

# IS “ORGANIC” HUMANE?: THE RELATIONSHIP BETWEEN ANIMAL WELFARE AND USDA ORGANIC

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## INTRODUCTION

Many consumers mistakenly assume that the “USDA Organic” label reflects heightened animal welfare standards.<sup>1</sup> In fact, few standards in the United States Department of Agriculture (USDA) National Organic Program (NOP) relate to animal welfare, even though the USDA has authority over “the care of livestock.”<sup>2</sup> Current NOP standards minimally require producers to provide livestock and poultry organic feed, sanitary living conditions, and adequate care to maintain their health.<sup>3</sup> NOP standards focus predominantly on creating uniformity among organically produced agricultural products.<sup>4</sup> These standards address the production, processing, marketing, and labeling of organic products<sup>5</sup>—but they do not address important animal welfare concerns like living space, pain control measures, slaughter, and transportation.<sup>6</sup>

In response to this regulatory gap, interest groups have called on USDA to incorporate more meaningful animal welfare standards in the NOP. In 2017, USDA promulgated the Organic Livestock and Poultry Practices (OLPP) rule, which added various animal welfare standards to the NOP, but was ultimately delayed and withdrawn—despite broad support from

farmers, consumers, animal advocacy organizations, and the NOP’s own advisory board. Recently, the Biden administration has signaled its willingness to consider reinstating the rule<sup>7</sup> and while the fate of the OLPP remains uncertain, it is clear that many organic producers are still not adopting the animal welfare standards that consumers expect.

This brief examines the movement to include animal welfare standards in the National Organic Program, from analyzing consumer perceptions of the USDA Organic label, to exploring the legal context and evolving status of the OLPP rule. It also includes policy considerations for advocates seeking to inform consumers and advance animal welfare through the National Organic Program.

# BACKGROUND: ANIMAL WELFARE IN AGRICULTURE

Modern advances in agriculture have significantly altered the landscape for farmed animals. Since the 1970s, the number of farms in the US has decreased while the average farm size has doubled.<sup>8</sup> During this time, federal agricultural subsidies strongly supported commodity crops, which producers primarily used for farmed animal feed.<sup>9</sup> This facilitated a shift away from small and medium-sized farms, and toward large farms.<sup>10</sup> In animal

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agriculture, these large facilities are often classified as concentrated animal feeding operations (CAFOs) and are sometimes referred to as “industrialized animal agriculture” or “factory farms.”<sup>11</sup> CAFOs raise a large number of farmed animals

on relatively small plots of land. Today, US producers raise 99 percent of farmed animals on factory farms.<sup>12</sup>

The growth and evolution of CAFOs have raised many animal welfare concerns.<sup>13</sup> CAFO-farmed animals are confined throughout their lives in overcrowded spaces, often without access to fresh air, sunlight, or vegetation.<sup>14</sup> These conditions lead to mental, emotional, and physical health issues, including the spread of disease.<sup>15</sup> Producers often use antibiotic feed preventively to combat these unsanitary conditions, but also to increase growth rates.<sup>16</sup> In addition, producers routinely perform physical alterations—teeth clipping, tail docking, debeaking—without pain control, causing farmed animals immense pain and health complications.<sup>17</sup> Other common practices include culling male chicks,<sup>18</sup> castrating male piglets,<sup>19</sup> forcibly impregnating female cows,<sup>20</sup> and, in the dairy industry, separating male calves from their mothers at birth to use for veal.<sup>21</sup> These practices prevent farmed animals from engaging in their natural behaviors, which furthers their suffering.<sup>22</sup> And they raise significant questions about both ethics and food safety.

Consumers rely on food packaging and labels to communicate information about products, including animal welfare.<sup>23</sup> An American Humane Association survey revealed that 95 percent of consumers believe

certain labels signify heightened animal welfare standards, including the “Organic” label.<sup>24</sup> A 2017 Consumer Reports survey showed that 60 percent of Americans believe it is highly important that organic farmers meet high animal welfare standards.<sup>25</sup> This percentage increased to 86 percent among Americans who always or often purchased organic.<sup>26</sup> Despite these consumer preferences, animals raised organically are often confined to tight spaces, physically altered, and deprived of access to the outdoors.<sup>27</sup> This data reveals a significant discrepancy between what the USDA Organic label means and how consumers perceive it.

## What Does ‘Humanely Raised’ Mean?

Consumers’ mistaken beliefs are partially attributed to the widespread use of “humanely raised” labels on organic meat products.<sup>28</sup> Although USDA’s Food Safety and Inspection Service (FSIS) requires premarket approval for special meat and poultry labels, like “humanely raised,” FSIS does not inspect or require third-party certification to verify such labels.<sup>29</sup> Additionally, FSIS does not define “humanely raised,” but instead allows each producer to define their “humanely raised” claim.<sup>30</sup> Thus, producers use varying and inconsistent standards for “humanely raised.”<sup>31</sup>

**For more information about animal welfare claims see:**

- [Farm Animal Welfare Certification Guide](#)
- [Labels Unwrapped, Protein Food Labels Overview](#)

Due to consumer confusion over the USDA Organic label, various interest groups have advocated for adding animal welfare standards to the NOP.<sup>32</sup> For example, Center for Food Safety, National Organic Coalition, Organic Eggs, Organic Valley, Pete and Gerry’s, Humane Society of the United States, and Whole Foods Market all supported efforts to add livestock and poultry welfare regulations to the NOP.<sup>33</sup> Some farming groups opposed these efforts, arguing that adding such animal welfare standards would financially devastate the organic industry.<sup>34</sup>



# THE LEGAL CONTEXT OF ANIMAL WELFARE

The legal framework in the US sets minimum animal welfare standards through a number of laws,<sup>35</sup> specifically, the Humane Methods of Slaughter Act, Twenty-Eight Hour Law, and Animal Welfare Act. The Organic Foods Production Act (OFPA) and the National Organic Program (NOP) also provide specific welfare standards for organic producers. While these laws provide for certain animal welfare standards, the proposed OLPP rule would have added more meaningful animal welfare standards to the NOP that better reflect consumer perceptions.<sup>36</sup>

## Animal Welfare Statutes

The primary federal animal welfare statute that applies to farmed animals is the **Humane Methods of Slaughter Act (HMSA)**.<sup>37</sup> Congress enacted the HMSA in 1958.<sup>38</sup> The HMSA gave USDA authority to promulgate regulations establishing humane methods of slaughter.<sup>39</sup> The HMSA covers “all food animals”—except for poultry, even though more poultry are slaughtered for food than all other farmed animals combined.<sup>40</sup> Finally, the HMSA addresses animal welfare only at the slaughterhouse, leaving states to regulate on-farm production practices.<sup>41</sup> Many states have exempted farmed animals from their animal cruelty laws or added exemptions for “normal” husbandry practices.<sup>42</sup>

Consumers and animal advocates have expressed concerns over the HMSA’s “humane” methods of slaughter.<sup>43</sup> The HMSA requires that slaughter “be carried out only by humane methods” and that animals be “rendered insensible to pain.”<sup>44</sup> Despite this directive, USDA has promulgated rules that compromise humane slaughter. For instance, in 2019 USDA increased swine slaughter line speeds.<sup>45</sup> Various groups sued USDA in response, arguing it acted contrary to the HMSA due to the intrinsic connection between line speeds and humane slaughter.<sup>46</sup> The complaint included evidence that increased line speeds intensify instances of inhumane handling.<sup>47</sup> For example, it detailed how slaughterhouse workers at one facility pushed “twice as many pigs into a carbon dioxide chamber . . . beating them on the back

