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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 761, 762, 763, 764, 765, 766, 767, 770, 772, 773, 774, and 799

Commodity Credit Corporation

7 CFR Part 1436

Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and

Farm Service Agency

7 CFR Part 1940

RIN 0560-AH02

Environmental Policies and Procedures; Compliance with the National Environmental Policy Act and Related Authorities

AGENCY: Farm Service Agency, Commodity Credit Corporation, Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) is consolidating, updating, and amending its regulations implementing the National Environmental Policy Act of 1969, as amended (NEPA). FSA's previous NEPA regulations had been in place since 1980. Significant changes to the structure of FSA and the scope of FSA's programs require changes in FSA's NEPA regulations. The changes will also better align FSA's NEPA regulations with the President's Council on Environmental Quality (CEQ) NEPA regulations and meet the FSA responsibilities for periodic review of their categorical exclusions (CatExs). CatExs involve proposed actions that typically do not result in individual or

cumulative significant environmental effects or impacts and therefore do not merit further environmental review in an Environmental Assessment (EA) or Environmental Impact Statement (EIS). The additions to the existing list of CatExs improves the clarity and consistency of the regulations. This final rule also expands and clarifies the list of proposed actions that require an EA. The FSA NEPA implementing regulations also cover the Commodity Credit Corporation (CCC) programs that FSA administers on behalf of CCC. In addition, this rule makes conforming changes to existing references to FSA NEPA regulations in other FSA regulations. The revisions to the FSA NEPA implementing regulations are intended to improve transparency and clarity of the FSA NEPA process for FSA program participants, and to provide for a more efficient environmental review that will lead to better decisions and outcomes for stakeholders and the environment. Finally, in coordination with the Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities Service, this rule removes the old NEPA regulations.

DATES: Effective: **[Insert date of publication in the FEDERAL REGISTER].**

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Persons with disabilities or who require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720-2600 (voice).

#### SUPPLEMENTARY INFORMATION:

##### Background

The proposed rule for this rulemaking initiative was published in the Federal Register on September 3, 2014 (79 FR 52239 through 52259) and discussed the changes

to consolidate, clarify, and update the FSA NEPA regulations. As discussed below in the section titled Summary of Public Comments and FSA Responses, some additional clarifying changes of certain provisions are being made in response to public comments received on the proposed rule. The majority of the changes this rule is making to the FSA NEPA regulations are the changes introduced in the proposed rule.

## NEPA

NEPA (Pub. L. 91-190, 42 U.S.C. 4321-4370) establishes a national environmental policy, sets goals for the protection, maintenance, and enhancement of the environment, and provides a process for carrying out the policy and working toward those policy goals. The NEPA process requires different levels of environmental review and analysis of Federal agency proposed actions, depending on the nature of the proposed action. As stated in 40 CFR 1508.18(a), proposed actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals. Some proposed actions, because of the nature of their potential environmental effects, are categorically excluded from further environmental review and are known as CatExs. If a proposed action is not categorically excluded, additional review will be performed either through an EA, or, where the circumstances warrant, a more rigorous EIS to ensure that the additional time and analysis is both expeditious and serves to better inform the decision makers. Rules specifying the requirements for NEPA review are in government-wide NEPA regulations issued by CEQ and available in 40 CFR parts 1500 through 1508, and

in individual agency regulations, including the USDA's NEPA implementing regulations (7 CFR part 1b). This rule updates the FSA NEPA implementing regulations.

A CatEx is used typically for proposed actions that do not have a significant impact on the quality of the human environment, individually or cumulatively, such as a farm loan consolidation or funding for the maintenance of existing buildings. The general NEPA regulations define the human environment as the natural and physical environment, and the relationship of people with that environment (40 CFR 1508.14). This final rule specifies categories of FSA proposed actions that are categorically excluded, if there are no extraordinary circumstances for the specific proposed action. As used in this rule, the term "extraordinary circumstance" refers to the presence of circumstances specified in 7 CFR 799.33 and the impacts of those circumstances -- for example, impacts that are potentially adverse, significant, uncertain, or involve unique or unknown risks; in addition, it will be determined if the impacts can be avoided or mitigated. The results of the review for extraordinary circumstances will be the determination if the proposed action can be categorically excluded or if an EA or EIS is required. If a proposed action is not categorically excluded, then the next step in the NEPA process is usually an EA. An EA is prepared to analyze the potential environmental impacts of a Federal agency proposed action and alternatives to the proposed action to determine whether proposed actions can proceed without supplemental environmental review through an EIS. An EA can result in:

- A proposed action not proceeding,
- A Finding of No Significant Impact (FONSI), or

- A determination that the environmental impact will be significant and therefore, an EIS is required.

If the agency determines at an early stage that there is clearly the potential for significant environmental impacts, FSA can start the EIS process without first doing an EA.

NEPA requires a Federal agency to prepare an EIS for any major Federal proposed action that significantly affects the quality of the human environment (see 42 U.S.C. 4332(c)). The criteria for what constitutes a “major Federal action significantly affecting the quality of the human environment” are specified in the general NEPA regulations that apply to all Federal agencies in 40 CFR 1508.18. The EIS must include a detailed evaluation of:

- 1) The environmental impacts of the proposed action;
- 2) Any adverse environmental effects that cannot be avoided;
- 3) Alternatives to the proposed action;
- 4) The relationship between the local, short-term resource uses and the maintenance and enhancement of long-term ecosystem productivity; and
- 5) Any irreversible and irretrievable commitments of resources.

NEPA requires that the environmental review must be started once a proposed action is concrete enough to warrant review and must be completed at the earliest possible time to ensure that planning and implementation decisions reflect environmental values. The NEPA review informs the decision maker and the affected public, and must be completed before a decision is made.

NEPA also establishes CEQ. Executive Order 11514, “Protection and Enhancement of Environmental Quality,” as amended by Executive Order 11991, “Relating to Protection and Enhancement of Environmental Quality,” directs CEQ to prepare binding regulations governing how Federal agencies are to implement NEPA. The CEQ NEPA regulations (40 CFR parts 1500-1508) provide this general regulatory framework.

The CEQ NEPA regulations require every Federal agency to develop agency-specific procedures for implementing NEPA. Each Federal agency’s NEPA implementing procedures supplement the CEQ regulations to address the agency’s specific environmental review needs. This final rule supplements the CEQ’s NEPA regulations, and the USDA general NEPA regulations in 7 CFR part 1b, and specifies their implementation by FSA.

#### FSA Organizational History

FSA was created in 1995 as required by the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354); the former Agricultural Stabilization and Conservation Service (ASCS) and the farm loan portion of the Farmers Home Administration (FmHA) were merged and are currently the Farm Programs and Farm Loan Programs, respectively. Since that reorganization, FSA has operated under two separate sets of NEPA regulations, one for the programs within the scope of Farm Programs and one for the programs within the scope of Farm Loan Programs. This final rule consolidates, clarifies, and updates FSA NEPA regulations to establish a single set of NEPA regulations for FSA, and to ensure that those regulations

reflect current FSA organizational structure, environmental laws, Executive Orders, and CEQ requirements.

FSA's scope also includes field operations and commodity warehouse activities that were included in the scope of the former ASCS. These activities are already categorically excluded as inventory, informational, or administrative actions under USDA's general NEPA implementing rules in 7 CFR part 1b, and those CatExs continue to be available for application by FSA. This rule does not change the USDA department-wide CatExs that apply to FSA programs that solely involve those proposed actions or similar proposed actions identified in 7 CFR 1b.3.

#### Previous Structure of FSA NEPA Regulations; Restructuring in this Rule

The Farm Programs part of FSA oversees conservation, disaster assistance, price support, farm storage facility loans, and commodity loan programs. Previously, the NEPA regulations governing FSA Farm Programs were specified in 7 CFR part 799, which this rule revises. Many current FSA programs did not exist in 1980 and were therefore not specifically addressed under the previous NEPA regulations in 7 CFR part 799.

The Farm Loan Programs part of FSA is responsible for providing direct farm loans, guaranteed farm loans, and land contract guaranteed loans. Previously, the NEPA regulations governing Farm Loan Programs in 7 CFR part 1940, subpart G applied to FSA farm loans and to other USDA activities associated with the Rural Development agencies: Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities Service, (also formerly part of FmHA). The regulations in 7 CFR part 1940

contained provisions that refer to programs that either no longer exist or are not FSA programs. This rule specifies the NEPA regulations for FSA Farm Loan Programs in 7 CFR part 799; part 1940 will no longer apply to those programs. The Rural Development agencies (Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities Service) published a final rule on March 2, 2016 (81 FR 11000 - 11053), amending part 1940, subpart G, to specify that subpart G does not apply to programs administered by the Rural Housing Service or the Rural Business-Cooperative Service. (NOTE: Subpart G had not applied to the Rural Utilities Service.) Therefore, with the changes made by this rule, the regulations in subpart G will no longer be used by any agency. Therefore, this rule removes subpart G to part 1940 in its entirety.

FSA is also responsible for NEPA compliance for the CCC programs that FSA administers on behalf of CCC. FSA has no separate NEPA regulations for CCC programs; previous FSA NEPA regulations in 7 CFR part 799 applied to CCC programs that are administered by FSA. Those CCC programs continue to be included in the scope of 7 CFR 799, as revised by this rule.

The revised part 799 has six subparts, titled “General FSA Implementing Regulations for NEPA,” “FSA and Program Participant Responsibilities,” Environmental Screening Worksheet,” “Categorical Exclusions,” “Environmental Assessments,” and “Environmental Impact Statements.” The “FSA and Program Participant Responsibilities” subpart includes an overview chart of the FSA NEPA process.

The changes are intended to improve clarity in the regulations, allow more efficient program implementation at the field level, provide more openness and

transparency during FSA's environmental decision-making, and simplify program administration.

Following the discussion of the regulatory changes, a summary table provides a general comparison of the major NEPA provisions, the previous regulations, and this final regulation. In general, FSA has already administratively implemented FSA NEPA procedures to meet current NEPA requirements as specified in Executive Orders and CEQ regulations; this rule revises the regulations to include those currently implemented FSA NEPA procedures. For example, Programmatic EAs (PEAs) were not in the previous regulations, but FSA already does such analyses in compliance with current CEQ regulations. The provisions for PEAs are a revision to the regulations. A detailed crosswalk comparing the specific regulatory changes between the previous FSA regulations and these final regulations would not accurately reflect the changes in FSA NEPA procedures that impact the public. Combining the requirements from the previous 7 CFR parts 799 and 1940 involved significant editing and restructuring. This resulted in final regulations that are significantly rewritten, but the underlying FSA NEPA procedures remain largely unchanged. Therefore, the summary table highlights the substantive procedural changes, rather than the detailed editorial restructuring and removal of obsolete provisions. This table is intended to provide a quick comparison of the major NEPA provisions and show how they are treated in both the previous regulations and this final regulation to clarify the actual changes that will have an impact on the public and the actions that FSA funds.

The CEQ regulations require that Federal agencies implement NEPA procedures, in part to "reduce paperwork and the accumulation of extraneous background data and to

emphasize real environmental issues and alternatives” (40 CFR 1500.2(b)). FSA believes that the changes meet that requirement by clarifying the procedures for completing EAs and EISs and expanding and making the CatEx list more specific. The changes will reduce paperwork and allow FSA to focus limited resources on real environmental issues and alternatives, as appropriate.

Emergency circumstances will continue to be handled consistent with 40 CFR 1506.11.

#### Environmental Screening Worksheet

This rule includes procedures to increase transparency and accountability of FSA’s NEPA process. One of those procedures is a new worksheet that will be used to assess the need for, and extent of, NEPA reviews for all FSA programs. This final rule describes the use of the new environmental screening worksheet (ESW) in 7 CFR part 799, subpart C. The ESW and the process for using it represent a substantive change from previous practice. Implementation of the ESW consolidates two forms previously required by 7 CFR parts 799 and 1940, subpart G, reducing total paperwork and ensuring better compliance with NEPA. FSA staff will use the ESW as an initial screening tool to record the use of a CatEx and review any likely environmental impacts of proposed actions and determine the potential significance and appropriate level of NEPA review (CatEx, EA, or EIS). For CatExs, completion of the ESW will be used to record the relevant CatEx being used; review and document the determination of whether extraordinary circumstances exist; and determine whether the CatEx is appropriately applied or if further environmental review of that proposed action is necessary. The new

ESW consolidates the review criteria from multiple forms and checklists previously used by FSA for environmental review. Having one form will reduce the paperwork for FSA and ensure compliance with NEPA.

As revised by this rule, 7 CFR part 799, subpart C, now specifies the categories of proposed actions that require the use of the ESW and how the ESW will be used. The ESW will be used to either record the CatEx or for a review, unless it is clear that the proposed action requires an EA or EIS or related environmental review, such as a PEA or PEIS. Generally, all proposed actions listed in § 799.31 will not require further documentation beyond that provided in the substantiation for establishing the CatEx and the project file for specific proposed actions. The review using the ESW will be required for all proposed actions listed in § 799.32. As noted in the proposed rule, an administrative record was created, in consultation with CEQ, to substantiate the CatExs in this rule. The administrative record includes benchmarking CatExs by other government agencies and documentation from previous FSA environmental review of these types of proposed actions.

The next section of this document explains the new categories of CatExs. Examples of CatEx proposed actions specified in § 799.31 that do not require review include many loan-related proposed actions, fence repair, and maintenance of existing buildings. For those proposed actions, instead of a full review, FSA staff will simply use the ESW form to record the specific CatEx being used and to ensure that no extraordinary circumstances exist.

The proposed actions specified in § 799.32 of this rule may be categorically excluded depending on the outcome of the review documented in the ESW. Those CatEx

proposed actions require a review using an ESW to determine if extraordinary circumstances exist that require further environmental review. Examples of these proposed actions that will be analyzed with a review using an ESW include loan transfers with planned new land disturbance and fence installation.

Extraordinary circumstances, as specified in this rule, are considered in the context of a specific action and include situations with potentially significant impacts. If such circumstances do exist, then an EA is required for a proposed action that would otherwise be categorically excluded.

For all proposed actions for which there is no applicable CatEx, if necessary, the ESW can be used to determine whether an EA or an EIS is the next step in the NEPA process, but the ESW is not required if it is clear to FSA that an EA or EIS is required.

USDA agencies and other Federal agencies have similar environmental screening tools (for example, USDA's Natural Resources Conservation Service (NRCS) and Rural Development, the Department of Energy, the Department of Defense). FSA reviewed those screening tools and considered these agencies' approaches during development of the ESW. For the purposes of this rule, references to the ESW also refer to alternate documentation comparable to the ESW and that has been approved in advance by the FSA National Environmental Compliance Manager, such as related environmental documentation, including, but not limited to, the related documentation from NRCS or another agency.

