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Washington, DC 20250-0268

Submitted via: [regulations.gov](https://www.regulations.gov)

**Docket Number: AMS-NOP-21-0073**

**Re: National Organic Program (NOP); Organic Livestock and Poultry Standards**

Dear Erin Healy,

Thank you for the opportunity to comment on the new proposed organic livestock and poultry standards. MOSA certifies nearly 2000 operations throughout the United States. Over 700 of our operations are certified, or in process of certification for the livestock scope. Of these operations, nearly 500 have dairy cows for milk, 150 raise hens for eggs, and 28 raise broilers. On average, our dairies milk about 66 cows, and our layer operations average just under 13,000 hens. MOSA urges the USDA to standardize organic livestock and poultry regulations and implement this widely supported animal welfare reform. Most of the changes in this proposed rule became effective with MOSA's work on the former final regulation prior to its withdrawal and through our implementation of the [ACA Best Practices Document for Consistent Implementation of Livestock and Poultry Regulations](#). We are confident that MOSA certified clients largely comply with the proposed regulations.

MOSA actively participated in all previous rounds of comments for this rule and we support the overall intent. The following commentary first answers the specific requests for information, then offers rule text suggested changes and updates, requests for clarification, and some interpretations we have made, all organized by the rule affected in order of the proposed regulation, and includes sound reasoning for all points. We have 10 top priorities, identified as **\*Critical**. We urge the NOP to finalize the rule with all of the suggestions we propose; the edits we suggest in our commentary below clarify the intention of this regulation and should mainly be considered technical corrections. Policy clarifications issued through guidance or a National Organic Program Organic Integrity Learning Center course could follow the final rule and ACA would likely build on the current best practice document to further explain the intent. Collaborative implementation will ensure there is a consistent interpretation of the new regulations.

**AMS seeks comment on the following topics:**

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

Some of the language in the proposed rules could benefit from some additional clarity and some technical corrections must be made in order for the regulation to be accurate. We propose clarifying edits throughout the standards listed below to enable consistent understanding, evaluation, and enforcement.

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

MOSA identified one primary area where an additional cost to small farmers was not discussed - the cost to small dairy farmers who utilize tie stall or stanchion barns discussed further in #14 and #18 below.

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

The proposed regulations do reflect current mammalian livestock practices for the most part, but we point out one especially impactful area a new requirement will be imposed at §205.239(a)(4)(i) and (a)(11) in our comments in #14 and #18 below.

Other proposed regulations which would impact farmers should be resolved through making necessary technical corrections (As an example, see #9 - §205.238(b)(2) and #10 §205.238(c)(1) below).

*4. What is an appropriate and feasible implementation timeframe for the proposed changes? Specifically, AMS seeks comment on the following implementation approach and timeframes: (a) One year for all proposed changes, except for the indoor space requirements for broiler operations and the outdoor space requirements for layer operations;*

NOP further explained, "During the one-year implementation period, certifying agents would need to update their OSP forms and make modifications to their certification processes to evaluate compliance with the new requirements. This would include training staff and inspectors. AMS believes one year is adequate for organic operations, including small businesses, to implement these changes.

### **Implementation period for MOSA**

We are assuming the implementation period time frame to be one year from the effective date (typically 60 days after publication). The additional two months could potentially be helpful as we make implementation plans.

MOSA certifies hundreds of livestock operations and as such, we work with an exceptionally large qualified staff and inspector base. We work with approximately fifty contract inspectors and one full-time staff inspector. Forty contractors are endorsed for livestock inspections. Since we'll need to first make changes to our OSPs and training materials and then conduct adequate

training for all of the staff we work with for review and inspection, we feel that one year will be a narrow timeline, especially if the timing does not work into the flow of our annual review cycle. We revise our forms October through December, and we send our update packet out to clients in January. Paperwork for all clients is due on April 1. From there, we work exceptionally hard to conduct a paperwork review and schedule inspections, which happen throughout the remainder of the year and into winter, as appropriate for the operation. Even as files are being reviewed for the concluding year, we're starting the process all over with revision of forms. In the case of the pasture rule, which was published at a time that was not conducive to our cycle, we spent considerable time, energy and effort to put together an addendum OSP to send out mid-year; many operations had been inspected already, and it was challenging for our clients to provide updates. However, since so much work has *already* been done to implement the policies outlined in this proposed rule, making changes will be much easier. Our proactive approach a few years ago adopting the [ACA Best Practices Document for Consistent Implementation of Livestock and Poultry Regulations](#) will give us a jump on our implementation of the final rule when published.

### **Implementation period for organic operations**

When discussing the implementation period for certified operations, please consider MOSA's comments for standards: §205.239(a)(4)(i) and (a)(11) in #14 and #18 below. NOP's interpretation of these standards will determine the impact to small dairy farms, and they may need additional time to comply.

We also note that the outdoor space implementation period for broilers and birds other than layers (i.e. turkeys) may need additional consideration. See comments at (b) below.

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

MOSA weakly supports up to a maximum of three years for indoor space requirements for broilers. One year would be more reasonable and would have our full support. We also observe that if any operation needs to expand outdoor space to meet the new metrics, operations would need three years if land needs to be transitioned though we note that MOSA certified operations are not affected.

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

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

This is assumed to be "*within three years of the effective date will have five years [from the effective date] to comply with the rule's outdoor space requirements concerning stocking density, exit doors, soil, and vegetation.*" [insert added] We suggest considering three years from the publication date rather than the effective date. The [origin of livestock rule](#) used the publication date as the starting point. This would provide a maximum of five years total from publication date for all currently certified layer operations to comply.

As proposed, new entrants to organic certification would have the same timeframe, meaning that new operations utilizing porches could still be certified up to three years after the final rule date and would have an additional two years to comply. It would make sense to MOSA to have new operations comply sooner rather than later. A reasonable compromise would be to require new operations to comply within one to three years from publication. Five years is unnecessary.

We definitely support *immediate* compliance for new operations certified after three years (36 months for land transition). But again, we would see one to three years as a more appropriate timeframe. This rule is not new news to the poultry industry.

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

**We do not support option 2. Fifteen years is unnecessarily long and is a disservice to the organic community which has worked hard to resolve this issue.** We emphasize that MOSA certified operations currently comply with the intent of this proposed regulation. It should not be another 15 years from publication for the NOP to resolve these longstanding concerns about the organic poultry industry. Giving such a long period of time for currently certified entities to comply would unfortunately maintain the competitive disadvantage for MOSA's certified farmers and allow for continued expansion of the poultry industry under regulations intended to be corrected through this rulemaking process. We support 15 years from the first NOSB animal welfare recommendation which according to the [NOSB recommendations library](#) was in 2002 regarding clarification of poultry access to outdoors or if we look at the 2009 animal welfare recommendations, we'd look at an effective date of 2024. The point being that the organic community is well aware of this direction and should be prepared for relatively *immediate* compliance. Many certifiers have already adopted the [ACA Best Practices Document for Consistent Implementation of Livestock and Poultry Regulations](#).

*Option 3: AMS seeks comments on alternative timeframes to those presented above for the outdoor space requirements for layer operations, including justification for alternatives and data on the costs and benefits. These options and their costs and benefits are discussed below in Section V ("Executive Orders 12866 and 13563—Executive Summary"). Detailed information can be found in the Regulatory Impact Analysis for this proposed rule.*

MOSA is most aligned with option 1 for currently certified layer operations, however we find three (at most five) years to be a fair and reasonable timeframe for client compliance. This gives MOSA and our client's plenty of time to implement changes.

We propose new entrants comply within a maximum of one to three years from the effective date.

This gives the industry a total maximum of five years to be aligned. Production practices would no longer be a competitive disadvantage for some farmers. We urge the NOP to ensure that the maximum time frame allowed serves farmers in business now.

We encourage the NOP to reconsider the effective date. The effective date is usually 60 days after publication, but notably, it was during this time frame when the previous final rule was withdrawn. We propose an immediate effective date upon publication, or as soon after publication as is possible.

We also encourage the NOP to reconsider the compliance date starting point (currently the *effective date*). As noted above, the recent origin of livestock final regulation has a compliance date that is one year from *publication*.

