

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 7

RIN 0560-AG90

#### Selection and Functions of Farm Service Agency State and County Committees

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Farm Service Agency (FSA) is adopting, without change, an interim rule that amended the regulations governing the selection and functions of State and county committees. The amendments in the interim rule were needed to make the regulations consistent with the Farm Security and Rural Investment Act of 2002 (the 2002 Farm Bill) and the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). The intent of the amendments was to ensure that socially disadvantaged (SDA) farmers and ranchers are appropriately represented on county committees, to make the county committee election process more open and accountable, and to clarify requirements for committee membership in the situation where existing county committees are consolidated or combined. All of these amendments have already been implemented by FSA, except for the new provisions specifying that the Secretary may appoint a voting member to the county committee when required to ensure fair representation of SDA farmers and ranchers. Those appointments will be made starting in 2013. There will be no change in State and county committee functions and election procedures as a result of this rule.

**DATES:** Effective March 1, 2013.

#### FOR FURTHER INFORMATION CONTACT:

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Persons with disabilities or who require alternative means for communications should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 10708 of the 2002 Farm Bill (Pub. L. 107-171) mandates several changes in the election process for FSA county committees and in the functions of both State and county committees in conducting county committee elections. Section 1615 of the 2008 Farm Bill (Pub. L. 110-246) makes minor additional changes. The interim rule was published in the **Federal Register** on June 5, 2012 (77 FR 33063-33075), following a proposed rule published on November 28, 2006 (71 FR 68755-68762). The rule was effective on September 4, 2012. The interim rule implemented the changes in the regulations required by both the 2002 and 2008 Farm Bills, and also made additional clarifying changes in response to comments on a previous proposed rule for the 2002 Farm Bill changes. The interim rule included provisions for the appointment of an SDA voting member to a county committee, which is authorized by the 2002 Farm Bill and will be implemented in 2013.

Consistent with the 2002 Farm Bill, the purpose of the amendments was to increase the transparency and accountability of county elections and to provide opportunities for the nondiscriminatory participation of SDA farmers and ranchers in county committees and in the programs of United States Department of Agriculture (USDA). The 2002 Farm Bill requires several actions by FSA to achieve those goals. The regulations specified in the interim rule are one of those actions; the other actions include collecting and reporting extensive data on the results of county committee elections and establishing Uniform Guidelines for conducting those elections. The 2008 Farm Bill requires additional changes to increase the maximum number of county committee members in the situation where counties are combined or consolidated into a single multi-county office, and to clarify that a

farmer or rancher may serve only on the county committee for the county office where their farm records are administered.

In response to the interim rule, 10 comments were submitted. The responses to issues raised in the comments are discussed later in this document. The issues raised concerned SDA appointments and outreach. No changes are being made to the regulations as a result of comments, because most of the comments supported the rule and the few alternatives suggested by commenters exceed our legislative authority or are not legally viable. There were no comments on the provisions of the interim rule other than the SDA appointment process. Both supporting and opposing comments on the interim rule supported the need for FSA's outreach to SDA producers. Therefore, in the discussion of the comments, this rule provides additional information about our outreach efforts.

##### Background on County Committees

County committees were originally authorized by Congress in the 1930s to allow for grassroots input and local administration of Agricultural Adjustment Administration programs. At that time, local farmers elected delegates to a county convention, which selected the members of the county committee. Direct election of county committee members has been FSA practice since FSA itself was authorized by the Federal Crop Insurance Reform and Department of Agriculture Reauthorization Act of 1994 (Pub. L. 103-334).

County committees provide local input on the administration of FSA programs, including commodity price support loans and payments, conservation programs, disaster payments, and emergency programs. Committee members are a critical component of the day-to-day operations of FSA. They help deliver and provide outreach for FSA Farm Programs at the local level. Farmers who serve on committees help decide the kind of programs their counties will offer. They provide input on how to improve program delivery. They work to make FSA agricultural programs serve the needs of local farmers and ranchers, and help local farmers and ranchers know

what programs are available. The duties of county committees currently include:

- Informing farmers of the purpose and provisions of FSA programs;
- Keeping the State FSA Committee informed of local administrative area (LAA) conditions;
- Monitoring changes in farm programs;
- Participating in monthly county meetings;
- Directing outreach activities;
- Making recommendations to the State committee on existing programs;
- Conducting hearings and reviews as requested by the State committee; and
- Ensuring SDA farmers and ranchers are fairly represented.

