds at all times. Cornucopia disagrees with this assumption. **Porches should not be included in either indoor or outdoor space calculations, regardless of whether the porches are inaccessible to birds at some times, or all the time.** Birds rarely use these spaces,

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<sup>20</sup> Current rule (no revision proposed) at §205.238(a)(3)

especially when doors only allow some birds to exit the building at one time. Food, water, and material for the birds to scratch in are not usually available on porches. Without these enrichments, birds are unlikely to utilize these spaces.

**Allowing porches to be included in space calculations has the potential to create a tremendous loophole. Large, industrial operations that want to confine birds into tightly packed houses could add very inexpensive, rudimentary porch or porch-like structures, contiguous to the primary henhouses. This relatively inexpensive space could undermine the spirit of the new rulemaking by allowing the continuation of the conventional “factory farm” model of organic poultry production.**

With respect to the allowance for doors on poultry houses, it is vital that the doors are large enough for several birds to get outside at the same time. The new proposed §205.241(c)(1) states that “...door spacing must be designed to promote and encourage outside access for all birds on a daily basis.” While a good baseline provision, there is too much ambiguity in this phrasing to be meaningful. Because most poultry are very territorial, in large barns a chicken at one end may not even know they can get outside if the door is ten feet away from them. The proposed §205.241(b)(5) requires poultry houses to have exits “*appropriately distributed around the building, to ensure that all birds have ready access to the outdoors*” [emphasis added].

We agree with the sentiment of this proposal, but believe it needs more specificity before being accepted. It should specify that doors be located with regularity and around *all sides* of the building for each bird to have access to the outdoors. One recommendation is that doors be placed such that, for every 50ft of wall, there should be 10ft of door. We agree that making the doors wide will also encourage the birds to go outside, and wonder why the NOP did not create better specifications within the proposed doors section, defining what a “wide” door means, or even what the phrase “distributed around the building” means.

Based on research by Cornucopia staff, the *height* of doors seem to also factor into whether birds actually venture outside. Low, small doors, many of which open hinging “up/out,” block the view of the sky. This door style does not allow poultry to exercise their instinctual behavior of looking upwards to assure that there are no avian predators present before venturing out.

With respect to indoor housing, these are other issues that Cornucopia feels need to be changed and/or clarified within the proposed rule:

- The proposed §205.241(b)(11) requires that “*Poultry housing must be sufficiently spacious to allow all birds to move freely, stretch their wings, stand normally, and engage in natural behaviors.*” Cornucopia agrees that indoor space should always allow birds to exhibit their natural behaviors. However, combined with the minimum stocking densities (discussed above) it will be hard, if not impossible, for birds to dust bathe without doing so in manure. They will also not be able to stretch their wings fully.

- Under the proposed §205.241(b)(3), artificial light may be used to prolong the day length up to 16 hours. It is beneficial that the proposal requires natural light in poultry barns, but again, the language could use more specificity. If a normal day length is already 16 hours, presumably artificial light would not be allowed to extend it any longer.
- Cornucopia also has some concerns about aviary systems. Aviaries, which house more birds by utilizing multiple levels, may cause problems providing all birds meaningful outdoors access. As already discussed, poultry tend to be territorial and individuals will not move throughout the whole barn. If an individual is on a top level and all the doors providing outdoor access are on the ground floor, those birds may never even know there are doors open to the outdoors. In addition, some aviaries have systems in place that allow them to confine birds to certain parts of the barn. These are glorified cages and should not be tolerated in organic production.

### *Outdoor Requirements for Poultry*

The proposed rule makes significant changes to the outdoor requirements for poultry. The clear concern and underlying target of these changes is the inconsistency in how the “outdoor access” requirement is implemented. Cornucopia agrees with the NOP that the disparity in amounts of outdoor access has economic implications for producers, and lessens consumer confidence in the organic label. Cornucopia also believes that porches do not constitute even a modicum of “outdoor access.”

