

# United States Senate

WASHINGTON, DC 20510

July 26, 2016

The Honorable Tom Vilsack  
Secretary  
United States Department of Agriculture  
1400 Independence Avenue, SW  
Washington, DC 20250

Dear Secretary Vilsack:

We write to you to request additional information in relation to the proposed rule, "National Organic Program; Organic Livestock and Poultry Practices."

The proposed rule raises significant concerns regarding the impact on current organic poultry and egg producers as well as access and price for organic consumers. Further, proposed changes to outdoor access standards could have a detrimental impact to both animal health and food safety. To address these concerns, we request clarification on the following issues:

## **Impact on Producers**

- 1) The Agricultural Marketing Service (AMS) proposes that new organic egg producers would likely enter the market as a result of these new standards. How many new producers and how much new production volume is estimated?
- 2) AMS acknowledges that there was a 39 percent increase in the number of organic layers between 2013 and 2015 (3.2 million additional organic layers). However, any additional hen houses built to house these new layers were not factored into the average age estimate of houses which was included in the proposed rule. If new organic aviary houses began operation in 2013-2016, how would the average age estimate need to be adjusted to include these houses? Does AMS plan to incorporate the depreciation schedule of these new facilities before finalizing a compliance schedule?
- 3) Organic egg and poultry producers contract with a large number of organic grain producers for feed. AMS asserts that a large number of organic producers will convert to cage-free or other types of production in lieu of assuming the cost burden of attempting to meet the proposed organic standards. Has AMS evaluated the market impact on organic grain producers and their organic rotation crops, such as organic beans?
- 4) The proposed rule estimates costs based on two producer response scenarios: (1) all producers have land or are able to acquire needed land and remain in organic production; and, (2) 45 percent of organic egg production transitions to cage-free. Why did AMS choose not to include in the estimate any cost for producers if they needed to make modifications to their current infrastructure or build entirely new structures to comply, in addition to purchasing additional land?

- 5) AMS did not provide an estimate of increased costs specifically for organic turkey producers. Please provide an estimation of increased costs of complying with the proposed outdoor space standards, as well as a more thorough market analysis reflecting any increase in price or decrease in availability of organic turkey products for consumers.

### **Impact on Consumers**

- 1) Since 2012, organic egg production has doubled, and, by all reasonable projections, consumer demand for these products continues to grow. The proposed rule cites a Consumer Reports survey that indicates consumers are willing to pay between \$0.21 and \$0.49 more per dozen if hens have access to the outdoors. However, the same study showed that less than half of respondents believed that hens already had outdoor access. The study also did not ask consumers whether porches should be considered outdoor access or how much space each hen should have. Under the aforementioned scenario in which 90 percent of producers leave the market, what would be the potential impact on retail organic egg prices? In your response, please include an average price per dozen in comparison with current average prices. In addition, please include the potential effect that changes in the retail price may have on consumer purchase behaviors, which is different than willingness to pay.
- 2) AMS asserts that the changes in the regulation are necessary to “maintain consumer confidence in the high standards represented by the USDA organic seal” and to clarify “consumer confusion about the significance of the organic label with regard to outdoor access.” What actions will AMS take to educate and inform consumers regarding the changes in the requirements for organic poultry and egg producers?
- 3) In addition to the impact on organic feed and rotational crops, the proposed rule would impact organic products that use breakers or organic poultry products as ingredients. Did AMS incorporate any potential impacts for these secondary markets as a part of its cost impact analysis? If not, please provide an estimate of potential effect on the prices and supply in these areas. Will these estimates be incorporated into the economic impact evaluation for a final rule?

### **Impact on Animal Health and Food Safety**

- 1) The federal government spent approximately \$800 million on the highly pathogenic avian influenza (HPAI) outbreaks last year. The instructions from USDA’s Animal and Plant Health Inspection Service (APHIS) to producers during the HPAI outbreak were to contain flocks indoors and keep birds away from wild waterfowl, rodents and other pests. USDA/APHIS also requires biosecurity plans that restrict access to wild birds, rodents and pests in order to receive an indemnity payment. This regulation would place a significant numbers of birds in uncovered, outdoor spaces, making it challenging to meet recommended biosecurity measures. AMS indicates that the regulation would allow for periods of containment during outbreaks, but states that “the potential for disease

outbreak is not sufficient cause. A documented occurrence of the disease in the region” is necessary. This appears to follow a reactive approach as opposed to the preventative approach supported by APHIS. Could you clarify why AMS chose to pursue a different approach to disease mitigation? How does USDA plan to reconcile requirements for biosecurity and uncovered, outdoor access?

- 2) FDA's "Production, Storage, and Transportation of Shell Eggs" (21 CFR 118) requires producers to reduce flock exposure to rodents and pests. APHIS has reported that "flocks where pests such as flies, wild birds, and rodents had access to the feed prior to it being fed (hoppers, lines, etc.) were 6.2 times more likely to test positive" for *Salmonella*. Some elements of the proposed rule appear to contradict guidance and regulation related to reducing risk of contamination. Did AMS consult with the APHIS Veterinary Services (VS) and the Food and Drug Administration (FDA) on the possible implications the proposed rule may have on Animal Health and Food Safety? If so, please provide additional information on how AMS incorporated any recommendations from APHIS-VS and FDA into the proposed rule.
- 3) The disease risk and outdoor access standard is ambiguous in the new 7 CFR 205.241. Did USDA/APHIS change its definition for "local disease risk"? What will be USDA's standard procedure for determining and implementing the disease risk level moving forward?
- 4) AMS states that the primary purpose of the regulation is to "clarify how producers and handlers must treat livestock and poultry to ensure their health and wellbeing." However, AMS also indicates that the rule will result in increased mortality, chiefly attributed to increased predation, disease and parasites from greater outdoor access." Several third party animal welfare certification systems embrace strong animal welfare standards without requiring practices that increase mortality. Did AMS consider alternative animal welfare standards that did not increase bird mortality and, if so, why did AMS determine that standards that do increase mortality were preferable from an animal welfare standpoint?

## Conclusion

We thank you in advance for considering our concerns regarding the proposed rule and providing us the requested information. In addition, we strongly encourage the Department of Agriculture to conduct a more thorough economic analysis of the cost to producers and impact to organic markets and consumers before moving forward with any additional action on this regulation.

Sincerely,

  
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Senator Pat Roberts

  
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Senator Debbie Stabenow



Senator Thad Cochran



Senator Mitch McConnell



Senator John McCain



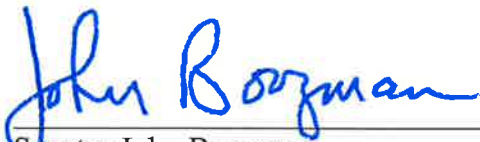
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Senator Robert P. Casey, Jr




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Senator John Boozman



Senator John Hoeven



Senator Gary C. Peters



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