## The Limits of Federal Animal Welfare Laws

### Humane Methods of Slaughter Act (1958)

Focused on slaughter

- Does not cover poultry
- Applies only at federally inspected slaughterhouses
- Has not always stopped USDA from promulgating rules that compromise humane slaughter, such as increased slaughter line speeds

### Twenty-Eight Hour Law (1973)

Focused on animal transport

- Does not cover poultry
- Includes numerous exemptions for accidents, “unavoidable situations,” time extensions, etc.
- Difficult to implement with low violation penalties, a lack of random inspections, and USDA’s failure to report violations

### Animal Welfare Act (1966)

Focused on laboratory animals, commerce, testing, exhibition, and research

- Excludes farmed animals from the definition of “animal”
- Excludes animals based on use, including animals used for food or fiber

### Organic Foods Production Act (1990)

Focused on organic production

- Applies only to food producers seeking a USDA Organic label
- Fails to address space allowances and enrichments, pain control, slaughter, and transportation
- Standards about outdoor access can be ambiguous





to force them in while they screamed and piled on top of one another to escape the beatings.”<sup>48</sup> Other advocacy groups similarly filed suit, pressuring USDA to change its rule.<sup>49</sup>

Finally, because the HMSA only regulates farmed animals at federally inspected slaughterhouses, farmed animals slaughtered elsewhere are legally susceptible to inhumane treatment. During the COVID-19 pandemic, slaughterhouses experienced disruptions and closures, leading producers to use ventilation shutdowns (VSD) to kill farmed animals.<sup>50</sup> VSD requires enclosing farmed animals in a building, shutting off all fans, and allowing the temperature to reach lethal levels causing the animals to die from overheating, suffocation, or exposure to toxic fumes.<sup>51</sup> Approximately 3,000 veterinary professionals and advocates petitioned the American Veterinary Medical Association (AVMA) to denounce VSD,<sup>52</sup> leading it to state that VSD should only be used in “constrained circumstances.”<sup>53</sup> These professionals and advocates cautioned that VSD is inhumane because it causes animals to slowly suffocate, sometimes for hours.<sup>54</sup> This controversial use of VSD demonstrates the HMSA’s limited ability to protect farmed animals.

In 1973, Congress enacted the **Twenty-Eight Hour Law** to develop humane standards for transporting cattle and livestock—again excluding poultry.<sup>55</sup> To comply with the law, transport companies must provide animals feed, water, and rest along their route after a 28-hour period.<sup>56</sup> However, the Twenty-Eight Hour Law includes a few important exceptions to this requirement, including (1) when there is an accident or unavoidable situation; (2) when the transport company requests a time extension; and (3) when the vehicle has food, water, and space for the animals to rest during travel.<sup>57</sup> In theory, the Twenty-Eight Hour Law provides some protections to farmed animals, but in practice, it is difficult to implement and enforce for three reasons. First, the penalties for violations are low, ranging between \$100 to \$500 per shipment violation.<sup>58</sup> Second, USDA typically inspects shipments in response to reports of potential violations rather than through random inspections.<sup>59</sup> Consequently, over the last 12 years, USDA formally inquired into only 10 violations.<sup>60</sup> Third, USDA often fails to act or report violations to the Department of Justice because it has inconsistently interpreted its authority to do so under the law.<sup>61</sup> As a result, the Twenty-Eight Hour Law often fails to protect farmed animals by ensuring humane transport.

Congress passed the **Animal Welfare Act (AWA)** in 1966.<sup>62</sup> The AWA focused on laboratory animals.<sup>63</sup> Later amendments expanded AWA’s coverage to animals in commerce, testing, exhibition, and research.<sup>64</sup> The AWA sets minimum standards of care for covered animals.<sup>65</sup> These standards address handling, housing, feeding, watering, ventilation, veterinary care, sanitization, and other similar processes.<sup>66</sup> Although consumers might expect the AWA to cover all animals—including farmed animals—the AWA excludes farmed animals in two ways.<sup>67</sup> First, the AWA excludes farmed animals from its definition of animal.<sup>68</sup> Second, the AWA excludes animals based on use, including those animals used as food or fiber.<sup>69</sup> Consequently, the AWA offers no protection to farmed animals.

Because federal law provides only minimal protections for farmed animals, consumers rely on food labels to communicate animal welfare standards.<sup>70</sup> Today, consumers rely on food labels “related to animal welfare more than they [did] just five years earlier, looking for reassurance about how farm[ed] animals were treated.”<sup>71</sup> As a result, labels—like USDA Organic—influence consumers’ purchasing decisions.<sup>72</sup>

## Organic Foods Production Act & the National Organic Program

In 1990, Congress passed the **Organic Foods Production Act (OFPA)**.<sup>73</sup> Congress enacted the OFPA “to assure consumers that organically produced products meet a consistent standard.”<sup>74</sup> To that end, Congress delegated authority to USDA to develop and oversee a national organic program.<sup>75</sup> In addition, Congress tasked USDA with creating the National Organic Standards Board (NOSB).<sup>76</sup> The NOSB is an advisory committee comprising 15 members from the organic community, including farmers, handlers, scientists, and consumer interest representatives.<sup>77</sup>

USDA promulgated standards for the NOP in 2010.<sup>78</sup> In so doing, USDA defined pertinent terms, listed allowable and prohibited substances, and outlined standards for the accreditation of producers seeking a USDA Organic label.<sup>79</sup> However, the NOP offered little guidance on animal welfare.

The NOP includes some welfare-related standards for livestock, which includes “cattle, sheep, goats, swine, poultry, [and] equine animals used for food.”<sup>80</sup>



Producers must supply livestock with organic feed.<sup>81</sup> The feed must include organic ingredients with limited exemptions for synthetic substances.<sup>82</sup> Producers also cannot give animals certain drugs, like hormones or antibiotics.<sup>83</sup> On the other hand, a producer cannot withhold medications or medical treatment from a sick animal to preserve its organic status.<sup>84</sup> In general, producers must employ preventive health care measures to promote livestock wellness.<sup>85</sup> For example, a producer must establish “appropriate housing, pasture conditions, and sanitation practices to minimize the occurrence and spread of diseases and parasites.”<sup>86</sup> Producers must also provide livestock access to pasture and the outdoors.<sup>87</sup>

The NOP standards fail to sufficiently address important animal welfare conditions, such as adequate indoor and outdoor space allowances, enrichment in those areas, pain control measures, slaughter, and transportation.<sup>88</sup> Although the NOP requires that livestock have access to the outdoors, many groups—producers, consumer advocacy organizations, and certifiers—find these standards ambiguous.<sup>89</sup> These groups have called on USDA to clarify the NOP’s access to the outdoors requirement<sup>90</sup> and to develop additional animal welfare standards.<sup>91</sup>

The National Organic Standards Board and USDA’s Office of Inspector General (OIG) have also recommended that USDA clarify its existing standards.<sup>92</sup> The NOSB has advised USDA to include more specific animal welfare standards in the NOP for over 17 years.<sup>93</sup> In addition, the OIG suggested USDA clarify its outdoor access requirement in 2010 after its report revealed inconsistent interpretations among farmers and certifying agents.<sup>94</sup> The OIG’s report noted that the NOP standards do “not specifically state how long access should be provided and how much area should be accessible to the animals.”<sup>95</sup> Shortly after the OIG released its report, USDA published a rule clarifying the access to pasture requirement for ruminants, such as sheep, cattle, and goats.<sup>96</sup> But this rule failed to address other ambiguities and animal welfare concerns,<sup>97</sup> leading the NOSB to continue advising USDA to adopt clear and meaningful animal welfare standards.<sup>98</sup>

In 2017, USDA published the Organic Livestock and Poultry Practices (OLPP) final rule.<sup>99</sup> The OLPP rule covered livestock care and living conditions, transportation, and slaughter.<sup>100</sup> It required daily

access to the outdoors, defining outdoors as “[a]ny area outside an enclosed building or enclosed housing structure, including roofed areas that are not enclosed.”<sup>101</sup> Under this definition, the outdoors had to include soil and vegetation for poultry.<sup>102</sup> The rule also prohibited several physical alterations to animals, such as debeaking and tail docking, with limited exemptions.<sup>103</sup> Lastly, it allowed farmers to use synthetic medications—not antibiotics—to alleviate animal pain or suffering when other preventive practices proved inadequate.<sup>104</sup> Overall, the rule answered years of questions and responded to many of the concerns from organic farmers, animal welfare groups, and consumers.

