



# Accredited Certifiers Association, Inc.

*Accredited certifying agents working together to ensure  
the integrity of organic certification in the United States*

July 11, 2016

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

**Document Number AMS-NOP-15-0012; NOP-15-06PR; RIN 0581-AD44**

National Organic Program Organic Livestock and Poultry Practices Proposed Rule

Dear Dr. Lewis:

Thank you for the opportunity to provide comments to the National Organic Program regarding the Proposed Rule for Organic Livestock and Poultry Practices. ACA members are very supportive of the National Organic Program efforts to establish clear, consistent requirements for organic livestock and poultry management.

The Accredited Certifiers Association (ACA) represents 51 USDA Accredited Certifying Agents, both foreign and domestic. An ACA Working Group was initiated to develop our comments on the Livestock and Poultry Proposed Rule; additionally, general comments were solicited from all our members. The ACA has prepared general comments, plus has included specific wording revisions for consideration.

## **General Comments**

Our Working Group has thoroughly reviewed the new definitions and proposed revisions to the Regulation and we were impressed with the level of specificity in the Proposed Rule. The level of detail contained in the Standard will permit more consistent enforcement, and provide operators with the management information they need to meet the requirements.

During our review we did identify several sections of the Regulation that seemed to duplicate one another, and for clarity (and a shorter Regulation!) we are asking that several sections be combined. This will allow enforcement activities to identify only one section of the Rule rather than multiple sections of the Rule.

We also identified some areas where we ask for additional specifics to be contained in the Final Regulation in order to provide consistent information on which the inspector can base their findings.

## **Implementation Time Frame Comments**

The ACA is requesting an 18-month implementation period, rather than a one-year implementation period. This will permit certifying agencies to provide information to operators, revise their OSPs, and train staff. We believe that the 18-month time frame will result in a smoother, more cost effective implementation period; this is based upon our experience with the implementation of the Pasture Rule. The Pasture Rule was released in the summer and for many agencies the renewal period for that year

began in the Spring. Operators had been required to submit their annual updated OSP prior to the release of the Pasture Rule. With the summer release of the Pasture Rule, new OSPs had to be developed and sent to the operators (after they had provided their update for the year) in order that compliance could be determined prior to the effective date. This resulted in some operations completing multiple OSP updates in one year, and also undergoing multiple inspections to determine compliance with the Rule.

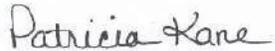
In addition, if producers must modify facilities, particularly in the case of layer houses, it will not be possible if the house is full of birds. Generally, producers have a flock of birds in the layer house for 13 months, if bringing pullets into the layer house at 16 weeks. The 18-month implementation time would allow a window for emptying of the house and modifications to be made.

We understand the desire that these revisions be implemented as soon as possible, however, a 12 - month time frame is very disruptive of the certification cycle, both for producers and certification agencies, and this results in duplication of information and additional costs.

Our specific comments and suggestions for revisions follow.

Thank you again for the opportunity to provide our comments.

Sincerely,

A handwritten signature in cursive script that reads "Patricia Kane". The signature is written in dark ink on a light-colored background.

Patricia Kane  
ACA Coordinator

**NOP Proposed Wording**

**ACA Comments / Suggested Revision**

| §205.2 Definitions  |   |
|---|---|
| <p><u>Indoors.</u> The flat space or platform area which is under a solid roof. On each level the animals have access to food and water and can be confined if necessary. Indoor space for avian species includes, but is not limited to:</p> | <p>a) As many operations have lean-to type structures or porches that are no longer considered for outdoor access, we believe these areas can be considered in the calculation for indoor space, providing the birds have unencumbered access to the areas. We request this clarification in the Final Rule.</p> <p>b) We ask for clarification regarding whether the accessible nest box areas can be included in floor space calculation? The Preamble section on <u>Avian indoor space requirements</u>, pg. 75, indicates that AMS did not accept the prohibition on inclusion of nest boxes in the floor space calculation. The Final Rule should specify the allowance for the inclusion of accessible nest box areas in the floor calculation.</p> <p>Suggested Revision:</p> <p><u>Indoors.</u> The flat space, <del>or</del> platform area, <u>or accessible nest box areas</u> which <del>is</del> <u>are</u> under a solid roof. On each level the animals have access to food and water and can be confined if necessary. Indoor space for avian species includes, but is not limited to:</p> |
| <p>(1) <u>Pasture housing.</u> A mobile structure for avian species with 70 percent perforated flooring.</p>  | <p><u>Pasture housing</u> should be revised to <i>mobile housing</i>. All pasture housing is not mobile, there are also fixed pasture housing systems, i.e. spoke &amp; wheel systems.</p>  |
| <p><u>Roost.</u> A flat structure over a manure pit that allows birds to grip with their toes as they would on a perch.</p>   | <p>Suggest removing “over a manure pit” as not all roosts are located over a manure pit; the term <i>roost</i> is also used interchangeably with <i>perch</i> in the Regulation, leading to confusion.</p>  |
| <p><u>Stocking density.</u> The weight of animals on a given unit of land at any one time.</p>  | <p>As <i>stocking density</i> also pertains to indoor requirements, we suggest the following revision:</p> <p>The weight of animals on a given <del>unit</del> <u>area</u> of <del>land</del> <u>space</u> at any one time.</p> <p>This change would better reflect that the Regulation contains requirements for indoors, outdoors and on multiple levels in the indoor housing.</p>   |
| <p><u>Toe clipping.</u> The removal of the nail and distal joint of the back two toes of a male bird.</p>   | <p>Suggest 2 changes:</p> <p>a) Toe clipping is done on both male &amp; female birds – definition only indicates male;</p> <p>b) Text used in Rule is: <i>toe trimming</i> in §205.238(a)(5)(ii); for consistency we request that the definition and use should be the same terminology.</p>  |

