

# Proposed Rules

Federal Register

Vol. 79, No. 170

Wednesday, September 3, 2014

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## 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, Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Commodity Credit Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Farm Service Agency (FSA) proposes to consolidate, update, and amend its regulations implementing the National Environmental Policy Act of 1969, as amended (NEPA). FSA's NEPA regulations have 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 proposed changes would also better align FSA's NEPA regulations with the President's Council on Environmental Quality (CEQ) NEPA regulations and guidance and meet the FSA responsibilities for periodic review of their categorical exclusions. One component of the changes proposed to improve the clarity and consistency of the regulations, is the proposed additions to the existing list of categorical exclusions (CatExs). CatExs involve 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). This proposed rule would also propose to expand and clarify the list of actions that require an EA. In addition, this rule proposes conforming changes to existing references to FSA NEPA regulations in other current USDA 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.

**DATES:** We will consider comments that we receive by December 2, 2014.

**ADDRESSES:** We invite you to submit comments on this proposed rule and the information collection. In your comment, specify RIN 0560-AH02 and the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail, Hand Delivery, or Courier:* Nell Fuller, Conservation and Environmental Program Division, FSA, USDA, Mail Stop 0513, 1400 Independence Avenue SW., Washington, DC 20250-0513.

FSA will post all comments received without change, including any personal information that is included with the comments, on <http://www.regulations.gov>. Comments will be available for inspection online at <http://www.regulations.gov> and at the address listed above between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this proposed rule is also available through the FSA homepage at <http://www.fsa.usda.gov/>.

**FOR FURTHER INFORMATION CONTACT:** Nell Fuller; telephone (202) 720-6303. Persons with disabilities or who require alternative means for communication should contact the USDA Target Center at (202) 720-2600.

### SUPPLEMENTARY INFORMATION:

#### Background—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 actions, depending on the nature of the action. As stated in 40 CFR 1508.18(a), 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 actions, because of the nature of their potential environmental effects are categorically excluded from further environmental analysis and are known as CatExs. If an 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 at hand. Rules specifying the requirements for NEPA analysis are in government-wide NEPA regulations issued by CEQ and available at 40 CFR parts 1500 through 1508, and in individual agency regulations, including the Department of Agriculture's NEPA implementing regulations (7 CFR part 1b). The scope of this proposed rule is to update the FSA NEPA implementing regulations.

A CatEx is used typically for actions that do not have a significant impact on the quality of the human environment, 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). Individual actions are not categorically excluded by this rulemaking; in the future, those actions that fit into a specific category can be categorically excluded if there are no extraordinary circumstances for the specific proposed action at hand. If an action is not in a categorically excluded category, then the next step in the NEPA process is usually an EA. An EA is prepared to analyze the potential environmental impact of a Federal agency action and

alternatives to the action to determine whether proposed actions can proceed without supplemental environmental review. An EA can result in a proposal 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 impact, FSA can start the EIS process without first doing an EA.

NEPA requires a Federal agency to prepare an EIS for any major Federal 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 impact 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 evaluation must be started once a proposal to take an action is concrete enough to warrant analysis 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 public, and must be completed before a decision is made.

NEPA also establishes the President’s Council on Environmental Quality (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 the 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 proposed rule supplements the CEQ’s NEPA regulations, and the USDA general NEPA regulations at 7 CFR part 1b, addressing their implementation by FSA.

#### **Background—FSA Organizational History**

FSA was created in 1995 by merging the former Agricultural Stabilization and Conservation Service (ASCS) and the farm loan portion of the Farmers Home Administration (FmHA); currently the Farm Programs and Farm Loan Programs, respectively. (As required by the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354).) Since that reorganization, FSA has been operating under two separate sets of NEPA regulations, one for the programs within the scope of the former ASCS and one for programs within the scope of the former FmHA. This proposed rule would consolidate, clarify, and update FSA NEPA regulations to establish a single set of NEPA regulations for FSA, and so that those regulations reflect current FSA organizational structure, environmental laws, Executive Orders, and CEQ guidance and policy.

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

#### **Current Structure of NEPA Regulations That Apply to FSA; Proposed Restructuring**

The Farm Programs part of FSA oversees conservation, disaster assistance, direct and countercyclical payments, price support, farm storage facility loans, and commodity loan programs. Currently, the NEPA regulations governing FSA Farm Programs are in 7 CFR part 799. Many current FSA programs did not exist in 1980 and are therefore not specifically addressed under the current 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. Currently, the NEPA regulations governing Farm Loan Programs are at 7 CFR part 1940,

subpart G, and apply to FSA farm loans and to other USDA activities associated with the Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities Service, (also formerly part of FmHA). These regulations contain provisions that refer to programs that either no longer exist or are not FSA programs.

FSA is responsible for NEPA compliance for the Commodity Credit Corporation (CCC) programs that FSA administers. FSA currently has no separate NEPA regulations for CCC; existing FSA NEPA regulations in 7 CFR part 799 apply for CCC programs that are administered by FSA. Those will be included in this rule.

The proposed rule would implement a single consolidated set of FSA NEPA regulations in 7 CFR part 799. As a result, the regulations in 7 CFR part 1940, subpart G, would no longer apply to FSA, and would be amended accordingly. The proposed 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.

The revised part 799 would have 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 would include a summary chart of the entire FSA NEPA process.

Following the discussion of the regulatory changes, a summary table provides a general comparison of the major NEPA provisions, the current regulations, and the proposed regulation. In general, FSA has already administratively implemented FSA NEPA procedures to meet current NEPA requirements as specified in Executive Orders and CEQ guidance; those currently implemented FSA NEPA procedures are reflected in this rule as proposed changes to the regulation. For example, Programmatic EAs (PEAs) are not in the current regulations, but FSA already does such analyses in compliance with current CEQ regulations and guidance. So, the proposed provisions for PEAs represent a revision to the regulations, which specifically authorize and further explain FSA NEPA procedures. A detailed crosswalk comparing the specific regulatory changes between the current FSA regulations and the

proposed regulations would not accurately reflect the changes in FSA NEPA procedures that would impact the public. Combining the requirements from the existing 7 CFR parts 799 and 1940 involved significant editing and restructuring. This resulted in proposed regulations that are significantly rewritten, but the underlying FSA NEPA procedures remain largely unchanged. Therefore, the summary table highlights the substantive procedure 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 current regulations and the proposed 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 proposed changes will meet that requirement, by clarifying the procedures for completing EAs and EISs, and by expanding and making the CatEx list more specific. The changes will significantly reduce paperwork and allow FSA to focus limited resources on real environmental issues and alternatives for other actions, as appropriate.

Emergency circumstances will continue to be handled consistent with 40 CFR 1506.11 and applicable CEQ guidance.

#### **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 evaluations for all FSA programs. This proposed rule describes the use of the new environmental screening worksheet (ESW) in the revised 7 CFR part 799, subpart C. ESW and the process for using it would represent a substantive change from current practice. Implementation of the ESW would consolidate two forms required by 7 CFR parts 799 and 1940, subpart G, reducing total paperwork and ensuring better compliance with NEPA. FSA staff would use the ESW as an initial screening tool to evaluate and document any likely environmental impacts of proposed actions and determine the potential significance and appropriate level of NEPA review (CatEx, EA, or

EIS). For some types of CatEx, completion of the ESW will identify the CatEx being considered and document the determination whether extraordinary circumstances exist, and will determine whether the CatEx is appropriately applied or further NEPA review of that proposed action is appropriate. The new ESW consolidates the evaluation criteria from multiple forms and checklists currently used by FSA for environmental evaluation. Having one form will reduce the paperwork for FSA and ensure compliance with NEPA.

