

Rules and Regulations

Federal Register

Vol. 83, No. 49

Tuesday, March 13, 2018

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–15–0012; NOP–15–06]

RIN 0581–AD75

National Organic Program (NOP); Organic Livestock and Poultry Practices

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; withdrawal.

SUMMARY: This final rule withdraws the Organic Livestock and Poultry Practices final rule published in the **Federal Register** on January 19, 2017, by the U.S. Department of Agriculture's Agricultural Marketing Service. The existing organic livestock and poultry regulations remain effective.

DATES: Effective May 13, 2018, the final rule published January 19, 2017, at 82 FR 7042, delayed February 9, 2017, at 82 FR 9967, further delayed May 10, 2017, at 82 FR 21677, and further delayed November 14, 2017, at 82 FR 52643, is withdrawn.

FOR FURTHER INFORMATION CONTACT: Paul Lewis, Ph.D., Director, Standards Division, Telephone: (202) 720–3252; Fax: (202) 720–7808.

SUPPLEMENTARY INFORMATION:

I. Background

The Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501–6522), authorizes the United States Department of Agriculture (USDA or Department) to establish national standards governing the marketing of certain agricultural products as organically produced to assure consumers that organically produced products meet a consistent standard and to facilitate interstate commerce in fresh and processed food that is organically produced. USDA's Agricultural

Marketing Service (AMS) administers the National Organic Program (NOP) under 7 CFR part 205.

II. Overview of Agency Action

USDA is withdrawing the OLPP rule based on its current interpretation of 7 U.S.C. 6905, under which the OLPP final rule would exceed USDA's statutory authority. Withdrawal of the OLPP rule also is independently justified based upon USDA's revised assessments of its benefits and burdens and USDA's view of sound regulatory policy. This is considered a deregulatory action under Executive Order 13771. The organic livestock and poultry regulations now published at 7 CFR part 205 remain effective.

III. Related Documents

Documents related to this final rule include: OFPA (7 U.S.C. 6501–6524) and its implementing regulations (7 CFR part 205); the OLPP proposed rule published in the **Federal Register** on April 13, 2016 (81 FR 21956); the OLPP final rule published in the **Federal Register** on January 19, 2017 (82 FR 7042); the final rule delaying the OLPP final rule's effective date until May 19, 2017, published in the **Federal Register** on February 9, 2017 (82 FR 9967); the final rule delaying the OLPP final rule's effective date until November 14, 2017, published in the **Federal Register** on May 10, 2017 (82 FR 21677); a second proposed rule presenting the four options for agency action listed in Section I, *supra*, published in the **Federal Register** on May 10, 2017 (82 FR 21742); a final rule further delaying the OLPP final rule's effective date until May 14, 2018, published in the **Federal Register** on November 14, 2017 (82 FR 52643); and a proposed rule explaining AMS' intent to withdraw the OLPP final rule, published in the **Federal Register** on December 18, 2017 (82 FR 59988).

IV. Public Comments

AMS received approximately 72,000 comments on the proposal to withdraw the OLPP final rule. The majority of comments, over 63,000, opposed the withdrawal of that final rule. This included over 56,000 comments submitted as form letters. Approximately fifty comments supported withdrawal of the OLPP final rule. This included five comments submitted as form letters. The remaining comments, about 7,800, did not state a

clear opinion about the proposed withdrawal of the rule.

Commenters opposing withdrawal included consumers, organic farmers, organic handlers, organizations representing animal welfare, environmental, or farming interests, trade associations, certifying agents and inspectors, and retailers. These commenters expressed the view that the OFPA provides AMS the legal authority to implement the OLPP final rule and that withdrawal violates the Administrative Procedure Act and/or the OFPA, because AMS did not consult with the National Organic Standards Board. These commenters asserted that the organic sector requested the OLPP regulation and the rulemaking reflects consensus within the organic sector and a working public-private partnership with years of input from stakeholders. A number of commenters also opposed withdrawal because of potential negative impacts for the welfare of farm animals.

Some commenters opposing the withdrawal also challenged the Preliminary Regulatory Impact Analysis (PRIA, published December 18, 2017 at <https://www.regulations.gov/document?D=AMS-NOP-15-0012-6687>) for the withdrawal of the OLPP final rule. These commenters claimed that (1) organic certification is voluntary and, therefore, there are no costs associated with the OLPP final rule, (2) economic considerations are not a legally permissible basis for withdrawing the OLPP final rule and are irrelevant because OFPA is not a cost-benefit statute, and (3) the PRIA failed to consider qualitative benefits.

Some comments objected to AMS' conclusion that there is no significant market failure to justify this rulemaking and stated that consumer deception caused by inconsistent application of outdoor access requirements for poultry is the market failure that OFPA prevents by compelling AMS to develop consistent standards. These commenters argued that withdrawal of the OLPP final rule would erode consumer confidence and trust in the organic label. Commenters also requested an extension of the public comment period, from 30 to 90 days, specifically noting they needed more time to study the revisions discussed in the Preliminary Regulatory Impact Analysis (PRIA) and develop meaningful comments.

Commenters supporting withdrawal of the OLPP final rule included organic farmers, state departments of agriculture, and trade associations. These commenters agreed that the OLPP final rule exceeded the scope of authority granted to AMS through OFPA to regulate specific animal health care practices. These commenters stated that withdrawing the OLPP final rule would prevent increased costs to producers and consumers from costly structural changes and higher prices for organic eggs, respectively. Some commenters also supported the withdrawal because of concerns that the outdoor access requirements for organic poultry would heighten disease risk and interfere with biosecurity practices and Food and Drug Administration (FDA) requirements.

V. Rationale for Withdrawing Organic Livestock and Poultry Practices Final Rule

A. Statutory Authority

In the notice of proposed rulemaking (NPRM), AMS proposed to withdraw the OLPP Rule due to a lack of statutory authority and to maintain consistency with USDA regulatory policy principles. The proposal stated that “the relevant language and context suggests OFPA’s reference to additional regulatory standards ‘for the care’ of organically produced livestock should be limited to health care practices similar to those specified by Congress in the statute, rather than expanded to encompass stand-alone animal welfare concerns. 7 U.S.C. 6509(d)(2).” The NPRM included a detailed analysis of the relevant legal authorities leading to the proposed action. (82 FR 59989–90).

