

SUBCHAPTER G—ENVIRONMENTAL PROTECTION

PART 799—COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

Subpart A—General FSA Implementing Regulations for NEPA

Sec.

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

Subpart B—FSA and Program Participant Responsibilities

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

Subpart C—Environmental Screening Worksheet

- 799.20 Purpose of the ESW.

Subpart D—Categorical Exclusions

- 799.30 Purpose of categorical exclusion process.
- 799.31 Categorical exclusions to be recorded on an ESW.
- 799.32 Categorical exclusions requiring review with an ESW.
- 799.33 Extraordinary circumstances.
- 799.34 Establishing and revising categorical exclusions.

Subpart E—Environmental Assessments

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

Subpart F—Environmental Impact Statements

- 799.50 Purpose of an *Environmental Impact Statement (EIS)*.
- 799.51 When an EIS is required.
- 799.52 Notice of intent to prepare an EIS.
- 799.53 Contents of an EIS.
- 799.54 Draft EIS.
- 799.55 Final EIS.
- 799.56 Supplemental EIS.
- 799.57 Tiering.
- 799.58 Adoption of an EIS prepared by another entity.
- 799.59 Record of Decision.

AUTHORITY: 42 U.S.C. 4321–4370.

SOURCE: 81 FR 51285, Aug. 3, 2016, unless otherwise noted.

Subpart A—General FSA Implementing Regulations for NEPA

§ 799.1 Purpose.

- (a) This part:
 - (1) Explains major U.S. Department of Agriculture (USDA) Farm Service Agency (FSA) environmental policies.
 - (2) Establishes FSA procedures to implement the:
 - (i) National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 through 4370);
 - (ii) Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500 through 1518); and
 - (iii) USDA NEPA regulations (§§ 1b.1 through 1b.4 of this title).
 - (3) Establishes procedures to ensure that FSA complies with other applicable laws, regulations, and Executive Orders, including, but not limited to, the following:
 - (i) American Indian Religious Freedom Act (42 U.S.C. 1996);
 - (ii) Archaeological and Historic Preservation Act (16 U.S.C. 469 through 469c);
 - (iii) Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa through 470mm);
 - (iv) Clean Air Act (42 U.S.C. 7401 through 7671q);
 - (v) Clean Water Act (33 U.S.C. 1251 through 1387);
 - (vi) Coastal Barrier Resources Act (16 U.S.C. 3501 through 3510);

§ 799.2

(vii) Coastal Zone Management Act of 1972 (CZMA) (16 U.S.C. 1451 through 1466);

(viii) Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 through 9675);

(ix) Endangered Species Act (ESA) (16 U.S.C. 1531 through 1544);

(x) Farmland Protection Policy Act (7 U.S.C. 4201 through 4209);

(xi) Migratory Bird Treaty Act (16 U.S.C. 703 through 712);

(xii) National Historic Preservation Act (NHPA) of 1966, as amended (54 U.S.C. 300101 through 307101),

(xiii) Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 through 3013);

(xiv) Resource Conservation and Recovery Act (42 U.S.C. 6901 through 6992k);

(xv) Safe Drinking Water Act (42 U.S.C. 300h through 300h.8);

(xvi) Wild and Scenic Rivers Act (16 U.S.C. 1271 through 1287);

(xvii) Wilderness Act (16 U.S.C. 1131 through 1136);

(xviii) Advisory Council on Historic Preservation regulations in 36 CFR part 800 "Protection of Historic Properties;"

(xix) USDA, Office of Environmental Quality regulations in part 3100 of this title, "Cultural and Environmental Quality" (see part 190, subpart F, of this title, "Procedures for the Protection of Historic and Archaeological Properties," for more specific implementation procedures);

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

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

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

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

(xxiv) USDA, Departmental Regulation 9500-3, "Land Use Policy;"

(xxv) USDA, Departmental Regulation 9500-4, "Fish and Wildlife Policy;"

7 CFR Ch. VII (1-1-24 Edition)

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

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

(xxviii) Executive Order 11988, "Floodplain Management;"

(xxix) Executive Order 11990, "Protection of Wetlands;"

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

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

(xxxii) Executive Order 13007, "Indian Sacred Sites;"

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

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

(xxxv) Executive Order 13287, "Preserve America;" and

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

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

§ 799.2 FSA environmental policy.

