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Submitted via <http://www.regulations.gov>

Re: Docket No. AMS-NOP-15-0012; NOP-15-06PR; RIM 0581-AD44 (National Organic Program; Organic Livestock and Poultry Practices)

Dear Mr. Leis:

The Committee on Animal Law of the New York City Bar Association (the “Committee” or “ALC”) submits this comment on the above-referenced rule proposed by the United States Department of Agriculture (“USDA”) Agricultural Marketing Service (“AMS”), which would provide heightened standards for the living conditions, physical alteration, medical care, handling, transport, and slaughter of organically raised farmed animals.¹

The New York City Bar Association is an independent non-governmental organization of more than 24,000 lawyers, law professors and government officials, predominantly from New York City but also from throughout the United States and fifty other countries. The Committee is the first committee of its kind in the country and has a history of supporting federal, state, and local anti-cruelty legislation, as well as commenting on proposed administrative rules affecting animal welfare and public health, including laws and regulations relating to the treatment of farmed animals.

¹ Organic Livestock and Poultry Practices, 81 Fed. Reg. 72 (Apr. 13, 2016), https://www.regulations.gov/#!documentDetail;D=AMS_FRDOC_0001-1423 (referred to herein as the “Notice” or, as the “Proposed Rule” as appropriate). (All Internet citations herein last visited May 6, 2016.)

The Committee Supports the Proposed Rule

The Committee supports the Proposed Rule because heightened standards for the handling, living conditions, transport, and slaughter of organically raised farmed animals are necessary to (i) establish consistent animal welfare standards for organically raised farmed animals; and (ii) satisfy consumer expectations that organically raised farmed animals meet a uniform and verifiable animal welfare standard.

I. LIVING CONDITIONS

A. Background

The Organic Foods Production Act of 1990 (7 U.S.C. §§ 6501-6522) (“OFPA”) was enacted “to establish national standards governing the marketing of certain agricultural products as organically produced products” and “to assure consumers that organically produced products meet a consistent standard.”² The USDA is authorized to implement regulations regarding standards for organic livestock products.³ Only those producers that desire to obtain organic certification need abide by these standards.

Current USDA organic regulations contain general requirements relating to animal welfare that provide broad discretion to producers. For example, current USDA organic regulations require housing and living conditions that allow animals to exercise their normal behaviors; these requirements are expressed as general standards with no clear requirements for the type and length of outdoor access required and, with limited exceptions, do not specifically address the needs of chickens and other avian species as well as certain mammalian non-ruminant livestock.⁴

This lack of specificity has resulted in gross variations in the manner in which the USDA organic regulations are applied and a great level of variability in the level of care provided by organic producers. Some producers raise animals on pasture with a high degree of animal welfare and others raise animals in a manner that closely resembles conventional, intensive agriculture with little or no access to the outdoors. For example, as noted in the explanation preceding the Proposed Rule:

[I]n organic poultry production, outdoor access ranges from extensive pastures to roofed enclosures, *i.e.*, porches with no access to soil or vegetation. This disparity

² OFPA § 6501.

³ OFPA § 6509.

⁴ Current regulations provide that “[t]he producer must establish and maintain preventative livestock health care practices, including: establishment of appropriate housing, pasture conditions, and sanitation practices to minimize the occurrence and spread of diseases and parasites; provision of conditions which allow for exercise, freedom of movement, and reduction of stress appropriate to the species.” 7 C.F.R. § 205.238(a)(3)-(4).

in amounts of outdoor access has economic implications for producers and lessens consumer confidence in the organic label.⁵

Similarly, current USDA organic regulations do not require a numerically expressed minimum amount of space per animal,⁶ and do not prohibit inhumane physical alterations of animals such as tail docking, de-beaking, mulesing, teeth clipping, and castration without anesthesia.⁷ Consequently, producers have broad discretion in interpreting these general standards such that many organic producers are raising animals in a manner that is nearly indistinguishable from the scant to non-existent animal welfare standards in the average factory farm.⁸ The National Organic Standards Board (NOSB), which was established by OPFA, has acknowledged that imprecise language has created production practices that may allow the welfare of some animals to be compromised.

This issue has resulted in a wide disparity between consumer expectations regarding animal welfare standards required for USDA organic products and the reality of the limited standards for animal welfare set by the USDA organic regulations. For example, a December 2015 study commissioned by Consumer Reports National Research Center indicated that 57% of U.S. consumers believe that animals raised organically are required to have meaningful minimum space requirements and 54% believe that animals went outdoors.⁹ Similarly, an April 2014 national study commissioned by the American Society for the Prevention of Cruelty to Animals (“ASPCA”) indicated that up to 63% of U.S. consumers believe that animals raised organically have access to pasture and fresh air throughout the day, and that they have significantly more space to move than on conventional farms.¹⁰ The ASPCA study also found that 44% of consumers believe that egregious physical alterations such as tail docking, de-

⁵ Notice, at 21958.

⁶ Proposed Rule § 205.238(a)(4).

⁷ Current regulations provide that “[t]he producer must establish and maintain preventative livestock health care practices, including: Performance of physical alterations as needed to promote the animal’s welfare and in a manner that minimizes pain and stress.” 7 C.F.R. § 205.238(a)(5).

⁸ We note that no federal law addresses the treatment of farmed animals prior to transport and slaughter. The Federal Meat Inspection Act (21 USC 601 *et seq.*) regulates only the handling of animals at the time of slaughter. *See Nat’l Meat Assoc. v. Harris*, 132 S. Ct. 965, 969 (2012). The Animal Welfare Act expressly excludes farmed animals from its protections (7 U.S.C. § 2132(g) (2006) (definition of “animal”)); and the Twenty-Eight Hour Law (49 U.S.C. § 80502) addresses solely the treatment of animals being transported across state lines. *See also* David J. Wolfson & Mariann Sullivan, *Foxes in the Hen House: Animals, Agribusiness, and the Law: A Modern American Fable*, ANIMAL RIGHTS: CURRENT DEBATES AND NEW DIRECTIONS (Cass R. Sunstein & Martha C. Nussbaum eds., 2004) (“In the case of farmed animals, federal law is essentially irrelevant. The Animal Welfare Act, which is the primary piece of federal legislation relating to animal protection and which sets certain basic standards for their care, simply exempts farmed animals, thereby making something of a mockery of its title. No other federal law applies to the raising of farmed animals.”).

⁹ CONSUMER REPORTS NATIONAL RESEARCH CENTER, NATURAL FOOD LABELS SURVEY 5, (Dec. 2015), https://www.consumerreports.org/content/dam/cro/magazine-articles/2016/March/Consumer_Reports_Natural_Food_Labels_Survey_2015.pdf.

¹⁰ ASPCA, *Research on Consumer Perceptions of Organic Food Standards for Treatment of Animals* 1 (Apr. 2014), http://www.aspcasites/default/files/aspcas_organic_labeling_public_memo_4-10-14.pdf.

beaking, mulesing, teeth clipping, and castration without anesthesia are prohibited in organically raised animals.¹¹

Accordingly, AMS has determined that the current USDA organic regulations covering animal handling and living conditions require additional specificity and clarity to better ensure consistent compliance by certified organic operations.¹²

B. Living Conditions and Space Requirements: Avian Species

Approximately 8.5 billion chickens and 238 million turkeys are killed for their meat every year, while another 300 million egg-layer hens live in tiny cages producing nearly 100 billion eggs annually.¹³ All birds—egg-laying hens, chickens, turkeys, ducks, geese and others—are excluded from federal animal protection laws.¹⁴ The vast majority of poultry are raised in concentrated animal feeding operations (“CAFOs”, also more commonly known as factory farms), where they live in large sheds and other indoor structures containing 20,000 chickens or more.¹⁵ Broiler chickens (raised for meat) typically are not raised in cages; instead they are housed together on a shed floor covered in litter (a shredded, absorbent material).¹⁶ The average broiler chicken has approximately one-half to eight-tenths of a square foot of living space.¹⁷ Because they live in their own waste, high ammonia levels irritate and burn their eyes, throats and skin.¹⁸ Most laying hens live in similarly crowded conditions: Conventional egg-production allows hens to be housed in cages that are “in the range of 67 to 86 square inches of usable space per bird”¹⁹ which is smaller than the area of a sheet of 8½ by 11 inch paper.

Despite consumer beliefs to the contrary, many organically raised meat chickens and egg-laying hens live in conditions that are very similar to those of conventionally-raised poultry. For example, one organic egg producer in Michigan houses over a million birds in barns that provide only covered porches for outside access and insufficient access to the porches for most birds, while another industrial-style egg producer in California is allowed to call its eggs organic

¹¹ *Id.*

¹² Notice, Executive Summary, at 21956.

¹³ ASPCA, *A Closer Look at Animals on Factory Farms*, <http://www.aspc.org/animal-cruelty/factory-farms/animals-factory-farms>.

¹⁴ *Id.*

¹⁵ National Chicken Council, *Animal Welfare for Broiler Chickens*, <http://www.nationalchickencouncil.org/industry-issues/animal-welfare-for-broiler-chickens/>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ ASPCA, *A Closer Look at Animals on Factory Farms*, <http://www.aspc.org/animal-cruelty/factory-farms/animals-factory-farms>.

¹⁹ UNITED EGG PRODUCERS, ANIMAL HUSBANDRY GUIDELINES FOR U.S. EGG LAYING FLOCKS 18 (2010 Edition), http://www.unitedegg.org/information/pdf/UEP_2010_Animal_Welfare_Guidelines.pdf.

despite offering no outside access at all for its hens.²⁰ By some estimates, 80% of the eggs labeled as organic sold in the United States are produced under industrial-scale conditions.²¹

As noted above, consumers believe that organically raised meat, dairy, and egg-laying animals are provided better living conditions than that offered to conventionally raised animals. However, the current USDA regulations for organic livestock production do not contain specific requirements for indoor space or outdoor access for avian species, and, indeed, with limited exceptions, do not specifically address requirements for avian living conditions at all.

The Proposed Rule would, for the first time, address many issues relating specifically to avian living conditions, rather than having avian and mammalian species covered by the same general regulations.²² To that end, AMS is proposing to add a new section 205.241, entitled “Avian Living Conditions.”²³ The requirements in this new section would apply to all poultry species, including but not limited to, chickens, turkeys, geese, quail, pheasant, and any other species that are raised for organic eggs, organic meat, or other organic agricultural product.²⁴

The new section on avian living conditions is lengthy and detailed. This section of the ALC’s comment will focus on some of the specific requirements for indoor and outdoor spaces for avian species.²⁵ Section 205.241(a) of the Proposed Rule spells out the overall requirements:

The producer of an organic poultry operation must establish and maintain year-round poultry living conditions which 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 from predators and aggressive behaviors suitable to the species, its stage of life, the climate and environment.²⁶

The Proposed Rule expressly provides birds raised under organic conditions with opportunities to express their natural behaviors. Among the important natural behaviors for laying hens are nesting, dust bathing, perching, foraging and exercising.²⁷ Nesting behavior is so

²⁰ CORNUCOPIA INSTITUTE; SCRAMBLED EGGS: SEPARATING FACTORY FARM EGG PRODUCTION FROM AUTHENTIC ORGANIC AGRICULTURE 22-26 (2nd Ed. Dec. 2015), <http://www.cornucopia.org/egg-report/scrambledeggs.pdf>.

²¹ *Id.* at 8.

²² 7 C.F.R. § 205.238(a)(3) –(4).

²³ Notice, at 21970.

²⁴ Notice, at 21971.

²⁵ Due to the length and level of detail of the new proposed regulations relating to avian living conditions—there are 33 individual sections specifying everything from air quality to types of permissible flooring and when birds may be denied outdoor access—it is not practical to discuss every individual section in this comment.

²⁶ Proposed Rule § 205.241(a). The section also provides that “[p]oultry may be temporarily denied access to the outdoors in accordance with § 205.241(d),” which provides exemptions based on, among other things, inclement weather, certain stages of the bird’s life, a documented risk of disease, or the need for preventative health measures. Notice, at 21970-71. Those exemptions are not discussed in detail in this comment.

²⁷ HUMANE SOCIETY OF THE UNITED STATES (“HSUS”), AN HSUS REPORT: THE WELFARE OF ANIMALS IN THE EGG INDUSTRY 2-3, http://www.humanesociety.org/assets/pdfs/farm/welfare_egg.pdf; *see, also*, SARA SHIELDS AND IAN J.H. DUNCAN, AN HSUS REPORT: A COMPARISON OF THE WELFARE OF HENS IN BATTERY CAGES AND ALTERNATIVE

important to the laying hen that it is often used as a prime example of a behavioral need.²⁸ Dust-bathing is a grooming behavior in which the bird lies in a dry loose material like soil, wood shavings or peat, which the bird rubs through her feathers and then shakes off. Dust-bathing keeps chickens' feathers and skin in healthy condition.²⁹ Given access to an appropriate substrate, hens would normally dust-bathe approximately once every other day.³⁰ Thus, the Proposed Rule section 205.241(a) seeks to require provisions for the expression of an appropriate range of natural avian behaviors.

C. Recommendation: Specific Requirements for Living Conditions

Current regulations do not provide substantive standards for avian welfare. Accordingly the Proposed Rule would provide much-needed specificity with regard to avian living conditions, and would promote consistent practices among organic producers.

1. Indoor Living Conditions

One of the goals of the Proposed Rule is to provide specific rules for indoor and outdoor “stocking density” for avian species.³¹ Under the new rule, “stocking density” would be defined as “[t]he weight of animals on a given unit of land at any one time.”³² There is no definition of stocking density in the current regulations because the current regulations do not set any specific requirements for stocking density.³³

The need for specificity is particularly acute with regard to living conditions for avian species because, as noted above, the current practices with respect to stocking densities and access to outdoor space at organic poultry operations vary greatly and are “divisive and controversial among producers and other stakeholders...”³⁴ As the commentary for the Proposed Rule further explains:

The current practices of organic poultry operations to provide outdoor access and minimum indoor and outdoor space per bird vary widely. This disparity causes consumer confusion about the meaning of the USDA organic label, threatens to erode consumer confidence in the organic label more broadly, and perpetuates unfair competition among producers. This rule would enable AMS and certifying agents to efficiently administer the NOP [National Organic Program]. In turn, the

SYSTEMS 2, <http://www.humanesociety.org/assets/pdfs/farm/hsus-a-comparison-of-the-welfare-of-hens-in-battery-cages-and-alternative-systems.pdf>.

²⁸ HSUS, AN HSUS REPORT: THE WELFARE OF ANIMALS IN THE EGG INDUSTRY, *supra* note 28, at 2-3.

²⁹ *Id.*

³⁰ *Id.*

³¹ Notice, Executive Summary §§ A3 and B, at 21956-57.

³² Proposed Rule, § III, Overview of Proposed Amendments, §A; Proposed Rule § 205.2.

³³ *See* 7 C.F.R. § 205.2.

³⁴ Notice, at 21980.

consistency and transparency in certification requirements will facilitate consumer purchasing decisions.³⁵

The next section, 205.241(b), provides detailed requirements for avian indoor living spaces. Section 205.241(b)(1) states the overall goal that “[a]ll birds must be able to move freely, and engage in natural behaviors.”³⁶ Greater specificity on how that is to be achieved is provided in sections 205.241(b) and (c). Proposed Rule section 205.241(d) enumerates the limited circumstances under which outdoor access may be denied.

