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November 10, 2022

Erin Healy, M.P.H Director, Standards Division  
USDA-AMS National Organic Program  
1400 Independence Avenue, SW  
Room 2646-So., Ag Stop 0268  
Washington, DC 20250-0268

**Re: National Organic Program: Organic Livestock and Poultry Standards**  
Docket ID: AMS-NOP-21-0073

Dear Ms. Healy:

On behalf of Attorneys for Animals, Inc. (AFA), we respectfully submit comments in support of the Organic Livestock and Poultry Standards (OLPS) proposed rule, and specifically urge its speedy implementation. Founded in the 1990s, AFA is a Michigan non-profit and 501(c)(3) organization of legal professionals and advocates who believe the lives of animals can be improved by use of the legal system.

We are heartened that the United States Department of Agriculture (USDA) Agricultural Marketing Service (AMS) is again proposing a rule that provides upgraded standards for farmed animal welfare on the farm, in transit, and at slaughter. However, requiring rapid compliance with the rule—and all its provisions—is necessary for consumers, animals, and producers alike.

For over three decades, the Organic Foods Production Act of 1990 has given the USDA authority to establish national organic standards that provide consumer assurance.<sup>1</sup> The statute states that the “National Organic Standards Board *shall* recommend. . . [additional standards] . . . for the care of livestock” (emphasis added).<sup>2</sup> But studies show that many consumers who buy organic products have animal welfare expectations that are not met by producers using the organic label.<sup>3</sup>

Consumers want to be assured that the organic eggs they buy do not come from hens who have never stepped foot outside, and that the organic chicken they buy was raised with enough space to spread his or her wings.<sup>4</sup> And Congress has made it clear that “[i]nformed consumers are essential to the fair and efficient functioning of a free market economy.”<sup>5</sup>

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<sup>1</sup> 7 U.S.C. § 6501(2).

<sup>2</sup> 7 U.S.C. § 6509(d)(2)

<sup>3</sup> 5 NOSB Resolution on the Organic Livestock and Poultry Practices (OLPP) Rule, (Apr. 21, 2017) (available at <https://www.ams.usda.gov/sites/default/files/media/OLPPResolutionFinalRec.pdf>)

<sup>4</sup> AWI and ASPCA, 2022 Survey on Public Perception of Animal Welfare in the USDA Organic Program (Sept. 2022) (available at [https://www.aspc.org/sites/default/files/awi\\_aspca\\_organic\\_consumer\\_survey\\_summary\\_2022\\_final.pdf](https://www.aspc.org/sites/default/files/awi_aspca_organic_consumer_survey_summary_2022_final.pdf))

<sup>5</sup> 15 U.S.C §1451.

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But the USDA organic label currently does not provide these assurances. Thus, consumers in the United States are spending more on organic products that do not in reality conform to their expectations.

This discrepancy, however, is not simple agency malfeasance. In 2017, after decades of public input, the USDA developed requirements and proposed a final rule that guaranteed some minimums of animal welfare under the USDA Organic label. Under 7 U.S.C. § 6509(g), the Secretary of Agriculture “*shall* hold public hearings and *shall* develop detailed regulations, with notice and public comment, to guide the implementation of the standards for livestock products provided under this section” (emphasis added). But as you know, in 2018, despite widespread public and industry support, the agency withdrew the rule.

The 2017 proposed rule drew over 50,000 comments, and fewer than 30 of them opposed the rule. The proposal to withdraw the rule received over 70,000 comments while approximately 50 comments supported its withdrawal. This decision disregarded 7 U.S.C. § 6509(g)’s command to allow public comment “to guide the implementation of the standards for livestock.”

The 2017 iteration of the rule was set to be fully implemented in a single year with two exceptions: 1) organic egg operations certified before March 20, 2020, were given until March 21, 2022 to comply with outdoor access requirements, and 2) organic broiler chicken producers were given until March 20, 2020.

Now, the 2022 iteration of this rule proposes the possibility of allowing producers up to 15 years to comply with the rule’s outdoor space requirements for chickens. There are no legitimate technical, economic, or administrative reasons to give these industries until 2037 to comply with a rule that has been widely supported by both consumers and producers for years.<sup>6</sup>

The stated reason for this exceedingly generous phase-in relates to IRS depreciation rules, which was then used as a basis for Scenario 4’s phase-in timeframe. We argue this is at odds with the purpose of the statute and is therefore unreasonable and arbitrary.

A streamlined timeline will reduce confusion, ensure that organic producers are able to fairly enter the market, and—most importantly—assure US consumers.<sup>7</sup> If Scenario 4’s 15-year timeline is implemented, a child who is currently in elementary school will not know until they are well out of high school whether the USDA Organic eggs they consume are from hens who were given care, space, and outdoor access, or if the hens lived and died in a dim wire cage that provided less space than a single sheet of letter-sized paper. The administration of Scenario 4 would not “assure consumers that organically produced products meet a consistent standard” more than 30 years after the law went into effect.<sup>8</sup>

The decision to withdraw the rule has unreasonably delayed agency action and consumer assurance; we therefore urge the agency to make the Organic Livestock and Poultry Standards rule effective without further delay, and propose the following timeline:

**The new rule should be fully implemented in a single year with two exceptions:** 1) current organic egg operations may have two years to comply with outdoor space requirements, and 2) current organic broiler chicken producers may likewise have two years to comply with indoor space requirements. Producers

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<sup>6</sup> 5 NOSB Resolution on the Organic Livestock and Poultry Practices (OLPP) Rule, (Apr. 21, 2017) (available at <https://www.ams.usda.gov/sites/default/files/media/OLPPResolutionFinalRec.pdf>)

<sup>7</sup> 7 U.S.C. § 6501(2).

<sup>8</sup> *Id.*

certified after the rule's effective date must immediately comply with all of the rule's provisions, without exception.

These exceptions would allow current organic egg and broiler producers an additional year to meet requirements that have been in the works for decades while minimizing consumer and market confusion. The very proposals that could be subject to the longest delays, i.e., providing outdoor space requirements for chickens, are the very ones that have a significant impact on both consumers and the welfare of animals.<sup>9</sup>

The agency does not have to offer lengthy and cumbersome timelines to help the industry; it has established alternative options to assist organic farmers that do not come at the expense of consumers, animals, or producers. For example, in August 2022 the USDA announced a broad-based initiative to assist organic farmers.<sup>10</sup>

Attorneys for Animals supports strengthening animal welfare standards and asks for the proposed rules to be fully implemented in no more than two years.

Very truly yours,



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Beatrice M. Friedlander, J.D.  
President, Attorneys for Animals



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Annie Sloan  
University of Michigan Law School  
J.D. Candidate, Class of 2023

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<sup>9</sup> 9 National Organic Program (NOP); Organic Livestock and Poultry Standards, 87 Fed. Reg. 48,565 (Aug. 9, 2022).

<sup>10</sup> Press Release, USDA to Invest up to \$300 million in New Organic Transition Initiative (Aug. 22, 2022),

<https://www.usda.gov/media/press-releases/2022/08/22/usda-invest-300-million-new-organic-transition-initiative>.