AMS received approximately fifteen comments directly addressing AMS’ proposed interpretation, of which three agreed with AMS’ interpretation that OFPA does not provide statutory authority for the OLPP final rule. After reviewing these comments, AMS maintains its interpretation that OFPA does not provide authority for the OLPP final rule and has decided to withdraw it. Consequently, the existing organic livestock and poultry regulations now published at 7 CFR part 205 remain effective.

1. Analysis of Its Authority Under the OFPA To Issue Stand-Alone Animal Welfare Regulations

The OLPP final rule consisted, in large part, of rules clarifying how producers and handlers participating in the National Organic Program must treat livestock and poultry to ensure their wellbeing (82 FR 7042). AMS is withdrawing the OLPP final rule

because it now believes OFPA does not authorize the animal welfare provisions of the OLPP final rule. Rather, the agency’s current reading of the statute, given the relevant language and context, is that OFPA’s reference in 7 U.S.C. 6509(d)(2) to additional regulatory standards “for the care” of organically produced livestock does not encompass stand-alone concerns about animal welfare, but rather is limited to practices that are similar to those specified by Congress in the statute and necessary to meet congressional objectives outlined in 7 U.S.C. 6501.

USDA believes that the Department’s power to act and how it may act are authoritatively prescribed by statutory language and context; USDA believes that it may not lawfully regulate outside the boundaries of legislative text.¹ Therefore, in considering the scope of its lawful authority, USDA believes the threshold question should be whether Congress has authorized the proposed action. If a statute is silent or ambiguous with respect to a specific issue, then USDA believes that its interpretation is entitled to deference and the question becomes simply whether USDA’s action is based on a permissible statutory construction.²

The OLPP final rule is a broadly prescriptive animal welfare regulation (82 FR 7042, 7074, 7082). USDA’s general OFPA implementing authority was used as justification for the OLPP final rule, which cited 7 U.S.C. 6509(g) as “convey(ing) the intent for the USDA to develop more specific standards. . . .” (82 FR 7043), and 7 U.S.C. 6509(d)(2) as authorizing regulations for animal “wellbeing” and the “care of livestock.” (82 FR 7042, 7074, 7082).

But nothing in section 6509 authorizes the broadly prescriptive, stand-alone animal welfare regulations contained in the OLPP final rule. Rather, section 6509 outlines discrete aspects of animal production practices and materials relevant to organic certification: sources of breeder stock, livestock feed, use of hormones and growth promoters, animal health care, and record-keeping. While subsection 6509(d)(2) authorizes promulgation of additional standards for the “care” of livestock, that provision is not free-standing authority for AMS to adopt any regulation conceivably related to animal “care”; rather, standards promulgated under that authority must be relevant to

“ensur[ing] that [organic] livestock is *organically produced*.” 7 U.S.C. 6509(d)(2). Similarly, section 6509(g) is not open-ended authority to regulate any and all aspects of livestock production; rather, it authorizes AMS to promulgate regulations to “guide the implementation of the standards for livestock products *provided under this section*” (emphasis added); in other words, standards relevant to and necessitated by the expressed purposes of Congress in enacting the OFPA. Thus, standards promulgated pursuant to section 6509(d)(2) and section 6509(g) must be relevant to ensuring that livestock is “organically produced.”

Although Congress did not define the term “organically produced” in the OFPA, the Cambridge Dictionary defines “organic” as “not using artificial chemicals in the growing of plants and animals for food and other products.” Merriam-Webster defines “organic” as “of, relating to, yielding, or involving the use of food produced with the use of feed or fertilizer of plant or animal origin *without employment of chemically formulated fertilizers, growth stimulants, antibiotics, or pesticides*” (emphasis added). <https://www.merriam-webster.com/dictionary/organic>. The surrounding provisions in section 6509 demonstrate that Congress had a similar understanding of the term “organic.” For example, subsection 6509(d)(2)’s authority for promulgation of additional standards governing animal “care” is contained within a subsection entitled “Health care” and follows a list of three specifically prohibited health care practices that each relate to ingestion or administration of chemical, synthetic, or non-naturally-occurring substances: Use of subtherapeutic doses of antibiotics; routine use of synthetic internal parasiticides; and administration of medication, other than vaccines, absent illness. AMS believes these prohibited practices—all of which relate to ingestion of chemical, artificial, or non-organic substances—are representative of the types of practices and standards that Congress intended to limit exposure of animals to non-organic substances and thus “ensure that [organic] livestock is organically produced.” Thus, the authority provided by section 6509(d)(2) does not extend to any and all aspects of animal “care”; it is limited to those aspects of animal care that are similar to the examples provided in the statute and relate to ingestion or administration of non-organic substances, thus tracking the purposes of the OFPA.

Reading this language in context, AMS now believes that the authority granted in section 6509(d)(2) and

¹ *City of Arlington v. FCC*, 133 S. Ct. 1863, 1868 (2013).

² See *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984); *City of Arlington*, 133 S. Ct. at 1871.

section 6509(g) for the Secretary to issue additional regulations fairly extends only to those aspects of animal care that are similar to those described in section 6509(d)(1)—*i.e.*, relate to the ingestion or administration of non-organic substances, thus tracking the purposes of the OFPA—and that are shown to be necessary to meet the congressional objectives specified in 7 U.S.C. 6501.

AMS finds that its rulemaking authority in section 6509(d)(2) should not be construed in isolation, but rather should be interpreted in light of section 6509(d)(1) and section 6509(g). Furthermore, AMS believes that a decision to withdraw the OLPP final rule based on § 6509's language, titles, and position within Chapter 94 of Title 7 of the United States Code;³ controlling Supreme Court authorities; and general USDA regulatory policy, would be a permissible statutory construction.