2. *Indoor Housing Requirements for Avian Species*

Since buildup of ammonia levels in indoor poultry housing presents a health problem for poultry,³⁷ AMS is proposing to add a new section 205.241(b)(2) to require ventilation sufficient to prevent ammonia in excessive concentrations in the indoor space.³⁸ Ammonia is a natural breakdown product of manure from animals that can be harmful for birds to inhale and, in many cases, is a sign that the litter is too damp, which also may cause lameness in the birds.³⁹ As explained in the commentary in the Federal Register, producers must describe in their Organic System Plan what methods and procedures they will employ to maintain airborne ammonia concentrations under 10 ppm.⁴⁰ Ammonia levels would need to be monitored monthly to verify that ammonia concentrations remain under 10 ppm and never exceed 25 ppm. Producers would need to implement additional ammonia mitigation procedures when ammonia levels exceed 10 ppm to ensure that ammonia levels never exceed 25 ppm in the indoor space.⁴¹

Under Proposed Rule section 205.241(b)(3), artificial lighting may be used to prolong the day up to 16 hours for mature birds and laying hens.⁴² However, indoor natural light must be sufficient to allow an inspector to read and write indoors with the lights off on a sunny day.⁴³ This requirement sets a performance standard that facilitates inspection, provides for enough

³⁵ *Id.*

³⁶ *Id.* at 21970.

³⁷ Marian Stamp Dawkins, et al., *Chicken welfare is influenced more by housing conditions than by stocking density*, 427 NATURE 342, 342-43 (2004) (British study finding that “[I]tter moisture and ammonia [concentration] were related to bird health.”), <http://users.ox.ac.uk/~abrg/papers/dawkins/Nature.pdf>.

³⁸ Notice, at 21970. *See, also*, Dawkins at 342-43 (“...73.3% of the variation in air ammonia could be explained by effects such as season and ventilation type”).

³⁹ A. Martrenchar, et al., *Influence of stocking density on some behavioural, physiological and productivity traits of broilers*, VETERINARY RESEARCH 473, 479 (1997), (“high values of atmospheric ammonia or airborne dust” have a “proven...deleterious” effect on bird performance and health), <https://hal.archives-ouvertes.fr/hal-00902495/document>.

⁴⁰ Notice, at 21971.

⁴¹ Proposed Rule section 205.241(b)(2) states: “Ventilation must be adequate to prevent buildup of ammonia. Ammonia levels must not exceed 25 ppm. Producers must monitor ammonia levels on a monthly basis. When ammonia levels exceed 10 ppm, producers must implement additional practices to reduce ammonia levels below 10 ppm.”

⁴² Notice, at 21970-71.

⁴³ *Id.*

lighting to accommodate natural avian behavior, and allows flexibility in determining how to design facilities for compliance.⁴⁴

Proposed Rule section 205.241(b)(4) describes the types of flooring that may be used in all types of indoor poultry houses.⁴⁵ Proposed Rule section 205.241(b)(4)(i) would allow mesh flooring under drinking areas to provide drainage.⁴⁶ Proposed Rule section 205.241(b)(4)(ii) would permit the use of slatted floors as long as 30 percent of the flooring is solid, with sufficient litter so that birds may dust bathe freely without crowding. Pasture housing would be exempt from this requirement, as birds on pasture will have large areas of outdoor space for dust bathing.⁴⁷ Proposed Rule section 205.241(b)(4)(iii) would require that litter be provided in all types of indoor housing and maintained in a dry manner.⁴⁸ Wet litter can lead to a variety of problems for birds, including lameness and excess ammonia concentration.⁴⁹ Litter may be topped off when needed to maintain sufficient dryness.⁵⁰

Proposed Rule section 205.241(b)(5) describes the required openings in shelters so that the birds can easily access both the indoor and outdoor areas.⁵¹ Doors or openings must be distributed around the building. In addition, the openings must be large enough to allow the passage of more than one bird at a time.⁵² Wide doors spread around the building provide meaningful outdoor access to the birds.⁵³ This level of specificity is required because in many large-scale egg-producing operations, there is inadequate access to whatever outdoor space might be provided, resulting in few birds being able to take advantage of the outdoors.⁵⁴

Proposed Rule section 205.241(b)(6) requires a flat roost area with a minimum of 6 inches of perch space per bird.⁵⁵ In single story buildings, all birds must be able to perch at the same time. In multi-tiered facilities, 55 percent of the birds must be able to perch at the same time, and the 6-inch per hen requirement still applies.⁵⁶

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* Proposed Rule § 205.241(b)(4)(ii) states: “Houses, excluding pasture housing, 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.”

⁴⁷ *Id.* at 21970-71.

⁴⁸ Proposed Rule § 205.241(b)(4)(iii) states, in full: “Litter must be provided and maintained in a dry condition.”

⁴⁹ See Martrenchar, *supra* note 39, at note 14.

⁵⁰ This provision is mentioned only in the commentary; it does not appear in the language of Proposed Rule section 205.241(b)(4)(iii).

⁵¹ Notice at 21970-71.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Deena Shanker, *Egg Comes First in Fight Over What it Means to Be Organic*, BLOOMBERG (May 19, 2016), <http://www.bloomberg.com/news/articles/2016-05-19/egg-comes-first-in-fight-over-what-it-means-to-be-organic>.

⁵⁵ Notice at 21970-71.

⁵⁶ *Id.* at 21972

Proposed Rule sections 205.241(b)(7), (b)(7)(i), (b)(7)(ii), (b)(7)(iii), (b)(7)(iv), (b)(8), and (b)(9) list the required minimum avian indoor space requirements. Indoor space requirements apply, with various minimums, to all methods of production, including ones in which indoor space is provided with permanent buildings or mobile pasture units. Indoor space is further defined in section 205.2, and includes pasture housing, aviary housing, floor litter housing and slatted/mesh floor housing.⁵⁷ The amount of space to be provided to each species of bird varies with the type of housing, as explained in detail in footnote 64 (*infra* at 9).

In 2011, the National Organic Standards Board (“NOSB”) recommended a minimum of 2.0 square feet per egg-laying hen based on the outside perimeter of the indoor housing structure and that all types of indoor housing have the same space requirement.⁵⁸ Based on AMS’s review of other animal welfare certification programs, which varied from a minimum of 1.0 square feet per bird in aviaries and pasture systems to 1.8 square feet per hen with no more than 500 hens per barn, the Proposed Rule would change from a system based on the number of birds per unit of space to a system based on the number of pounds of laying hen per square foot as the measurement of required indoor space per hen.⁵⁹ This change would allow for a single standard for space for different avian species and varieties.⁶⁰ The commentary explains that there is a wide variety of avian species and breeds that may be used to produce eggs for human consumption, so using a minimum space per bird is impractical if applied to producers of quail eggs and emu eggs alike.⁶¹ The Proposed Rule is similar in format to the NOSB-recommended minimum space for pullets and meat-type birds.⁶²

Because different types of housing structures present varying concerns for producers with regard to maintaining indoor temperatures during the winter in colder climates, AMS proposes to vary the required minimum indoor space with the housing type: pasture housing would have a maximum of 4.5 pounds of avian livestock per square foot; aviary housing would have a maximum of 4.5 pounds per square foot; slatted/mesh floor would have a maximum of 3.75 pounds per square foot; and floor litter housing would have a maximum of 3.0 pounds per square foot.⁶³

To make this conversion, AMS assumed that a majority of organic eggs are brown eggs produced by a strain of chicken called the ISA Brown, which has an average mature weight of 4.5 pounds.⁶⁴ The indoor space requirement based upon maximum pounds of laying hen per

⁵⁷ Notice at 21970, 21972

⁵⁸ Proposed Rule, Executive Summary, at 21959.

⁵⁹ Notice, at 21970 & 21972.

⁶⁰ *Id.*

⁶¹ *Id.* at 21972

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* AMS made the following calculation to convert minimum square feet to maximum pounds per square foot: (1 hen/2.0 square feet) * (4.5 pounds/1 hen) = 2.25 pounds per square foot. The table below shows the maximum pounds per hen permitted in different types of housing (*see* Notice, at 21972)

Indoor housing type	Square feet per laying hen	Pounds of hen per square foot
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square foot of space will allow producers to vary the number of birds in a given house depending upon the size or breed of the bird. For example, Rhode Island Red birds are heavier than ISA Browns, and thus could not be stocked as densely in the same area.⁶⁵

In a related new section, 205.241(b)(8), AMS is proposing to use the NOSB recommendation of a maximum of 3 pounds of pullet (future egg-laying hens that are not yet old enough to lay) per square foot of indoor space.⁶⁶ And, under proposed section 205.241(b)(9), AMS would require a maximum of 5 pounds of meat-type species per square foot of indoor space for birds raised for meat (e.g., broilers, turkeys, and geese).⁶⁷ These are minimum standards, and organic producers may choose to provide more indoor space than required.

The Proposed Rule also specifies some required furnishings for indoor spaces. Proposed Rule sections 205.241(b)(10) and (11) specify that indoor space, whether stationary or mobile, must have scratch areas which all birds can access.⁶⁸ In addition, the indoor housing must be sufficiently spacious to allow all birds to move freely, stand normally, stretch their wings and engage in natural behaviors.⁶⁹

3. Outdoor Space Requirements

The issue of outdoor access for egg-laying hens in particular not only has humane implications for the hens’ quality of life but also has health implications for consumers. A 2013 study published in the *Journal of the Science of Food and Agriculture* found that organic hens with more pasture access produced eggs with significantly higher levels of valuable nutrients including carotenoids, tocopherols, and omega 3 fatty acids.⁷⁰

The current rules do not specify “an outdoor space allowance or stocking density rate, nor do they require that all animals in the herd or flock have access to the outdoors at the same time.”⁷¹ Proposed Rule section 205.241(c) would specify certain outdoor space requirements for

Pasture	1.0	4.5
Aviary	1.0	4.5
Floor Litter	1.5	3.0
Pit/mesh litter	1.2	3.75
All others	2.0	2.25

⁶⁵ Notice at 21972.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Notice at 21970 & 21972.

⁶⁹ *Id.*

⁷⁰ Cecilia Mugnai, et al., *The effects of husbandry system on the grass intake and egg nutritive characteristics of laying hens*, 94 J. SCI. FOOD & AGRIC. (2013), https://www.researchgate.net/profile/Alessandro_Bosco3/publication/239942774_The_effects_of_husbandry_system_on_the_grass_intake_and_egg_nutritive_characteristics_of_laying_hens/links/0c96051ee29d15ab67000000.pdf.

⁷¹ Notice at 21950.

avian species. Section 205.241(c)(1) requires that “[o]utside access and door spacing must be designed to promote and encourage outside access for all birds on a daily basis.”⁷²

Section 205.241(c)(1) also requires that the outdoor space be designed to promote and encourage outdoor access for all birds.⁷³ Producers would be required to train birds to go outdoors from an early age because outdoor space requirements are not meaningful unless the birds go outside.⁷⁴ Proposed Rule section 205.241(c)(1) also requires that outdoor areas have suitable enrichment to entice the birds to go outside.⁷⁵ One example of suitable enrichment would be a minimum 50 percent vegetative cover (living vegetation or harvested vegetation scattered in the area), which would provide opportunities for poultry to engage in natural foraging behaviors.⁷⁶ In addition, the vegetative cover would help to reduce soil erosion and nutrient run off.⁷⁷ Other means of providing enrichment include, but are not limited to: access to water for water birds; bales of straw or hay; raised platforms; cover for protection from aerial predators; shaded areas and trees; and loose substrate for dust bathing.⁷⁸

Proposed Rule sections 205.241(c)(3) through (5) specify certain minimum outdoor space requirements.⁷⁹ Laying hens must not exceed 2.25 pounds of hen per square foot of outdoor space, while organic pullets must not exceed three pounds of pullet per square foot.⁸⁰ Organic broiler, turkey and other meat-type producers must not exceed five pounds of bird per square foot of outdoor space.⁸¹ As with indoor space requirements for birds, a stocking density calculation based on a pound per unit of space basis, rather than a bird per unit of space basis, provides a uniform calculation for organic eggs from hens as well as quail, emu, or other species.⁸² Again, these space requirements are minimums⁸³ and organic producers can choose to exceed them.

Proposed Rule sections 205.241(c)(6) and (7) specify how outdoor space must be calculated. Outdoor space may not include any area that has a solid roof that is attached to the

⁷² Proposed Rule section 205.241(c)(1) provides: “Outside access 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 (train) birds to go outdoors. Outdoor areas must have suitable enrichment to entice birds to go outside. Birds may be temporarily denied access to the outdoors in accordance with § 205.241(d).”

⁷³ Notice at 21970, 21973

⁷⁴ Notice at 21973.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Notice at 21970, 21973

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.* at 21973.

⁸³ *Id.*

structure which provides indoor space.⁸⁴ Thus, areas under eaves and overhangs from the stationary barn or mobile unit may not be included as part of the outdoor space.⁸⁵ This provision is meant to address and reverse the practice of allowing enclosed porches to meet the outdoor access requirement, a practice that arose after a 2002 administrative appeal decision allowed one such structure to meet the outdoor requirement for organic poultry⁸⁶ and which was contrary to the spirit and intent of the original organic regulations.⁸⁷ Despite that 2002 decision having been based on a fact-specific need to protect water quality in that case, it was used as a rationale to allow many subsequent large-scale organic producers to meet the outdoor access requirement through the use of enclosed porches attached to the main structure housing the birds.⁸⁸

Although outdoor space requirements cannot be met through the use of an attached porch, the outdoor space must provide shade for the birds. For example, a structure with a solid roof that is not attached to a structure providing indoor space may be included as part of the outdoor space.⁸⁹ Shade may also be provided by trees or other objects in the environment.

Lastly, a new section 205.241(c)(8) would require that the outdoor space have a minimum of 50 percent soil.⁹⁰ The soil would allow for the birds to engage in natural foraging and dust bathing behaviors.⁹¹ In addition, the soil, if covered in vegetation, would provide nutrition and enrichment to help draw the birds outdoors.

4. *Justification*

As explained above, an administrative appeal decision issued in 2002 allowed porches as outdoor access. It is hoped that the Proposed Rule will clarify USDA statutory and regulatory mandates and establish consistent, transparent, and enforceable requirements.⁹² Furthermore, “it will align regulatory language and intent to enable producers and consumers to readily discern

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Notice, at 21973, 21980.

⁸⁷ In 2002, the NOSB issued recommendations, which stated, in part, “1. Organically managed poultry must have access to the outdoors. Organic livestock facilities shall give poultry the ability to choose to be in the housing or outside in the open air and direct sunshine. The producer’s organic system plan shall illustrate how the producer will *maximize* and encourage access to the outdoors [emphasis added]; 2. Bare surfaces other than soil (e.g. metal, concrete, wood) do not meet the intent of the National Organic Standards. National Organic Standards Board Recommendation: Access to outdoors for poultry, adopted May 8, 2002, [www.http://www.ams.usda.gov/AMSV1.0/nop](http://www.ams.usda.gov/AMSV1.0/nop). These recommendations have not been officially adopted as regulations by the USDA. See CORNUCOPIA INSTITUTE, *supra* note 20, at 7.

⁸⁸ Notice, at 21973, 21980.

⁸⁹ *Id.*

⁹⁰ *Id.* at 21970, 21973.

⁹¹ *Id.* at 21973.