### **NOP request for comments on the definitions for indoor and outdoor space**

*AMS welcomes public comment on whether the proposed definitions (also for outdoor space below) clearly and adequately distinguish the two types of spaces.*

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

See #1 and #2 (definitions for indoors and outdoors) in the MOSA commentary section immediately below. The intention of the new definitions, when explained by NOP, seems clear, but the right words seem to be difficult to put together to reflect that intention.

NOP’s commentary seems transparent to us and we encourage NOP to include the principles noted (underlined below) as guidance for this rule.

*“One of the key considerations for distinguishing indoor space from outdoor space would be how the livestock are managed in that space, which may determine whether the space could be defined as indoors, outdoors, or neither indoors nor outdoors. As an example, a screened-in and roofed porch to which the (enclosed) birds always have access, including during temporary confinement events, would be considered indoor space. That same porch would be considered neither indoors nor outdoors if the birds do not have continuous access to the space during temporary confinement events. If the screens were removed from that porch so that the birds could freely access other outdoor space, then the porch would be considered outdoor space (see “Outdoors or outdoor space” in section III.A.3). These distinctions would provide flexibility for producers to work with their certifying agents when developing their organic system plans (OSPs), yet still aligns with the position that enclosed porches are not considered to be outdoor space.”*

We agree that outdoors means outside; not inside a free stall or inside a structure even if the sides are lowered or not present (i.e. a freestall with curtain sides that raise and lower for ventilation and animal comfort when *indoors*). Animals need to be able to exit the housing structure. For poultry, an enclosed porch does *not* allow for real outdoor access, and we require

access to soil. Removing the screens may or may not be sufficient to provide birds an adequate route to true outdoor access. Calculating the porch as outdoors does not seem practical in most circumstances. Significant modifications would likely need to be made to enable birds to *freely* access the rest of the outdoors. We have no question about what types of structures qualify nor do *our* clients and we feel entirely capable of making this determination. However, our concern lies with any inconsistent interpretations that would be maintained or implemented throughout the organic community.

We've also considered how these definitions apply to other animals. Picture cattle (or other livestock) housed in freestalls or hoop barns which have sides that can be rolled up or may not even be present at all in some climates. While the indoors lets the outdoor air inside, the animals are still inside of a structure.



Photo from: [The Dairyland Initiative > Housing Module > Adult Cow Housing > Freestall Dimensions](#)

Are these types of barns for mammals to be regarded as indoors or outdoors? We strongly feel that inside the barn, even if the sides are up for ventilation, is not outdoor access. Animals have to be able to *exit* the structure, a roof overhead is not outdoors. NOP should clarify this understanding for mammals.

We would not understand any fences and overhead netting to mean “enclosed” but we are not sure that would be clear to everyone. With the preamble, it is clear, but we note that the preamble is not the rule and if there is any room for mis-interpretation within the regulatory text, then we suggest revisions be explored. Suggestions follow in #1 and #2 of the next section.

**Rule Commentary and Technical Corrections (topic; rule [emphasis added as appropriate]; commentary)**

1. **§205.2 Indoors or indoor space.** *Indoors or indoor space. The space inside of an enclosed building or housing structure available to livestock....* Would it be more clear to remove the word *enclosed*? Perhaps consider adding, “*the space inside of a building or housing structure (which the animals cannot exit to outdoor space) available to livestock..*”

We would not like to see this definition for indoors, as related to mammals, exclude a freestall or hoop barn with the sides up from being considered *indoors*; or to allow that same structure to be considered *outdoors*. Such space would NOT be outdoor space if animals are still kept inside the housing structure. Another key understanding we have is that animals are required to have “direct sunlight” as per §205.239(a)(1) and the new

§205.241(a). Having a roof overhead all the time would not meet these standards requirements.

As noted in the preamble “*That same porch would be considered neither indoors nor outdoors if the birds do not have continuous access to the space during temporary confinement events,*” porches can be indoors OR outdoors, NOT BOTH, OR neither. We do not certify operations utilizing porches, rather we have always required true outdoor access. To consider porches as outdoors in any circumstance does not seem to reflect the intention of requiring birds to be outside.

We also point out that there is a fine line between indoor space for mobile housing and outdoor space for pasture pens. Mobile housing and pasture pens differ in that mobile units have a floor of some sort and pasture pens do not. We understand that wire flooring, even if it rests on the ground, falls under mobile housing since the wire covering the ground would restrict the natural behavior of the birds to scratch. A true pasture pen has no floor at all, including a chicken wire floor. Birds’ feet access only the earth, with nothing at all in between.

We request NOP to consider this definition as applied to all types of animals, or perhaps indicate that it is only applicable to poultry. Clarification requested.

2. **\*Critical §205.2 Outdoors or outdoor space.** *Any area outside an enclosed building or enclosed housing structure, including roofed areas that are not enclosed.* Again we have the issue with “enclosed” as related to mammals. A freestall or hoop barn without sides (i.e. open to the outdoors) should NOT be interpreted as *roofed areas that are not enclosed.* [ACA best practices](#) included this understanding. *Question: Can permanently open-sided barns count as outdoor access? Answer: If animals can freely exit and enter a structure, then they are considered to have outdoor access; otherwise not. Roofed structures that have open sides but don’t allow an animal to exit may be allowed for temporary confinement, such as for protection of soil and water quality. Allowance is dependent upon local climate and time of year. Indoor confinement cannot be year-round.*

MOSA does not consider an enclosed barn of any sort which is used for housing to be outdoor access. Outdoors is outside. We are clear that housing structures are not *also* outdoor access.

This definition is applied in *205.241(c)(7) Outdoor space may include porches and lean-to type structures that are not enclosed (e.g., with roof, but with screens removed) and allow birds to freely access other outdoor space.* This standard requires that outdoor space must be able to *freely access* other outdoor space. That clarity could be added to the definition so that it applies to all animals and all structures. As it stands now, the definition includes structures for mammals, we think (and hope), unintentionally.

MOSA is also clear that a porch is not true outdoor access. Notably, we do not certify any operations who consider a porch to be outdoor access. ACA best practices addressed porches.

*Question: How are enclosed porches and lean-to type structures calculated into indoor space in poultry houses? Answer: These areas can be counted as indoor space if they are not already counted as outdoor space and as long as the birds have constant access to them while indoors.*

At MOSA, we are challenged to see porches as equivalent to outdoor space, even if restricted to 50% of the outdoor space (since 50% must be soil), or if the screens were removed. NOP gave the example, “*if the screens were removed from that porch so that the birds could freely access other outdoor space, then the porch would be considered outdoor space...*” The type of structure would determine if the removal of screens would be sufficient to call it outdoor space. Removing any walls or other barriers to the birds would work.

We request NOP to reconsider this definition as applied to all types of animals, or perhaps indicate that it is only applicable to poultry. How is “not enclosed” best explained? Clarification requested.

3. **§205.2 Ritual slaughter.** *Slaughtering in accordance with the ritual requirements of any ~~other~~ religious faith that prescribes a method of slaughter whereby the animal suffers loss...* The word “other” is not needed, since “Jewish” faith was removed as a specific reference. Any religious faith is accurate phraseology. Technical correction.
4. **§205.2 Soil.** We suggest striking this new definition due to potential impacts as related to other parts of the current regulation. The word *soil* is used 55 times in the current regulatory text with no definition; as related here it is used 6 novel/new times, and the references are clear to us without a definition. Technical correction.
5. **205.2 Stocking Density.** *Stocking density. The weight of ~~animals~~ on a given area or unit of land.* Replace “animals” with “**birds**” since stocking density is used in the regulation only for poultry, not mammals. Technical correction.
6. **§205.238(a)(2) Body condition.** *Provision of a feed ration sufficient to meet nutritional requirements, including vitamins, minerals, proteins and/or amino acids, fatty acids, energy sources, and fiber (ruminants), resulting in appropriate body condition.* We currently assess body condition through on-site inspections and evaluation of feed rations. We do not expect to make any changes to process or procedures as a result of this rule addition.
7. **§205.238(a)(5)(i) Alterations for swine.** *The following ~~practice~~ may not be routinely...* It should be “**practices**” since there are two practices (teeth and tails) listed. Technical correction.
8. **§205.238(a)(8) Monitoring lameness and percentage recordkeeping.** *Monitoring of lameness and keeping records of the percent of the herd or flock suffering from lameness and the causes.* We feel that monitoring of livestock health, including lameness, is an active and existing part of farming and the addition of this new standard and records requirement is burdensome and unnecessary. In our OSP, we ask