As proposed, 7 CFR part 799, subpart C, specifies the categories of actions that would require the use of the ESW and how the ESW would be used. In general, the ESW would be required for all actions except those CatExs listed in § 799.31, which FSA has determined do not require further documentation (beyond that provided in the substantiation for establishing the CatEx and the project file) for specific proposed actions. 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 NEPA analysis of these types of actions.

The next section of this document explains the new categories of CatExs, some of which require an ESW. Some examples of CatEx actions proposed in § 799.31 that would not require an ESW include many loan actions, fence repair, and maintenance of existing buildings. The list of 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 actions would require an ESW to determine if extraordinary circumstances exist that require further environmental analysis. Some examples of these actions that would be analyzed with an ESW include loan transfers with planned new land disturbance and fence installation.

Extraordinary circumstances, as specified in this proposed 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 an action that would otherwise be categorically excluded.

In addition to its use for NEPA review, the ESW would also be required for a list of specific actions, specified in § 799.34, that FSA has determined may have the potential to affect historic properties. This includes actions such as operating loans for construction and well drilling.

For all actions for which there is no applicable CatEx, the ESW would be used to determine whether an EA or an EIS is the next step in the NEPA process.

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.

The ESW would replace the existing form FSA 850 “Environmental Evaluation Checklist” document and the RD 1940–22, which local FSA staff and County Office Committee reviewers have found to be somewhat lengthy, confusing, and duplicative paperwork. Due to its length and complexity, the existing checklist has been used inconsistently. The new, more concise ESW is designed to be applied consistently.

This proposed rule specifies the situations in which the ESW would be used by FSA. The ESW would 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 NEPA analysis without documentation in an ESW, or FSA receives technical assistance with the environmental evaluation 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 evaluation 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 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 proposed rule would update and clarify the CatEx requirements that apply to FSA programs and group those requirements in a new subpart. Consistent with CEQ regulations, subpart D of the proposed rule specifies that a “categorical exclusion” is a category of agency actions that normally have no individually or cumulatively significant effect on the human environment (see 7 CFR 799.30). Subpart D would provide a longer and more specific list of categorically excluded actions than is in the current

regulations (see 7 CFR 799.31 and 799.32). The updated and expanded list of CatExs represents a substantive change. Many of the actions proposed in this rule as CatExs are not explicitly listed as CatExs in the current 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; this rule requests public comment on all of the proposed CatExs and proposes to add all such actions that should have been categorically excluded in the FSA NEPA regulations. 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 and by providing an opportunity for public comment on the CatExs in this proposed rule.

Some of the proposed CatExs are similar to the CatExs of other Federal agencies and reflect FSA's experience with similar factual circumstances. For example, the action of "fencing" is an action that FSA has categorized as a CatEx that also has been identified as a CatEx by other agencies, such as the Department of Energy, 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 environmental impacts on the human environment based on past NEPA documentation by FSA environmental experts and their review of the impacts for implementing those actions. For example, many of the loan program 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 action. In addition, those actions are categorically excluded in 7 CFR 1940.310(e)(2) as loan-closing and servicing activities.

There are many CatExs proposed in this rule on the basis of the location where the specific actions would be occurring. For example, various actions that would take place within previously disturbed or developed farmland, and actions on land where the former state of the area and its ecological functions

have already been altered, are appropriate for a CatEx. These would also include actions on land that has been previously cultivated, as long as the proposed new action would not disturb below the plow zone or amount to very limited disturbance. The Department of Energy uses this same previously disturbed ground criteria as an integral component of their CatExs.

FSA proposes to separate its actions into three broad categories with regards to categorical exclusion and any further required environmental review. As explained below, these are actions that (1) are automatically excluded from further environmental review without further documentation, (2) may be excluded from further environmental review based on the result of the ESW, and (3) are not excluded and require further environmental review (EA or EIS):

- First, those actions that would be categorically excluded from further environmental review without documentation. There are a total of 71 of these types of actions proposed in this rule and include actions such as paying loan closing costs, refinancing debt, and a payment to support commodity prices with no requirement for any action on part of the recipient. Most of these type of actions would also not be considered as undertakings that have potential to affect a historic property and therefore would not be subject to section 106 of the National Historic Preservation Act of 1966 (NHPA) (16 U.S.C. 470f). FSA may also add 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 § 799.35 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 actions that would be considered as CatExs so long as they are documented with an ESW. Extraordinary circumstances, as specified in this proposed rule, are unique to a specific action and include situations where an action has potentially significant impacts. The presence or absence of such extraordinary circumstances would be determined by the completion of the ESW. There are a total of 21 of these actions proposed in this rule, including actions such as loans for livestock purchases, construction in previously disturbed areas, grading, shaping, leveling, and refilling. These are categories of actions where such extraordinary circumstances with the

potential for environmental impact have rarely resulted in potentially significant effects. In addition, most of these actions are not considered as undertakings that have the potential to affect a historic property and therefore would not be subject to section 106 of the NHPA.

- Third, those 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 actions an environmental review in the form of an EA or EIS will be required and a CatEx would not be considered. These would be analyzed by completing the ESW and using the results to determine the need for an EA or an EIS. There are a total of 47 of these actions and include actions such as pond planning and construction, dike planning and construction, and operating loans for actions with demolition or construction planned. If a property is deemed historic, these actions are also considered as undertakings that have the potential to affect a historic property and would be subject to section 106 of NHPA. Consultation with the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), Tribal governments, and the public will be conducted as appropriate based on the location, nature, and scale of the action.

As specified in § 799.35 of this proposed rule, the CEQ regulations at 40 CFR 1507.3, and in CEQ guidance on "Establishing, Applying and Revising Categorical Exclusions under the National Environmental Policy Act (NEPA)" and published in the **Federal Register** on December 6, 2010 (75 FR 75628–75638), FSA is required to publish a document in the **Federal Register** to announce new CatExs. The document must provide no less than 30 days for public review and comment. This proposed rule serves as the notice of the new CatExs proposed in this rule, and comments are requested for a 90-day period on all of the proposed rule, including the CatExs specified in §§ 799.31 and 799.32.

The inclusion in the regulations of CatExs that were previously not explicitly listed as CatExs in the current 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 added with this rule, and the new ESW, will reduce the time and effort required for the

environmental evaluation of actions that in the past required an EA, but almost always resulted in a FONSI as the result of the EA.

### EA Changes

The current 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 proposed regulation has only one category of Environmental Assessment, which would make the NEPA process less complex and consistent with the CEQ regulations. This is a substantive change in the regulation, but not in the current process.

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

This rule proposes to add criteria for developing a programmatic EA (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 currently performs PEAs under the current regulations. 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 comprehensive manner while providing the basis for future proposed actions and site-specific analyses ("tiering"). For example, the rulemaking to implement the Voluntary Public Access and Habitat Incentive Program (VPA-HIP) required State-level PEAs for all grant recipients. This eliminates the need to review and prepare an ESW for each of the

individual incentives to provide public access or implement public access related activities for any single parcel of land in a State. The PEA process allows FSA to identify similar 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 actions analyzed in the PEA.