### What Would the Organic Livestock and Poultry Practices Rule Change?

#### Under the proposed rule, USDA certified organic producers would be:

- required to give animals access to the outdoors daily, including access to soil and vegetation for poultry;
- prevented from using certain methods of physical alteration on animals, such as debeaking and tail docking (with limited exceptions); and
- allowed to use synthetic medications, but not antibiotics, to alleviate animal pain or suffering when other preventive practices prove inadequate.

USDA subsequently withdrew the OLPP rule on May 13, 2018, before the standards took effect,<sup>105</sup> stating that the agency lacked authority to regulate animal welfare, and therefore, had improperly promulgated the rule.<sup>106</sup> USDA explained that the Organic Food Production Act’s directive to create standards “for the care” of livestock only meant healthcare—not welfare.<sup>107</sup> Consequently, USDA concluded it could not establish “stand-alone” animal welfare practices unrelated to ensuring livestock is “organically produced.”<sup>108</sup> Noting that Congress failed to define “organically produced” within the OFPA, USDA determined that “organic” means produced “without employment of chemically formulated fertilizers, growth stimulants, antibiotics, or pesticides.”<sup>109</sup> Therefore, USDA found that “care” in the OFPA limited the agency’s authority to prescribing standards related to “the ingestion or administration of non-



organic substances.”<sup>110</sup> In addition, USDA claimed its initial cost-benefit analysis for the OLPP rule was inaccurate.<sup>111</sup> USDA updated its analysis, finding that even if it had the authority, the OLPP rule would be too costly for organic farmers to implement.<sup>112</sup>

USDA’s withdrawal of the OLPP prompted producers, animal advocacy organizations, and consumer interest groups to speak out in disapproval. Organic Valley, Whole Foods Market, The Humane Society, Organic Trade Association, and National Farmers Union all released statements on USDA’s withdrawal.<sup>113</sup> In an Organic Trade Association press release, the CEO stated:

**USDA knows the public overwhelmingly supports the implementation of the Organic Livestock and Poultry Practices (OLPP) regulation. Indeed, in its announcement to withdraw the rule, USDA noted that out of the 72,000 comments it received, over 63,000 opposed the withdrawal of the final rule, and that only 50 supported its withdrawal.**<sup>114</sup>

Thereafter, the Organic Trade Association (OTA) sued USDA for delaying and then withdrawing the OLPP rule. As of February 2022, the lawsuit is pending in the US District Court for the District of Columbia.

## Organic Trade Association Litigation

In 2017, the OTA sued USDA for its repeated delay of the OLPP rule’s effective date.<sup>115</sup> USDA issued a final rule delaying the effective date<sup>116</sup> in response to President Trump’s executive order “Reducing Regulations and Controlling Regulatory Costs,” which called on federal agencies to reduce regulations and extend the effective dates of rules that had been published, but not yet gone into effect.<sup>117</sup> Two months later, the OTA amended its complaint because USDA again delayed the effective date.<sup>118</sup> In April 2018, the OTA filed a second amended complaint after USDA withdrew the rule completely.<sup>119</sup> In its second amended complaint, the OTA claimed USDA improperly withdrew the rule without consulting the National Organic Standards Board.<sup>120</sup> The OTA also challenged USDA’s argument that it lacked authority to promulgate the OLPP rule and regulate animal welfare.<sup>121</sup> Lastly, the OTA alleged that USDA’s updated cost-benefit analysis was unsubstantiated and contained numerous errors.<sup>122</sup>

The district court agreed with the OTA, finding that USDA’s updated cost-benefit analysis was flawed.<sup>123</sup> The court stayed further proceedings and provided USDA with 180 days to fix its economic modeling errors.<sup>124</sup> USDA then published its updated economic analysis for notice and comment in April 2020.<sup>125</sup> In response, the OTA submitted a comment challenging the updated analysis, stating that USDA continued to “skew and cherry-pick statistics in order to support its withdrawal of the organic animal welfare rule.”<sup>126</sup> In September 2020, USDA published the final version of its analysis.<sup>127</sup> Dissatisfied with this final version, the OTA urged the court to rule on the legal issues and mandate the OLPP rule become effective.<sup>128</sup>

However, in November 2020, the OTA changed course and requested the court halt further proceedings in anticipation of the incoming Biden administration.<sup>129</sup> The court agreed and aligned a new briefing schedule.<sup>130</sup> Several months later, in March 2021, lawmakers called on the new administration to reinstate the OLPP rule.<sup>131</sup> Senators Patrick Leahy of Vermont and John Tester of Montana, and Representatives Chellie Pingree of Maine and Peter DeFazio of Oregon sent a letter to President Biden, which stated:

**By withdrawing the final rule on Organic Livestock and Poultry Practices, the Trump administration erroneously concluded that the Organic Foods Production Act (OFPA) does not authorize existing federal organic livestock and stand-alone animal welfare standards. This conclusion, if left uncorrected, destabilizes the entire organic livestock regulatory framework, and upsets more than twenty years of well-settled organic requirements. It is also significantly out of step with organic consumers and most Americans.**<sup>132</sup>

A month later, the OTA and USDA asked the court for 30 days to agree on a settlement.<sup>133</sup> Although the court granted this request, the OTA and USDA were unable to reach an agreement.<sup>134</sup> As a result, the OTA and USDA asked the court to rule on the merits.<sup>135</sup>







In June 2021, USDA publicly announced its intent to reconsider its authority to regulate animal welfare practices.<sup>136</sup> In the statement from Secretary Vilsack, USDA also directed the National Organic Program to collaborate with the Office of Management and Budget on a rulemaking to ban porches as outdoor space for poultry.<sup>137</sup> Shortly after USDA's announcement, the OTA motioned for summary judgment, requesting the court to order USDA to reinstate the OLPP rule.<sup>138</sup> The OTA commented:

While we welcome Secretary Vilsack's statement last week. . . that the department will re-evaluate the prior administration's withdrawal of the fully vetted organic animal welfare regulation, and affirmed its commitment to outdoor access for laying hens, the policy statement alone won't guarantee a swift end to this harm. We need to have a legal ruling.<sup>139</sup>

As of February 2022, the OTA and USDA are awaiting the court's response.<sup>140</sup> One potential outcome is a decision finding USDA's withdrawal of the OLPP rule unreasonable<sup>141</sup> and an order requiring USDA to reinstate the OLPP rule. In addition, the court could require USDA to fully comply with the Administrative Procedure Act and OFPA before rescinding the OLPP rule—compliance means providing sufficient notice and comment periods, consulting the NOSB, and submitting a credible economic analysis.<sup>142</sup> Conversely, the court could determine that USDA's withdrawal of the OLPP was reasonable.<sup>143</sup> Because either party may appeal the result, the future of the OLPP rule based on this litigation remains uncertain.