(a) FSA will:

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

(2) Ensure protection of basic resources, including important farmlands and forestlands, prime rangelands, wetlands, floodplains, and other protected resources. Consistent with Departmental Regulations and related Executive Orders, it is FSA policy not to approve or fund proposed actions that, as a result of their identifiable impacts, direct, indirect, or cumulative, would lead to or accommodate either the conversion of these land uses or encroachment upon them.

Farm Service Agency, USDA

§ 799.4

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

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

(ii) Concurrently and in a coordinated manner,

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

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

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

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

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

(b) A proposed action that consists of more than one categorically excluded proposed action may be categorically excluded only if all components of the proposed action are included within one or more categorical exclusions and trigger no extraordinary circumstances. The component of a proposed action that requires the highest level of NEPA review will be used to determine the required level of the NEPA review.

§ 799.3 Applicability.

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

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

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

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

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

§ 799.4 Abbreviations and definitions.

(a) The following abbreviations apply to this part:

CAAP Concentrated Aquatic Animal Production Facilities.

CAFO Concentrated Animal Feeding Operation.

CCC Commodity Credit Corporation.

CEQ Council on Environmental Quality.

EA Environmental Assessment.

EIS Environmental Impact Statement.

ESA Endangered Species Act.

ESW Environmental Screening Worksheet.

FONSI Finding of No Significant Impact.

FPO Federal Preservation Officer.

FSA Farm Service Agency.

MOA Memorandum of Agreement.

MOU Memorandum of Understanding.

NECM National Environmental Compliance Manager.

NEPA National Environmental Policy Act.

NHPA National Historic Preservation Act.

NOA Notice of Availability.

NOI Notice of Intent.

PEA Programmatic Environmental Assessment.

PEIS Programmatic Environmental Impact Statement.

RAO Responsible Approving Official.

RFO Responsible Federal Officer

ROD Record of Decision.

SEC State Environmental Coordinator.

SED State Executive Director for FSA.

SEIS Supplemental Environmental Impact Statement.

SHPO State Historic Preservation Officer.

THPO Tribal Historic Preservation Officer.

USDA United States Department of Agriculture.

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

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

Application means the formal process of requesting FSA assistance.

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

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

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

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

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

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

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

Plow zone means the depth of previous tillage or disturbance.

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

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

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

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

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

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

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

Subpart B—FSA and Program Participant Responsibilities

§ 799.5 National office environmental responsibilities.

(a) The FSA Administrator or designee:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 799.6 FSA State office environmental responsibilities.

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

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

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

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

(c) SECs or designees are responsible for:

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

(2) Advising SEDs on environmental issues;

(3) Providing training, in coordination with the NECM, on NEPA and other environmental compliance requirements to appropriate FSA State and county office personnel;

(4) Providing assistance on environmental-related matters on a proposed

§ 799.7

7 CFR Ch. VII (1–1–24 Edition)

action-by-action basis to State and county office personnel, as needed;

(5) When feasible, developing controls for avoiding or mitigating adverse environmental impacts and monitoring the implementation of those controls;

(6) Reviewing FSA proposed actions that are not categorically excluded from documentation in an environmental assessment or environmental impact statement, or that otherwise require State office approval or clearance, and making appropriate recommendations to the approving official;

(7) Providing assistance to resolve post-approval environmental issues at the State office level;

(8) Maintaining decision records for State office environmental compliance matters;

(9) Monitoring their respective State's compliance with environmental laws, regulations, and Executive Orders;

(10) Acting as a liaison on FSA State office environmental compliance matters with the public and other Federal, State, and Tribal governments;

(11) Representing the SED on environmental issues, as requested;

(12) Delegating duties under this section with the approval of both the SED and NECM; and

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

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

§ 799.7 FSA program participant responsibilities.