The use of the amended CatEx lists would 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 would depend on the finding of no extraordinary circumstances during the ESW analysis—in some cases the ESW process could result in a finding that an EA is required. Specifically, many Farm Loan Programs actions that currently require an EA would be categorically excluded with documentation required using the new ESW process. Some would be categorically excluded without documentation.

### EIS Changes

This rule proposes a new subpart on the EIS process that consolidates EIS requirements from the existing regulations and more specifically describes the processes involved. As proposed in this rule and as required by NEPA and CEQ regulations, an EIS would be required for the following four types of 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 programs, if through the preparation of an EA, 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 actions, while more clearly defined in this proposed rule than in the current regulations, are substantially similar to the requirements in the current NEPA regulations for FSA Farm Programs in 7 CFR part 799. The current 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 action (for example, floodplains, wetlands). The proposed changes are intended to clarify the requirements for an EIS, but are not intended to substantively change when an EIS is required. The changes in this proposed rule are not expected to result in a change in the number of EISs that FSA conducts each year. The proposed changes explain 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, which is currently specified in the FSA handbooks rather than the regulations. As noted earlier, much of that process has already been implemented administratively.

### Summary of Proposed Substantive Changes

This proposed rule consolidates and reorganizes the provisions currently 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 actions requiring an EA, and adds new provisions to comply with current CEQ guidance. The following table summarizes how the major provisions in this proposed regulation compare to similar provisions in the existing regulations.

TABLE 1—CHANGES FROM CURRENT 7 CFR PARTS 799 AND 1940 TO PROPOSED 7 CFR PART 799

Major provisions	Current 7 CFR part 799	Current 7 CFR part 1940	Proposed 7 CFR part 799	Additional information
Categorical Exclusions (CatEx).	The term categorical exclusion is not used, although there is a list of actions not normally requiring an EA or EIS.	Some specific Farm Loan Programs actions are categorically excluded under 7 CFR 1940.310(d).	Lists all categories of FSA actions and separates them into three categories: <ul style="list-style-type: none"> <li>• Actions that are always CatExs, with no documentation required.</li> </ul>	Proposed rule also includes specific process for publishing new CatExs in the future, including public review and comment process.

TABLE 1—CHANGES FROM CURRENT 7 CFR PARTS 799 AND 1940 TO PROPOSED 7 CFR PART 799—Continued

Major provisions	Current 7 CFR part 799	Current 7 CFR part 1940	Proposed 7 CFR part 799	Additional information
Environmental Assessments (EAs).	Requires NEPA process to be followed but does not specify which Farm Programs actions require an EA.	Requires EAs, depending on circumstances, for certain Farm Loan Programs actions. See 7 CFR 1940.311, 312, 318, and 319.	<ul style="list-style-type: none"> <li>• Actions that are categorically excluded with documentation in an ESW to determine whether an extraordinary circumstance exists in which case an EA would be required.</li> <li>• Actions that cannot be CatExs and require the completion of the ESW to determine if an EA or EIS is required.</li> </ul> Eliminates the Class I and Class II actions for Farm Loan Programs. Lists all specific FSA actions that require an EA, and those that require an ESW to determine if an EA is required.	Some actions that currently require an EA would be categorically excluded actions.
Environmental Impact Statements (EIS).	Specifies general categories of FSA Farm Programs actions that are likely to have a significant impact on the environment, and specific programs that are not.	Specifies criteria for determining significant impact, with an emphasis on floodplains and wetlands. See 7 CFR 1940.313, 314, and 320.	Specifies the general categories of FSA 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 actions for which an EIS is required, but more detail on the content and review process of an EIS.
Environmental Screening Worksheet (ESW).	An appendix provides the now obsolete ASCS-929 form.	Environmental Evaluation (RD 1940-22 (NOTE: RD is a successor agency to FmHA)) is required to determine if a Class I or Class II EA should be prepared. See 7 CFR 1940.317(c).	An ESW would be required for FSA actions that fall into a listed CatEx requiring documentation to determine if an extraordinary circumstance exists and if an EA or EIS should be prepared.	The description of how to use the current FSA Environmental Evaluation form (FSA 850) is in the handbooks, not the regulations. The ESW is shorter and has more specific criteria than the current FSA 850.
Programmatic NEPA Process.	Not addressed .....	Not addressed specifically, although tiering is in 7 CFR 1940.327.	Specified process for conducting programmatic NEPA for FSA programs and actions that have a national scope.	This is not a new process for FSA, but the process is currently not specified in the FSA regulations.
Integration of other environmental laws and regulations.	NEPA and CEQ's NEPA regulations are the only environmental laws and regulations referenced.	Some other environmental law requirements are 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 NHPA is explained in detail and integrated into the ESW.	FSA already complies with the Executive Orders, USDA regulations, laws, and CEQ guidance listed in the proposed rule, but most of those references are not in the current regulations.

### Consolidating and Clarifying Amendments

Many of the proposed changes in this rule are essentially minor technical and clarifying changes, some changes reorganize the requirements from the current regulations. This section of the preamble discusses the technical and structural changes to the regulations that are intended to increase clarity and remove obsolete provisions, but would 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 would be in one section of the consolidated regulations, § 799.4. In addition to the definitions already in the current regulations, this rule proposes to add definitions for “application,” “construction,” “consultation,” “environmental screening worksheet,” “financial assistance,” “historic properties,” “memorandum of agreement,” “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. For example, the definition for “historic properties” in this rule, includes prehistoric or historic districts, sites, buildings, structures or objects, which are included in, or eligible for inclusion in, the National Register of Historic Places, which is consistent with the other Federal agencies and NHPA (16 U.S.C. 470–470x–6) regulations.

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

As proposed in this rule, all of the FSA NEPA compliance responsibilities would be specified in 7 CFR part 799. The regulations would clarify 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 (16 U.S.C. 470hndash;2(a)) and Executive Order 13287. These are not new responsibilities; this would clarify the regulations. To update the current position titles in FSA, the references to State Director from 7 CFR part 1940, subpart G, would be changed to State Executive Director. Other revised provisions would clarify the role of the State Environmental Coordinator, to be consistent with current practice.

The requirements for CatExs, EAs, and EISs would be organized into separate subparts, so that it would be 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 EIS process but not used for EAs or CatExs, would be in the EIS subpart, but the requirements for “tiering” would not change.

Many of the changes in this proposed rule would remove obsolete provisions and terminology. For example, references to agencies that no longer exist would be removed, and replaced with references to FSA. This rule would also remove 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 actions rather than to specific programs. These changes would make the regulations clearer, more transparent, and up to date, but are not substantive changes and should have no impact on the NEPA analysis process.

The current 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 would remove those exhibits and

appendices, which would not change the current process because in most cases the referenced items are no longer used. This rule would add references in § 799.1, “Purpose,” to several dozen relevant environmental laws, Executive Orders, and regulations that were developed since the current regulations were published. References to departmental regulations currently listed in appendices to 7 CFR part 1940 would also be 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 would not be a change the current practice.

### Conforming Changes

In addition to the changes discussed above, a number of changes would need to be made in other related FSA regulations. Throughout the FSA regulations, references to NEPA regulations and environmental compliance would be updated to refer to 7 CFR part 799. Several environmental compliance sections would become redundant and would be removed. For example, the separate environmental compliance section for the Farm Storage Facility Loan program would be removed, because that program is subject to the same environmental compliance requirements as every other FSA program.

