



January 17, 2018

Paul Lewis Ph.D., Director, Standards Division  
National Organic Program, USDA-AMS-NOP  
1400 Independence Ave., SW  
Room 2646-So., Ag Stop 0268  
Washington, DC 20250-0268

Docket Number AMS-NOP-15-0012; NOP-15-06,  
Regulatory Information Number (RIN) 0581-AD75  
Submitted via <https://www.regulations.gov>

Dear Dr. Lewis,

MOSA appreciates the opportunity to provide comments to the USDA's National Organic Program regarding the new proposed rule - [Organic Livestock and Poultry Practices - Withdrawal](#). MOSA works with over 2000 operations throughout the United States with the majority of our certified entities located in the Upper Midwest. Over 900 of our operations are certified or in process for certification of livestock. We are deeply dismayed at the proposed withdrawal of this rule - a rule which has been in development in the organic community for many years, supported by the USDA, essentially required by the Office of the Inspector General, seemingly endorsed by the National Organic Program, and taken up energetically by the National Organic Standards Board.

**MOSA is strongly opposed to the withdrawal of this rule.** Withdrawal would be a great disservice to the organic community - a community soundly rooted in process and committed to the advancement of the USDA organic seal. Organic farmers already have a high standard for animal welfare, but this rule was developed to further strengthen consistency in production methods and to ensure organic consumers receive the organic products they expect. We wholeheartedly concur with the comments of the Accredited Certifiers Association and the Organic Trade Association. We also hear a resounding, unified opposition from the organic community to the withdrawal of this rule, as evidenced by the over 67,000 comments already posted on this docket. We expect the USDA to respond to this organic community outcry and allow this rule to become effective on May 14th. Withdrawal would seem to be a failure of our representative democracy, and would be particularly disheartening in the context of the National Organic Program, which exemplifies a better way for government, through our voluntary regulations.

More recently, we're hearing that this rule has already been withdrawn and that the USDA is simply waiting for the comment period to pass to make that announcement. If that is true, it's not how Americans expect their government to operate. We'll say our piece anyway.

The USDA has given two reasons for withdrawal, both contended as independently justifiable.

*“Specifically, USDA proposes withdrawing the OLPP rule based on its current interpretation of 7 U.S.C. 6905, under which the OLPP final rule would exceed USDA’s statutory authority. Withdrawal of the OLPP rule also is independently justified based upon USDA’s revised assessments of its benefits and burdens and USDA’s view of sound regulatory policy.”*

MOSA interprets both justifications as dismissive of the hard work of the organic community, all of which was channeled through the proper regulatory process, and dismissive of the preferred direction of our organic industry, an industry that has grown and become an important economic engine as a direct result of promulgating strong regulations. The many comments received in response to the previous proposed rules attest to the outcome the industry’s primary stakeholders are demanding!

In section IV. Legal Authority, it states that:

*“USDA invites comment generally on the regulatory and other policy implications of the legal interpretation of OFPA proposed in this action.”*

First, MOSA is shocked and appalled that this new interpretation of OFPA is introduced, now, many years after work on this topic began. It has been our understanding, since the time of the Arthur Harvey lawsuit more than a decade ago, that the NOP regulations can be MORE prescriptive than OFPA’s, but cannot be LESS restrictive. Now, the argument seems to be that the regulations cannot exceed what is explicitly prescribed by OFPA. Had this interpretation been in place from the beginning, over the years, we would not have devoted many months of precious time and energy to this animal welfare discussion, nor, as we are understanding now, to any topic other than materials. In light of this interpretation of OFPA by AMS, we would like to call attention to the discrepancies between the response to OLPP and other additions to the standards, such as the pasture practice standard published in 2010. Clearly the pasture rule represents a major advancement for the industry, and was put into place to level the playing field regarding outdoor access and pasture requirements for ruminants. That rule includes very specific metrics to be enforced by certifiers. The regulatory objective for the access to pasture rule was noted as:

*“The purpose in amending the NOP regulations is to make clear what access to pasture and grazing mean under the NOP. A stated purpose of the OFPA (7 U.S.C. 6501) is to assure consumers that organically produced products meet a consistent and uniform standard. This action is being taken to facilitate and improve compliance and enforcement and satisfy consumer expectations that ruminant livestock animals are grazing pastures and that pastures are managed to support grazing throughout the grazing season. Sufficient specificity and clarity will bring uniformity in application of the livestock regulations and enable certifying agents and producers to assess compliance. The amendments set minimal objectives which align with consumer expectations and producer perspectives. Producers can select measures suitable to the conditions of their operation, regardless of size or location, to meet and exceed the requirements.”*

An explanation for how the principle for implementation of the pasture rule differs from the implementation process for these animal welfare standards is warranted.