how livestock health is being managed and monitored, and about use of prohibited inputs and instances or circumstances where treatment would require the use of such inputs, and about other information regarding health management. Monitoring of lameness is a type of recordkeeping option that clients can select and we also indicate in the instruction that monitoring of lameness is required (so are mortality records). We have always required individual, herd or flock records as appropriate and that such records document all alterations, vaccinations, mortality, health treatments, etc. Records vary among operations but include any treatments given for any reason. We feel that between all the varying records currently kept we can easily gather a sense of lameness on the operation. We would be willing to add additional OSP questions regarding lameness specifically, but we would not like to see that additional recordkeeping and inspection requirements be necessary. In addition, interpretations of what constitutes lameness could vary, so if this standard is kept, we encourage that a definition for lameness be developed. We propose to strike this as a separate standard. Are there enforcement actions needed when a certain percentage or number of animals is suffering from lameness, and, if so, what is that percentage? Clarification requested.

9. **\*Critical §205.238(b)(2) Milk withhold for use of parasiticides.** *Dairy stock, when used a minimum of 90 days prior to the production of milk or milk products that are to be sold, labeled, or represented as organic.* This rule should read: *Dairy animals, as allowed under § 205.603.* This rule was updated in this [Federal Register notice](#). While this is a technical correction, it should be regarded as a very important one to make. This standard would not be enforceable in combination with the parasiticide restrictions on the National List. Technical correction.
  
10. **\*Critical §205.238(c)(1) Materials with a withholding time.** *Sell, label, or represent as organic any animal or product derived from any animal treated with antibiotics, any substance that contains a synthetic substance not allowed under §205.603, or any substance that contains a non-synthetic substance prohibited in §205.604. Milk from animals undergoing treatment with synthetic substances allowed under § 205.603 cannot be sold as organic but may be fed to calves on the same operation. Milk from animals undergoing treatment with prohibited substances cannot be sold as organic or fed to organic livestock.* This sentence is missing a key phrase reflected in the commentary as the intent. The commentary noted -- *AMS proposes to amend § 205.238(c)(1) to clarify that milk from an animal treated with an allowed substance in § 205.603, which has a withholding time, may not be sold, labeled, or represented as organic during that withholding time.* This regulation, as written, is an important point of concern, however *the intent* as explained in the preamble reflects our current policy. As written, this means that milk from an animal being treated with aspirin, iodine or hydrogen peroxide (and many other materials used daily on farms) can only be fed to the calves, not sold. The phrase “**which has a withholding time**” needs to be inserted after §205.603. This phrase was part of the first proposed rule, but was mistakenly left out of the final rule and in this new proposed rule. Technical correction.
  
11. **\*Critical §205.238(c)(10) Forced molting prohibition.** *Practice forced molting or withdrawal of feed to induce molting.* Should the “or” be “including but not limited to” and if so, then is it even necessary to say? Are all forced molting practices prohibited?

What, if any, molting management practices are allowed? Water withdrawal and lighting withdrawal are also ways to induce molting, and feed may not be withdrawn entirely, but a strict diet to reduce the body weight of the chickens by up to 35% can also be provided. This could include reduced feed quantity as well as reduced nutritive content the feed provides. MOSA interprets this standard as prohibiting all forced molting practices, which includes but is not limited to withdrawal of feed to induce molting. MOSA's current policy (ACA best practice) notes that we do not view any forced molting as "living conditions which accommodate the health and natural behavior of the animal" (§205.239(a)), nor is it "provision of conditions which allow for ...reduction of stress" (§205.238(a)(4)), nor is it a "feed ration sufficient to meet nutritional requirements" (§205.238(a)(2)). *Forced molting, which stresses the birds through activities such as feed withdrawal, altered lighting, and removal of outdoor access, is not keeping with requirements for conditions that allow for reduction of stress. Additionally, some practices do not comply with outdoor access requirements and requirements to provide feed rations sufficient to meet nutritional requirements. \*\*However some certifiers have allowed forced molting through reduced protein in a ration that is still sufficient to meet the flock's nutritional needs and does not introduce additional environmental stressors.*

We would like clarification as to whether or not a significant reduction of feed quantity or quality, not an entire withdrawal, but a ration designed to molt the birds, is considered forced molting. To eliminate the redundancy and confusion, this standard should be edited to: *Practice forced molting*. Forced Molting could be further defined in 205.2 for clarity regarding practices included. We note that also generally in practice flocks are not maintained long enough for birds to naturally molt. Molting practices are not used by MOSA certified operations. Clarification requested. Technical correction.

12. **§205.239 and §205.241 Mammalian livestock living conditions and Avian living conditions.** We note that this segregation leaves out any other "non-plant" life identified as "livestock" in §205.2 While MOSA does not currently certify any livestock other than mammals or avian species, we have received questions from potential clients regarding certifying insects. We additionally note that OMRI requires insects in livestock feed products to be certified organic. Clarification requested.

13. **§205.239(a)(3) Bedding requirement** *...except as provided in § 205.236(a)(2)(i), and, if applicable, organically handled by operations certified to the NOP,* This proposed rule reference needs to be updated to 205.236(a)(2)(iii) and include "**under this part,**" after NOP to include the recent Origin of Livestock Final Rule and regulatory text change. Technical correction.

14. **\*Critical §205.239(a)(4)(i) 24 hour period.** *Over a 24-hour period, sufficient space and freedom to lie down, turn around, stand up, fully stretch their limbs, and express normal patterns of behavior.*

The commentary for the new rule for (a)(4) says "*Stalls for organic dairy cattle are often designed to limit the animals from turning to the sides. This stall design directs manure and urine into a collection system to prevent mastitis and maintain low somatic cell counts in the milk. Mammalian livestock may be housed for part of the day in stalls as described in the organic system plan as long as they have complete freedom of*

*movement during significant parts of the day for grazing, loafing, and exhibiting natural social behavior. This allowance does not permit the use of gestation crates or other confinement systems in which swine would be housed individually in stalls for months at a time. However, if livestock are temporarily confined indoors as permitted in § 205.239(b), livestock must be able to move around, turn around, and stretch their limbs indoors for part of the day. Operations would need to fully describe the use of any stalls, methods used in stall management, and how livestock are able to express their normal patterns of behavior.”*

The 24 hour part of this requirement was new with the first final rule and, notably, NOP has not had the opportunity to hear comments from the industry regarding challenges and economic impact of this part of the new regulation until now and we appreciate this time to express concern. This regulation as written, and as explained in the preamble, means that every day, including during approved temporary confinement events, the animals must have full freedom of movement, i.e. no tie stalls, short tethers, or stanchions. Turning around is not possible in a tie stall or stanchion barn and these particular barn styles do not usually have accommodations inside to allow adult cattle to move about freely when they are confined indoors. As a resolution, we recommend that NOP reconsider and update their understanding of appropriate housing *during* approved temporary confinement events and provide clarification. A new NOP interpretation of this new regulation, in combination with §205.239(a)(1) *Continuous total confinement of any animal indoors is prohibited*, will ensure the intent for animals to exercise daily as appropriate. Clarification requested.

We've also discussed tethering of calves. If calves comply with temporary confinement restrictions at §205.239(c)(2), then §205.239(a)(4)(i) has been met. The rule does not prevent tethering if calves can lie down, stand up, fully extend their limbs, and move about freely. We have always ensured that tether length allows for this rule to be met, which should provide compliance with (a)(4)(i) too. Additionally, new §205.239(a)(7) reinforces that calves may be individually housed and confined until they are a maximum of 6 months old *...provided that they have enough room to turn around, lie down, stretch out when lying down, get up, rest, and groom themselves.*

We maintain that calf tethers should be long enough to provide for a fairly free range of movement. We often see calves tied to their hutches outside or posted on long tethers in pasture areas to introduce them to grazing. We encourage the NOP to affirm that calf tethering is an allowed practice and clarify if there are different considerations for indoor vs outdoor tethering. Confirmation requested.

