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*Via Federal eRulemaking Portal*

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Jennifer Tucker, Ph.D.  
National Organic Program  
USDA-AMS-NOP  
1400 Independence Ave SW  
Room 2642-So., Ag Stop 0268  
Washington, DC 20250-0268

***RE: ASPCA Comments, Notice of Proposed Rulemaking, National Organic Program, Strengthening Organic Enforcement, AMS-NOP-17-0065***

Dear Dr. Tucker:

Thank you for the opportunity to submit comments on the U.S. Department of Agriculture’s (“USDA” or the “Agency”) Notice of Proposed Rulemaking to amend the USDA organic regulations to strengthen oversight and enforcement in the National Organic Program (“NOP”).<sup>1</sup> The American Society for the Prevention of Cruelty to Animals (“ASPCA”) is a not-for-profit organization incorporated in 1866 by a special act of the New York State legislature. The ASPCA’s mission is to provide effective means for the prevention of cruelty to animals throughout the United States. It is North America’s oldest humane organization, and one of the largest in existence today, with millions of supporters nationwide.

The ASPCA appreciates USDA’s efforts to strengthen oversight and enforcement in the NOP and to promote transparency in the organic supply chain, as reflected in the proposed rule. However, these efforts do not go far enough to safeguard organic integrity and build consumer trust in the USDA Organic seal. As discussed further below, in order to truly achieve these goals, USDA must promulgate and enforce meaningful animal welfare standards in the NOP. In the absence of such standards, USDA must consistently interpret and effectively enforce existing requirements. To that end, at a minimum, USDA should revise the proposed rule to account for the need to strengthen enforcement of current standards that impact animal welfare.

**I. To safeguard organic integrity and build consumer trust, USDA must promulgate and enforce meaningful animal welfare standards in the NOP.**

The ASPCA has long advocated for reform to the USDA organic regulations to provide meaningful animal welfare standards. We supported the Organic Livestock and Poultry Practices

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<sup>1</sup> National Organic Program (NOP); Strengthening Organic Enforcement, 85 Fed. Reg. 47,536 (Aug. 5, 2020).

(“OLPP”) Rule and applauded the NOP and the National Organic Standards Board (“NOSB”) for their work to enact comprehensive animal welfare standards that address animals’ lives during rearing, transport and slaughter.<sup>2</sup> We subsequently condemned USDA’s misguided decision to withdraw the OLPP Rule and maintain the status quo of inadequate standards that are inconsistently interpreted and enforced.<sup>3</sup> Although the Agency persists along the wrongheaded path of undoing the progress embodied by the OLPP Rule,<sup>4</sup> we continue to urge USDA to promulgate and enforce meaningful animal welfare standards in the NOP.

Meaningful animal welfare standards, like those contained in the OLPP Rule, are necessary to protect the health and well-being of animals used to produce organic products. For example, meaningful access to outdoor spaces that are sufficiently sized, vegetated and otherwise equipped to support animals in outdoor settings could accommodate their physical needs as well as their innate drive to perform various natural behaviors. Similarly, improved environmental enrichment in indoor spaces could lead to better quality of life by allowing animals to express natural behaviors and lessening discomfort. Moreover, indoor stocking density requirements could ensure that animals—some of whom may spend their entire lives indoors—are able to move freely and that spaces are not overcrowded, thus reducing injury, stress, ammonia levels and the spread of disease. Furthermore, protective requirements for physical alterations and pain control could ensure that animals are spared from unnecessary pain and suffering, and meaningful humane handling requirements for transportation and slaughter could lessen stress and minimize pain and suffering during these moments of animals’ lives.