**NOP Proposed Wording**

**ACA Comments / Suggested Revision**

| <b>§205.238 Livestock Health Care Practice Standard</b>   |   |
|---|---|
| <p>(a)(5) Physical alterations may be performed to benefit the welfare or hygiene of the animals, or for identification purposes or safety. Physical alterations must be performed on livestock at a reasonably young age, with minimal stress and pain and by a competent person.</p>  | <p>The concept of animal <i>hygiene</i> is the primary rationale for docking of tails in cattle. There is concern that this section can be used to justify tail docking, despite the specific prohibition in 205.238(a)(5)(ii).</p>   |
| <p>(a)(5) (ii)The following practices must not be performed on a certified operation: de-beaking, de- snooding, caponization, dubbing, toe trimming of chickens, toe trimming of turkeys unless with infra-red at hatchery, beak trimming after 10 days of age, tail docking of cattle, wattling of cattle, face branding of cattle, tail docking of sheep shorter than the distal end of the caudal fold, and mulesing of sheep.</p> | <p>The new proposed definition is for <i>toe clipping</i>. We request that the definition and use be consistent. The following revision is suggested:</p> <p>.... dubbing, toe <del>trimming</del> <u>clipping</u> of chickens, toe <del>trimming</del> <u>clipping</u> of turkeys...</p>   |
| <p>(a)(8) Monitoring of lameness and keeping records of the percent of the herd or flock suffering from lameness and the causes.</p>  | <p>We believe this requirement will lead to additional and unnecessary recordkeeping. As there is no standard for an acceptable (or unacceptable) level of percent of lameness in a herd or flock, the recording of this information is unnecessary. Any animals treated for lameness would be identified in the herd/flock health records. We request this requirement be removed.</p> <p>There is wording from the Preamble regarding why NOP did not include several of the NOSB recommendations regarding additional record keeping requirements:</p> <p style="padding-left: 40px;">Producers are already required to maintain records on practices and procedures, and describe <i>monitoring</i> practices and procedures under the current scope of the organic system plan in § 205.201.</p> |
| <p>(a)(9) Ammonia levels in poultry houses must be less than 25 parts per million indoors. When ammonia levels in poultry houses exceed 10 parts per million, an operation must implement additional practices to reduce the ammonia levels below 10 parts per million.</p>   | <p>This is duplicated in §205.241(b)(2). We suggest deleting this section. While higher ammonia levels do have health implications, these requirements would be more appropriate in the Avian Living Conditions section.</p>  |