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

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

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

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

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

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

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

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

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

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

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

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

(1) Design specifications;

(2) Topographical, aerial, and location maps;

(3) Surveys and assessments necessary for determining the impact on

Farm Service Agency, USDA

§ 799.11

protected resources listed in § 799.33(a)(2);

(4) Nutrient management plans; and

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

§ 799.8 Significant environmental effect.

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

(b) [Reserved]

§ 799.9 Environmental review documents.

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

(1) ESW;

(2) Programmatic Environmental Assessment (PEA);

(3) Environmental Assessment (EA);

(4) Supplemental Environmental Assessment;

(4) Programmatic Environmental Impact Statement (PEIS);

(5) Environmental Impact Statement (EIS);

(6) Supplemental Environmental Impact Statement (SEIS);

(7) Finding of No Significant Impact (FONSI);

(8) Record of Decision (ROD);

(9) Notice of Intent (NOI) to prepare any type of EIS;

(10) Notice of Availability (NOA) of environmental documents;

(11) Notice of public scoping meetings;

(12) Other notices, including those required under Executive Order 11988, "Floodplain Management," Executive Order 13690, "Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input," and Executive Order 11990, "Protection of Wetlands;"

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

(14) Environmental studies, as indicated and appropriate.

(b) [Reserved]

§ 799.10 Administrative records.

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

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

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

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

(4) Internal memorandums or informational papers;

(5) Contracts or agreements;

(6) Notes of professional telephone conversations and meetings;

(7) Meeting minutes;

(8) Correspondence with agencies and stakeholders;

(9) Communications to and from the public;

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

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

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

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

§ 799.11 Actions during NEPA reviews.

(a) Except as specified in paragraphs (b) and (c) of this section, FSA or a program participant must not take any action, implement any component of a proposed action, or make any final decision during FSA's NEPA and environmental compliance review process that could have an adverse environmental

§ 799.12

7 CFR Ch. VII (1–1–24 Edition)

impact or limit the range of alternatives until FSA completes its environmental review by doing one of the following:

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

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

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

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

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

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

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

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

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

§ 799.12 Emergency circumstances.

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

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

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

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

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

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

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

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

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

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

(7) Warning of further risks and hazards.

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

§ 799.13 FSA as lead agency.

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

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

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

(b) If FSA acts as a lead agency for a proposed action that affects more than

Farm Service Agency, USDA

§ 799.16

one State, the NECM will designate one SEC to act as RAO.

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

§ 799.14 FSA as cooperating agency.

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

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

§ 799.15 Public involvement in environmental review.

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

(1) The scale of the proposed action and its probable effects;

(2) The likely level of public interest and controversy; and

(3) Advice received from knowledgeable parties and experts.

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

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

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

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

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

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

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

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

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

§ 799.16 Scoping.

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

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

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

(2) Identify the significant issues to be analyzed;

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

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

(5) Identify any related EAs or EISs;

§ 799.17

7 CFR Ch. VII (1–1–24 Edition)

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

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

(8) Determine points of contact within FSA; and

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

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

§ 799.17 Public meetings.

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

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

(2) Gather information about the public concerns; and

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

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

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

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

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

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

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

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

§ 799.18 Overview of FSA NEPA process.

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

Subpart C—Environmental Screening Worksheet

§ 799.20 Purpose of the ESW.

(a) FSA uses the ESW as an initial screening tool to evaluate record the use of a categorical exclusion for a pro-

posed action and to determine the required type of environmental review.

(b) Review with the ESW is not required for proposed actions that are categorically excluded as specified in § 799.31(b) or § 1b.3 of this title, or for

proposed actions where FSA determines at an early stage that there is a need to prepare an EA or EIS.

Subpart D—Categorical Exclusions

§ 799.30 Purpose of categorical exclusion process.

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

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

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

§ 799.31 Categorical exclusions to be recorded on an ESW.