Also see related comments on §205.239(a)(11) below.

15. **§205.239(a)(7) Calf housing requirements.** *Dairy young stock may be housed in individual pens until completion of the weaning process but no later than 6 months of age, provided that they have enough room to turn around, lie down, stretch out when lying down, get up, rest, and groom themselves; individual animal pens shall be designed and located so that each animal can see, smell, and hear other calves.* Seeing other calves may not always be possible, and there are instances where a calf is born at a time when other calves may not be at the same stage of life or housed in the same area.

We also sometimes see calf stalls arranged in a side by side manner which may not allow for calves to actually see each other, however they can smell, hear, and socialize with other calves. We'd also note that there may not be other calves around, but there might be other animals. While we can appreciate the intent of this regulation, the reality is that it may not always be fully enforceable, especially on small farming operations, but that we still find the operation's practices to be compliant. A simple revision to reflect the intent: *Dairy young stock may be individually housed until completion of the weaning process but no later than 6 months of age, provided that animals are able to socialize with other animals and they have enough room to turn around, lie down, stretch out when lying down, get up, rest, and groom themselves.* This suggestion removes the required "see" element but maintains the intention and also retains the elements animals need for comfort. Technical correction.

16. **§205.239(a)(8)(iii) Individually housed swine.** *Swine with documented instance of aggression or recovery from an illness.* Since multiple documented instances are intended to be required as indicated in the NOP commentary "...and (3) § 205.239(a)(8)(iii) would allow for swine to be individually housed after multiple documented instances of aggression or to allow an individual pig to recover from a documented illness." We suggest adding in "multiple" and changing "instance" to "instances" as NOP stated. Technical correction.
  
17. **§205.239(a)(10) Swine rooting materials.** *For swine, rooting materials must be provided, except during the farrowing and suckling period.* We think that "must be provided" means "must be provided at all times," including during temporary confinement events except during farrowing and suckling. The way the regulation is worded leaves room to misinterpret the intent of the regulation. What if the rooting materials are provided but not accessible to the swine at all times? The NOP's commentary further covers when rooting materials must be provided. *In addition, § 205.239(a)(10) would require both indoor and outdoor areas for swine to include space for the livestock to root. Rooting is a natural behavior that must be accommodated by organic swine producers and could be done in soil, deep packed straw, or other materials. Organic swine producers would also be required to update their OSP to address how swine will be allowed to root during temporary confinement periods.* Is it that rooting materials are required inside and outside or that rooting materials are available wherever the hogs are, at all times, including during temporary confinement, except as excluded during farrowing and suckling? If hogs have free access to the rooting materials at all times, is that sufficient? As a technical correction, adding "and available to animals at all times" after "provided" would make this unmistakable and reflect the intent. *For swine, rooting materials must be provided and available to animals at all times, except during the farrowing and suckling period.* We support this clarity. Technical correction.
  
18. **\*Critical §205.239(a)(11) Group-housed cattle.** *For group-housed cattle, bedded packs, compost packs, tie-stalls, free-stalls, and stanchion barns are all acceptable housing as part of an overall organic system plan.* This rule isn't of concern specifically and when considered individually actually helps to resolve concerns, but when applied in

combination with §205.239(a)(4)(i), and supported by the commentary for this regulation, we are concerned. The commentary for (a)(11) notes, “*However, while these barns can all be suitable for organic certification systems, the specific procedures used by producers with these barns may be incompatible with organic production. For example, it would not be permitted for a producer to leave an animal tied up for 24 hours per day in a tie stall barn.*” This thinking is further emphasized by commentary under (a)(4)(i) noted above.

As a resolution to this issue, we recommend that NOP reconsider and update the understanding of appropriate housing *during* approved temporary confinement events. If NOP IS intending to mandate that animals be let out of stalls indoors *during temporary confinement events* when cows are unable to exit the barn, then we implore the NOP to assess how many operations will have a significant economic impact due to the regulation. We strongly urge the NOP to reconsider impacting this sector of small farmers. We agree that it is best practice to allow cattle out of the tie stall and stanchion barns for part of the day, but in reality it’s not always feasible if the conditions outdoors are unsuitable for the cows to exit the barn. The fact of the matter is that farmers *want* their cows to be out of the barn for cleaning and other maintenance that is better done without the cows indoors. Most of the operations we certify have typical main barn set-ups equipped with milking cattle stalls, a traditional alley and waste gutter system, a small pen or two for other animals, the milking equipment room, the feed bunk and perhaps some feed storage. Cows are trained to step over the gutter to enter their assigned stall (they know which stall is theirs). Not only would letting cows out of the stalls into the inside of the barn introduce a safety concern due to the barn style, but also a welfare concern for cows that are confined to a small space and in direct conflict with 205.239(a)(iii) requiring shelter be designed to allow for reduction of potential for livestock injury, yet allowed to move about and interact with other cows freely. There is simply no additional room inside the barn for letting the cattle mill about, and particularly in the upper midwest (where the majority of our certified dairies are located) we have several days where weather conditions prevent animals from being outside.

We also want to highlight that the cows housed in such stalls are comfortable and attended to often throughout the day in a one on one manner; animal welfare can be monitored more regularly than in a free housing system. One client said it best, “Tie stalls have a negative connotation and should not be called that. We should be calling them comfort stalls because our cows are truly comfortable in them, both physically and mentally and they tell me so everyday that I take care of them.”

In response to our 2017 survey, another client offered, “Tie stalls give us the opportunity to interact with our cows on an hourly basis. It quickens the response time to adequately care for a sick or injured animal as we can see symptoms almost immediately. There is no “lost in the herd” suffering. Tie stall barns also allows us the personal connection with the cows that keeps the barn calm and stress free, an atmosphere where the cows like to be milked and cared for.”

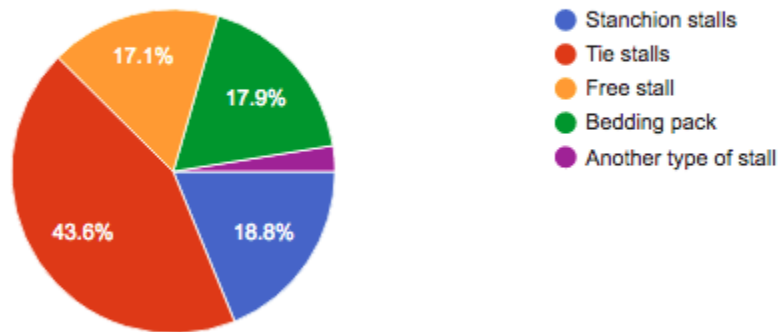
Aside from this primary concern with overall housing structures, we also implore the NOP to consider how such a requirement would work with the allowed temporary confinement events outlined in the rule. There are most *certainly* allowed temporary

confinement events where letting the cow out of the stall is not a reasonable idea, such as during a health care event. For example, animals should likely be confined during a difficult labor or post parturition, recovering from lameness, and any other conditions under which the health, safety, and well-being of the animal will be jeopardized. Animals can also be tied for the farmer's safety in order to provide treatment. Most of the time in a free stall system or other group housing system, animals which need to be temporarily confined are removed from the group. Documenting temporary confinement events is currently required.

Other allowed temporary confinement events, which could span a period of 24 hours or more, where restricting freedom of movement *is often necessary* could include during sorting and shipping, breeding, and FFA, 4H or other youth events. Stock shows and fair safety requirements require animals to be confined and under control. While these animals will often get to move around as they are cared for at the event, freedom indoors or freely accessing the outdoors is not possible.

To illustrate the potential impact, MOSA gathered reports from organic system plans on the type of livestock housing that our clients have. Again, as we noted above, MOSA certifies approximately 500 dairies primarily in the upper Midwest. Well over one third of our operations utilize traditional dairy barns. While our data could be missing some information due to unsearchable information entered, we have a reportable total of approximately 120 clients with tie stalls and another 30 with stanchion barns for their milk cows. Another 20 have stall barns (not noting type) and 8 have comfort barns, all 28 are presumably tie stall and stanchion barns, based on dimensions and farm description. In 2017, for the first proposed rule, we surveyed our clients and asked what types of stalls they had for their cows and results for tie stalls more than doubled results for any other stall type.