The ESW replaces the previous form FSA-850, "Environmental Evaluation Checklist" document and the RD-1940-22 form, which local FSA staff and County Office Committee reviewers have found to be outdated and confusing. The new, more

concise ESW is designed to be applied consistently and provide a more transparent review of anticipated environmental effects.

This final rule specifies the situations in which the ESW will be used by FSA. The ESW will be completed by FSA field office personnel during the review of an application for any FSA program, unless the program is categorically excluded from further environmental review as shown by the CatEx recorded on the ESW, or unless FSA receives technical assistance with the environmental review from USDA or another Federal agency that can be used in place of the ESW. For example, FSA often receives technical assistance from NRCS, which uses its own review form. The NRCS form provides the same information as the ESW and therefore is used instead of the ESW when NRCS supplies FSA technical assistance. The use of the new FSA ESW as specified in this rule is expected to make overall proposed action planning and project-specific environmental reviews more timely and cost effective. It is also expected to provide more clarity and transparency to the environmental review process.

#### CatEx Changes

This rule updates and clarifies the CatEx requirements that apply to FSA programs and groups those requirements in a new subpart. Consistent with CEQ regulations, subpart D of the rule specifies that a CatEx is an agency proposed action that normally has no individual or cumulative significant effect on the human environment (see 7 CFR 799.30). In subpart D, 7 CFR 799.31 and 799.32 provide longer and more specific lists of categorically excluded proposed actions than were in the previous regulations. The updated and expanded list of CatExs represents a substantive change.

Many of the proposed actions included in this rule as CatExs were not explicitly listed as CatExs in the previous FSA NEPA regulation, but have been considered as CatExs under the Departmental regulations (for example, 7 CFR part 1b(3)(a)(2) activities which deal solely with funding programs). In the past, some program regulations should have been categorically excluded, but were not.

The proposed rule requested public comment on all of the proposed CatExs. After reviewing and incorporating clarifications based on comments received, this rule adds all such proposed actions that should have been categorically excluded. Adding the specific list of CatExs to the FSA NEPA regulation adds clarity and transparency to the NEPA process by consolidating all FSA CatExs in a single regulation.

Some of the CatExs in this rule are similar to the CatExs of other Federal agencies and reflect FSA's experience with similar factual circumstances. For example, the proposed action of "fencing" is a proposed action that FSA has categorized as a CatEx that also has been identified as a CatEx by other agencies, including the Departments of Energy and Interior, in their NEPA implementing regulations. It has also been documented in several FSA EISs for the Emergency Conservation Program to have no significant impact on the environment. Other new CatExs are more specific to FSA and reflect FSA's past experience with similar factual circumstances. These CatExs have been found to have no potential to produce significant impacts, individually or cumulatively, on the human environment based on past NEPA documentation by FSA environmental experts and their review of the impacts for implementing those proposed actions. For example, many of the loan program proposed actions conducted by FSA, such as refinancing, closing cost payments, and deferral of loan payments, have been

shown consistently to have no potential to significantly impact the human environment as a result of the FSA proposed action, individually or cumulatively. In addition, those proposed actions were previously categorically excluded in 7 CFR 1940.310(e)(2) as loan closing and servicing activities.

There are many CatExs in this rule that are excluded on the basis of the location where the specific proposed actions are to occur. For example, various proposed actions that would take place within previously disturbed or developed farmland, and proposed actions on land where the former state of the area and its ecological functions have already been altered, are appropriate for a CatEx. These also include proposed actions on land that has been previously cultivated, as long as the new proposed action would not disturb below the plow zone, and amount to very limited disturbance. The Department of Energy uses this same “previously disturbed ground” criteria as an integral component of their CatExs.

This rule separates FSA proposed actions into three broad categories with regard to CatExs and any further required environmental review. As explained below, these three categories are proposed actions that:

- 1) Are automatically excluded from further environmental review without further documentation (beyond recording the specific CatEx on the ESW for the administrative record),
- 2) Require review using the ESW, but may be excluded from further environmental review based on the result of the ESW, or

3) Are not excluded and require further environmental review (EA or EIS) because they fall into one of the following groups:

- First, those proposed actions that are categorically excluded from further environmental review without documentation, beyond recording the specific CatEx on the ESW for the administrative record. There are a total of 66 of these types of proposed actions in this rule, and includes proposed actions such as paying loan closing costs, refinancing debt, and a payment to support commodity prices with no requirement for any proposed action on part of the recipient. FSA may also add additional CatExs to the regulations in the future. As specified in this rule and discussed below, future CatExs would be proposed in the Federal Register with an opportunity for public comment (see § 799.34 and 40 CFR 1507.3). FSA will consult with CEQ on any new CatExs prior to publication, as is the normal process for establishing CatExs, and as was done with this rule.
- Second, those proposed actions that are considered as CatExs so long as they are reviewed and documented with an ESW. Extraordinary circumstances, as specified in this rule in § 799.33, are unique to a specific proposed action and include situations where a proposed action has potential impacts. The review for the presence or absence of such extraordinary circumstances will be documented by the completion of the ESW. There are a total of 24

of these proposed actions in this rule, including proposed actions such as loans for livestock purchases, construction in previously disturbed areas, grading, shaping, leveling, and refilling. These are categories of proposed actions where such extraordinary circumstances with the potential for environmental impacts have rarely resulted in potential effects. But, due to the potential for impacts, a review using the ESW is necessary to determine that no extraordinary circumstances exist.

- Third, those proposed actions that typically have the potential to have a significant impact on the human environment but for which, as a general matter, mitigation measures can be applied to decrease the level of significance to support a Finding of No Significant Impact. For those proposed actions, an environmental review in the form of an EA or EIS will be required and a CatEx will not be considered. If the context and intensity of the impacts are uncertain, these could be analyzed by completing the ESW and using the results to determine the need for an EA or an EIS. Otherwise, the ESW step can be skipped and the proposed action addressed using an EA or EIS, as appropriate. There are a total of 46 of these proposed actions and include proposed actions such as pond planning and construction, dike planning and construction, and operating loans for proposed actions with demolition or construction planned. As is true for every FSA proposed action, if

a property is deemed historic, these proposed actions are also considered as undertakings that have the potential to affect a historic property and will therefore be subject to section 106 of the National Historic Preservation Act (NHPA; 54 U.S.C. 306108). Consultation with the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), Tribal governments, and the affected public will be conducted, as appropriate, based on the location, nature, and scale of the proposed action. This is also true if a proposed action has the potential to impact species or habitats listed under the Endangered Species Act (ESA) (16 U.S.C. 1531 through 1544); consultation is required with the U.S. Fish and Wildlife Service or National Marine Fisheries Service, or both, as appropriate. Other consultations or reviews may be needed, given the resources potentially impacted, such as wetlands or floodplains.

As specified in § 799.34 of this rule and the CEQ regulations in 40 CFR 1507.3, FSA is required to publish a document in the Federal Register to announce new CatExs. The document must provide for public comment. The proposed rule, as published in the Federal Register, served as the notice of the new CatExs in this rule, and comments were requested for a 90-day period on all of the proposed rule, including the CatExs specified in §§ 799.31 and 799.32. FSA analyzed the public comments and has made changes in response to comments as discussed below in the Summary of Public Comments and FSA Responses section.

The inclusion in the regulations of CatExs that were previously not explicitly listed as CatExs in the FSA NEPA regulations, but were previously documented as CatExs in their corresponding program regulations and FSA handbooks, will increase transparency and clarity of FSA's NEPA process. The new CatExs that this rule adds to the regulation, and the new ESW, will reduce the time and effort required for the environmental review of proposed actions that in the past required EAs, but almost always resulted in FONSI as the result of the EAs.

#### EA Changes

The previous FSA NEPA regulations in 7 CFR part 1940, subpart G, have two categories of Environmental Assessments (Class I and Class II). As currently specified by CEQ, there is no variation on EA requirements; for example, a checklist does not meet the definition of an EA (40 CFR 1508.9). This regulation has only one category of Environmental Assessment, which makes the FSA NEPA process consistent with the CEQ regulations and less complex than previously. This is a substantive change in the regulation, but not in the existing process.

The previous FSA Farm Programs NEPA regulations in 7 CFR part 799 do not specify the types of proposed actions for which an EA is required. This rule now includes a specific list of proposed actions for which an EA is normally required, in addition to the previously discussed list of CatExs where an ESW may be needed to determine if an EA is required (see 7 CFR 799.31 and 799.32, respectively). This rule also specifies the information that must be included in an EA (see 7 CFR 799.42). These provisions help add clarity to the NEPA process.

This rule adds criteria for developing a PEA if proposed actions in a program individually have an insignificant environmental impact, but cumulatively could have a significant impact (see 7 CFR 799.40(c)). FSA has performed PEAs in the past in conformance with CEQ requirements, but the previous FSA regulations did not specify the procedures for doing so. FSA’s PEAs are broad NEPA documents that examine a program or policy on a larger scale and provide an analytical framework to examine environmental impacts in a comprehensive manner, while providing the basis for future proposed actions and site-specific analyses (“tiering”). The PEA process eliminates the need to review and prepare an ESW for each of the individual incentives to provide public access or to implement public access-related activities for any single parcel of land in a State. The PEA process:

- Allows FSA to identify similar proposed actions that share common issues, timing or geography;
- Provides a framework for future tiered analyses to be consistent with one another; shortens development time; and
- Reduces funding needs while streamlining or eliminating the environmental review process for certain individual proposed actions analyzed in the PEA.

The use of the updated CatEx lists will likely substantially reduce the number of EAs that FSA is required to complete in a year, as compared to the number of EAs that FSA has completed in the past. The expected reduction in the number of EAs will depend on the finding of no extraordinary circumstances during the ESW review, and in some cases the ESW process could result in a finding that an EA is required.

Specifically, many Farm Loan Programs proposed actions that previously required an EA will be categorically excluded with documentation required using the new ESW process. Some will be categorically excluded as recorded on the ESW without requiring additional supporting documentation.

### EIS Changes

This rule includes a new subpart on the EIS process that consolidates EIS requirements from the previous regulations, and more specifically describes the processes involved. As specified in this rule and as required by NEPA and CEQ regulations, an EIS is required for the following four types of proposed actions:

- Legislative proposals, not including appropriations requests, drafted and submitted to Congress by FSA, that have the potential to have significant impact on the quality of the human environment, as specified in 40 CFR 1506.8;
- Regulations for new and substantively discretionary programs, if through the preparation of an ESW or EA, as appropriate, FSA has determined that an EIS is necessary;
- Broad Federal assistance programs administered by FSA involving significant financial assistance for ground disturbing activities or payments to program participants that may have significant cumulative impacts on the human environment or national economy; and
- Ongoing programs that have been found through previous environmental analyses to have major environmental concerns.

These four categories of proposed actions, while more clearly defined in this rule than in the previous regulations, are substantially similar to the requirements in the previous NEPA regulations for FSA Farm Programs in 7 CFR part 799. The previous NEPA regulations for FSA Farm Loan Programs in 7 CFR part 1940, subpart G, specify some general criteria for determining if an EIS is needed, with an emphasis on the location of the proposed action (for example, floodplains, wetlands). This rule clarifies the requirements for an EIS, but is not intended to substantively change when an EIS is required. This rule is not expected to result in a change in the number of EISs that FSA conducts each year. This rule explains more clearly the procedures and process FSA will follow when preparing an EIS, including specific requirements for the information that must be included in an EIS. This rule also adds specific information on the process for developing a programmatic EIS (PEIS), which was previously specified in FSA handbooks rather than the regulations. As noted earlier, much of that process has already been implemented administratively.

#### Summary of Substantive Changes

This final rule consolidates and reorganizes the provisions previously in 7 CFR parts 799 and 1940, subpart G, into a revised 7 CFR part 799, adds longer and more specific lists of CatExs and of proposed actions requiring EAs, and adds new provisions to comply with current CEQ regulations. As discussed below, additional minor changes and clarifications were made based on comments received on the proposed rule. The following table summarizes how the major provisions in this regulation compare to similar provisions in the previous regulations.

Table 1. Previous 7 CFR parts 799 and 1940 Compared to Revised 7 CFR part 799

Major Provisions	Previous 7 CFR part 799	Previous 7 CFR part 1940	7 CFR part 799 (as revised; this rule)	Additional Information
CatExs .....	The term CatEx or categorical exclusion was not used, although there is a list of proposed actions not normally requiring an EA or EIS.	Some specific Farm Loan Programs proposed actions were categorically excluded under 7 CFR 1940.310(d).	<p>Lists all categories of FSA proposed actions and separates them into two categories:</p> <ul style="list-style-type: none"> <li>• Proposed actions that are always CatExs, with no review required; the use of these CatExs will be recorded on the ESW</li> <li>• Proposed actions that are categorically excluded with review using the ESW to determine whether an extraordinary circumstance exists, in which case an EA will be required</li> </ul>	

Major Provisions	Previous 7 CFR part 799	Previous 7 CFR part 1940	7 CFR part 799 (as revised; this rule)	Additional Information
EAs.....	Required NEPA process to be followed but did not specify which Farm Programs proposed actions require an EA.	Required EAs, depending on circumstances, for certain Farm Loan Programs proposed actions. See 7 CFR 1940.311, 312, 318, and 319.	Lists all specific FSA proposed actions that require an EA and those that require review through an ESW to determine if an EA is required (based on existence of extraordinary circumstances). Eliminates the Class I and Class II EA process for Farm Loan Programs.	Some proposed actions that previously required an EA are now categorically excluded proposed actions.
EIS.....	Specified general categories of FSA Farm Programs proposed actions that are likely to have a significant impact on the environment, and specific programs that are not.	Specified criteria for determining significant impacts, with an emphasis on floodplains and wetlands. See 7 CFR 1940.313, 314, and 320.	Specifies the general categories of FSA proposed actions that are likely to have a significant impact on the environment. Specifies the content of an EIS and the review process.	No change in the types of proposed actions for which an EIS is required, but more detail on the content and review process of an EIS.
ESW .....	An appendix provided the now obsolete ASCS-929 form.	Environmental Evaluation (RD-1940-22) could be required to determine if a Class I or Class II EA should be prepared. See 7 CFR 1940.317(c).	Review with an ESW is required for FSA proposed actions using a CatEx requiring documentation to determine if an extraordinary circumstance exists and if	The ESW and instructions are in the handbooks.