In the explanation along with the rule, “*AMS agrees with FDA that porches are not outdoor space. Many do not provide contact with soil nor align with consumer expectations and NOSB recommendations for outdoor access.*” Cornucopia agrees with this sentiment and wonders why this information could not come in a guidance.

Leaving the proposed rule for a moment, it is clear that those utilizing porches to qualify as “outdoor access” have always been in violation of the current rule. The *current regulation*, as of May, 2016, states that “[t]he producer of an organic livestock operation must establish and maintain year-round livestock living conditions which accommodate the health and natural behavior of animals, including: **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...” [emphasis added].<sup>21</sup>

This language applies to poultry, as “livestock” is defined as: “...cattle, sheep, goats, swine, **poultry**, or equine animals used for food or in the production of food, fiber, feed, or other agricultural-based consumer products; wild or domesticated game; or other non-plant life...” [emphasis added].<sup>22</sup> The current rule also states that “[c]ontinuous total confinement of **any animal indoors is prohibited.**”<sup>23</sup> **Taken together, this language makes it clear that porches are in violation of the current law.**

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<sup>21</sup> 7 CFR 205.239(a)(1)

<sup>22</sup> 7 CFR 205.2. *Livestock*

<sup>23</sup> §205.239(a)(1)

A significant problem with the proposed rule is that it does not require the outdoor space to be contiguous to the building within which poultry are housed. Chickens are unlikely to travel far from their shelters, and so there has to be pasture available *alongside* buildings and doors.

### *Biosecurity*

Other commenters maintain that porches for poultry (as oppose to actual outdoor access) are necessary for biosecurity reasons, citing concerns of disease contamination from wild birds (primarily avian influenza and salmonella).

The truth is that high-welfare, pasture-based systems have few, if any, problems with disease. There are organic practitioners allowing their birds true outdoor access (with access to the soil and even vegetation) in every state where organic chicken or egg production takes place. We have seen no documented health problems associated with the outdoor access. These high-welfare systems, by and large, use rotational pasture methods which effectively keep poultry from living in their own manure. Keeping birds clean and in the fresh air, and sunshine, is a better disease preventative than limiting exposure to wild birds. In addition, chickens that are outdoors (and particularly those that can feed on vegetation and insects) are less stressed than poultry in crowded barns and, therefore, have stronger immune systems to deal with possible outbreaks of disease. The NOP should consider the prevalence of disease in flocks with the highest welfare as a benchmark to which all organic poultry should aspire.

The proposed definition of “outdoors” would allow fencing, or overhead netting, that does not block sunlight or rain, preventing predators and wild birds from entering the outdoor area. However, adding netting to most systems would be impracticable and could even involve an additional future cost. The FDA stated that none of the rules they promulgate regarding food biosecurity will prevent organic producers from complying with the organic regulations, but if things like netting become more prevalent, and are specifically sanctioned in the NOP regulations, the FDA may require the netting because it would not “interfere” with the ability of producers to meet organic standards. For high-welfare producers, such as those that do rotational pasturing of their birds, this would be logistically impossible and come at a prohibitive cost.

The addition of §205.241(d)(3) would allow poultry to be confined due to the production area being on a migratory pathway (for wild birds). This is a serious loophole that should not be included. In some regions, migrations are ongoing for three months or more, which could allow birds to be confined to buildings for an extended period. As already discussed, the health of a flock is better predicted by the welfare of the birds and whether they are crowded or stressed.

Some “experts” in the industry may disagree with our conclusions. However, these comments do not take into account the viable market already existing in pastured

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poultry or the widely accepted understanding that birds with true outdoor access are healthier and therefore resistant to disease.