Meaningful animal welfare standards are also necessary to safeguard organic integrity and build consumer trust. As it stands, there is an established and substantial gap between consumer expectations as to how animals raised on certified organic farms should be treated and what the USDA organic regulations actually require in terms of animal welfare. For example, according to ASPCA-commissioned data from 2014, 68 percent of organic consumers believe that “[a]ll animals have access to outdoor pasture and fresh air throughout the day” and 67 percent believe that animals raised on certified organic farms “have significantly more space to move than on non-organic farms.”<sup>5</sup> However, the existing standards are not stringent enough to ensure that these consumer expectations are met. Moreover, they contain troubling loopholes that allow animals to be raised in factory-like conditions bearing no resemblance to these and other high-welfare expectations. Unless and until the Agency promulgates higher animal welfare standards and applies them in a way that meets consumer expectations, the USDA Organic seal will continue to fall short of the Organic Foods Production Act’s (“OFPA”) purpose of “assur[ing] consumers that organically produced products meet a consistent standard.”<sup>6</sup>

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<sup>2</sup> Letter from Deborah Dubow Press & Suzanne McMillan, ASPCA, to The Honorable Thomas J. Vilsack, USDA (July 13, 2016); Letter from Deborah Dubow Press & Suzanne McMillan, ASPCA, to The Honorable Sonny Perdue (June 9, 2017).

<sup>3</sup> Letter from ASPCA et al. to Dr. Paul Lewis, USDA (Jan. 17, 2018).

<sup>4</sup> See, e.g., National Organic Program (NOP); Final Decision on Organic Livestock and Poultry Practices Rule and Summary of Comments on the Economic Analysis Report, 85 Fed. Reg. 57,937 (Sept. 17, 2020).

<sup>5</sup> Edge Research, Research on Consumer Perceptions of Organic Food Standards for Treatment of Animals 1 (Apr. 2014), [https://www.aspc.org/sites/default/files/aspc-2014\\_organic\\_survey.pdf](https://www.aspc.org/sites/default/files/aspc-2014_organic_survey.pdf).

<sup>6</sup> 7 U.S.C. § 6501.

The vast majority of consumers already support higher animal welfare standards on certified organic farms. FoodNavigator-USA reports that, according to The Hartman Group, which released its Organic and Beyond 2020 report earlier this year, “78 [percent] of consumers believe there should be more stringent animal welfare requirements for the USDA organic certification.”<sup>7</sup> In addition, a Consumer Reports survey from 2017 found that “86 percent [] of consumers who often or always buy organic food say it’s highly important that animals used to produce these foods are raised on farms with high standards for animal welfare” and that “83 percent of these consumers think it’s highly important that organic eggs come from hens that were able to go outdoors, and have enough space to move around freely.”<sup>8</sup> Finally, ASPCA-commissioned data indicates that consumers across the board—organic and non-organic alike—overwhelmingly support outdoor access requirements that would provide for higher animal welfare on certified organic farms, such as access to open pasture and access to natural ground as opposed to concrete.<sup>9</sup>

To the extent that USDA endeavors to safeguard organic integrity and build consumer trust, the proposed rule simply does not go far enough. USDA must promulgate and enforce meaningful animal welfare standards to better protect animals and ensure that on-farm conditions reflect consumer expectations for products that bear the USDA Organic seal.

## **II. Absent meaningful animal welfare standards, USDA must ensure that existing requirements are consistently interpreted and effectively enforced.**

While the ASPCA continues to urge USDA to promulgate meaningful animal welfare standards, the Agency should not ignore the requirements that already exist. A primary purpose of the OFPA—and of the proposed rule—is to ensure that organic products meet consistent standards.<sup>10</sup> As such, USDA must ensure that existing requirements, including those that provide for some degree of animal welfare, are consistently interpreted and effectively enforced.

In recent years, USDA has focused on assessing compliance with the pasture practice standard.<sup>11</sup> Quality time on vegetated pastures and range is central to animals’ physical, mental and social well-being. Therefore, the ASPCA appreciates efforts made to date to bring attention to ruminant access to pasture, evaluate compliance and promote consistency in the application of existing

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<sup>7</sup> Elizabeth Crawford, *Hartman Group: Organic ‘is still meaningful, but ... doesn’t symbolize everything’ consumers want*, FOOD navigator-usa.com (June 11, 2020), <https://www.foodnavigator-usa.com/Article/2020/06/11/Hartman-Group-Organic-is-still-meaningful-but-doesn-t-symbolize-everything-consumers-want#> (internal quotations omitted).