**NOP Proposed Wording**

**ACA Comments / Suggested Revision**

| <b>§205.238 Livestock Health Care Practice Standard (cont.)</b>  |   |
|--|---|
| <p>(c)(1) Sell, label, or represent as organic any animal or edible product derived from any animal treated with antibiotics, any substance that contains a synthetic substance not allowed under §205.603, or any substance that contains a nonsynthetic substance prohibited in §205.604. Milk from animals undergoing treatment with synthetic substances allowed under §205.603 having withholding time, cannot be sold as organic but may be fed to their own offspring. Milk from animals undergoing treatment with prohibited substances cannot be sold as organic or fed to organic livestock.</p> | <p>ACA believes that while the intention to permit the milk of an animal that is undergoing treatment with synthetic substances allowed under §205.603 to be fed to their own offspring is a good intention, it raises several issues:</p> <ol style="list-style-type: none"> <li>a) The requirement of 100% organic feed for the offspring is not being met (the milk cannot be sold as organic), and</li> <li>b) If the offspring is intended for meat, tracking this offspring for the rest of its life is problematic;</li> <li>c) The requirement seems to be directed more towards meat production than dairy, as it is not common for a dairy animals' milk to be fed to its own offspring.</li> </ol> |
| <p>(c)(2) Administer any animal drug in the absence of illness or to alleviate pain or suffering, with the exception of vaccinations and other veterinary biologics.</p>   | <p>This sentence is confusing as written as it could be interpreted as prohibiting any animal drug to relieve pain and suffering, and the allowance to provide medications to alleviate pain and suffering is contained in §205.238(b)(3). The proposed revision is a clearer statement of intent.</p> <p>(c)(2) Administer any animal drug in the absence of illness, <del>or to</del> <b>alleviate</b> pain or suffering, with the exception of vaccinations and other veterinary biologics.</p>  |
| <p>(c)(10) Practice forced molting or withdrawal of feed to induce molting.</p>  | <p>Clarification is requested whether NOP is considering <i>forced</i> molting and <i>induced</i> molting as interchangeable terms, meaning the same. A definition for molting would provide additional clarity.</p> <p>Clarification is also requested regarding whether withdrawal of feed to induce molting is the only practice prohibited. Are the following methods to induce molting permitted:</p> <ul style="list-style-type: none"> <li>• low salt or altered mineral feed plans, which are non-starvation plans</li> <li>• reduced lighting to initiate molting.</li> </ul> <p>The Federal Register Preamble, pg. 21965, identifies only feed withdrawal to induce molting as prohibited.</p>      |
| <p>(e)(1) Organic livestock producers must have written plans for prompt, humane euthanasia for sick or injured livestock.</p>   | <p>The American Veterinary Medical Association guidelines are referenced in §205.238(c)(8) and for clarity should be referenced again in this section.</p> <p>Add:<br/> <a href="#"><u>Euthanasia methods should align with the American Veterinary Medical Association guidelines.</u></a></p>   |

**NOP Proposed Wording**

**ACA Comments / Suggested Revision**

| <b>§205.239 Mammalian Living Conditions</b>   |  |
|---|--|
| <p>(a)(3) Animals must be kept clean during all stages of life with the use of appropriate, clean, dry bedding, as appropriate for the species. When roughages are used as bedding, they must be organically produced and handled in accordance with this part by an operation certified under this part, except as provided in § 205.236(a)(2)(i), and, if applicable, organically handled by operations certified to the NOP.</p> | <p>The requirement that animals must be kept clean during <i>all stages of life</i> is unrealistic, and if literally interpreted, could lead to a noncompliance being issued for unclean animals. While there are permitted examples of natural behavior for swine and grazing cattle that could result in unclean animals in the Preamble, pg. 21968, those examples are not contained in the regulation wording here.</p> <p>We ask that the strike-through language be deleted.</p> <p><del>(a)(3) Animals must be kept clean during all stages of life with the use of</del> Appropriate, clean, dry bedding. <del>as appropriate for the species.</del></p>   |
| <p><del>(a)(4)(i) Sufficient space and freedom to lie down in full lateral recumbence, turn around, stand up, fully stretch their limbs without touching other animals or the sides of the enclosure, and express normal patterns of behavior;</del></p>  | <p>We recommend striking the proposed wording of this section, and reverting back to the current wording. This is an unrealistic requirement for dairy operation barns with stalls or stanchions. Dairy cattle generally do not lie down in full lateral recumbence, unless gravely ill or dead.</p> <p>The current wording, in combination with proposed wording for §205.239(a)(4)(iv), communicates the requirement for comfortable shelter designed to allow natural behaviors.</p> <p>Based on the proposed wording operators now believe their existing barns do not qualify, and are distraught with this requirement, as it is cost prohibitive to build new facilities.</p> <p>We request that NOP clearly indicate in the Final Rule that tie stall, stanchion barns, and free stall barns are permitted (as was stated in the informational webinar).</p> |
| <p>(a)(4)(iv) Areas for bedding and resting that are sufficiently large, solidly built, and comfortable so that animals are kept clean, dry, and free of lesions.</p>   | <p>The Proposed Rule does not contain any reference to an allowance of stalls for dairy animals, we suggest adding the following to this section</p> <p>(a)(4)(iv) Areas for bedding and resting that are sufficiently large, solidly built, and comfortable so that animals are kept clean, dry, and free of lesions. <u>In confined housing with stalls, at least one stall must be provided for each animal in the facility at any given time. A cage must not be called a stall.</u> (from §205.239(a)(11))</p> <p>We believe that this requirement should be considered a general requirement for all livestock, and not limited to only §205.239(a)(11).</p> <p>We request that NOP clearly indicate in the Final Rule that tie stall, stanchion barns, and free stall barns are permitted (as was stated in the informational webinar).</p>                   |