Currently, the Rural Housing Service and Rural Business-Cooperative Service also use 7 CFR part 1940, subpart G. However, exhibit M to subpart G, “Implementation Procedures for the Conservation of Wetlands and Highly Erodible Land Affecting Farmer Program Loans and Loans to Indian Tribes and Tribal Corporations,” is currently only used by FSA. The Rural Development agencies do not use exhibit M to subpart G because the provisions related to swampbuster and sodbuster do not apply to the Rural Development agencies. There are cross references to exhibit M throughout subpart G that would be unnecessarily complicated to change at this time because the goal is to remove subpart G when both Rural Development and FSA have their own replacement regulations in place. Therefore, the content of exhibit M to subpart G would be replaced with references for specific types of information, for example, when to refer to 7 CFR part 12 or 7 CFR part 799.

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

### 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 rule as significant under Executive Order 12866, “Regulatory Planning and Review,” and has reviewed this rule. A summary of the cost benefit analysis is provided below and is available at [www.regulations.gov](http://www.regulations.gov) and from the contact information listed above.

### Clarity of the Regulations

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this proposed rule, we invite your comments on how to make it easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

### Summary of Economic Impacts

This rule is expected to provide both quantifiable and qualitative benefits. It is expected to provide qualitative benefits by improving the efficiency and transparency of the NEPA process. By consolidating FSA NEPA procedures into a single rule and more clearly identifying the process required under different types of circumstances, this rule is expected to increase understanding and consistency in implementing the NEPA process while decreasing the time spent addressing NEPA requirements. Confusion in

selecting the correct type of NEPA analysis can cause unnecessary delays in implementing projects and approving loans. For example, delay can occur if an EA was done but a CatEx could have applied. The current number of any NEPA analysis errors, as well as the delays caused by the lack of clarity and consistency in the current rules, is difficult to quantify. However, it is clear that increasing consistency and transparency, and reducing errors and uncertainty, will provide public benefit.

The expanded and clarified list of CatExs in this rule is expected to generate specific, quantifiable benefits associated with reducing the number of EAs required. One benefit will be the cost savings due to reduced FSA workload. The public, including, but not limited to, individual program participants, lenders, and State agencies and organizations, will likely see both cost savings and qualitative benefits from the reduced time required to complete the NEPA process for both Farm Programs and Farm Loan Programs actions. To estimate the impact of fewer EAs, the Cost Benefit Analysis uses the assumptions that current programs continue and that most Farm Loan Programs actions for which the current regulation would require site level EAs would qualify for either CatExs without documentation or for CatExs that require the use of the ESW. Using these assumptions, the proposed NEPA rule changes could eliminate, on average, 314 environmental assessments per year based on our analysis of Farm Loan Programs EAs done between 2002 and 2009. In 2008, the average cost to FSA for these EAs was estimated at \$1,100, suggesting an annual savings of \$345,000 in FSA expenses for environmental reviews as a result of this rule.

Actual cost savings may be higher or lower than \$345,000 in any specific year, because the number and types of required NEPA analyses in any given year depend on participation in the specific FSA programs for which NEPA applies. For example, the impact for Farm Loan Programs depends on how many loans are for actions on land that has already been disturbed, as opposed to those that involve additional disturbance such as pond or building construction.

This rule does not change the basic requirements for an EIS, so it is not expected to result in a change in the number of EISs associated with FSA programs. Therefore, no costs or benefits, other than increased clarity of procedure, are expected for the EIS process as a result of this rule.

### 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 whenever an agency is required by the Administrative Procedure Act (5 U.S.C. 553) or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. FSA has determined that this rule would not have a significant impact on a substantial number of small entities for the reasons explained below. Consequently, FSA has not prepared a regulatory flexibility analysis.

This rule would generally reduce the level of NEPA analysis required for most Farm Loan Programs and some Farm Programs actions. It should have a minor positive effect on small entities, including small government entities, by reducing the uncertainty and delay associated with NEPA compliance.

### Environmental Evaluation

The Council on Environmental Quality regulations do not direct agencies to prepare a NEPA analysis 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 actions: Those that normally require preparation of an environmental impact statement; those that normally require preparation of an environmental assessment; and those that are categorically excluded from further NEPA review (40 CFR 1507.3(b)). Categorical exclusions are one part of those agency procedures, and therefore establishing categorical exclusions does not require preparation of a NEPA analysis or 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 NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3. The determination that establishing categorical exclusions does not require NEPA analysis and 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. 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 preempts State and local laws, regulations, or policies that are in conflict with the provisions of this rule. The rule will not have retroactive effect. Any action under this rule may be appealed, consistent with the Administrative Procedure Act (Pub. L. 79–404). Before any judicial action may be brought regarding the provisions of this rule, all administrative remedies in accordance with 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, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Nor does this proposed rule impose substantial direct compliance costs on State and local governments. The provisions in this proposed 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 guidance. 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. If a Tribe requests consultation, FSA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications are identified for this rule, which are not expressly mandated by any law or regulation.

#### **Unfunded Mandates Reform Act of 1995**

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, or 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 Federal mandates for State, local, or tribal governments or for the private sector that would result in the addition analysis as required by Title II of UMRA. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

#### **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**

Currently, as specified in 7 CFR 1940.350, the OMB control number approving the NEPA information

collection, for FSA and the Rural Development agencies is 0575-0094. The proposed 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 proposed FSA NEPA regulation does not have any information collection activities related to the NEPA process. An FSA county office employee gathers information from soil maps, wetland maps, etc. then visits the site. The FSA county office employee uses the ESW form, which is an internal form within FSA only. The ESW is completed by the FSA county office staff, with relevant information from one or more of the following as appropriate: completed application, from the visiting farmers, and like all other FSA programs an AD-1026, which is approved for FSA use under OMB control number 0560-0185 is required to be on file to comply with swampbuster and sodbuster. There is no information collection burden for this proposed 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. As noted in § 799.42(c), FSA may request a program participant to 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 PRA) 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.

#### **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. The proposed rule and substantiating documents, and the final rule when approved, will be available on the FSA Web site at <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecrc&topic=nep>.

#### **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 in the preamble, FSA proposes to amend 7 CFR chapters VII, XIV, and XVIII as follows:

**7 CFR Chapter VII****PART 761—FARM LOAN PROGRAMS;  
GENERAL PROGRAM  
ADMINISTRATION**

- 1. The authority citation for part 761 would continue 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, 765.252, and 765.351  
[Amended]**

- 11. Amend §§ 765.205, 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. In § 765.205(a)(3);
  - b. § 765.252(b)(3)(ii); and
  - c. § 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(a)(5) and 766.112(b)(2) by removing the words “subpart G of 7 CFR part 1940” and adding the words “part 799 of this chapter” in their place.

**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. The authority citation for part 770 is revised 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. The authority citation for part 772 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, 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 Farm Service Agency  
(FSA) Regulations Implementing NEPA**

Sec.

- 799.1 Purpose.
- 799.2 FSA environmental policy.
- 799.3 Applicability.
- 799.4 Abbreviations and definitions.