2. Public Comments on AMS' Analysis

a. One commenter said that “Agency reconsideration of a rule . . . [previously] approved by the agency and the Office of Management and Budget under a previous administration is arbitrary, capricious, and an abuse of discretion.” Others suggested that the agency's prior consideration of “animal welfare” was binding and dispositive. However, AMS has broad discretion to reconsider a regulation at any time. *Clean Air Council v. Pruitt*, 862 F.3d 1, 8–9 (D.C. Cir. 2017). Furthermore, AMS' interpretation of OFPA “is not instantly carved in stone,” but may be evaluated “on a continuing basis.” *Chevron U.S.A. Inc. v. NRDC, Inc.*, 467 U.S. 837, 863–64 (1984). This is true when, as is the case here, the agency's review is undertaken in response to a change in administrations. *National Cable & Telecommunications Ass'n v. Brand X Internet Services*, 545 U.S. 967, 981 (2005).

b. AMS sought comment on the proposed construction of its rulemaking authority, suggesting that the relevant OFPA text did not authorize the broadly prescriptive, stand-alone animal welfare regulations in the OLPP final rule, and noting that, even if OFPA were deemed to be silent or ambiguous with respect to the authority issue, a decision to withdraw the OLPP final rule based on section 6509's language, titles, and position within Chapter 94 of Title 7 of the United States Code; relevant legal authorities; and general USDA regulatory policy, would be a permissible statutory construction. AMS was led to this position by the Supreme Court's admonition that it may properly exercise discretion only in the

interstices created by statutory silence or ambiguity and that it must always give effect to the unambiguously expressed intent of Congress.⁴

The U.S. Supreme Court established the legal standard for review for an agency's interpretation of a statute that it administers in *Chevron*, 467 U.S. at 842–43:

First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.

Several commenters challenged the proposed action based on an expansive construction of the statutory term “care” largely divorced from the surrounding context of the OFPA. This interpretation would suggest that Congress delegated the Secretary virtually un-cabined regulatory authority over organic livestock producers.

Under *City of Arlington v. FCC*, 569 U.S. 290 (2013), the Supreme Court held that the *Chevron* framework applies to an agency's interpretation of ambiguous statutory language concerning the scope of its authority. *Id.* at 302 (“[W]e have consistently held ‘that *Chevron* applies to cases in which an agency adopts a construction of a jurisdictional provision of a statute it administers.’” 1 R. Pierce, *Administrative Law Treatise* § 3.5, p. 187 (2010).”). While the regulations in *City of Arlington* were based on an expansive construction of statutory authority, AMS is aware of no reason, and commenters cited none, suggesting deference is limited to interpretations of expansive authority. Rather, the *City of Arlington* decision is not a one-way ratchet; and an agency would also be entitled to deference when it interprets the scope of its authority narrowly.

Some commenters also stated that certain parts of the OLPP Rule do relate to animal health care, such as provisions concerning physical alterations. OFPA does not define the terms “care,” “health care,” “welfare,” or “wellbeing.” Accordingly, some commenters rejected the contextual

construction adopted by AMS to argue that the reference in section 6509(d)(2) to additional standards “for the care of livestock to ensure that such livestock is organically produced” necessarily encompasses the statutory authority to issue stand-alone animal welfare regulations because animal health and welfare are “inextricably linked.” This requires an expansive interpretation of the direction to the National Organic Standards Board (NOSB) to “recommend to the Secretary standards in addition to those in paragraph (1) for the care of livestock” in 7 U.S.C. 6509(d)(2) to encompass stand-alone animal welfare standards. However, the regulatory authority conferred by subparagraph (d)(2) does not extend to all aspects of animal care, but rather is limited to those necessary to “ensure that such livestock is organically produced.”

Moreover, subparagraph (d)(2) specifically refers back to subparagraph (d)(1) when calling for standards of livestock care in addition to the prohibitions set forth in subparagraph (d)(1). This demonstrates that any additional standards promulgated pursuant to section (d)(2) are to be similar to those set forth in section (d)(1), all of which are related to ensuring that organic livestock is raised with minimal administration of chemical and synthetic substances. That subparagraph's reference to “care for livestock” cannot be read more expansively than the previous references to animal health care found in section 6509 generally. Thus, even if some aspects of the OLPP Rule—such as certain provisions pertaining to physical alterations—can be characterized as relating to “health care,” AMS finds that they are not related to the OFPA's overarching purpose of regulating the use of chemical and synthetic substances in organic farming. Therefore, section 6509 does not provide authority for those provisions. AMS notes that some commenters agree with this interpretation of section 6509(d).

c. Several commenters also cited certain passages from OFPA's legislative history that they claim demonstrate Congress' intention to give the Secretary authority to regulate the stand-alone welfare of organic livestock, but they either misinterpret or selectively quote the legislative history. Specifically, the commenters noted that Senate Report 101–357, which accompanied S. 2830, the Food, Agriculture, Conservation, and Trade Act of 1990, states, “[t]he Committee expects that, after due consideration and the reception of public comment, the [National Organic

⁴ See generally *Utility Air Regulatory Group v. Environmental Protection Agency*, 134 S. Ct. 2427, 2441, 2445–46 (2014) (citations omitted).

Standards Board or NOSB] will best determine the necessary balance between the goal of restricting livestock medications and the need to provide humane conditions for livestock rearing.” The commenters suggest that this reference to “the need to provide humane conditions for livestock rearing” is proof that OFPA authorizes USDA to promulgate wide-ranging animal welfare regulations for organic livestock to ensure “humane conditions for livestock rearing.”

However, this statement actually states that the NOSB is to weigh the fact that administering certain livestock medications to livestock may disqualify said livestock from claiming organic status against the fact that withholding these medications in order to claim organic status may in fact be inhumane; it does not direct or authorize the Secretary to issue regulations to promote animal welfare by ensuring that organic livestock are reared humanely. In other words, the Senate Report does not equate organic production with humane treatment; to the contrary, it conveys an understanding that organic production may be *in tension with* humane rearing. To the extent that is so, the Senate Report suggests that AMS may relax organic objectives in order to accommodate countervailing principles of humane treatment. But the Senate Report in no way suggests that AMS is permitted to regulate animal welfare as a stand-alone objective. Furthermore, the commenters were selectively quoting from the Senate Report; the full statement reads as follows:

The Committee felt strongly that organically produced feed should be required for livestock. However, on the issue of livestock medication, the Committee felt that this required further consideration by the National Organic Standards Board. Livestock parasiticides and medications must be on the National List in order to be used but in no case shall livestock be given subtherapeutic doses of antibiotics, synthetic internal parasiticides on a routine basis, or be administered medication other than vaccinations in the absence of illness. The Committee expects that, after due consideration and the reception of public comment, the Board will best determine the necessary balance between the goal of restricting livestock medications and the need to provide humane conditions for livestock rearing.

