

ConsumersUnion®

POLICY & ACTION FROM CONSUMER REPORTS

January 17, 2018

Paul Lewis, Ph.D.
Director, Standards Division
National Organic Program, USDA-AMS-NOP
Room 2646-So., Ag Stop 0268
1400 Independence Avenue S.W.
Washington, D.C. 20250-0268

Submitted via www.regulations.gov.

**Comments of Consumers Union to the U.S. Department of Agriculture’s Agricultural Marketing Service on the National Organic Program: Organic Livestock and Poultry Practices; Withdrawal of Final Rule
Docket No. AMS-NOP-15-0012-6686**

Consumers Union, the policy division of Consumer Reports,¹ strongly opposes the proposed rule by the U.S. Department of Agriculture (USDA) to withdraw the Organic Livestock and Poultry Practices (OLPP) rule, published as a final rule in the Federal Register on January 19, 2017.

When the USDA requested public comments in 2017 on whether to make effective, delay, or withdraw the OLPP rule, the USDA received over 47,000 comments showing widespread support from consumers, farmers and businesses for the OLPP rule. In fact, only 28 commenters urged the USDA to withdraw the rule.²

USDA’s conclusion that the OLPP rule would exceed USDA’s statutory authority under the Organic Foods Production Act of 1990 (OFPA) does not comport with the express terms of the Act. OFPA states, “The National Organic Standards Board shall recommend to the Secretary standards in addition to those in paragraph (1) for the care of livestock to ensure that such livestock is organically produced.”³

Similarly, we disagree with the USDA’s statement that the “additional regulatory standards ‘for the care’ of organically produced livestock should be limited to health care

¹ Consumer Reports is an independent, nonprofit organization that works side by side with consumers to create a fairer, safer, and healthier world. As the world’s largest independent product-testing organization, Consumer Reports uses its more than 50 labs, auto test center, and survey research center to rate thousands of products and services annually. Founded in 1936, Consumer Reports has over 7 million subscribers to its magazine, website, and other publications.

² AMS-NOP-17-0031

³ 7 U.S.C. 6509.

practices similar to those specified by Congress in the statute, rather than expanded to encompass stand-alone animal welfare concerns.”

If the law intended to request additional regulatory standards from the National Organic Standards Board (NOSB) only for health care practices, then it would have stated so, such as by using the words “health care” instead of “care.” The current organic regulations include standards for the care of animals that are broader than health care, and address the animals’ living conditions, well-being and welfare under 7 CFR 205.239. The current regulations already require “year-round access for all animals to the outdoors.” The OLPP rule provides clarification for this existing rule. Therefore we disagree with the USDA’s conclusion that such standards fall outside its statutory authority.

In 2010, the USDA issued a rule that provides clarification of existing organic regulations addressing animal care (beyond health). The USDA made effective the rule for “Access to Pasture (Livestock),” which set minimum requirements to ensure consistent interpretation of existing animal care requirements in the organic standards.⁴ The OLPP rule sets similar standards to clarify an existing requirement.

The report language accompanying the statute provides further clarification, as it states that the committee “expects that after due consideration and the reception of public comment, the Board will best determine the necessary balance between the goal of restricting livestock medications and the need to provide humane conditions for livestock rearing. The Board shall recommend livestock standards, in addition to those specified in this bill, to the Secretary.”⁵ Health care and welfare are not distinct categories in livestock and poultry farming; standards for welfare will impact health care, and vice versa. For example, withholding medications (health care) can lead to animal suffering (welfare). And conversely, living conditions and welfare provisions will impact health care. As another example, the OLPP rule would set limits on indoor ammonia levels. Research shows that high ammonia levels can have negative impacts on eye and lung health. Therefore, while this standard could be interpreted as improving animal welfare, it can equally be interpreted as improving animal health. Provisions for minimum space, bedding, physical alterations and others that are in the OLPP rule can all be interpreted as impacting both health care and welfare. What is clear, however, is that both health care and welfare fall in the category of “care,” which is precisely what OFPA authorizes.

Moreover, the OLPP rule is the result of recommendations by the National Organic Standards Board, which developed these recommendations with broad public engagement and agreement within the organic community that these standards address “the care of” livestock. The NOSB still interprets the OLPP rule as an appropriate interpretation of OFPA’s requirement, as evidenced in its unanimous vote at its spring 2017 meeting to recommend to the USDA that the OLPP rule be made effective immediately.

