

For: State and County Offices

FSA Environmental Compliance for USDA Leases

Approved by: Deputy Administrator, Farm Programs



1 Overview

A Background

In 2006, the annual appropriations language was amended to eliminate the FSA independent leasing authority. Since that time, FSA has been making strides in establishing an FSA-specific process for handling its leases.

Part of this process involves requesting delegated authority from GSA to approve USDA leases. When granted according to Federal Management Regulation (FMR) Bulletin C-2, Delegations of Lease Acquisition Authority, FSA has to complete the environmental compliance portion of the process according to GSA’s NEPA Desk Guide and other relevant national laws and policies at

<https://sharepoint.fsa.usda.net/states/cepd/FSAEC/sitepages/home.aspx>.

In cases where FSA or other Service Center Agencies (SCA’s) have been granted delegated authority to procure space for USDA, the State Environmental Coordinators (SEC’s) are now **required** to complete the appropriate level of environmental review. All leases will now be referred to as “USDA leases”.

To comply with GSA requirements for lease approvals, FSA needs to follow the process as detailed in the following GSA documentation that is available at

<https://sharepoint.fsa.usda.net/states/cepd/FSAEC/sitepages/home.aspx>:

- NEPA Desk Guide, October 1999
- AutoCATEX Form, “Automatic Categorical Exclusion NEPA Memo to File” (Exhibit 1)
- Categorical Exclusion Checklist for FSA Actions (Exhibit 2).

Disposal Date	Distribution
June 1, 2015 11-21-14	State Offices; State Offices relay to County Offices

Notice EQ-140

1 Overview (Continued)

B Purpose

This notice provides:

- clarification and further explanation of the process for approval of leases for existing and new construction and/or infrastructure
- guidance to State Offices, USDA Real Property Leasing Officers (RPLO's), and staff on the steps required to complete the environmental review for USDA leases
- Exhibits 1 and 2 are for documenting the environmental review for USDA leases.

2 FSA's Environmental Compliance Review Requirements

A Overview

USDA's leasing portfolio contains a large number of holdover and expiring leases that require processing. The process outlined in this paragraph provides SEC's with the environmental compliance guidance and process needed to fully evaluate leasing decisions for both existing and new construction.

For ease of SEC usage, FSA has opted to use only the following 2 GSA forms that are available at <https://sharepoint.fsa.usda.net/states/cepd/FSAEC/sitepages/home.aspx>:

- AutoCATEX Form
- Categorical Exclusion Checklist for FSA Actions.

SEC's shall **not** use other forms.

B Required Process for Existing Construction

For new or amended leases in existing construction and/or infrastructure, where **no** changes to the infrastructure and **no** other new impacts will be observed, SEC's will complete the AutoCATEX Form (Exhibit 1) **or** proceed to subparagraph C, as follows:

- SEC's should receive the AutoCATEX Form from RPLO or other leasing staff with the site-specific information already completed
- **no** consultations or additional environmental reviews will be necessary
- SEC's should either select the appropriate "Types of Action" categorical exclusions or review the preselected categorical exclusions, then sign and date the "Environmental Protection" block.

Notice EQ-140

2 FSA’s Environmental Compliance Review Requirements (Continued)

C Required Process for New Construction

The following table provides the steps in the environmental review that are necessary to complete the GSA Categorical Exclusion Checklist for FSA Actions (Exhibit 2) for USDA leases for new construction and/or infrastructure.

According to GSA’s NEPA Desk Guide, SEC’s will use the GSA Categorical Exclusion Checklist for FSA Actions to document their environmental review findings. Under FSA’s NEPA rules, these actions **require** environmental assessments, but because of the delegation of authority, FSA is authorized to use GSA’s regulations, authorities, and standards of environmental review for the USDA leasing process.