1990 U.S.C.A.N. 4656, 4956.

The language preceding that cited by the commenters strengthens, rather than refutes, USDA’s belief that section 6509(d)(2) authorizes AMS only to establish additional medical standards for the care of livestock to ensure that these livestock are organically produced. This legislative history

supports an interpretation that the Secretary does not have the authority to promulgate stand-alone animal welfare organic requirements.

Several commenters also noted that the Senate Report and the House Conference Report 101–916 on the Food, Agriculture, Conservation, and Trade Act of 1990 make references to the expectation that USDA would promulgate regulations regarding livestock standards. However, this legislative history does not specify that the referenced livestock standards go beyond the specific types of practices referenced in the statute to include animal welfare. Rather, they are general statements that do not change the statutory plain meaning or AMS’s permissible interpretation of the scope of its statutory authority.

d. Several commenters argued that AMS may not withdraw the OLPP final rule because it did not consult with the NOSB prior to proposing the withdrawal. Additionally, they stated that withdrawal would be improper because it is contrary to the NOSB’s recommendations.⁵

OFPA requires USDA to consult with the NOSB on certain matters and to receive recommendations from it, but nothing in OFPA requires AMS to consult the NOSB at every phase of the rule making process or makes the NOSB’s recommendations binding on the Secretary, nor could it.⁶

e. Several commenters argued that 7 U.S.C. 6506(a)(11)⁷ and 6512⁸ provided

⁵ These commenters offer a constitutionally troubling construction of the OFPA. To comply with the Appointments Clause of the U.S. Constitution, National Organic Standards Board members must serve at the pleasure of the Secretary and be subordinate to him or her. The Secretary must be free to accept, reject, or revise the recommendations of an advisory committee such as the NOSB.

⁶ OFPA requires AMS to consult with the NOSB only under limited circumstances: In developing the organic certification program (section 6503(c)), exemption for certain processed food (section 6505(c)), and certification and labeling of wild seafood (section 6506(c)). Thus, OFPA does not require AMS to consult with the NOSB prior to undertaking a rulemaking to withdraw the OLPP final rule. Additionally, requiring USDA to consult NOSB on every action that it takes with respect to organic standards and practices would be impractical. The NOSB meets only twice a year and is not available for consultation on the many steps involved in a significant rulemaking. Regardless, AMS did present to the NOSB an update concerning the status of the proposed withdrawal of the OLPP final rule. AMS participated in the NOSB’s meeting in the April 2017, during which NOSB discussed the delayed effective date of the OLPP final rule and unanimously voted to “urge[] the Secretary to allow the [OLPP] Rule to become effective on May 19, 2017 without further delay.”

⁷ “[R]equire such other terms and conditions as may be determined by the Secretary to be necessary.”

⁸ “If a production or handling practice is not prohibited or otherwise restricted under this

additional statutory authority for the OLPP final rule. Sections 6506(a)(11) and 6512 do not convey to the Secretary limitless and unfettered discretion to require whatever terms and conditions he or she may want. Rather, the exercise of discretion under those sections must be grounded in the statutory authority for the organic production. As discussed above for § 6509, the authority for care of organic livestock is to ensure that organic livestock is raised with minimal administration of chemical and synthetic substances. Additionally, to the extent that section 6506(a)(11) may provide authority for livestock care regulations, it does so only if the Secretary determines that they are necessary, which the OLPP final rule is not.

f. Certain commenters noted that NOSB made recommendations concerning animal welfare standards and living conditions over a period of nearly two decades, a situation that has caused a majority of small- and medium-sized operations to have significant reliance interests in animal welfare standards under NOP rules in general, including the OLPP final rule. They further asserted that, under *Encino Motorcars v. Navarro*, 136 S. Ct. 2117 (2016), AMS is required to address any disruption of long standing policies upon which the industry may have relied but has failed to do so. As proof of such reliance, some commenters asserted that they have made capital expenditures based on the 2002 NOP policy statement on outdoor access and 7 CFR 205.239.

The subject matter of *Encino Motorcars* is distinguishable from this rule. The Court in *Encino Motorcars* was concerned with the Department of Labor’s decision to reverse an established rule that had governed the regulated industry for over 30 years, thereby upsetting a longstanding, and therefore, settled reliance interest (“[I]n explaining its changed position, an agency must be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account (emphasis added).”)⁹ The commenters who claimed that USDA should consider their “reliance interests” acknowledged that they relied on a history of NOSB recommendations (which do not constitute official USDA policy) and the NOP policies and regulations that are already in effect,

chapter, such practice shall be permitted unless it is determined that such practice would be inconsistent with the applicable organic certification program.”

⁹ *Encino Motorcars*, 136 S. Ct. at 2020.

rather than the OLPP final rule. Indeed, they could not have relied (and did not assert specific reliance upon) the OLPP final rule because AMS published that rule in the **Federal Register** in January 2017 and it never went into effect. Accordingly, any capital investments or other activities that the regulated industry made in order to comply with the OLPP rule prior to its effective date were not made pursuant to that rule, but in accordance with existing NOP policies and regulations governing animal welfare standards. USDA is not proposing to withdraw existing organic animal welfare standards or the 2002 NOP policy statement on outdoor access, and they remain in effect. Therefore, withdrawal of the OLPP final rule is not a reversal of a longstanding agency policy.

g. Finally, several commenters disagreed with USDA's current interpretation of OFPA by noting that USDA previously promulgated 7 CFR 205.238, 205.239, and 205.240, which they interpret to address the wellbeing of organic livestock. They cited those regulations as proof that USDA has authority to promulgate stand-alone animal welfare standards. In the alternative, they noted that some of these standards address animal health and they question why the OLPP final rule cannot be promulgated on the same ground.

AMS notes that the validity of §§ 205.238, 205.239, and 205.240 is not before it in the present rulemaking. As such, a detailed consideration of whether those regulations accord with AMS' statutory interpretation is not within the scope of this rulemaking. Thus, even if AMS were to decide that it does not have authority to promulgate those regulations under OFPA, it could not withdraw them through this final rule because the NPRM did not provide notice that this action was under consideration. As part of the regulatory reform review, however, AMS may seek comment in the future regarding whether the cited regulations are in accordance with AMS' statutory authority.