**NOP Proposed Wording**

**ACA Comments / Suggested Revision**

| §205.239 Mammalian Living Conditions (cont.)  |  |
|---|--|
| <p>(a)(7)(i) Until weaning, providing that they have enough room to turn around, lie down, stretch out when lying down, get up, rest, and groom themselves; individual animal pens shall be designed and located so that each animal can see, smell, and hear other calves.</p> | <p>Based upon current practices, and so as not to increase the stress on young animals, we request that the proposed wording be revised to read:</p> <p style="padding-left: 40px;">Until <u>after the weaning process is complete...</u></p> <p>It is common practice to leave calves in individual stalls for a time after weaning to break the sucking habit, and this is considered a part of the weaning process.</p> <p>From the <u>Humane Farm Animal Care Standards, Jan. 2014, Dairy Cows; Section FW 16.b, pg. 6</u>: Removal of calves from individual pens into social groups should not coincide with weaning. Both of these practices are stressful to the animals and should be carried out separately.</p>   |
| <p>(a)(7)(ii) Dairy young stock shall be group-housed after weaning.</p>  | <p>These two sections –(a)(7)(ii) &amp; (a)(7)(iii) do not seem to be related to the overall section title:</p> <p style="padding-left: 40px;">(a)(7) Dairy young stock may be housed in individual pens under the following conditions:</p> <p>As they do not reference being housed in individual pens, but are referring to animals being group housed, and having outdoor access.</p> <p>If these section are to be retained, we recommend creation of a new section (a)(8) to incorporate these sections with the following revisions:</p> <p>Current (a)(7)(ii) Dairy young stock shall be group-housed after <u>the weaning process is complete, but no later than six months of age.</u></p> <p>Current (a)(7)(iii) Dairy young stock over six months of age shall have <u>year-round</u> access to the outdoors <u>at all times,</u>...</p> <p>The addition of <i>year-round</i> is consistent with terminology included in other parts of the rule. This revision permits the operator to manage the outdoor access process. In addition, the management of animals in a tie stall or stanchion barn to provide access to the outdoors <i>at all times</i> would not be practical, particularly in inclement weather conditions.</p> |
| <p>(a)(7)(iii) Dairy young stock over six months of age shall have access to the outdoors at all times, including access to pasture during the grazing season, except as allowed under 205.239(c).</p>  | <p>As rooting is an acceptable practice, it is not necessary to specify both indoors or outdoors.</p> <p>In addition, exercise areas are not generally linked to temporary confinement events. For clarity, we suggest replacement with the following statement:</p> <p style="color: red;"><u>For swine, rooting materials must be provided at all times.</u></p>   |
| <p>(a)(10) Exercise areas for swine, whether indoors or outdoors, must permit rooting, including during temporary confinement events.</p>   | <p>As rooting is an acceptable practice, it is not necessary to specify both indoors or outdoors.</p> <p>In addition, exercise areas are not generally linked to temporary confinement events. For clarity, we suggest replacement with the following statement:</p> <p style="color: red;"><u>For swine, rooting materials must be provided at all times.</u></p>   |

**NOP Proposed Wording**

**ACA Comments / Suggested Revision**

| §205.239 Mammalian Living Conditions (cont.)  |  |
|---|--|
| <p>(a)(11) In confined housing with stalls, at least one stall must be provided for each animal in the facility at any given time. A cage must not be called a stall. For group-housed swine, the number of individual feeding stalls may be less than the number of animals, as long as all animals are fed routinely over a 24-hour period.</p> | <p>See our suggested comments for §205.239(a)(4)(iv) regarding stalls for dairy animals.</p> <p>It is unclear whether sentences 1 &amp; 2 apply to all animals, as these are contained in the swine section §205.239(a)(8) – (11). We believe these two sentences should apply to all animals, and have included these sentences in our suggested revision for §205.239(a)(4)(iv).</p> <p>Clarification is requested regarding the reference to “stall” in sentence one, vs. “feeding stalls” in sentence three. Is this referencing the same structure? A “stall” is not only used for feeding in most cases.</p>   |
| <p>(a)(12) At least 50 percent of outdoor access space must be soil, except for <b>temporary</b> conditions which would threaten the soil or water quality when outdoor access must be provided without contact to the soil.</p>  | <p>We believe that this requirement conflicts with NRCS requirements to limit access to soil in inclement and/or winter weather conditions. In practice <i>Temporary</i> would in effect mean most of the winter in many areas. The striking of <i>temporary</i> would address the concerns of NRCS guidelines.</p> <p>For swine production, we are concerned with the 50 percent of outdoor access space must be soil, as their natural behavior of rooting will be damaging to soil and water quality. The result would be that swine would likely be “temporarily” confined and/or be provided with outdoor access such as a concrete pad for the majority of the time.</p> |
| <p>(b)(6) Sorting or shipping animals and livestock sales: Provided, that, the animals shall be maintained under continuous organic management, including organic feed, throughout the extent of their allowed confinement;</p>   | <p>We request that NOP take the opportunity of the Final Rule to clarify that livestock auction and sales facilities are required to be certified as handlers. We suggest the following language be added:</p> <p style="padding-left: 40px;">§205.239(b)(6) Sorting or shipping animals in livestock sales: Provided that <b>the auction or sales facility is certified as a handler, and</b> the animals are maintained under continuous organic management, including organic feed, throughout the extent of their allowed confinement;</p>   |
| <p>(b)(8) Notwithstanding the requirements in §205.239 (b)(6), facilities where 4-H, National FFA Organization, and other youth events are held are not required to be certified organic for the participating animals to be sold as organic, provided all other organic management practices are followed.</p>                                   | <p>We appreciate the additional clarification regarding the lack of necessity for organic certification for the youth events.</p>  |