## OTA Lawsuit Timeline

2017	September	OTA <a href="#">filed</a> a lawsuit against USDA in the US District Court for the District of Columbia for delaying the OLPP rule's effective date and violating the OFPA and APA.
	November	The OTA filed <a href="#">amended</a> complaint in response to USDA's further delay of the OLPP rule's effective date.
	December	USDA <a href="#">announced</a> intended withdrawal of the OLPP rule.
2018	January	The OTA <a href="#">commented</a> in disapproval of USDA's proposed withdrawal of the OLPP rule. USDA <a href="#">motioned</a> to dismiss (12(b)(1) and 12(b)(6)).
	February	The OTA <a href="#">responded</a> to USDA's motion to dismiss.
	March	USDA <a href="#">withdrew</a> the OLPP rule.
	April	The OTA filed <a href="#">second amended</a> complaint to reflect USDA's withdraw of the OLPP rule. OTA claimed USDA relied on erroneous economic evaluation in withdrawal.
	October	Court agreed to <a href="#">hear</a> case.
2019	October	OTA <a href="#">motioned</a> for summary judgment after the close of final arguments.
	November	Court granted USDA's motion to dismiss for the OTA's challenge against the <a href="#">Delay Rules</a> due to mootness. Court allowed the OTA's remaining claims move forward.
2020	March	Court <a href="#">ordered</a> USDA to fix economic modeling errors within 180 days.
	April	USDA <a href="#">opened</a> 30-day comment period on revised economic analysis.
	May	The OTA <a href="#">refuted</a> USDA's revised economic analysis in comment filed in the Federal Register.
	October	Court <a href="#">lifted</a> the stay after USDA completed court order to revise economic analysis. Court also provided a new calendar of court-ordered deadlines.
	November	The OTA filed <a href="#">third amended</a> complaint outlining the case from the time of the original filing in Sept. 2017 to the most recent developments. Former Vice President Joe Biden was elected President.
	December	Court <a href="#">granted</a> the OTA's request to stay proceeding until the incoming Biden administration was in place.
2021	March	Lawmakers <a href="#">called on</a> the Biden administration to reinstate the OLPP rule. The OTA and USDA <a href="#">requested</a> deadline extension for their joint status report to explore amicable resolution.
	April	The OTA and USDA <a href="#">requested</a> a 30-day extension for their joint status report "to allow for continued discussions to resolve or narrow the litigation."
	May	The OTA and USDA <a href="#">filed</a> a joint statute report. The OTA requested the Court to rule on the merits.
	June	USDA <a href="#">announced</a> decision to reconsider its authority to regulate animal welfare. The OTA <a href="#">filed</a> motion for summary judgement.





# POLICY ISSUES: CAN THE NATIONAL ORGANIC PROGRAM ADVANCE ANIMAL WELFARE?

Notwithstanding the strong support behind the OLPP rule, the question remains whether the NOP is the best tool to advance federal on-farm animal welfare. To explore this issue, there are three key considerations:

- I. Could the OLPP rule adequately advance animal welfare values?
- II. Do the economic costs to the organic industry outweigh the benefits?
- III. Why should organic farming regulations include animal welfare standards?

## I. Could the OLPP Rule Adequately Advance Animal Welfare Values?

Animal advocacy groups advance animal protection based on various ideologies. The two most well-known and accepted ideologies are animal welfare and animal rights.<sup>144</sup> Animal welfare advocates accept the premise that humans may use animals so long as people treat them according to certain standards.<sup>145</sup> Animal rights advocates reject the idea that humans may use animals for their benefit because animals have inherent rights.<sup>146</sup> Although these two ideologies can overlap with regard to certain issues, they are known to conflict around animal agriculture.<sup>147</sup> For example, the animal rights organization People for the Ethical Treatment of Animals (PETA) has stated that “there is no such thing as humane meat.”<sup>148</sup> Thus, the animal rights ideology complicates the issue of “humane” organic standards. Because the focus of this brief is on animal welfare, it will only address whether the NOP could advance animal welfare ideals.



## Farm Animal Welfare Committee's Five Freedoms

Animal welfare advocates diverge on how to best define welfare. Although there is no universally accepted definition, many have adopted a version of the **Farm Animal Welfare Committee's Five Freedoms**.<sup>149</sup> It is difficult to determine how much the OLPP rule would have improved farmed animal welfare; however, the rule included requirements that—on paper—could have done so:

FREEDOM FROM HUNGER AND THIRST	FREEDOM FROM DISCOMFORT	FREEDOM FROM PAIN, INJURY, AND DISEASE	FREEDOM TO EXPRESS NORMAL BEHAVIOR	FREEDOM FROM FEAR AND DISTRESS
Requires that animals be <b>free from hunger and thirst</b> “by ready access to fresh water and a diet to maintain full health and vigor.” <sup>150</sup>	Requires that animals be <b>free from discomfort</b> “by providing an appropriate environment.” <sup>151</sup>	Requires that animals be <b>free from pain, injury, and disease</b> “by prevention or rapid diagnosis and treatment.” <sup>152</sup>	Requires that animals be <b>free to express normal behavior</b> “by providing sufficient space, proper facilities and appropriate company of the animal’s own kind.” <sup>153</sup>	Requires that animals be <b>free from fear and distress</b> “by ensuring conditions and treatment, which avoid mental suffering.” <sup>154</sup>
The OLPP rule would have added transportation requirements beyond the Twenty-Eight Hour Law. The rule would have required water and organic feed be available “if transport time exceeds 12 hours.” <sup>155</sup>	Overcrowding and intense confinement causes farmed animals extreme discomfort. The OLPP rule would have defined outdoor access and set indoor and outdoor stocking densities for poultry. <sup>156</sup>	The OLPP rule would have required organic farmers to minimize pain during certain physical alterations. <sup>157</sup>	The OLPP rule would have required producers to provide shelter designed to accommodate natural behaviors over every 24-hour period, with limited exceptions. In addition, the OLPP rule would have required enrichments that encourage natural behaviors. <sup>158</sup>	The OLPP rule would have required that a “competent person” handle animals, especially for situations that are known to create fear and stress. <sup>159</sup> This would generally be someone who has the “education, training, and experience necessary to conduct physical operations quickly and easily, with minimal stress.” <sup>160</sup>

## II. Do the Economic Costs to the Organic Industry Outweigh the Benefits?

Although many groups supported the OLPP rule, some claimed the rule would devastate the organic industry.<sup>161</sup> The National Pork Producers Council opposed the OLPP rule out of concern that new requirements would make it cost prohibitive for farmers to meet organic standards.<sup>162</sup> USDA took a similar position in its updated economic analysis, explaining that the OLPP rule’s benefits did not

outweigh the costs to industry.<sup>163</sup> However, the district court in the OTA’s lawsuit against USDA found that this analysis was flawed.<sup>164</sup> Consequently, the court required USDA to fix its errors.<sup>165</sup>

USDA’s updated analysis still concluded the costs of the OLPP rule would outweigh its benefits.<sup>166</sup> The OTA disagreed and criticized USDA for again using inaccurate economic variables.<sup>167</sup> Specifically, the OTA refuted USDA’s analysis based on a different analysis conducted by an expert economist who evaluated flock production records that the OTA collected for 5.6 million organic hens.<sup>168</sup> The economist’s evaluation



showed “actual [flock] productivity [was] higher and mortality rates [were] lower than what USDA proposed in its report.”<sup>169</sup> The flaws the OTA identified in USDA’s updated analysis arguably undermine USDA’s argument that the OLPP rule would financially harm the organic industry.