B. Impact of OLPP Final Rule on Producers and Lack of Market Failure

Executive Orders 12866 and 13563 require agencies to assess the costs and benefits of economically significant regulatory actions. Executive Order 12866 also generally requires that the agency "propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs," and further, that the agency "shall tailor its regulations to impose the least burden

on society. . . ." Executive Order 12866 also states that "Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling need, such as material failures of private markets. . . ." While participation in the NOP is technically voluntary, this fact does not neutralize the impacts of changes to the USDA organic regulations because Executive Order 12866 does not exempt regulations of voluntary programs from this evaluation. Changes to the regulations could affect voluntary participation and would have real costs.

The Office of Management and Budget (OMB) has designated OLPP as an economically significant rule. Under Executive Order 12866, AMS is obligated to consider whether the potential impacts of the OLPP rule meet the principles of Executive Order 12866 and demonstrate a need for regulation. AMS did not identify a market failure in the OLPP final rule RIA and therefore AMS has now concluded that regulation is unwarranted. In fact, several organic producers and organizations that oppose withdrawal of the OLPP rule, including a few that argued that there was market failure necessitating the OLPP final rule, purchased a full-page advertisement in a newspaper about this rulemaking. In it they recognized that "[o]rganic farmers have pioneered new practices to enhance animal welfare because consumers demand it and because it makes farms resilient and profitable."¹⁰ If this is true, it is additional evidence from those involved in organic production that supports AMS' conclusion that the market is working and that additional regulation is unwarranted.

Further, AMS maintains that the costs of the OLPP final rule outweigh potential benefits. After publication of the OLPP final rule, AMS discovered a mathematical error in the calculation of benefits. The error was related to the formula used to calculate the 7 percent and 3 percent discount rates. In addition, AMS determined that there was a more suitable willingness-to-pay estimate for outdoor access than the range used to estimate benefits in the OLPP final rule. Although there was another error correction that moved the results in the opposite direction, the estimated benefits declined overall when AMS recalculated those values based on the above findings. In summary, given the high degree of uncertainty and subjectivity in evaluating the benefits of the OLPP final

rule, and the lack of any market failure to justify intervention, and the clear potential for additional regulation to distort the market or drive away consumers, even if the comparison of costs and benefits was a close call, AMS would choose not to regulate as a policy matter.

Several commenters opined that AMS did not properly account for qualitative benefits to farm animals and producers in determining that there are net costs for the OLPP final rule. AMS finds that the qualitative benefits are speculative because it is uncertain that organic farmers and consumers would see positive impacts from implementation of the OLPP rule. The assertion that the OLPP final rule would result in economic benefits from healthier animals is not supported by information or research linking outdoor access on pasture or vegetation to improved economic outcomes for producers. AMS did not use the potential outcome of healthier animals as justification for the OLPP final rule. The withdrawal of the OLPP final rule does not prevent organic producers from providing outdoor access on pasture or vegetation, communicating that to consumers, and receiving any potential benefits from those practices.

AMS concludes that the costs to consumers of implementing the OLPP final rule would outweigh any potential benefits to consumers because it anticipates that a significant portion (50 percent) of current organic egg producers would exit the organic market following implementation, resulting in supply shortages and price increases for organic eggs. The OLPP final rule RIA estimated that organic egg prices could increase by a mean of \$1.25 per dozen (assuming a demand elasticity of 1.0) as a result of that rule, which exceeded the RIA's estimate of consumers' willingness to pay for the costs of implementing the OLPP final rule. Furthermore, as AMS explained in the PRIA issued in connection with this final rule on withdrawal, the initial consumer willingness-to-pay estimates for eggs from hens with outdoor access were likely overstated in the RIA for the OLPP final rule and should be lower (initial range: \$0.21 to \$0.49 per dozen versus revised range: \$0.16 to \$0.25 per dozen). Therefore, the estimated benefits in the RIA for the OLPP final rule were inflated, and there are no clear net benefits for producers or consumers from implementation of the OLPP final rule.

Ultimately, the reduction of potential qualitative benefits, as a result of recalculations due to mathematical errors, the absence of a market failure,

¹⁰ *The Washington Post*, January 16, 2018, Page A7.

and tenuous qualitative benefits leaves net costs that would be overly burdensome to organic producers and consumers.

Some commenters have stated that withdrawal of the rule would undermine public trust and consumer confidence in the organic label. AMS believes, based on data and experience, that this outcome will not be realized. First, the withdrawal of the OLPP final rule maintains the current organic regulations for livestock that cover health care practices and living conditions, including the requirement for year-round outdoor access. This rule does not withdraw any requirements that are currently codified in the USDA organic regulations for livestock. AMS anticipates that consumer confidence in the organic label will be preserved and that certified organic livestock producers will continue to use that label to differentiate their products in the marketplace.

Further, market data suggests that consumer perception of the USDA organic regulations, which will remain in effect upon withdrawal of the OLPP final rule, is positive. Under the current regulations, sales of organic products have increased annually. From 2007 to 2016, the number of organic layers has increased by 12.7% annually. The Organic Trade Association (OTA) 2017 Organic Industry Survey reports, "2016 was a tremendous year for organic meat and poultry, with sales growing 17.2%." That survey further states, "Consumers have moved from conventional to natural to hormone-free or grass-fed, and now finally to organic or organic grass-fed as they understand all that organic encompasses." Regarding organic eggs, the OTA 2017 Organic Industry Survey predicted that the organic egg market will "stabilize" by the latter half of 2017, after the supply of organic eggs spiked in response to the 2015 outbreak of Avian Influenza and the drop in demand for organic eggs in 2016 due to the wide price gap between organic and conventional.

These market data do not support commenters' assertions that the withdrawal of the OLPP final rule and maintenance of current regulations will damage consumer confidence and trust in organic products. The industry has continued to expand under the current regulations and the outlook for continued growth in the organic sector has not been predicated upon the implementation of the OLPP final rule. Further, the OTA survey indicates that consumers are choosing organic meat and poultry, demonstrating consumer validation of the sufficiency of the existing regulations; plainly, the organic

label is an effective means for product differentiation in the marketplace.