Major Provisions	Previous 7 CFR part 799	Previous 7 CFR part 1940	7 CFR part 799 (as revised; this rule)	Additional Information
			an EA or EIS should be prepared.	
Programmatic NEPA Process...	Not addressed.	Not addressed specifically, although tiering was in 7 CFR 1940.327.	Specifies process for conducting programmatic NEPA for FSA programs and proposed actions that have a national scope.	This is not a new process for FSA, but the process was previously not specified in the FSA regulations.
Integration of other environmental laws and regulations.....	NEPA and CEQ's NEPA regulations were the only environmental laws and regulations referenced.	Some other environmental law requirements were mentioned, but not in detail and with little guidance on how they apply.	Many environmental laws, Executive Orders, and regulations are added as references. Compliance with other environmental laws, such as ESA, is explained in detail and integrated into the ESW.	FSA already complies with the Executive Orders, USDA regulations, laws, and CEQ regulations listed in the final rule, but most of those references were not in the previous regulations.

## Consolidating and Clarifying Amendments

Many of the changes in this rule are essentially minor, technical, and clarifying changes; some changes reorganize the requirements from the previous regulations. This section discusses the technical and structural changes to the regulations that are intended to increase clarity and remove obsolete provisions, but do not change requirements for the public or change the environmental review processes administratively.

All of the definitions that apply to NEPA implementation for FSA Farm Programs, Farm Loan Programs, and CCC programs administered by FSA are now in § 799.4. In addition to the definitions already in the previous regulations, this rule adds definitions for “Administrator,” “application,” “construction,” “consultation,” “environmental screening worksheet,” “financial assistance,” “historic properties,” “memorandum of agreement,” “plow zone,” “program participant,” “protected resources,” “State Historic Preservation Officer,” “Tribal Historic Preservation Officer,” and “wetlands.” These terms are all already used in FSA’s current NEPA implementation and Environmental Quality Programs handbook (1-EQ); adding them to the regulations will provide clarity to the FSA NEPA process, but will not change the existing process.

Similarly, for consistency within USDA, the definition for “consultation” in this rule includes the process of considering the views of other participants in the environmental review process and working toward agreement where feasible. This is consistent with how other USDA agencies (for example, NRCS) define “consultation” in their NEPA regulations.

All of the FSA NEPA compliance responsibilities are specified in 7 CFR part 799. The regulation clarifies who is responsible for NEPA and NHPA compliance at the national level by specifying that the Administrator or designee will appoint a National Environmental Compliance Manager as required by 40 CFR 1507.2(a), and a Federal Preservation Officer as required by section 110 of NHPA (54 U.S.C. 306101) and Executive Order 13287. These are not new responsibilities; this rule simply clarifies the requirements. To update the previous position titles in FSA, the FSA positions previously referred to as “State Director” are now referred to as “State Executive Director.” Other revised provisions clarify the role of the State Environmental Coordinator, to be consistent with current practice.

The requirements for CatExs, EAs, and EISs are organized into separate subparts, so that it is clearer which requirements and processes apply to each type of environmental review. For example, the section on “tiering,” a process that is relevant to the EA and EIS processes, but not used for CatExs, will be included in the EA and EIS provisions, but the requirements for “tiering” will not change.

Many of the changes in this rule remove obsolete provisions and terminology. For example, references to agencies that no longer exist have been removed and replaced with current references. This rule also removes references to programs that no longer exist (such as the Agricultural Conservation Program, Water Bank Program, Tobacco Production Adjustment Program, Bee Indemnity Program, and Naval Stores Program), replacing them with more general provisions that apply to types of programs and proposed actions rather than to specific programs. These changes make the regulations

clearer, more transparent, and up to date, but are not substantive changes and should have no impact on the environmental review process.

The previous regulations in 7 CFR parts 799 and 1940, subpart G, have numerous exhibits and appendices. These include obsolete forms and obsolete organizational charts. This rule removes those exhibits and appendices, which does not change the existing process because these items are no longer used. In § 799.1, “Purpose,” this rule adds references to several dozen relevant environmental laws, Executive Orders, and regulations that were developed since the previous regulations were published. References to departmental regulations previously listed in appendices to 7 CFR part 1940 have also been moved to this list of references. FSA is already required to comply with these laws, Executive Orders, departmental regulations, and regulations of other agencies, so listing all of the relevant references in one consolidated section will not be a change to the existing practice.

#### Conforming Changes

In addition to the changes discussed above, a number of changes needed to be made in other related FSA regulations to update references to the appropriate NEPA regulations. Throughout the FSA regulations, this rule updates references to NEPA regulations and environmental compliance to refer to 7 CFR part 799. This rule removes environmental compliance sections that are now redundant. For example, the separate environmental compliance section for the Farm Storage Facility Loan Program, which was in 7 CFR part 1436, is not necessary because that program is subject to the same environmental compliance requirements as every other FSA program.

Along with the changes to the regulations, FSA will make conforming changes to any references to 7 CFR part 1940, subpart G in, for example, forms and handbooks.

#### Summary of Public Comments and FSA Responses

The 90-day comment period for the proposed rule ended December 2, 2014. FSA received 24 comments on the proposed rule. Comments were received from farming and food safety organizations, government agencies, financial institutions, and private individuals. Some of the comments received reflected misunderstandings of FSA's current and proposed NEPA processes, which are now clarified in this rule as discussed below. Other comments suggested specific changes, which are discussed below.

The following discussion summarizes the issues raised by commenters and FSA's responses to those comments.

Comment: Do not require a Notice of Intent (NOI) for an EA.

Response: We are not requiring NOIs for EAs. This has been clarified and a change made in response to this comment in § 799.15(b)(3).

Comment: Include the ESW in the regulation. The ESW should have been included in the proposed rule so that the public had a chance to comment on it.

Response: The ESW is an internal document only. As such, it will be included in the FSA handbook. The ESW will remain flexible over time. No change in being made in response to this comment.

Comment: Clarify Animal Feeding Operation (AFO) and Confined AFO (CAFO) definitions and requirements. There were also questions about the NEPA requirements

for CAFOs, including impact on floodplains and watersheds, and making CAFOs pay for the cost of EAs and EIS. Do not increase these requirements.

Response: We continue to use the U.S. Environmental Protection Agency's definitions for CAFOs, which are specified in 40 CFR 122.23. We have not increased the NEPA requirements for CAFOs from the current process; currently, the NEPA requirements for medium and large CAFOs are synonymous with the process included in this rule.

Comment: Prepare an environmental review of the changes in this rule.

Response: NEPA, CEQ Implementing Regulations, and the recent CEQ Guidance on Establishing New CatExs, do not require an environmental review of the changes in this rule. Rather, CEQ will review this regulation, the CatExs, and all other provisions, and prepare a Conformity Determination, with which they will determine whether or not this rule conforms to the specifications of NEPA and CEQ's Implementing Regulations. No change in being made in response to this comment.

Comment: Add two additional CatExs, one for minor amendments and another for adopting CatExs of other agencies for shared proposed actions.

Response: We have added the adoption of CatEx by other agencies in 799.32(c)(3)(v) and modified a proposed CatEx in 799.31(b)(2)(iii) to better reflect the CatEx of minor amendments to already approved proposed actions.

Comment: Discontinue approving loans for CAFOs.

Response: Science and technology have transformed the agriculture sector over the second half of the 20th century. CAFOs provide a cost effective means of livestock production, an efficient use of available resources (land and labor), and an efficient

means of ensuring a supply of reasonably priced protein for the nation. Environmentally safe and compliant CAFO operations are ensured by the U.S. Environmental Protection Agency regulation, permitting, and related monitoring and enforcement actions.

CAFO's represent an important part of modern American agriculture; therefore, FSA lending for new or expanded CAFO operations is consistent with FSA's stated vision of providing economic opportunity through innovation, helping rural America thrive; promoting agriculture production; as well as being in step with its stated mission of fostering a market-oriented, economically, and environmentally sound American agriculture delivering an abundant, safe, and affordable food and fiber supply while sustaining quality agricultural communities. No change is being made in response to this comment.

Comment: Expand list of sensitive resources to include impaired waters.

Response: We have added waterbodies that are listed as impaired waters under section 303(d) of the Clean Water Act (33 U.S.C. 1251-1387) to the list of protected resources in § 799.33(e)(3).

Comment: Prepare an environmental review on commodity support and crop insurance payments.

Response: To the extent FSA has discretionary authority over changes to these programs, and changes are more than administrative in nature, we will perform appropriate environmental review. No change in being made in response to this comment.

Comment: Document the rationale for CatExs.

Response: This documentation and analysis has been done as part of the conformity review for this rulemaking process by CEQ. No change in being made in response to this comment.

Comment: Combine federal NEPA requirements with state-level requirements.

Response: State-level requirements are not consistent nationally. As such, it would not be appropriate to attempt to combine all state requirements with FSA's agency-wide NEPA rule. That said, where possible and appropriate, FSA always encourages combining and streamlining shared compliance processes. No change in being made in response to this comment.

Comment: If FSA accepts NRCS documentation, separate consultation should not be needed.

Response: As lead agency for its proposed actions, FSA still needs to consult with NRCS regardless of environmental documentation provided by NRCS. FSA encourages combined consultation to the extent these can be appropriately combined on a case-by-case basis. No change in being made in response to this comment.

Comment: Define "plow zone."

Response: This rule now includes a definition of "plow zone" in § 799.4(b) to specify that it is the depth to which a site has been previously disturbed by plows during agricultural tillage or other legal actions.

Comment: Clarify requirements for "cattle loans."

Response: This rule more clearly identifies which projects involving cattle will require additional internal FSA documentation, such as youth loans (§ 799.31(b)(1)(v)),

loans for livestock purchases (§ 799.32(c)(1)(ii)), or construction of a CAFO (§ 799.41(a)(9)).

Comment: Clarify documentation for CatExs with and without the ESW.

Response: To document our NEPA decisions, FSA decided that all FSA proposed actions will require completion of the ESW, unless it is clear to FSA that an EA or EIS is required. To clarify this, the form has been split in separate portions. The first portion is to record the use of CatExs included in § 799.31. The second portion is to document the review of CatExs included in § 799.32.

Comment: More specifically define the following terms:

- Land clearing,
- Commercial facilities and structures,
- Minor planting and management, and
- Pesticides and fertilizers.

Response: Minor planting and management was determined to be sufficiently defined in § 799.31(b)(4). The use of the following terms have been further clarified in the following locations:

- Land clearing § 799.41(a)(5),
- Commercial facilities and structures § 799.41(a)(8), and
- Pesticides and fertilizers § 799.31(b)(5)(vi).

Comment: As proposed, the provisions for medium CAFOs would be an onerous impediment to obtaining financing for operations that will often include young or beginning farmers.

Response: We revised the provisions to clarify that EAs will only be required for large CAFOs; ESW review will be completed for small and medium CAFOs if there are no extraordinary circumstances involved in the proposed action.

Comment: The phrase “installation or enlargement of irrigation facilities” must be removed from the list of proposed actions requiring an EA or more specifically defined. Including wells, pumping plants, and sprinklers in the list of proposed actions requiring an EA could subject a large number of harmless and extremely low risk projects to additional onerous steps, costs and financing delays. Some provisions in the EA section are overly broad and ambiguous.

Response: As specified in § 799.41(a)(4), the EA requirement for proposed actions related to the installation or enlargement of irrigation facilities are when those facilities are designed to irrigate an aggregate of greater than 320 acres. Therefore, these proposed actions may not be related to low risk projects. No change in being made in response to this comment.

Comment: Some of the proposed actions under § 799.31 and some of the loan proposed actions involving construction included in § 799.34 are too broad and inconsistent with the NEPA regulations in 40 CFR 1508.25.

Response: The CatExs that involve construction have been revised to clarify and add context to require the appropriate level of environmental review. In addition to the

clarifications, the CatExs that were proposed in § 799.34 have also been moved into § 799.32.

### Miscellaneous Changes

In addition to the changes discussed above, during the development of this final rule and in keeping with the overall nature of the changes and clarifications made in response to the public comments, we determined that the following changes need to be made to the rule:

- Removed references to NHPA throughout the rule, as impacts to NHPA-governed resources are included as an extraordinary circumstance in § 799.33(e)(1).
- Amended the definition of floodplains under § 799.4(b) to be consistent with the new Executive Order 13690.
- Clarified in § 799.2(a)(2) FSA's commitment to resource protection.
- Clarified and broadened public notice options specified in § 799.2(a)(4).
- Clarified in § 799.2(b) that a proposed action can be categorically excluded only if all the components of the proposed action are considered CatExs, and no extraordinary circumstances are triggered, and that the component triggering the highest level of NEPA review dictates the overall level of review for the proposed action.
- Clarified in § 799.6(a)(2) the requirement to appoint SECs.
- Clarified FSA program participant responsibilities in § 799.7(a)(7) through (10).

- Removed a provision in § 799.7(c), which had been proposed, requiring FSA to provide information to participants regarding the level of information required for evaluating proposed actions, as these responsibilities are internal, need to remain flexible to adapt to changing external requirements, could mislead participants regarding the level of review needed for their proposed action, and may need to be state- or locally-specific.
- Clarified in § 799.12(d) the environmental compliance requirements for emergency actions to address immediate post-emergency health or safety hazards.
- Clarified in § 799.15(d) the notification requirements for the opportunity for the public to review of FONSI in the certain limited circumstances as specified in CEQ regulations in 40 CFR 1501.4(e)(2)(i) through (ii).
- Clarified in § 799.17(b)(4) that the FSA Administrator can decide if public meetings are needed for a given proposed action.
- Clarified in § 799.18 and throughout when the ESW or related environmental documentation, for example, the related NRCS form, is required. The use of the ESW depends on whether the appropriate CatExs covering a given FSA proposed action are in §§ 799.31 or 799.32. For those CatExs listed in § 799.31, the ESW is used to record the CatEx. For those CatExs listed in § 799.32, the ESW is used to review the proposed action to determine if the CatEx applies or if there are extraordinary circumstances.

- Moved a CatEx in § 799.31 from the paragraph covering administrative actions to the paragraph covering repair, improvement, or minor modification proposed actions.
- Added “minor management” and “minor construction” to the heading of § 799.32(c)(2) for consistency with the actual CatExs included in the category.
- Moved “nutrient management” from § 799.31 to § 799.32 for consistency with the potential for environmental impacts.
- Clarified in § 799.32(d)(2) that an ESW is not needed if it is already known, based on anticipated impacts, that an EA or EIS is needed.
- Clarified in § 799.33(b)(4) that a violation of a Federal, State, or local law or policy is an extraordinary circumstance that prevents the use of the ESW.
- Clarified provisions in § 799.41(a)(7) for consistency with the requirements for a Concentrated Aquatic Animal Production Facility (CAAP), as defined by the U.S. Environmental Protection Agency in 40 CFR 122.24-25.
- Clarified in § 799.41(a)(8) that commercial facilities or structures are those used for processing or handling of farm production or for public sales.
- Clarified in § 799.41(a)(10) the refinancing proposed actions involving large CAFOs and specifically, that an EA is required if the CAFO has been in operation for 24 months or less. This was changed from 12

months to avoid any potential circumvention of federal environmental compliance requirements.