⁹² *Id.* at 21980.

the required practices for organic poultry production and to differentiate the products in the marketplace.”⁹³

The majority of organic poultry producers also participate in private, third-party verified animal welfare certification programs.⁹⁴ These certification programs vary in stringency, particularly for outdoor access requirements.⁹⁵ These differences are not discernible to consumers through use of the USDA organic label. Consumers are increasingly aware of these varying outdoor production practices and either seek specific brands of organic eggs based on information about living conditions at individual farms, or seek animal welfare labels in addition to the USDA organic seal. Such widespread participation among organic poultry producers is evidence that consumers want additional label claims to provide information about animal welfare practices.⁹⁶ The Proposed Rule would align consumer expectations with the production practices of organic poultry producers and thus make an organic label meaningful to consumers.⁹⁷

The commentary further explains that the Proposed Rule also addresses the findings of an audit conducted in 2010 by the USDA Office of Inspector General (OIG) concerning inconsistent applications of the USDA organic regulations for outdoor access for livestock, particularly regarding the absence of regulatory provisions covering the hours per day of outdoor access and the size of the outdoor area.⁹⁸ Rather than issuing further recommendations, AMS decided to pursue rulemaking to clarify outdoor access for poultry.⁹⁹

II. PHYSICAL ALTERATIONS

Current USDA organic regulations do not prohibit specific types of physical alterations or specify the conditions under which the physical alterations may be performed. Rather, the current regulations merely provide that “[t]he producer must establish and maintain preventative livestock health care practices, including: Performance of physical alterations as needed to promote the animal’s welfare and in a manner that minimizes pain and stress.”¹⁰⁰ Accordingly, producers have broad latitude to determine the types and methods of physical alterations performed on organically raised farmed animals. As a result, organically raised farmed animals

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Sheila Rodriguez, *The Morally Informed Consumer: Examining Animal Welfare Claims on Egg Labels*, 30 TEMP. J. SCI. TECH. & ENVTL. L. 51, 74-77 (Spring 2011) (explaining that currently there are three private certification programs used in the U.S.: "American Humane Certified," "Certified Humane," and "Animal Welfare Approved," with widely differing requirements regarding outdoor space. Of the three, neither the American Humane Certified label nor Certified Humane label requires outdoor access. Animal Welfare Approved is the only third-party program to require access to the outdoors.)

⁹⁶ Notice, at 21980.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ 7 C.F.R. § 205.238(a)(5).

may be subjected to inhumane physical alterations such as tail docking, de-beaking and castration performed without anesthesia by non-veterinary farm workers.

A. Tail docking

Tail docking is not prohibited by the current regulations. Tail docking is a procedure commonly performed on dairy cows, pigs and sheep to remove up to two-thirds of an animal's tail. The procedure is commonly performed without anesthetics by non-veterinary farm workers. The proffered purpose of tail docking in cows includes improved comfort for milking personnel, enhanced udder cleanliness, reduced incidence of mastitis, and improved milk quality and milk hygiene.¹⁰¹ The proffered purpose of tail docking of pigs is to prevent tail biting,¹⁰² an abnormal behavior that occurs in concentrated animal feeding operations due to crowded and barren conditions.¹⁰³ The proffered purpose of tail docking of sheep is to reduce fecal soiling and fly strike.¹⁰⁴

The tail is severed either by removal with a sharp instrument (e.g., cutting shears), or by application of a tight rubber ring that restricts blood flow to the distal portion of the tail, which atrophies and detaches.¹⁰⁵ Tails are severed between vertebrae (sometimes leading to serious infections reaching into the spine), and either procedure results in chronic, life-long pain, among other issues.¹⁰⁶ When performed by slow strangulation of the blood supply (with a rubber band), the procedure itself is also a painful and slow process and presents the opportunity for gangrene and other infections to set in.¹⁰⁷

Tail docking of cows is banned in California,¹⁰⁸ Ohio¹⁰⁹ and Rhode Island.¹¹⁰ The AVMA¹¹¹ and the American Association of Bovine Practitioners¹¹² oppose the routine tail

¹⁰¹ AMERICAN VETERINARY MEDICAL ASSOCIATION (“AVMA”), TAIL DOCKING OF CATTLE 1 (Aug. 29, 2014), https://www.avma.org/KB/Resources/LiteratureReviews/Documents/tail_docking_cattle_bgnd.pdf.

¹⁰² AVMA, WELFARE IMPLICATIONS OF TEETH CLIPPING, TAIL DOCKING AND PERMANENT IDENTIFICATION OF PIGLETS 2, https://www.avma.org/KB/Resources/LiteratureReviews/Documents/practices_piglets_bgnd.pdf.

¹⁰³ HSUS, AN HSUS REPORT: THE WELFARE OF PIGLETS IN THE PIG INDUSTRY 1, http://www.humanesociety.org/assets/pdfs/farm/welfare_piglets.pdf.

¹⁰⁴ AVMA, DOCKING OF LAMBS' TAILS 1 (July 15, 2014), https://www.avma.org/KB/Resources/LiteratureReviews/Documents/lamb_tail_docking_bgnd.pdf.

¹⁰⁵ HSUS, AN HSUS REPORT: WELFARE ISSUES WITH TAIL-DOCKING OF COWS IN THE DAIRY INDUSTRY, <http://www.humanesociety.org/assets/pdfs/farm/HSUS-Report-on-Tail-Docking-of-Dairy-Cows.pdf>; *see also* Nicolette Hahn Niman, *The unkindest cut*, NY TIMES, Mar. 7, 2005, www.nytimes.com/2005/03/07/opinion/07niman.html.

¹⁰⁶ *Cows Subjected to tail docking without anesthesia* (Dec. 1, 2008), <http://www.pet-abuse.com/cases/16147/NY/US/>; *See also*, Marlene Halverson, Farm Animal Economic Advisor, Animal Welfare Institute, *Tail Docking Dairy Cattle*; *Welfare Implications of Tail Docking in Dairy Cattle*, <http://www.docstoc.com/docs/4697714/TAIL-DOCKING-DAIRY-CATTLE-Marlene-Halverson-Farm-Animal-Economic>; AVMA, WELFARE IMPLICATIONS OF TAIL-DOCKING CATTLE., (Aug. 29, 2014), <https://www.avma.org/KB/Resources/LiteratureReviews/Pages/Welfare-Implications-of-Tail-Docking-of-Cattle.aspx>.

¹⁰⁷ An HSUS Report: Welfare Issues With Tail-Docking of Cows in the Dairy Industry, *supra*, note 105.

¹⁰⁸ California Penal Code 597n.

docking of cows, noting that the practice provides no benefit to the animal and can actually lead to distress during fly seasons. When tail docking is medically necessary, the AVMA states that “amputation of tails must be performed by a licensed veterinarian.”¹¹³ The Farm Animal Welfare Council (FAWC) recommends that tail docking of sheep should be avoided whenever possible.¹¹⁴ The AVMA states that “[b]ecause tail docking causes pain and discomfort, the AVMA recommends the use of procedures and practices that reduce or eliminate these effects, including the use of approved or AMDUCA-permissible clinically effective medications whenever possible.”¹¹⁵ Regarding the tail docking of pigs, the AVMA states that “[t]he ideal welfare outcome would be for tail biting to be reduced to a level where tail docking need not be carried out routinely, if at all.” The AVMA also recommends that where performed, “[b]ecause docking causes pain and stress, it should be performed as early as possible and/or in conjunction with appropriate analgesia.”¹¹⁶

B. De-beaking

De-beaking is not prohibited by the current regulations. De-beaking, defined under the Proposed Rule as “removal of more than the beak tip,” is a procedure commonly performed to prevent cannibalism and feather pecking in large groups of birds.¹¹⁷ De-beaking is commonly performed without anesthesia by non-veterinary farm workers using a sharp blade or scissors, a heated blade, or a high-voltage electrical current. As noted by the AVMA, this practice is “acutely painful, as nociceptors are present in the tip of the beak.”¹¹⁸ The procedure causes tissue damage and nerve injury, including open wounds, bleeding, and inflammation, and may also result in chronic long-term pain.¹¹⁹ The procedure also deprives birds of the important sensory

¹⁰⁹ Ohio Department of Agriculture, Livestock Care Standards, § 901:12-6-02(A)(4), [www.agri.ohio.gov/LivestockCareStandards/docs/Livestock%20Care%20Standards%20\(EFFECTIVE\).pdf](http://www.agri.ohio.gov/LivestockCareStandards/docs/Livestock%20Care%20Standards%20(EFFECTIVE).pdf).

¹¹⁰ Rhode Island General Law § 4-1-6.1.

¹¹¹ AVMA, TAIL DOCKING OF CATTLE, *supra* note 101.

¹¹² American Association of Bovine Practitioners, *Tail docking*, (Mar. 13, 2010), http://www.aabp.org/resources/aabp_position_statements/aabp_tail_docking-3.13.10.pdf.

¹¹³ AVMA, TAIL DOCKING OF CATTLE, *supra* note 101.

¹¹⁴ FARM ANIMAL WELFARE COUNCIL, FAWC REPORT ON THE IMPLICATIONS OF CASTRATION AND TAIL DOCKING FOR THE WELFARE OF LAMBS, (June 2008), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/325125/FAWC_report_on_the_implications_of_castration_and_tail_docking_for_the_welfare_of_lambs.pdf.

¹¹⁵ AVMA, DOCKING OF LAMBS’ TAILS (July 15, 2014), https://www.avma.org/KB/Resources/LiteratureReviews/Documents/lamb_tail_docking_bgnd.pdf.

¹¹⁶ AVMA, WELFARE IMPLICATIONS OF TEETH CLIPPING, TAIL DOCKING AND PERMANENT IDENTIFICATION OF PIGLETS, *supra* note 102.

¹¹⁷ These are abnormal behaviors that occur in concentrated animal feeding operations due to crowded and barren conditions. SHIELDS & DUNCAN, *supra* note 27, at 15.

¹¹⁸ AVMA, LITERATURE REVIEW ON THE WELFARE IMPLICATIONS OF BEAK TRIMMING 1 (Feb. 2010), https://www.avma.org/KB/Resources/LiteratureReviews/Documents/beak_trimming_bgnd.pdf.

¹¹⁹ HSUS, AN HSUS REPORT: THE WELFARE OF ANIMALS IN THE CHICKEN INDUSTRY 7 (Dec. 2013), http://www.humanesociety.org/assets/pdfs/farm/welfare_broiler.pdf

information provided by the highly innervated beak tip.¹²⁰ Research indicates that alternative environmental solutions are more effective at preventing cannibalism and feather pecking than de-beaking (alternatives include providing sufficient space and access to resources such as properly nutritious feed, water, nest boxes, and perches; providing mash rather than pelleted feed; separating injured and low body weight birds; installing visual barriers; avoiding lighting programs designed to bring about early onset of lay; and providing an enriched environment with attractive foraging materials).¹²¹

C. Teeth clipping/Needle teeth trimming

Teeth clipping/Needle teeth trimming is not prohibited by the current regulations. Pigs are born with eight small tusk shaped canine teeth, commonly known as “needle” teeth. Needling teeth trimming (also known as teeth clipping) is a procedure in which the pig’s teeth are cut off (partially or completely to the gum line) with a sharp instrument or a grinding device.¹²² The procedure is commonly performed without anesthetics by non-veterinary farm workers. The procedure causes acute pain and stress, and pigs whose teeth have been clipped may experience more gum and tongue injuries and potentially painful inflammation or abscesses of the teeth.¹²³ The proffered purpose of needle teeth trimming is to prevent facial lacerations to pigs, laceration of the mother pig’s udders, and increased overlying and crushing of piglets by the mother pig due to sows being injured and becoming more restless.¹²⁴

D. Mulesing of sheep

Mulesing of sheep is not prohibited by the current regulations. Mulesing of sheep, defined in the Proposed Rule as the “removal of skin from the buttocks of sheep, approximately 2 to 4 inches wide and running away from the anus to the hock to prevent fly strike.” The procedure is commonly performed with shears or another sharp instrument without anesthetics by non-veterinary farm workers.¹²⁵ The procedure causes acute pain for days after the procedure.¹²⁶

¹²⁰ *See Id.*

¹²¹ *Id.* at 11.

¹²² AVMA, WELFARE IMPLICATIONS OF TEETH CLIPPING, TAIL DOCKING AND PERMANENT IDENTIFICATION OF PIGLETS, *supra* note 102; *see also* HSUS REPORT: THE WELFARE OF PIGLETS IN THE PIG INDUSTRY, *supra* note 103.

¹²³ AVMA, WELFARE IMPLICATIONS OF TEETH CLIPPING, TAIL DOCKING AND PERMANENT IDENTIFICATION OF PIGLETS 2, *supra* note 102.

¹²⁴ *Id.* at 1.

¹²⁵ University of Adelaide, *Mulesing of sheep*, <https://www.adelaide.edu.au/ANZCCART/school/casestudymulesing.pdf> (Noting that “A local anaesthetic is not used as this requires a veterinarian to administer the anaesthetic and would make the operation prohibitively expensive”).

¹²⁶ Royal Society for the Prevention of Cruelty to Animals Australia, *What is mulesing and what are the alternatives?* (May 2016), http://kb.rspca.org.au/What-is-mulesing-and-what-are-the-alternatives_113.html.

E. Caponization and other Castration

Caponization and other forms of castration are not prohibited by the current regulations. Caponization is defined in the Proposed Rule as “[c]astration of chickens, turkeys, pheasants and other avian species.” The proffered purpose of the procedure is to produce a slower growing bird whose flesh appeals to the gourmet market.¹²⁷ As the testes of male birds are internal, caponization requires surgical removal of the reproductive organs through an incision between the last two ribs.¹²⁸ The procedure is commonly performed without anesthetics by non-veterinary farm workers. Caponizing has been banned in the United Kingdom due to animal welfare concerns.¹²⁹

Castration of male cows is a common procedure achieved by removing the testicles surgically, damaging them irreparably through chemical injection, or causing them to atrophy by stricture of the blood supply through application of a constricting elastic band.¹³⁰ The proffered purpose of the procedure is to reduce aggressiveness and sexual activity.¹³¹ All physical methods of castration cause acute pain and may cause chronic pain thereafter.¹³² Castration of cows is commonly performed without anesthesia by non-veterinary farm workers.¹³³

Castration of pigs is a common procedure achieved by removing the testicles surgically or damaging them irreparably through chemical injection. The proffered purpose of the procedure is to prevent “boar taint,” the taste and odor characteristic in the flesh of sexually intact, mature male pigs, as well as to prevent aggression and reduce handling problems.¹³⁴ All physical methods of castration cause acute pain and may cause chronic long term effects.¹³⁵ Castration of pigs is commonly performed without anesthesia by non-veterinary farm workers.¹³⁶

¹²⁷ See Matthew Kronsberg, *Will 2015 Be the Year of the Chicken?* WALL STREET JOURNAL (Dec. 26, 2014), <http://www.wsj.com/articles/will-2015-be-the-year-of-the-chicken-1419632701>.

¹²⁸ HSUS, HSUS REPORT: WELFARE ISSUES WITH CAPONIZING CHICKENS 2, <http://www.humanesociety.org/assets/pdfs/farm/HSUS-Report-on-Caponization.pdf>.

¹²⁹ *Id.* at 1.

¹³⁰ AVMA, LITERATURE REVIEW ON THE WELFARE IMPLICATIONS OF CASTRATION OF CATTLE 1 (July 2014), <https://www.avma.org/KB/Resources/LiteratureReviews/Documents/castration-cattle-bgnd.pdf>.

¹³¹ *Id.*

¹³² *Id.*

¹³³ HSUS, AN HSUS REPORT: THE WELFARE OF CALVES IN THE BEEF INDUSTRY, http://www.humanesociety.org/assets/pdfs/farm/welfare_calves.pdf (noting that the practice is “usually performed without anesthesia or analgesia, pain relief of any kind”).