<sup>8</sup> Consumer Reports, *Consumer Reports Survey Finds Consumers Think its [sic] Important to Have High Animal Welfare Standards for Food Labeled Organic* (Apr. 20, 2017), <https://www.consumerreports.org/media-room/press-releases/2017/04/consumer-reports-survey-finds-consumers-thin-its-important-to-have-high-animal-welfare-standards-for-food-labeled-organic/>.

<sup>9</sup> Edge Research, *Research on Consumer Perceptions of Organic Food Standards for Treatment of Animals*, *supra* note 5, at 2.

<sup>10</sup> 7 U.S.C. § 6501; NOP Strengthening Organic Enforcement, 85 Fed. Reg. at 47,536.

<sup>11</sup> *See, e.g.*, USDA Agricultural Marketing Service, *Organic Oversight and Enforcement Update 5–6* (Feb. 2020), [https://www.ams.usda.gov/sites/default/files/media/NOP\\_Enforcement\\_Update\\_February2020.pdf](https://www.ams.usda.gov/sites/default/files/media/NOP_Enforcement_Update_February2020.pdf); USDA Agricultural Marketing Service, *Organic Oversight and Enforcement Update 6–7* (May 2019), <https://www.ams.usda.gov/sites/default/files/media/NOPEenforcementUpdateMay2019.pdf>.

requirements. Unfortunately, the proposed rule makes only two passing references to pasture.<sup>12</sup> Moving forward, USDA should fully address both the importance of meaningful access to pasture—for animal welfare and otherwise—and the ways in which the proposed amendments will better ensure compliance with, and strengthen enforcement of, existing requirements.

In addition to the pasture practice standard, certain existing requirements related to livestock health care and living conditions could—and should—be interpreted and applied to provide a basic level of animal care and well-being. These existing requirements address, *inter alia*, feed, space, exercise, indoor living conditions, outdoor access and the quality of outdoor space.<sup>13</sup> If interpreted in a consistent manner and applied in a way that focuses on the well-being of animals used to produce organic products, these requirements could form a useful framework for providing some degree of animal welfare. However, many of the relevant provisions are subjective and lack technical definitions, metrics, or other means of objective measurement.<sup>14</sup> The resulting ambiguity and gaps, along with the dearth of guidance from USDA, has led to inconsistent interpretation and poor enforcement of these requirements.<sup>15</sup> Even the Agency itself has difficulty determining which practices are and are not allowed in the NOP. For example, USDA previously took the position that the current regulations prohibit forced molting—a cruel and stressful practice that involves withholding nutrients—but recently acknowledged that is not actually the case.<sup>16</sup> While producers must comply with certain requirements related to nutrition, the current regulations do not necessarily ban forced molting. USDA’s recent acknowledgement highlights the need for clear standards and guidance to ensure that cruel practices like forced molting are not allowed in the NOP.

The lack of clear standards or guidance, combined with ineffective enforcement, has contributed to an environment where companies raising animals in factory-like conditions are allowed to enter the organic market. These companies greatly increase the number of animals used to produce “organic” meat, dairy and eggs, and their presence in the organic market creates an unequal playing field for producers who are raising animals pursuant to better welfare standards that are more consistent with both the letter and the spirit of the existing regulations. For example, millions of egg-laying hens—those laying what USDA estimates to be 70 percent of all

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<sup>12</sup> NOP Strengthening Organic Enforcement, 85 Fed. Reg. at 47,578, 47,581 (referencing pasture in the context of the potential for unannounced inspections that are targeted or otherwise limited in scope).

<sup>13</sup> See 7 C.F.R. §§ 205.238–239.

<sup>14</sup> See *id.* (requiring, e.g., that producers provide animals with year-round access to the outdoors but failing to specify the type or duration of such access or the dimensions of the outdoor space); see also, USDA Office of Inspector General, Oversight of the National Organic Program 22 (Mar. 2010), [https://www.cornucopia.org/USDA/OIG\\_AuditofNOP.pdf](https://www.cornucopia.org/USDA/OIG_AuditofNOP.pdf).