### What type of stalls do you have for your dairy cows? (117 responses)



These are small family farms; notably MOSA's overall average size dairy has only 66 milkers. These farmers are the types of farmers the organic movement is committed to support. Old style barns should not be a limiting or eliminating factor. This requirement could likely put these small farmers out of the organic business.

We encourage NOP to reconsider the expectation that animals are let off ties or out of housing stalls during all temporary confinement events. Clarification requested.

19. **§205.239(a)(12) Mammalian outdoor access.** *Outdoor space must be provided year-round. When the outdoor space includes soil, maximal vegetative cover must be maintained as appropriate for the season, climate, geography, species of livestock, and stage of production.*

- The first sentence of this new standard is implied in the first sentence of §205.239(a)(1) *Year-round access for all animals to the outdoors*, and this new standard reinforces that it's not just "access" to the outdoors, but that actual space outside must be provided. We do not question that animals need to be outside year-round as appropriate.
- The NOP commentary noted that livestock shall have "*unencumbered access to the outdoors year-round.*" We feel that we've always verified that *appropriate* outdoor access is being provided as stipulated in §205.239(a)(1). The new idea for us is to consider that the access is to be *unencumbered*. Unencumbered means that animals have the freedom to come and go as they please, and with recognition of the farms we certify and facilities in use, we note access is not truly *unencumbered*, but we believe it is appropriate.
- The addition of the maximal vegetation requirement is also new. It was added with the first final rule. Notably, this requirement as written is only now getting an opportunity for public comment. The first proposed rule required access to 50% soil in the outdoor area which *for mammals* isn't necessary or reasonable in many cases. We'll assume that we can rest on the appropriate part of "*must be maintained as appropriate for the season, climate, geography, species of livestock, and stage of production.*" It is not necessarily appropriate that all soil available in areas outdoors be covered in vegetation. We appreciate NOP noting vegetation isn't required for swine because they don't need soil in order to root, however, if soil is provided, hogs will tend to render it vegetation-less in short order; and we also recognize that most non-pasture outdoor areas for ruminants will not have vegetation either. Most outdoor lots are just a lot, unable to support much plant life, however are also designed in such a way that §205.239(a)(5) is being met too.
- In summary, we will intend to apply this new standard *appropriately*.

20. **§205.239(b)(7) Temporary confinement for breeding.** *Breeding: Except, that, animals shall not be confined any longer than necessary to perform the natural or artificial insemination. Animals may not be confined to observe estrus; and*

We appreciate the clarity found in the preamble clearly stating that animals are not allowed to be confined after insemination/natural breeding during the time preceding confirmed pregnancy, "*This provision would prohibit livestock from being confined indoors to observe estrus, **or until they are determined to be pregnant.***" This has always been MOSA's understanding. To make this understanding unmistakable, we would be pleased to see this clarity added into the rule.

*Breeding: Except, that, animals shall not be confined any longer than necessary to perform the natural or artificial insemination. Animals may not be confined to observe estrus **or to confirm pregnancy.*** Technical correction.

21. **§205.239(c)(2) Temporary confinement for newborn dairy cattle.** *In the case of newborn **dairy cattle** for up to six months.* We understand this to mean “**dairy animals**” to include other dairy species. Technical correction.
22. **§205.241 Avain Living Conditions standards general note.** Turkeys and birds other than chickens are held to overarching standards and do not have specific metrics attached to them as outlined in (b)(5) perches, (b)(8, 9 and 10) indoor stocking density, (c)(4, 5, and 6) outdoor stocking density, however we note that the (c)(2), which is the 50% soil requirement, would apply. Porches are not allowed for any poultry. If these types of operations do not have true outdoor access presently, with access to 50% soil, a transition period would seem reasonable. MOSA certified operations currently comply.
23. **\*Critical §205.241(a) Avain year-round living conditions.** *The producer of an organic poultry operation must establish and maintain year-round poultry living conditions that accommodate the health and natural behavior of poultry, including: year-round access to outdoors; shade; shelter; exercise areas; fresh air; direct sunlight; clean water for drinking; materials for dust bathing; and adequate outdoor space to escape aggressive behaviors suitable to the species, its stage of life, the climate, and environment. Poultry may be temporarily denied access to the outdoors in accordance with paragraph (d) of this section.* Poultry may be temporarily denied access to the outdoors in accordance with paragraph (d) of this section which appears open the door to total confinement. This is in conflict with [Policy Memo 11-12: Confinement of Poultry Flocks](#) which states “*Continuous total confinement of any organic poultry indoors is prohibited*” and with the mammalian rule at §205.239(a)(1) which states “*Continuous total confinement of any animal indoors is prohibited.*” It does seem reasonable that broilers and pullets could end up being confined for the extent of their life or stage of life (ex. broilers can be confined up to 4 weeks and then perhaps if grown during an upper midwest winter, when temperatures are below 40 degrees), but the omission of this key phrase in combination with allowed confinement practices at (d) seem to allow layers to be confined also. Layers will generally be confined up to 16 weeks as pullets, then for up to 5 weeks for nest box training, then for weather related temperatures and now also for reseeding the outdoor space. Temporary confinement allowances could end up allowing for total continuous confinement leaving certifiers no standard to cite when on farm practices result in continuous total confinement. We must maintain this strong top-line position, and it needs to be in the regulation so that temporary confinement practices are seen as the exception. We propose resolution of this inconsistency by adding, “**Continuous total confinement of poultry indoors is prohibited.**” We do not find this addition to be significant in and of itself - this is regulation now; rather it should be regarded as a technical correction to reflect the intention of this standard. Technical correction.

We also suggest adding in “**soil**” as one of the listed elements poultry must have and, since it is also regulation at §205.241(c)(2), we see this as a technical correction. Technical correction.



24. **§205.241(b)(1) - Poultry housing space.** *Poultry housing must be sufficiently spacious to allow all birds to move freely, stretch their wings, stand normally, and engage in natural behaviors.* NOP commentary described natural behaviors as, “*In addition, the indoor space must allow birds to engage in natural behaviors such as **dust bathing, scratching, and perching.***” We note other natural behaviors are also required in §205.241(b)(5) and (6) so we can be assured that birds’ natural behaviors are observed.
25. **§205.241(b)(2) - Ammonia monitoring.** *Producers must monitor ammonia levels at least monthly and implement practices to maintain ammonia levels below 10 ppm. When ammonia levels exceed 10 ppm, producers must implement additional practices and additional monitoring to reduce ammonia levels below 10 ppm. Ammonia levels must not exceed 25 ppm.* We appreciate the attention to ammonia levels in this new avian section. It is clear that levels must be kept from exceeding 25 ppm and that if levels exceed 10 ppm mitigating actions (such as better litter maintenance) need to be in place. Anecdotally, producers who do use ammonia monitoring now do so far more frequently than monthly. We’d appreciate the NOP offering added guidance on acceptable monitoring methods. Are specific practices going to be necessary, or can we rely on our clients to let us know how they monitor levels? Is the basic sniff test acceptable? The majority of our clients do not perform specific testing for ammonia levels. Clarification requested.
26. **\*Critical §205.241(b)(3) Artificial lighting.** *For layers and fully feathered birds, artificial light may be used to prolong the day length, to provide up to 16 hours of continuous light. Artificial light intensity must be lowered gradually to encourage hens to move to perches or settle for the night.* This standard was updated from the first final rule by eliminating the last sentence of that rule, “*Natural light must be sufficient indoors on sunny days so that an inspector can read and write when all lights are turned off.*” We understand “*AMS determined that it would not be feasible for inspectors to verify a producer’s compliance with this requirement, so the requirement was removed from this proposed rule.*” However, this deletion also removes the requirement for natural light indoors. We believe the NOP meant that it’s not practical for an inspector to turn off the artificial lights during an inspection. We agree with that premise, but we think natural light is required indoors for birds. NOP needs to clarify that artificial lighting is NOT suitable as the *only* light source indoors, up to 16 hours a day (6am-10pm). As a resolution, we propose maintaining the first part of the sentence, “*Natural light must be sufficient indoors.*” Since it is our understanding that the omission was made because it was unreasonable to think that lights would be turned off during an inspection, and not addressing natural lighting requirements, we think this should be regarded as a technical correction. Technical correction.