IF the resource to be reviewed is...	THEN the review process is...
wetlands	because requests for wetland determinations for USDA leases will be infrequent, that SED’s shall work with NRCS State conservationists to provide wetland determinations for USDA leases, particularly when co-located with NRCS. If this cannot be negotiated, SEC’s will use FSA’s Wetland Screening Tool at https://sharepoint.fsa.usda.net/states/cepd/FSAEC/sitepages/home.aspx to identify any potential wetland impacts. If potential wetlands are identified, the building owner and/or developer will need to work with NRCS, U.S. Army Corps of Engineers, technical service provider (TSP), and/or other wetland expert, to have the wetland delineated to ensure that there are no impacts or the building site is moved away from the wetlands. SEC’s shall check the “Need Data” block. <u>1/</u> USDA RPLO’s must followup to ensure that the wetland determinations have been acquired and that no wetlands will be adversely impacted by the project.
floodplains	that SEC’s will review existing floodplain maps. If the site is located within a floodplain, the building owner and/or developer will need to work with the U.S. Army Corps of Engineers (and possibly others, specific to the State) and be required to have flood insurance. SEC’s will check the “Need Data” block. <u>1/</u> USDA RPLO’s must followup to ensure that the floodplain determinations and all appropriate clearances have been acquired.
Endangered Species Act (ESA), FWS	that SEC’s will consult the FWS Information, Planning, and Consultation web site at http://www.fws.gov/ipac/ to determine if any Federally listed species may be impacted. If SEC’s identify any Federally listed species impacts, and cannot make a “no effect” determination according to ESA, Section 7, they will engage FWS in informal consultation for concurrence with their “may affect, not likely to adversely affect” determination. If SEC’s reach a “may affect, likely to adversely affect” determination, they will have to engage in formal consultation with FWS. If changes to the project cannot be made to reduce the level of impact to “ not likely to adversely affect”, SEC will not approve the project.

Notice EQ-140

2 FSA’s Environmental Compliance Review Requirements (Continued)

C Required Process for New Construction (Continued)

IF the resource to be reviewed is...	THEN the Review Process is...
ESA. National Marine Fisheries Service (NMFS)	where needed, SEC’s will consult with NMFS to determine if any Federally listed species may be impacted under their jurisdiction. If SEC’s identify any Federally listed species impacts, and cannot make a “no effect” determination according to ESA, Section 7, they will engage NMFS in informal consultation for concurrence with their “may affect, not likely to adversely affect” determination. If SEC’s reach a “may affect, likely to adversely affect” determination, they will have to engage in formal consultation with NMFS. If changes to the project cannot be made to reduce the level of impact to “ not likely to adversely affect”, SEC will not approve the project.
National Historic Preservation Act (NHPA)	where available, SEC’s will consult the State Historic Preservation Offices (SHPO’s) State database and/or records to determine if any historic properties are located in or near the area and may be potentially impacted. In areas where SHPO data and/or records are not available to SEC, SEC’s will consult with SHPO to determine the presence of historic properties and potential impacts. If any historic properties and impacts are identified, SEC will consult with SHPO to determine the appropriate course of action. If SHPO requires surveys or other work is required before their approval, SEC’s will check the “Need Data” block. <u>1/</u> It will be up to USDA RPLO’s and the building owner and/or developer to have the required work performed to the standards of NHPA, Section 106 regulations, 36 CFR Part 800, and FSA policy. Following receipt of the SHPO’s concurrence of FSA’s determination, SEC can proceed.
cultural significance	that SEC’s will consult with the appropriate Tribal Historic Preservation Offices (THPO’s) and Tribes to determine if any sites of cultural or religious significance are in or near the area and potentially impacted (http://www.nathpo.org/main.html and http://egis.hud.gov/tadat/Tribal.aspx may be helpful). If there are any sites of cultural or religious significance in or near the area and potentially impacted, SEC’s will have to work with the applicable Tribes to determine the appropriate course of action.
other	that SEC’s will ascertain if other compliance concerns warrant further consideration, such as sole source aquifer consultations with EPA, Wild and Scenic River consultations with the appropriate Federal agency, consultation with NRCS about loss of “important farmlands”, etc. (review list of Protected Resources at 1-EQ, Part 4). To the extent SEC’s can make determinations, they will do so. If additional work, research, surveys, etc. are required, SEC’s will check the “Need Data” block. <u>1/</u>

Notice EQ-140

2 FSA’s Environmental Compliance Review Requirements (Continued)

C Required Process for New Construction (Continued)

IF the resource to be reviewed is...	THEN the Review Process is...	
conclusion	select 1 of the 4 options.	
	IF SEC...	THEN...
	has identified areas that “Need Data”	the 2 nd option should be selected specifying the action “...requires further review...”
	cannot comfortably select 1 of the first 2 categorical exclusions options	SEC’s should recommend that either an environmental assessment or environmental impact statement be prepared.
signature	<p>If “Need Data” block is checked (✓), then SEC’s signature means that they have identified environmental compliance concerns that require more review by USDA RPLO’s, and it is the responsibility for USDA RPLO’s to address.</p> <p>After the environmental review has been completed according to the steps in this subparagraph and in consideration of the appropriate resources, SEC’s sign and date the checklist.</p>	
attachments/ references	Include as appropriate.	