<sup>15</sup> See e.g., National Organic Program (NOP); Organic Livestock and Poultry Practices, 82 Fed. Reg. 7,042 (Jan. 19, 2017); USDA Office of Inspector General, Oversight of the National Organic Program, *supra* note 14, at 22.

<sup>16</sup> NOP Final Decision on Organic Livestock and Poultry Practices Rule and Summary of Comments on the Economic Analysis Report, 85 Fed. Reg. at 57,939–40.

“organic” eggs<sup>17</sup>—are relegated to indoor porch systems.<sup>18</sup> This approach—which fails to meet the hens’ basic needs and does not provide true outdoor access—is a particularly egregious illustration of the factory-like conditions that cause preventable animal suffering in the NOP.

The lack of clear standards can also cause confusion and lead to misconceptions among consumers seeking to purchase products from higher welfare farms. That consumers are becoming more concerned with farm animal welfare and increasingly seeking out products from farms that provide better treatment underscores the need for effective enforcement of the existing regulations. Data collected by Nielsen in 2016 and 2018 show that sales of welfare-certified eggs have been increasing for the past several years.<sup>19</sup> This is consistent with ASPCA-commissioned research from 2018, which found that the majority of consumers—irrespective of age, gender, race, education, income, geographic location, or political affiliation—are concerned with the well-being of farm animals and make purchasing choices to address this concern.<sup>20</sup> Many consumers look to product packaging to inform their choices, and nearly three-quarters of consumers report being likely to switch products in favor of those offering adequate assurances of higher animal welfare standards.<sup>21</sup>

Collectively, the problems surrounding the interpretation and enforcement of existing requirements related to livestock health care and living conditions threaten the NOP’s mission and undermine the credibility of the USDA Organic seal. If the Agency truly aims “to assure consumers that organic products meet a robust, consistent standard and reinforce the value of the organic label,” as the proposed rule seeks to do,<sup>22</sup> then USDA must start by ensuring that existing requirements are consistently interpreted and effectively enforced to provide animals with a basic level of care and well-being.

### **III. USDA should revise the proposed rule to account for the need to strengthen enforcement of current standards that impact animal welfare.**

Although the proposed rule is meant to protect organic integrity and build consumer trust by, *inter alia*, “providing robust enforcement of the USDA regulations,”<sup>23</sup> it fails to account for the need to strengthen enforcement of existing requirements that impact animal welfare. As discussed above, in the absence of higher welfare standards, USDA must consistently interpret and effectively enforce existing requirements. Therefore, at a minimum, the Agency should revise the proposed rule so that it expressly accounts for strengthening enforcement of current

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<sup>17</sup> USDA Agricultural Marketing Service, Regulatory Impact Analysis and Final Regulatory Flexibility Analysis, Organic Livestock and Poultry Practices Final Rule 83–84 (Jan. 2017), <https://www.ams.usda.gov/sites/default/files/media/OLPPSupplementalDocAnalysis.pdf>.

<sup>18</sup> USDA has described these systems as “an enclosed porch with a roof, mesh walls and cement floor.” USDA, Organic Livestock and Poultry Practices Final Rule, Questions and Answers 1 (Jan. 2017), <https://www.ams.usda.gov/sites/default/files/media/OLPPEexternalQA.pdf>.

<sup>19</sup> ASPCA, Certified Eggs: A Certifiable Success Story (2019), [https://www.aspc.org/sites/default/files/aspc\\_2019\\_certified\\_eggs\\_a\\_certifiable\\_success\\_story.pdf](https://www.aspc.org/sites/default/files/aspc_2019_certified_eggs_a_certifiable_success_story.pdf).

<sup>20</sup> Memorandum from LRP to ASPCA, Results from a Survey of American Consumers 1 (Feb. 1, 2019), [https://www.aspc.org/sites/default/files/aspc-2018\\_animal\\_welfare\\_labelling\\_and\\_consumer\\_concern\\_survey.pdf](https://www.aspc.org/sites/default/files/aspc-2018_animal_welfare_labelling_and_consumer_concern_survey.pdf).