- Clarified in § 799.41(a)(11) through (12) that an EA is required for new rules only when they are substantively discretionary.
- Clarified in § 799.41(b) that proposed actions that do not meet the thresholds defined in § 799.41(a) and are not listed in §§ 799.31 or 799.32, require review using the ESW to determine if an EA or EIS is warranted.
- Clarified in § 799.42(c) FSA's role in applicant-prepared EAs.

#### Effective Date

In general, the Administrative Procedure Act (5 U.S.C. 553) requires that before rules are issued by Government agencies, the rule must be published in the Federal Register, and the required publication of a substantive rule is to be not less than 30 days before its effective date. One of the exceptions is that section 553 does not apply when the rule involves a matter relating to public property, loans, grants, benefits, or contracts. Therefore, because this rule relates to FSA benefit and loan programs, section 553, including the 30-day effective period requirement, does not apply. This final rule is effective when published in the Federal Register.

#### Executive Orders 12866 and 13563

Executive Order 12866, "Regulatory Planning and Review," and Executive Order 13563, "Improving Regulation and Regulatory Review," 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, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this final rule as not significant under Executive Order 12866, “Regulatory Planning and Review,” and has therefore not reviewed this rule.

#### Clarity of the Regulations

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. Comments were solicited as part of the proposed rule process and clarifications have been made to the text of this regulation as a result of the comments received.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Even though a proposed rule was published for this rulemaking initiative, this rule is not subject to the

Regulatory Flexibility Act because the agencies were not required by any law to publish a proposed rule for public comments for this rulemaking.

#### Environmental Review

The Council on Environmental Quality regulations do not direct agencies to prepare an environmental review or document before establishing Agency procedures (such as this regulation) that supplement the CEQ regulations for implementing NEPA. Agencies are required to adopt NEPA procedures that establish specific criteria for, and identification of, three classes of proposed actions:

- 1) Those that normally require preparation of an environmental impact statement;
- 2) Those that normally require preparation of an environmental assessment; and
- 3) Those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)).

CatExs are one part of those agency procedures, and therefore establishing CatExs does not require preparation of an environmental review or related document. Agency NEPA procedures are procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of environmental review is required for a particular proposed action. The requirements for establishing agency NEPA procedures are specified in 40 CFR 1505.1 and 1507.3. The determination that establishing CatExs does not require environmental review and related documentation has been upheld in Heartwood, Inc. v. U.S. Forest Service, 73 F. Supp. 2d 962, 972-73 (S.D. Ill. 1999), aff'd, 230 F.3d 947, 954-55 (7th Cir. 2000).

#### Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. This rule does not provide grants, cooperative agreements, or any other benefits. Therefore, FSA has concluded that this rule does not require consultation with State and local officials as when USDA provides Federal financial assistance or direct Federal development (see 7 CFR 3015.307). Therefore, this rule is not subject to Executive Order 12372.

#### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. The rule will not have retroactive effect. Before any judicial action may be brought regarding the provisions of this rule, all administrative appeal provisions in 7 CFR parts 11 and 780 must be exhausted.

#### Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do not have any substantial direct effect on States, on the

relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor will this rule impose substantial direct compliance costs on State and local governments. The provisions in this rule may impose compliance costs on State and local governments, but these are not new costs, as the provisions in this rule have already been implemented as required by per various Executive Orders, laws, and CEQ regulations. Therefore, consultation with the States is not required.

#### 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.

FSA has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have Tribal implications that require Tribal consultation under Executive Order 13175. To ensure this, with assistance from the USDA Office of Tribal Relations, FSA engaged in Tribal consultation in 2014 jointly with the USDA Rural Development Mission Area, who also amended their NEPA regulations. No comments were received as a result of this consultation. If a Tribe requests additional

consultation, FSA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided.

#### Unfunded Mandates

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule does not contain any Federal mandates, as defined in Title II of UMRA, for State, local, or Tribal governments or for the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

#### SBREFA Congressional Review

This rule is not a major rule under SBREFA (Pub. L. 104-121). Therefore, there is no requirement to delay the effective date for 60 days from the date of publication to allow for Congressional review. This rule is effective on the date of publication in the Federal Register.

## Federal Assistance Programs

This rule applies to all Farm Service Agency Federal assistance programs found in the Catalog of Federal Domestic Assistance.

## Paperwork Reduction Act of 1995

Previously, as specified in 7 CFR 1940.350, the OMB control number approving the NEPA information collection for FSA and the Rural Development agencies was 0575-0094. The changes to the regulation eliminate FSA's use of the form, RD-1940-22, Request for Environmental Information, previously used by FSA and included in that approval. In the past, financial institutions completed the form RD-1940-22 and submitted the form to FSA; that process has been revised and that form is no longer used. The burden hours will be reduced by 1,050 hours for this change in OMB 0575-0094 when that is renewed.

The FSA NEPA regulation does not have any information collection activities related to the NEPA process. The appropriate FSA employee gathers information from soil maps, wetland maps, etc., then may visit the site. The FSA employee uses the ESW form, which is an internal form within FSA only. The ESW is completed by the appropriate FSA staff, with relevant information from one or more of the existing FSA forms with information collection approval. There is no information collection burden for this rule because it is associated with application for or participation in one or more FSA programs and that information collection burden is approved for each respective FSA program, as needed. A few specific FSA program-related forms will require conforming changes including, but not limited to, replacing references on the forms

to 7 CFR 1940 to 7 CFR 799; such changes will be addressed under the specific program control number.

As noted in § 799.42(c), FSA may request that a program participant provide information for use in an EA. That supplemental information will be case specific; the primary information comes from the information the applicant gave to the program itself (already covered by the relevant OMB control number for the respective FSA or CCC program) and site visits. Any additional information will be specific to the action in question. Therefore, it does not require additional approval under the Paperwork Reduction Act (44 U.S.C. chapter 35) for this rule.

#### E-Government Act Compliance

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

#### List of Subjects

##### 7 CFR Part 761

Accounting, Loan programs-agriculture, Rural areas.

##### 7 CFR Part 762

Agriculture, Banks, Banking, Credit, Loan programs-agriculture, Reporting and recordkeeping requirements.

##### 7 CFR Part 763

Agriculture, Banks, Banking, Credit, Loan programs-agriculture.

7 CFR Part 764

Agriculture, Disaster assistance, Loan programs-agriculture.

7 CFR Part 765

Agriculture, Agricultural commodities, Credit, Livestock, Loan programs—  
agriculture.

7 CFR Part 766

Agriculture, Agricultural commodities, Credit, Livestock, Loan programs—  
agriculture.

7 CFR Part 767

Agriculture, Credit, Government property, Government property management,  
Indians—loans, Loan programs—agriculture.

7 CFR Part 770

Credit, Indians, Loan programs-agriculture, Reporting and recordkeeping  
requirements.

7 CFR Part 772

Agriculture, Credit, Loan programs-agriculture, Rural areas.

7 CFR Part 773

Apples, Loan programs-agriculture.

7 CFR Part 774

Loan programs-agriculture, Seeds.

7 CFR Part 799

Environmental impact statements.

7 CFR Part 1436

Administrative practice and procedure, Loan programs-agriculture, Penalties, Price support programs, Reporting and recordkeeping requirements.

7 CFR Part 1940

Agriculture, Environmental protection, Flood plains, Grant programs-agriculture, Grant programs-housing and community development, Loan programs-agriculture, Loan programs-housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements, Rural areas, Truth in lending.

For the reasons discussed above, the regulations in 7 CFR chapters VII, XIV, and XVIII are amended as follows:

7 CFR Chapter VII

PART 761 – FARM LOAN PROGRAMS; GENERAL PROGRAM

ADMINISTRATION

1. The authority citation for part 761 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

§ 761.10 [Amended]

2. Amend § 761.10(c)(3) by removing the words “subpart G of 7 CFR part 1940” and adding the words “part 799 of this chapter” in their place.

PART 762 – GUARANTEED FARM LOANS

3. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

§ 762.128 [Amended]

4. Amend § 762.128 as follows:

a. In paragraph (a) remove the words “part 1940, subpart G, of this title” and add the words “part 799 of this chapter” in their place; and

b. In paragraph (c)(3) remove the words “part 1940, subpart G” and add the words “part 799 of this chapter” in their place.

**PART 763 – LAND CONTRACT GUARANTEE PROGRAM**

5. The authority citation for part 763 continues to read as follows:

Authority: 5 U.S.C. 501 and 7 U.S.C. 1989.

§ 763.7 [Amended]

6. In § 763.7(b)(12) remove the words “part 1940, subpart G, of this title” and add the words “part 799 of this chapter” in their place.

§ 763.16 [Amended]

7. In § 763.16(a) remove the words “part 799 and part 1940, subpart G, of this title” and add the words “part 799 of this chapter” in their place.

**PART 764 – DIRECT LOAN MAKING**

8. The authority citation for part 764 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

§§ 764.51 and 764.106 [Amended]

9. Amend §§ 764.51(b)(7) and 764.106(b) by removing the words “subpart G of 7 CFR part 1940” and adding the words “part 799 of this chapter” in their place.

PART 765 – DIRECT LOAN SERVICING – REGULAR

10. The authority citation for part 765 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

§ 765.205 [Amended]

11. Amend § 765.205:

a. In paragraph (a)(3) by removing the words “subpart G of 7 CFR part 1940” and adding the words “part 799 of this chapter” in their place; and

b. In paragraph (b)(3)(xiii) by removing the words “part 1940, subpart G of this title” and adding the words “part 799 of this chapter” in their place.

§§ 765.252 and 765.351 [Amended]

11a. Amend §§ 765.252 and 765.351 by removing the words “subpart G of 7 CFR part 1940” and adding the words “part 799 of this chapter” in their place in the following places:

- a. § 765.252(b)(3)(ii); and
- b. § 765.351(a)(6).

PART 766 – DIRECT LOAN SERVICING – SPECIAL

12. Revise the authority citation for part 766 to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, and 1981d(c).

Subpart C – Loan Servicing Programs

§§ 766.102 and 766.112 [Amended]

13. Amend §§ 766.102 and 766.112 by removing the words “subpart G of 7 CFR part 1940” and adding the words “part 799 of this chapter” in their place in the following places:

- a. § 766.102(b)(3)(ii); and
- b. § 766.112(a)(6).

#### PART 767 – INVENTORY PROPERTY MANAGEMENT

14. The authority citation for part 767 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

#### § 767.201 [Amended]

15. Amend § 767.201 introductory text, by removing the words “subpart G of 7 CFR part 1940” and adding the words “part 799 of this chapter” in their place.

#### PART 770 – INDIAN TRIBAL LAND ACQUISITION LOANS

16. Revise the authority citation for part 770 to read as follows:

Authority: 5 U.S.C. 301 and 25 U.S.C. 488.

#### § 770.5 [Amended]

17. Amend § 770.5(a) by removing the words “exhibit M to subpart G of part 1940 of this title” and adding the words “part 799 of this chapter” in their place.

#### PART 772—SERVICING MINOR PROGRAM LOANS

18. Revise the authority citation for part 772 to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, and 25 U.S.C. 490.

#### § 772.4 [Amended]

19. In § 772.4 remove the words “7 CFR part 1940, subpart G and the exhibits to that subpart and”.

#### § 772.6 [Amended]

20. Amend § 772.6(a)(6) by removing the words “7 CFR part 1940, subpart G” and adding the words “part 799 of this chapter” in their place.

## PART 773 - SPECIAL APPLE LOAN PROGRAM

21. The authority citation for part 773 continues to read as follows:

Authority: Pub. L. 106-224.

### § 773.9 [Removed]

22. Remove § 773.9.

### § 773.18 [Amended]

23. Amend § 773.18(a)(3) by removing the words “7 CFR part 1940, subpart G” and adding the words “part 799 of this chapter” in their place.

## PART 774 - EMERGENCY LOAN FOR SEED PRODUCERS PROGRAM

24. The authority citation for part 774 continues to read as follows:

Authority: Pub. L. 106-224.

### § 774.9 [Removed]

25. Remove § 774.9.

### § 774.17 [Amended]

26. Amend § 774.17(d) by removing the words “7 CFR part 1940, subpart G” and adding the words “part 799 of this chapter” in their place.

27. Revise part 799 to read as follows:

## PART 799—COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

### Subpart A – General FSA Implementing Regulations for NEPA

Sec.

799.1 Purpose.

799.2 FSA environmental policy.

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## Subpart B – FSA and Program Participant Responsibilities

- 799.5 National office environmental responsibilities.
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- 799.15 Public involvement in environmental review.
- 799.16 Scoping.
- 799.17 Public meetings.
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## Subpart C - Environmental Screening Worksheet

- 799.20 Purpose of the ESW.

## Subpart D - Categorical Exclusions

- 799.30 Purpose of categorical exclusion process.
- 799.31 Categorical exclusions to be recorded on an ESW.
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## Subpart E - Environmental Assessments

- 799.40 Purpose of an EA.
- 799.41 When an EA is required.
- 799.42 Contents of an EA.
- 799.43 Tiering.
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## Subpart F - Environmental Impact Statements

- 799.50 Purpose of an Environmental Impact Statement (EIS).
- 799.51 When an EIS is required.
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- 799.55 Final EIS.
- 799.56 Supplemental EIS.
- 799.57 Tiering.
- 799.58 Adoption of an EIS prepared by another entity.
- 799.59 Record of Decision.

Authority: 42 U.S.C. 4321-4370.

#### Subpart A - General FSA Implementing Regulations for NEPA

##### § 799.1 Purpose.

(a) This part:

(1) Explains major U.S. Department of Agriculture (USDA) Farm Service

Agency (FSA) environmental policies.

(2) Establishes FSA procedures to implement the:

(i) National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 through 4370);

(ii) Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500 through 1518); and

(iii) USDA NEPA regulations (§§ 1b.1 through 1b.4 of this title).