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

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

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

- (i) Closing cost payments;
- (ii) Commodity loans;
- (iii) Debt set asides;
- (iv) Deferral of loan payments;
- (v) Youth loans;
- (vi) Loan consolidation;
- (vii) Loans for annual operating expenses, except livestock;
- (viii) Loans for equipment;
- (ix) Loans for family living expenses;
- (x) Loan subordination, with no or minimal construction below the depth of previous tillage or ground disturbance, and no change in operations, including, but not limited to, an increase in animal numbers to exceed the current CAFO designation (as defined by the U.S. Environmental Protection Agency in 40 CFR 122.23);
- (xi) Loans to pay for labor costs;
- (xii) Loan (debt) transfers and assumptions with no new ground disturbance;
- (xiii) Partial or complete release of loan collateral;
- (xiv) Re-amortization of loans;
- (xv) Refinancing of debt;
- (xvi) Rescheduling loans;
- (xvii) Restructuring of loans; and
- (xviii) Writing down of debt;

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

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

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

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

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

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

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

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

(i) Bareland planting or planting without site preparation;

(ii) Bedding site establishment for wildlife;

(iii) Chiseling and subsoiling;

(iv) Clean tilling firebreaks;

(v) Conservation crop rotation;

(vi) Contour farming;

(vii) Contour grass strip establishment;

(viii) Cover crop and green manure crop planting;

(ix) Critical area planting;

(x) Firebreak installation;

(xi) Grass, forbs, or legume planting;

(xii) Heavy use area protection;

(xiii) Installation and maintenance of field borders or field strips;

(xiv) Pasture, range, and hayland planting;

(xv) Seeding of shrubs;

(xvi) Seedling shrub planting;

(xvii) Site preparation;

(xviii) Strip cropping;

(xix) Wildlife food plot planting; and

(xx) Windbreak and shelterbelt establishment;

(5) *Management actions.* The following list includes categorical exclusions of land and resource management proposed actions:

(i) Forage harvest management;

(ii) Integrated crop management;

(iii) Mulching, including plastic mulch;

(iv) Netting for hard woods;

(v) Obstruction removal;

(vi) Pest management (consistent with all labelling and use requirements);

(vii) Plant grafting;

(viii) Plugging artesian wells;

(ix) Residue management including seasonal management;

(x) Roof runoff management;

(xi) Thinning and pruning of plants;

(xii) Toxic salt reduction; and

(xiii) Water spreading; and

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

(i) Conservation easement purchases with no construction planned;

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

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

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

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

(vi) Safety net programs administered by FSA;

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

(viii) Stand analysis for forest management planning;

(ix) Tree protection including plastic tubes; and

(x) Proposed actions involving another agency that are fully covered by one or more of that agency's categorical exclusions (on the ESW, to record the categorical exclusion, FSA will name the other agency and list the specific categorical exclusion(s) that applies).

§ 799.32 Categorical exclusions requiring review with an ESW.

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

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

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

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

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

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

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

- (i) Minor construction, such as a small addition;
- (ii) Drain tile replacement;
- (iii) Erosion control measures;
- (iv) Grading, leveling, shaping, and filling;
- (v) Grassed waterway establishment;
- (vi) Hillside ditches;
- (vii) Land-clearing operations of no more than 15 acres, provided any

amount of land involved in tree harvesting (without stump removal) is to be conducted on a sustainable basis and according to a Federal, State, Tribal, or other governmental unit approved forestry management plan;

- (viii) Nutrient management;
- (ix) Permanent establishment of a water source for wildlife (not livestock);
- (x) Restoring and replacing property;
- (xi) Soil and water development;
- (xii) Spring development;
- (xiii) Trough or tank installation; and
- (xiv) Water harvesting catchment; and

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

- (i) Fence installation and replacement;
- (ii) Fish stream improvement;
- (iii) Grazing land mechanical treatment; and
- (iv) Inventory property disposal or lease without protective easements or covenants (this proposed action, in particular, has the potential to cause effects to historic properties and therefore requires analysis under section 106 of NHPA (54 U.S.C. 306108), as well as under the ESA and wetland protection requirements).