In particular, the comments filed by the National Assembly of State Animal Health Officials (NASAHO) affirm that “outdoor access” provisions would undermine biosecurity instructions that the USDA gave to poultry producers after the avian influenza outbreak last year, as well as FDA requirements for preventing salmonella. Susan Keller, president of the NASAHO, writes in their comments that the “*AMS acknowledges the increased risk, so the fact that this change in the rule is even being considered is a major concern. It must be questioned whether this proposal emphasizes marketing above poultry health and, if so, whether the risk to the entire national poultry industry has been considered.*”<sup>24</sup>

These comments show a bias toward one narrow aspect of the dominant paradigm in the poultry industry: large intensive-practice producers. As previously stated, the biosecurity concerns of having poultry outdoors are minimal in properly managed operations. Outdoor access has always been part of the organic law.

If the NOP is concerned about biosecurity issues, they should seek the advice of poultry producers who are currently keeping their birds outdoors on pasture or those with significant outdoor access. These producers’ experiences illustrate how outdoor access and the organic label are more than compatible. When birds have access to adequate space, fresh air, sunshine, and exercise, they maintain better physical health than confined birds.

Surveys regarding avian influenza show that there are *multiple factors* that influence the disease’s prevalence and virulence. According to findings analyzed by the National Organic Coalition, “[r]esearch shows that the mutation of LPAI to HPAI occurs almost exclusively in crowded indoor poultry houses.”<sup>25</sup>

While opponents of keeping birds outdoors seem to be concerned about exposure to wild birds, this exposure is only one of *many* potential disease vectors. Research shows that disease is more likely to be passed by people traveling between poultry houses, and indoor-only barns appear to be especially vulnerable. Essentially, **lower stocking densities and true outdoor access, where the birds (and their manure) are exposed to sunlight and fresh air, are not the problem: they are the solution.**

### *Temporary Confinement*

The proposed regulation at §205.241(d)(1) states that birds can be temporarily confined during “*Inclement weather, including, when air temperatures are under 40*

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<sup>24</sup> Comments on the same docket from the National Assembly of State Animal Health Officials. Specific comments from Susan Keller, president of the NASAHO.

<sup>25</sup> [Avian Influenza and Outdoor Access for Organic Poultry](http://www.nationalorganiccoalition.org/literature_130075/Avian_Influenza_and_Outdoor_Access_for_Organic_Poultry). National Organic Coalition. PDF available online at: [http://www.nationalorganiccoalition.org/literature\\_130075/Avian Influenza and Outdoor Access for Organic Poultry](http://www.nationalorganiccoalition.org/literature_130075/Avian_Influenza_and_Outdoor_Access_for_Organic_Poultry)

*degrees F or above 90 degrees F...* **This provision for temporary confinement is too lax.**

First, “inclement weather” is not defined and could be used as a significant loophole for producers. While the NOP states in their narrative that “[b]irds may be confined due to storms, blizzards, and other hazardous conditions...” this language is not in the actual rule. This term must be defined for this provision, and others (including the temperature requirements for the birds), to be meaningful.

Birds do well in varied weather conditions and temperatures and if outdoor runs have shade structures, as required, the birds can freely choose to seek shelter either outside or in their barns.

The temperature threshold standards provide another loophole for producers in regularly hot or cold climates. With adequate shade, birds can be comfortable outdoors in temperatures and above 90°F. Having doors to the outdoors open will allow the birds’ ability to choose whether to stay in or out regardless of the weather. **Cornucopia supports removing the high-temperature allowance for temporary confinement.** To address any aberrant weather that might impact poultry welfare, the term the term “inclement weather” could be defined to include weather patterns *unusual for the area*, such as unexpected heat.

At the colder end of the spectrum, Cornucopia would support a limit for outdoor access **below** 40°F. Inclement weather is a greater indicator for poultry welfare than temperature alone. Chief concerns are harsh winds and wet weather, both of which poultry are sensitive to. Wind breaks and protective cover can do a lot to mitigate these threats, while keeping the birds outdoors. In addition, different breeds of poultry should be considered for their ability to withstand local weather norms, requiring organic producers to adapt their programs to the environment, rather than the other way around.