(3) Establishes procedures to ensure that FSA complies with other applicable laws, regulations, and Executive Orders, including, but not limited to, the following:

(i) American Indian Religious Freedom Act (42 U.S.C. 1996);

(ii) Archaeological and Historic Preservation Act (16 U.S.C. 469 through 469c);

(iii) Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa through 470mm);

- (iv) Clean Air Act (42 U.S.C. 7401 through 7671q);
- (v) Clean Water Act (33 U.S.C. 1251 through 1387);
- (vi) Coastal Barrier Resources Act (16 U.S.C. 3501 through 3510);
- (vii) Coastal Zone Management Act of 1972 (CZMA) (16 U.S.C. 1451 through 1466);
- (viii) Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 through 9675);
- (ix) Endangered Species Act (ESA) (16 U.S.C. 1531 through 1544);
- (x) Farmland Protection Policy Act (7 U.S.C. 4201 through 4209);
- (xi) Migratory Bird Treaty Act (16 U.S.C. 703 through 712);
- (xii) National Historic Preservation Act (NHPA) of 1966, as amended (54 U.S.C. 300101 through 307101),
- (xiii) Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 through 3013);
- (xiv) Resource Conservation and Recovery Act (42 U.S.C. 6901 through 6992k);
- (xv) Safe Drinking Water Act (42 U.S.C. 300h through 300h.8);
- (xvi) Wild and Scenic Rivers Act (16 U.S.C. 1271 through 1287);
- (xvii) Wilderness Act (16 U.S.C. 1131 through 1136);
- (xviii) Advisory Council on Historic Preservation regulations in 36 CFR part 800 “Protection of Historic Properties;”
- (xix) USDA, Office of Environmental Quality regulations in part 3100 of this title, “Cultural and Environmental Quality” (see part 190, subpart F, of this title,

“Procedures for the Protection of Historic and Archaeological Properties,” for more specific implementation procedures);

(xx) USDA, Natural Resources Conservation Service regulations in part 658 of this title, “Farmland Protection Policy Act;”

(xxi) USDA regulations in part 12 of this title, “Highly Erodible Land and Wetland Conservation;”

(xxii) U.S. Department of the Interior, National Park Service regulations in 36 CFR part 60, “National Register of Historic Places;”

(xxiii) U.S. Department of the Interior, National Park Service regulations in 36 CFR part 63, “Determinations of Eligibility for Inclusion in the National Register of Historic Places;”

(xxiv) USDA, Departmental Regulation 9500–3, “Land Use Policy;”

(xxv) USDA, Departmental Regulation 9500–4, “Fish and Wildlife Policy;”

(xxvi) Executive Order 11514, “Protection and Enhancement of Environmental Quality;”

(xxvii) Executive Order 11593, “Protection and Enhancement of the Cultural Environment;”

(xxviii) Executive Order 11988, “Floodplain Management;”

(xxix) Executive Order 11990, “Protection of Wetlands;”

(xxx) Executive Order 11991, “Relating to Protection and Enhancement of Environmental Quality;”

(xxxi) Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations;”

(xxxii) Executive Order 13007, “Indian Sacred Sites;”

(xxxiii) Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments;”

(xxxiv) Executive Order 13186, “Responsibilities of Federal Agencies to Protect Migratory Birds;”

(xxxv) Executive Order 13287, “Preserve America;” and

(xxxvi) Executive Order 13690, “Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input.”

(b) The procedures and requirements in this part supplement CEQ and USDA regulations; they do not replace or supersede them.

§ 799.2 FSA environmental policy.

(a) FSA will:

(1) Use all practical means to protect and, where possible, improve the quality of the human environment and avoid or minimize any adverse environmental effects of FSA actions;

(2) Ensure protection of basic resources, including important farmlands and forestlands, prime rangelands, wetlands, floodplains, and other protected resources.

Consistent with Departmental Regulations and related Executive Orders, it is FSA policy not to approve or fund proposed actions that, as a result of their identifiable impacts, direct, indirect, or cumulative, would lead to or accommodate either the conversion of these land uses or encroachment upon them.

(3) Ensure that the requirements of NEPA and other State and national environmental policies designed to protect and manage impacts on the human environment are addressed:

(i) As required by 40 CFR 1501.2, at the earliest feasible stage in the planning of any FSA action,

(ii) Concurrently and in a coordinated manner,

(iii) During all stages of the decision making process,

(iv) Using professional and scientific integrity in their discussions and analyses, identifying applicable methodologies, and explaining the use of the best available information, and

(v) In consultation with all interested parties, including Federal, State, and Tribal governments;

(4) As appropriate, make environmental review available to the public through various means, which can include, but are not limited to: Posting on the National FSA website or a State FSA website, publishing in the Federal Register, or publishing in a newspaper in the area of interest; and

(5) Ensure that, if an FSA proposed action represents one of several phases of a larger action, the entire action is the subject of an environmental review independent of the phases of funding. If the FSA proposed action is one segment of a larger action, the entire action will be used in determining the appropriate level of FSA environmental review.

(b) A proposed action that consists of more than one categorically excluded proposed action may be categorically excluded only if all components of the proposed

action are included within one or more categorical exclusions and trigger no extraordinary circumstances. The component of a proposed action that requires the highest level of NEPA review will be used to determine the required level of the NEPA review.

§ 799.3 Applicability.

(a) Except as provided for in paragraph (b) of this section, this part applies to:

(1) The development or revision of FSA rules, regulations, plans, policies, or procedures;

(2) New or continuing FSA proposed actions and programs, including, on behalf of the Commodity Credit Corporation (CCC), CCC programs, Farm Loan Programs, and Farm Programs; and

(3) FSA legislative proposals, not including appropriations requests, developed by FSA or with significant FSA cooperation and support.

(b) This part does not apply to FSA programs specifically exempted from environmental review by the authorizing legislation for those programs.

§ 799.4 Abbreviations and definitions.

(a) The following abbreviations apply to this part:

CAAP Concentrated Aquatic Animal Production Facilities.

CAFO Concentrated Animal Feeding Operation.

CCC Commodity Credit Corporation.

CEQ Council on Environmental Quality.

EA Environmental Assessment.

EIS Environmental Impact Statement.

ESA Endangered Species Act.

ESW Environmental Screening Worksheet.

FONSI Finding of No Significant Impact.

FPO Federal Preservation Officer.

FSA Farm Service Agency.

MOA Memorandum of Agreement.

MOU Memorandum of Understanding.

NECM National Environmental Compliance Manager.

NEPA National Environmental Policy Act.

NHPA National Historic Preservation Act.

NOA Notice of Availability.

NOI Notice of Intent.

PEA Programmatic Environmental Assessment.

PEIS Programmatic Environmental Impact Statement.

RAO Responsible Approving Official.

RFO Responsible Federal Officer

ROD Record of Decision.

SEC State Environmental Coordinator.

SED State Executive Director for FSA.

SEIS Supplemental Environmental Impact Statement.

SHPO State Historic Preservation Officer.

THPO Tribal Historic Preservation Officer.

USDA United States Department of Agriculture.

(b) The definitions in 40 CFR part 1508 apply and are supplemented by parts 718 and 1400 of this title; in the event of a conflict the definitions in this section will be controlling. In addition, the following definitions apply to this part:

Administrator means the Administrator, Farm Service Agency, including designees.

Application means the formal process of requesting FSA assistance.

Construction means actions that include building, rehabilitation, modification, repair, and demolition of facilities, and earthmoving.

Consultation means the process of soliciting, discussing, and considering the views of other participants in the environmental review process and working toward agreement where feasible.

Environmental screening worksheet, or ESW, means the FSA screening procedure used to record the use of categorical exclusions, review if a proposed action that can be categorically excluded involves extraordinary circumstances, and evaluate the appropriate level and extent of environmental review needed in an EA or EIS when a categorical exclusion is not available or not appropriate. For the purposes of this part, the ESW may be represented by alternate documentation comparable to the ESW, and that has been approved in advance by the NECM, such as related environmental documentation, including, but not limited to, the related documentation from another agency.

Financial assistance means any form of loan, loan guarantee, grant, guaranty, insurance, payment, rebate, subsidy, or any other form of direct or indirect Federal monetary assistance.

Floodplains means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, including, at a minimum, those that are subject to a 1-percent or greater chance of flooding in any given year.

Historic property means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior as defined in 36 CFR 800.16.

Memorandum of Agreement means a document that records the terms and conditions agreed upon to resolve the potential effects of a Federal agency proposed action or program. Often used interchangeably with Memorandum of Understanding.

Plow zone means the depth of previous tillage or disturbance.

Programmatic Environmental Assessment (PEA) means an assessment prepared when the significance of impacts of a program are uncertain to assist in making this determination.

Programmatic Environmental Impact Statement (PEIS) means an analysis of the potential impacts that could be associated with various components of a program or proposed action that may not yet be clearly defined or even known, to determine if the program or its various components have the potential to significantly affect the quality of the human environment.

Program participant means any person, agency, or other entity that applies for or receives FSA program benefits or assistance.

Protected resources means environmentally sensitive resources that are protected by laws, regulations, or Executive Orders for which FSA proposed actions may pose potentially significant environmental effects.

State Historic Preservation Officer (SHPO) means the state official appointed or designated under the NHPA to administer a State historic preservation program, or a representative to act for the SHPO.

Tribal Historic Preservation Officer (THPO) means the Tribal official appointed by a Tribe's chief governing authority or designated by a Tribal ordinance or preservation program, who has assumed the responsibilities of the SHPO on Tribal lands under the NHPA.

Wetlands means areas that are inundated by surface or ground water with a frequency sufficient to support and, under normal circumstances, do support or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas, such as sloughs, prairie potholes, wet meadows, river overflows, mudflats, and natural ponds.

#### Subpart B - FSA and Program Participant Responsibilities

##### § 799.5 National office environmental responsibilities.

(a) The FSA Administrator or designee:

(1) Is the Responsible Federal Officer (RFO) for FSA compliance with applicable environmental laws, regulations, and Executive Orders, including NEPA, and unless otherwise specified, will make all determinations under this part;

(2) Will ensure responsibilities for complying with NEPA are adequately delegated to FSA personnel within their areas of responsibility at the Federal, State, and county levels;

(3) Will appoint a National Environmental Compliance Manager (NECM), as required by 40 CFR 1507.2(a), who reports directly to the FSA Administrator; and

(4) Will appoint a qualified Federal Preservation Officer (FPO), as required by Executive Order 13287 “Preserve America” section 3(e) and by section 110 of NHPA (54 U.S.C. 306101). This individual must meet the National Park Service professional qualification standards requirements referenced in 36 CFR part 61 and will report directly to the NECM.

(b) The NECM or designee coordinates FSA environmental policies and reviews under this part on a national basis and is responsible for:

(1) Ensuring FSA legislative proposals and multistate and national programs are in compliance with NEPA and other applicable environmental and cultural resource laws, regulations, and Executive Orders;

(2) Providing education and training on implementing NEPA and other environmental compliance requirements to appropriate FSA personnel;

(3) Serving as the principal FSA advisor to the FSA Administrator on NEPA and other environmental compliance requirements;

(4) Representing FSA, and serving as an intra- and inter-agency liaison, on NEPA- and environmental compliance-related matters on a national basis;

(5) Maintaining a record of FSA environmental compliance actions; and

(6) Ensuring State and county office compliance with NEPA and other applicable environmental laws, regulations, and Executive Orders.

(c) The FPO or designee coordinates NHPA compliance under this part and is responsible for:

(1) Serving as the principal FSA advisor to the NECM on NHPA requirements;

(2) Representing FSA, and serving as FSA intra- and inter-agency liaison, on all NHPA-related matters on a national basis;

(3) Maintaining current FSA program guidance on NHPA requirements;

(4) Maintaining a record of FSA environmental actions related to the NHPA; and

(5) Ensuring State and county office compliance with the NHPA and other cultural resource-related requirements.

§ 799.6 FSA State office environmental responsibilities.

(a) FSA State Executive Directors (SEDs) or designees are the responsible approving officials (RAOs) in their respective States and are responsible for:

(1) Ensuring FSA proposed actions within their State comply with applicable environmental laws, regulations, and Executive Orders, including NEPA; and

(2) Appointing two or more collateral duty State Environmental Coordinators (SECs) or at least one full time SEC.

(b) An SED will not appoint more than one SEC for Farm Programs and one SEC for Farm Loan Programs in a State unless approved in writing by the NECM.

(c) SECs or designees are responsible for:

(1) Serving as the environmental compliance coordinators on all environmental-related matters within their respective State;

- (2) Advising SEDs on environmental issues;
- (3) Providing training, in coordination with the NECM, on NEPA and other environmental compliance requirements to appropriate FSA State and county office personnel;
- (4) Providing assistance on environmental-related matters on a proposed action-by-action basis to State and county office personnel, as needed;
- (5) When feasible, developing controls for avoiding or mitigating adverse environmental impacts and monitoring the implementation of those controls;
- (6) Reviewing FSA proposed actions that are not categorically excluded from documentation in an environmental assessment or environmental impact statement, or that otherwise require State office approval or clearance, and making appropriate recommendations to the approving official;
- (7) Providing assistance to resolve post-approval environmental issues at the State office level;
- (8) Maintaining decision records for State office environmental compliance matters;
- (9) Monitoring their respective State's compliance with environmental laws, regulations, and Executive Orders;
- (10) Acting as a liaison on FSA State office environmental compliance matters with the public and other Federal, State, and Tribal governments;
- (11) Representing the SED on environmental issues, as requested;
- (12) Delegating duties under this section with the approval of both the SED and NECM; and

(13) Other NEPA and environmental compliance-related duties as assigned.

(d) County Executive Directors, District Directors, and Farm Loan Programs loan approval officers or designees are responsible for compliance with this part within their geographical areas.

§ 799.7 FSA program participant responsibilities.

(a) Potential FSA program participants requesting FSA assistance must do all of the following:

(1) Consult with FSA early in the process about potential environmental concerns associated with program participation. The program participation information required to start participation in an FSA program varies by FSA program and may be in the form of an offer, enrollment, sign-up, contract, note and security agreement, or other as is required by the relevant FSA program.

(2) Submit applications for all Federal, regional, State, and local approvals and permits early in the planning process.

(3) Coordinate the submission of program participation information to FSA and other agencies (for example, if a conservation plan is required, then the program participation information is also submitted to USDA's Natural Resources Conservation Service).

(4) Work with other appropriate Federal, State, and Tribal governments to ensure all environmental factors are identified and impacts addressed and, to the extent possible, mitigated, consistent with how mitigation is defined in 40 CFR 1508.20.

(5) Inform FSA of other Federal, State, and Tribal government environmental reviews that have previously been completed or required of the program participant.

(6) Provide FSA with a list of all parties affected by or interested in the proposed action.

(7) If requested by FSA, provide information necessary for FSA to evaluate a proposed action's potential environmental impacts and alternatives.