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

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

§ 799.33

7 CFR Ch. VII (1–1–24 Edition)

- (i) Loans and loan subordination with construction, demolition, or ground disturbance planned;
 - (ii) Real estate purchase loans with new ground disturbance planned; and
 - (iii) Term operating loans with construction or demolition planned;
- (2) *Construction or ground disturbance actions.* The following list includes categorical exclusions for construction or ground disturbance proposed actions:
- (i) Bridges;
 - (ii) Chiseling and subsoiling in areas not previously tilled;
 - (iii) Construction of a new farm storage facility;
 - (iv) Dams;
 - (v) Dikes and levees;
 - (vi) Diversions;
 - (vii) Drop spillways;
 - (viii) Dugouts;
 - (ix) Excavation;
 - (x) Grade stabilization structures;
 - (xi) Grading, leveling, shaping and filling in areas or to depths not previously disturbed;
 - (xii) Installation of structures designed to regulate water flow such as pipes, flashboard risers, gates, chutes, and outlets;
 - (xiii) Irrigation systems;
 - (xiv) Land smoothing;
 - (xv) Line waterways or outlets;
 - (xvi) Lining;
 - (xvii) Livestock crossing facilities;
 - (xviii) Pesticide containment facility;
 - (xix) Pipe drop;
 - (xx) Pipeline for watering facility;
 - (xxi) Ponds, including sealing and lining;
 - (xxii) Precision land farming with ground disturbance;
 - (xxiii) Riparian buffer establishment;
 - (xxiv) Roads, including access roads;
 - (xxv) Rock barriers;
 - (xxvi) Rock filled infiltration trenches;
 - (xxvii) Sediment basin;
 - (xxviii) Sediment structures;
 - (xxix) Site preparation for planting or seeding in areas not previously tilled;
 - (xxx) Soil and water conservation structures;
 - (xxxi) Stream bank and shoreline protection;
 - (xxxii) Structures for water control;
 - (xxxiii) Subsurface drains;

- (xxxiv) Surface roughening;
 - (xxxv) Terracing;
 - (xxxvi) Underground outlets;
 - (xxxvii) Watering tank or trough installation, if in areas not previously disturbed;
 - (xxxviii) Wells; and
 - (xxxix) Wetland restoration.
- (3) *Management and planting type actions.* The following list includes categorical exclusions for resource management and planting proposed actions:
- (i) Establishing or maintaining wild-life plots in areas not previously tilled or disturbed;
 - (ii) Prescribed burning;
 - (iii) Tree planting when trees have root balls of one gallon container size or larger; and
 - (iv) Wildlife upland habitat management.

§ 799.33 Extraordinary circumstances.

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

- (1) Scientific controversy about environmental effects of the proposed action;
- (2) Impacts that are potentially adverse, significant, uncertain, or involve unique or unknown risks, including, but not limited to, impacts to protected resources. Protected resources include, but are not limited to:
 - (i) Property (for example, sites, buildings, structures, and objects) of historic, archeological, or architectural significance, as designated by Federal, Tribal, State, or local governments, or property eligible for listing on the National Register of Historic Places;
 - (ii) Federally-listed threatened or endangered species or their habitat (including critical habitat), or Federally-proposed or candidate species or their habitat;

Farm Service Agency, USDA

§ 799.34

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

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

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

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

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

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

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

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

(b) FSA will use the ESW to review proposed actions that are eligible for categorical exclusion to determine if extraordinary circumstances exist that could impact protected resources. If an extraordinary circumstance exists, and cannot be avoided or appropriately mitigated, an EA or EIS will be prepared, as specified in this part. Specifically, FSA will complete a review with the ESW for proposed actions that fall within the list of categorical exclusions specified in § 799.32 to determine whether extraordinary circumstances are present.