In addition to the bigger concern about natural light, we note that not all barns have lighting systems to allow for *gradual* lowering of light intensity, however there is not a welfare concern present with how the birds move around and settle for the night. We propose to add “as needed” to this standard or use a “should” instead of a “must”. “*Artificial light intensity must be lowered gradually **as needed** to encourage hens...*” or “*Artificial light intensity **should** be lowered to encourage hens...*” Technical correction.

27. **§205.241(b)(4) Exit areas.** *Exit areas—poultry houses must have sufficient exit areas that are appropriately distributed to ensure that all birds have ready access to the outdoors; producers subject to requirements in 21CFR part 118 Production, Storage, and Transportation of Shell Eggs must take steps to prevent stray poultry, wild birds, cats, and other animals from entering poultry houses. Does NOP envision additional guidance to help certifiers determine sufficiency of exit areas? The NOP commentary noted, “Organic avian systems must be designed so birds have ready access to outdoor areas and so birds are able to return indoors to roost in the evening. Producers must provide exit doors and door sizes to enable all birds to access outdoor and indoor areas. Door size and appropriate placement must provide meaningful outdoor access to the birds.”*

We understand that in some barns one large exit door may be sufficient and in other barns many doors may need to be located around the structure to enable all birds to have ready access to the outdoor areas. We feel capable of making this determination but recognize that exit areas have been unregulated and *ready* access to the outdoors has not always been effectively provided among certified flocks in the industry, nor do many flocks have meaningful outdoor access. In addition, we question how porch structures will be incorporated (or not) into the outdoor access areas and note that sufficient doors would need to be between the main house and the porch and the porch and the outdoors. It seems to us that the birds will still be challenged to actually get outside. MOSA does not certify operations with porches and it seems impractical to us to think that this scenario could work. Having a consistent understanding throughout the industry is necessary for the competitive playing field.

It will be paramount that operations’ compliance is based on whether or not the birds actually go outside. If there aren’t a sufficient number of birds outside then we’ll have to determine that exit areas are not appropriate. It would be helpful for the NOP to provide guidance on issuing noncompliances in this area that has been a little like the wild west, where just about anything has been acceptable. Clarification requested.

Second, certifiers can determine which producers are subject to 21CFR part 118 (all producers with more than 3,000 hens and who do not market directly to consumers) but then do we also need to evaluate steps taken to prevent unwanted animals and birds from entering the poultry house? Since this requirement is from a separate regulation and overseen by a separate regulatory authority, we would prefer to leave evaluation for sufficiency up to them. Clarification requested.

28. **§205.241(b)(5) Perches.** *Perches—for layers (*Gallus gallus*), six inches of perch space must be provided per bird. Perch space may include the alighting rail in front of the nest boxes. All layers must be able to perch at the same time except for aviary housing, in which 55 percent of layers must be able to perch at the same time. We understand that the alighting rail in front of nest boxes counts as perch space, but, other than perches, what fixtures in the barn can be considered? The definition for slatted floor houses includes perching, “(3) *Slatted/mesh floor housing. A fixed structure for avian species that has both: (i) A slatted floor where perches, feed, and water are provided over a pit or belt for manure collection;*” which leads to some confusion when related to*

the definition for perch. *“Perch. A rod or branch type structure above the floor of the house that accommodates roosting, allowing birds to utilize vertical space in the house.”* In slatted or mesh floor houses, the slats are not above the floor. Slats are also not a rod or branch structure. We are assuming that the slats may not also be counted as perch space. We are also assuming that perch space and floor space may not be counted from the same space. If, as noted in the preamble, *“elevated round perches, for example, are not flat areas and could not be included as indoor space,”* then we’d also assume that flat indoor space areas cannot be counted as perches. NOP may wish to clarify what is allowed to count toward perching space. Specifically can slatted floor barns count the same slat space for both perches and for floor space? Clarification requested.

29. **§205.241(b)(7) 30% solid area in slatted floor houses.** *Houses with slatted/mesh floors must have 30 percent minimum of solid floor area available with sufficient litter available for dust baths so that birds may freely dust bathe without crowding.* This is a new measurement and we are unaware if our clients can meet this requirement. If 30% of the flooring isn't solid presently, then these style barns will have added expense to comply.

30. **§205.241(b)(8) Indoor stocking density for chickens.**

- In our earlier work on implementing stocking densities, we converted live bird weight to birds per square feet by using some general assumptions. We assumed the average weight of a production hen to be 4.5 pounds, the average weight of a 16-week old Isa Brown pullet to be 3 pounds, and the average weight of a full-grown broiler to be 5 pounds. These weights were also adopted in the [ACA Best Practice document](#). Clients would need to provide additional information when the size of their birds varies. We would encourage NOP to consider using this type of measurement too. Reconsideration requested.
- Can natural mortalities be factored into stocking rate calculations? The commentary noted that, *“AMS is using the unit of measurement as “pounds per square foot” to establish space requirements. In other words, the minimum space that must be provided depends on the average weight of birds at that time.”* This sentence seems to clearly state that stocking density is to be factored on the weight of the birds present at that time. However, the NOP also states in the calculation example that, *“In other words, for each 10,000 square feet, a producer could stock 6,993 birds at 32 weeks of age (bird weight of 4.3 pounds) but only 6,667 birds at 80 weeks of age (bird weight of 4.5 pounds). Although older and heavier birds require more space, natural mortalities over time may result in compliance with the space requirements over a production cycle.”* This implies that natural mortality can be factored into the overall compliance determination. If mortality can be considered, is there a percentage threshold of natural mortalities that we can use? We would prefer to keep calculations simple and measure on a metric using the maximum size of birds in a given facility, which means that at younger ages a lower stocking density would be required in order to comply with the final stocking density allowed. Clarification requested.
- How does NOP envision certifiers accomplishing the weighing of chickens? *“However, if weight is not monitored by a producer, the producer will need to establish the weight of birds based on objective criteria to determine the space*

*required indoors and outdoors. Certifiers may also weigh birds at inspections to verify compliance with the requirements.*” Catching chickens to weigh them at inspection isn’t a reasonable expectation and could/would present its own set of issues to navigate. Reconsideration and clarification requested.

31. **§205.241(b)(10) Broiler indoor stocking density.** *For broilers (Gallus gallus), indoor stocking density must not exceed 5.0 pounds of bird per square foot.* Most recognized animal welfare organizations require 6 lbs of bird per square foot; Canada allows - 46 lbs /10.8 square foot which = ~4.25 lbs per square foot. This is even less than what is being proposed. Is there a way to align all standards, or recognize that clients have the choice to opt into or out of any program which has requirements they are or are not willing to maintain? We’d propose that the NOP align the NOS with 6 lbs of bird per square foot for broilers. Consistency among animal welfare regulations would be helpful. This could be regarded as a technical correction upon re-evaluation of other recognized standards. Technical correction.
32. **§205.241(b)(12) Indoor space and porches.** *Indoor space may include enclosed porches and lean-to type structures (e.g., screened in, roofed) as long as the birds always have access to the space, including during temporary confinement events. If birds do not have continuous access to the porch during temporary confinement events, this space must not be considered indoors.* We support this thinking. Any square footage contributing to the facility metrics for indoor space should be fully accessible at all times when birds are indoors. There should be no ability to restrict access. A standard operating procedure of “doors open” would not be sufficient; there should be no doors. As NOP noted, *“if the screens were removed from that porch so that the birds could freely access other outdoor space, then the porch would be considered outdoor space...”*
33. **§205.241(c) Outdoor space requirements.** We understand that the outdoor space area must be calculated for the total number of birds. As NOP clearly noted, *“not by multiplying the number of birds actually in the outdoor area at a given moment by the space requirement per bird.”* The space must be such that all birds can be outdoors at one time.
34. **§205.241(c)(1) Access to the outdoors.** *Access to outdoor space and door spacing must be designed to promote and encourage outside access for all birds on a daily basis. Producers must provide access to the outdoors at an early age to encourage (i.e., train) birds to go outdoors. Birds may be temporarily denied access to the outdoors in accordance with § 205.241(d).*
- We observe again that door spacing will be subjective, based on the type of barn and the number of birds. §205.241(b)(4) specifies that there must be a sufficient number that are appropriately distributed to ensure all birds have ready access to the outdoors. This standard further requires outdoor access door spacing to be designed to encourage and promote the use of outdoor access on a daily basis.
  - Temporary confinement at §205.241(d) could allow for total confinement of poultry. We do not support this for poultry, especially layers and mature birds. We can see broilers and pullets (stage of life up to 16 weeks) could end up being confined for the duration of their life depending on when and where they are

grown, but layers and other mature birds should never be continuously confined. We feel total confinement of any poultry goes against the overall intent driving the addition of these standards revisions. To address this concern, in §205.241(a) Avain year-round living conditions (#23 above) we suggest adding “*Continuous total confinement of poultry indoors is prohibited.*”