A number of commenters mentioned that withdrawal of the rule contradicts the "consensus" favoring new, broadly prescriptive regulations and that considerations for animal welfare should override potential costs. Commenters urged implementation of the OLPP final rule because the organic industry requested that regulation.

AMS will not regulate when statutory authority is insufficient and potential costs do not justify potential benefits, whether there is a pro-regulatory "consensus" or not. As a matter of USDA regulatory policy, AMS should not regulate simply because some industry players believe that more regulations will help their competitive position. Furthermore, AMS believes the very notion of a "consensus" is at odds with prior public comments and some data on consumer behavior around organic purchases. In response to the April 2016 OLPP proposed rule, AMS received a number of comments representing consumer and organic farmer interests that stated that the current USDA organic regulations are adequate and enforceable and new regulations are not necessary or preferable. In the 2017 OTA U.S. Families' Organic Attitudes and Behavior survey, respondents were asked to rank the importance of several "true" statements about organic products. The statement, "Animals used in the production of organic food are treated humanely, fed an organic diet and are not raised in confinement," was ranked fourth out of fourteen.¹¹ This data, plus the reports of increased sales in organic livestock products, shows consumer trust in the current practices and requirements for organic livestock products.

Moreover, the mere fact that some organic consumers care about animal welfare does not mean that the term "organic" should be equated with animal welfare assurances.

The current USDA organic regulations, which will remain in effect, have standards for livestock healthcare, feed, and living conditions. A central premise of these regulations, which producers must uphold and certifying agents must enforce, is for year-round living conditions that accommodate the

health and natural behavior of the animals. Moreover, AMS has estimated that a sizeable portion of organic livestock producers already meet the requirements in the OLPP final rule. In the RIA for the OLPP final rule, AMS stated that the mammalian livestock provisions of the OLPP final rule largely codify existing industry practices. In addition, AMS estimated that the majority of organic egg producers and about half of organic egg production meet the outdoor access requirements in the OLPP final rule. The withdrawal of the OLPP final rule would not compel changes in organic livestock production for these producers, who can continue to cater to consumers willing to pay a premium for animal welfare guarantees if they choose. Finally, the withdrawal of the OLPP final rule does not restrict organic producers from using private certification labels to communicate additional information to consumers about production practices or product attributes.

Some commenters asserted that the voluntary nature of the organic program mitigates the potential costs of implementing the OLPP final rule. The bases for evaluating the potential costs of compliance are the requirements of Executive Order 12866 and the final rule establishing the NOP in 2002 (65 FR 80548). The 2002 final rule quantified costs of complying with that rule, e.g., voluntarily obtaining or maintaining organic certification. AMS cannot negate the costs of the OLPP final rule on the basis that obtaining organic certification is voluntary because some producers that are in compliance with current regulations would incur costs to either change practices or to exit organic production. AMS notes that participation in many regulated markets is technically voluntary, but participants nevertheless invest substantial resources in and frequently stake their livelihoods on such participation. Moreover, the voluntary nature of the market is not an answer for consumers that would like to purchase organic products but cannot afford the premium that will result from the cost of implementing the OLPP rule. These consumers could be excluded from the organic market despite their preference to participate.

A number of commenters also addressed biosecurity and disease risk, stating that some of the outdoor access requirements, such as the presence of vegetation and no roofs, conflict with FDA requirements and biosecurity practices. These comments were also submitted in response to the April 2016 OLPP proposed rule and were addressed in the OLPP final rule (p. 7068–7070;

¹¹ The question provided a list and asked, "All of the following statements are true with regards to products certified as organic by the USDA. From this list, what is or would be most important to you, if any, when deciding whether or not to purchase organic foods specifically? The statement, "Animals used in the production of organic foods are treated humanely, fed an organic diet and not raised in confinement," ranked 4 out of 14.

7072). Existing USDA organic regulations allow for the temporary confinement of animals for conditions under which the health, safety, or well-being of the animal could be jeopardized. AMS acknowledges that the existing requirements for outdoor access and the provisions for temporary confinement provide organic producers with the flexibility to mitigate biosecurity and disease risks.

A comment noted that AMS must assess the impact of withdrawing the OLPP final rule on the equivalency arrangements with the European Union and Canada and the economic impacts of the potential dissolution of those agreements as a result of this action. In the OLPP final rule, AMS responded to comments concerning potential impacts on trade agreements (p. 7080). AMS' responses to these comments remains the same.

AMS provided a 30-day public comment period in order to consider the public comments received on the proposed withdrawal and make a final decision on the OLPP final rule by the current effective date of May 14, 2018. AMS did not grant requests for extension of the public comment period because interested parties had the opportunity to comment on the underlying OLPP final rule in 2016 as well as the rulemaking in 2017 that culminated in the delay of the effective of the OLPP final rule until May 14, 2018. Moreover, commenters were on notice of the proposal since November 14, 2017, when it was discussed in a final rule published on that date. Furthermore, and in light of this backdrop, the December 18, 2017 proposed rule presented discrete issues that interested parties should have been able to address within the 30-day comment period. Additionally, extending the comment period would have prevented AMS from resolving the status of the OLPP rulemaking by May 14, 2018.

For the reasons described above, AMS maintains that the OLPP final rule exceeds AMS' scope of authority under OFPA and would be overly burdensome for organic poultry producers. Therefore, AMS is withdrawing the OLPP final rule.

VI. Executive Orders 12866/13563 Review

This section provides an Executive Summary of the Regulatory Impact Analysis (RIA) for this final rule on withdrawal. A full analysis is posted on the *Regulations.gov* website. This rulemaking has been designated as an "economically significant regulatory action" under Executive Order 12866,

and, therefore, has been reviewed by OMB. This RIA on withdrawal remains unchanged from the PRIA because AMS did not receive new information via public comments on the December 18, 2017 proposed rule that would have altered the RIA.