County committee decisions are made by consensus. Committee members vote to achieve consensus on various items, for example, yield determination for the county, the county executive director (CED) ratings, and approving producer applications when required for various Farm Programs.

County committees do not oversee the administration of FSA direct or guaranteed farm operating loans or ownership loans. Those are administered by FSA federal employees.

There are currently more than 7,700 committee members serving on more than 2,100 committees nationwide. More than 219,000 ballots were cast in the 2011 county elections. Elected committee members serve for a 3-year term, and roughly one-third of seats are up for election each year. There are term limits, which enables beginning farmers and those who have not participated in the past have an opportunity to serve. The interim rule added provisions specifying that the Secretary may appoint an SDA voting member when there is no elected SDA member on a county committee and one is needed to ensure fair representation based on the demographics of the county. In the context of this rule, SDA groups are African Americans, American Indians, Alaska Natives, Hispanics, Asian Americans, Pacific Islanders and women. Appointed members will serve a 1-year term and also have term limits. The determination of the need for an appointed member will be performed after each annual election. The 2012 county committee elections are in December 2012. Therefore, the determination of need for appointed members based on the results of the election 2012 cycle will be made by January 2013. Appointed SDA members will start their 2013 term in March 2013.

County committees may also have appointed non-voting SDA advisors. The appointment of those advisors is one of the efforts USDA has made to

address the concerns in the 2002 Farm Bill about fair representation of SDA farmers and ranchers on county committees. Non-voting SDA advisors are recommended by the local county committee, in consultation with local community groups and local Tribal organizations representing SDA farmers and ranchers, and appointed by the State committee. Advisors attend county committee meetings and ensure that SDA issues and viewpoints are understood and considered in FSA actions. Non-voting advisors do not have the authority to sign documents or vote on county committee actions.

As discussed in the next section, the interim rule updated the regulations to make them consistent with current practice, but did not change the role of county committees or county committee voting members from current practice, with the exception of the new SDA appointment authority that will be implemented in 2013.

#### **Amendments Implemented Through the Interim Rule**

The interim rule amended 7 CFR part 7, "Selection and Functions of Farm Service Agency State and County Committees." It made substantive changes to the regulations that were needed to add requirements from the 2002 and 2008 Farm Bills. This section of the document briefly discusses those amendments that have already been implemented in the regulations. We did not receive any comments on the amendments.

The definitions for "participate" and "cooperate" were added to the regulations. These terms, which are specified in the 2002 Farm Bill, are used to clarify who is eligible to vote in county elections and be nominated to serve on county committees. Farmers and ranchers who "participate," meaning they receive assistance, benefits, or services from USDA or indirectly through another federal government agency, may vote in county elections and be nominated as county committee members. Farmers and ranchers who provide information to the FSA county office about their farming operation, thus meeting the definition of "cooperate" in the rule, may also be eligible voters and nominees even if they do not directly receive benefits or services from USDA.

The regulations for the establishment of LAAs were revised to be consistent with current practice and with the 2002 and 2008 Farm Bills. The regulations specify at least 3 LAAs per county, with up to 11 LAAs for county committees that have jurisdiction over multiple counties. The maximum allowable

number of LAAs per county committee was increased in some cases. The purpose of having more LAAs is, in part, to ensure that SDA representation is not reduced when county offices are combined. In some circumstances, such as a very large county or one with many farms, a county committee with jurisdiction over a single county can have up to five LAAs.

The specific requirements on election procedures were added to the regulations, including specific requirements to give the public advance notice at least 30 days before the election on how, where, and when eligible voters may vote. FSA holds all the county elections at the same time every year, with ballots available in November and counted in December. The elections are widely publicized at the county, State, Tribal, and national levels. As specified in the regulations, the public may observe the opening and counting of the ballots, and the county committee must provide at least 10 days advance notice of the date, time, and place at which the ballots will be opened and counted.

Occasionally, a vacancy on the county committee occurs outside of the normal election cycle, such as when a member resigns or moves away. The procedures for how a vacancy may be filled by a special election or a designated alternate were clarified in the regulations. While the option to have the State committee designate an alternate is specified in the regulations so that FSA can exercise that option if needed, special elections are normally held to fill vacancies.

The challenges and appeals requirements regarding the voter eligibility or results of a county committee election in the regulations includes specific requirements to allow nominees to challenge the results of elections within required times and to allow a special election if the election is nullified.