**Subpart B—FSA and Program Participant  
Responsibilities**

- 799.5 National office environmental responsibilities.
- 799.6 FSA State office environmental responsibilities.
- 799.7 FSA program participant responsibilities.
- 799.8 Significant environmental effect.
- 799.9 Environmental review documents.
- 799.10 Administrative records.
- 799.11 Actions during NEPA reviews.
- 799.12 Emergency circumstances.
- 799.13 FSA as lead agency.
- 799.14 FSA as cooperating agency.
- 799.15 Public involvement in environmental review.
- 799.16 Scoping.
- 799.17 Public meetings.
- 799.18 Overview of FSA NEPA process.

**Subpart C—Environmental Screening Worksheet**

- 799.20 Purpose of environmental screening worksheet.
- 799.21 [Reserved]

**Subpart D—Categorical Exclusions**

- 799.30 Purpose of categorical exclusion process.
- 799.31 Categorical exclusions not requiring an environmental screening worksheet.
- 799.32 Categorical exclusions requiring an environmental screening worksheet.
- 799.33 Extraordinary circumstances.
- 799.34 Review for extraordinary circumstances.
- 799.35 Establishing and revising categorical exclusions.

**Subpart E—Environmental Assessments (EA)**

- 799.40 Purpose of an EA.
- 799.41 When an EA is required.
- 799.42 Contents of an EA.
- 799.43 Adoption of an EA prepared by another entity.
- 799.44 Finding of No Significant Impact (FONSI).

**Subpart F—Environmental Impact Statements**

- 799.50 Purpose of an EIS.
- 799.51 When an EIS is required.
- 799.52 Notice of intent to prepare EIS.
- 799.53 Contents of an EIS.
- 799.54 Draft EIS.
- 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 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. 4321–4370);
    - (ii) Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500 through 1518); and
    - (iii) United States Department of Agriculture (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. 469–469c);

- (iii) Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa–470mm);
- (iv) Clean Air Act (42 U.S.C. 7401–7671q);
- (v) Clean Water Act (33 U.S.C. 1251–1387);
- (vi) Coastal Barrier Resources Act (16 U.S.C. 3501–3510);
- (vii) Coastal Zone Management Act of 1972 (CZMA) (16 U.S.C. 1451–1466);
- (viii) Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601–9675);
- (ix) Endangered Species Act (16 U.S.C. 1531–1544);
- (x) Farmland Protection Policy Act (7 U.S.C. 4201–4209);
- (xi) Migratory Bird Treaty Act (16 U.S.C. 703–712);
- (xii) National Historic Preservation Act (NHPA) of 1966, as amended (16 U.S.C. 470–470x–6);
- (xiii) Native American Graves Protection and Repatriation Act (25 U.S.C. 3001–3013);
- (xiv) Resource Conservation and Recovery Act (42 U.S.C. 6901–6992k);
- (xv) Safe Drinking Water Act (42 U.S.C. 300h–300h.8);
- (xvi) Wild and Scenic Rivers Act (16 U.S.C. 1271–1287);
- (xvii) Wilderness Act (16 U.S.C. 1131–1136);
- (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;” and
  - (xxxv) Executive Order 13287, “Preserve America;”
- (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 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, identify applicable methodologies, and explain the use of the best available information, and
    - (v) In consultation with all interested parties, including Federal, State, and Tribal governments;
  - (3) Make environmental analysis available to the public before decisions are finalized through various means including posting the analyses on the FSA Web site; and
  - (4) Ensure that, if an FSA action represents one of several phases of a larger proposal, the entire proposal is the subject of an environmental review independent of the phases of funding. If the FSA action is one segment of a

larger action funded by private parties or other governmental agencies, the entire action will be used in determining the appropriate level of FSA environmental review.

(b) A proposal that consists of more than one categorically excluded action may be categorically excluded only if all components of the action are eligible for a single categorical exclusion.

#### **§ 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 actions and programs, including Commodity Credit Corporation (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:

**CAFO** Concentrated Animal Feeding Operation.

**CCC** Commodity Credit Corporation.

**CEQ** Council on Environmental Quality.

**EA** Environmental Assessment.

**EIS** Environmental Impact Statement.

**FONSI** Finding of No Significant Impact.

**FPO** Federal Preservation Officer.

**FSA** Farm Service Agency.

**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.

**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, and in the event of a conflict with the definitions in this section will be controlling. In addition, the following definitions apply to this part:

**Application** is the formal process of seeking FSA assistance.

**Construction** includes building, rehabilitation, modification, repair, and demolition of facilities, and earthmoving actions.

**Consultation** is the process of seeking, discussing, and considering the views of other participants in the environmental review process and seeking agreement where feasible.

**Environmental screening worksheet** is the FSA screening procedure used to evaluate if a proposed action that can be categorically excluded involves extraordinary circumstances that could produce potential environmental impacts, and to evaluate the appropriate level and extent of review and analysis in an EA or EIS when a CatEx is not available.

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

**Floodplains** are 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** is a document that records the terms and conditions agreed upon to resolve the potential effects of a Federal agency action or program. Often used interchangeably with Memorandum of Understanding.

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

**Programmatic Environmental Impact Statement (PEIS)** is an analysis of the potential impacts that could be associated with various components of a program or 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** is any person, agency, or other entity that applies for or receives FSA program benefits or assistance.

**Protected resources** are sensitive resources that are protected by laws, regulations, or Executive Orders for which FSA actions may pose highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.

**State Historic Preservation Officer (SHPO)** is the 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)** is 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** are 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, 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;

(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 (16 U.S.C. 470h-2(a)). 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 requirements to appropriate FSA personnel;

(3) Serving as the principal FSA advisor to the FSA Administrator on NEPA requirements;

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

(5) Maintaining a record of FSA environmental 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.

#### **§ 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 actions within their State comply with applicable environmental laws, regulations, and Executive Orders, including NEPA; and

(2) Appointing one or more State Environmental Coordinators (SECs).

(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 technical assistance on environmental-related matters on an action-by-action basis to State and county office personnel, as needed;

(5) Developing controls for avoiding or mitigating adverse environmental impacts and monitoring the implementation of those controls;

(6) Reviewing FSA actions that are not categorically excluded from NEPA and that 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 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 seeking FSA assistance must do all of the following, unless the action is categorically excluded as specified in §§ 799.31 or 799.32:

(1) Consult with FSA early in the application process about potential environmental concerns associated with program participation.

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

(3) Coordinate the submission of applications to FSA and other agencies

(for example, if a conservation plan is required the application 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.

(b) When FSA receives an application for assistance or notification that an application will be filed, FSA will contact the potential program participant about the environmental information the program participant must provide as part of the application 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 environmentally sensitive resources listed in § 799.33(c);

(4) Nutrient management plans; and

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

(c) FSA will prepare and make available general guidelines for program participants that describe the scope and level of environmental information required for evaluating proposed actions and make those available on the FSA Web site at <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecrc&topic=nep>.

#### **§ 799.8 Significant environmental effect.**

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

#### **§ 799.9 Environmental review documents.**

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

(1) Environmental screening worksheet;

- (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 EA or EIS;
- (10) Notice of Availability (NOA) of environmental documents for public review or comment;
- (11) Notice of public scoping meetings;
- (12) Other notices, including those required under Executive Order 11988, "Floodplain Management," 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 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) All NEPA environmental review documents listed in § 799.9, as applicable;
  - (2) Technical information, 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 telephone conversations and meetings, unless they are personal notes;
  - (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.