⁴ 75 Fed. Reg. 7154-01 (Feb. 17, 2010).

⁵ Senate Report 101-357. July 6, 1990. “Report of the Committee on Agriculture, Nutrition, and Forestry, United States Senate, to accompany S. 2830 together with Additional and Minority Views.” 101st Congress – 2nd Session P. 292.

Furthermore, the OLPP rule specifically meets one of the three purposes of OFPA, which is “to assure consumers that organically produced products meet a consistent standard.”⁶ The OLPP rule does not add a new requirement for outdoor access for poultry; rather, it clarifies the existing requirement for outdoor access by setting a minimum space requirement. This change creates consistency in how the existing rule is interpreted by different certifiers, as required by OFPA.

As you well know, participation in organic production is voluntary, because certification is a choice, not a requirement for any farmer or business. Likewise, purchasing certified organic foods is a choice for consumers. To protect consumers who buy organic foods from being misled, and to ensure that their expectations are met, farmers and businesses should not sell their products as certified organic if they cannot meet all the requirements for organic certification.

Our data show that the OLPP rule is supported by a vast majority of the Americans who often or always buying organic foods. According to a Consumer Reports survey conducted in March 2017,⁷ the vast majority (86%) of consumers who often or always buy organic food say it is highly important that animals used to produce these foods are raised on farms with high standards for animal welfare, such as minimum space requirements or access to outdoor space. While the new rule is not perfect, it is an improvement and a step toward providing consumers assurance that producers of organic meat, poultry, dairy, and eggs meet standards for improved animal care.

The OLPP rule also would create consistency on access to the outdoors for chickens, including laying hens, by setting a minimum outdoor space requirement. Our survey found that 83% of consumers who often or always buy organic food think it is highly important that organic eggs come from hens able to go outdoors and with enough space to move around freely.

Not only is there wide consumer support for the OLPP, but there is also widespread organic industry support, as shown by a 2017 letter of support for the rule signed by more than 300 producers representing \$1.95 billion in annual sales.⁸ Other businesses support the OLPP rule, such as the National Co+op Grocers (NCG), representing 147 food co-ops operating over 200 stores in 37 states with combined annual sales over \$2.1 billion, and the Accredited Certifiers Association, representing 51 USDA accredited certifying agents.

Since the existing standards have always required “access to the outdoors,” most organic farmers already meet this requirement. According to the Organic Trade Association, 76% of

⁶ 7 U.S.C. 6501(2)

⁷ Consumer Reports conducted the survey to assess the opinion of Americans regarding standards for the organic label. Opinion Research Corporation (ORC) of Princeton, New Jersey, administered the survey to a nationally representative sample of 1,018 adult U.S. residents through its CARAVAN Omnibus Survey. Respondents were selected by means of random-digit dialing and were interviewed via phone. The survey fielded from March 23-26, 2017. The margin of error is +/-3.1 percentage points at the 95% confidence level. The data were statistically weighted to be demographically and geographically representative of the U.S. population.

⁸ Organic Trade Association, Letter from 334 organic beef, pork, dairy, and poultry producers to George Ervin "Sonny" Perdue III, Secretary, U.S. Department of Agriculture (Apr. 28, 2017) (online at ota.com/sites/default/files/indexed_files/Organic%20Livestock%20and%20Poultry%20Producer%20Letter.pdf).

organic farmers currently allow their flocks to have “real outdoor access.”⁹ The OLPP would create a level playing field for all organic producers, by requiring them to meet the same standard for outdoor access. This, in turn, will benefit consumers by ensuring that the organic label meets their expectations for improved animal welfare on organic farms and meaningful access to the outdoors for all animals.

We strongly oppose USDA’s proposed rule to withdraw the OLPP rule and urge the Department to make the rule effective without further delay. Thank you for considering our comments.

Respectfully submitted,

A handwritten signature in cursive script that reads "Charlotte Vallaey".

Charlotte Vallaey
Senior Policy Analyst

⁹ Organic Trade Association, “Take action now on animal welfare rule” (May 2017) (online at www.ota.com/livestockpractices).