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

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

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

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

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

§ 799.34 Establishing and revising categorical exclusions.

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

(1) Completed FSA NEPA documents;

(2) Other Federal agency NEPA documents on proposed actions that could be considered similar to the categorical exclusion being considered;

(3) Results of impact demonstration or pilot projects;

(4) Information from professional staff, expert opinions, and scientific analyses; and

(5) The experiences of FSA, private, and public parties that have taken similar actions.

(b) FSA will consult with CEQ and appropriate Federal agencies while developing or modifying a categorical exclusion.

(c) Before establishing a new final categorical exclusion, FSA will follow the CEQ specified process for establishing Categorical Exclusions, including consultation with CEQ and an opportunity for public review and comment as required by 40 CFR 1507.3.

(d) FSA will maintain an administrative record that includes the supporting information and findings used in establishing a categorical exclusion.

(e) FSA will periodically review its categorical exclusions to identify and revise exclusions that no longer effectively reflect environmental circumstances or current FSA program scope.

(f) FSA will use the same process specified in this section and the results of its periodic reviews to revise a categorical exclusion or remove a categorical exclusion.

Subpart E—Environmental Assessments

§ 799.40 Purpose of an EA.

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

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

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

§ 799.41 When an EA is required.

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

- (1) New Conservation Reserve Enhancement Program (CREP) agreements;
- (2) Development of farm ponds or lakes greater than or equal to 20 acres;
- (3) Restoration of wetlands greater than or equal to 100 acres aggregate;
- (4) Installation or enlargement of irrigation facilities, including storage reservoirs, diversions, dams, wells, pumping plants, canals, pipelines, and sprinklers designed to irrigate greater than 320 acres aggregate;

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

(6) Clear cutting operations for timber involving greater than or equal to 100 acres aggregate;

(7) Construction or major enlargement of a Concentrated Aquatic Animal Production Facility (CAAP), as defined by the U.S. Environmental Protection Agency in 40 CFR 122.24;

(8) Construction of commercial facilities or structures for processing or handling of farm production or for public sales;

(9) Construction or major expansion of a large CAFO, as defined by the U.S. Environmental Protection Agency in 40 CFR 122.23, regardless of the type of manure handling system or water system;

(10) Refinancing of a newly constructed large CAFO, as defined by the U.S. Environmental Protection Agency in 40 CFR 122.23, or CAAPs as defined by the U.S. Environmental Protection Agency in 40 CFR 122.24 through 122.25, that has been in operation for 24 months or less;

(11) Issuance of substantively discretionary FSA regulations, FEDERAL REGISTER notices, or amendments to existing programs that authorize FSA or CCC funding for proposed actions that have the potential to significantly affect the human environment;

(12) Newly authorized programs that involve substantively discretionary proposed actions and are specified in § 799.32(d);

(13) Any FSA proposed action that has been determined to trigger extraordinary circumstances specified in § 799.33(c); and

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

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

Farm Service Agency, USDA

§ 799.45

§ 799.42 Contents of an EA.

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

- (1) FSA cover sheet;
- (2) Executive summary;
- (3) Table of contents;
- (4) List of acronyms;
- (5) A discussion of the purpose of and need for the proposed action;
- (6) A discussion of alternatives, if the proposed action involves unresolved conflicts concerning the uses of available resources;
- (7) A discussion of the existing pre-project environment and the potential environmental impacts of the proposed action, with reference to the significance of the impact as specified in § 799.8 and 40 CFR 1508.27;
- (8) Likelihood of any significant impact and potential mitigation measures that FSA will require, if needed, to support a FONSI;
- (9) A list of preparers and contributors;
- (10) A list of agencies, tribes, groups, and persons solicited for feedback and the process used to solicit that feedback;
- (11) References; and
- (12) Appendixes, if appropriate.

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

- (1) Substantial changes occur in the proposed action that are relevant to environmental concerns previously presented, or
- (2) Significant new circumstances or information arise that are relevant to environmental concerns and to the proposed action or its impacts.