#### **§ 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 an action, or make any final decision during FSA's NEPA review process that could have an adverse environmental impact or limit the range of alternatives until FSA:
  - (1) Determines that the proposed action is categorically excluded under NEPA under subpart D of this part; 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 review and decision making process; and
  - (4) NEPA review has been completed for the interim action or expenditure; or
- (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.

#### **§ 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 subsequently amended, is exempt from NEPA

requirements, as specified in 42 U.S.C. 5159. Under a Presidentially-declared disaster, the following actions are exempt from NEPA and NHPA:

- (1) Clearing roads and constructing temporary bridges necessary for performing emergency tasks and essential community services;
- (2) Debris removal;
- (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.

#### **§ 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 at 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 RAO 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 at 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 Corp of Engineers, and other agencies, as appropriate, if wetlands, floodplains, or endangered species have the potential to be impacted;
- (2) Make appropriate environmental documents available to interested parties on request;
- (3) Publish a Notice of Intent (NOI) to prepare an EA or EIS as specified in subparts E and F; and
- (4) Publish a Notice of Availability (NOA) of draft and final EAs, FONSI, EISs, and RODs as specified in subparts E and F.

(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, in addition to the 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) If the effects of a proposed action will set a precedent for future actions with potentially widespread effects, or the proposed action is highly controversial in nature, FSA will publish notice of the proposed action in the regional or national media, and in the **Federal Register** with a request for public comment. The public comment period will be not less than 30 days after publication in the **Federal Register**.

**§ 799.16 Scoping.**

(a) FSA will determine the appropriate scoping process for the NEPA analysis of a proposed action based upon the nature, complexity, 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 analysis issues that were determined not significant or have been adequately addressed in 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) The NECM 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 whether:

- (1) There is substantial controversy concerning the environmental impact of the proposed action;
- (2) There is substantial interest in holding a public meeting; and
- (3) Another Federal agency or Tribal government has requested a public scoping meeting and their request is warranted.

(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 for EAs and at least 30 days for EISs. 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.
Is an action that has the potential to impact historic properties as specified in § 799.34(b) and therefore requires the completion of an environmental screening worksheet.	Completes an environmental screening worksheet 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 action listed in § 799.32 that requires the completion of an environmental screening worksheet.	Completes an environmental screening worksheet to determine whether extraordinary circumstances are present. This review includes a determination of whether the action will potentially impact environmentally sensitive 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 actions requiring an EA listed in § 799.41 .....	Prepares an EA.
Involves a category of actions requiring an EIS listed in § 799.51 .....	Prepares an EIS.

## Subpart C—Environmental Screening Worksheet

### § 799.20 Purpose of environmental screening worksheet.

(a) FSA uses the environmental screening worksheet as an initial screening tool to evaluate and document any likely environmental impacts of a proposed action and to determine the appropriate type of analysis required.

(b) The environmental screening worksheet is not required for actions that are categorically excluded as specified in § 799.31(b) or § 1b.3 of this title, or for actions where FSA determines at an early stage that there is clearly the potential for environmental impact and therefore an EA or EIS is required.

### § 799.21 [Reserved]

## Subpart D—Categorical Exclusions

### § 799.30 Purpose of categorical exclusion process.

(a) FSA has determined that the categories of 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.

(b) If a proposed action falls within one of the categories of 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 action is categorically excluded from the requirements to prepare an EA or an EIS.

### § 799.31 Categorical exclusions not requiring an environmental screening worksheet.

(a) Actions that fit within a category of action listed in paragraph (b) of this section may be categorically excluded if there are no extraordinary circumstances as specified in § 799.33. Unless otherwise noted in paragraph (b) of this section, the proposed actions listed in paragraph (b) of 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 (16 U.S.C. 470f) or its implementing regulations, 36 CFR part 800.

(b) The following actions are categorically excluded without the need to complete an environmental screening worksheet. However, some actions may require other Federal consultation as

indicated. These actions are grouped into broader categories of similar types of actions. Based on FSA's previous experience implementing these actions and similar actions through the completion of EAs, these actions are categorically excluded. Those actions that are similar in nature and intent to those listed below and not listed in §§ 799.32 or 799.33, will be considered a categorical exclusion in this category:

(1) *Loan actions.* The following list includes examples of categorical exclusions for certain types of FSA loans and actions related to FSA loans. Certain types of FSA loans and loan actions typically involve limited or no ground disturbance. Therefore, the following list includes those types of FSA loans and loan actions that are categorically excluded.

- (i) Closing cost payments;
- (ii) Commodity loans;
- (iii) Debt set asides;
- (iv) Deferral of loan payments;
- (v) Income producing projects associated with 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 or change in operations (may require NHPA consultation under section 106 of NHPA (16 U.S.C. 470f));
- (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
- (xviii) Writing down of debt;

(2) *Repair, improvement, or minor modification actions.* The following list includes examples of categorical exclusions for proposed repair, improvement, or minor modification actions. Each of the following actions typically has no significant impact on the quality of the human environment based on previous FSA analysis and FSA compliance experience for actions in this category. These actions typically involve limited or no ground disturbance.

- (i) Fence repair; and
- (ii) Improvement or repair of farm-related structures under 50 years of age (if property is older than 50 years NHPA consultation will be required under section 106 of NHPA (16 U.S.C. 470f));

(3) *Administrative actions.* The following list includes examples of

categorically excluded administrative actions. These actions involve no ground disturbance and are considered administrative or operational in nature.

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

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

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

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

(4) *Planting actions.* The following list includes examples of categorical exclusions for planting actions that will occur on land that has been tilled in the past and do not exceed the depth of previous tillage.

(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 examples of land and resource management actions.

(i) Forage harvest management;

(ii) Integrated crop management;

(iii) Mulching, including plastic mulch;

(iv) Netting for hard woods;

(v) Nutrient management;

(vi) Obstruction removal;

(vii) Pest management;

(viii) Plant grafting;

(ix) Plugging artesian wells;

(x) Residue management including seasonal management;

(xi) Roof runoff management (if property is older than 50 years NHPA consultation will be required under section 106 of NHPA (16 U.S.C. 470f));

(xii) Thinning and pruning of plants;  
 (xiii) Toxic salt reduction; and  
 (xiv) Water spreading;  
 (6) *Other FSA actions.* The following list includes examples of categorical exclusions for other FSA actions.  
 (i) Conservation easement purchases with no construction planned;  
 (ii) Emergency program actions (including Emergency Conservation Program and Emergency Forest Restoration Program) that have a cost share of less than \$5,000;  
 (iii) Financial assistance to supplement income, manage the supply of agricultural commodities, influence the cost and supply of such commodities or programs of a similar nature or intent;  
 (iv) Individual farm participation in FSA programs where no ground disturbance or change in land use occurs as a result of the action or participation;  
 (v) Inventory property disposal or lease with protective easements or covenants;  
 (vi) Issuance of grants under the Voluntary Public Access and Habitat Incentive Program;  
 (vii) Safety net programs administered by FSA;  
 (viii) 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;  
 (ix) Stand analysis for forest management planning; and  
 (x) Tree protection including plastic tubes.