- What measures should farmers take to encourage and promote daily outdoor access aside from door spacing and training birds to go outside by letting them out at an early age? We find the second sentence of this standard to be basically a double standard since pullets are allowed to be confined for the first 16 weeks of life, then nest training can occur for 5 weeks. Layers realistically will be at least 21 weeks old before they are required to be outside. If the flock of pullets arrives in winter in Wisconsin, they could be significantly older before they see direct sunlight.
- We understand that birds may be temporarily denied access to the outdoors as noted in the proposed §205.241(d). Temporarily being an operative word, however we see that confinement allowances could allow for total confinement. See concerns detailed below in #38 -§205.241(d) Temporary confinement.

35. **§205.241(c)(2) 50% soil.** *At least 50 percent of outdoor space must be soil. Outdoor space with soil must include maximal vegetative cover appropriate for the season, climate, geography, species of livestock, and stage of production. Vegetative cover must be maintained in a manner that does not provide harborage for rodents and other pests.* This standard applies to all avian species. While we haven’t specified 50% of the outdoor area must be soil in our written policies, our expectation has been that outdoor access for poultry is soil. We are confident that our operations can comply with the first sentence.

“Maximal vegetative cover” may be the harder part of this to achieve and we appreciate the room to make well-reasoned decisions based on what may be “appropriate” for the season, climate, geography, species, and stage of production. Vegetative cover may not be appropriate in many circumstances. We also think that while vegetation is usually a good measure to maintain and improve the overall operation, the requirement to have it should not result in a temporary confinement allowance (reseeding). This could, in practice, allow for entire layer flocks to be confined for their whole life, which is generally just one to two years. It could also allow them to be confined to a porch, if a porch is counted as outdoor space, and the 50% soil area is being reseeded or there is another risk to animal welfare or soil or water quality. The only solution to this is to require that 100% of the space calculated as outdoors be soil and that porches be counted as indoors or nothing, and not allow them to be considered outdoor space. See also comments on §205.241(d)(4) #41 regarding reseeding below.

36. **§205.241(c)(6) Broiler outdoor stocking density.** See comments in #31 above for indoor stocking density.

37. **§205.241(c)(7) Outdoor space and porches.** *Outdoor space may include porches and lean-to type structures that are not enclosed (e.g., with roof, but with screens removed) and allow birds to freely access other outdoor space.* We understand that

screens must be removed to qualify as “not enclosed” and the other part of the consideration is the birds’ free access to all outdoor space. The space would be open to the outdoors at all times, with no ability to close it off, and to be counted as outdoor square footage, birds must have access to all square footage provided at all times they are outside. We also understand that it does not mean fencing or netting used to define the perimeter of the outdoor area. We are not confused by what inside and outside means, but it has become apparent to us that the definitions proposed have the potential to be misunderstood/misinterpreted even though this is the main area of confusion that this rule proposes to eliminate. This standard in combination with §205.241(c)(2) requiring 50% soil eliminates porches from being able to be the only outdoor access, however we point out again that, in most circumstances, a porch should not be considered true outdoor space.

38. **§205.241(d) Temporary confinement.** *The producer of an organic poultry operation may temporarily confine birds. Confinement must be recorded. Operations may temporarily confine birds when one of the following circumstances exists.* We think the key word here is “temporarily,” however as noted above, if you combine a few allowed confinement practices together, we could end up with continuous total confinement of layers and other mature birds specifically. As noted, for broilers and pullets, the practice of confinement would seem reasonable given the season and young slaughter age. As a proposed resolution to this inconsistency we propose adding, *“Continuous total confinement of poultry indoors is prohibited.”* at §205.241(a) Avain year-round living conditions. We see this addition as a technical correction as explained above in #23. Technical correction.
39. **§205.241(d)(1) - Temperatures.** *...air temperatures are under 40 degrees F or above 90 degrees F. NOP commentary further clarifies: “In this case, producers have to provide outdoor access during parts of the day when temperatures are between 40-90° F, unless other forms of inclement weather occur. Weather may still qualify as inclement weather (§ 205.2) within the 40-90° F temperature range.”* We understand that a partial day of outdoor access is expected when temperatures are appropriate and there is no other inclement weather.
40. **§205.241(d)(2)(iii) Until fully feathered for bird species other than Gallus.** This should say *Gallus gallus*. Technical correction.
41. **\*Critical §205.241(d)(4) Temporary confinement for reseeded.** *Risk to soil or water quality, including to establish vegetation by reseeding the outdoor space.* MOSA does not support this loose confinement allowance. Of course we support the idea of maintaining vegetation, but the reality and practicality of doing so is not at all reasonable to expect on all operations and to allow producers to confine indoors the whole time reseeding is taking place is a concern because it provides for an allowance of, *in reality*, total confinement for this reason. When used in combination with all the other reasons, we think we could expect that we’ll never see some birds outside. Reseeding considerations are important and when the rule was first final, ACA worked on a best practice, which MOSA adopted as our policy. Reseeding could be needed to meet the new requirement for maximal vegetative cover if deemed *appropriate* for the client, but

reseeding does not need to impact the entire outdoor access area, nor enable confinement of the birds to the indoors or porches (which now could potentially be deemed as outdoors).

Our policy is as follows: Are producers allowed to confine birds indoors for the purpose of outdoor area reseeding? Reseeding activities are permissible to maintain maximum vegetative cover as appropriate for the protection of soil and water quality. Birds may not be confined any longer than required to seed the area and allow for the vegetation to establish itself. Producers cannot routinely deny poultry access to areas for reseeding purposes unless other outdoor area exists that can provide the entire flock with the required outdoor access. If reseeding is not necessary for preservation of soil and water quality but is still desired by the producer, reseeding should happen in a section-by-section fashion so that outdoor access is always enabled. OSPs should ask under what circumstances the producer might confine the flock for reseeding purposes so that certifiers can evaluate plans in advance. With this, OSPs should also ask expected length of confinement in these circumstances and a description of any alternative outdoor access areas.

We support maintaining this ACA logic. Reseeding should not be an allowed temporary confinement from *all outdoor access to soil*. As an important side note, we recognize that with the advent of porches (with a floor) potentially being considered outdoor access, the logic will need to be updated. If part of the outdoor access is permitted to be available when part of the area is being reseeded (given the part provided provides the total outdoor access area needed for the flock), the available access must also be to 50% soil. It wouldn't be permitted to keep birds off the soil and provide only a porch. We have three suggestions to make.

- We propose to eliminate specifying an allowance for reseeding altogether. The regulation would be: *Risk to soil or water quality*. If a lack of vegetation is a risk to soil or water quality the first part of the standard covers the allowance and certifiers already assess if the risk is a compliant reason to confine birds.
- If reseeding will be maintained, a proposed resolution is to add *“Producers cannot routinely deny poultry access to outdoor areas for reseeding purposes”* to this standard.
- We also propose adding, *“Continuous total confinement of poultry indoors is prohibited”* at §205.241(a) Avian year-round living conditions, to help resolve this issue.

MOSA does not support the idea that continuous total confinement of layers could potentially be allowed or that temporary confinement allowances would allow for confinement to porches. Clarification and technical corrections requested.