**NOP Proposed Wording**

**ACA Comments / Suggested Revision**

| §205.241 Avian Living Conditions   |  |
|--|--|
| <p>(a) The producer of an organic poultry operation must establish and maintain year-round poultry living conditions which accommodate the health and natural behavior of poultry, including: year-round access to outdoors; shade; shelter; exercise areas; fresh air; direct sunlight; clean water for drinking; materials for dust bathing; and adequate outdoor space to escape from predators and aggressive behaviors suitable to the species, its stage of life, the climate and environment. Poultry may be temporarily denied access to the outdoors in accordance with §205.241(d)</p> | <p>There is a general lack of specificity regarding requirements for raising pullets &amp; broilers in the Proposed Rule, other than pullets may be confined until they are 16 weeks of age.</p> <p>We request clarification regarding:</p> <ul style="list-style-type: none"> <li>• whether artificial lighting may be used for pullets &amp; broilers;</li> <li>• whether the requirement for natural lighting applies to the pullet raising facilities</li> <li>• are operations raising pullets that move/sell at 16 weeks required to have outside access areas constructed</li> <li>• whether reduced lighting can be used during nest box training</li> </ul>   |
| <p>(b)(1) All birds must be able to move freely, and engage in natural behaviors.</p>  | <p>Section (b)(1) and (b)(11) are essentially the same requirements. For clarity, we suggest deleting proposed (b)(1) and replacing with (b)(11) and deleting the current proposed (b)(11):</p> <p>(b)(11) Poultry housing must be sufficiently spacious to allow all birds to move freely, stretch their wings, stand normally, and engage in natural behaviors.</p>  |
| <p>(b)(2) Ventilation must be adequate to prevent buildup of ammonia. Ammonia levels must not exceed 25 ppm. Producers must monitor ammonia levels on a monthly basis. When ammonia levels exceed 10 ppm, producers must implement additional practices to reduce ammonia levels below 10 ppm.</p>   | <p>See comments regarding §205.238(a)(9).<br/> Retain §205.241(b)(2); remove §205.238(a)(9).</p>   |
| <p>(b)(3) For layers and mature birds, artificial light may be used to prolong the day length up to 16 hours. Artificial light intensity must be lowered gradually to encourage hens to move to perches or settle for the night. Natural light must be sufficient indoors on sunny days so that an inspector can read and write when all lights are turned off.</p>  | <p>The specificity of the proposed wording is unnecessary and may require smaller operations to install dimmer switches, etc. Producers inherently manage the birds so as to avoid injury when settling for the night. We suggest the following revision:</p> <p style="padding-left: 40px;">Artificial light intensity <del>must</del> <b>should</b> be lowered gradually <b>as needed</b> to <b>prevent bird injury</b> and encourage hens to move to perches or settle for the night.</p> <p>The requirement that</p> <p style="padding-left: 40px;">Natural light must be sufficient indoors on sunny days so that an inspector can read and write when all lights are turned off is too subjective. In order to verify lighting requirements, we request the inclusion of a specific lumen requirement that is measurable as this would be clearer for operators, and verifiable by inspectors. Please see our requested clarifications regarding lighting in pullet houses in section §205.241(a).</p> |
| <p>(b)(4)(iii) Litter must be provided and maintained in a dry condition.</p>  | <p>We believe that this requirement applies to all housing, and not only the mesh or slatted flooring house referenced above. Therefore, we suggest moving this requirement and combining with §205.241(b)(10). Please see (b)(10) for wording revision.</p>   |

**NOP Proposed Wording**

**ACA Comments / Suggested Revision**

**§205.241 Avian Living Conditions (cont.)**

(b)(5) Poultry houses must have sufficient exit areas, appropriately distributed around the building, to ensure that all birds have ready access to the outdoors.

§205.241(c)(2) also addresses exit areas. For clarity we suggest combining these requirements, and delete the proposed (c)(2).

In addition, both (b)(5) and (c)(2) are lacking in specifics to verify that the number of exits are “sufficient”. Realistically, all birds will not exit the facility within one hour; the natural behavior of birds is that they move between indoors and outdoors during the day, but do not adhere to a schedule. Verification that all birds exit in one hour is not possible, particularly with the lack of specifications for the number of exits/birds. We don’t believe the intent of this requirement should be to ‘herd’ the birds outside within an hour, as this would be stressful for the birds.