¹³⁴ AVMA, WELFARE IMPLICATIONS OF SWINE CASTRATION 1, https://www.avma.org/KB/Resources/LiteratureReviews/Documents/swine_castration_bgnd.pdf (noting that “[o]n-farm use of anesthesia is rare due to a range of economic, logistical and safety issues, both for the pig and the herdsman”); see also HSUS REPORT: THE WELFARE OF PIGLETS IN THE PIG INDUSTRY, *supra* note 103.

¹³⁵ AVMA, WELFARE IMPLICATIONS OF SWINE CASTRATION, *supra* note 134, at 2.

¹³⁶ *Id.*

F. Branding

Branding, although not defined in the Proposed Rule, is commonly defined as a mark indicating identity or ownership, burned on the skin of an animal with a hot iron.¹³⁷ Hot-iron brands are applied with a heated branding iron of approximately 520°C (968°F), pressed into the skin for approximately five seconds. This process burns the skin and underlying tissue, leaving a hairless, permanent scar on the skin.¹³⁸ The procedure is commonly performed without anesthesia by non-veterinary farm workers.¹³⁹ Branding may be performed on various parts of an animal's body, from the hip area, to the face. Branding causes acute pain and stress. Branding of the face is regarded as particularly inhumane due to the increased sensitivity of the face and the risk of injury to facial muscles, salivary glands and eyes.¹⁴⁰

G. Proposed Rule

The Proposed Rule would prohibit certain physical alterations:

- *De-beaking* (defined in Proposed Rule section 205.2 as “removal of more than the beak tip”);
- *De-snooding* (defined in Proposed Rule section 205.2 as “removal of the turkey snood (a fleshy protuberance on the forehead of male turkeys)”);
- *Caponization* (defined in Proposed Rule section 205.2 as “Castration of chickens, turkeys, pheasants and other avian species”);
- *Dubbing* (defined in Proposed Rule section 205.2 as “The removal of poultry combs and wattles”);
- *Toe trimming of chickens*;
- *Toe trimming of turkeys unless with infra-red at hatchery*;
- *Beak trimming after 10 days of age* (defined in Proposed Rule section 205.2 as “removal of the curved tip of the beak”);
- *Tail docking of cattle*;
- *Wattling of cattle* (defined in Proposed Rule section 205.2 as “surgical separation of two layers of the skin from the connective tissue along a 2 to 4 inch path on the dewlap, neck or shoulders used for ownership identification”);
- *Face branding of cattle*;
- *Tail docking of sheep shorter than the distal end of the caudal fold*; and

¹³⁷ AVMA, LITERATURE REVIEW ON THE WELFARE IMPLICATIONS OF HOT-IRON BRANDING AND ITS ALTERNATIVES 1 (Apr. 4, 2011), https://www.avma.org/KB/Resources/LiteratureReviews/Documents/hot-iron_branding_bgnd.pdf (noting that “[m]ost commonly, a hot iron is placed on the unanesthetized skin for the amount of time needed to remove all hair and burn the skin sufficiently to leave a permanent scar in the shape of a symbol”).

¹³⁸ HSUS, AN HSUS REPORT: THE WELFARE OF CALVES IN THE BEEF INDUSTRY, *supra* note 133, at 7.

¹³⁹ AVMA, LITERATURE REVIEW ON THE WELFARE IMPLICATIONS OF HOT-IRON BRANDING AND ITS ALTERNATIVES, *supra* note 137.

¹⁴⁰ *Humane Soc. of Rochester v. Lyng*, 633 F. Supp. 480, 487 (W.D.N.Y.1986) (“the type of branding espoused in LD-249 [i.e., hot iron face branding] constitutes cruelty to animals ... The testimony before me clearly establishes that freeze-branding is a viable alternative to hot-iron branding since it causes less pain to cows and accomplishes all of the objectives outlined by defendants”).

- *Mulesing of sheep* (defined in Proposed Rule section 205.2 as “removal of skin from the buttocks of sheep, approximately 2 to 4 inches wide and running away from the anus to the hock to prevent fly strike”).¹⁴¹

The Proposed Rule would also restrict the use of teeth clipping/needle teeth trimming in pigs (requiring that the procedure remove no more than top one-third of the tooth) and tail docking of pigs to require that such practices are “not routinely used” and “must be used only with documentation that alternatives methods to prevent harm failed.”¹⁴²

The Proposed Rule would also require that the performance of physical alterations not otherwise prohibited by the regulations “must be performed on livestock at a reasonably young age, with minimal stress and pain and by a competent person.”¹⁴³

H. Recommendations

While we generally support the Proposed Rule, which will increase animal welfare standards for organically raised farmed animals, we offer the following recommendations to strengthen the provisions regarding physical alterations:

1. Recommendation for mandatory veterinary care and administration of anesthetics and pain relief

Under the Proposed Rule, a number of serious physical alterations (including castration of non-avian species, branding, ear notching, dehorning, etc.) may still be performed on organically raised animals. Given the seriousness of these alternations, particularly the pain and risk of infection for animals subjected to such practices, it is imperative that these procedures be performed by a licensed veterinarian in accordance with veterinary guidelines and with the administration of effective pain relief. Accordingly, we recommend that the execution of all permissible physical alterations be performed exclusively by a licensed veterinarian and that the administration of anesthetics, analgesics and sedatives and other approved clinically effective pain medications shall be mandatory for all such procedures.

2. Recommendation for limitation on non-avian castrations

We note that the Proposed Rule only prohibits the castration of avian species and does not address the castration of cows, pigs, sheep or other animals. Castration is a serious medical procedure that causes significant pain and stress to animals with little to no benefit to the animals (the primary benefit is to the producer only). Accordingly, in addition to the recommendation that castration be performed only by licensed veterinarians utilizing anesthetics, analgesics and sedatives, we recommend a prohibition on the routine use of castration, limiting its use to situations where documented alternative methods to prevent harm have failed.

¹⁴¹ Proposed Rule § 205.238(a)(5)(ii).

¹⁴² Proposed Rule § 205.238(a)(5)(i).

¹⁴³ Proposed Rule § 205.238(a)(5).

3. *Recommendation for prohibition on all branding*

We note that the Proposed Rule would ban only the practice of face branding of cattle, and do not address the branding of other parts of a cow's body nor the branding of other species (facial or otherwise). We recommend that the Proposed Rule ban all types of hot iron branding (facial and otherwise) for both cows and all other farmed animals. Hot iron branding is inhumane and can be replaced by one of the many alternative identification methods such as ear tags, ear notches, back tags, neck chains, tail tags, freeze brands, tattoos, paint marks, leg bands and electronic identification (e.g., electronic ear tags, microchips, electronic collars). These alternatives are less invasive than branding and cause considerably less pain.¹⁴⁴

4. *Recommendation for prohibition on all toe trimming and beak trimming*

We further recommend that all the regulations prohibit all toe trimming of turkeys and all beak trimming. The Proposed Rule would generally ban both practices, but create an exception for turkey toe trimming performed at the hatchery with infra-red light (used to kill the tissue cells so that the affected portion of the toe falls off) and beak trimming performed before 10 days of age. Toe trimming, also known as toe-clipping or de-clawing, although not defined in the Proposed Rule, is commonly defined as the amputation of the ends of a bird's toes to remove the part of the toe with the claw.¹⁴⁵ This procedure is known to cause pain and discomfort to the animal during the procedure and chronic pain thereafter.¹⁴⁶ This practice is inhumane regardless of whether the procedure is performed with an infrared light rather than a traditionally used instrument (e.g., using a hot blade or mechanical device). Similarly, beak trimming (also known as partial beak amputation), defined under the Proposed Rule as "removal of the curved tip of the beak," is commonly performed without anesthesia by non-veterinary farm workers using a sharp blade or scissors, a heated blade, or a high-voltage electrical current. As noted by the AVMA, "[b]eak trimming is acutely painful, as nociceptors are present in the tip of the beak."¹⁴⁷ Accordingly, this practice is inhumane regardless of whether the procedure is performed before or after 10 days of age.¹⁴⁸

III. HANDLING

The Proposed Rule adds sections on handling which greatly improve what is currently required by organic regulations. Below are some comments to the language of the Proposed Rule and some recommendations for additions thereto.

¹⁴⁴ AVMA, LITERATURE REVIEW ON THE WELFARE IMPLICATIONS OF HOT-IRON BRANDING AND ITS ALTERNATIVES, *supra* note 139.

¹⁴⁵ Jocelyn Fournier, *The Effect of Toe Trimming on Heavy Turkey Toms' Productivity and Welfare*, §1.0, <https://ecommons.usask.ca/bitstream/handle/10388/ETD-2013-12-1330/FOURNIER-THESIS.pdf?sequence=3>

¹⁴⁶ *Id.*, § 2.4 (Noting that toe trimming "is a physical alteration which has the potential to cause acute pain from the trimming itself, as well as chronic pain due to the presence of neuromas or abnormal gait").

¹⁴⁷ AVMA, LITERATURE REVIEW ON THE WELFARE IMPLICATIONS OF BEAK TRIMMING, *supra* note 118, at 1.

¹⁴⁸ *Id* at 3 ("Although younger birds that are beak trimmed experience less neuroma formation and have relatively normal oral behaviors, all methods of beak-trimming induce pain and physiologic stress in birds").

A. Health care practices, generally

Proposed Rule section 205.238¹⁴⁹ is entitled “Livestock health care practices standard.” Subsection (a) of this section requires a producer to establish and maintain preventive health care practices, and sets forth a list of nine requirements. We recommend that the word “organic” appear therein, and that the rule also indicate that these are minimum standards, not necessarily optimal standards. Moreover, we recommend that so much of (a) as precedes paragraph (1) be revised to read as follows:

(a) The producer of organic livestock, both mammalian and poultry, must establish and maintain preventive health care practices, which must include the following, and may include stricter provisions otherwise permitted by law, including:

In addition, we recommend that the AMS consider requiring all organic producers to have written guidelines for health care practices.

B. Feed rations

Proposed Rule section 205.238(a)(2) requires as part the producer’s established and maintained preventive health care practices the “[p]rovision of feed ration sufficient to meet nutritional requirements, including vitamins, minerals, protein and/or amino acids, fatty acids, energy sources and fiber (ruminants) resulting in appropriate body condition.” While the language regarding appropriate body condition is an improvement, more specificity and uniform standards are required to define an “appropriate body condition.” Livestock producers (even those raising non-organic animals) have guidelines as to what such conditions are,¹⁵⁰ and these should be standardized goals for all organic producers.

C. Medical treatment

To ensure that vaccines and other approved veterinary biologics are properly administered, Proposed Rule section 205.238(a)(6) should be amended to read: “(6) Administration of vaccines and other *approved* veterinary biologics *by veterinarians or by other individuals trained to administer these and whose credentials have been approved in advance by an inspector.*”

It is commendable that Proposed Rule section 205.238(b)(3) provides for the administration of pain medication in the absence of illness, but a drafting problem should be addressed in the final rule. Subparagraph (3) does not follow the form of the preceding two paragraphs and it provides for the use of synthetic medications to alleviate pain, while paragraph (b) provides only for the administration of medications to prevent sickness. Section 205.238(b) provides:

¹⁴⁹ Notice, at 22005-22006.

¹⁵⁰ For example, Colorado Department of Agriculture regulations, 8 CCR 1201-13 (<https://www.sos.state.co.us/CCR/GenerateRulePdf.do?ruleVersionId=456>), has detailed body scoring systems specific to certain species or classes of animals.

(b) When preventive practices and veterinary biologics are inadequate to prevent sickness, a producer may administer synthetic medications: Provided, that, such medications are allowed under § 205.603. Parasiticides allowed under § 205.603 may be used on:

- (1) Breeder stock, when used prior to the last third of gestation but not during lactation for progeny that are to be sold, labeled, or represented as organically produced; and
- (2) Dairy stock, when used a minimum of 90 days prior to the production of milk or milk products that are to be sold, labeled, or represented as organic
- (3) Synthetic medications may be administered in the presence of illness or to alleviate pain and suffering: Provided, that such medications are allowed under § 205.603.

Finally, the additions of Proposed Rule sections 205.238(a)(7) and 205.238(b)(7) through (9) are most welcome. However, we note that in the comment portion of the Proposed Rule (Notice, at 21965), AMS states, “AMS takes a broad view of illness,” but there is no correlative statement in the actual text of the Proposed Rule section 205.238(a) or (b). We recommend adding language to this effect in the Proposed Rule.

D. Monitoring and recording lameness and illness

Proposed Rule section 205.238(a)(8) would require the organic producer, as part of the livestock health care practice standard, to monitor and keep records of the percentage of the herd or flock suffering from lameness, and the causes of such lameness.

This provision is welcome. However, there should be additional provisions that address specific acceptable limitations within a herd or flock and that provide consequences when these limitations are exceeded. For example, if lameness or illness exceeds a certain percentage of the producer’s animals in a manner that is not adequately explained as attributable to natural causes not within the producer’s control (such as an outbreak of avian flu in a specified percentage of birds or other conditions the producer cannot adequately treat) and that occurs over more than a specified number of months, the producer will lose organic certification until the situation is adequately addressed. For example, illness spreading rapidly in a flock may indicate that stocking levels have been exceeded. Repeatedly exceeding acceptable levels for illness should be actionable, with due process rights for the producer to appeal a decertification.

E. Breeding and Reproduction

While existing regulations generally prohibit genetic modification of animals as “excluded methods”,¹⁵¹ they do not prohibit selective breeding of animals that produces more

¹⁵¹ 9 CFR § §205.105 (prohibiting “excluded methods”, defined under 9 CFR § §205 as “A variety of methods used to genetically modify organisms or influence their growth and development by means that are not possible under natural conditions or processes and are not considered compatible with organic production. Such methods include cell fusion, microencapsulation and macroencapsulation, and recombinant DNA technology (including gene deletion, gene doubling, introducing a foreign gene, and changing the positions of genes when achieved by recombinant DNA technology). Such methods do not include the use of traditional breeding, conjugation, fermentation, hybridization, in vitro fertilization, or tissue culture.”).

meat (or more white meat, in the case of chickens, for example) but which leaves the animals physiologically compromised. For example, there is substantial evidence that many chickens are bred to develop unnatural body musculature such that they are unable to walk due to the disproportionate size of their breasts relative to the rest of the body and legs.¹⁵² In keeping with the goal of establishing a uniform set of rules applicable to all organic producers which promotes humane practices and consumer confidence, we recommend the addition of specific regulatory provisions proscribing any type of selective breeding that results in these types of outcomes and mandating that no animal bred in this fashion may be certified as organic. Where body morphology changes are incident to selective breeding—for example, changes incident to breeding for resistance to certain insects or transmitted diseases—the prohibition would not be violated, provided records of the goal of the selective breeding are maintained and reviewed by inspectors. However, if changes that inhibit an animal’s natural behaviors are demonstrated to be the incidental result of breeding designed for an authorized purpose, such as hardiness and resistance to local insects and other pests, the producer should be notified that organic status will not be granted to animals produced unless such breeding practices are modified.¹⁵³

Much of the Notice stresses the importance that animals be housed, fed, and generally maintained in an environment that allows them to engage in their natural behaviors. We recommend that clarifying language be added to Proposed Rule section 205.238(a)(4) to read as follows (*italics indicates additions to the current Proposed Rule*):

“(4) Provision of conditions which allow for exercise, freedom of movement, *engaging in natural behaviors*, and the reduction of stress appropriate to the species.” (emphasis added)

F. Forced Moulting

The starvation of laying hens to make them enter the next laying cycle is a common practice known as “forced moulting.”¹⁵⁴ Egg layers are housed without access to a nest box in a manner that does not allow the birds to exercise full range of motion. Another common practice is the disposal of male chicks or live unhatched eggs by suffocation. These practices should be prohibited for organic producers.