Executive Orders 12866, 13563, and 13771 control regulatory review. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives, and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 13771 directs Agencies to identify at least two existing regulations to be repealed for every new regulation unless prohibited by law. The total incremental cost of all regulations issued in a given fiscal year must have costs within the amount of incremental costs allowed by the Director of OMB, unless otherwise required by law or approved in writing by the Director of OMB. This rule is an Executive Order 13771 deregulatory action. AMS estimates that withdrawal of the OLPP final rule will result in cost savings of \$10.2 million to \$32.6 million per year, discounted at 7 percent over 15 years. When factored over perpetuity and extended to account for future years, the estimated cost savings become, on an annualized basis, \$8.5 million to \$34.9 million. Details on the estimated cost savings of this rule over 15 years can be found in the RIA, posted separately and summarized below.

The estimated costs of implementing the OLPP final rule were based on three potential scenarios of how organic egg producers would respond. First, AMS estimated that if all organic livestock and poultry producers came into compliance, the costs would be \$28.7 to \$31 million each year. Second, if 50 percent of the organic egg producers moved to the cage-free egg market and the organic industry continues to grow at historical rates, the estimated costs are \$11.7–\$12.0 million. Plus, AMS estimated transfers in the amount of \$79.5 million to \$86.3 million per year for producers that move from the organic to the cage-free market and lose the organic price premium. Third, if 50 percent of the organic egg producers moved to the cage-free egg market and there were no new entrants that could not already comply, the estimated costs are \$8.2 million. For this scenario, AMS

estimated transfers to be \$43.7 million to \$47.4 million per year. These costs do not include an additional \$1.95–\$3.9 million associated with the estimated paperwork burden. Withdrawing the OLPP final rule prevents these potential costs from taking effect, resulting in substantial organic poultry producer cost savings.

The estimated benefits of implementing the OLPP final rule were calculated for the three scenarios above and were based on consumer willingness-to-pay for outdoor access for laying hens. If all organic livestock and poultry producers came into compliance, AMS estimated the benefits would be \$13.0–\$31.6 million. Second, if 50 percent of the organic egg producers moved to the cage-free egg market and the organic industry continues to grow at historical rates, the estimated benefits are \$3.6–\$8.7 million. Third, if 50 percent of the organic egg producers moved to the cage-free egg market and there were no new entrants that could not already comply, the estimated benefits are \$3.3–\$8.0 million.

For all scenarios described above, the midpoint of the cost estimates, including the estimated paperwork burden, exceeds the midpoint of the estimated benefits.

The OLPP final rule estimated the benefits from the rule's implementation as \$4.1 to \$49.5 million annually. The estimated benefits spanned a wider range than the estimated costs and were based on research that measured consumers' willingness-to-pay for outdoor access for laying hens. The OLPP final rule acknowledged that the benefits were difficult to quantify.

In reviewing the OLPP final rule, AMS found that the calculation of benefits contained mathematical errors in calculating the discount rates of 7% and 3%. The error resulted in overstating the value of the benefits. Using the correct discounting formula, the estimated costs and paperwork burden for the OLPP final rule exceed the estimated benefits for all producer response scenarios. AMS also found the estimated benefits over time were handled differently than were the estimated costs over time. Specifically, costs were constant over time while benefits declined by an equal amount each year corresponding to the depreciation of poultry housing. In addition, AMS determined that the range used for estimating the benefit interval should be replaced with more suitable estimates. The estimate used in the benefits calculations for the OLPP final rule were based on consumers' willingness-to-pay for eggs produced by chickens raised in a cage-free

environment without induced moulting and with outdoor access. Because the first two practices are already required in organic production, AMS determined that a narrower range for the willingness-to-pay for outdoor access estimate was more precise and appropriate. The revised calculations of benefits are presented in the accompanying RIA.

As a result of reviewing the calculation of estimated benefits, AMS reassessed the economic basis for the rulemaking as well as the validity of the estimated benefits. On the basis of that reassessment, AMS finds little, if any, economic justification for the OLPP final rule.

The RIA for the OLPP final rule did not identify a significant market failure to justify the need for rule. The RIA for the OLPP final rule noted that there is wide variance in production practices within the organic egg sector and asserted that “as more consumers become aware of this disparity, they will either seek specific brands of organic eggs or seek animal welfare labels in addition to the USDA organic seal.” OLPP final rule RIA at 14. AMS also found the “majority of organic producers also participate in private, third-party verified animal welfare certification programs.” *Id.* Variance in production practices and participation in private, third-party certification programs, however, do not constitute evidence of significant market failure or weigh against withdrawal of the OLPP rule.

First, while AMS recognizes that the purpose of the OFPA is to assure consumers that organically produced products meet a consistent standard, that purpose does not imply that there can be no variation in organic production practices. Rather, a variety of production methods may be employed to meet the same standard. Some may be more labor intensive and others more capital intensive, and some may be appropriate for small operations while others are appropriate for large operations. Importantly, producers will adopt different production methods over time as technology evolves and enables operations to meet the same standard more efficiently. Moreover, producers may follow different standards with respect to aspects of production that are not relevant to organic certification or otherwise subject to regulation. Thus, variation in production practices is expected and does not stand as an indicator of a significant market failure.

Second, private, third-party certification programs are common in the dynamic food sector. That organic

suppliers participate in such programs does not indicate a market failure with respect to the standards promulgated under the USDA NOP. Rather, the use of third-party certifications in addition to the USDA organic seal merely indicates that participants in the food sector seek ways to differentiate their products from those of their competitors. That some aspects of a private certification may overlap with the requirements underlying the USDA organic seal demonstrates that food producers, manufacturers, and retailers use multiple methods to communicate with consumers about the attributes of the foods that they produce and sell. Private, third-party certifications reflect attributes that food sellers wish to emphasize, and the existence of such certifications on organic products provides no evidence of a significant market failure relating to USDA organic standards. Nor is it clear that implementation of the OLPP final rule would reduce participation in third-party certification programs; instead, third-party certification programs may simply evolve as producers find new ways to distinguish their products.

Finally, the accompanying RIA explains several calculation errors associated with the OLPP final rule RIA. The RIA also provides additional information regarding the estimated benefits and explains why they likely were overstated in the original OLPP final rule RIA. In any case, withdrawing the OLPP final rule would prevent the negative cost impacts from taking effect, resulting in substantial organic poultry producer cost savings of \$8.2 to \$31 million annually, plus additional cost savings of \$1.95–\$3.9 million from paperwork reduction.