We believe that the intent of this requirement is that facility exits should accommodate the ability for multiple birds to exit at one time, without piling on each other, or encouraging other welfare issues such as aggressive behaviors, dominant birds blocking exits, etc.

One option is the following revision:  
 (b)(5) Poultry houses must have sufficient exit areas, appropriately distributed around the building, to ensure that all birds have ready access to the outdoors. Exit areas for birds to get outside must be designed so that ~~more than one bird at a time can get through the opening and that all birds within the house can go through the exit areas within one hour~~ they allow passage for more than one bird at a time, and be evenly distributed along the line of access to the outdoor area.

While the above revision is still subjective, verification would depend on the individual observer and the time of day the house is inspected. Some additional focused training for inspectors would likely be necessary.

Another option is to use metrics that are actually measurable when submitted with the OSP, and able to be confirmed at inspection. We suggest the Final Rule include specific requirements on the size and number of exit areas; an example of these metrics is found in the Canadian Organic Regulations (table below). Suggested revision:

(b)(5) Poultry houses must have sufficient exit areas, appropriately distributed around the building, to ensure that all birds have ready access to the outdoors. Exit areas for birds to get outside must be designed so that ~~they more than one bird at a time can get through the opening and that all birds within the house can go through the exit areas within one hour~~

- i. allow passage for more than one bird at a time, and are evenly distributed along the line of access to the outdoor area;
- ii. shall correspond to the requirements shown in the following table for the number and size of exits (please note that these dimensions are from the Canadian Rule and the ACA is referencing them as an example of the type of specifics that will assist us and the industry in maintaining compliance with this section of the Rule)

| Poultry  | Combined width of exit areas                           | Minimum width of each exit | Minimum height | Minimum number |
|----------|--|----------------------------|----------------|----------------|
| Layers   | 6 ft./1000 hens  | 20 in                      | 14 in          | 2              |
| Broilers | 3 ft./1000 birds or all birds within 50 ft. of an exit | 20 in                      | 14 in          | 2              |
| Turkeys  | 6 ft./1000 birds                                       | 60 in                      | 30 in          | 2              |

**NOP Proposed Wording**

**ACA Comments / Suggested Revision**

| §205.241 Avian Living Conditions (cont.)   |  |
|--|--|
| <p>(b)(6) Flat roosts areas must allow birds to grip with their feet. Six inches of perch space must be provided per bird. Perch space may include the alighting rail in front of the nest boxes. All birds must be able to perch at the same time except for multi-tiered facilities, in which 55 percent of birds must be able to perch at the same time. Facilities for species which do not perch do not need to be contain perch and roost space.</p> | <p>The terminology “flat roost” is somewhat confusing, and not necessarily a term widely used. We believe that for clarity, the first sentence of this section should be revised:</p> <p style="color: red;"><u>Flat roosts areas must allow birds to grip with their feet. Perch or roost areas must allow birds to grip with their feet.</u></p> <p>In addition, the last sentence should be revised to indicate that the stage of life also determines if a species perches or not. An example of this is that a broiler chicken at 2 weeks of age can perch, but at 5 weeks of age likely cannot perch.</p> <p>Facilities for species which do not perch, <u>or due to stage of life do not perch</u>, do not need to be contain perch and roost space.</p> <p>Clarification is also needed regarding whether the 6 inches of perch space requirement includes perches <u>and</u> roosts, or just perches? It is common practice for operators to include the raised slatted floor area as a perching space.</p> |
| <p>(b)(7) For layers, no more than 2.25 pounds of hen per square foot of indoor space is allowed at any time, except;</p>  | <p>ACAs appreciate the specificity of the pounds / square foot; this will make verification of space easier.</p> <p>Please also see our comments in the definition of <i>indoors</i> regarding the inclusion of accessible nest box areas in the floor space calculation.</p>  |
| <p>(b)(10) All birds must have access to scratch areas in the house.</p>   | <p>Our comment regarding §205.241(b)(4)(iii) is to move that requirement to this section, as litter and scratch areas are often used interchangeably and apply to many types of houses. We suggest the following revision:</p> <p>(b)(10) Litter must be provided and maintained in a <del>dry</del> <u>friable</u> condition, <u>and</u> all birds must have access to scratch areas in the house.</p> <p>Our reason for the above revision is that “dry” litter can be harmful, due to dust and could initiate respiratory problems.</p> <p>For clarification, a definition of “scratch area” should be included; with a focus on whether the scratch area contains litter, or added bedding, or exactly what comprises a scratch area.</p>  |
| <p>(b)(11) Poultry housing must be sufficiently spacious to allow all birds to move freely, stretch their wings, stand normally, and engage in natural behaviors.</p>  | <p>Please see our comments on §205.241(b)(1). Replace (b)(1) wording with (b)(11) wording; delete (b)(11) section.</p>   |