¹⁵² See, e.g. www.cacklehatchery.com/jumbo-cornish-cross.html (describing choice of breed to maximize meat and acknowledging that “they grow so fast that their legs may give out from their weight and it is not recommended that they be kept for breeding. You can take away the chicken feed at night to restrict the feed intake to slow the growth of the chicken. This will allow the bones and tendons to catch up with the rapid growth of the Cornish broiler. . . . However, do not use small particle bedding (like saw dust or small shavings) because when restricting their feed they will eat too much of their bedding material and cause sickness and death. This breed is bred specifically to butcher or harvest and is not recommended for a pet and only for chickens for meat production. Generally, if the Cornish broiler chicken is NOT butchered or dressed it will have health issues with the heart, bones, muscles, tendon and sores from sitting all the time”).

¹⁵³ For example, the featherless chicken developed to “more likely survive in warmer conditions” by a scientist at the Hebrew University in Jerusalem (*see* Emma Young, *Featherless Chicken Creates a Flap*, NEW SCIENTIST (May 21, 2002), <https://www.newscientist.com/article/dn2307-featherless-chicken-creates-a-flap>), should not be labeled organic because the loss of feathers inhibits a chicken’s natural behaviors.

¹⁵⁴ David J. Wolfson, *Beyond the Law: Agribusiness and the Systemic Abuse of Animals Raised for Food or Food Production*, 2 ANIMAL L. 123, 126 (1996).

G. Euthanasia

Proposed Rule section 205.238(e) includes no specific guidelines as to when a sick or injured animal may be euthanized, although the notice portion of the Proposed Rule (Notice, at 21965) provides that “[i]n certain cases, livestock may be suffering from an illness from which recovery is unlikely.” We recommend that, for purposes of euthanasia, the Proposed Rule specify that an animal is “sick” only when recovery is unlikely. Thus, euthanizing an animal that could recover with reasonable (as opposed to extraordinary) medical treatment would not be permitted.

H. Handling Prior to Slaughter

Current regulations require animals held at slaughter facilities and awaiting slaughter to be provided food and water only after 24 hours. We recommend that the Proposed Rule require the provision of water after 8 hours and food after 18 hours. In addition, we recommend that holding pens at slaughter houses be required to have adequate bedding consistent with prevalent climate conditions, and that specific prohibitions on mistreatment and abuse be added to require that animals awaiting slaughter be treated as humanely as if they were still at the organic producer. Penalties for violations should include disqualification of the facility as an organic slaughter facility.

IV. TRANSPORTATION

A. Background

Current organic regulations do not address the humane treatment of animals during transportation. As a result, sick, injured and non-ambulatory animals are commonly transported for sale or slaughter. Thousands of animals also die during transit due to these conditions. Farmed animals in the United States are transported an average of 1,000 miles prior to slaughter.¹⁵⁵ Under current law, animals may be denied food, water, bedding, or space to lie down for 28 hours of consecutive transport and may endure weather conditions that range from extreme heat to extreme cold.¹⁵⁶

As described in an investigation by the Humane Society of the United States:

Animals are injured during loading, then forced to negotiate dark truck interiors, steep ramps, narrow doorways, sharp turns, and slippery flooring. They are loaded so hurriedly that they knock down or climb onto those animals ahead of them and are crowded so tightly that they injure or suffocate each other. During their journey (which may last for sixty hours), they are forced to endure extremes of weather in all climates and deprived of food and/or water. As they are unloaded, they are driven from trucks onto filthy, slippery loading ramps, often over the

¹⁵⁵ HSUS, AN HSUS REPORT: HUMAN HEALTH IMPLICATIONS OF LONG-DISTANCE LIVE FARM ANIMAL TRANSPORT 1, http://www.humanesociety.org/assets/pdfs/farm/pubhealth_transport.pdf .

¹⁵⁶ An HSUS Report: Human Health Implications of Long-Distance Live Farm Animal Transport (citing Wilson TM, Logan-Henfrey L, Weller R, and Kellman B., *Agroterrorism, biological crimes, and biological warfare targeting animal agriculture*, 2000).

bodies of their dying companions. They stumble, sometimes breaking their legs, yet are forced to continue this final journey on their knees. Weak, crippled, old, young, and lame animals are mercilessly ramrodded through auction yards and their maze of holding pens, chutes, and sales arenas, then reloaded to endure another journey to a feedlot, finishing yard, slaughterhouse, or yet another auction.¹⁵⁷

As noted by the United Nations Food and Agriculture Organization (“FAO”), “[t]ransport of livestock is undoubtedly the most stressful and injurious stage in the chain of operations between farm and slaughterhouse and contributed significantly to poor animal welfare and loss of production.”¹⁵⁸ The stresses and heightened susceptibility of animals to disease during transportation have caused the FAO to recognize “[t]ransport of animals over long distances as one cause of the growing threat of livestock epidemics.”¹⁵⁹

The Twenty-Eight Hour Law (49 U.S.C § 80502) is the only federal law that addresses the treatment of farmed animals being transported across state lines. This law generally requires that farmed animals traveling longer than 28 hours be unloaded for at least five hours, fed and provided with water before continuing on a longer journey. Time spent loading and unloading animals is not included in the time limit, and if requested in writing, animals may be confined even longer—for up to 36 hours during transport. Moreover, the law “does not apply when animals are transported in a vehicle or vessel in which the animals have food, water, space and an opportunity for rest.”¹⁶⁰ And chickens and other birds raised for food are not covered by the law at all.¹⁶¹

¹⁵⁷ HSUS, HSUS EXPOSES LIVESTOCK TRANSPORTATION CRUELTY 1 (Sept. 1984), http://animalstudiesrepository.org/cu_reps/25; see also HSUS, PETITION BEFORE THE UNITED STATES DEPARTMENT OF AGRICULTURE (2005), <http://cok.net/wp-content/uploads/2013/02/Twenty-Eight-Hour-Law-Petition-2005.pdf>.

¹⁵⁸ FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, GUIDELINES FOR HUMANE HANDLING, TRANSPORT AND SLAUGHTER OF LIVESTOCK 33 (Apr. 2001), http://www.fao.org/fileadmin/user_upload/animalwelfare/guidelines%20humane%20handling%20transport%20slaughter.pdf.

¹⁵⁹ Food and Agriculture Organization of the United Nations, *Europe vulnerable to livestock epidemics, warning delivered at FAO press conference* (Feb. 1998), <http://www.fao.org/english/newsroom/highlights/1998/980204-e.htm>.

¹⁶⁰ 49 U.S.C § 80502(c).

¹⁶¹ Letter from W. Ron DeHaven, Administrator, USDA, to Peter A. Brandt, Esq., The Humane Society of the United States (September 22, 2006) (stating that “The Twenty-Eight Hours Law was never construed as being applicable to poultry, and ... USDA does not intend to change this longstanding interpretation of the statute”), quoted in HENRY COHEN, HSUS, BRIEF SUMMARIES OF ANIMAL PROTECTION STATUTES 28 (Apr. 20, 2009), <http://www.humanesociety.org/assets/pdfs/legislation/CRS-07-animal-protection-fed-statutes.pdf>; see also *Clay v. New York Cent. R.R. Co.*, 231 N.Y.S. 424, 428 (3d Dept. 1928) (“[T]he [Twenty-Eight Hour Law] does not apply. Its provisions are confined to the transportation of animals in these words: ‘cattle, sheep, swine, or other animals.’ It does not apply to poultry; birds are not animals”); 9 C.F.R. § 89.1(a) (setting forth feeding and recommendations by species under the Twenty-Eight Hour Law, with no mention of poultry).

Violation of the law is subject to a civil penalty of \$100 to \$500 per violation.¹⁶² Notably, violations are calculated not per animal but by shipment.¹⁶³ The USDA has not developed any system of documenting the length of journeys or rest stops taken. Furthermore, until 2006, the USDA did not interpret the Twenty-Eight Hour Law to apply to transportation of animals by truck¹⁶⁴ – the most common method of transporting animals through the country. While transportation of animals via truck is now deemed to be subject to the provisions of the Twenty-Eight Hour Law, the USDA has taken the position that its role is limited to investigating and reporting violations of the Twenty-Eight Hour Law to the U.S. Department of Justice and providing transport-related guidance to field personnel.¹⁶⁵

Accordingly, enforcement of the 28-Hour Law is inconsistent at best, as demonstrated by the fact that there are no reported USDA administrative decisions involving USDA enforcement of this law since 1977, and no reported federal cases involving enforcement since 1960 despite numerous occurrences of violations.¹⁶⁶

B. Fitness for transport

1. Downed animals

a. Proposed Rule

The Proposed Rule requires that “all livestock must be fit for transport to auction or slaughter facilities.”¹⁶⁷ Specifically, the Proposed Rule would prohibit the transport for sale or slaughter of any “sick, injured, weak, disabled, blind, [or] lame animals” and provide that such animals may be medically treated or euthanized. The Proposed Rule would also require that calves be able to stand and walk without human assistance and have a dry navel cord.

¹⁶² 49 U.S.C § 80502(d).

¹⁶³ *Baltimore & Ohio Sw. R.R. Co. v. United States*, 220 U.S. 94, 104–06 (1911) (noting that the violation is calculated by shipment).

¹⁶⁴ 60 F.R. 48362, 48365 (September 19, 1995) (“The regulations in 9 C.F.R. Part 89, ‘Statement of Policy Under the Twenty-Eight Hour Law,’ set forth APHIS policy concerning the authorizing statute at 45 U.S.C. 71–74, and are written to apply only to transport by railcar. . . The Twenty-Eight Hour Law does not apply to transport by truck”).

¹⁶⁵ ANIMAL WELFARE INSTITUTE, LEGAL PROTECTIONS FOR FARM ANIMALS DURING TRANSPORT, 3, <https://awionline.org/sites/default/files/uploads/legacy-uploads/documents/FA-LegalProtectionsDuringTransport-081910-1282577406-document-23621.pdf> (citing April 2009 letter to the Animal Welfare Institute from Kevin Shea, Acting Administrator USDA-APHIS, stating that “Regulations are already in place under the Twenty-Eight Hour Law, and APHIS’ policies regarding this law support our obligation to report violations and provide guidance to our field personnel”).

¹⁶⁶ AN HSUS REPORT: THE WELFARE OF CALVES IN THE BEEF INDUSTRY, *supra* note 135, at 10; *see also* COMPASSION OVER KILLING, COK INVESTIGATION EXPOSES FARMED ANIMAL SUFFERING DURING INTERSTATE TRANSPORT (July 2005), <http://cok.net/inv/farm-animal-transport> (publishing the results of an investigation of numerous occasions of animals being transported for more than twenty-eight hours).

¹⁶⁷ Proposed Rule § 205.242(a)(2).

b. *Recommendation: Requirement for mandatory immediate medical treatment or immediate euthanasia of downed animals*

The Proposed Rule authorizes—but does not require—the provision of medical treatment or euthanasia to downed animals. We recommend that the Proposed Rule mandate immediate medical treatment or immediate euthanasia of downed animals. In recent years, public attention to the inhumane treatment of farmed animals has grown as documented inhumane conditions in farms, stockyards and slaughterhouses have revealed egregious cases of the inhumane treatment of farmed animals,¹⁶⁸ particularly downed farmed animals.¹⁶⁹ Downed animals have been subjected to physical abuse in an attempt to make them stand or walk and are sometimes left unattended for days without food, water, protection from the elements, or veterinary care.¹⁷⁰ In addition to the extreme animal cruelty often associated with the handling and slaughter of downed animals, the slaughter of such animals poses a significant human health risk. As recognized by the USDA, downed animals are more likely to carry disease, including Bovine Spongiform Encephalopathy (“BSE”, commonly known as “mad cow disease”), salmonella and E. coli.¹⁷¹

¹⁶⁸ See e.g., Joby Warrick, *They Die Piece by Piece*, THE WASHINGTON POST, Apr. 10, 2001 (alleging widespread repeated violations of the Humane Slaughter Act, including that “the government took no action against a Texas beef company that was cited 22 times in 1998 for violations that include chopping hooves off live cattle”), <http://www.abolitionistapproach.com/wp-content/uploads/2014/06/Warrick-They-Die-Piece-by-Piece-2001.pdf>; see also Statement of Senator Robert Byrd, 147 Cong. Rec. S7310 (daily ed. July 9, 2001) (“The law clearly requires that these poor creatures be stunned and rendered insensitive to pain before this process [i.e., by which they are cut, skinned and scalded] begins. Federal law is being ignored. Animal cruelty abounds. It is sickening. It is infuriating. Barbaric treatment of helpless, defenseless creatures must not be tolerated even if these animals are being raised for food – and even more so, more so”), <https://www.gpo.gov/fdsys/pkg/CREC-2001-07-09/html/CREC-2001-07-09-pt1-PgS7310.htm>.

¹⁶⁹ In its 2009 rulemaking regarding non-ambulatory cattle, the USDA recognized the significant potential for abuse and inhumane treatment of downed animals. *Requirements for Disposition of Cattle*, 74 Fed. Reg. at 11,463, <http://www.gpo.gov/fdsys/pkg/FR-2009-03-18/pdf/E9-5987.pdf> (“The Agency issued a proposed rule in response to a January 2008 investigation into events at the Hallmark/Westland Meat Packing Company that highlighted a vulnerability in our inspection system and that disclosed instances where cattle had been inhumanely handled”).

¹⁷⁰ See Patrick Battuello, *Abuse at Willet Dairy Farm*, Examiner.com, Feb. 3, 2010, <http://www.examiner.com/article/abuse-at-willet-dairy-farm> (noting that “downers [were] left unattended for days”); *Dairy’s Dark Side*, COMPASSIONATE LIVING MAGAZINE 11, (Spring/Summer 2010), <http://www.mercyforanimals.org/CL6web.pdf> (noting that a 2010 investigation of a New York dairy farm revealed “numerous cases of downed cows left to suffer for up to 12 days with no apparent provision of food, water or veterinary care”); HSUS, DOWNED ANIMAL FACT SHEET 1, http://www.humanesociety.org/assets/pdfs/109_downers_100605.pdf (noting that “[d]owned animals may be left for days without food, water, or veterinary care as they await slaughter”).

¹⁷¹ See USDA Audit Report No. 24601-10-Hy at 4 (Sept. 2009), <http://www.usda.gov/oig/webdocs/24601-10-HY.pdf> (noting that such downed animals “carry a higher risk of disease than healthy [animals]”); *Beef Over Cattle Abuse Video Escalates*, CBS NEWS (Feb. 19, 2008), http://www.cbsnews.com/8301-201_162-3846461.html.

2. *Ventilation, bedding, food and water*

a. Proposed Rule

The Proposed Rule requires that animals be transported in vehicles with “adequate and season-appropriate ventilation” to protect animals against cold and heat stresses.¹⁷² The Proposed Rule also requires bedding “as needed to keep livestock clean, dry and comfortable during transportation and prior to slaughter, however poultry are specifically excluded from the bedding requirement.”¹⁷³ The Proposed Rule also requires that “[a]rrangements for water and organic feed must be made if transport time, including all time on the mode of transportation, exceeds twelve hours.”¹⁷⁴

b. Recommendation: Specific requirements for food, water, ventilation, bedding, space

The Proposed Rule merely requires that “arrangements” for food and water be made where the transport time exceeds twelve hours, but do not clearly mandate when such food and water is to be provided to the animals. We recommend that the Proposed Rule be amended to clearly specify the time periods in which food and water shall be provided to animals. We also recommend that the maximum time with which animals shall remain without water be limited to six hours.