<sup>21</sup> *Id.* at 3–7.

<sup>22</sup> NOP Strengthening Organic Enforcement, 85 Fed. Reg. at 47,536.

<sup>23</sup> *Id.*

standards that impact animal welfare as a necessary component of restoring organic integrity and rebuilding consumer trust.

First, USDA should account for animal welfare as a “commonly cited area[] for improvement” along with, and, in some cases, as a component of, “certification of excluded handlers, organic import oversight, fraud prevention, organic trade arrangements, and organic inspector qualifications.”<sup>24</sup> USDA itself has recognized the need to improve animal welfare standards, as has the NOSB and many other stakeholders, through the OLPP rulemaking process and in other fora.<sup>25</sup>

Second, USDA should acknowledge that inconsistent interpretation and poor enforcement of existing standards that impact animal welfare perpetuate significant growth in the number of animals raised in disparate ways to produce “organic” meat, dairy and eggs. In the proposed rule, USDA states that

the growth and complexity of the modern organic industry has exposed the limitations of the current organic regulations, revealing oversight and enforcement that the original regulations do not address. A lack of clear and specific standards in portions of the regulations has sometimes led to different interpretations of the regulations, inconsistent practices and unequal enforcement across the industry.<sup>26</sup>

This is particularly true in the context of animal welfare. The use of indoor porch systems for egg-laying hens demonstrates how the current standards, as interpreted and enforced, lead to disparities within the organic market. USDA has confirmed as much, recognizing “the current ambiguity about outdoor access for poultry,”<sup>27</sup> and the existence of “two very different organic egg production systems in the United States...currently able to utilize the organic seal and capture a premium from consumers.”<sup>28</sup>

Third, USDA should recognize that consistent interpretation and application of the existing livestock health care and living conditions requirements are necessary for the strengthened training and inspection requirements in the proposed rule to have any benefits for animals. During on-site inspections—including any unannounced on-site inspections required once the proposed rule is implemented—certifying agents must verify, *inter alia*, “[t]he operation’s compliance or capability to comply with the [OFPA and USDA organic regulations].”<sup>29</sup> Thus, certifying agents are already required to verify compliance with existing requirements that

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<sup>24</sup> *Id.*

<sup>25</sup> *See, e.g.*, NOP Organic Livestock and Poultry Practices, 82 Fed. Reg. 7,042; NOSB, Formal Recommendation by the National Organic Standards Board (NOSB) to the National Organic Program (NOP) (Dec. 2, 2011), <https://www.ams.usda.gov/sites/default/files/media/NOP%20Livestock%20Final%20Rec%20Animal%20Welfare%20and%20Stocking%20Rates.pdf>.

<sup>26</sup> NOP Strengthening Organic Enforcement, 85 Fed. Reg. at 47,538.

<sup>27</sup> USDA, Organic Livestock and Poultry Practices Final Rule Webinar 3 (Jan. 18, 2017), <https://www.ams.usda.gov/sites/default/files/media/OLPPWebinarSlidesScript.pdf>.

<sup>28</sup> USDA, Organic Livestock and Poultry Practices Final Rule, Questions and Answers, *supra* note 18, at 1

<sup>29</sup> 7 C.F.R. § 205.403.

impact animal welfare. While the ASPCA supports strengthening training requirements for inspectors as well as accreditation and enforcement staff, and mandating a minimum number of unannounced inspections annually,<sup>30</sup> USDA provides no assurances that existing requirements will be interpreted and applied in a way that better protects animal health and well-being once these aspects of the proposed rule have been implemented.

In sum, absent higher welfare standards urgently needed in the NOP, USDA must consistently interpret and effectively enforce existing requirements that could—and should—provide a basic level of animal care and well-being. To that end, the Agency should revise the proposed rule to account for the need to strengthen enforcement of current standards that impact animal welfare.

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Thank you for the opportunity to comment on the proposed rule to strengthen organic enforcement. Please feel free to contact us with any questions.

Sincerely,



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<sup>30</sup> See NOP Strengthening Organic Enforcement, 85 Fed. Reg. at 47,549, 47,554–55.