**NOP Proposed Wording**

**ACA Comments / Suggested Revision**

| NOP Proposed Wording   | ACA Comments / Suggested Revision   |
|--|---|
| <b>§205.241 Avian Living Conditions (cont.)</b>  |   |
| <p>(c)(1) Outside access and door spacing must be designed to promote and encourage outside access for all birds on a daily basis. Producers must provide access to the outdoors at an early age to encourage (train) birds to go outdoors. Outdoor areas must have suitable enrichment to entice birds to go outside. Birds may be temporarily denied access to the outdoors in accordance with § 205.241(d).</p> | <p>The term “suitable enrichment” is not verifiable. We suggest a definition of <i>enrichment</i>, including examples, be included in the Final Rule. Additional guidance regarding verification of this requirement would be appreciated.</p>  |
| <p>(c)(2) Exit areas for birds to get outside must be designed so that more than one bird at a time can get through the opening and that <u>all</u> birds within the house can go through the exit areas within one hour.</p>  | <p>Please see our comments regarding §205.241(b)(5).<br/>         This section should be deleted after combination with (b)(5).</p>   |
| <p>(c)(6) Space that has a solid roof overhead and is attached to the structure providing indoor space does not meet the definition of outdoor access and must not be included in the calculation of outdoor space.</p>  | <p>We find this requirement problematic and arbitrary. We understand the intent to not permit a porch structure and/or winter garden with no access to soil, to be considered outdoor access. There are however many varying styles of solid roofed overhead structures such as ‘lean to’ type structures attached to the indoor space facility, that can provide shade <u>and access to soil</u>. We fail to see the difference between a shade ‘structure’ in the middle of the outdoor area and an ‘roof area’ attached to the indoor structure – the bird cannot see the sky in either area, but the birds are on soil and are able to move from either type of shade.</p> <p>Birds are normally cautious about going from a dark place to a light place, and are fearful of overhead predators, and many facilities are built with an overhang to accommodate this behavior. This overhang / or ability to look out may actually be more conducive to going outside.</p> <p>The allowance of a roofed overhead structure attached to the structure providing indoor space, should be permitted, provided that the area can provide soil contact and unencumbered access to the balance of the outdoor space.</p> |

**NOP Proposed Wording**

**ACA Comments / Suggested Revision**

| <b>§205.241 Avian Living Conditions (cont.)</b>  |  |
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| <p>(d) The producer of an organic poultry operation may temporarily confine birds. Each instance of confinement must be recorded. Producers may confine birds because of:</p>          | <p>We believe this section is too prescriptive and should be revised as follows:</p> <p style="padding-left: 40px;">The producer of an organic poultry operation may temporarily confine birds. <del>Each instance of confinement must be recorded.</del> Producers may confine birds because of:</p> <p>Producers currently provide standard operating procedures for many activities, and these are accepted by ACAs and verified at inspection. The procedures identify the events/activities which would require confinement. We believe that the recording of each instance of confinement is overly burdensome and the requirement should be removed. The existing rule or proposed rule does not contain this requirement for other species of livestock.</p> |
| <p>(d)(2) The animal’s stage of life, including the first 4 weeks of life for broilers and other meat type birds and the first 16 weeks of life for pullets; and</p>                   | <p>Please see our comments regarding the lack of specifics regarding pullet requirements in §205.241(a).</p>   |
| <p>(d)(6) Sorting or shipping birds and poultry sales: Provided, the birds are maintained under continuous organic management, throughout the extent of their allowed confinement.</p> | <p>We request that NOP take the opportunity of the Final Rule to clarify that livestock auction and sales facilities are required to be certified as handlers. We suggest the following language be added:</p> <p>§205.241(d)(6) Sorting or shipping birds and poultry sales: Provided that <del>the auction or sales facility is certified as a handler,</del> <u>and</u> the birds are maintained under continuous organic management, throughout the extent of their allowed confinement;</p>   |