In addition, the OLPP rule would have addressed economic concerns resulting from unfair competition.<sup>170</sup> The OIG’s report noted that some farmers and organic certifiers interpreted the NOP standards differently, with some requiring heightened animal welfare practices while others did not:<sup>171</sup>

[O]ne of the agents we visited had developed dimension requirements for poultry while the other three agents did not. This agent based the dimension requirements on organic industry standards that were consistent with animal welfare standards. One poultry facility we visited had considerably less outdoor access compared to the other two poultry facilities we visited. This facility had a total of 300 square feet of outdoor access for approximately 15,000 chickens [1 square foot per 50 chickens].<sup>172</sup>

As a result, farmers who meet minimal animal welfare standards can benefit more from the organic price premium than farmers who meet higher animal welfare standards.<sup>173</sup> One reason USDA created the OLPP rule was to resolve these inconsistencies and address unfair competition.<sup>174</sup> The OLPP rule would have clarified areas of confusion and placed organic farmers in a consistent position.

President Biden signed an executive order in July 2021 recognizing barriers to competition in the US—namely corporate consolidation.<sup>175</sup> The executive order “established a whole-of-government effort to promote competition” throughout many

sectors, including agriculture.<sup>176</sup> In January 2022, Biden released an “Action Plan for a Fairer, More Competitive, and More Resilient Meat and Poultry Supply Chain.”<sup>177</sup> Clarifying organic animal welfare standards compliments Biden’s plan to promote fair competition in agriculture.<sup>178</sup> The development of clear standards that address outdoor access and space could enable organic farmers to compete with each other on a more even economic playing field and resolve the issues the OIG identified in its 2010 report. Consequently, the economic benefits tilt in favor of the OLPP rule’s clarified standards.

### III. Why Should Organic Farming Regulations Include Animal Welfare Standards?

Animal welfare organizations, the NOSB, farmers, retailers, distributors, consumers, and others advocated for the OLPP rule.<sup>179</sup> The strong support behind the rule—in addition to strong consumer beliefs—suggests that animal welfare standards should be part of organic farming. A regulation like the OLPP rule is one way to drive this change.

A regulation could add clear animal welfare standards and resolve confusion among farmers, certifiers, and consumers. First, farmers and certifiers have expressed the need to clarify current standards—most notably the access to the outdoors requirement.<sup>180</sup> Clarifying current standards could address concerns of unfair competition and ensure that organic farmers meet a consistent level of animal welfare standards.<sup>181</sup> Second, a regulation could align the NOP standards with consumer beliefs as many consumers currently think the USDA Organic label incorporates a high level of animal welfare.<sup>182</sup> A regulation is one mechanism that can push the organic industry to adopt high animal welfare standards.





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## CONCLUSION

USDA's National Organic Program currently does not include meaningful animal welfare standards that protect animals and meet consumer expectations. The Organic Livestock and Poultry Practices rule would have added and clarified significant animal welfare standards, better aligning the National Organic Program with consumer perceptions about the USDA Organic label. The immense support for the rule from multiple stakeholders, including organic farming groups, illustrates that animal welfare standards should be part of organic farming, and that regulations such as the OLPP rule could create the enforceable standards needed to ensure compliance.

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### About the Center for Agriculture and Food Systems at Vermont Law School

Vermont Law School's [Center for Agriculture and Food Systems](#) (CAFS) uses law and policy to build a more sustainable and just food system. In partnership with local, regional, national, and international partners, CAFS addresses food system challenges related to food justice, food security, farmland access, animal welfare, worker protections, the environment, and public health, among others. CAFS works closely with its partners to provide legal services that respond to their needs and develop resources that empower the communities they serve. Through CAFS' Food and Agriculture Clinic and Research Assistant program, students work directly on projects alongside partners nationwide, engaging in innovative work that spans the food system.

For more information visit the Labels Unwrapped website at <http://labelsunwrapped.org/>



## Welfare Standards

WELFARE STANDARDS	INDUSTRY GUIDELINE <sup>183</sup>	CERTIFIED ORGANIC	ORGANIC LIVESTOCK & POULTRY PRACTICES RULE <sup>184</sup>
Pain relief for physical alterations	<p><b>Beef cattle:</b><sup>185</sup> Calves should be castrated before 3 months and dehorned while horn development is at the bud stage. Only states that producers may speak to a veterinarian about anesthesia.</p> <p><b>Dairy cattle:</b><sup>186</sup> Castration and branding should be performed at earliest age possible and pain mitigation should be provided based on the Veterinarian of Record's protocol.</p> <p><b>Egg-laying hens:</b><sup>187</sup> No pain relief recommended for beak trimming. Two types of beak trimming are allowed, day-old infrared treatment or trimming before 10 days old.</p> <p><b>Poultry:</b><sup>188</sup> No pain relief recommended for beak trimming. Should not remove more than 1/3 of the beak by either infrared or hot blade method.</p>	<p><b>Cattle, egg-laying hens, &amp; poultry:</b><sup>189</sup> Physical alterations permitted to promote animal welfare. Pain relief not required.</p>	<p><b>Cattle, egg-laying hens, &amp; poultry:</b><sup>190</sup> Debeaking for egg-laying hens and poultry prohibited. Recommended that all surgical procedures for livestock be done with anesthetics, analgesics, and sedatives. A competent person must perform any physical alteration, which may only be performed to promote animal welfare.</p>
Enrichments that promote natural behaviors <sup>191</sup>	<p><b>Beef cattle:</b> None included.</p> <p><b>Dairy cattle:</b> None included.</p> <p><b>Egg-laying hens:</b><sup>192</sup> The United Egg Producers is reviewing the enriched colony system that provides hens with more opportunities to express natural behaviors like perching, scratching, and foraging.</p> <p><b>Poultry:</b> None included.</p>	<p><b>Cattle, egg-laying hens, &amp; poultry:</b> None included.</p>	<p><b>Cattle, egg-laying hens, &amp; poultry:</b> None included.</p>
Access to pasture or outdoors	<p><b>Beef cattle:</b> None included.</p> <p><b>Dairy cattle:</b><sup>193</sup> If weather permits, tied cattle should have access to the outdoors.</p> <p><b>Egg-laying hens:</b> None included.</p> <p><b>Poultry:</b> None included.</p>	<p><b>Cattle, egg-laying hens, &amp; poultry:</b><sup>194</sup> Must provide year-round access for all animals to the outdoors, exercise areas, and pasture.</p>	<p><b>Cattle, egg-laying hens, &amp; poultry:</b><sup>195</sup> Animals must have unencumbered access to the outdoors year-round, unless temporary confinement is justified under a specific exception.</p>



## Welfare Standards

WELFARE STANDARDS	INDUSTRY GUIDELINE <sup>183</sup>	CERTIFIED ORGANIC	ORGANIC LIVESTOCK & POULTRY PRACTICES RULE <sup>184</sup>
Sufficient space for comfort and movement	<p><b>Beef cattle:</b><sup>196</sup> No recommended measurement of space. Feedlots allowed.</p> <p><b>Dairy cattle:</b><sup>197</sup> Provides recommended stall dimensions to allow for rising and lying down. No density recommendations for loose housing system.</p> <p><b>Egg-laying hens:</b><sup>198</sup> Caged, cage-free, and enriched colony cages may be used. (No guidelines available yet for enriched colony cages.)</p> <p><b>Poultry:</b><sup>199</sup> Recommends stocking density based on target weight.</p>	<p><b>Cattle, egg-laying hens, &amp; poultry:</b><sup>200</sup> Generally, confinement is prohibited except under certain conditions. Provides no stocking density or space requirements.</p>	<p><b>Cattle, egg-laying hens, &amp; poultry:</b><sup>201</sup> Confinement prohibited except under certain conditions. Specified minimum outdoor space requirements for egg-laying hens and poultry.</p>
Transportation limits that promote safety and health	<p><b>Beef cattle:</b><sup>202</sup> Recommends providing enough space so cattle can stand. (Federal Twenty-Eight Hour Law.)</p> <p><b>Dairy cattle:</b><sup>203</sup> Fitness to transport guidelines. Should provide water upon arrival at the destination. Should provide feed if the trip is longer than 24 hours. (Federal Twenty-Eight Hour Law.)</p> <p><b>Egg-laying hens:</b><sup>204</sup> Should not use hanging racks to move birds. Must plan transport so that feed is not withdrawn for more than 24 hours prior to slaughter. No time limit on duration of trip.</p> <p><b>Poultry:</b><sup>205</sup> Recommends that the time from catching to slaughter not exceed 12 hours. Transport modules should allow birds to sit during transport without sitting on top of each other.</p>	<p><b>Cattle, egg-laying hens, &amp; poultry:</b><sup>206</sup> Cattle cannot go longer than 28 consecutive hours before being unloaded for food, water, and rest. (Federal Twenty-Eight Hour Law applies to cattle.)</p>	<p><b>Cattle, egg-laying hens, &amp; poultry:</b><sup>207</sup> Set minimum standards for the truck, trailer, or other shipping containers. If the transport time exceeds 12 hours, all livestock must be provided with organic feed and water. For poultry, transport cannot exceed 12 hours without providing feed, even when required to withdraw feed 24 hours before slaughter.</p>