**§ 799.32 Categorical exclusions requiring an environmental screening worksheet.**

(a) The actions listed in paragraph (b) of this section are eligible for categorical exclusion after completion of an environmental screening worksheet to document that an action does not involve any of the extraordinary circumstances specified in § 799.33. Unless otherwise noted in paragraph (b) of this section, the actions listed in paragraph (b) 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 or its implementing regulations, 36 CFR part 800.

(b) The following actions are eligible for categorical exclusion with completion of an environmental screening worksheet. These actions are grouped into broader categories of similar types of actions:

(1) *Loan actions.* The following list includes examples of types of loans and loan actions for which an environmental screening worksheet will be required.

(i) Farm storage and drying facility loans for added capacity;  
 (ii) Loans for livestock purchases;  
 (iii) Release of loan for forestry improvements;  
 (iv) Reorganizing farm operations (if new construction is planned or buildings over 50 years will be impacted, NHPA consultation will be required under section 106 of NHPA (16 U.S.C. 470f)); and

(v) Replacement building loans (if property is older than 50 years NHPA consultation will be required under section 106 of NHPA (16 U.S.C. 470f));

(2) *Limited construction or repair actions.* The following list includes examples of limited construction or repair actions in areas of previous disturbance and actions that will not impact soil below previous level of disturbance.

(i) Construction in previously disturbed areas;  
 (ii) Construction involving an addition (if property is older than 50 years NHPA consultation will be required under section 106 of NHPA (16 U.S.C. 470f));  
 (iii) Drain tile replacement;  
 (iv) Erosion control measures;  
 (v) Grading, leveling, shaping, and filling;  
 (vi) Grassed waterway establishment;  
 (vii) Hillside ditches; (may require NHPA consultation under section 106 of NHPA (16 U.S.C. 470f));

(viii) Land-clearing operations of no more than 15 acres, provided any amount of land involved in tree harvesting is to be conducted on a sustainable basis and according to a Federal, State, Tribal, or other governmental unit approved forestry management plan (may require NHPA consultation under section 106 of NHPA (16 U.S.C. 470f));

(ix) Permanent establishment of a water source for wildlife;  
 (x) Restoring and replacing property (if property is older than 50 years NHPA consultation will be required under section 106 of NHPA (16 U.S.C. 470f));  
 (xi) Soil and water development;  
 (xii) Spring development;  
 (xiii) Trough or tank installation; and  
 (iv) Water harvesting catchment; and

(3) *Other FSA actions.* The following list includes examples of other FSA actions for which an environmental screening worksheet will be required.

(i) Fence installation and replacement;  
 (ii) Fish stream improvement;  
 (iii) Grazing land mechanical treatment; (if disturbance will be below

plow zone NHPA consultation will be required under section 106 of NHPA (16 U.S.C. 470f)); and

(iv) Herbicide, insecticide, fungicide, or mineral application;

(v) Inventory property disposal or lease without protective easements or covenants (this action has the potential to cause effects to historic properties and therefore requires analysis under section 106 of NHPA (16 U.S.C. 470f)).

**§ 799.33 Extraordinary circumstances.**

(a) Extraordinary circumstances are unique situations presented by specific proposals. Extraordinary circumstances include, but are not limited to:

(1) Scientific controversy about environmental effects of the proposal; and

(2) Uncertain effects or effects involving unique or unknown risks.

(b) A categorical exclusion is possible in situations specified in paragraph (a) of this section only if the proposal:

(1) Is also not “connected” (as specified in 40 CFR 1508.25(a)(1)) to other actions with potentially significant impacts,

(2) Is not related to other proposed actions with cumulatively significant impacts (40 CFR 1508.25(a)(2)), and

(3) Complies with 40 CFR 1506.1, “Limitations on actions during NEPA process.”

(c) FSA will use an environmental screening worksheet (ESW) to review proposed actions that are eligible for categorical exclusion to determine if extraordinary circumstances exist that could impact environmentally sensitive resources. If extraordinary circumstances exist, then an EA or EIS will be prepared as specified in this part.

(d) Environmentally sensitive resources include, but are not limited to:

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

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

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

(4) Wetlands regulated under the Clean Water Act (33 U.S.C. 1344), highly erodible land, and floodplains;

(5) 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

(6) Special sources of water such as sole-source aquifers, wellhead protection areas, and other water sources that are vital in a region.

**§ 799.34 Review for extraordinary circumstances.**

(a) FSA will complete an environmental screening worksheet for proposed actions that fall within the list of categorical exclusions specified in § 799.32 to determine whether extraordinary circumstances under § 799.33 are present.

(b) FSA or an authorized technical representative will also complete an ESW to determine whether to prepare an EA or EIS for the following actions, unless technical assistance is provided by another Federal agency that uses its own environmental screening documentation and provide the information called for in an ESW. These actions have the potential to cause effects to historic properties, and therefore analysis is required for compliance under section 106 of the NHPA (16 U.S.C. 470f). FSA will comply with 36 CFR part 800, "Protection of Historic Properties," when reviewing the environmental impact of these actions. 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. These actions are grouped into broader categories of similar types of actions. All of the categories include, but are not limited to, the specific actions listed in this section; other actions that are similar in nature will also require review for extraordinary circumstances that would require either an EA or EIS:

(1) *Loan actions.* Although most loan actions are addressed in §§ 799.31 and 799.32, the following actions have the potential for significant impacts on resources. Additional environmental review will therefore be necessary. An environmental screening worksheet must be completed to determine if an EA or EIS should be completed.

(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 with ground disturbance actions.* The following list includes examples of construction actions for which an environmental

screening worksheet will be required to determine if an EA or EIS will be needed. The ground disturbance of the construction actions in this category have the potential for impacts and therefore additional environmental review is required.

(i) Animal trails and walkways;

(ii) Bridges;

(iii) Chiseling and subsoiling in areas not previously tilled;

(iv) Construction of a new farm storage facility;

(v) Dams;

(vi) Dikes and levees;

(vii) Diversions;

(viii) Drop spillways;

(ix) Dugouts;

(x) Excavation;

(xi) Grade stabilization structures;

(xii) Grading, leveling, shaping and filling in areas not previously disturbed;

(xiii) Installation of structures designed to regulate water flow such as pipes, flashboard risers, gates, chutes, and outlets;

(xiv) Irrigation systems;

(xv) Land smoothing;

(xvi) Line waterways or outlets;

(xvii) Lining;

(xviii) Livestock crossing facilities;

(xix) Pesticide containment facility;

(xx) Pipe drop;

(xxi) Pipeline for watering facility;

(xxii) Ponds, including sealing and lining;

(xxiii) Precision land farming with ground disturbance;

(xxiv) Riparian buffer establishment;

(xxv) Roads, including access roads;

(xxvi) Rock barriers;

(xxvii) Rock filled infiltration trenches;

(xxviii) Sediment basin;

(xxix) Sediment structures;

(xxx) Site preparation for planting or seeding in areas not previously tilled;

(xxxi) Soil and water conservation structures;

(xxxii) Stream bank and shoreline protection;

(xxxiii) Structures for water control;

(xxxiv) Subsurface drains;

(xxxv) Surface roughening;

(xxxvi) Terracing;

(xxxvii) Underground outlets;

(xxxviii) Watering tank or trough installation, if in areas not previously disturbed;

(xxxix) Wells; and

(xl) Wetland restoration; and

(3) *Management and planting type actions.* The following list includes examples of resource management and planting actions for which an environmental screening worksheet will be required to determine if an EA or EIS will be needed. The actions in this category have been found to have the

potential for impacts and therefore additional environmental review is required.