The 2002 Farm Bill requires FSA to collect and report detailed information on county election results. Therefore, the regulations include requirements for FSA county committees to collect this information and provide it to the FSA national office. This information is already being collected and reported. FSA publishes this information annually, and it is available on our Web site at [www.fsa.usda.gov/elections](http://www.fsa.usda.gov/elections). Election results for 2002 through 2011 are currently posted.

The political activity restrictions and personnel actions procedures in the regulations are consistent with the specific procedures in FSA handbooks and directives that are already in use. Since the details are in the handbooks

and directives, the provisions now reference the appropriate handbooks and directives. Obsolete appeals provisions were removed from the regulations.

The interim rule also made a number of technical changes to remove other obsolete provisions, such as removing references to county conventions and community committees.

#### **Provisions To Appoint SDA Members to County Committees**

The 2002 Farm Bill grants the Secretary the authority to appoint a SDA committee member to a committee to achieve the goal of fair representation in a county committee jurisdiction. The 2008 Farm Bill requires the Secretary to develop procedures to maintain SDA representation on county committees. The interim rule specified that the Secretary may appoint one additional SDA voting member to a county committee when a significant population of SDA farmers and ranchers exist in the committee jurisdiction and no member is elected from that socially disadvantaged population.

As discussed in the preamble to the interim rule, the Secretary will use the authority to appoint SDA committee members when the statistical evidence, measured at the county level, demonstrates a lack of diversity and underrepresentation on selected county committees over a period of at least 4 years. The appointed SDA committee member will be in addition to the elected voting members. The appointed member does not replace any of the elected members. Where the county already has an SDA advisor, the Secretary may appoint that advisor as the SDA voting member.

FSA's analysis of 2010 and 2011 election results showed that of the approximately 2,100 county committees, about 13 percent met the threshold where SDA representation would be expected based on the demographics of the eligible county committee voters in the county. Of these counties where SDA representation would be expected, over half already had an elected SDA voting member. Almost all of the counties where SDA representation would be expected already had a non-voting SDA advisor. Fewer than 20 counties that met the benchmark for expected SDA representation had neither an elected SDA voting member nor an SDA advisor.

The Secretary will also consider observed historical voting patterns in determining when an SDA appointment is needed. FSA has collected detailed election data for the past decade of

county committee elections, as required by the 2002 Farm Bill. Voting patterns are relevant because individual voting members may resign or reach term limits, resulting in a temporary lack of SDA representation. Only counties that have an observed pattern of non-representation for at least the past four election cycles will be considered for SDA appointments. Analysis of 2007 through 2010 election data found that about 5 percent of counties (over 100) would be in this group. Counties that meet the benchmark for lacking SDA representation and do not currently have an SDA voting member, but have had one in at least one of the last four election cycles, will not be considered for appointments. Where counties do not currently have an SDA voting member, meet the benchmark for lacking SDA representation for at least four election cycles, and have an advisor, the Secretary may select the existing advisor as the appointed SDA voting member. The vast majority of the appointments (roughly 80 percent) are expected to be elevation to voting status of persons who are already serving on their local county committee as a non-voting SDA advisor. In the few counties with no SDA advisor, the selection of an appointed member will follow the same procedure used to identify an SDA advisor, including, among other things, outreach to community based organizations.

FSA will continue outreach efforts to increase SDA voter participation and SDA representation on county committees through the regular election process. We will also continue to update the statistical analysis each year with current year election data. Going forward, the appointment process will be used where and when it is needed to ensure fair representation of SDA farmers and ranchers. If in any year the statistical analysis finds that SDA farmers and ranchers are fairly represented on all county committees, then the Secretary will not need to make any SDA appointments that year.

#### **Discussion of Comments on Interim Rule**

FSA received ten comments on the interim rule. The comments were received from producers, organizations representing producers, and organizations representing county committee members and FSA county office employees. The commenters generally supported the interim rule, and the goals of making the election processes more transparent and ensuring fair SDA representation. Three commenters did not support the SDA appointments. Some generally

supportive comments suggested alternatives to the SDA appointment process as specified in the interim rule. Nine of the 10 comments addressed the new procedures for appointing SDA members; the 10th addressed the need for more outreach to SDA stakeholders, which was also an issue of concern for many of the other commenters. We did not receive comments on any other provision of the interim rule.

*Comment:* The SDA appointment process would inject politics into the county committee system. It would be a huge problem for the Secretary of Agriculture to appoint numerous qualified SDA committee members every year.