The Proposed Rule also does not provide adequate specificity for temperatures, ventilation or bedding requirements during transport. Accordingly, we recommend that the USDA promulgate specific requirements for temperatures, ventilation and bedding requirements.

The Proposed Rule also does not specify the amount of space to be provided for each animal during transportation. We recommend that the Proposed Rule be modified to include specific space requirements to avoid overcrowding.

In addition, the Proposed Rule specifically excludes poultry from the requirement to provide bedding. Like other livestock animals, chickens and other birds require bedding to remain “clean, dry and comfortable” during transportation; accordingly, we recommend that this exception be removed.

3. *Compliance with the Twenty-Eight Hour Law; Emergency Planning*

a. Proposed Rule

The Proposed Rule requires that animals be transported in compliance with the Twenty-Eight Hour Law and that producers or handlers “must provide all non-compliant records and subsequent corrective action related to livestock transport during the annual inspection.”¹⁷⁵ The

¹⁷² Proposed Rule § 205.242(a)(3).

¹⁷³ Proposed Rule § 205.242(a)(4).

¹⁷⁴ Proposed Rule § 205.242(a)(5).

¹⁷⁵ Proposed Rule § 205.242(a)(5).

Proposed Rule also requires that producers have in place emergency plans adequate to address possible animal welfare problems that may arise during transportation.

b. Recommendation: Modification of Twenty-Eight Hour Law

As noted above, the Twenty-Eight Hour Law provides minimal protections for animals (animals may be transported twenty-eight hours or more without food, water or rest), specifically excludes chickens and other birds from its protections, and is rarely enforced. Accordingly, requiring compliance with the Twenty-Eight Hour Law does not set a meaningful animal welfare standard for animals. Furthermore, due to under-enforcement of the Twenty-Eight Hour Law, a producer or handler may not have any “non-compliant records” despite actual violations of the law.

We recommend that the Proposed Rule be amended to provide that organically raised animals (including specifically chickens and other birds raised for food) may not be transported eight hours or more without food, water and rest. We further recommend that the USDA develop a specific inspection program to adequately ensure compliance with these transportation standards.

V. SLAUGHTER

A. Overview

As noted above, transport of livestock can be the most stressful and injurious stage in the chain of operations between farm and slaughterhouse;¹⁷⁶ however, it is without question that procedures and practices at slaughterhouses can and have contributed to the needless suffering of animals.¹⁷⁷ Not only are such practices animal welfare issues of critical importance, but slaughter practices clearly and significantly impact human health concerns¹⁷⁸ and production efficiencies. Uniform rules governing practices at slaughterhouses, along with an effective mechanism for oversight, would facilitate both humane treatment of animals and food and health safety protocols.

¹⁷⁶ FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, *supra* note 157.

¹⁷⁷ E.g., Temple Grandin, *Assessment of Stress During Handling and Transport*, 75 J. OF ANIMAL SCIENCE 249 (1997), <http://www.grandin.com/references/handle.stress.html>. In enacting the Humane Methods of Livestock Slaughter Act of 1978 (7 U.S.C. § 1901 *et seq.*), Congress recognized that “the use of humane methods in the slaughter of livestock prevents needless suffering; results in safer and better working conditions for persons engaged in the slaughtering industry; brings about improvement of products and economies in slaughtering operations; and produces other benefits for producers, processors and consumers which tend to expedite an orderly flow of livestock and livestock products in interstate and foreign commerce.”

¹⁷⁸ Hygiene and attention to mandated health standards that aim to minimize or eliminate food adulteration, pests, vermin, food-borne pathogens and spoilage and enhance overall food safety are of critical concern during all stages of food production, and perhaps none more critically so than during and following the slaughter process. Inhumane conditions at slaughter facilities contribute to worker stress, depression and other psychic injury which (aside from the obvious negative impact on the worker) can lead to worker inattentiveness, propagating other errors in judgment in terms of animal handling as well as lapses in health, safety and hygiene protocols. *See, e.g.*, Mark Hawthorne, *Inside the Life of a Factory Farm Worker*, VEGNEWS (May 1, 2013), <http://vegnews.com/articles/page.do?pageId=5732&catId=1>.

We support the USDA's efforts to address these issues through the Proposed Rules. Below are additional recommendations to effectuate the dual goals of raising standards for humane animal welfare practices and promoting food safety.

B. Current law

Section 1902 of the Humane Methods of Livestock Slaughter Act¹⁷⁹ (HMSA) applies to "livestock¹⁸⁰" and provides that "[n]o method of slaughtering or handling in connection with slaughtering shall be deemed to comply with the public policy of the United States unless it is humane."

There are two methods of slaughtering under the statute that are considered "humane." One method is ritual slaughter.¹⁸¹ The other requires that cattle, calves, horses, mules, sheep, swine, and other livestock animals¹⁸² be "rendered insensible to pain... before being shackled, hoisted, thrown, cast, or cut."¹⁸³ An animal may be made unconscious of pain "by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective."¹⁸⁴ The Secretary of Agriculture designates which methods are "practicable with reference to the speed and scope of slaughtering operations" and humane, taking into account existing methods of slaughter and current scientific knowledge.¹⁸⁵ These methods are found in the Code of Federal Regulations (C.F.R.) at 9 C.F.R. §§ 313.1 *et seq.* There is no hierarchy to indicate which of these approved slaughter practices is believed to be more humane than the others, and no mandate to use one method preferentially to others, although sources suggest that certain methods of stunning or killing, such as through use of controlled atmospheric stunning or controlled atmospheric killing, are more humane and thus should be used preferentially at least as to certain species.¹⁸⁶

¹⁷⁹ 7 U.S.C. §§ 1901-1906. This statute is commonly referred to as the "Humane Slaughter Act"; references herein will be to the HMSA.

¹⁸⁰ "Livestock" as used in the Notice and Proposed Rule includes domestically raised birds, but these animals are not covered by the HMSA. *See* footnote 182, *infra*. *But see* 7 U.S.C. § 8302, which defines an animal as any non-human member of the animal kingdom and defines livestock as "all farm-raised animals."

¹⁸¹ Section 1906 of the HMSA provides that no form of ritual slaughter is prohibited. Ritual slaughter is defined in § 1902(b) of the HMSA as "slaughtering in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and handling in connection with such slaughtering." Thus, ritual slaughter that may not otherwise meet the requirements of the HMSA is permissible and deemed to be a defined form of "humane slaughter." *See discussion, infra*, in footnotes 230 and 231 and the accompanying text.

¹⁸² Goats and other equines are included in the definition of livestock under 9 C.F.R. section 201.2 ("*Livestock*. Cattle, sheep, swine, goat, horse, mule, or other equine"). Birds are not included. The Secretary of Agriculture has authority to designate other animals as livestock, but thus far has not included any species of birds.

¹⁸³ HMSA § 1902(a).

¹⁸⁴ HMSA § 1902(a)

¹⁸⁵ HMSA § 1904(a), (b). The Secretary may foster research and investigation into other methods of slaughter that are more humane.

¹⁸⁶ *See* Slaughter Guidelines for Red Meat (<http://animalwelfareapproved.org/standards/slaughter-redmeat>). *See also* Slaughter Guidelines for Poultry (<http://animalwelfareapproved.org/standards/slaughter-poultry>). For example, carbon dioxide or anoxic gases are deemed preferable for stunning or killing swine. Notably, cattle (and other mammalian

Under current Federal regulations, acceptable methods to kill or render livestock insensible to pain include the use of carbon dioxide gas, captive bolt stunners, firearms, and electrocution. Whether a particular method is acceptable may depend on the species of livestock.¹⁸⁷ For example, cattle, calves, sheep, swine, goats, horses, mules and other equines may be killed or rendered unconscious by a single gunshot to the head¹⁸⁸ or by means of a captive bolt stunner.¹⁸⁹ If a stunner is used, it may be either a penetrating stunner that drives a bolt into the brain,¹⁹⁰ or a non-penetrating stunner (“mushroom stunner”) that drives a bolt with a flattened circular head against the external surface of the head over the brain.¹⁹¹ Stunners that inject compressed air into the cranium may not be used on cattle.¹⁹² Swine, sheep, calves, cattle, and goats may be electrocuted to produce surgical anesthesia (a state in which the animal feels no pain) or to kill them.¹⁹³ Carbon dioxide gas may be used to produce surgical anesthesia in sheep and calves, and may be used to stun or kill swine.¹⁹⁴

The USDA is responsible for ensuring HMSA compliance for facilities under its jurisdiction; state-inspected or small custom-exempt slaughterhouses are outside of its purview.¹⁹⁵

Provisions of the C.F.R. were enacted to promulgate the HMSA’s requirements for humane methods of handling livestock in connection with slaughter. Currently, the applicable regulations mandate that animals be driven at a normal walking speed with a minimum of excitement and discomfort.¹⁹⁶ Electric prods, canvas slappers, and other tools used to drive animals are allowed, but their use “must be kept to a minimum so as to reduce excitement and injury.”¹⁹⁷ Excessive use of such devices is prohibited;¹⁹⁸ however, there is no regulatory

livestock slaughtered for human consumption other than swine) typically are alive until exsanguinated. Consequently, it is crucial that stunning be complete and irreversible to ensure that the animal is unconscious at the time it is killed. As will be discussed below, there is no similar requirement for avian or poultry slaughter via exsanguination.

¹⁸⁷ If slaughter facilities are given a range of permissible options with no preference given for one over the other, economic considerations—rather than animal welfare ones—are likely to drive the decision of which methods to use. We submit that scientific advancements, as well as anecdotal evidence, would allow the Department of Agriculture to assess which methods produce less suffering and change these regulations accordingly, but that is outside the scope of this comment.

¹⁸⁸ 9 C.F.R. § 313.16(a)(1)

¹⁸⁹ 9 C.F.R. § 313.15.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ 9 C.F.R. § 313.30, 313.30(a)(1) .

¹⁹⁴ 9 C.F.R. §§ 313.5, 313.5(a)(1).

¹⁹⁵ See David J. Wolfson, *Beyond the Law: Agribusiness and the Systemic Abuse of Animals Raised for Food or Food Production*, 2 ANIMAL L. 123, 126 (1996) (which describes state and federal laws relating to animals raised for food production, and outlines a path for reform).

¹⁹⁶ 9 C.F.R. § 313.2.

¹⁹⁷ 9 C.F.R. § 313.2(b).

guidance as to what constitutes “excessive use,” leaving this up to the handler’s judgment, and there is no regulation that precludes application to sensitive parts of the animal.¹⁹⁹ Moreover, objects that could cause injury or unnecessary pain, such as pipes or sharp or pointed objects, may not be used to drive animals.²⁰⁰ In addition, livestock pens, driveways and ramps must be constructed in such a way as to prevent injury or pain to the animals by providing secure footing, minimizing sharp corners, being free from sharp or protruding objects or openings, and preventing animals from changing direction while being driven.²⁰¹

The Secretary of Agriculture has authority to promulgate regulations to provide for the humane treatment of non-ambulatory livestock.²⁰² Non-ambulatory animals are those unable to walk or to rise from a recumbent position, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column or metabolic conditions.²⁰³ These regulations prohibit the dragging of conscious non-ambulatory livestock, but do not prohibit or regulate the use of electric prods on them.²⁰⁴ Disabled animals must be moved on suitable equipment, such as on stone boats,²⁰⁵ or stunned before being dragged.²⁰⁶ Dying, diseased, and disabled livestock must also be provided with a covered pen to protect them from adverse weather conditions while they await their ultimate fate.²⁰⁷ If the animals are held overnight, the pens must be large enough for them to lie down.²⁰⁸ The animals must also have access to water, and must be fed if held for longer than 24 hours.²⁰⁹

The HMSA does not apply to poultry. As noted above, the HMSA applies to livestock, as defined in 9 C.F.R. section 301.2, which currently does not include birds. Poultry slaughter is governed by the Poultry Products Inspection Act, 21 USC § 453(g)(5), which provides:

(g) The term “adulterated” shall apply to any poultry product ...

¹⁹⁸ 9 C.F.R. § 313.2(b); *see* HMSA § 1907.

¹⁹⁹ As discussed below, the NOSB would prohibit all electric prod use except in very controlled situations, but such prohibition is not included in the Proposed Rule. In light of our current understanding of the suffering caused by overuse of electric prods, the Proposed Rule should adopt the NOSB recommendations rather than simply import the standards of the HMSA.

²⁰⁰ 9 C.F.R. § 313.2(c).

²⁰¹ 9 C.F.R. § 313.1(a), (b), (d).

²⁰² *See* HMSA § 1907(b)

²⁰³ 9 C.F.R. § 309.2(b).

²⁰⁴ 9 C.F.R. § 313.2(d)(2)

²⁰⁵ Stone boats, although undefined in existing regulations, are a type of sled for moving heavy objects. *See* 9 CFR § 313(d) (prohibiting the dragging of conscious downed animals, and requiring that such animals may only be moved on “equipment suitable for such purposes; e.g., stone boats”).

²⁰⁶ 9 C.F.R. § 313.2(d)(2), (3)

²⁰⁷ 9 C.F.R. § 313.1(c), § 313.2(d)(1).

²⁰⁸ 9 C.F.R. § 313.2(e).

²⁰⁹ 9 C.F.R. § 313.2(e). Requiring animals to remain without water for up to 24 hours should not be permitted under the Proposed Rule.

(5) if it is, in whole or in part, the product of any poultry which has died otherwise than by slaughter.

“Poultry” is defined as any domesticated bird, whether live or dead,²¹⁰ and “poultry product” is defined to include a poultry carcass or part thereof, or any product made in whole or in part from any poultry carcass or part thereof.²¹¹

The humane slaughter requirements applicable to poultry are minimal. Title 9 C.F.R. section 381.65(b), purportedly the poultry equivalent of the regulations governing mammalian slaughter, requires only that “poultry must be slaughtered in accordance with good commercial practices in a manner that will result in thorough bleeding of the carcasses and ensure that breathing has stopped before scalding.” “Good commercial practices” is not defined.

C. Recommendations

Meat and poultry cannot be sold as certified organic, despite the producer’s close adherence to all production rules affecting organic livestock, if the slaughter facility itself is not certified.²¹² Thus, the consequences to organic animal agriculture producers of their slaughter facilities’ failure to adhere to organic standards could be severe. Notably, however, there currently are no regulations with respect to the handling of livestock that specifically apply to organic slaughter—certification depends merely on separating organic meat processing from non-organic meat processing to avoid cross-contamination. Indeed, most (if not all) slaughter facilities slaughter both organic and non-organic livestock. Thus, a facility can be certified as organic if it separates organic meat from non-organic meat and cleans the equipment to avoid cross-contamination.²¹³ Typically, certified slaughter facilities comply with this mandate by separating the slaughter of organic and non-organic livestock into different times of day or different days. Consequently, there are no special animal welfare standards imposed on slaughter facilities that handle organic livestock.

Consumers expect that organically farmed animals benefit from heightened welfare standards, which should include the transport and handling of animals up to and including the time of slaughter. To ensure compliance with such higher standards through the time of slaughter, and discussed in greater detail below, we recommend that staff at organic slaughter facilities be specially trained, and that inspectors be present on site at organic slaughter facilities to ensure compliance.²¹⁴

²¹⁰ 21 U.S.C. § 453(e).

²¹¹ 21 U.S.C. § 453(f). This provision includes an exception of products with poultry ingredients in relatively small proportion or which historically have not been considered as poultry products by consumers and which are exempted by the Secretary of Agriculture from the definition of poultry product.