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

- (1) Independently evaluates the environmental issues;
- (2) Takes responsibility for the scope and content of the EA and the process utilized, including any required public involvement; and
- (3) Prepares the FONSI or NOI to prepare an EIS.

§ 799.43 Tiering.

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

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

- (1) Summarize the issues discussed in the broader statement;
- (2) Incorporate by reference the discussions from the broader statement and the conclusions carried forward into the subsequent tiered analysis and documentation; and
- (3) State where the PEA document is available.

§ 799.44 Adoption of an EA prepared by another entity.

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

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

§ 799.45 Finding of No Significant Impact (FONSI).

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

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

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

Subpart E—Environmental Impact Statements

EDITORIAL NOTE: At 81 FR 51295, Aug. 3, 2016, subpart F was revised; however, the subpart F heading was published erroneously as a second subpart E.

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

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

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

§ 799.51 When an EIS is required.

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

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

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

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

(b) [Reserved]

§ 799.52 Notice of intent to prepare an EIS.

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

(b) The notice will include the following:

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

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

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

§ 799.53 Contents of an EIS.

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

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

(1) An FSA cover sheet;

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

(3) A table of contents;

(4) List of acronyms and abbreviations;

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

(6) A detailed discussion of the environmental impacts of the proposed action and reasonable alternatives to the proposed action, a description and brief analysis of the alternatives considered but eliminated from further consideration, the no-action alternative, FSA's preferred alternative(s), and discussion of appropriate mitigation measures;

(7) A discussion of the affected environment;

(8) A detailed discussion of:

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

(ii) Unavoidable adverse environmental effects;

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

(iv) Any irreversible and irretrievable commitments of resources;

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

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

(viii) Urban quality, historic, and cultural resources and the design of the

Farm Service Agency, USDA

§ 799.57

built environment, including the reuse and conservation potential of the alternatives and mitigation measures;

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

(10) A list of preparers;

(11) Persons and agencies contacted;

(12) References, if appropriate;

(13) Glossary, if appropriate;

(14) Index;

(15) Appendixes, if any;

(16) A list of agencies, organizations, and persons to whom copies of the EIS are sent; and

(17) In the final EIS, a response to substantive comments on environmental issues.

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

(1) Require the contractor to sign a disclosure statement specifying it has no financial or other interest in the outcome of the proposed action, which will be included in the administrative record; and

(2) Furnish guidance and participate in the preparation of the EIS, and independently evaluate the EIS before its approval.

§ 799.54 Draft EIS.

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

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

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

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

(2) Tribal governments that have interests that could be impacted; and

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

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

www.epa.gov/compliance/nepa/submiteis/index.html).

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

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

§ 799.55 Final EIS.

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

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

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

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

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

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

§ 799.56 Supplemental EIS.

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

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

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

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

§ 799.57 Tiering.

(a) As specified in 40 CFR 1508.28, tiering is a process of covering general environmental review in a broad PEIS, followed by subsequent narrower scope analysis to address specific proposed actions, action stages, or sites. FSA

§ 799.58

will use tiering when FSA prepares a broad PEIS and subsequently prepares a site-specific ESW, EA, or PEA for a proposed action included within the program addressed in the original, broad PEIS.

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

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

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

(3) State where the PEIS document is available.

§ 799.58 Adoption of an EIS prepared by another entity.

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

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

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

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

(c) For the adoption of an EIS from a state or tribe that has an established state or tribal procedural equivalent to the NEPA process (generally referred

7 CFR Ch. VII (1-1-24 Edition)

to as “mini-NEPA”), FSA will follow the procedures specified in the CEQ regulations in 40 CFR 1506.3.

§ 799.59 Record of Decision.

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

(1) State the decision reached;

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

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

(4) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted and, if not, explain why these mitigation measures were not adopted. A monitoring and enforcement program will be adopted and summarized where applicable for any mitigation.

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

(c) FSA will publish the ROD or a notice of availability of the ROD in the FEDERAL REGISTER.