## Welfare Standards

WELFARE STANDARDS	INDUSTRY GUIDELINE <sup>183</sup>	CERTIFIED ORGANIC	ORGANIC LIVESTOCK & POULTRY PRACTICES RULE <sup>184</sup>
Animal drug standards <sup>208</sup>	<p><b>Beef cattle:</b><sup>209</sup> Must seek veterinarian approval to use medically important antibiotics for treatment of disease. Ractopamine and other growth performance drugs allowed.</p> <p><b>Dairy cattle:</b> There are no Veterinary Feed Directive drugs approved for lactating dairy cattle.<sup>210</sup> Growth performance drugs allowed, including Bovine Somatotropin (bST).<sup>211</sup></p> <p><b>Egg-laying hens:</b><sup>212</sup> Antibiotics allowed under the supervision of a veterinarian.</p> <p><b>Poultry:</b><sup>213</sup> Medicated feed, including amprolium and ionophore antibiotics, are allowed.</p>	<p><b>Cattle, egg-laying hens, &amp; poultry:</b><sup>214</sup> Prohibited from using antibiotics. However, producers cannot withhold medical treatment from a sick animal in an effort to maintain organic status.</p>	<p><b>Cattle, egg-laying hens, &amp; poultry:</b><sup>215</sup> Prohibited from using antibiotics. However, producers cannot withhold medical treatment from a sick animal in an effort to maintain organic status. Certain synthetic medications allowed to alleviate pain and suffering.</p>



# ENDNOTES

- 1 See *infra* p. 2.
- 2 See *infra* pp. 3-6; 7 U.S.C. § 6509(d)(2).
- 3 See *infra* pp. 4-5.
- 4 See *infra* p. 4.
- 5 *Id.*
- 6 Jennifer Chait, *Is Organic Livestock Production More Humane?*, THE BALANCE SMALL BUS. (June 26, 2019), <https://www.thebalancesmb.com/is-organic-livestock-production-more-humane-2538119>; see RESEARCH ON CONSUMER PERCEPTIONS OF ORGANIC FOOD STANDARDS FOR TREATMENT OF ANIMALS ASPCA 2 (April 2014), [https://www.aspc.org/sites/default/files/aspc\\_a\\_organic\\_labeling\\_public\\_memo\\_4-10-14.pdf](https://www.aspc.org/sites/default/files/aspc_a_organic_labeling_public_memo_4-10-14.pdf) (explaining how loopholes in the NOP lead to inconsistent animal welfare practices).
- 7 Statement from Agriculture Secretary Tom Vilsack on Organic Livestock and Poultry Practices Final Rule (June 17, 2021), <https://www.usda.gov/media/press-releases/2021/06/17/statement-agriculture-secretary-tom-vilsack-organic-livestock-and>.
- 8 See JAMES M. MACDONALD ET AL., FARM SIZE AND THE ORGANIZATION OF U.S. CROP FARMING, ECON. RSCH. SERV. 1, 31 (Aug. 2013), [https://www.ers.usda.gov/webdocs/publications/45108/39359\\_err152.pdf](https://www.ers.usda.gov/webdocs/publications/45108/39359_err152.pdf) (“The midpoint acreage for cropland, measured with data from the Census of Agriculture, nearly doubled between 1982 and 2007.”); JAMES M. MACDONALD & WILLIAM D. MCBRIDE, THE TRANSFORMATION OF U.S. LIVESTOCK AGRICULTURE: SCALE, EFFICIENCY, AND RISKS, ECON. RSCH. SERV. 1, 5 (Jan. 2009), [https://www.ers.usda.gov/webdocs/publications/44292/10992\\_eib43.pdf?v=0](https://www.ers.usda.gov/webdocs/publications/44292/10992_eib43.pdf?v=0) (explaining that since 1987 animal agriculture has shifted towards large farms (CAFOs) in part due to consolidation and specialization); *Student Project: Factory Farming: Overview*, PACE UNIV. [hereinafter *Factory Farming Overview*], <https://libraryguides.law.pace.edu/c.php?g=452979&p=3094147> (last updated Apr. 13, 2020) (explaining that although animal agriculture began its transition to large-scale farming in the 1920s with chickens, farmers did not follow suit until the 1970s with other farmed animals).
- 9 MACDONALD ET AL., *supra* note 8, at 31.
- 10 *Id.*
- 11 See e.g., *Protecting Farm Animals*, ASPCA, <https://www.aspc.org/animal-cruelty/farm-animal-welfare> (last visited Mar. 11, 2022); see *Animal Feeding Operations (AFOs)*, EPA, <https://www.epa.gov/npdes/animal-feeding-operations-afo#~:text=AFOs%20that%20meet%20the%20regulatory,waters%20of%20the%20United%20States> (last updated Aug. 3, 2020) (describing the legal definition for animal feeding operations).
- 12 Jacy Reese Anthis, *US Factory Farming Estimates*, SENTIENCE INST. (Apr. 11, 2019), <https://www.sentienceinstitute.org/us-factory-farming-estimates>.
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- 14 Gaverick Matheny & Cheryl Leahy, *Farm-Animal Welfare, Legislation, And Trade*, 70 L. & CONTEMP. PROBS. 325, 329 (2007); *Factory Farming Overview*, *supra* note 8.
- 15 *Id.*
- 16 Emanuel Goldman, *Antibiotic Abuse in Animal Agriculture: Exacerbating Drug Resistance in Human Pathogens*, 10 AGRIC. & ENC. SCI. COLLECTION 121, 121–23 (2004); see also Press Release, Union Of Concerned Scientists, New FDA Data Confirm What UCS Has Been Saying for Years: Antimicrobial Use in U.S. Livestock and Poultry is Massive, (Dec. 14, 2010), <https://www.commondreams.org/newswire/2010/12/14/new-fda-data-confirm-what-ucs-has-been-saying-years-antimicrobial-use-us>; *Antibiotics & Factory Farms, As You Sow*, <https://www.asyousow.org/our-work/environmental-health/antibiotics-factory-farms> (last visited Mar. 11, 2022); Helena Bottemiller, *Most U.S. Antibiotics Go to Animal Agriculture*, FOOD SAFETY NEWS (Feb. 24, 2011), <https://www.foodsafetynews.com/2011/02/fda-confirms-80-percent-of-antibiotics-used-in-animal-ag/>.
- 17 *Welfare Implications of Tail Docking of Cattle*, AM. VETERINARY MED. ASS’N (Aug. 29, 2014), <https://www.avma.org/resources-tools/literature-reviews/welfare-implications-tail-docking-cattle>; *Farm Animal Welfare*, ASPCA, <https://www.aspc.org/animal-cruelty/farm-animal-welfare> (last visited Nov. 24, 2021); see also Krista Marie McLennan, *Why Pain is Still a Welfare Issue for Farm Animals, and How Facial Expression Could be the Answer*, AGRIC., 2018, at 2–6 (explaining that routine physical alterations can lead to acute and chronic pain).
- 18 See also Erin Blakemore, *Egg Producers Pledge More Humane Fate for Male Chicks*, SMITHSONIAN MAG. (June 13, 2016), <https://www.smithsonianmag.com/smart-news/egg-producers-pledge-more-humane-fate-male-chicks-180959394/>; Tove K. Donovan, *Why the US Egg Industry is Still Killing 300 Million Chicks a Year*, VOX (Apr. 12, 2021), <https://www.vox.com/future-perfect/22374193/eggs-chickens-animal-welfare-culling>.
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- 27 See Jennifer Chait, *supra* note 9 (noting that outdoor access often differs among organic farmers, creating discrepancies between how livestock and poultry are raised under the NOP).
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- 37 7 U.S.C. §§ 1901–1907 (2006).
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- 42 See Nicole E. Negowetti, *supra* note 24, at 132 (“While all states have animal cruelty laws, [twenty-five] states specifically exempt farm animals from animal cruelty laws, and in [thirty] states certain ‘normal’ farm practices are exempted.”).
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- 57 49 U.S.C. § 80502(a); see also ANIMAL WELFARE INST., *supra* note 55, at 1, 2.
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- 59 ANIMAL WELFARE INST., *supra* note 55, at 3.
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- 73 Organic Foods Production Act of 1990, 7 U.S.C. § 6501 (2018).
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- 75 *Id.* at § 6503.
- 76 *Id.* at § 6518.
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- 78 *Animal Welfare Under the National Organic Program: A Timeline*, ANIMAL WELFARE INST. (last updated May 2017) [hereinafter AWI, *Timeline*], <https://awionline.org/sites/default/files/uploads/documents/temp/Organic-animal-welfare-timeline-rev-May-2017.pdf>.
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- 82 7 C.F.R. § 205.237; 7 C.F.R. § 205.238.
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- 84 7 C.F.R. § 205.238.
- 85 *Id.*
- 86 *Id.*
- 87 *Id.* at § 205.239.
- 88 *Animal Welfare in the National Organic Program: USDA Must Act Quickly to Protect Millions of Animals*, ASPCA 3, 5 [hereinafter ASPCA, *Animal Welfare*], [https://www.aspc.org/sites/default/files/animal\\_welfare\\_in\\_the\\_national\\_organic\\_program.pdf](https://www.aspc.org/sites/default/files/animal_welfare_in_the_national_organic_program.pdf) (last visited June 13, 2021).
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- 92 Office of Inspector General, *Oversight of the National Organic Program*, USDA, 1 (March 2010) [hereinafter *OIG Report*], [https://www.cornucopia.org/USDA/OIG\\_AuditofNOP.pdf](https://www.cornucopia.org/USDA/OIG_AuditofNOP.pdf); see also AWI, *Timeline*, *supra* note 78; ASPCA, *Animal Welfare*, *supra* note 88, at 3.
- 93 *Id.*; *Animal Welfare and Stocking Rates Final Recommendation*, NAT’L ORGANIC STANDARDS Bd. (Dec. 2, 2011), <http://www.ams.usda.gov/sites/default/files/media/NOP%20Livestock%20Final%20Rec%20Animal%20Welfare%20and%20Stocking%20Rates.pdf>.
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- 95 *Id.*
- 96 *USDA Issues Final Rule on Organic Access to Pasture*, USDA, <https://www.ams.usda.gov/press-release/usda-issues-final-rule-organic-access-pasture> (last visited June 13, 2021); LEE RINEHART & ANN BAIER, USDA, *PASTURE FOR ORGANIC RUMINANT LIVESTOCK 2* (May 2011), <https://www.ams.usda.gov/sites/default/files/media/NOP-UnderstandingOrganicPastureRule.pdf>.
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- 98 AWI, *Timeline*, *supra* note 78.
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- 101 82 Fed. Reg. at 7089.
- 102 82 Fed. Reg. at 7045.
- 103 82 Fed. Reg. at 7045.
- 104 82 Fed. Reg. at 7050.
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- 107 Organic Livestock and Poultry Practices, 83 Fed. Reg. 10775, 10777 (Mar. 13, 2018).
- 108 83 Fed. Reg. at 10776–777.
- 109 83 Fed. Reg. at 10776.
- 110 83 Fed. Reg. at 10776.
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- 112 83 Fed. Reg. at 10777.
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- 114 See *Organic Trade Association Ups Challenge to USDA Withdrawal of Animal Welfare Rule*, ORGANIC TRADE ASSOC. (Apr. 12, 2018), <https://ota.com/news/press-releases/20134>.