*Response:* Based on our past experience with appointing non-voting SDA advisors, we do not envision major problems finding qualified SDA farmers and ranchers who meet the eligibility requirements for county committee membership as specified in the interim rule. The eligibility requirements for appointed and elected members are identical.

*Comment:* The current election process has local accountability and should be maintained.

*Response:* The current election process will be maintained. In addition, the SDA appointed members will be selected from the local community and must meet the same eligibility requirements as elected members.

*Comment:* The SDA appointments will create a disconnection rather than a connection to the community. The election process serves the community better.

*Response:* The SDA appointments do not replace any elected members. The SDA appointed members will be selected from the local community. The appointments are needed to ensure that the county committee membership represents the community. In most cases, the election process has resulted in county committee membership that fairly represents the community in that area. FSA outreach has resulted in increased SDA representation on county committees. However, our analysis of election results indicates that in a few county committee jurisdictions, fair representation of the community has not been achieved through the election process. If in the future the election results in every county demonstrate fair representation of the local community based on the demographics of that community, no appointments will be needed.

*Comment:* The new rule is unnecessary because the policies and procedures already in place accomplish the stated objective of fair and balanced

representation. Appointments are undemocratic.

*Response:* While the increased FSA outreach activities over the last several years have resulted in the election process reflecting fair representation in most locations, our analysis of election results indicates that in a few county committee jurisdictions, fair representation has not been achieved through the existing election process. If in the future the election results in every county demonstrate fair representation based on the demographics of that county, no appointments will be needed.

*Comment:* If there is an existing SDA advisor, will the SDA appointed member be in addition to that person, or will the advisor become the appointed member?

*Response:* Where an SDA appointment is needed, the Secretary will consider any existing SDA advisor for that position, in which case the advisor would likely be appointed as the SDA member. However, the Advisor is a separate position from the SDA appointed member and it is possible that both positions could potentially be filled by two separate people in the same county if there is a need to represent multiple SDA groups for fair representation. In that situation where multiple SDA groups lack fair representation on the county committee, there could be both a voting SDA appointed member and a non-voting Advisor in the same county.

*Comment:* Encouraging SDA representation through appointments is just and fair, but the SDA category should include small farmers.

*Response:* The SDA groups for this regulation are defined in the 2002 Farm Bill; we do not have the authority to add groups to the definition. However, FSA does recognize the needed for outreach and program education with small farmers and includes reaching that group in their outreach plans. Additional information on existing FSA Farm Programs is also available on the FSA Web site at: <http://www.fsa.usda.gov>. Information on FSA Education and Outreach as well as contact information is available at: <http://www.fsa.usda.gov/outreach>. Information on assistance available to SDA farmers is available at: <http://www.fsa.usda.gov/FSA/webapp?area=about&subject=landing&topic=sao-oa-cr-ma>.

*Comment:* Instead of appointments, have SDA-only elections to elect a county level at-large member. The 2002 Farm Bill provides the Secretary with the authority to establish at-large minority LAAs and to accept

nominations from SDAs for those designated at-large seats.

*Response:* The 2002 Farm Bill does not provide USDA the authority to conduct separate elections where only SDA members may be nominated, or to create at-large minority LAAs. The procedures for appointing SDA members in the regulations are narrowly tailored to promote diversity and inclusion on county committees, consistent with the legislative authority provided in the 2002 and 2008 Farm Bills.

*Comment:* Use the LAA demographics instead of the county demographics to decide if an appointment is needed. Using county level data may dilute the apparent need for an SDA representative.

*Response:* The county committee serves the county as a whole, and we have legislative authority for one and only one appointed SDA member per county. Therefore, it is appropriate to use county level demographic data to determine if an SDA appointment is needed, and to select that member from any LAA in the county.

*Comment:* LAA boundaries should be reviewed in consultation with community and SDA groups.

*Response:* SDA population is one of the factors used in determining LAA boundaries.

*Comment:* Appoint SDA members to a 3 year term instead of a 1 year term. One year is not enough time to develop relationships with the farming community or to be effective in understanding FSA programs and their delivery.

*Response:* The SDA member term was established as 1 year because the county committee elections are held every year. If an SDA member is elected, there is no need for an additional SDA appointed member to achieve fair representation. The goal is to increase the SDA population through the election process whenever possible. If the need for an appointed member continues beyond 1 year, the appointed SDA member can be selected for up to 9 consecutive years as an appointed member. Also, a formerly appointed member may at any time run for election as an elected member, subject to the 9 consecutive years limit. The ability to serve for 9 consecutive years provides the opportunity to build community relationships and knowledge base over time.