(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.

(c) 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 environmental screening worksheet.

**§ 799.35 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 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 opinion, 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:

(1) Publish a notice of the proposed categorical exclusion in the **Federal Register** for public review and comment for at least 30 calendar days;

(2) Consider the public comments in developing the final categorical exclusion;

(3) Consult with CEQ on the final categorical exclusion and obtain a written statement from CEQ that the final categorical exclusion was developed in conformity with NEPA requirements and CEQ regulations;

(4) Publish the final categorical exclusion in the **Federal Register**; and

(5) Post the final categorical exclusion on the FSA Web site.

(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 at least once

every seven years 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 impact of reasonable alternatives and the potential mitigation measures to the alternatives and proposed action.

(b) FSA may determine that a proposed action will significantly affect the environment or is environmentally controversial without first preparing an EA. In that case, FSA will prepare an EIS as specified in subpart F of this part.

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

(d) The result of the EA process will be either a FONSI or a determination that an EIS is required.

#### § 799.41 When an EA is required.

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

- (1) 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 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 enlargement of aquaculture facilities when the capacity is either 20,000 pounds for cold water flow through systems or 100,000 pounds for warm water confined systems;
- (8) Construction of commercial facilities or structures;

(9) Construction or expansion of a CAFO, regardless of the type of manure handling system or water system;

(10) Refinancing of a newly constructed CAFO, including medium CAFOs, as defined in 40 CFR 122.23, or aquaculture facilities that have been in operation for 12 months or less;

(11) Issuance of FSA regulations, Federal Register notices, or amendments to existing programs that authorize FSA or CCC funding for actions that have the potential to adversely affect the human environment;

(12) Newly authorized programs that involve actions specified in § 799.34;

(13) Any FSA action that after completion of the environmental screening worksheet for extraordinary circumstances specified in § 799.33(b) has been determined to have a potentially significant impact on the quality of the human environment; and

(14) Any action that will involve the planting of a potential invasive species, unless exempted by Federal law.

(b) [Reserved]

#### § 799.42 Contents of an EA.

(a) The EA must 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 proposal involves unresolved conflicts concerning the uses of available resources;
- (7) A discussion of 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 to include those FSA will undertake to support a FONSI;
- (9) A list of preparers and contributors;
- (10) A list of agencies and persons consulted;
- (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; and
- (2) Takes responsibility for the scope and content of the EA.

#### § 799.43 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.

#### § 799.44 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.

(d) FSA will make the FONSI available to the public prior to making a decision as specified in 40 CFR 1506.6, including publishing a notice of availability of the final EA and FONSI in the local media or **Federal Register** as appropriate.

(e) FSA will make the final EA and FONSI available for public review for at least 15 days before taking any final agency action. FSA will determine whether an EIS is required based in part on the comments received during such review.

### Subpart E—Environmental Impact Statements

#### § 799.50 Purpose of an 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 actions may be insignificant.

#### **§ 799.51 When an EIS is required.**

(a) The following FSA 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 or national economy; 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.

(b) The EIS must 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) Any 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;

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

(vi) Energy and natural depletable resource requirements, 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 proposal;

(10) A list of preparers;

(11) Persons and agencies contacted;

(12) References, if appropriate;

(13) Glossary, if appropriate;

(14) Index;

(15) Appendixes, if appropriate;

(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(b). 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 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) FSA will request comments on the draft EIS from:

(1) Any Federal agency that has jurisdiction by law or has special expertise with respect to the environmental impact involved or is authorized to develop and enforce environmental standards;

(2) Appropriate State and local agencies authorized to develop and enforce environmental standards relevant to the scope of the EIS;

(3) Tribal governments that have interests that could be impacted;

(4) Any agency that requested to receive statements on the type of action proposed;

(5) The public, particularly persons or organizations who may be interested or affected;

(6) If the action affects historic properties, the appropriate SHPO, THPO, and the Advisory Council on Historic Preservation; and

(7) An applicant or program participant, if applicable.

(d) FSA will file the draft EIS with the Environmental Protection Agency as specified in 40 CFR 1506.9 and in accordance with the EPA 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 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 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 previously presented; or

(2) Significant new circumstances or information arise that are relevant to environmental concerns and to 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 programmatic EIS, followed by subsequent narrower scope analysis to address specific actions, action stages, or sites. FSA will use tiering when FSA prepares a broad programmatic EIS and subsequently prepares a site-specific EA or PEA for a proposed action included within the program addressed in the original, broad programmatic EIS.

(b) When FSA uses tiering, the subsequent 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 programmatic EIS 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) If FSA participated in the NEPA process as a cooperating agency, FSA may adopt the lead agency's final EIS and reference it in the FSA ROD. However, the NECM must independently review the EIS and determine that FSA requirements in this part have been satisfied.

(c) If FSA was not a cooperating agency but the FSA action is substantially the same as the subject of another agency's EIS, the NECM may adopt the EIS and recirculate it as a final EIS. However, the NECM must independently review the EIS and determine that FSA requirements in this part have been satisfied. The final EIS must identify the other Federal action involved.

(d) If the FSA action is not substantially the same as the subject of another agency's EIS, FSA may incorporate by reference the relevant portions of the EIS into the FSA draft EIS. The draft EIS must include the content specified in § 799.53. The NECM must inform the agency that prepared the original EIS of FSA's intent and the proposed FSA action for which the EIS will be used.

(e) If an adopted EIS is not final, or it is subject to a referral to CEQ as specified in 40 CFR part 1504, or the EIS's adequacy is the subject of a judicial action that is not final, the NECM must include an explanation in the FSA EIS why adoption of the EIS was appropriate.

#### **§ 799.59 Record of decision.**

(a) FSA will issue an ROD within the time periods specified in 40 CFR 1506.10(b) but no sooner than 30 days after the 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 balanced 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.

(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. The authority citation for part 1436 continues to read as follows:

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

#### **§ 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—Environmental Program**

■ 31. Amend § 1940.301 by adding paragraph (i) to read as follows:

#### **§ 1940.301 Purpose.**

\* \* \* \* \*

(i) This subpart does not apply to the Farm Service Agency Farm Loan Programs. (See part 799 of this title for the Farm Service Agency NEPA implementing regulations.)

■ 32. Revise Exhibit M to Subpart G of Part 1940 to read as follows:

#### **Exhibit M to Subpart G of Part 1940—Conservation of Wetlands and Highly Erodible Land Affecting Farm Loan Programs and Loans to Indian Tribes and Tribal Corporations**

The Farm Service Agency consolidated the Farm Loan Programs NEPA implementing regulations into part 799 of this title. (The swampbuster and sodbuster provisions previously contained in Exhibit M do not apply to the Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities Service.) Therefore, see part 799 of this title for information related to the Farm Service Agency's NEPA implementing regulations; see part 12 of this title for information related to highly erodible land and wetland conservation; and see parts 761 through 774 of this title for information related to Farm Loan Programs.

Signed on August 25, 2014.

**Juan M. Garcia,**

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

Signed on August 26, 2014.

**Douglas J. O'Brien,**

*Acting Under Secretary, Rural Development.*  
[FR Doc. 2014–20836 Filed 9–2–14; 8:45 am]

**BILLING CODE 3410–05–P**