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- 118 *Lawsuit*, *supra* note 115.
- 119 Second Amended Complaint for Declaratory and Injunctive Relief at ¶ 8, Organic Trade Ass'n v. U.S. Dep't of Agric., No. 1:17cv01875 (D.D.C. Apr. 11, 2018).
- 120 *Id.* ¶ 8.
- 121 *Id.* ¶ 7-9; see also Memorandum of Law in Support of Plaintiff's Motion for Summary Judgement, Organic Trade Ass'n v. U.S. Dep't of Agric., No. 1:17cv01875 (D.D.C. Oct. 13, 2019) (explaining in further detail why USDA had authority under OFPA to promulgate the OLPP rule).
- 122 Second Amended Complaint, *supra* note 119, ¶ 184.
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- 124 Court Order, Organic Trade Ass'n v. U.S. Dep't of Agric., No. 17-1875 (D.D.C. Mar. 2020).
- 125 National Organic Program (NOP): Request for Comment on Organic Livestock and Poultry Practices Economic Analysis Report, 85 Fed. Reg. 22,664 (Apr. 23, 2020).
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- 127 *Id.*
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- 132 Letter to Susan Rice, Ambassador, Domestic Policy Advisor from Organic Trade Assoc. et al., (Mar. 23, 2021), [https://ota.com/sites/default/files/indexed\\_files/White%20House%20Domestic%20Policy%20Council\\_OLPP%20Coalition.pdf](https://ota.com/sites/default/files/indexed_files/White%20House%20Domestic%20Policy%20Council_OLPP%20Coalition.pdf).
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- 134 *Id.*
- 135 *Id.*
- 136 USDA, *supra* note 7.
- 137 *Id.*; see ASPCA, *Animal Welfare*, *supra* note 88, at 13 (defining porches as "screened-in rooms with roofs and solid flooring.").
- 138 Motion for Summary Judgement at 2, Organic Trade Ass'n v. U.S. Dep't of Agric., No. 1:17cv01875 (D.D.C. June 18, 2021).
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- 145 *Id.*; *Welfare vs. Rights*, ANIMAL WELFARE COUNCIL, [https://www.animalwelfarecouncil.org/?page\\_id=16](https://www.animalwelfarecouncil.org/?page_id=16) (last visited Nov. 24, 2021).
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- 153 *FAWC*, *supra* note 151, at 2.
- 154 *FAWC*, *supra* note 151, at 2.
- 155 Organic Livestock and Poultry Practices, 82 Fed. Reg. 7042, 7090 (Jan. 19, 2017) (withdrawn on May 13, 2018).
- 156 82 Fed. Reg. at 7091; ASPCA, *Animal Welfare*, *supra* note 88.
- 157 82 Fed. Reg. at 7050.
- 158 82 Fed. Reg. at 7045-46.
- 159 82 Fed. Reg. at 7051.
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- 161 See *supra* page 2.
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- 168 *Id.*
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- 170 *OIG Report*, *supra* note 92, at 22; ASPCA, *Animal Welfare*, *supra* note 88, at 6.
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- 172 *Id.* (emphasis added).
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- 177 Press Release, White House, FACT SHEET: The Biden-Harris Action Plan for a Fairer, More Competitive, and More Resilient Meat and Poultry Supply Chain (Jan. 3, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/03/fact-sheet-the-biden-harris-action-plan-for-a-fairer-more-competitive-and-more-resilient-meat-and-poultry-supply-chain/>.