### *Other Avian Considerations*

There are other concerns regarding animal welfare that are not addressed in the proposed rule *or* areas where the proposed rule is inappropriate:

- The NOPS’s discussion of porches in the proposed rule is framed in its history. Porches began in many operations following the 2002 AMS administrative appeal decision ordering the certification of an operation, providing porches exclusively for outdoor access. However, **the “Country Hen” decision was a corrupt and legally indefensible.** It was made in 3 days, an unprecedented turnaround time for administrative decisions. In addition, the administrator in charge of the case went to work for Country Hen after his retirement from the USDA. The subsequent legal decisions were never based on debate or the legality of housing animals on porches instead of outdoor access, but solely on whether the certifier had the ability to appeal the NOP’s decision. This decision was clearly made in deference to the egg industry, disrespecting the discerning consumer and ethical poultry operations.

- Poultry should have access to the outdoors **during all daylight hours**. This timing will, of course, change depending on the seasons and latitude of the farm.
- The new §205.241(b)(6) language is unclear given the proposed definitions of “perch” and “roost”. The differentiation between these terms is poor and needs to be clarified before it can be deemed meaningful within the proposed §205.241(b)(6) and the definition section. Aviaries where the upper levels are extended flat spaces do not meet the common-sense definition of either “perch” or “roost.”
- The proposed rule states that poultry can be confined up to a certain age, at which point they are required to have outdoor access.<sup>26</sup> These age requirements (4 weeks of life for broilers and 16 weeks for pullets) are too conservative. Many operations successfully put their birds (both layers and broilers) outside at four weeks without any adverse effects.<sup>27</sup> As such, 16 weeks is particularly old. Also, if broilers can go out at four weeks of age, then layers should be able to as well, *at a minimum*.
- There is no requirement that ducks and geese have access to water for swimming and dabbling. These are species-specific natural behaviors that should be acknowledged.
- In their comments, the NOP states that structures for shade are permitted in outdoor spaces and those shade structures not attached to building can be included in the “outdoor space”. The rules do not clarify what percent of the outdoor space can be covered with a roof for shade.
- If this proposed rulemaking goes forward, it should include provisions restricting the breed of poultry (and in particular, broilers) to slower-growing breeds. As it stands, common broiler breeds are so fast-growing and “top heavy” (from growing a large breast) that they can barely walk, and often suffer physical deformity as a result of their breeding. This breeding practice imparts poor animal welfare to the birds and should not be utilized in organic production. A bird that cannot walk cannot make use of outdoor access or enrichment, and should therefore be disallowed by any provision requiring the birds be able to perform “natural behaviors.” In fact, these breeds would potentially already be illegal due to §205.238(a)(1), which requires “[s]election of species and types of livestock with regard to **suitability for site-specific conditions...**” [emphasis added]. All organic operations should take into account the desired outcome of having a hearty bird that can, and does, go outside and whose welfare is not impacted by questionable genetics.

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<sup>26</sup> §205.241(d)(2)

<sup>27</sup> Conversation with Joel Salatin of Polyface Farm in Swoope, VA. Website information: <http://www.polyfacefarms.com/>

- The poultry products derived from birds kept in conditions that allow full expression of their natural behavior and diets are better for consumers. The significant scientific evidence showing that pastured poultry imparts greater health benefits should not be ignored. These benefits include healthier fats and nutrient density in the meat and eggs – something lacking in most American diets.<sup>28,29,30</sup> Of course, many consumers are aware of this and choose organic because they believe their choices are going to be healthier for their families.
- There is no scientific basis for the industries' argument that there will be an increase in the incidences of disease, parasites, cannibalism, and stress due to true outdoor access or access to soil and vegetation. Other production considerations, such as overcrowding, ventilation, and diet are stronger indications. In fact, studies show that birds reared with outdoor access are healthier and less stressed than those housed indoors in deep litter.<sup>31</sup> Both cannibalism and piling, which other commenters state is a risk of providing more space and outdoor access to birds, is *only a risk at all* in large groups.<sup>32</sup> Behaviors like feather picking are also mitigated by providing allowances for natural foraging behaviors.<sup>33</sup> For all of these concerns, the NOP's focus should be on stocking density and the numbers of birds housed in one area.