(8) Ensure that all compliance documentation provided is current, sufficiently detailed, complete, and submitted in a timely fashion.

(9) Be in compliance with all relevant laws, regulations, and policies regarding environmental management and protection.

(10) Not implement any component of the proposed action prior to the completion of FSA's environmental review and final decision, or FSA's approval for that proposed action, consistent with 40 CFR 1506.1.

(b) When FSA receives program participation information for assistance or notification that program participation information will be filed, FSA will contact the potential program participant about the environmental information the program participant must provide as part of the process. This required information may include:

(1) Design specifications;

(2) Topographical, aerial, and location maps;

(3) Surveys and assessments necessary for determining the impact on protected resources listed in § 799.33(a)(2);

(4) Nutrient management plans; and

(5) Applications, plans, and permits for all Federal, regional, State and local approvals including construction permits, storm water run-off and operational plans and permits, and engineering designs and plans.

§ 799.8 Significant environmental effect.

(a) In determining whether a proposed action will have a significant effect on the quality of the human environment, FSA will consider the proposed action's potential effects in the context of society as a whole, the affected region and interests, the locality, and the intensity of the potential impact as specified in 40 CFR 1508.27.

(b) [Reserved]

§ 799.9 Environmental review documents.

(a) FSA may prepare the following documents during the environmental review process:

- (1) ESW;
- (2) Programmatic Environmental Assessment (PEA);
- (3) Environmental Assessment (EA);
- (4) Supplemental Environmental Assessment;
- (4) Programmatic Environmental Impact Statement (PEIS);
- (5) Environmental Impact Statement (EIS);
- (6) Supplemental Environmental Impact Statement (SEIS);
- (7) Finding of No Significant Impact (FONSI);
- (8) Record of Decision (ROD);
- (9) Notice of Intent (NOI) to prepare any type of EIS;
- (10) Notice of Availability (NOA) of environmental documents;
- (11) Notice of public scoping meetings;
- (12) Other notices, including those required under Executive Order 11988,

“Floodplain Management,” Executive Order 13690, “Establishing a Federal Flood Risk

Management Standard and a Process for Further Soliciting and Considering Stakeholder Input,” and Executive Order 11990, “Protection of Wetlands;”

(13) Memorandums of Agreement or Understanding (MOA or MOU), such as those for mitigation of adverse effects on historic properties as specified in 36 CFR part 800, “Protection of Historic Properties;” and

(14) Environmental studies, as indicated and appropriate.

(b) [Reserved]

§ 799.10 Administrative records.

(a) FSA will maintain an administrative record of documents and materials that FSA created or considered during its NEPA decision making process for a proposed action and referenced as such in the NEPA documentation, which can include any or all the following:

(1) Any NEPA environmental review documents listed in § 799.9, as applicable;

(2) Technical information, permits, plans, sampling results, survey information, engineering reports, and studies, including environmental impact studies and assessments;

(3) Policies, guidelines, directives, and manuals;

(4) Internal memorandums or informational papers;

(5) Contracts or agreements;

(6) Notes of professional telephone conversations and meetings;

(7) Meeting minutes;

(8) Correspondence with agencies and stakeholders;

(9) Communications to and from the public;

(10) Documents and materials that contain any information that supports or conflicts with the FSA decision;

(11) Maps, drawings, charts, and displays; and

(12) All public comments received during the NEPA comment periods.

(b) The administrative record may be used, among other purposes, to facilitate better decision making, as determined by FSA.

§ 799.11 Actions during NEPA reviews.

(a) Except as specified in paragraphs (b) and (c) of this section, FSA or a program participant must not take any action, implement any component of a proposed action, or make any final decision during FSA's NEPA and environmental compliance review process that could have an adverse environmental impact or limit the range of alternatives until FSA completes its environmental review by doing one of the following:

(1) Determines that the proposed action is categorically excluded under NEPA under subpart D of this part and does not trigger any extraordinary circumstances; or

(2) Issues a FONSI or ROD under subpart E or F of this part.

(b) FSA may approve interim actions related to proposed actions provided the:

(1) Interim actions will not have an adverse environmental impact;

(2) Expenditure is necessary to maintain a schedule for the proposed action;

(3) Interim actions and expenditures will not compromise FSA's environmental compliance review and decision making process for the larger action;

(4) Interim actions and expenditures will not segment otherwise connected actions; and

(5) NEPA and associated environmental compliance review has been completed for the interim action or expenditure.

(c) FSA and program participants may develop preliminary plans or designs, or perform work necessary to support an application for Federal, State, or local permits or assistance, during the NEPA review process, provided all requirements in paragraphs (a) and (b) of this section are met.

§ 799.12 Emergency circumstances.

(a) If emergency circumstances exist that make it necessary to take action to mitigate harm to life, property, or important natural, cultural, or historic resources, FSA may take an action with significant environmental impact without complying with the requirements of this part.

(b) If emergency circumstances exist, the NECM will consult with CEQ as soon as feasible about alternative NEPA arrangements for controlling the immediate impact of the emergency, as specified in 40 CFR 1506.11.

(c) If emergency circumstances exist, the FPO will follow the emergency procedures specified in 36 CFR 800.12 regarding preservation of historic properties, if applicable.

(d) FSA assistance provided in response to a Presidentially-declared disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C 5121 - 5207, is exempt from NEPA requirements, as specified in 42 U.S.C. 5159. Under a Presidentially-declared disaster, the following actions to specifically address immediate post-emergency health or safety hazards are exempt from environmental compliance requirements:

(1) Clearing roads and constructing temporary bridges necessary for performing emergency tasks and essential community services;

(2) Emergency debris removal in support of performing emergency tasks and essential community services;

(3) Demolishing unsafe structures that endanger the public or could create a public health hazard if not demolished;

(4) Disseminating public information and assistance for health and safety measures;

(5) Providing technical assistance to State, regional, local, or Tribal governments on disaster management control;

(6) Reducing immediate threats to life, property, and public health and safety; and

(7) Warning of further risks and hazards.

(c) Proposed actions other than those specified in paragraph (d) of this section that are not specifically to address immediate post-emergency health or safety hazards require the full suite of environmental compliance requirements and are not exempt.

§ 799.13 FSA as lead agency.

(a) When FSA acts as the lead agency in a NEPA review as specified in 40 CFR 1501.5, FSA will:

(1) Coordinate its review with other appropriate Federal, State, and Tribal governments; and

(2) Request other agencies to act as cooperating agencies as specified in 40 CFR 1501.6, and defined in 40 CFR 1508.5, as early in the review process as possible.

(b) If FSA acts as a lead agency for a proposed action that affects more than one State, the NECM will designate one SEC to act as RAO.

(c) If the role of lead agency is disputed, the NECM will refer the matter to the FSA Administrator, who will attempt to resolve the matter with the other agency. If the Federal agencies cannot agree which will serve as the lead agency, the FSA Administrator will follow the procedures specified in 40 CFR 1501.5(e) to request that CEQ determine the lead agency.

§ 799.14 FSA as cooperating agency.

(a) FSA will act as a cooperating agency if requested by another agency, as specified in 40 CFR 1501.6 and defined in 40 CFR 1508.5. However, FSA may decline another agency's request if FSA determines the proposed action does not fall within FSA's area of expertise or FSA does not have jurisdiction by law. If FSA declines such a request to cooperate, that will be documented in writing to the requesting agency and a copy will be provided to CEQ.

(b) FSA may request to be designated as a cooperating agency if another agency's proposed action falls within FSA's area of expertise.

§ 799.15 Public involvement in environmental review.

(a) FSA will involve the public in the environmental review process as early as possible and in a manner consistent with 40 CFR 1506.6. To determine the appropriate level of public participation, FSA will consider:

- (1) The scale of the proposed action and its probable effects;
- (2) The likely level of public interest and controversy; and
- (3) Advice received from knowledgeable parties and experts.

(b) Depending upon the scale of the proposed action, FSA will:

(1) Coordinate public notices and consultation with the U.S. Fish and Wildlife Service, USDA's Natural Resources Conservation Service, Federal Emergency Management Agency, the National Marine Fisheries Service, the U.S. Army Corps of Engineers, and other agencies, as appropriate, if wetlands, floodplains, ESA-listed species, or other protected resources have the potential to be impacted;

(2) Make appropriate environmental documents available to interested parties by request;

(3) Publish a Notice of Intent (NOI) to prepare an EIS, as specified in subpart F of this part; and

(4) Publish a Notice of Availability (NOA) of draft and final EISs and RODs, as specified in subpart F of this part.

(c) If the effects of a proposed action are local in nature and the scale of the proposed action is likely to generate interest and controversy at the local level, then in addition to the proposed actions specified in paragraphs (a) and (b) of this section, FSA will:

(1) Notify appropriate State, local, regional, and Tribal governments and clearinghouses, and parties and organizations, including the State Historic Preservation Officer (SHPO) and Tribal Historic Preservation Officer (THPO), known to have environmental, cultural, and economic interests in the locality affected by the proposed action; and

(2) Publish notice of the proposed action in the local media.

(d) Public review for 30 days for a FONSI is necessary if any of the limited circumstances specified in 40 CFR 1501.4(e)(2)(i) or (ii) applies.

§ 799.16 Scoping.

(a) FSA will determine the appropriate scoping process for the environmental review of a proposed action based on the nature, complexity, potential significance of effects, and level of controversy of the proposed action.

(b) As part of its scoping process, FSA will:

(1) Invite appropriate Federal, State, and Tribal governments, and other interested parties to participate in the process, if determined necessary by FSA;

(2) Identify the significant issues to be analyzed;

(3) Identify and eliminate from further review issues that were determined not significant or have been adequately addressed in any prior environmental reviews;

(4) Determine the roles of lead and cooperating agencies, if appropriate;

(5) Identify any related EAs or EISs;

(6) Identify other environmental reviews and consultation requirements, including NHPA requirements and State, local, regional, and Tribal requirements, so they are integrated into the NEPA process;

(7) Identify the relationship between the timing of the environmental review process and FSA's decision making process;

(8) Determine points of contact within FSA; and

(9) Establish time limits for the environmental review process.

(c) FSA may hold public meetings as part of the scoping process, if appropriate and as time permits. The process that FSA will use to determine if a public scoping meeting is needed, and how such meetings will be announced, is specified in § 799.17.

§ 799.17 Public meetings.

(a) In consultation with the NECM, the SEC will determine if public meetings will be held on a proposed action to:

(1) Inform the public about the details of a proposed action and its possible environmental effects;

(2) Gather information about the public concerns; and

(3) Resolve, address, or respond to issues raised by the public.

(b) In determining whether to hold a public meeting, FSA will consider and determine whether:

(1) There is substantial controversy concerning the environmental impact of the proposed action;

(2) There is substantial interest in holding a public meeting;

(3) Another Federal agency or Tribal government has requested a public scoping meeting and their request is warranted; or

(4) The FSA Administrator has determined that a public meeting is needed.

(c) FSA will publish notice of a public meeting, including the time, date and location of the meeting, in the local media or Federal Register, as appropriate, at least 15 days before the first meeting. A notice of a public scoping meeting may be included in a Notice of Intent to prepare an EIS.

(d) If a NEPA document is to be considered at a public meeting, FSA will make the appropriate documentation available to the public at least 15 days before the meeting.

§ 799.18 Overview of FSA NEPA process.

If the proposed action:	FSA:
Is an emergency action	Follows the procedures in § 799.12
Is exempt from section 102(2)(C) of NEPA (42 U.S.C. 4332(2)(C)) by authorizing legislation for the program	Implements the action.
Is categorically excluded under § 799.31(b) or § 1b.3 of this title	Implements the action after recording the specific categorical exclusion on the ESW (no review needed).
Is a proposed action that has the potential to impact historic properties as specified in § 799.33(e) and therefore requires the completion of an ESW	Completes an ESW to determine if there will be an impact on historic properties. FSA will prepare an EA or EIS, as indicated, before implementing the action.
Is a categorically excluded proposed action listed in § 799.32 that requires the completion of an ESW	Completes an ESW to determine whether extraordinary circumstances are present, as defined in § 799.33. This review includes a determination of whether the proposed action will potentially impact protected resources. If there are no extraordinary circumstances, FSA implements the action; if there are extraordinary circumstances, FSA will prepare an EA or EIS, as indicated, before implementing the action.
Involves a category of proposed actions requiring an EA listed in § 799.41	Prepares an EA.
Involves a category of proposed actions requiring an EIS listed in § 799.51	Prepares an EIS.

Subpart C - Environmental Screening Worksheet

§ 799.20 Purpose of the ESW.

(a) FSA uses the ESW as an initial screening tool to evaluate record the use of a categorical exclusion for a proposed action and to determine the required type of environmental review.

(b) Review with the ESW is not required for proposed actions that are categorically excluded as specified in § 799.31(b) or § 1b.3 of this title, or for proposed actions where FSA determines at an early stage that there is a need to prepare an EA or EIS.

#### Subpart D - Categorical Exclusions

##### § 799.30 Purpose of categorical exclusion process.

(a) FSA has determined that the categories of proposed actions listed in §§ 799.31 and 799.32 do not normally individually or cumulatively have a significant effect on the human environment and do not threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, including requirements of Executive Orders and other USDA regulations in this chapter. Based on FSA's previous experience implementing these actions and similar actions through the completion of EAs, these proposed actions are categorically excluded.

(b) If a proposed action falls within one of the categories of proposed actions listed in § 1b.3 of this title, § 799.31, or § 799.32, and there are no extraordinary circumstances present as specified in § 799.33, then the proposed action is categorically excluded from the requirements to prepare an EA or an EIS.

(c) Those proposed actions in categories in § 799.31 or § 799.32 will be considered categorical exclusions unless it is determined there are extraordinary circumstances, as specified in § 799.33.

§ 799.31 Categorical exclusions to be recorded on an ESW.

(a) Proposed actions listed in this section involve no new ground disturbance below the existing plow zone (does not exceed the depth of previous tillage or disturbance) and therefore only need to be recorded on the ESW; no further review will be required. Unless otherwise noted, the proposed actions in this section also do not have the potential to cause effects to historic properties, and will therefore not be reviewed for compliance with section 106 of NHPA (54 U.S.C. 306108) or its implementing regulations, 36 CFR part 800. However, some proposed actions may require other Federal consultation to determine if there are extraordinary circumstances as specified in § 799.33.