²¹² Notice, at 21978 (“Certified organic livestock slaughtered in a non-certified slaughter facility cause the resulting meat to lose organic status”).

²¹³ James A Riddle (endowed chair in Agricultural Systems, UMN), *Why Eat Organic Meat*, <http://misadocuments.info/whyorgmeat.html>.

²¹⁴ While an inspector must assess livestock for health before permitting animals to proceed to slaughter, there is little oversight at the point of slaughter. As recognized in an audit report by the U.S. Inspector General, there is no

In addition, we recommend that slaughter facilities certified as organic be required to handle only organic livestock, rather than permitting them to process both organic and non-organic meats. This will better ensure compliance with the higher standards of organic slaughter, as staff will handle livestock consistent with organic standards rather than altering their behavior depending on whether the livestock is organic or non-organic.

We recommend that the National Organic Program (NOP) create uniform training programs and materials that are mandatory for staff at organic slaughter facilities, and that the USDA specially train dedicated staff²¹⁵ in this regard as well. We also recommend that there be fully trained inspectors dedicated exclusively to observing compliance with animal welfare conditions on site at all organic slaughter facilities with particular attention at the point of slaughter, if not daily, at least on a weekly rotating basis to ensure compliance.

We further recommend that the acceptable methods of slaughter (including practices designed to ensure that the animal is insensible before slaughter) be identified clearly within the regulation, rather than through a cross-reference to other legislation or regulations governing slaughter, and that there be a hierarchy identifying the preferred (i.e., most humane) methods based on current scientific understanding.²¹⁶

Furthermore, we note the minimal sanctions that currently apply where a slaughter facility fails to comply with applicable regulations and law. These sanctions are geared mainly to food safety and public health concerns: where a USDA inspector observes inhumane treatment at a slaughter facility, the regulations provide that the establishment operator be informed of the incident and asked to rectify the situation; then, if no corrective action is taken (or “satisfactory assurances” given that action will be taken), the inspector may tag the equipment as “U.S. rejected,” which, temporarily, renders any meat produced unable to be inspected, labeled and

specific staffing requirement for FSIS personnel performing humane handling inspection duties. [Evaluation of FSIS Management Controls Over Pre-Slaughter Activities](http://www.usda.gov/oig/webdocs/24601-07-KC.pdf), USDA Audit Report 24601-0007-KC, November 2008, <http://www.usda.gov/oig/webdocs/24601-07-KC.pdf>.

²¹⁵ FSIS inspectors at slaughtering facilities view their prime directive to be the implementation of food safety, not ensuring compliance with humane welfare practices. Many USDA inspectors do not enforce the Humane Slaughter Act and many do not understand the requirements for enforcement. This is a result of deficient training, which has been acknowledged by the USDA. *See* USDA Office of Inspector General, *Food Safety and Inspection Service- Inspection and Enforcement Activities at Swine Slaughter Plants, Audit Report 24601-0001-41* (May 2013). There is no criminal sanction for failure to observe the HMSA, and the only means of enforcement is through USDA inspection, which has been inconsistent. We urge the USDA to come up with a strict policy that, for example, would provide that more than two violations within a designated period automatically results in loss of organic slaughter certification. Since meat cannot be sold as organic (despite the producer’s strict observance of all production requirements) if the slaughter is not organic, such a rule would effectively impact producers, which could incentivize them to police the slaughter industry themselves, as discussed below.

²¹⁶ The NOSB made recommendations regarding slaughter performance standards; however, AMS declined to incorporate those recommendations. *See* Notice at 29718 (“*Slaughter performance standards*. The NOSB recommended a series of performance standards for slaughter facilities which would have required extensive paperwork for facilities. However, considering the current shortage of organic livestock slaughter facilities, AMS is proposing requirements. . . with the goal of limiting the burden on extant organic slaughter facilities”). We submit that limiting the paperwork burden on existing facilities is an inadequate justification for maintaining the status quo, which does not adequately protect animal welfare.

sold for human consumption.²¹⁷ We recommend that the USDA make clear that slaughter facilities must comply with animal welfare policy rules in order to obtain and maintain organic certification and to institute meaningful penalties for non-compliance. There should also be specific provisions permitting personnel at organic slaughter facilities who observe non-compliant animal welfare or health practices to anonymously report such activity to a dedicated office at the USDA and to protect such employees from retaliatory firings if or when their identities are disclosed.

To further ensure compliance, organic producers could also be encouraged to form consortiums to increase their leverage over slaughter facilities. Optimally, these consortiums would require strict adherence to organic slaughter rules and certification of compliance by an independent body.

D. Specific comments and recommendations pertaining to the Proposed Rule

I. Mammals

With respect to the slaughter of mammalian livestock, the Notice, at page 29176 of the Federal Register, states:

AMS is proposing a new § 205.242(b), regarding mammalian slaughter, to clarify the authority of the NOP, certifying agents and State organic programs to initiate compliance action if certified operations are found to have violated FSIS [Food Safety and Inspection Service] regulations governing the humane handling of mammalian livestock in connection with slaughter (note that AMS is separating mammalian from avian slaughter requirements due to differences in how mammalian and avian livestock are handled and slaughtered). This new section, entitled “Mammalian Slaughter,” would govern the mammals defined as “livestock” or “exotic animals” under the FSIS regulations. Under the

²¹⁷ See 9 C.F.R. § 313.50. The first sentence of this regulation provides: “When an inspector observes an incident of inhumane slaughter or handling in connection with slaughter, he/she shall inform the establishment operator of the incident and request that the operator take the necessary steps to prevent a recurrence.” This does not specifically mandate immediate interference with operations (such as requiring an animal observed to be conscious to be rendered unconscious before further handling, killing or processing), although there have been reported instances where inspectors have so intervened. See USDA Office of Inspector General, *Food Safety and Inspection Service- Inspection and Enforcement Activities at Swine Slaughter Plants, Audit Report 24601-0001-41* (May 2013).

Moreover, the second sentence of 9 C.F.R. section 313.50 provides: “If the establishment operator fails to take such action or fails to promptly provide the inspector with satisfactory assurances that such action will be taken, the inspector shall follow the procedures specified in paragraph (a), (b) or (c) as appropriate.” Thus, a “satisfactory assurance” from the operator of the facility is all that the current regulations require to permit the facility to resume slaughter operations even where an FSIS inspector has observed an incident of inhumane treatment. While the FSIS may order the facility to halt or suspend operations, it rarely does so, even in “egregious” cases. Indeed, the USDA Office of Inspector General has acknowledged such enforcement would be appropriate but that it is rarely imposed. USDA Office of Inspector General, *Food Safety and Inspection Service- Inspection and Enforcement Activities at Swine Slaughter Plants, Audit Report 24601-0001-4, supra*.

FSIS regulations, “livestock²¹⁸” are cattle, sheep, swine, goat, horse, mule or other equine. “Exotic animals” are antelope, bison, buffalo, cattalo, deer, elk, reindeer and water buffalo. These regulations govern the handling and slaughter of the majority of mammalian animals used for food in the United States and would apply to all certified organic operations that slaughter these animals.

Notably, although the Notice goes on to state that “AMS is proposing to add a new § 205.242(b)(1) to require certified organic slaughter facilities to be in full compliance with the Humane Methods of Livestock Slaughter Act (HMSA) of 1978 (7 U.S.C, 1901 *et seq.*) and its implementing FSIS regulations,”²¹⁹ Proposed Rule section 205.242(b)(1) in fact contains no reference to the HMSA. Instead it refers to the Federal Meat Inspection Act (which itself references the HMSA) and parenthetically the FSIS regulations at 9 C.F.R. Part 313. We recommend that this omission be corrected to include a direct reference to the HMSA by name and citation.²²⁰ We further recommend that the Proposed Rule make clear that the HMSA provides minimum standards, and also recommend that provisions from the National Organic Standards Board (NOSB) recommendations, as discussed below, be added.²²¹

We believe that incorporating the NOSB’s recommendations regarding mammalian slaughter²²² would provide much needed guidance and specificity and greatly enhance animal welfare. Reliance on existing FSIS regulations is inadequate in many respects, including the following:

- (1) The NOSB recommendations would require that slaughter facilities have non-slip flooring. The current regulation (9 C.F.R. 313.1(b)) requires that livestock pens, ramps and driveways be constructed and maintained to provide “good footing for livestock,” but this has been interpreted to permit the use of sand as a floor covering—which clearly is not equivalent to rubberized or other non-slip flooring.

²¹⁸ Note that the term “livestock” in other parts of the proposed regulations clearly applies to both mammals and avians.

²¹⁹ “FSIS” stands for the USDA’s Food Safety and Inspection Service which has responsibility for administering the Federal Meat Inspection Act (“FMIA”), 21 USC § 602 *et seq.* The FMIA was created to protect the public by assuring meat and meat products that enter the nation’s food supply are safe for consumption.

²²⁰ References to the HMSA generally refer to sections 1901 through 1906 and fail to include a cross reference to section 1907; this provision, dealing with nonambulatory livestock, should also be included.

²²¹ *See also* footnotes 230 – 232 and the accompanying text.

²²² *See* Table at Notice at 21979. The table heading indicates that the recommendations may be from the “NOSB Recommendation or AMS preliminary draft proposed regulatory text,” which we refer to herein as the “NOSB recommendations.” The table summarizing the NOSB recommendations indicates that previously proposed but not included in the proposed regulations are various discrete and clear rules relating to humane slaughter procedures, including handling of livestock prior to stunning and euthanasia, as well as handling and treatment of animals in holding pens and other slaughter facility areas, and humane treatment protocols for immobile or fatigued animals. The FSIS responded to each of these recommendations and asserted that existing regulations adequately addressed each item. As detailed below, the FSIS’s responses and reliance on existing regulations fall far short of the NOSB recommendations.

Slipping or falling can be highly traumatic to animals as well as alarm surrounding animals and thereby increase the animals' overall stress levels.

- (2) The NOSB recommendation requires that “gates in the live animal area must swing freely, latch securely, and be free of sharp or otherwise injurious parts. Gates are never to be slammed on animals.” Current regulations at 9 C.F.R. 313.1(a) have no specific recommendations about gates and do not prohibit the slamming of gates on animals.
- (3) The NOSB recommendations require adequate lighting to be in place to “allow animals to be easily observed.” In its response to the NOSB recommendations, FSIS maintains that, pursuant to 9 C.F.R. section 309.1(a), livestock must be inspected on the day of slaughter; thus, the inspection requirement “requires lighting sufficient for inspectors to easily observe the animals.” However, the existing regulation does not address lighting in all areas and does not require persons other than the inspector involved in handling to have adequate lighting to properly observe the animals. Including the language in the NOSB recommendations would ensure proper observation at critical points in the slaughter process, such as determining whether an animal has been stunned to unconsciousness or remains conscious.
- (4) The NOSB recommendations further provide:

“(6) Electric prods are available *if needed for human safety or for medical use, i.e., in an effort to save down animals*. Prod use must stop after three shocks interspersed with rest periods or if the animal does not attempt to rise. Prods may never be applied to sensitive parts of the animal: eye, nose, ears, rectum or reproductive organs. Prods may not be used on animals less than twelve months of age.” (emphasis added)

In response, the FSIS notes that “[t]his provision is covered—9 C.F.R. 313.2(b)—Electric prods, canvas slappers, or other implements employed to drive animals shall be used as little as possible in order to minimize excitement and injury. *Any use of such implements which, in the opinion of the inspector, is excessive, is prohibited.*” However, the current regulation falls far short of the NOSB recommendation. Electric prods should be avoided and used only within circumscribed and specified parameters, and in no event for convenience or to coax down animals to move. Consequently, the NOSB recommendation should be adopted in the form proposed, and should include a specific statement that electrical prods are not part of normal animal handling. In addition, we recommend that the Proposed Rule include specific language dealing with (i) movement in a calm and consistent manner, (ii) avoidance of loud noises, (iii) a prohibition against forcing animals to move when there is inadequate space in front of them to do so, and (iv) clear prohibitions against beating or striking an animal, throwing an animal, or abusing or mistreating an animal. In addition, there is no restriction on the use of prods in young animals under current regulations, and the NOSB recommendation regarding animals under the age of twelve months should be incorporated in the Proposed Rule.

- (5) The NOSB recommendation requires that there be plans in place for euthanasia of sick livestock, and that euthanasia be performed by trained personnel. No such requirements exist under current regulations. 9 C.F.R. 309.13 simply provides for the disposition of condemned livestock (which are to be “killed by the official establishment, if not already dead... and shall [not] be conveyed into any department of the establishment used for edible products”). Further, the NOSB recommendation requires the slaughter facility to maintain a list of all animals euthanized and the reason for euthanasia. The NOSB recommendation would ensure that euthanasia is used appropriately and humanely.
- (6) The NOSB recommendation is that no more than “3 percent of cattle vocalize as they move through the restrainer, stunning box and stunning area...and [n]o more than 5 percent of livestock vocalize when a head holder is used during stunning or slaughter.” It is an undisputed fact that cattle and other animals vocalize when they are in pain or in distress.²²³ However, the current regulations followed by FSIS do not have a vocalization standard. Vocalization is evidence that an animal was not properly stunned. Therefore, the NOSB recommendation regarding vocalization would help ensure that humane methods are being used.

Current regulations do not require a systematic approach to humane handling, and a written plan is recommended only as an option.²²⁴ Rather than making such a written plan optional, a document setting forth the facility’s plan for humane handling of livestock should be mandatory for all organic slaughter facilities.

2. *Avian slaughter*

The Proposed Rule addresses avian slaughter—which, as previously noted, is not covered by the HMSA and therefore is not currently governed by clearly defined humane standards—separately from mammalian slaughter.

The Proposed Rule at section 205.242 (c) provides:

Avian slaughter. (1) Organic operations that slaughter organic poultry must be in compliance with the Poultry Products Inspection Act requirements (21 USC 453(g)(5) and the regulations at 9 C.F.R. 381.1(b)(v), 381.90 and 381.65(b)).

²²³ Temple Grandin, *Assessment of Stress During Handling and Transport*,” J. OF ANIMAL SCIENCE 249 (1997); see also Temple Grandin, *How to Determine Insensibility (Unconsciousness) in Cattle*, <http://www.grandin.com/humane/insensibility.html>.

²²⁴ “It is important to understand that there is no regulatory requirement for an establishment to have a systematic approach to humane handling.” USDA Food Safety and Inspection Services webpage, http://www.fsis.usda.gov/wps/wcm/connect/f01f41d1-bc55-42f3-8880-991814f35533/LSIT_HumaneHandling.pdf?MOD=AJPERES.

(2) Organic operations that slaughter organic poultry must provide all non-compliant records related to the use of good manufacturing practices in connection with slaughter issued by the controlling national, federal or state authority and all records of subsequent corrective actions during the annual organic inspections.

(3) Organic operations that slaughter organic poultry, but are exempt from or not covered by the requirements of the Poultry Products Inspection Act must ensure that:

- (i) No lame birds may be shackled, hung or carried by their legs:
- (ii) All birds shackled on a chain or automated system must be stunned prior to exsanguination; and
- (iii) All birds must be irreversibly insensible prior to being placed in the scalding tank.