**NOP Proposed Wording**

**ACA Comments / Suggested Revision**

| <b>§205.242 Transport and Slaughter</b>   |  |
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| <p>(a)(1) Certified organic livestock must be clearly identified as organic and transported in pens within the livestock trailer clearly labeled for organic use and be contained in those pens for the duration of the trip.</p> | <p>Clarification is requested regarding whether this section requires the actual labeling of interior livestock trailer pens/sections.</p> <p>If the livestock are identified as organic, all shipping documents identify the livestock as organic, and there is no co-mingling with conventional livestock, the requirement to identify interior structures as is organic is unnecessary. The requirement as written is also not auditable.</p>   |
| <p>(a)(2) All livestock must be fit for transport to auction or slaughter facilities.</p>   | <p>We request that NOP take the opportunity of the Final Rule to clarify that livestock auction and sales facilities are required to be certified as handlers.</p> <p>Please see our comments on §205.239(b)(6) and §205.241(d)(6).</p>  |
| <p>(a)(2)(ii) Sick, injured, weak, disabled, blind, and lame animals must not be transported for sale or slaughter. Such animals may be medically treated or euthanized.</p>  | <p>We believe that this language has the potential to economically damage producers, since it would require animals with only a sore foot not to be transported for sale or slaughter. We suggest the following revision. The word non-ambulatory reflects the regulatory language utilized at processing plants.</p> <p>(a)(2)(ii) <del>Sick, injured, weak, disabled, blind, and lame</del> <u>Non-ambulatory</u> animals must not be transported for sale or slaughter. Such animals <del>may</del> <u>must</u> be medically treated or euthanized.</p> |
| <p>(a)(5) Arrangements for water and organic feed must be made if transport time, including all time on the mode of transportation, exceeds twelve hours.</p>   | <p>At times animals are off-loaded, and we believe that the site used for off-loading must be a certified facility. The animals should not be temporarily housed in a non-certified facility. We suggest the following revision:</p> <p>(a)(5) Arrangements for water and organic feed must be made if transport time, including all time on the mode of transportation, exceeds twelve hours. <u>If animals are off-loaded, the site where they are temporarily housed must be a certified facility.</u></p>  |

**NOP Proposed Wording**

**ACA Comments / Suggested Revision**

| <b>§205.242 Transport and Slaughter (cont.)</b>  |   |
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| <p>(a)(5)(i) The producer or handler of an organic livestock operation must transport livestock in compliance with the Federal Twenty-Eight Hour Law (49 USC 80502) and the regulations at 9 CFR 89.1-89.5.</p>  | <p>There are concerns among ACAs regarding the regulation references contained in this section, plus §205.242(b)(1), (b)(2), and §205.242(c)(1), including that OSPs and inspection reports will need major revision in order to verify compliance with the above regulations, inspectors and review staff will need additional training, and ACA staff will need to continually monitor these external regulations for any changes. We also don't believe the intent is to have ACA staff verifying the cited regulations in detail.</p> <p>We ask for clarification of the NOP expectations for how ACAs will verify the above Rule sections:</p> <ul style="list-style-type: none"> <li>• are ACAs responsible for verifying compliance with the specific regulations, or</li> <li>• are ACAs responsible only for reviewing the noncompliance reports issued by the regulating agencies.</li> </ul> <p>For clarity and ease of interpretation of §205.242(a)(5)(i), for both producers and ACAs, we ask that the Final Rule state the regulation that is intended to be followed, rather than reference another regulation. In addition, producers may have difficulty in accessing these external regulations.</p> |
| <p>(a)(5)(ii) The producer or handler of an organic livestock operation must provide all non-compliant records and subsequent corrective action related to livestock transport during the annual inspection.</p>   | <p>This section does not clearly specify the <i>regulation</i> for which the non-compliant records and subsequent corrective actions must be provided. We believe that this section is referencing §205.242(a)(5)(i), however, clarity would be improved with the following revision:</p> <p>(a)(5)(ii) The producer or handler of an organic livestock operation must provide all non-compliant records and subsequent corrective action related to <del>livestock transport during the annual inspection</del> <u>the Federal Twenty-Eight Hour Law (4 USC 80502) and the regulations at 9 CFR 89.1-89.5.</u></p>   |
| <p>(b)(1) Producers and handlers who slaughter organic livestock must be in compliance with the Federal Meat Inspection Act (21 U.S.C. 603(b) and 21 U.S.C. 610(b) and the regulations at 9 CFR part 313 regarding humane handling and slaughter of livestock.</p> | <p>Please see our comments at §205.242(a)(5)(i), as they apply to this section also.</p>  |

**NOP Proposed Wording**

**ACA Comments / Suggested Revision**

| <b>§205.242 Transport and Slaughter (cont.)</b>   |  |
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| <p>(b)(2) Producers and handlers who slaughter organic exotic animals must be in compliance with the Agricultural Marketing Act of 1946 (7 U.S.C. 1621, <u>et seq.</u>) and the regulations at 9 CFR parts 313 and 352 regarding the humane handling and slaughter of exotic animals.</p> | <p>Please see our comments at §205.242(a)(5)(i), as they apply to this section also.</p> |
| <p>(c) (1) Producers and handlers who slaughter organic poultry must be in compliance with the Poultry Products Inspection Act requirements (21 U.S.C. 453(g)(5) and the regulations at 9 CFR 381.1(b)(v), 381.90, and 381.65(b)).</p>  | <p>Please see our comments at §205.242(a)(5)(i), as they apply to this section also.</p> |