(b) The following proposed actions are categorically excluded. These proposed actions are grouped into broader categories of similar types of proposed actions. Those proposed actions that are similar in scope (purpose, intent, and breadth) and the potential significance of impacts to those listed in this section, but not specifically listed in § 799.31 or § 799.32, will be considered categorical exclusions in this category, unless it is determined that extraordinary circumstances exist, as specified in § 799.33:

(1) Loan actions. The following list includes categorical exclusions for proposed actions related to FSA loans:

- (i) Closing cost payments;
- (ii) Commodity loans;
- (iii) Debt set asides;
- (iv) Deferral of loan payments;
- (v) Youth loans;

- (vi) Loan consolidation;
- (vii) Loans for annual operating expenses, except livestock;
- (viii) Loans for equipment;
- (ix) Loans for family living expenses;
- (x) Loan subordination, with no or minimal construction below the depth of previous tillage or ground disturbance, and no change in operations, including, but not limited to, an increase in animal numbers to exceed the current CAFO designation (as defined by the U.S. Environmental Protection Agency in 40 CFR 122.23);

- (xi) Loans to pay for labor costs;
- (xii) Loan (debt) transfers and assumptions with no new ground disturbance;
- (xiii) Partial or complete release of loan collateral;
- (xiv) Re-amortization of loans;
- (xv) Refinancing of debt;
- (xvi) Rescheduling loans;
- (xvii) Restructuring of loans; and
- (xvii) Writing down of debt;

(2) Repair, improvement, or minor modification actions. The following list includes categorical exclusions for repair, improvement, or minor modification proposed actions:

- (i) Existing fence repair;
- (ii) Improvement or repair of farm-related structures under 50 years of age; and

(iii) Minor amendments or revisions to previously approved projects, provided such proposed actions do not substantively alter the purpose, operation, location, impacts, or design of the project as originally approved;

(3) Administrative actions. The following list includes categorically excluded administrative proposed actions:

(i) Issuing minor technical corrections to regulations, handbooks, and internal guidance, as well as amendments to them;

(ii) Personnel actions, reduction-in-force, or employee transfers; and

(iii) Procurement actions for goods and services conducted in accordance with Executive Orders;

(4) Planting actions. The following list includes categorical exclusions for planting proposed actions:

(i) Bareland planting or planting without site preparation;

(ii) Bedding site establishment for wildlife;

(iii) Chiseling and subsoiling;

(iv) Clean tilling firebreaks;

(v) Conservation crop rotation;

(vi) Contour farming;

(vii) Contour grass strip establishment;

(viii) Cover crop and green manure crop planting;

(ix) Critical area planting;

(x) Firebreak installation;

(xi) Grass, forbs, or legume planting;

- (xii) Heavy use area protection;
  - (xiii) Installation and maintenance of field borders or field strips;
  - (xiv) Pasture, range, and hayland planting;
  - (xv) Seeding of shrubs;
  - (xvi) Seedling shrub planting;
  - (xvii) Site preparation;
  - (xviii) Strip cropping;
  - (xix) Wildlife food plot planting; and
  - (xx) Windbreak and shelterbelt establishment;
- (5) Management actions. The following list includes categorical exclusions of

land and resource management proposed actions:

- (i) Forage harvest management;
- (ii) Integrated crop management;
- (iii) Mulching, including plastic mulch;
- (iv) Netting for hard woods;
- (v) Obstruction removal;
- (vi) Pest management (consistent with all labelling and use requirements);
- (vii) Plant grafting;
- (viii) Plugging artesian wells;
- (ix) Residue management including seasonal management;
- (x) Roof runoff management;
- (xi) Thinning and pruning of plants;
- (xii) Toxic salt reduction; and

(xiii) Water spreading; and

(6) Other FSA actions. The following list includes categorical exclusions for other FSA proposed actions:

(i) Conservation easement purchases with no construction planned;

(ii) Emergency program proposed actions (including Emergency Conservation Program and Emergency Forest Restoration Program) that have a total cost share of less than \$5,000;

(iii) Financial assistance to supplement income, manage the supply of agricultural commodities, or influence the cost and supply of such commodities or programs of a similar nature or intent (that is, price support programs);

(iv) Individual farm participation in FSA programs where no ground disturbance or change in land use occurs as a result of the proposed action or participation;

(v) Inventory property disposal or lease with protective easements or covenants;

(vi) Safety net programs administered by FSA;

(vii) Site characterization, environmental testing, and monitoring where no significant alteration of existing ambient conditions would occur, including air, surface water, groundwater, wind, soil, or rock core sampling; installation of monitoring wells; installation of small scale air, water, or weather monitoring equipment;

(viii) Stand analysis for forest management planning;

(ix) Tree protection including plastic tubes; and

(x) Proposed actions involving another agency that are fully covered by one or more of that agency's categorical exclusions (on the ESW, to record the categorical

exclusion, FSA will name the other agency and list the specific categorical exclusion(s) that applies).

§ 799.32 Categorical exclusions requiring review with an ESW.

(a) Proposed actions listed in this section may be categorically excluded after completion of a review with an ESW to document that a proposed action does not involve extraordinary circumstances as specified in § 799.33.

(b) This section has two types of categorical exclusions, one without construction and ground disturbance and one with construction and ground disturbance that will require additional environmental review and consultation in most cases.

(c) Consultations under NHPA, ESA, and other relevant environmental mandates, may be required to document that no extraordinary circumstances exist.

(d) The following proposed actions are grouped into broader categories of similar types of proposed actions without ground disturbance. Those proposed actions that are similar in scope (purpose, intent, and breadth) and the potential significance of impacts to those listed in this section, but not specifically listed in this section, will be considered categorical exclusions in this category, unless it is determined that extraordinary circumstances exist, as specified in § 799.33:

(1) Loan actions. The following list includes categorical exclusions for proposed actions related to FSA loans:

- (i) Farm storage and drying facility loans for added capacity;
- (ii) Loans for livestock purchases;
- (iii) Release of loan security for forestry purposes;
- (iv) Reorganizing farm operations; and

(v) Replacement building loans;

(2) Minor management, construction, or repair actions. The following list includes categorical exclusions for minor construction or repair proposed actions:

(i) Minor construction, such as a small addition;

(ii) Drain tile replacement;

(iii) Erosion control measures;

(iv) Grading, leveling, shaping, and filling;

(v) Grassed waterway establishment;

(vi) Hillside ditches;

(vii) Land-clearing operations of no more than 15 acres, provided any amount of land involved in tree harvesting (without stump removal) is to be conducted on a sustainable basis and according to a Federal, State, Tribal, or other governmental unit approved forestry management plan;

(viii) Nutrient management;

(ix) Permanent establishment of a water source for wildlife (not livestock);

(x) Restoring and replacing property;

(xi) Soil and water development;

(xii) Spring development;

(xiii) Trough or tank installation; and

(xiv) Water harvesting catchment; and

(3) Other FSA actions. The following list includes categorical exclusions for other FSA proposed actions:

(i) Fence installation and replacement;

(ii) Fish stream improvement;

(iii) Grazing land mechanical treatment; and

(iv) Inventory property disposal or lease without protective easements or covenants (this proposed action, in particular, has the potential to cause effects to historic properties and therefore requires analysis under section 106 of NHPA (54 U.S.C. 306108), as well as under the ESA and wetland protection requirements).

(e) The following proposed actions are grouped into broader categories of similar types of proposed actions with ground disturbance, each of the listed proposed actions has the potential for extraordinary circumstances because they include construction or ground disturbance. Therefore, additional environmental review and consultation will be necessary in most cases. Those proposed actions that are similar in scope (purpose, intent, and breadth) and the potential significance of impacts to those listed in this section, but not specifically listed in this section, will be considered categorical exclusions in this category, unless it is determined that extraordinary circumstances exist, as specified in § 799.33:

(1) Loan actions. The following list includes categorical exclusions for proposed actions related to FSA loans:

(i) Loans and loan subordination with construction, demolition, or ground disturbance planned;

(ii) Real estate purchase loans with new ground disturbance planned; and

(iii) Term operating loans with construction or demolition planned;

(2) Construction or ground disturbance actions. The following list includes categorical exclusions for construction or ground disturbance proposed actions:

- (i) Bridges;
- (ii) Chiseling and subsoiling in areas not previously tilled;
- (iii) Construction of a new farm storage facility;
- (iv) Dams;
- (v) Dikes and levees;
- (vi) Diversions;
- (vii) Drop spillways;
- (viii) Dugouts;
- (ix) Excavation;
- (x) Grade stabilization structures;
- (xi) Grading, leveling, shaping and filling in areas or to depths not previously disturbed;
- (xii) Installation of structures designed to regulate water flow such as pipes, flashboard risers, gates, chutes, and outlets;
- (xiii) Irrigation systems;
- (xiv) Land smoothing;
- (xv) Line waterways or outlets;
- (xvi) Lining;
- (xvii) Livestock crossing facilities;
- (xviii) Pesticide containment facility;
- (xix) Pipe drop;
- (xx) Pipeline for watering facility;
- (xxi) Ponds, including sealing and lining;

- (xxii) Precision land farming with ground disturbance;
- (xxiii) Riparian buffer establishment;
- (xxiv) Roads, including access roads;
- (xxv) Rock barriers;
- (xxvi) Rock filled infiltration trenches;
- (xxvii) Sediment basin;
- (xxviii) Sediment structures;
- (xxix) Site preparation for planting or seeding in areas not previously tilled;
- (xxx) Soil and water conservation structures;
- (xxxi) Stream bank and shoreline protection;
- (xxxii) Structures for water control;
- (xxxiii) Subsurface drains;
- (xxxiv) Surface roughening;
- (xxxv) Terracing;
- (xxxvi) Underground outlets;
- (xxxvii) Watering tank or trough installation, if in areas not previously disturbed;
- (xxxviii) Wells; and
- (xxxix) Wetland restoration.

(3) Management and planting type actions. The following list includes categorical exclusions for resource management and planting proposed actions:

- (i) Establishing or maintaining wildlife plots in areas not previously tilled or disturbed;
- (ii) Prescribed burning;

(iii) Tree planting when trees have root balls of one gallon container size or larger; and

(iv) Wildlife upland habitat management.

§ 799.33 Extraordinary circumstances.

(a) As specified in 40 CFR 1508.4, in the definition of categorical exclusion, procedures are required to provide for extraordinary circumstances in which a normally categorically excluded action may have a significant environmental effect. The presence and impacts of extraordinary circumstances require heightened review of proposed actions that would otherwise be categorically excluded. Extraordinary circumstances include, but are not limited to:

(1) Scientific controversy about environmental effects of the proposed action;

(2) Impacts that are potentially adverse, significant, uncertain, or involve unique or unknown risks, including, but not limited to, impacts to protected resources. Protected resources include, but are not limited to:

(i) Property (for example, sites, buildings, structures, and objects) of historic, archeological, or architectural significance, as designated by Federal, Tribal, State, or local governments, or property eligible for listing on the National Register of Historic Places;

(ii) Federally-listed threatened or endangered species or their habitat (including critical habitat), or Federally-proposed or candidate species or their habitat;

(iii) Important or prime agricultural, forest, or range lands, as specified in part 657 of this chapter and in USDA Departmental Regulation 9500-3;

(iv) Wetlands, waters of the United States, as regulated under the Clean Water Act (33 U.S.C. 1344), highly erodible land, or floodplains;

(v) Areas having a special designation, such as Federally- and State-designated wilderness areas, national parks, national natural landmarks, wild and scenic rivers, State and Federal wildlife refuges, and marine sanctuaries; and

(vi) Special sources of water, such as sole-source aquifers, wellhead protection areas, or other water sources that are vital in a region;

(3) A proposed action that is also “connected” (as specified in 40 CFR 1508.25(a)(1)) to other actions with potential impacts;

(4) A proposed action that is related to other proposed actions with cumulative impacts (40 CFR 1508.25(a)(2));

(5) A proposed action that does not comply with 40 CFR 1506.1, “Limitations on actions during NEPA process;” and

(6) A proposed action that violates any existing Federal, State, or local government law, policy, or requirements (for example, wetland laws, Clean Water Act-related requirements, water rights).

(b) FSA will use the ESW to review proposed actions that are eligible for categorical exclusion to determine if extraordinary circumstances exist that could impact protected resources. If an extraordinary circumstance exists, and cannot be avoided or appropriately mitigated, an EA or EIS will be prepared, as specified in this part.

Specifically, FSA will complete a review with the ESW for proposed actions that fall within the list of categorical exclusions specified in § 799.32 to determine whether extraordinary circumstances are present.

(c) For any proposed actions that have the potential to cause effects to historic properties, endangered species, waters of the United States, wetlands, and other protected resources, FSA will ensure appropriate analyses is completed to comply with the following mandates:

(1) For section 106 of the NHPA (54 U.S.C. 306108), the regulations in 36 CFR part 800, "Protection of Historic Properties;" if an authorized technical representative from another Federal agency assists with compliance with 36 CFR part 800, FSA will remain responsible for any consultation with SHPO, THPO, or Tribal governments;

(2) For section 7 of the ESA that governs the protection of Federally proposed, threatened and endangered species and their designated and proposed critical habitats; and

(3) For the Clean Water Act and related Executive Order provisions for avoiding impacts to wetlands and waters of the United States, including impaired waters listed under Section 303(d) of the Clean Water Act.

(d) If technical assistance is provided by another Federal agency, FSA will ensure that the environmental documentation provided is commensurate to or exceeds the requirements of the FSA ESW. If it is not, a review with an ESW is needed to determine if an EA or EIS is warranted.

§ 799.34 Establishing and revising categorical exclusions.

(a) As part of the process to establish a new categorical exclusion, FSA will consider all relevant information, including the following:

(1) Completed FSA NEPA documents;

- (2) Other Federal agency NEPA documents on proposed actions that could be considered similar to the categorical exclusion being considered;
- (3) Results of impact demonstration or pilot projects;
- (4) Information from professional staff, expert opinions, and scientific analyses;
- and
- (5) The experiences of FSA, private, and public parties that have taken similar actions.
- (b) FSA will consult with CEQ and appropriate Federal agencies while developing or modifying a categorical exclusion.
- (c) Before establishing a new final categorical exclusion, FSA will follow the CEQ specified process for establishing Categorical Exclusions, including consultation with CEQ and an opportunity for public review and comment as required by 40 CFR 1507.3.
- (d) FSA will maintain an administrative record that includes the supporting information and findings used in establishing a categorical exclusion.
- (e) FSA will periodically review its categorical exclusions to identify and revise exclusions that no longer effectively reflect environmental circumstances or current FSA program scope.
- (f) FSA will use the same process specified in this section and the results of its periodic reviews to revise a categorical exclusion or remove a categorical exclusion.

## Subpart E - Environmental Assessments

### § 799.40 Purpose of an EA.

(a) FSA prepares an EA to determine whether a proposed action would significantly affect the environment, and to consider the potential impacts of reasonable alternatives and the potential mitigation measures to the alternatives and proposed action.