42. **§205.241(d)(7) Nest training.** *Confinement must not exceed five weeks over the life of the bird.* We interpret this to mean that 1) intermittent nest training is allowed, for example if birds were nest trained and then after molt started laying on the floor again, they could be confined if there was time left on the five-week clock; and 2) that nest training time started at a pullet facility must be added to the time at the layer facility. For example, if a pullet is confined for 16 weeks, then nest trained for a week at the pullet facility if they have the means to do so, the birds would be sold at 17 weeks to the layer

facility and the layer facility would then only have four additional weeks to nest box train.

43. **General note about the Avian section.** Finally, we also point out that the avian section could have a standard like §205.239(a)(5). *The use of yards, feeding pads, feedlots and laneways that shall be well-drained, kept in good condition (including frequent removal of wastes), and managed to prevent runoff of wastes and contaminated waters to adjoining or nearby surface water and across property boundaries.*

The closest related standard is in §205.241(e) but is specific to manure management and is also included in both .239 and 241 at (e). *Manure management. The producer of an organic poultry operation must manage manure in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, heavy metals, or pathogenic organisms. The producer must also optimize recycling of nutrients and must manage outdoor access in a manner that does not put soil or water quality at risk.*

We think that outdoor areas for poultry need to meet the same requirement as mammalian outdoor access areas. As a resolution, we propose to add a new §205.241(f) *“the use of outdoor access areas shall be well drained, kept in good condition (including frequent removal of wastes), and managed to prevent runoff of wastes and contaminated waters to adjoining or nearby surface water and across property boundaries.* This should not be considered a novel idea; rather an oversight and added to the new avian section. Technical correction.

44. **§205.242(a)(1) Identification.** *Certified organic livestock must be clearly identified as organic, and this identity must be traceable for the duration of transport.* Origin of livestock elevates the need for tracing livestock identification, transitioned status, and slaughter eligibility. MOSA developed a form for clients to use for tracing slaughter eligibility of individual animals and we are in process of updating our livestock list form for better individual animal traceability.
45. **\*Critical §205.242(a)(5) Transport time exceeding 12 hours.** *Arrangements for water and organic feed must be made if transport time, including all time on the mode of transportation, exceeds 12 hours.* We understand that transport time includes all the time the animals are physically *inside* of the mode of transportation, and since this is an allowed temporary confinement at §205.241(d)(6) *Sorting or shipping animals and livestock sales: Provided, that, the animals shall be maintained under continuous organic management, including organic feed, throughout the extent of their allowed confinement;* we think the addition here is unnecessary and poses requirements that are not practical to enforce. When we consider how we’d apply this new standard, scenarios don’t actually seem all that feasible. After 12 hours “on the truck,” either animals need to be fed in the transport vehicle or offloaded and fed. Animals bound for slaughter are not allowed to eat before slaughter, and if the 12 hours bumps up against delivery time, other regulations would not be upheld. If they are offloaded, the location used must be certified organic. It would seem impossible to know all the possible routes that would take over 12 hours and also find a certified organic stopping point at 12 hours. What if



there are traffic delays? Then, to think all the birds that are transported, in the case of poultry (baby chicks) will be unloaded and let out of the shipping crates or boxes, allowed to eat and drink, recaptured, re-sorted, crated, and shipped for the remainder of the trip is not realistic. Baby chicks are shipped in individual boxes with the correct number and breed for the customer and often many customers' orders combined in the same load from the hatchery. It would not work to open each box to feed and water or to let them out and resort into the individual orders. Chicks are also pretty fragile which introduces other concerns. Not only would this all be an immense amount of time (now added to the overall shipping time), but it would also put the birds, or other animals, under unnecessary and undue stress. Not to mention that they probably wouldn't eat or drink anyway since they would be stressed. This wouldn't seem to benefit the welfare of the animal overall. This also makes for drivers that would need to also be livestock handlers, a professional combination that doesn't seem reasonable to require. What this means to us is that all shipping times will need to be less than 12 hours which would be limiting for the farmer. We think this standard is unnecessary since there is already the temporary confinement allowance for sorting and shipping, but if maintained we'd like to see a revision that reflects animal welfare is being observed and striking the notion that animals would actually be fed if there is no concern regarding the welfare of the animal. §205.242(a)(5) could require that "~~Arrangements for water and organic feed must be made~~ If transport time, including all time on the mode of transportation, exceeds 12 hours, *operators must demonstrate how organic management and animal welfare are maintained which may include feed and water.*" The technical corrections suggested in either of these possible actions maintain the need for the welfare of the animal to be considered. Technical correction.

46. **§205.242(a)(6) Emergency plans.** *...must have emergency plans in place that adequately address possible animal welfare problems that might occur during transport.* We think it is impossible to think of all the things that could go awry in transport but we can get a plan for some scenarios, such as the truck breaking down, significant traffic delays, or the driver getting sick. It would seem easy enough to have an OSP question to gather an idea of the standard procedures when unforeseen circumstances come up. The idea is that the farmer is thinking about the what if's. Will the NOP be looking for recordkeeping and certifier follow up on emergency situations? Clarification requested.

47. **§205.242(b) Mammalian slaughter and related §205.242(c) Avian Slaughter.** The idea is that clients are in good standing with appropriate authorities, and that we verify that good standing. We have several comments (as noted below) around the practicality and expectations of recordkeeping verification by the certifier. In general, we emphasize that our specialty is verifying the organic standards are being met and are not actively verifying *compliance* with the regulations of other authorities unless specifically called for, the most frequent example is through National List annotations. The line "as determined by FSIS" in §205.242(b)(1) makes it clear that we are not the ones determining compliance. Our interpretation is that we only need to verify active licensing, assuming licensing would not be in good standing if there were a concern. Clarification requested.

48. **§205.242(b)(1) and (2) and (c)(1) Compliance with regulatory authorities.**

Specifically, our understanding is that we'd need to verify licensing is present as appropriate, not that clients are in compliance with all of the noted regulations: FSIS would determine compliance. Who determines compliance with (2), FSIS also? Does "as determined by FSIS" need to be added at (2)? Technical correction.

49. **§205.242(b)(3) and (c)(2) Noncompliance and corrective actions records.**

*Producers and handlers who slaughter organic livestock or exotic animals [or (c)(2) poultry] must provide all noncompliance records related to humane handling and slaughter issued by the controlling national, federal, or state authority and all records of subsequent corrective actions to certifying agents during inspections or upon request. [insert added]* MOSA again notes that it is not usually within our regulatory authority to ensure compliance with other regulatory authorities. While we can verify active licensing easily, we cannot verify FSIS decision-making regarding noncompliances and corrective actions. If a client is not adequately following up on compliance issues, then FSIS (or the appropriate authority) should be following up, not unlike how certifiers would follow up with an organic noncompliance issue. We expect that organic certification is active and in good standing (§205.404(c)) unless the operation's organic certification is suspended or revoked. There is no other way to interpret the standard. At what point is noncompliance with FSIS significant enough to warrant organic certification suspension? Furthermore, collecting records at inspection, or expecting an inspector to make a compliance decision is not appropriate. We appreciate the inclusion of "upon request." Is it okay if a certifier does not ever request records? We propose to strike these standards or simply require a reporting mechanism. An acceptable revision would be: *Any failures to adhere to organic livestock (or avian) slaughter standards or the approved organic system plan during slaughter must be reported to the certifier of affected livestock.* This compromise allows certifiers to keep tabs but not attempt to regulate a different regulation. Reconsideration and revision requested.

In summary, MOSA is in support of changes to the organic livestock and poultry standards. However, *without the technical corrections and critical revisions we've identified, and with additional guidance to ensure industry understanding and consistency, this rule, as written, will not provide the changes the organic industry is requesting.* We encourage the NOP to take the time to address all of the very important comments we, and many other industry organizations, make. It is imperative that we land with an enforceable final rule which upholds and increases the organic integrity of the organic products we certify. Avian standards have long needed to be improved. We appreciate the time and energy that has been devoted to developing this proposed rule and look forward to its sensible implementation. Thank you again for the opportunity to provide comments.

Respectfully submitted,

The MOSA Certification Team