*Comment:* Release voter lists to candidates and community organizations. Some local county FSA offices will not provide that information. The list of voters should include the race, gender, and ethnicity

of voters, under conditions consistent with the Privacy Act.

*Response:* FSA collects and publishes general information about voter demographics in each LAA. The Privacy Act requires that agencies publish a System of Records notice in the **Federal Register** with a period for public comment before personal information is collected to inform the public on how the collected information will be used. Personally identifiable information may be released for certain routine uses, which must be specified in the System of Records notice. As provided in the current regulations and in the applicable System of Records notice, releasing the list of eligible voter names and addresses to candidates for county committee is listed as a "routine use" of that information in the System of Records notice that covers the collection of that information. Only names and addresses are provided to candidates; other information such as race, ethnicity, and gender, etc., is not released to candidates. Releasing personally identifiable information on race, ethnicity, and gender of individual voters to candidates for county committee elections is not an authorized routine use in the applicable System of Records (Farm Records File (Automated) USDA/FSA-2) that covers the collection of FSA program participant information. Releasing that information is longstanding FSA policy and did not change with the interim rule. In addition, lists of voter names without addresses will be provided to any member of the public, including community organizations, on request. If there is an issue with a particular FSA county office not providing that information, please contact the applicable State Office. Contact information for State Offices can be found at <http://www.fsa.usda.gov/FSA/stateOffices>.

*Comment:* Implement Section 14006 of the 2008 Farm Bill, and release the data on program participation data to the public.

*Response:* National Agricultural Statistics Service (NASS) 2007 Census of Agriculture data, which includes data on producer demographics at the national, State, and county levels, is currently available on the web at [www.agcensus.usda.gov](http://www.agcensus.usda.gov). USDA has also implemented new forms and a Departmental Regulation to implement Section 14006, and has directed agencies to collect the required data on race, ethnicity, and gender of program applicants and participants. That data is expected to be available to the public on the USDA Web site in 2013.

*Comment:* The FSA local offices need to do more on SDA outreach, not just about the county committee process, but about all of its programs. They need to invest more in partnerships with community based organizations to improve outreach and training. Also, the county committees need to do more on providing information to local SDA farmers and ranchers. Elections should be more widely publicized, and FSA should do more to improve SDA participation in elections. More emphasis should be placed on outreach to all farmers, not just SDA farmers, at the local level, to foster the next generation of farmers. FSA should be required to work with community based organizations on evaluations and required improvements in election participation and participation in FSA programs.

*Response:* The Farm Service Agency is committed to improving outreach to farmers and ranchers and will continue to provide guidance and tools to assist local offices in conducting and improving outreach at the local levels within the resources available. Local farmers and ranchers are also encouraged to become involved and learn more about the county committee by attending county committee regular meetings. Times and place of county committee meetings can be obtained from the local FSA county office and the public is welcomed at the meetings.

FSA is committed to carrying out an effective outreach program to improve program participation processes and overcome barriers commonly faced by farmers and ranchers. Those barriers include access to credit and lack of information on available FSA programs. Part of that commitment includes ensuring:

- Resources such as funding, manpower, and training materials are provided to States and counties we serve;
- Partnerships with members of the underserved and minority groups, community based organizations, community leaders, congressional leaders, educational institutions, and other federal agencies are required and supported; and
- Fair representation in FSA county committee nominations and elections is achieved.

FSA conducts an extensive outreach program and relies on partnerships to assist in efforts to improve accessibility to our programs and services. FSA has made outreach an integral part of the overall delivery of programs and services to customers and potential beneficiaries. The purpose of the outreach is to ensure that the county

committee election process, and all FSA programs and services, are equally available to all customers.

With hundreds of national partners and thousands of state and county partners, these outreach efforts to enhance the county committee election process have improved participation and awareness significantly over the years. Through outreach informational meetings, the mailing of election material packets, slide presentations, public service announcements, newsletters, press releases, posters, fact sheets, and success stories, the public have become more aware of the county committee structure, eligibility requirements, and nomination processes. More information on the county committee election process and election results are available in English and Spanish at: <http://www.fsa.usda.gov/elections>.

Last year, FSA outreach coordinators conducted over 7,000 outreach activities that reached over 4 million people nationwide. FSA does evaluate the effectiveness of outreach in improving election and program participation. In the past few years through extensive outreach efforts:

- Participation of beginning and minority farmers in FSA programs has increased;
- Farm loan assistance to immigrant farmers has increased; and
- SDA participation in county committee nominations and elections have increased.

In addition to the county office outreach meetings, participation in other partner events and activities helps to ensure we are reaching all of our customers and potential customers. We participate in local and national conferences, festivals, State and county fairs, farm expos, and grower and producer workshops. We conduct special group meetings to discuss disaster assistance programs and county committee elections. Through the USDA Strike Force Initiative, FSA works in partnership with community based organizations and other USDA agencies to improve outreach and provide assistance to persistent poverty communities and farmers. FSA also participates in farm tours and Ag Field Days.

Through extensive outreach, planning, promotion, and partnerships, FSA has shown a strong commitment to promote fair representation and the increase participation of eligible farmers and ranchers in all FSA programs. See [www.fsa.usda.gov/outreach](http://www.fsa.usda.gov/outreach) for more information.

## Executive Order 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 emphasized 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 not significant under Executive Order 12866 and therefore, OMB has not reviewed this final rule.

## Regulatory Flexibility

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. FSA has determined that this rule will not have a significant impact on a substantial number of small entities for the reasons explained below. Therefore, FSA has not prepared a regulatory flexibility analysis.

There are no costs to comply with this rule because the regulatory changes were implemented through the previous interim rule. There are no costs of compliance with this rule for the public, and the costs for the previous interim rule are expected to be minimal. No comments were received on the proposed rule or interim rule regarding the economic impact on small entities. Therefore, FSA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

## Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA (7 CFR part

799). The rule was determined to be Categorically Excluded. Therefore, no environmental assessment or environmental impact statement will be completed for this final rule.

#### 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. For reasons set forth in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372.

#### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, "Civil Justice Reform." This rule is not retroactive and it does not preempt State, or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought regarding the provisions of this rule the administrative appeal provisions of 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 rule impose substantial direct compliance costs on State, and local governments. Therefore, consultation with the States is not required.

#### Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 imposes requirements on the development of regulatory policies that have Tribal implications or preempt Tribal laws. The policies contained in this rule do not preempt Tribal law.

FSA has been working closely with the USDA Office of Tribal Relations to ensure that the rule meets the concerns of Tribal leaders and to develop a plan

to improve the rule implementation with FSA staff. USDA will also respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to implement this rule in Indian country. We received one comment on the interim rule, from a group representing Tribal farmers and ranchers. That comment is addressed above and noted that the local county committee and local FSA office should improve outreach efforts to Tribal members.

#### Unfunded Mandates Reform Act

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 contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, or Tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

#### Paperwork Reduction Act

Currently approved information collection activities are covered under OMB control number 0560-0229. This rule involves no change to the currently approved collection of information.

#### E-Government Act Compliance

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

#### List of Subjects for 7 CFR Part 7

Agriculture.

### PART 7—SELECTION AND FUNCTIONS OF FARM SERVICE AGENCY STATE AND COUNTY COMMITTEES

■ Accordingly, we are adopting as final, without change, the interim rule that amended 7 CFR part 7 and that was published at 77 FR 33063-33075 on June 5, 2012.

Signed on December 4, 2012.

**Thomas J. Vilsack,**

*Secretary of Agriculture.*

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BILLING CODE 3410-05-P

### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

#### 7 CFR Part 205

[Document Number AMS-NOP-11-0002; NOP-11-02]

#### National Organic Program: Notice of Policies Addressing Kelp, Seeds and Planting Stock, Livestock Feed, and Responding to Pesticide Residue Testing

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice of availability of final guidance.

**SUMMARY:** The National Organic Program (NOP) is announcing the availability of three final guidance documents and one instruction document intended for use by certifying agents and certified operations. The final guidance and instruction documents are entitled as follows: "The Use of Kelp in Organic Livestock Feed (NOP 5027); Responding to Results from Pesticide Residue Testing (NOP 2613)"; "Seeds, Annual Seedlings, and Planting Stock in Organic Crop Production (NOP 5029)"; and "Evaluating Allowed Ingredients and Sources of Vitamins and Minerals for Organic Livestock Feed (NOP 5030)". These final guidance and instruction documents are intended to inform the public of NOP's current thinking on these topics.

**DATES:** The final guidance documents announced by this notice of availability are effective on March 4, 2013.

#### FOR FURTHER INFORMATION CONTACT:

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