(b) FSA will prepare a PEA to determine if proposed actions that are broad in scope or similar in nature have cumulative significant environmental impacts, although the impacts of the proposed actions may be individually insignificant.

(c) The result of the EA process will be either a FONSI or a determination that an EIS is required. FSA may also determine that a proposed action will significantly affect the environment without first preparing an EA; in that case, an EIS is required.

### § 799.41 When an EA is required.

(a) Proposed actions that require the preparation of an EA include the following:

(1) New Conservation Reserve Enhancement Program (CREP) agreements;

(2) Development of farm ponds or lakes greater than or equal to 20 acres;

(3) Restoration of wetlands greater than or equal to 100 acres aggregate;

(4) Installation or enlargement of irrigation facilities, including storage reservoirs, diversions, dams, wells, pumping plants, canals, pipelines, and sprinklers designed to irrigate greater than 320 acres aggregate;

(5) Land clearing operations (for example, vegetation removal, including tree stumps; grading) involving greater than or equal to 40 acres aggregate;

- (6) Clear cutting operations for timber involving greater than or equal to 100 acres aggregate;
- (7) Construction or major enlargement of a Concentrated Aquatic Animal Production Facility (CAAP), as defined by the U.S. Environmental Protection Agency in 40 CFR 122.24;
- (8) Construction of commercial facilities or structures for processing or handling of farm production or for public sales;
- (9) Construction or major expansion of a large CAFO, as defined by the U.S. Environmental Protection Agency in 40 CFR 122.23, regardless of the type of manure handling system or water system;
- (10) Refinancing of a newly constructed large CAFO, as defined by the U.S. Environmental Protection Agency in 40 CFR 122.23, or CAAPs as defined by the U.S. Environmental Protection Agency in 40 CFR 122.24 through 122.25, that has been in operation for 24 months or less;
- (11) Issuance of substantively discretionary FSA regulations, Federal Register notices, or amendments to existing programs that authorize FSA or CCC funding for proposed actions that have the potential to significantly affect the human environment;
- (12) Newly authorized programs that involve substantively discretionary proposed actions and are specified in § 799.32(d);
- (13) Any FSA proposed action that has been determined to trigger extraordinary circumstances specified in § 799.33(c); and
- (14) Any proposed action that will involve the planting of a potentially invasive species, unless exempted by Federal law.

(b) Proposed actions that do not reach the thresholds defined in paragraph (a) of this section, unless otherwise identified under § 799.31(b) or § 799.32(c), require a review using the ESW to determine if an EA is warranted.

§ 799.42 Contents of an EA.

(a) The EA should include at least the following:

(1) FSA cover sheet;

(2) Executive summary;

(3) Table of contents;

(4) List of acronyms;

(5) A discussion of the purpose of and need for the proposed action;

(6) A discussion of alternatives, if the proposed action involves unresolved conflicts concerning the uses of available resources;

(7) A discussion of the existing pre-project environment and the potential environmental impacts of the proposed action, with reference to the significance of the impact as specified in § 799.8 and 40 CFR 1508.27;

(8) Likelihood of any significant impact and potential mitigation measures that FSA will require, if needed, to support a FONSI;

(9) A list of preparers and contributors;

(10) A list of agencies, tribes, groups, and persons solicited for feedback and the process used to solicit that feedback;

(11) References; and

(12) Appendixes, if appropriate.

(b) FSA will prepare a Supplemental EA, and place the supplements in the administrative record of the original EA, if:

(1) Substantial changes occur in the proposed action that are relevant to environmental concerns previously presented, or

(2) Significant new circumstances or information arise that are relevant to environmental concerns and to the proposed action or its impacts.

(c) FSA may request that a program participant prepare or provide information for FSA to use in the EA and may use the program participant's information in the EA or Supplemental EA, provided that FSA also:

(1) Independently evaluates the environmental issues;

(2) Takes responsibility for the scope and content of the EA and the process utilized, including any required public involvement; and

(3) Prepares the FONSI or NOI to prepare an EIS.

§ 799.43 Tiering.

(a) As specified in 40 CFR 1508.28, tiering is a process of covering general environmental review in a broad PEA, followed by subsequent narrower scope analysis to address specific proposed actions, action stages, or sites. FSA will use tiering when FSA prepares a broad PEA and subsequently prepares a site-specific ESW, EA, or PEA for a proposed action included within the program addressed in the original, broad PEA.

(b) When FSA uses tiering in a broad PEA, the subsequent ESW, EA, or PEA will:

(1) Summarize the issues discussed in the broader statement;

(2) Incorporate by reference the discussions from the broader statement and the conclusions carried forward into the subsequent tiered analysis and documentation; and

(3) State where the PEA document is available.

§ 799.44 Adoption of an EA prepared by another entity.

(a) FSA may adopt an EA prepared by another Federal agency, State, or Tribal government if the EA meets the requirements of this subpart.

(b) If FSA adopts another agency's EA and issues a FONSI, FSA will follow the procedures specified in § 799.44.

§ 799.45 Finding of No Significant Impact (FONSI).

(a) If after completing the EA, FSA determines that the proposed action will not have a significant effect on the quality of the human environment, FSA will issue a FONSI.

(b) The FONSI will include the reasons FSA determined that the proposed action will have no significant environmental impacts.

(c) If the decision to issue the FONSI is conditioned upon the implementation of measures (mitigation actions) to ensure that impacts will be held to a nonsignificant level, the FONSI must include an enforceable commitment to implement such measures on the part of FSA, and any applicant or other party responsible for implementing the measures will be responsible for the commitments outlined in the FONSI.

## Subpart E - Environmental Impact Statements

### § 799.50 Purpose of an Environmental Impact Statement (EIS).

(a) FSA will prepare an EIS for proposed actions that are expected to have a significant effect on the human environment. The purpose of the EIS is to ensure that all significant environmental impacts and reasonable alternatives are fully considered in connection with the proposed action.

(b) FSA will prepare a PEIS for proposed actions that are broad in scope or similar in nature and may cumulatively have significant environmental impacts, although the impact of the individual proposed actions may be insignificant.

### § 799.51 When an EIS is required.

(a) The following FSA proposed actions normally require preparation of an EIS:

(1) Legislative proposals, not including appropriations requests, with the potential for significant environmental impact that are drafted and submitted to Congress by FSA;

(2) Broad Federal assistance programs administered by FSA, involving significant financial assistance or payments to program participants, that may have significant cumulative impacts on the human environment; and

(3) Ongoing programs that have been found through previous environmental analyses to have major environmental concerns.

(b) [Reserved]

§ 799.52 Notice of intent to prepare an EIS.

(a) FSA will publish a Notice of Intent to prepare an EIS in the Federal Register and, depending on the scope of the proposed action, may publish a notice in other media.

(b) The notice will include the following:

(1) A description of the proposed action and possible alternatives;

(2) A description of FSA's proposed scoping process, including information about any public meetings; and

(3) The name of an FSA point of contact who can receive input and answer questions about the proposed action and the preparation of the EIS.

§ 799.53 Contents of an EIS.

(a) FSA will prepare the EIS as specified in 40 CFR part 1502 and in section 102 of NEPA (42 U.S.C. 4332).

(b) The EIS should include at least the following:

(1) An FSA cover sheet;

(2) An executive summary explaining the major conclusions, areas of controversy, and the issues to be resolved;

(3) A table of contents;

(4) List of acronyms and abbreviations;

(5) A brief statement explaining the purpose and need of the proposed action;

(6) A detailed discussion of the environmental impacts of the proposed action and reasonable alternatives to the proposed action, a description and brief analysis of the alternatives considered but eliminated from further consideration, the no-action

alternative, FSA's preferred alternative(s), and discussion of appropriate mitigation measures;

(7) A discussion of the affected environment;

(8) A detailed discussion of:

(i) The direct and indirect environmental consequences, including any cumulative impacts, of the proposed action and of the alternatives;

(ii) Unavoidable adverse environmental effects;

(iii) The relationship between local short-term uses of the environment and long-term ecosystem productivity;

(iv) Any irreversible and irretrievable commitments of resources;

(vi) Possible conflicts with the objectives of Federal, regional, State, local, regional, and Tribal land use plans, policies, and controls for the area concerned;

(vii) Energy and natural depletable resource requirements, including, but not limited to natural gas and oil, and conservation potential of the alternatives and mitigation measures; and

(viii) Urban quality, historic, and cultural resources and the design of the built environment, including the reuse and conservation potential of the alternatives and mitigation measures;

(9) In the draft EIS, a list of all Federal permits, licenses, and other entitlements that must be obtained for implementation of the proposed action;

(10) A list of preparers;

(11) Persons and agencies contacted;

(12) References, if appropriate;

- (13) Glossary, if appropriate;
- (14) Index;
- (15) Appendixes, if any;
- (16) A list of agencies, organizations, and persons to whom copies of the EIS are sent; and
- (17) In the final EIS, a response to substantive comments on environmental issues.

(c) FSA may have a contractor prepare an EIS as specified in 40 CFR 1506.5(c).  
If FSA has a contractor prepare an EIS, FSA will:

- (1) Require the contractor to sign a disclosure statement specifying it has no financial or other interest in the outcome of the proposed action, which will be included in the administrative record; and
- (2) Furnish guidance and participate in the preparation of the EIS, and independently evaluate the EIS before its approval.

§ 799.54 Draft EIS.

(a) FSA will prepare the draft EIS addressing the information specified in § 799.53.

(b) FSA will circulate the draft EIS as specified in 40 CFR 1502.19.

(c) In addition to the requirements of 40 CFR 1502.19, FSA will request comments on the draft EIS from:

- (1) Appropriate State and local agencies authorized to develop and enforce environmental standards relevant to the scope of the EIS;
- (2) Tribal governments that have interests that could be impacted; and

(3) If the proposed action affects historic properties, the appropriate SHPO, THPO, and the Advisory Council on Historic Preservation.

(d) FSA will file the draft EIS with the U.S. Environmental Protection Agency as specified in 40 CFR 1506.9 and in accordance with U.S. Environmental Protection Agency filing requirements (available at <http://www.epa.gov/compliance/nepa/submiteis/index.html>).

(e) The draft EIS will include a cover sheet with the information specified in 40 CFR 1502.11.

(f) FSA will provide for a minimum 45-day comment period calculated from the date the U.S. Environmental Protection Agency publishes the NOA of the draft EIS.

§ 799.55 Final EIS.

(a) FSA will prepare the final EIS addressing the information specified in § 799.53.

(b) FSA will evaluate the comments received on the draft EIS and respond in the final EIS as specified in 40 CFR 1503.4. FSA will discuss in the final EIS any issues raised by commenters that were not discussed in the draft EIS and provide a response to those comments.

(c) FSA will attach substantive comments, or summaries of lengthy comments, to the final EIS and will include all comments in the administrative record.

(d) FSA will circulate the final EIS as specified in 40 CFR 1502.19.

(e) FSA will file the final EIS with the U.S. Environmental Protection Agency as specified in 40 CFR 1506.9.

(f) The final EIS will include a cover sheet with the information specified in 40 CFR 1502.11.

§ 799.56 Supplemental EIS.

(a) FSA will prepare supplements to a draft or final EIS if:

(1) Substantial changes occur in the proposed action that are relevant to environmental concerns; or

(2) Significant new circumstances or information arise that are relevant to environmental concerns and bearing on the proposed action or its impacts.

(b) The requirements of this subpart for completing the original EIS apply to the supplemental EIS, with the exception of the scoping process, which is optional.

§ 799.57 Tiering.

(a) As specified in 40 CFR 1508.28, tiering is a process of covering general environmental review in a broad PEIS, followed by subsequent narrower scope analysis to address specific proposed actions, action stages, or sites. FSA will use tiering when FSA prepares a broad PEIS and subsequently prepares a site-specific ESW, EA, or PEA for a proposed action included within the program addressed in the original, broad PEIS.

(b) When FSA uses tiering in a broad PEIS, the subsequent ESW, EA, or PEA will:

(1) Summarize the issues discussed in the broader statement;

(2) Incorporate by reference the discussions from the broader statement and the conclusions carried forward into the subsequent tiered analysis and documentation; and

(3) State where the PEIS document is available.

§ 799.58 Adoption of an EIS prepared by another entity.

(a) FSA may elect to adopt an EIS prepared by another Federal agency, State, or Tribal government if:

(1) The NECM determines that the EIS and the analyses and procedures by which they were developed meet the requirements of this part; and

(2) The agency responsible for preparing the EIS concurs.

(b) For the adoption of another Federal agency EIS, FSA will follow the procedures specified in the CEQ regulations in 40 CFR 1506.3.

(c) For the adoption of an EIS from a state or tribe that has an established state or tribal procedural equivalent to the NEPA process (generally referred to as “mini-NEPA”), FSA will follow the procedures specified in the CEQ regulations in 40 CFR 1506.3.

§ 799.59 Record of Decision.

(a) FSA will issue a Record of Decision (ROD) within the time periods specified in 40 CFR 1506.10(b) but no sooner than 30 days after the U.S. Environmental Protection Agency’s publication of the NOA of the final EIS. The ROD will:

(1) State the decision reached;

(2) Identify all alternatives considered by FSA in reaching its decision, specifying the alternative or alternatives considered to be environmentally preferable;

(3) Identify and discuss all factors, including any essential considerations of national policy, which were considered by FSA in making its decision, and state how those considerations entered into its decision; and

(4) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted and, if not, explain why these mitigation

measures were not adopted. A monitoring and enforcement program will be adopted and summarized where applicable for any mitigation.

(b) FSA will distribute the ROD to all parties who request it.

(c) FSA will publish the ROD or a notice of availability of the ROD in the Federal Register.

#### 7 CFR Chapter XIV – Commodity Credit Corporation

#### PART 1436 – FARM STORAGE FACILITY LOAN PROGRAM REGULATIONS

28. Revise the authority citation for part 1436 to read as follows:

Authority: 7 U.S.C. 7971 and 8789; and 15 U.S.C. 714 through 714p.

§ 1436.17 [Removed]

29. Remove § 1436.17.

#### 7 CFR Chapter XVIII - Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department Of Agriculture

#### PART 1940 – GENERAL

30. The authority citation for part 1940 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

Subpart G [Removed]

31. Remove subpart G, consisting of §§ 1940.301 through 1940.350 and the appendices exhibits A through M.

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Val Dolcini,  
Administrator,  
Farm Service Agency, and  
Executive Vice President,  
Commodity Credit Corporation.

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Lisa Mensah,  
Under Secretary,  
Rural Development.

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