Section 205.242(c)(3) of the Proposed Rule partially incorporates recommendations offered by the NOSB regarding avian slaughter: while the NOSB recommendations were intended to set minimum requirements for organic avian slaughter in all facilities, the Proposed Rule only sets minimum standards for organic poultry slaughter in facilities that are exempt from or not covered by the Poultry Products Inspection Act.²²⁵ The FSIS response to the NOSB recommendations is that 9 C.F.R. section 381.65(b) sufficiently addresses avian slaughter. That regulation requires that “poultry must be slaughtered in accordance with good commercial practices in a manner that will result in thorough bleeding of the carcasses and ensure that breathing has stopped before scalding.” However, “good commercial practices” does not define or require humane standards with respect to avian slaughter. In addition, the consequence for allowing poultry that is still breathing to enter the scalding tank (who then die from drowning and thus not by slaughter) is that the meat is considered adulterated and unfit as human food. There is no fine or other consequence for failing to ensure that the bird is dead before scalding. Moreover, if birds are dead before scalding but were mistreated prior to slaughter, FSIS staff are directed to “discuss the mistreatment with the establishment managers at the next weekly meeting.”²²⁶

²²⁵ The NOSB recommendations appear in the Notice at 21979-21980 and provide that “(1) No lame birds may be shackled, hung or carried by their legs. (2) All birds shackled on a chain or automated system must be stunned prior to exsanguination. (3) All birds must be irreversibly insensible prior to being placed in the scalding tank.” These provisions were captured in section 205.242(c)(3) of the Proposed Rule.

²²⁶ The USDA publication, *Disposition/Food Safety: Humane Handling of Livestock/Good Commercial Practices in Poultry*, offers the following as part of its inspector training module:

If the establishment is not following good commercial practices, and birds are dying other than by slaughter, you are to document a noncompliance record citing 9 C.F.R. § 381.65(b). If birds are being mistreated, but can still be fully bled and not breathing when they enter the scalding tank, you must discuss the mistreatment with establishment managers at the next weekly meeting. In addition, you are to document the discussion and any planned actions on the part of the establishment in a MOI. Give a copy of the MOI to establishment managers, keep a copy in the inspection file, and send a copy to the DVMS. The DVMS will review the MOI and determine if

Under 9 C.F.R. 500.3(b), FSIS may, in its discretion, suspend assignment of inspectors at an establishment without prior notification for human handling violations that are egregious, but this remedy is rarely used.²²⁷

The “good commercial practices” standard leaves a gaping hole with respect to the humane treatment of birds prior to slaughter. Applicable regulations should list the acceptable manner in which poultry may be slaughtered. Further, current law includes no requirement that an establishment have a written plan describing its own particular form of good commercial practice. An organic establishment should not simply be “encouraged” to have a written plan; it should be required to have one.

Accordingly, we recommend that the Proposed Rule include a requirement, effective immediately, that any new facility applying for certification as an organic slaughter facility must have and make available to any requesting producer and to USDA enforcement staff a written plan outlining the facility’s practices. The plan would be reviewed and approved before the facility could operate as a certified organic slaughter. Existing facilities should be required to comply with the same requirement within one year of enactment or lose the ability to slaughter organically raised animals.

We also recommend that the Proposed Rule be revised to mandate that, in all cases, birds slaughtered at an organic facility must be *irreversibly* stunned prior to exsanguination, and that if a bird regains consciousness, it is to be re-stunned. No rule currently requires this basic humane standard.

E. Recommendation Regarding 7 C.F.R. § 205.270

7 C.F.R. section 205.270 provides in relevant part as follows:

Organic handling requirements. (a) Mechanical or biological methods, including but not limited to cooking, baking, curing, heating, drying, mixing, grinding, churning, separating, distilling, extracting, *slaughtering*, cutting, fermenting, *viscerating*, preserving, dehydrating, freezing, chilling, or otherwise manufacturing, and the packaging, canning, jarring, or otherwise enclosing food in a container *may be used to process an organically produced agricultural product for the purpose of* retarding spoilage or otherwise *preparing the agricultural product for market*. (emphasis added)

This regulation should be amended and made subject to the new rules on slaughter to ensure consistency and to prevent the possibility that organic slaughter requirements might be eschewed

additional action is warranted. If you have questions or concerns about what you’re seeing during poultry slaughter, contact the DVMS for guidance.

http://www.fsis.usda.gov/wps/wcm/connect/f01f41d1-bc55-42f3-8880-991814f35533/LSIT_HumaneHandling.pdf?MOD=AJPERES.

²²⁷ *Id.*

“for the purpose of retarding spoilage or otherwise preparing the agricultural product for market.” For example, the following language could be added after the sentence quoted above: **“Notwithstanding the preceding, slaughter of organic livestock, regardless of its purpose, may never be performed in a manner other than a specifically permitted organic slaughter pursuant to §205.242(b) or § 205.242(c).”**

F. Conclusions With Respect to Organic Slaughter Standards

While the USDA’s plan to establish standards with respect to the methods of slaughter at organic facilities is a laudable goal and a welcome development, we believe that specific regulatory requirements should be set forth directly in section 205.242 rather than merely incorporating the provisions of the HMSA. The Proposed Rule should provide a specific list of methods of slaughter for each species, hierarchically ordered to indicate which are most humane.²²⁸ Indeed, the current regulations leave significant gaps and permit lapses that may cause or contribute to animal suffering. For example, strict timeframes and observation requirements should be in place to ensure that, following any authorized procedure by which an animal has been rendered insensible to pain, the animal remains insensible to pain until its death. Clear rules must be in place for staff who should be rigorously trained in approved, humane methods of animal handling.

In addition, we believe that approved organic slaughter guidelines stricter than those currently acceptable under the HMSA and corresponding regulations, such as those proposed by the NOSB and by Animal Welfare Approved,²²⁹ would be appropriate to set a strict humane policy regarding organic slaughter.

Finally, because ritual slaughter of mammals is exempt from the provisions of the HMSA,²³⁰ wholesale importation of the HMSA into Proposed Rule section 205.242 would

²²⁸ Certain methods of killing are considered more humane than those currently approved in the Code of Federal Regulations. Anoxic gas has been found to be entirely painless and the only gas specifically authorized by the C.F.R. is carbon dioxide. For example, use of controlled atmospheric stunning or killing should be the recommended if not required method of stunning and slaughter of swine. In addition, inversion of poultry and the use of killing cones is inhumane and should be strictly forbidden in all organic slaughter.

²²⁹ See *Slaughter Guidelines for Red Meat* (<http://animalwelfareapproved.org/standards/slaughter-redmeat/lastviewed> 5.25.6). Animal Welfare Approved (“AWA”) is a non-profit organization that has established a program and food label that “promote the well-being of animals and the sustainability of family farms and meat plants and suggests its guidelines be used by plants that slaughter cattle, hogs, sheep and goats.” (A separate guideline is published for plants that slaughter poultry.) If best practices in the industry are to be used as a measuring stick, we suggest AWA’s guidelines be considered. AWA program inspectors conduct annual audits of farms to assure compliance with its criteria for sustainable farming with attention to a high degree of animal welfare, and the producer can then use the AWA designation. The AWA designation provides the consumer with assurance of compliance with these standards, and participation in its program is voluntary and free for the producer. The organization has no jurisdiction to inspect practices at slaughter facilities governed by the HMSA but its guidelines are informative, and consideration should be given to employing their inspectors, or those trained similarly, to review slaughter practices at organic facilities.

²³⁰ HMSA § 1906 provides as follows: “Exemption of ritual slaughter. Nothing in this chapter shall be construed to prohibit, abridge, or in any way hinder the religious freedom of any person or group. Notwithstanding any other provision of this chapter, in order to protect freedom of religion, ritual slaughter and the handling or other preparation of livestock for ritual slaughter are exempted from the terms of this chapter. For the purposes of this section the term ‘ritual slaughter’ means slaughter in accordance with section 1902(b) of this title.”

permit inhumane ritual slaughtering of organically raised mammals.²³¹ We believe ritual slaughter that does not otherwise conform to humane methods of slaughter should not be exempted from the general rules governing organic mammalian slaughter and, therefore, that cross-referencing mammalian slaughter rules with the HMSA and corresponding C.F.R. provisions would not be appropriate.

VI. GENERAL RECOMMENDATIONS

While we generally support the Proposed Rule, which will increase animal welfare standards for organically raised farmed animals, we offer the following recommendations to strengthen the regulations:

A. Enforcement of the regulations

We recommend that the USDA develop a specific inspection program to ensure compliance with all animal welfare standards for organically raised animals.

Audit reports by the U.S. Inspector General identify significant under-enforcement issues²³² and acknowledge USDA inspectors' lack of experience and/or understanding of FMIA and HSMA violations.²³³ These issues have reportedly continued despite efforts to “boost [FSIS'] humane handling verification inspection activities” in recent years.²³⁴ For example, a

²³¹ According to most interpretations, Kosher slaughter, or shechita, prohibits the stunning of animals before slaughter by ritual knife. Dr. Temple Grandin has approved shechita as humane; she has noted that cattle appear to lose consciousness immediately after the carotid is slit. There is, however, some dispute on this point (cattle reported to live for up to two minutes following slitting of the carotid and are conscious during this time). Also, the common practice is to shackle and hoist the living animal prior to slitting its carotid artery, which otherwise would be prohibited in organic slaughter, although it appears that this practice is mainly for convenience as opposed to a requirement of ritual slaughter. *See also* Carmine Lippolis, Animal Legal Defense Fund, *Kosher Slaughter Laws and an End to “Schackle-and-Hoist Restraint,”* (Jan. 23, 2015), <http://aldf.org/blog/kosher-slaughter-laws-and-an-end-to-shackle-and-hoist-restraint>.

As currently drafted, the Proposed Rule would, by importing the provisions of the HMSA, exempt Kosher and other ritual slaughter from humane requirements for organic slaughter and still permit them to be certified organic. We believe organic slaughter rules should not be compromised to accommodate religious beliefs.

²³² *See, e.g., Food Safety and Inspection Service – Inspection and Enforcement Activities At Swine Slaughter Plants*, USDA Audit Report 24601-0001-41 (May 2013), <http://www.usda.gov/oig/webdocs/24601-0001-41.pdf> (see page 2 of the PDF).

²³³ Evaluation of FSIS Management Controls Over Pre-Slaughter Activities, USDA Audit Report 24601-0007-KC, (Nov. 2008), <http://www.usda.gov/oig/webdocs/24601-07-KC.pdf> (“FSIS, however, does not have a formal, structured developmental program in place to demonstrate and ensure that all of its employees receive both formal and on-the-job training”); *see generally Humane Methods of Slaughter Act: USDA Has Addressed Some Problems but Still Faces Enforcement Challenges*, United States General Accounting Office, Jan. 2004, <http://www.gao.gov/new.items/d04247.pdf> (“as part of the inspectors’ new hire program, FSIS includes a module on humane handling issues; inspectors have no other formal training on the HMSA and its enforcement. Most of the deputy district managers and half of the DVMSs noted that an overall lack of knowledge among inspectors about how they should respond to an observed noncompliance has been a problem in enforcing the HMSA”).

²³⁴ *See* Kenneth E. Peterson, D.V.M., M.P.H., Assistant Administrator, Office of Field Operations, March 8, 2010, <http://www2.nycbar.org/pdf/report/uploads/20072295-CommentonDownedAnimals.pdf> (letter in response to a citizen’s inquiry).

May 2013 audit report of pig slaughterhouses highlighted “egregious [humane handling] violations where inspectors did not issue suspensions. As a result, the plants did not improve their slaughter practices, and FSIS could not ensure humane handling of swine.”²³⁵

Audit reports have also reflected an overall lack of inspectors for humane handling oversight.²³⁶ For example, data provided by the USDA between 2011 and 2013 show that the number of Food Safety and Inspection Service (“FSIS”) inspectors employed to address humane handling requirements constitutes only a small fraction of the overall number of FSIS inspectors.²³⁷ Further, a July 2013 audit report shows that more than 400 inspectors averaged more than 120 hours each two-week pay period for all of 2012.²³⁸ “OIG maintains that overworked FSIS inspectors may be risking their own and the public’s health, especially if they are tired or fatigued while performing crucial food safety-related tasks.”²³⁹

While we applaud the promulgation of heightened standards for the welfare of organically raised animals, these standards are only as good as their enforcement. Additional resources (including designated humane-handling inspectors, with no concurrent duties as food safety inspectors or approval of animals as fit for slaughter), training and inspection schemes must be implemented to ensure compliance with these standards. We specifically recommend that inspectors trained to observe animal welfare violations be placed on site at each slaughter facility, and that an inspector be present at all times at the point of slaughter to ensure conscious animals are not subjected to processing.²⁴⁰

B. Consequences for violation of the regulations

The Proposed Rule does not provide sufficient incentive for organic animal producers or slaughter facilities to adhere to its heightened humane standards. Under the Organic Foods Production Act (OFPA), the AMS, accredited certifying agents, and State Organic Programs

²³⁵ *Food Safety and Inspection Service – Inspection and Enforcement Activities At Swine Slaughter Plants*, USDA Audit Report 24601-0001-41 (May 2013), <http://www.usda.gov/oig/webdocs/24601-0001-41.pdf>. See, in particular, Section 2, Finding 4 at p. 22-27.

²³⁶ *Evaluation of FSIS Management Controls Over Pre-Slaughter Activities*, USDA Audit Report 24601-0007-KC, (Nov. 2008), <http://www.usda.gov/oig/webdocs/24601-07-KC.pdf> (noting that “inherent vulnerability exists that such violations can occur and not be detected because FSIS does not have sufficient staffing levels to provide continuous surveillance of all operating areas within and around a slaughter establishment at all times”).

²³⁷ As of September 30, 2011, FSIS employed 9,295 full-time employees. However, in that same year, “the agency devoted 152.88 FTEs [full-time equivalent, or the workload of an employed person]...to the verification and enforcement of humane handling requirements in federally inspected establishments.” USDA, 2013 Explanatory Notes: Food Safety and Inspection Service, <http://www.obpa.usda.gov/21fsis2013notes.pdf> (see pages 21-1, 21-21 of the PDF).

²³⁸ *FSIS and AMS’ Field-Level Workforce Challenges*, USDA Audit Report No. 50601-0002-31, July 2013, <http://www.usda.gov/oig/webdocs/50601-0002-31.pdf> (see page 6 of PDF).

²³⁹ *Id.*

²⁴⁰ The increased costs of salary for these inspectors could be paid by fines imposed on a facility that has any observed case of animal cruelty, or in higher processing fees for applicants re-applying for organic certification after loss of such certification due to repeated violations of the rules.

have the authority to deny, revoke, or suspend organic certification,²⁴¹ however, a producer or applicant must be informed of the noncompliance and have an opportunity to correct the noncompliance before a decision to revoke, suspend, or deny certification is made.²⁴² Additionally, willful violations of the organic regulations may result in a civil penalty of up to \$10,000. Thus, under existing regulations, a producer in violation of one of the animal welfare components of the rules may not face any consequences at all for that violation as long as the producer takes steps to prevent future violations. Moreover, the Proposed Rule also fails to take into consideration violations of applicable state and local animal cruelty laws.

To incentivize compliance and in recognition of the seriousness of violations of animal welfare requirements, we recommend that the Proposed Rule be amended to (i) require compliance with all applicable state and local animal cruelty laws and (ii) require the assessment of a serious financial penalty for each substantiated act of noncompliance with the animal welfare requirements of the organic regulations (willful or otherwise).

* * *

For the above reasons, the Committee supports the Proposed Rule and offers the aforementioned recommendations to strengthen the Proposed Rule.

Sincerely,



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cc:

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²⁴¹ 7 C.F.R. § 205.405(a) (authority to deny certification); 7 C.F.R. § 205.660(b)(1), (2) (authority to revoke or suspend organic certification).

²⁴² 7 C.F.R. § 205.662.

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