Consideration of Alternatives

AMS considered three alternatives in developing this rule to withdraw the OLPP final rule. The first alternative was to implement the OLPP final rule on May 14, 2018, which is the current effective date. The second alternative was to further delay the final rule. The third alternative, which is the selected alternative, was to withdraw the final rule.

For the first alternative, if the OLPP final rule were to become effective on May 14, 2018, the costs and transfers described in the RIA would be expected to occur, resulting in requirements with substantial costs not supported by evidence of significant market failure.

The second alternative was to further delay the OLPP final rule. This alternative, however, would defer the decision on whether to implement or withdraw to a future date, despite the

agency having performed its review and received comments from the public. This alternative fails to achieve USDA’s goal of reducing regulatory uncertainty.

AMS has selected the third alternative, to withdraw the OLPP final rule, as the preferred alternative. This alternative estimates cost savings for poultry producers of \$8.2 to \$31 million per year (based on 15-year costs). In addition, \$1.95–\$3.9 million in annual paperwork burden would not be incurred. As described in the RIA, the range of benefits could be expected to be lower than projected in the OLPP final rule RIA. Moreover, *a priori*, the benefits associated with any government intervention in the absence of an identifiable market failure will be lower than the required costs of imposing such an intervention. Given the unclear nature of the market failure being addressed by the OLPP final rule, AMS would give clear preference to the lower end of the benefit range, which consistently falls below the costs associated with the OLPP final rule.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market.

Data suggest nearly all organic egg producers qualify as small businesses. OLPP final rule RIA at 140–141. Small egg producers are listed under North American Industry Classification System (NAICS) code 112310 (Chicken Egg Production) as grossing less than \$15,000,000 per year, and AMS estimates that out of 722 operations reporting sales of organic eggs, only four are not small businesses. Thus, the OLPP final rule RIA found that some small egg producers and small chicken (broiler) producers would be affected by the poultry outdoor access and space provisions. *See* OLPP final rule RIA at 136–138, 142, 145–146. Furthermore, the RIA of the OLPP final rule noted that some small producers were particularly concerned about limited land availability for outdoor access requirements and the potential for increased mortality attendant to the new regulatory demands. These concerns were identified as sources of burdensome costs and/or major obstacles to compliance for some small businesses. *See id.* at 26–28. Based on surveys of organic egg producers, AMS believes approximately fifty percent of layer production will not be able to

acquire additional land needed to comply with the OLPP final rule and some of this burden will be borne by small entities. *Id.* at 142. Also, certain existing certified organic slaughter facilities could surrender their organic certification as a result of the OLPP final rule and certain businesses currently providing livestock transport services for certified organic producers or slaughter facilities may be unwilling to meet and/or document compliance with the livestock transit requirements. *Id.* at 149.

Withdrawing the OLPP final rule avoids these economic impacts without introducing any incremental burdens or erecting barriers that would restrict the ability of small entities to compete in the market. This conclusion is supported by the historic growth of the organic industry without the regulatory amendments.

This rule relieves producers of the costs of complying with the OLPP final rule. The effects of withdrawal will be beneficial and not defined as significant for the specific purposes of the Regulatory Flexibility Act. Some small entities may experience time and money savings as a result of not having to change practices to comply with the OLPP final rule. Affected small entities would include organic egg and organic broiler producers. This rule will provide measurable, savings for small entities. However, for the definitional purposes of the RFA, these savings are not considered a “significant” economic impact on a substantial number of small entities.

Under these circumstances, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities and certifies as such.

VIII. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system.

Pursuant to section 6519(f) of OFPA, this final rule would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601–624), the Poultry Products Inspection Act (21 U.S.C. 451–471), or the Egg Products Inspection Act (21 U.S.C. 1031–1056), concerning meat, poultry, and egg products, respectively, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301–399), nor the authority of the Administrator of the U.S. Environmental Protection Agency

under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136–136(y)).

IX. Paperwork Reduction Act

No additional collection or recordkeeping requirements are imposed on the public by withdrawing the OLPP final rule. Accordingly, OMB clearance is not required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), Chapter 35. Withdrawing the OLPP final rule will avoid an estimated \$1.95–\$3.9 million in costs for increased paperwork burden associated with that final rule.

X. Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

AMS has assessed the impact of this rule on Indian tribes and determined that this rule would not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, AMS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

XI. Civil Rights Impact Analysis

AMS has reviewed this final rule in accordance with the Department Regulation 4300–4, Civil Rights Impact Analysis, to address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. AMS has determined that withdrawing the OLPP final rule has no potential for affecting producers in protected groups differently than the general population of producers.

XII. Conclusion

In compliance with OFPA and consistent with the regulatory policies of Executive Orders 12866 and 13563, AMS is withdrawing the OLPP final rule.

Dated: March 8, 2018.

Bruce Summers,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2018–05029 Filed 3–12–18; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 741

RIN 3133–AE77

Requirements for Insurance; National Credit Union Share Insurance Fund Equity Distributions; Correction

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule; correction.

SUMMARY: On February 23, 2018, the NCUA Board (Board) issued a final rule adopting amendments to its share insurance requirements rule to provide stakeholders with greater transparency regarding the calculation of each eligible financial institution’s pro rata share of a declared equity distribution from the National Credit Union Share Insurance Fund (NCUSIF). A clerical error appeared which confuses what CFR unit is being amended. This document corrects that error.

DATES: This correction is effective March 26, 2018.

FOR FURTHER INFORMATION CONTACT: Benjamin M. Litchfield, Staff Attorney, Office of General Counsel, at (703) 518–6540; or Steve Farrar, Supervisory Financial Analyst, Office of Examination and Insurance, at (703) 518–6360. You may also contact them at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

SUPPLEMENTARY INFORMATION: On February 23, 2018, at 83 FR 7954, the Board issued a final rule adopting amendments to 12 CFR part 741. In amendments to appendices A, B, and C to part 741, incorrect headings appeared above amendatory instructions 4 and 5 on page 7964 identifying the wrong CFR part. Instruction 5 omitted the part number.

Therefore, FR Rule Doc. No. 2018–03622, published on February 23, 2018, beginning on page 7954, is corrected as follows:

■ 1. On page 7964, in the center column, the heading above amendatory instruction 4 is corrected to read as follows: