

# 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:** Interim rule.

**SUMMARY:** This rule amends the regulations governing the selection and functions of Farm Service Agency (FSA) State and county committees. The amendments are 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 is to ensure that socially disadvantaged 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 socially disadvantaged farmers and ranchers. There will be no change in State and County Committee functions and election procedures as a result of this rule, except for limited appointments of socially disadvantaged voting members. This rule is needed to make the regulations consistent with current FSA practice.

**DATES:** *Effective Date:* September 4, 2012.

*Comment Date:* We will consider comments that we receive by August 6, 2012.

**ADDRESSES:** We invite you to submit comments on this interim rule. In your comment, include the Regulation Identifier Number (RIN) 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:* Barbara Boyd, Field Operations Program Manager, FSA, United States Department of Agriculture (USDA), Mail Stop 0542, 1400 Independence Avenue SW., Washington, DC 20250-0542.

• *Hand Delivery or Courier:* Deliver comments to the above address.

All written comments will be available for inspection online at [www.regulations.gov](http://www.regulations.gov) and at the mail address above during business hours from 8 a.m. to 5 p.m., Monday through Friday, except holidays. A copy of this interim rule is available through the FSA home page at <http://www.fsa.usda.gov/>.

**FOR FURTHER INFORMATION CONTACT:** Barbara Boyd; telephone: (202) 720-7890. 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. This interim rule implements those changes in the regulations, and also makes additional clarifying changes in response to comments on a previous proposed rule for the 2002 Farm Bill changes. This rule includes provisions for the appointment of a voting member to a county committee, which is authorized by the 2002 Farm Bill, but has not been implemented.

Consistent with the 2002 Farm Bill, the purpose of the amendments is to

increase the transparency and accountability of county elections and to provide opportunities for the nondiscriminatory participation of socially disadvantaged (SDA) farmers and ranchers in county committees and in the programs of USDA. The 2002 Farm Bill requires several actions by FSA to achieve those goals. These regulations 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.

This interim rule follows a proposed rule published in the **Federal Register** on November 28, 2006 (71 FR 68755-68762). The 60-day comment period for the proposed rule closed on January 29, 2007; 13 comments were submitted. The issues raised in the comments and the resulting changes to the rule in response to those comments are discussed later in this document. The changes between the proposed and interim rule in response to comments are minor because most of the issues raised by the commenters have already been addressed or can be addressed with minor clarifying changes.

The “Uniform Guidelines for Conducting Farm Service Agency County Committee Elections” (the Uniform Guidelines) were published in the **Federal Register** on January 18, 2005 (70 FR 2837-2842). These regulations are consistent with the Uniform Guidelines. The Uniform Guidelines are available on the FSA Web site at [www.usda.fsa.gov/elections](http://www.usda.fsa.gov/elections).

This rule uses the phrase “county committee” in both the preamble and in the regulations. A county committee may have jurisdiction over a geographical area that is different from an actual county, such as more than one county, or a county and a Tribal area. The proposed rule and the current regulations refer to “area committees” for county committees that have jurisdiction over more than one county,

which some commenters found confusing, so this interim rule does not use that phrase.

This document first provides background information on county committees, then discusses the changes to county committee procedures specified in this rule. Most of the changes have already been implemented. Comments on the previous proposed rule, and our responses to those comments, are at the end of the preamble, followed by the amended regulations.

### 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 socially disadvantaged farmers and ranchers are fairly represented.

County committee decisions are made by consensus. Committee members vote to come to 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 2,200 committees nationwide. More than 235,000 ballots were cast in the 2010 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. This rule adds provisions specifying that the Secretary may appoint an SDA voting member when there is no elected SDA member and one is needed to ensure fair representation. In the context of this rule, SDA groups are women, African Americans, American Indians, Alaska Natives, Hispanics, Asian Americans, and Pacific Islanders. Appointed members 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.

Nomination forms for county elections are distributed to all eligible voters by June 15th of each year; the forms are also available online and at all county offices. Anyone who is an eligible voter can nominate themselves or another person to be on the slate of candidates. An organization, such as a local nonprofit, Tribal government, or local Tribal organizations representing SDA farmers, can also nominate a candidate. Nominations are due in August, and elections take place in December. Anyone of legal voting age who lives in the county, or whose FSA farm records are administered in the county, and participates in a USDA program or has provided the county office with information about their farming operation, can vote in the election. Minors can vote if they are in charge of the operations on an entire farm. The person receiving the most votes in the election serves on the county committee, and the first and second runners up may serve as alternates, if they meet the eligibility requirements and agree to serve.

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 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.

The county committee is the official employer of CED, and in the case of a vacancy, will be responsible for selecting the new CED.

As discussed in the next section, this rule updates the regulations to make them consistent with current practice, but does not change the role of county committees or county committee voting members from current practice, with the exception of the new appointment authority.

### Amendments to the Regulation That Are Consistent With Current FSA Practice

This interim rule amends 7 CFR part 7 "Selection and Functions of Agricultural Stabilization and Conservation State, County, and Community Committees." Those regulations were most recently updated in 1994, and are no longer consistent with current FSA practice. This rule makes substantive changes to the regulations that are needed to add requirements from the 2002 and 2008 Farm Bills. This section of the document discusses the amendments to the regulations that have already been implemented administratively. The next section discusses the new provisions to appoint SDA members that have not yet been implemented.

In addition to the changes required by the two Farm Bills, this rule also removes obsolete terms. This rule removes text that does not relate to public compliance and is therefore appropriately addressed in FSA handbooks and directives. It changes the name of the part to "Selection and Functions of Farm Service Agency State and County Committees."

This rule includes definitions for "participate" and "cooperate." 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 § 7.3 of this rule, may also be eligible voters and nominees even if they do not directly receive benefits or services from USDA. For example, farmers who grow specialty crops that do not qualify for FSA programs and beginning farmers may qualify to vote by providing information about their farming operation to the county office. Those who do not both own and operate their farm, such as landowners, tenants, and sharecroppers, may qualify to vote by providing such information. USDA uses this information to better understand the agricultural communities that our programs serve, or might serve in the future. We also wish to ensure that persons who have an interest in farming that may not qualify for our programs at this time have an opportunity to be represented on the county committee.

The additional requirements for eligibility for county committee members in this rule, including term limits for elected members, are largely unchanged from the current regulations. The requirement that a voter who operates a farm or ranch in more than one local administrative area (LAA) in a county can only vote in any election in any one LAA is unchanged. (An LAA is similar to a precinct or voting district in function.) Similarly, the requirements for spouse eligibility and entity eligibility are unchanged. This rule specifies that the county office will maintain the list of eligible voters in the county and must disclose that list to the public, which is also not a new requirement.

The regulations for the establishment of LAAs are revised to be consistent with current practice and with the two Farm Bills. The current regulations specify exactly three LAAs per county, with some exceptions that include fewer than three LAAs per county. The revised regulations specify at least 3 LAAs per county, with up to 11 LAAs for county committees that have jurisdiction over multiple counties. 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 single county committee can have up to five LAAs. The LAA boundaries will be determined by the State committee, after considering

recommendations from the county committee in which an LAA is located. The county committee must give public notice of LAA designations before the election and nomination processes. FSA has already implemented these provisions through handbooks and the Uniform Guidelines.

This rule revises the nomination process regulations to be consistent with current FSA practice. The revisions make the nomination process and deadlines provisions more clear and specific than the current regulations. Nominations for county committee are due not less than 90 days before the election date. The nomination form is distributed to eligible voters and is also available at county offices and on the internet at <http://www.sc.egov.usda.gov>. Nominees must meet eligibility requirements, which include residing in the LAA for which the election is being held and being willing to serve if elected. The eligibility requirements for nominees, county committee members, and other personnel are largely unchanged from the current regulations. As specified in the 2008 Farm Bill, a farmer or rancher with farming interests in multiple LAAs or counties can only serve on the county committee in the jurisdiction where their FSA records are administered.

This rule has revised provisions, consistent with the Uniform Guidelines, on how the slate of candidates for the election will be determined. The slate of candidates for a county committee election will typically consist of the farmers and ranchers nominated through the public solicitation of nominees. If at least one nomination is filed, the county committee will not take any action to add more nominees to the slate, although write-in candidates are always allowed. If no nominations are received, which is not common, the existing county committee will develop a slate of candidates following the procedures in the Uniform Guidelines. As specified in the Uniform Guidelines, if there are no nominations, the Secretary and the State committee may nominate up to two individuals to the slate. If they choose not to do so, the county committee must ensure that the slate is filled by selecting two nominees. Slates developed by the county committee must include at least one individual representing the interests of SDA farmers and ranchers.

The current regulation provides that election dates will be held sometime after July 1st each year, on a date or within a time period specified by the Deputy Administrator. This rule includes more 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 has already implemented this. 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 this rule, 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, there is a vacancy on the county committee that occurs outside of the normal election cycle, such as when a member resigns or moves away. This rule specifies that in the case of a vacancy, there can be a special election to fill the vacancy, or the State committee may designate an alternate to serve out the remaining term. While the option to have the State committee designate an alternate is specified in the regulation so that FSA can exercise that option if needed, special elections are normally held to fill vacancies. The obsolete provisions on vacancies in the current regulations that specify the procedures for the county conventions and community committees to fill the vacancies are removed, but those provisions have not been used in many years because those entities have not been authorized since 1994.

The challenges and appeals requirements regarding the voter eligibility or results of a county committee election follow the Uniform Guidelines and current practice and are largely unchanged from the current regulations. Obsolete references to challenging the results of county conventions have been removed. This rule 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 new 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 2010 are currently posted.

The political activity restrictions and personnel actions procedures were modified in the regulation to be

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.

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

The 2002 Farm Bill grants the Secretary the authority to appoint a 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.

Since the 2002 Farm Bill, USDA has increased outreach to SDA communities to encourage participation in COC elections. SDA non-voting advisors have been appointed by State committees to many county committees. However, voter turnout has remained low among all groups, and particularly among SDA farmers and ranchers, whose voter participation rate is about 7 percent. That is about half the voter participation rate for all eligible voters. USDA has also collected and analyzed extensive data on county committee election results, and found that a few counties (about 5 percent) still do not have fair representation of SDA farmers and ranchers. Given the continued low SDA voter turnout, despite sustained and extensive outreach over the past decade, it is unlikely that the regular election process alone will result in fair SDA representation on all county committees. An additional effort is needed to achieve fair representation on county committees in a few cases. USDA has therefore decided to utilize the appointment authority provided in the 2002 Farm Bill.

In the preamble to the 2006 proposed rule, USDA stated that "in the event the Secretary does decide to utilize the appointment authority, the Secretary will only do so after providing an opportunity for the public to comment on the proposed provisions under which such appointments will be made." This interim rule provides that opportunity for public comment. This rule specifies in 7 CFR 7.17 that the Secretary will use the discretionary authority to make appointments when such appointments are necessary to maintain fair representation. USDA will continue to monitor the effectiveness of the Uniform Guidelines and these regulations to ensure that they are sufficient to ensure fair representation of SDA farmers and ranchers on county committees. If needed to ensure fair

representation, the Secretary will use the authority to appoint 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 committee member will be in addition to the elected voting members. The appointed member does not replace any of the elected members.

This rule does not specify what specific procedures the Secretary will use to determine that an appointment is necessary. The method USDA currently plans to use to identify counties where an appointment is appropriate is as follows: USDA will first determine a baseline number of eligible voters in a county, using operator data in the Census of Agriculture and eligible-voter data in FSA records. The baseline eligible voter pool for each county committee will be measured annually against the demographics of the current committee to ensure fair representation each year on the committees and to identify where there is a need for increased SDA representation. The method used to determine if an appointment should be made will be a benchmark level of expected representation, which will be the number of SDA representatives expected in the county to ensure fair representation. The benchmark is a threshold percentage that is calculated as follows:

$$1 \div 1 \text{ plus the current number of elected COC members}$$

For example, if there are 3 elected county committee members, the threshold will be 1 divided by 4, or 25 percent. If more than 25 percent of the eligible voters in the county are SDA, but there is no SDA voting member on the COC, that county will be considered for an SDA appointment. Where the county already has an SDA advisor, the Secretary plans to appoint that advisor as the SDA voting member.

Our current analysis of 2010 election results shows that of the 2,244 county committees, about 13 percent met the threshold where SDA representation would be expected based on the demographics of the eligible COC voters in the county. (In the example above, if 10 percent of the eligible voters in the county are SDA farmers and ranchers, but there is no SDA member on the existing 3-member COC, that county does not meet the threshold where an SDA voting member would be expected.) FSA analysis shows that 153 counties met the threshold where SDA representation would be expected based

on race or ethnicity of eligible voters, and 160 counties met the threshold where SDA representation would be expected based on gender of eligible voters (28 counties were in both groups). Of these counties where SDA representation would be expected, over half already had an SDA voting member. Almost all of the counties where SDA representation would be expected already had a non-voting SDA advisor. Only 17 counties that met the benchmark for expected SDA representation had neither an SDA voting member nor an SDA advisor.

FSA analysis also considered observed historical voting patterns. 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 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 plans to 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 office 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 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 USDA will not

need to make any SDA appointments that year.

### Removal of Obsolete Provisions and Other Technical Changes

This rule removes the current section of the regulations specifying procedures for county conventions. All county committee elections are conducted by direct election by eligible voters. County conventions have not been used to select county committee members in many years, because they were removed from the authority with the reorganization of USDA required by the Federal Crop Insurance Reform and Department of Agriculture Reauthorization Act of 1994 (Pub. L. 103-334).

This rule removes all references to community committees. Community committees were also removed from the underlying authority in 1994 as part of the USDA reorganization. Community areas are no longer used to establish the boundaries of LAAs, and have not been for many years.

This rule removes the reference to consideration of at large and cumulative voting that were in § 7.17 in the proposed rule because USDA assessed the at large and cumulative alternatives and found them not viable.

As noted earlier, obsolete appeals and hearings provisions for appealing a suspension, disqualification, or removal from office are removed. Updated procedures are now in the employee handbooks and Uniform Guidelines.

Non-substantive editorial changes were made throughout to improve clarity by providing plain language explanation of election procedures and by grouping related provisions in the same section. Plain language changes, such as replacing “shall” with “will” or “must,” have been made.

### Discussion of Comments on Proposed Rule

FSA received 13 comments on the proposed rule. The comments were received from agricultural associations and representative groups, Indian tribes and communities, FSA employee associations, an FSA county committee, USDA’s Office of Inspector General, and individuals. The commenters generally supported the 2002 Farm Bill goals of making election processes more transparent and ensuring fair SDA representation, but requested clarification and objected to specific proposed regulatory provisions to implement those goals. Some issues raised by commenters were subsequently addressed in the 2008 Farm Bill. Most of the issues raised by

commenters have already been addressed in current FSA practice.

*Comment:* Provide addition clarification or further definition of the terms “assistance,” “services,” “benefits,” “enroll,” and “indirect service” because these terms are used to establish eligibility.

*Response:* FSA procedural handbooks will include the definitions of these terms. This rule specifically defines “cooperate” and “participate” as they relate to voter eligibility. The other terms listed are not specific to the county election process and FSA does not use them in a different way from their dictionary meaning to establish voter eligibility, so therefore they are not defined in this rule.

*Comment:* Please define and clarify the term “fairly representative.” A common dictionary meaning would mean that the committee’s make-up is proportional to the make-up of the farming or ranching population of the administrative area in terms of race, ethnicity, and gender.

*Response:* The 2002 Farm Bill and the Uniform Guidelines specify the information that we must collect to measure SDA farmer participation and representation. This information, including the total ballots cast by race, gender, and ethnicity, the total eligible voters in each category, and the total nominees in each category, is currently collected and reported on the FSA Web site. This information is collected and reported at the LAA, county, State, Tribal, and national levels. Detailed county election results are available on our Web site for the 2002 through 2010 elections. As required by Congress, these detailed statistics on participation rates at the LAA, county, State, Tribal, and national levels are how FSA measures SDA representation on our county committees and participation in the elections.

The benchmark for what will be considered “fairly representative” for the purpose of appointments is a percentage that is calculated as follows:  

$$1 \div 1 \text{ plus the current number of COC members}$$

For example, if there are 3 county committee members, the benchmark for fair representation will be 1 divided by 4, or 25 percent. If 25 percent of the eligible voters in the county are SDA, and there is at least one SDA member on the COC, that county will be considered to have fair representation of SDA voters. If not, it will be considered for a Secretarial appointment of one SDA member. The 2002 Farm Bill does not provide authorization to appoint more than one member, nor does it

specify strictly proportional representation as a goal.

*Comment:* Provide clarification on whether both participants and cooperators would have voting rights and eligibility for county committees if they are reporting on the same tract of land. As written, both the landowner and the farm operator would have voting rights if they either participated or cooperated. We are particularly concerned that SDA farmers who are tenants, operators, or sharecroppers are eligible to vote.

*Response:* Both a landowner and an operator may be eligible to vote based on reporting on the same tract of land. An owner and an operator are not an entity; they are both individuals both eligible to vote. Only one vote is allowed for an entity such as a cooperative or trust, but tenants and sharecroppers are unlikely to be entities.

*Comment:* The time requirements that farmers and ranchers must have participated or cooperated within the past year to vote or be nominated appear to be in direct conflict with the goal of increasing SDA participation. The time frame should be increased.

*Response:* Anyone who lives in the county can be eligible to vote or be nominated if they “cooperate” by providing information about their farming operation and their current name and address to the county office no later than the final date to return ballots (to be eligible to vote) or the final date for nomination forms (to run for county committee). So, if someone has not received farm benefits recently but wishes to vote in county elections, they should be able to easily meet the “cooperate” eligibility criteria by updating their records at the county office at any time up to the day ballots are due. Farmers and ranchers can be eligible voters under the cooperation requirement even if they have not participated in programs (received benefits or services) within the past year. They can provide their information the day they vote or pick up their ballot. Therefore, this requirement should not discourage SDA participation. It is unclear how a longer time frame would increase participation by SDA farmers or by any other group. The intent of the “within the past year” provision, as discussed in the preamble to the proposed rule, was in part to ensure that county committee members are elected by those who are directly affected by committee actions, including those who have participated in USDA programs in the past year.

*Comment:* The regulations may exclude certain landowners that have been eligible voters.

*Response:* The voter eligibility requirements are specified in the rule to ensure that farmers and ranchers, including landowners, are fully informed of the voter eligibility requirements. Please note that landowners who provide information to the FSA county office about their farming operation, thus meeting the definition of “cooperate” in 7 CFR 7.3, may be eligible voters even if they do not directly receive benefits or services from USDA or from other federal agencies. To “cooperate,” a landowner must provide their current name and address information to the county office.

*Comment:* Some Tribal members may no longer be considered eligible voters under the proposed rules. Section 7.5 of the proposed rule says that they must be producers, and 7 CFR part 718 defines producers as a person who shares in the risk of producing a crop. Tribal members as owners of Tribal agricultural land may not meet the requirements for voter eligibility because most of the parcels are operated under a lease or permit. We recommend changing the definition of “producer” to include owners of crop producing lands.

*Response:* As specified in this rule, a farmer or rancher is eligible to vote if they participated or cooperated in USDA programs, as participated and cooperated are defined in this rule. Specifically, a Tribal member of a tribe with Tribally owned agricultural land who provides their name and current address to the county office will meet the requirement of “cooperate” and be eligible to vote. In response to this comment, § 7.5 has been modified to refer to “farmers and ranchers,” the term used for voters in the relevant sections of the 2002 and 2008 Farm Bills.

*Comment:* The rule isn’t clear how the voter or FSA determines which LAA is the correct area for a voter with an interest in more than one LAA in the county.

*Response:* A voter with an interest in more than one LAA in the county will vote based on the location of their home. As specified in § 7.18, the LAA where the voter resides, or in cases where the LAA boundary or other jurisdictional boundary runs through a farm, the county office and LAA where the farm’s FSA records are kept is the LAA for the voter.

*Comment:* The proposed rule doesn’t have language on how a producer can seek relief if they have been deemed ineligible to vote. That appeals provision is in the Uniform Guidelines but it should also be in the rule in § 7.5, with the 15 day response period, like in the Uniform Guidelines.

*Response:* This rule specifies in § 7.15 that challenges and appeals on voter eligibility will be handled in accordance with the Uniform Guidelines. In response to this comment, an appeals provision specifically for voter eligibility has also been added to § 7.5. This is not a change from current practice, or from the current regulations.

*Comment:* Disciplinary action and political activity guidance should not be removed from the rule.

*Response:* They are not entirely removed from the rule. The requirements are updated to be consistent with current legal requirements, and some details have been moved to FSA procedural handbooks and directives, which are the appropriate location for detailed disciplinary action and political activity guidance.

*Comment:* The authority granted to the Secretary in the 2002 Farm Bill to appoint a voting member should not be included in the rule. Neither the Secretary of Agriculture nor anyone else should appoint members.

*Response:* The Secretary was provided the authority in the 2002 Farm Bill to appoint a member to represent socially disadvantaged farmers and ranchers after a thorough analysis of the representation of socially disadvantaged farmers and ranchers in a particular county committee jurisdiction. The 2002 Farm Bill also required USDA to collect detailed election data, which we have done. USDA now has multiple years of data available to identify which counties do not currently have appropriate SDA representation, and have not had appropriate SDA representation in the recent past. The procedures for appointing SDA members are included in the regulations so that members of the public are fully informed of what actions USDA may take in the future to achieve appropriate SDA representation on a county committee.

*Comment:* If the Secretary uses the authority to appoint SDA committee members, the regulations should require the Secretary to solicit and accept nominations from community-based organizations that represent SDA farmers and ranchers in the area.

*Response:* When the authority is used, it will be in consultation with local organizations and Tribal organizations that represent SDA producers in the area, as was discussed in the notice published in the **Federal Register** in which the Uniform Guidelines were published. Where an SDA non-voting COC member exists, the Secretary will typically appoint that member as the

SDA voting member, if such an appointment is made.

*Comment:* Releasing the names and addresses of eligible voters to candidates for county committees may violate the Privacy Act.

*Response:* The release of names and addresses is handled in accordance with the requirements of the Privacy Act of 1974. 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 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. The release of names and addresses of eligible voters to candidates for county committees was specifically 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 financial information about farming operations, geospatial information about farm tracts, etc., is not released to candidates.

*Comment:* Restrict the use of the names and addresses to the county committee elections—prohibit anyone who received the list of names from selling it or using it for any political or profitable use. The list of voters must not be used for any other purpose than to inform or educate the voters in the capacity as county committee candidate.

*Response:* We do not have the authority to restrict the use of this public information, however a disclaimer will be provided with the list of voters indicating that the information is for use in running as a COC candidate and should not be used for any other purpose.

*Comment:* Maintain local control of FSA county committees’ ability to supervise FSA county office employees. Provide further clarification on the proposed change to remove references to county office employee personnel actions from the regulations. Does this apply only to FSA county committee elections?

*Response:* County committees retain the authority to employ a county executive director and are considered the supervisor(s) of record of the county executive director. Personnel actions will be conducted under official FSA handbook procedure with input from the county committee. The scope of the county committee authority regarding personnel actions is not limited to committee elections, and has not changed with this rule.

*Comment:* On the LAA issue, the rule changed the intent of LAA delineation, which was meant for commodity similarities rather than for fair representation of producers.

*Response:* The purpose of establishing LAAs has been and remains fair representation of farmers and ranchers in the county or larger area under the jurisdiction of a county committee. Commodities grown in an area are only one of many criteria used for LAA delineation. That has not changed with this rule.

*Comment:* Increase the number of LAAs from 3 to 7.

*Response:* This rule specifies up to 11 LAAs per county. The 2002 Farm Bill allows 3 to 5 county committee members for a single county jurisdiction and the 2008 Farm Bill allows up to 11 members in a combined or consolidated county. That is reflected in this interim rule, and in current practice. The number of LAAs will correspond to the number of members on the county committee, which could be as many as 11 for a combined or consolidated committee.

*Comment:* The Uniform Guidelines should be included in the regulation.

*Response:* As noted above, the Uniform Guidelines were issued previously in the **Federal Register**. They are too extensive to include in the regulations, and include provisions that do not apply to members of the public. As revised by this rule, the regulations are consistent with the Uniform Guidelines. If the Uniform Guidelines are updated in the future, they will be published in the **Federal Register**. They are available on FSA's Web site at <http://www.fsa.usda.gov/elections>.

*Comment:* A disinterested party should maintain the ballots and the ballots should not be handled by employees of the county committees.

*Response:* While it is not appropriate for candidates to handle the ballots, FSA county employees may not run for election and are therefore disinterested parties. As specified in the Uniform Guidelines, any candidate may request that ballots be sent to the State FSA Office until the official counting, and the county committee must do so if requested.

When the Uniform Guidelines were originally developed in 2004, FSA considered requiring that ballots be sent to the State FSA Office in all cases, and tested that approach in a pilot program. After a review of the pilot program, it was determined to be impractical to require this approach for all county committees, so it was decided to keep State office collection of ballots as an option, but not a requirement, unless a

candidate requests it. That provision is in the final Uniform Guidelines and in this rule.

*Comment:* The community committees should not be removed from the regulation. Community committees are a valuable resource.

*Response:* The community committees are removed from the regulation because they have not been used since 1995. The authorization for community committees was removed from the relevant United States Code in 1994 as part of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994.

*Comment:* The Guidelines specify that only mail or hand-delivered ballots are allowed, but the rule in § 7.11 provides for meeting or polling place method. The guidelines and the rule should be consistent.

*Response:* The Guidelines will be updated to properly reflect the options for meeting or polling place method.

*Comment:* The rule usually refers to county committees, but there are a few references to area committees that are potentially confusing.

*Response:* Those references have been removed from the interim rule to address this comment. Area committees is a commonly used term for county committees that have jurisdiction over multiple counties.

*Comment:* FSA should include a provision setting forth an appropriate retention period for county committees to maintain books, records, and documents in § 7.30, which only specifies the retention period for ballots.

*Response:* The proper retention period for the various program and administrative records are documented in applicable agency handbooks and are not needed in this rule. Retention periods vary depending on program or administrative function.

*Comment:* When Tribal lands cross state boundaries, Tribal farmers and ranchers also be able to have the ability for unified decision-making and implementation by county committees.

*Response:* When Tribal lands cross state boundaries, members of the Tribe may choose to all participate at a single county office, and therefore vote in a single LAA to have unified decision making and implementation for their land.

*Comment:* The final rule should reflect that the political activity of county office employees must comply with the Hatch Act.

*Response:* That is an appropriate topic for handbooks and directives, and has therefore been addressed there, rather than in the rule.

## Other Comments

Some of the comments received expressed general support or opposition for the rule or the 2002 Farm Bill provisions, without offering specific suggestions for changes. FSA also received comments that are outside the scope of this rule but have been addressed elsewhere. The topics of the out of scope comments included financial support for outreach and updates to employee handbooks.

## 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 interim rule.

## 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 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?

## 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.

The costs to comply with this rule are primarily borne by FSA, not the public. The costs of compliance with this rule for the public are expected to be minimal. No comments were received on the proposed rule regarding disparate 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 following interim 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 interim 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 interim 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 improve this rule in Indian country.

#### **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 interim 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.

For the reasons discussed above, 7 CFR part 7 is revised to read as follows:

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

- Sec.
- 7.1 Administration.
  - 7.2 General.
  - 7.3 Definitions.
  - 7.4 Selection of committee members.
  - 7.5 Eligible voters.
  - 7.6 Establishment of local administrative areas.
  - 7.7 Calling of elections.
  - 7.8 Nominations for county committee.
  - 7.9 Slate of candidates.
  - 7.10 Conduct of county committee elections.
  - 7.11 Election of county committee members.
  - 7.12 Composition of a county committee.
  - 7.13 Tie votes.
  - 7.14 Vacancies.
  - 7.15 Challenges and appeals.
  - 7.16 Report of election.
  - 7.17 Remedial measures.
  - 7.18 Eligibility requirements of county committee members.
  - 7.19 Eligibility requirements of all other personnel.
  - 7.20 Prohibition on dual office.
  - 7.21 Terms of office of county committee members.
  - 7.22 State committee duties.
  - 7.23 County committee duties.
  - 7.24 Chairperson of the county committee duties.
  - 7.25 County executive director duties.
  - 7.26 Private business activity and conflicts of interest.
  - 7.27 Political activity.
  - 7.28 Removal from office or employment for cause.
  - 7.29 Delegation of authority to Deputy Administrator.



7.30 Custody and use of books, records, and documents.

7.31 Administrative operations.

7.34 Retention of authority.

**Authority:** 7 U.S.C. 2279–1, 16 U.S.C. 590d and 590h.

### § 7.1 Administration.

(a) The regulations in this part apply to the election and functions of the Farm Service Agency (FSA) county committees and the functions of FSA State committees (“county committees” and “State committees,” respectively). State and county committees will be under the general supervision of the FSA Administrator.

(b) State and county committees, and representatives and employees of those committees, do not have authority to modify or waive any of the provisions of this part.

(c) State committees will take any actions required by these regulations that have not been taken by a county committee. State committees will also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with this part, or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No provision or delegation to a State or county committee will preclude the FSA Administrator, or designee, from determining any question arising under this part, or from reversing or modifying any determination made by a State or county committee.

(e) These regulations will be administered in accordance with the Uniform Guidelines for Conducting FSA County Committee Elections.

(f) Unless specifically provided in this part, the Deputy Administrator, Field Operations, FSA (Deputy Administrator), is authorized to issue the official instructions and procedures referred to in this part to implement the provisions of this part.

(g) This part applies to the United States, its territories, and Puerto Rico.

### § 7.2 General.

State and county committees will, as directed by the Secretary, or a designee of the Secretary, carry out the programs and functions of the Secretary.

### § 7.3 Definitions.

The following definitions apply to this part. The definitions in § 718.2 of this title also apply to this part, except where they conflict with the definitions in this section.

*Cooperate* means to enroll a farming operation or agricultural property with a county office.

*Deputy Administrator* means Deputy Administrator for Field Operations, Farm Service Agency, U.S. Department of Agriculture or the designee.

*Local administrative area* means an elective area for FSA committees in a single county or multi-county jurisdiction.

*Participate* means to receive assistance, services, or benefits directly from the United States Department of Agriculture (USDA), or from USDA indirectly through another governmental agency.

*Socially disadvantaged farmer or rancher* is an individual or entity who is a member of a group whose members have been subject to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. These groups consist of: American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women.

*State committee* means the FSA State committee.

*Uniform Guidelines* means the Uniform Guidelines for Conducting Farm Service Agency County Committee Elections, which are available in FSA Handbook 15–AO.

### § 7.4 Selection of committee members.

(a) State committee members will be selected by the Secretary and will serve at the pleasure of the Secretary.

(b) County committee members will be elected as specified in § 7.11 of this part or appointed as specified in § 7.17 of this part.

### § 7.5 Eligible voters.

(a) Persons must meet the requirements of paragraphs (b) or (c) of this section to be eligible to vote in direct elections of county committee members.

(b) Farmers and ranchers who are of legal voting age in the State in which their farms or ranches are located, regardless of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status, and any farmers or ranchers not of legal voting age who are in charge of the supervision and conduct of the farming operations on an entire farm, are eligible to vote for direct election of county committee members, if they:

(1) Participated in a program administered within a county, or area under the jurisdiction of the county committee, within 1 year of the date of the election; or

(2) Not later than the final date to return ballots, cooperate as evidenced in county office records.

(c) In any State having a community property law, the spouse of a person who is eligible to vote in accordance with paragraph (b) of this section is also eligible to vote.

(d) If an eligible voter is a legal entity, the eligible voter’s vote may be cast by a duly authorized representative of such entity, as determined by the Deputy Administrator, Field Operations, FSA.

(e) Each county office will maintain a list of eligible voters for each local administrative area within the county. A county office must disclose a list containing the names of eligible voters to the public. A county office must disclose a list containing the names and addresses of eligible voters to a candidate for a county committee position at the request of the candidate.

(f) Farmers and ranchers who are not on the list of eligible voters who believe that they meet eligibility requirements may file a written challenge with the county committee and may appeal county committee voting ineligibility determinations to the State committee.

(g) Each eligible voter will be entitled to only one ballot in any election held in any one local administrative area. If the eligible voter has an interest in land located in more than one local administrative area in a single county, such voter will not be entitled to vote in more than one local administrative area in that county. There will be no voting by proxy.

### § 7.6 Establishment of local administrative areas.

(a) The Secretary, or the Secretary’s designee, may designate local administrative areas within a county or a larger area under the jurisdiction of a county committee.

(1) There will be a minimum of three local administrative areas in each county. In counties that have been combined or consolidated into a multiple county office, there will be 3 to 11 local administrative areas. In single-county offices, there will be three to five local administrative areas. With respect to Alaska and Puerto Rico, the county will be the area so designated by the State committees. In Louisiana, the term “county” applies to parishes.

(2) Each local administrative area will have not more than one elected county committee member.

(3) The boundaries of the local administrative areas will be determined by the State committee after considering recommendations by the county committee in which the local administrative areas are located.

(4) The county committee must give public notice of the local administrative

area boundaries in advance of the election and nomination processes.

(b) [Reserved]

#### **§ 7.7 Calling of elections.**

(a) The Secretary will establish a county committee in each county or area under the jurisdiction of a multiple county office.

(b) Each election of county committee members must be held on a date, or within a specified period of time, determined by the Deputy Administrator. Each such election must be held in accordance with instructions issued by the Deputy Administrator, and the instructions must be available for public examination in each county office.

(c) If the number of eligible voters voting in any election of county committee members is so small that the State committee determines that the result of that election does not represent the views of a substantial number of eligible voters, the State committee may declare the election void and call a new election. If it is determined by the State committee that the election for any position on a county committee has not been held substantially in accordance with official instructions, the State committee will declare such election void and call a new election.

#### **§ 7.8 Nominations for county committee.**

(a) Nominations to the county committee will be publicly solicited with a closing date for nominations not less than 90 days prior to the election date.

(b) Each solicitation for nomination will include the nondiscrimination statement used by the Secretary.

(c) To be eligible for nomination for election in a single county jurisdiction in the local administrative area conducting the election, a person must be a farmer or rancher residing within that local administrative area under the jurisdiction of the county committee. In a multiple county jurisdiction, or in the case where an local administrative area or county boundary runs through a farm, a person will only be eligible for nomination in the jurisdiction and local administrative area in which the person's records are administered.

(d) To be eligible, nominees must be farmers or ranchers who:

(1) Participated in a program administered within an area under the jurisdiction of the county committee; or

(2) At the time of the deadline to submit nominations, cooperate as evidenced in county office records.

(e) Nominations of eligible farmers and ranchers will be solicited and accepted from organizations

representing the interests of socially disadvantaged farmers and ranchers.

(f) Eligible farmers and ranchers may nominate themselves or other farmers and ranchers who meet the nomination criteria in paragraph (d) of this section, and who certify their willingness to serve on the county committee.

(g) If elected, nominees must meet all the eligibility requirements in § 7.18 to serve as county committee members.

#### **§ 7.9 Slate of candidates.**

(a) Except as provided in paragraph (b) of this section, a slate of candidates will consist of one or more eligible farmers and ranchers nominated through public solicitation of nominees as specified in § 7.8.

(b) If no nominations are received by the closing date for nominations, the county committee must develop a slate of candidates in accordance with the Uniform Guidelines.

(c) A slate developed by the county committee must include at least one individual representing the interests of socially disadvantaged farmers and ranchers.

(d) Candidates must certify their willingness to serve on the county committee if elected as a member or alternate.

(e) The county committee must accept write-in candidates on ballots.

(f) Write-in candidates, if elected as a member or an alternate, must meet the eligibility requirements of § 7.18 and must certify their willingness to serve on the county committee before they will be certified as a member or alternate.

#### **§ 7.10 Conduct of county committee elections.**

(a) The county committee serving at the time of the election will be responsible for the conduct of the county committee election in accordance with the Uniform Guidelines and with any instructions issued by the Deputy Administrator.

(b) County committee elections must not be associated with, or held in conjunction with, any other election or referendum conducted for any other purpose.

(c) The county committee must give advance public notice at least 30 calendar days prior to the election date of how, when, and where eligible voters may vote.

(d) The county committee must provide at least 10 calendar days of public notice of the date, time, and place at which election ballots will be opened and counted.

(e) The county committee must provide at least 10 calendar days of

public notice that any person may observe the opening and counting of the election ballots.

(f) The county executive director must notify all nominees of the outcome of the election within 5 calendar days of the election date. The notification must be in writing.

#### **§ 7.11 Election of county committee members.**

(a) Where there are three local administrative areas as specified in § 7.6, there will be an election of a county committee member and, if available, any alternates, for a term of not more than 3 years, or until such person's successor is elected and qualified, in only one of the local administrative areas so that the term of office of one county committee member and any alternates within one of the local administrative areas will expire each year.

(b) Where there are more than three local administrative areas as specified in § 7.6, there will be an election in at least one of the local administrative areas each year, such that the term of office of the county committee member(s) and any alternates within at least one-third of the local administrative areas will expire each year.

(c) Every 3 years, the eligible voters in a local administrative area will elect a county committee member and may elect first and second alternates, as available, to serve. The alternates will serve, in the order of the number of votes received, as acting members of the county committee, in case of the temporary absence of a member, or to become a member of the county committee in that same order elected in case of the resignation, disqualification, removal, or death of a member. In other words, the candidate receiving the most votes will be elected as the committee member, and the candidates receiving the second and third most votes, if there are multiple candidates, will be elected as first and second alternates, respectively.

(d) An alternate serving as an acting member of the county committee will have the same duties, responsibilities, and authority as a regular member of such committee. In the event an alternate fills a permanent vacancy on the county committee, such person will assume the remainder of the unexpired term of the county committee member who was replaced.

(e) The election must be conducted in all counties by mail or other distribution of ballots in accordance with the Uniform Guidelines, except that the Deputy Administrator may authorize use of the meeting or polling place

method in any county where such exception is deemed justified.

(f) Elections will be by secret ballot with each eligible voter allowed to cast one vote and having the option of writing in the name of a candidate.

(g) Failure to elect alternates at the regular election will not invalidate such election or require a special election to elect alternates.

#### **§ 7.12 Composition of a county committee.**

(a) A committee established under this part will consist of not fewer than 3 nor more than 11 elected members.

(b) Committee members must be fairly representative of the farmers and ranchers within their respective LAA from which they are elected.

(c) The county committee must select a secretary who must be the county executive director or other employee of the county committee. The secretary cannot be a county committee member.

(d) The county committee must select a chairperson and vice-chairperson.

#### **§ 7.13 Tie votes.**

Tie votes in county committee elections will be settled by lot in a manner that is open to the public.

#### **§ 7.14 Vacancies.**

(a) In case of a vacancy in the office of chairperson of a county committee, the respective vice chairperson will become chairperson. In case of a vacancy in the office of vice chairperson of a three member committee, the respective third member will become vice chairperson. In case of a vacancy in the office of a member, a respective first alternate, if available, will become a member. In case of a vacancy in the office of vice chairperson of a four to five member county committee, the first alternate, if available, for the LAA of the vice chairperson will become a member and the county committee will conduct an organizational meeting to select a vice chairperson; and in case of a vacancy in the office of the first alternate, a respective second alternate, if available, will become the first alternate. When unanimously recommended by the members of the county committee, as constituted under this paragraph, and approved by the State committee, the offices of chairperson and vice chairperson of the county committee may be filled by any county committee member without regard to the order of succession specified in this paragraph.

(b) In the event that a vacancy, other than one caused by temporary absence, occurs in the membership of the county committee and no alternate is available to fill the vacancy, a special election

may be held to fill such vacancies as exist in the membership.

(c) In the event that a vacancy, other than one caused by temporary absence, occurs in the membership of the county committee and no alternate is available to fill the vacancy, the State committee may designate a person to serve out the balance of the term of the vacant position on the county committee.

#### **§ 7.15 Challenges and appeals.**

(a) Challenges and appeals by nominees regarding voter eligibility or the results of a county committee election must be handled in accordance with the Uniform Guidelines.

(b) Any nominee has the right to challenge an election in writing, in person, or both within 15 calendar days after the results of the election are posted.

(c) Challenges to the election must be made to the county committee, which will provide a decision on the challenge to the appellant within 7 calendar days of the receipt of the challenge.

(d) The county committee's decision may be appealed to the State Committee within 15 calendar days of receipt of the notice of the decision if the appellant desires.

(e) In the event that an election is nullified as a result of a challenge or appeal, or an error in the election process, a special election must be conducted by the county office and closely monitored by the FSA State office.

#### **§ 7.16 Report of election.**

(a) The county committee must file an election report with the Secretary through the Deputy Administrator's office not later than 20 days after the date an election is held.

(b) The election report must include:

- (1) The number of eligible voters in the local administrative area;
- (2) The number of ballots cast in the election by eligible voters;
- (3) The percentage of eligible voters that cast ballots;
- (4) The number of ballots disqualified in the election;
- (5) The percentage of ballots disqualified;
- (6) The number of nominees for each seat up for election;
- (7) The race, ethnicity, and gender of each nominee, as provided by the voluntary self identification of each nominee; and
- (8) The final election results, including the number of ballots received by each nominee.

#### **§ 7.17 Remedial measures.**

(a) FSA will consider additional efforts to achieve the objective that

county committees are fairly representative of farmers and ranchers within areas covered by the committees. Such efforts may include, but are not limited to, compliance reviews of selected counties, further centralization of the election process, and the appointment of socially disadvantaged farmers and ranchers to particular committees in accordance with a notice published in the **Federal Register** issued by the Secretary authorizing such appointments.

(b) The Secretary may ensure inclusion of socially disadvantaged farmers and ranchers by appointment of 1 additional voting member to a county committee when a significant population of socially disadvantaged farmers and ranchers exist in the committee jurisdiction and no member is elected from that socially disadvantaged population. The appointment of the socially disadvantaged voting member will be in accordance with standards and qualifications furnished by the State committee.

#### **§ 7.18 Eligibility requirements of county committee members.**

(a) To be eligible to hold office as a county committee member or an alternate to any county office, a person must meet the conditions specified in this section.

(b) Such person must:

- (1) Meet the eligibility for nomination criteria specified in § 7.8;
- (2) Reside in the local administrative area in which the election is held, in cases where a State line, a county line, or a local administrative area boundary runs through a farm, eligible farmers and ranchers residing on such farm may hold office in the county and local administrative area in which the farm has been determined to be located for program participation purposes;
- (3) Not be ineligible based on prohibited political activities, as specified in the Uniform Guidelines;
- (4) Not have been dishonorably discharged from any branch of the armed services; removed for cause from any public office; convicted of any fraud, larceny, embezzlement, or felony, unless any such disqualification is waived by the State committee or the Deputy Administrator;
- (5) Not have been removed as a county committee member, alternate to any county office, or as an employee for: Failure to perform the duties of the office; committing, attempting, or conspiring to commit fraud; incompetence; impeding the effectiveness of any program administered in the county; refusal to

carry out or failure to comply with the Department's policy relating to equal opportunity and civil rights, including the equal employment policy, or interfering with others in carrying out such policy; or for violation of official instructions, unless any such disqualification is waived by the State committee or the Deputy Administrator;

(6) Not have been disqualified for future service because of a determination by a State committee that during previous service as a county committee member, alternate to any county office, or as an employee of the county committee, the person has: Failed to perform the duties of such office or employment; committed, attempted, or conspired to commit fraud; impeded the effectiveness of any program administered in the county; in the course of their official duties, refused to carry out or failed to comply with the Department's policy relating to equal opportunity and civil rights, including the equal employment policy, or interfered with others in carrying out such policy; or violated official instructions, unless any such disqualification is waived by the State committee or the Deputy Administrator;

(7) Not be an employee of the U.S. Department of Agriculture during the term of office;

(8) Not be a sales agent or employee of the Risk Management Agency or their affiliates during the term of office;

(9) Not be already serving as a county committee member with 1 or more years remaining in their current term of office; and

(10) Not have served more than 9 consecutive years (three consecutive terms as an elected member) as an elected or appointed county committee member just prior to the current election in which elected office is sought. After a break in service of at least 1 year, a member who has previously served 9 consecutive years may run for re-election or be re-appointed.

#### **§ 7.19 Eligibility requirements of all other personnel.**

(a) The county executive director and other employees of the county committee must not have been: Dishonorably discharged from any branch of the armed services; removed for cause from any public office; or convicted of any fraud, larceny, embezzlement, or any other felony, unless any such disqualification is waived by the State committee or the Deputy Administrator.

(b) The county executive director or any other employee of the county committee must not have been removed as a county committee member,

alternate to any county office, county executive director, or other employee of the county committee for: Failure to perform the duties of the office; committing, attempting, or conspiring to commit fraud; incompetence; impeding the effectiveness of any program administered in the county; refusal to carry out or failure to comply with the Department's policy relating to equal opportunity and civil rights, including equal employment policy, or interfering with others in carrying out such policy; or for violation of official instructions, unless such disqualification is waived by the State committee or the Deputy Administrator.

(c) The county executive director or any other employee of the county committee must not have been disqualified for future employment because of a determination by a State committee that during previous service as a county committee member, alternate to any county office, or as an employee of the county committee, the person has: Failed to perform the duties of such office or employment; committed, attempted, or conspired to commit fraud; impeded the effectiveness of any program administered in the county; refused to carry out or failed to comply with the Department's policy relating to equal opportunity and civil rights, including the equal employment policy, or interfered with others in carrying out such policy; or violated official instructions, unless such disqualification is waived by the State committee or the Deputy Administrator.

#### **§ 7.20 Prohibition on dual office.**

(a) A member of the county committee cannot, during the time they are a committee member, also serve as:

(1) The secretary to the county committee;

(2) A member of the State committee; or

(3) A county executive director or any other county office employee.

(b) [Reserved]

#### **§ 7.21 Terms of office of county committee members.**

(a) The term of office of county committee members and alternates to such office will begin on a date fixed by the Deputy Administrator, which will be after their election or appointment.

(b) Before any county committee member or alternate to the county committee may take office as a county committee member, such person must sign an oath of office to pledge that they will faithfully, fairly, and honestly perform to the best of their ability all of

the duties devolving on them as committee members.

(c) A term of office will continue until a successor is elected and qualified as specified in §§ 7.8 and 7.9 or appointed as specified in § 7.17.

#### **§ 7.22 State committee duties.**

The State committee, subject to the general direction and supervision of the Deputy Administrator, will be generally responsible for carrying out all Farm Programs in the State or any other functions assigned by the Secretary or a designee of the Secretary.

#### **§ 7.23 County committee duties.**

(a) The county committee, subject to the general direction and supervision of the State committee, will be generally responsible for carrying out in the county Farm Programs and any other program or function assigned by the Secretary or a designee of the Secretary.

(b) The county committee will:

(1) Employ the county executive director, subject to standards and qualifications furnished by the State committee, except that incumbent directors must not be removed except as specified in § 7.28. There must be no employment discrimination due to race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status. The county executive director may not be removed for advocating or carrying out the Department's policy on equal opportunity and civil rights, including the equal employment policy. In the event it is claimed that dismissal is for such reasons, the dismissal will not become effective until the State committee and the Deputy Administrator have determined that dismissal was not because of such reasons;

(2) Direct outreach activities to reach and inform socially disadvantaged farmers and ranchers of all programs and county committee election processes;

(3) Follow official instructions to review, approve, and certify forms, reports, and documents requiring such action;

(4) Recommend to the State committee needed changes in boundaries of local administrative areas;

(5) Make available to farmers, ranchers, and the public information concerning the objectives and operations of the programs administered through the county committee;

(6) Make available to agencies of the Federal Government and others information with respect to the county committee activities in accordance with official instructions issued;

(7) Give public notice of the designation and boundaries of each local administrative area within the county prior to the election of county committee members;

(8) Direct the giving of notices in accordance with applicable regulations and official instructions;

(9) Recommend to the State committee desirable changes in or additions to existing programs;

(10) Conduct such hearings and investigations as the State committee may request; and

(11) Perform such other duties as may be prescribed by the State committee.

#### **§ 7.24 Chairperson of the county committee duties.**

The chairperson of the county committee or the person acting as the chairperson will preside at meetings of the county committee, certify such documents as may require the chairperson's certification, and perform such other duties as may be prescribed by the State committee.

#### **§ 7.25 County executive director duties.**

(a) The county executive director will execute the policies established by the county committee and be responsible for the day-to-day operations of the county office.

(b) The county executive director will:

(1) In accordance with standards and qualifications furnished by the State committee, employ the personnel of the county office. There must be no employment discrimination due to race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. An employee may not be removed under this paragraph for advocating or carrying out the Department's policy on equal opportunity and civil rights, including the equal employment policy. In the event it is claimed that the dismissal is for such reason, the dismissal will not become effective until the State committee and the Deputy Administrator have determined that dismissal was not because of such reason;

(2) Receive, dispose of, and account for all funds, negotiable instruments, or property coming into the custody of the county committee.

#### **§ 7.26 Private business activity and conflicts of interest.**

(a) No county committee member, alternate to any such office, or county office employee, may at any time use such office or employment to promote any private business interest.

(b) County committee members, alternates, and any person employed in

the county office will be subject to the official instructions issued with respect to conflicts of interest and proper conduct.

#### **§ 7.27 Political activity.**

Permitted and prohibited political activities, with respect to any State committee member, county committee member, county executive director, or any other county employee, will be determined in accordance with applicable policies specified in FSA handbooks and directives.

#### **§ 7.28 Removal from office or employment for cause.**

(a) Adverse personnel actions involving any county committee member or alternate member, county executive director, or other county office employee will be taken for failing to perform the duties of their office, impeding the effectiveness of any program administered in the county, violating official instructions, or for misconduct.

(b) Any person whom FSA proposes to suspend or remove from office or employment must be given advance written notice of the reason for such action and must be advised of the right to reply to such a proposal and any right of further review and appeal if the person is removed or suspended.

#### **§ 7.29 Delegation of authority to Deputy Administrator.**

(a) Notwithstanding the authority vested by this part to a State committee, a county committee, and the county executive director, the Deputy Administrator has the authority to take adverse personnel actions involving any county committee member or alternate member, county executive director, or other county office employee for failing to perform the duties of their office or for misconduct.

(b) Any person whom FSA proposes to suspend or remove from office or employment must be given advance written notice of the reason for such action and must be advised of the right to reply to such a proposal and any right of further review and appeal if the person is removed or suspended.

#### **§ 7.30 Custody and use of books, records, and documents.**

(a) All books, records, and documents of or used by the county committee in the administration of programs assigned to it, or in the conduct of elections, will be the property of FSA or the United States Department of Agriculture, as applicable, and must be maintained in good order in the county office.

(b) Voted ballots must be placed into and remain in sealed containers, such

containers not being opened until the prescribed date and time for counting. Following the counting of ballots, the ballots must be placed in sealed containers and retained for 1 year unless otherwise determined by the Deputy Administrator.

(c) The books, records, and documents referred to in paragraph (a) of this section must be available for use and examination:

(1) At all times by authorized representatives of the Secretary, the Administrator, or a designee of the Administrator.

(2) By State and county committee members, and authorized employees of the State and county office in the performance of duties assigned to them under this part, subject to instructions issued by the Deputy Administrator;

(3) At any reasonable time to any program participant insofar as such person's interests under the programs administered by the county committee may be affected, subject to instructions issued by the Deputy Administrator; and

(4) To any other person only in accordance with instructions issued by the Deputy Administrator.

#### **§ 7.31 Administrative operations.**

The administrative operations of county committees including, but not limited to, the following, must be conducted, except as otherwise provided in this part, in accordance with official instructions issued: Annual, sick, and other types of employee leave; the calling and conduct of elections; and the maintenance of records of county committee meetings.

#### **§ 7.34 Retention of authority.**

(a) Nothing in this part will preclude the Secretary, the Administrator, or the Deputy Administrator from administering any or all programs, or exercising other functions delegated to the county committee, State committee, or any employee of such committees.

(b) In exercising this authority, the Secretary, the Administrator, or the Deputy Administrator may designate for such period of time as deemed necessary a person or persons of their choice to be in charge with full authority to carry out the programs or other functions without regard to the normal duties of such committees or employees.

Signed on April 25, 2012.

**Thomas J. Vilsack,**  
*Secretary of Agriculture.*

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