### Transport to Sale and Slaughter

Organic slaughter facilities *should* be in full compliance with the Humane Methods of Slaughter Act (HMSA) of 1978, and its associated FSIS regulations. Therefore, Cornucopia supports the NOP's proposal to add § 205.242(b)(1) to require compliance with HMSA and FSIS.

Cornucopia supports the FOOD Farmers position on transport and slaughter. In particular, we agree that the USDA NOP does not go far enough to safeguard the

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<sup>28</sup> P.I.P. Ponte, *et al.* Restricting the Intake of a Cereal-based Feed in Free-range-pastured Poultry: Effects on Performance and Meat Quality; Poultry Science, 2008. PDF available online at: <http://ps.oxfordjournals.org/content/87/10/2032.full.pdf>

<sup>29</sup> P.I.P. Ponte, *et al.* Influence of Pasture Intake on the Fatty Acid Composition, and Cholesterol, Tocopherols, and Tocotrienols Content in Meat from Free-range Broilers; Poultry Science, 2008. Available online at: <http://ps.oxfordjournals.org/content/87/1/80.abstract>

<sup>30</sup> Research shows eggs from pastured chickens may be more nutritious. Penn State News, July 20, 2010. Last accessed 6/21/2016 at: <http://news.psu.edu/story/166143/2010/07/20/research-shows-eggs-pastured-chickens-may-be-more-nutritious>

<sup>31</sup> KM Liles, *et al.* Comparing the Effects of Conventional and Pastured Poultry Production Systems on the Stress Levels of Broilers. Tuskegee University. Number 2 Professional Agricultural Workers Journal. June 2015. PDF available online at: <http://tuspubs.tuskegee.edu/cgi/viewcontent.cgi?article=1042&context=pawj>

<sup>32</sup> DC Lay Jr. *et al.* Hen welfare in different housing systems. Poultry Science Association. June 2011. PDF available online at: [http://www.poultryscience.org/docs/ps\\_962.pdf](http://www.poultryscience.org/docs/ps_962.pdf)

<sup>33</sup> Hubereicher B and Wechsler B. 1997. Feather pecking in domestic chicks: Its relation to dustbathing and foraging. Animal Behavior 54: 757-768 Part 4. <http://www.ncbi.nlm.nih.gov/pubmed/9344430>

welfare of organic livestock up to the time of slaughter. It also does not honor the recommendations of the NOSB to ensure that organic livestock are handled humanely in appropriate facilities. These issues should be addressed in this rule.

### Conclusion

Cornucopia cannot support this rulemaking in its present form. The allotted stocking densities for poultry alone are not what consumers expect and discriminate against ethical organic practitioners and their marketing partners. The requirement that livestock be out on soil does not go far enough. More than 50% of poultry's outdoor access should be composed of soil, and outdoor areas should be required to have vegetation. Dairy cattle should not be maintained in indoor conditions that would prevent their healthful management, and could lead to the deterioration of hygienic conditions and clean/high-quality milk production. Furthermore, requirements for cattle need to balance maximum outdoor access and pasture (when possible), against significant environmental risks and factors that could impact animal health and quality milk production. The NOP must take into account the financial harm that has been perpetuated on ethical organic farmers. These farmers will be harmed by delay in enforcement of the current rules.

Allowing the current practices for animal welfare to continue is unacceptable.

Porches for poultry do not and have never met the definition of "outdoors."

Cornucopia recommends enforcing the current rules. If a rulemaking must be made, there are many changes this proposed rule would have to go through to be remotely acceptable to the consumer public and the ethical organic farmer.