- 178 *Id.* The Biden-Harris includes an initiative to clarify the Produce of USA labeling rules so “consumers can better understand where their meat comes from.” *Id.*
- 179 See *supra* p. 6.
- 180 See *supra* p. 2.
- 181 This brief does not address enforcement, however, the primary mechanism for enforcement is through the certification process for the organic label. See 7 U.S.C. §205.400 (explaining the requirements for certification).
- 182 See Paul Lewis, *USDA: Organic Labeling Should Include Animal Welfare Standards*, THE ACTION NETWORK, <https://actionnetwork.org/petitions/usda-organic-labeling-should-include-animal-welfare-standards> (last visited Oct. 1, 2020).
- 183 These industry guidelines were distilled from the recommended standards that leading industry groups created for each type of farmed animal. The Beef Quality Assurance is a national, producer-driven certification program that sets standards for US beef producers. The National Dairy FARM Program is a collaboration between the National Milk Producers Federation and Dairy Management Inc that establishes standards for US dairy producers. The National Chicken Council is a non-profit trade association that sets standards for the US broiler chicken industry. For egg-laying hens, the United Egg Producers (UEP) certifies and audits eggs. Its certification standards reflect a collaboration among US egg farmers.
- 184 Organic Livestock and Poultry Practices, 82 Fed. Reg. 7042 (Jan. 19, 2017) (withdrawn on May 13, 2018). Although this table focuses on cattle and poultry, the OLPP rule also included welfare standards for wine. See e.g., 82 Fed. Reg. at 7057 (prohibiting the use of flat decks or piglet cages and requiring indoor and outdoor space for rooting).
- 185 BEEF QUALITY ASSURANCE, CATTLE CARE & HANDLING GUIDELINES 1, 9 (2019), <https://www.bqa.org/Media/BQA/Docs/cchg2019.pdf> [hereinafter Beef Quality Assurance Standards].
- 186 NAT’L DAIRY FARM PROGRAM, ANIMAL CARE REFERENCE MANUAL VERSION 4 1, 46 (2020), [https://nationaldairyfarm.com/wp-content/uploads/2020/09/FARM\\_Animal-Care-4-Manual\\_Layout\\_FINAL\\_091520\\_SinglePages.pdf](https://nationaldairyfarm.com/wp-content/uploads/2020/09/FARM_Animal-Care-4-Manual_Layout_FINAL_091520_SinglePages.pdf) [hereinafter Dairy Farm Standards].
- 187 UNITED EGG PRODUCERS CERTIFIED, ANIMAL HUSBANDRY GUIDELINES FOR U.S. EGG-LAYING FLOCKS 1, 9 (2017), [https://uepcertified.com/wp-content/uploads/2020/02/Caged-UEP-Guidelines\\_17.pdf](https://uepcertified.com/wp-content/uploads/2020/02/Caged-UEP-Guidelines_17.pdf) [hereinafter Egg Laying Hens Standards].
- 188 NAT’L CHICKEN COUNCIL, NATIONAL CHICKEN COUNCIL ANIMAL WELFARE GUIDELINES AND AUDIT CHECKLIST 1, 8 (2020), [https://www.nationalchickencouncil.org/wp-content/uploads/2021/02/NCC-Animal-Welfare-Guidelines\\_Broilers\\_Sept2020.pdf](https://www.nationalchickencouncil.org/wp-content/uploads/2021/02/NCC-Animal-Welfare-Guidelines_Broilers_Sept2020.pdf) [hereinafter Broiler Chicken Standards].
- 189 7 C.F.R. § 205.238(a)(5); see also 7 C.F.R. § 205.2 (defining *livestock* as “any cattle, sheep, goats, swine, poultry, or equine animals”).
- 190 82 Fed. Reg. 7042, 7050.
- 191 See Fiona French & Anna Zamansky, *Designing Enrichment for Farm Animals*, in FARMJAM 2017, Jessica Lane, *What is Enrichment? How It’s Important for Livestock* (Feb. 5, 2017), <https://104homestead.com/enrichment-important-livestock/>; see also *A Practical Guide to Environmental Enrichment for Pigs*, AHDB (2017), <https://grants.royalsociety.org/tenantfiles/41/documents/enrichment-guide-2017.pdf> (providing information on enrichment for pigs).
- 192 See *Choices in Hen Housing*, UNITED EGG PRODUCERS CERTIFIED, <https://uepcertified.com/choices-in-hen-housing/> (last visited June 13, 2021).
- 193 Dairy Farm Standards, *supra* note 186, at 38.
- 194 7 C.F.R. § 205.239(a)(1)–(2); see also 7 C.F.R. § 205.239(d).
- 195 Organic Livestock and Poultry Practices, 82 Fed. Reg. 7042, 7057 (Jan. 19, 2017) (withdrawn on May 13, 2018).
- 196 Beef Quality Assurance Standards, *supra* note 185, at 20.
- 197 Dairy Farm Standards, *supra* note 186, at 37.
- 198 Egg Laying Hens Standards, *supra* note 187, at 3.
- 199 Broiler Chicken Standards, *supra* note 188, at 12.
- 200 7 C.F.R. § 205.239(d).
- 201 82 Fed. Reg. 7042, 7046–47.
- 202 Beef Quality Assurance Standards, *supra* note 185, at 15.
- 203 Dairy Farm Standards, *supra* note 186, at 91.
- 204 Egg Laying Hens Standards, *supra* note 187, at 11.
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- 206 49 U.S.C. §80502(a).
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- 208 See *Antimicrobials Sold or Distributed for Use in Food-Producing Animals*, FDA (2019), <https://www.fda.gov/media/144427/download>.
- 209 Beef Quality Assurance Standards, *supra* note 185, at 8; see CTR. FOR FOOD SAFETY, FOOD SAFETY FACT SHEET: RACTOPAMINE FACTSHEET (2013), [https://www.centerforfoodsafety.org/files/ractopamine-factsheet\\_02211.pdf](https://www.centerforfoodsafety.org/files/ractopamine-factsheet_02211.pdf); Susan A. Schneider, *Beyond the Food We Eat: Animal Drugs in Livestock Production*, 25 DUKE ENV’T L. & POL’Y F. 227, 255–61 (2015).
- 210 *Fact Sheet: Veterinary Feed Directive Final Rule and Next Steps*, FDA (Feb. 11, 2020), <https://www.fda.gov/animal-veterinary/development-approval-process/fact-sheet-veterinary-feed-directive-final-rule-and-next-steps>.
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- 212 See also *Confused about Hormones and Eggs?*, UNITED EGG PRODUCERS CERTIFIED, <https://uepcertified.com/confused-about-hormones-and-eggs/> (last visited June 11, 2021) (explaining that hormones are not used in egg-laying hens or poultry).
- 213 See Daniel Bautista & John Glisson, *What the Veterinary Feed Directive means for the Poultry Industry*, FEED STRATEGY (July 3, 2013), <https://www.feedstrategy.com/poultry/what-the-veterinary-feed-directive-means-for-the-poultry-industry/>.
- 214 7 C.F.R. § 205.238(c)(3), (7).
- 215 82 Fed. Reg. 7042, 7050.