We believe that AMS is interpreting the OFPA now to suit the *new* desired outcome, which serves a minority of special interests, rather than serving the vast majority of organic stakeholders. What caused the direction to change so sharply? The former interpretation of the interplay between the OFPA framework and regulatory specifics has been in place for decades, supporting our work and moving it forward. Our preferred interpretation of the OFPA is that the authority is granted in 7 U.S.C. 6501, Sec. 2102 [7 U.S.C 6501] Purposes.

*“It is the purpose of this title-- (1) to establish national standards governing the marketing of certain agricultural products as organically produced products; (2) to assure consumers that organically produced products meet a consistent standard.”* and furthermore in Sec. 2119 [7 U.S.C. 6518] National Organic Standards Board (a) General - *“The Secretary shall establish a National Organic Standards Board....to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of this title.”*

We believe these two references give clear authority to develop, improve and strengthen our organic standards.

The [Charter for the NOSB](#) further explains the long established authority of the NOSB. It states under Section 3. Objectives and Scope of Activities:

*“As described in OFPA, the purpose of the NOSB is to "assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of OFPA." Key activities of the Board include: **assisting in the development of organic standards and regulations;** reviewing petitioned materials for recommending inclusion on or deletion from the National List of Approved and Prohibited Substances (National List); recommending changes to the National List; **communicating with the organic community, listening to public comments at public meetings; and communicating and coordinating with the NOP staff.**”* [Emphasis added]

Furthermore, the Office of the Inspector General specifically *required* development of additional guidance in their report dated March 9, 2010, [audit number 01601-03-Hy](#). The report outlines inconsistencies regarding outdoor space in place on operations. The NOP response indicated that the NOSB was working on both animal welfare and animal space requirements, noted that the pasture rule was recently implemented, and confirmed that additional guidance would be developed.

In subsection C. Executive Orders under section V. Rationale for withdrawing the rule, the AMS recognizes the

*“purpose of the OFPA is to assure consumers that organically produced products meet a consistent and uniform standard”*

but further contends

*“that purpose does not imply that there should be no variation in organic production practices.”*

The AMS goes on to explain that

*“..a variety of production methods may be employed to meet the same standard. Some may be more labor intensive and others more capital intensive, and some may be appropriate for small operations while others are appropriate for large operations. Importantly, producers will adopt different production methods over time as technology evolves and enables operations to meet the same standard more efficiently.*

*Thus, variation in production practices is expected and does not stand as an indicator of a significant market failure.”*

We agree and disagree with this approach. While we agree that OFPA *should* assure consumers that the organic label is uniform and consistent, and that there is and should continue to be flexibility in production methods, we disagree that certifiers *currently have* a uniform standard to apply in all areas. Farmers cannot meet “*the same standard*” since there are not standards that are agreed upon for all topics. Specifically, with regard to organic poultry, production practices vary significantly. We cannot deny that the variations in poultry production have created an unfair playing field for farmers. Hot debates have centered around this topic for years. Sound, private, third-party certification programs need consistent regulations to apply. While we appreciate *flexibility*, regulations which continue to allow for *such* significant *variations* in production practices will discourage consumers’ confidence in the organic products they purchase. This undermines the consistent, strong standards which have been the basis for organics’ economic growth.

If the intent of AMS is to maintain the strength of the organic seal, and for the seal to continue to broadly represent the organic community, it’s imperative to heed our voices and also enable *advancement* of the organic standards. A regulatory structure in which the primary stakeholders are marginalized and do not have meaningful influence on the direction of the Program will not thrive in the long term. As has been observed through recent debates, the organic movement is at a crossroads. If further fracturing of the organic community is to be prevented, collaboration between the the USDA and the majority of industry stakeholders is vital.

In summary, MOSA continues to support the implementation of the new Organic Livestock and Poultry Practices rule. We appreciate the time and energy that has been devoted to developing this rule and look forward to its sensible implementation. We urge the USDA to represent the will of the vast majority of organic stakeholders, and allow the rule to become effective on May 14, 2018.

Please direct any questions to Jackie DeMinter, Certification Policy Manager.  
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Sincerely,

MOSA Certification Team