1/ Anytime SEC’s have checked the “Need Data” block, it is up to the building owner and/or developer and RPLO to acquire the data. SEC’s may not be able to finalize their decision until **after** the data have been received. Where the “Need Data” block has been checked, SEC’s have **no** responsibility to gather the data or make determinations. In this case, SEC’s signature means they have identified environmental compliance concerns that **require** more review by RPLO and it is the responsibility for RPLO to address.

After signing, the FSA SEC’s Federal responsibilities for the environmental compliance for the lease are met. All other permits, approvals, and permissions, including for stormwater, water quality, etc., are the responsibility of the building owner and/or developer.

D Required Process for Remodeling Within Existing Construction

Remodeling an existing building will need NHPA Section 106 consultation with SHPO, THPO, and/or Tribe if the building is either of the following:

- part of historic district
- older than 50 years.

Notice EQ-140

2 FSA's Environmental Compliance Review Requirements (Continued)

D Required Process for Remodeling Within Existing Construction (Continued)

Consultation is **required** as follows, the same as new construction:

- if private lands that are non-ancestral, consult with SHPO
- if private lands that are ancestral, consult with either of the following:
 - SHPO **and** THPO
 - SHPO **and** tribal government, if **no** THPO
- if tribal lands, consult with either of the following:
 - THPO
 - SHPO and Tribal government, if **no** THPO.

Complete Exhibit 2 for USDA leases for new construction and/or infrastructure, specifying that, "this proposal is for remodeling an existing building **only**", and input "NA" for non-impacted resources under Item A. Cultural resources should be the **only** protected resource potentially impacted by typical remodeling, so the only consultation needed. Potential impacts to **all** protected resources should be evaluated before approval. Refer to the HUD web site at <http://egis.hud.gov/tdat/Tribal.aspx> for identifying ancestral lands.

3 Action

A State Office Action

State Offices shall ensure that their SEC's have resources available to complete these requirements.

SEC's shall ensure that all USDA leases are handled according to this notice. For assistance, SEC's shall contact their RPLO.

B County Office Action

County Offices shall ensure that all requests for assistance with USDA leases be referred to their SEC. GSA has delegated the authority for the environmental reviews solely to FSA's SEC's.

Notice EQ-140

3 Action (Continued)

C USDA RPLO Action

USDA RPLO staff shall do **all** of the following:

- provide SEC's with adequate detail for the environmental review
- provide SEC's with 1 of the 2 FSA-authorized GSA forms
- appropriately handle responses to SEC's where additional information is required

Note: This includes basic location information, such as is provided on Exhibit 1, and maps, plans, and designs that are available.

- acquire the information and complete the processes needed to conclude the environmental review steps checked (✓) by SEC as "Need Data".

For RPLO contact information, go to the FSA Environmental Compliance SharePoint site at <https://sharepoint.fsa.usda.net/states/cepd/FSAEC/SitePages/Home.aspx>.

D Contacts

For questions about this notice, or the required environmental review process for USDA leases, contact Nell Fuller, FSA National Environmental Compliance Manager, by either of the following:

- e-mail to nell.fuller@wdc.usda.gov
- telephone at 202-720-6303.

Example of GSA’s AutoCATEX Form, “Automatic Categorical Exclusion NEPA Memo to File”

GSA Public Buildings Service	Automatic Categorical Exclusion <i>NEPA Memo to File</i>	AutoCATEX Form Last Revised 1/18/12
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Section I – Project Information

From	Lease No.
Title	Project No.
Date	Agency

Section II – Site Information

Building Name	Building #	Size (sq ft)	Floodplain
Street Address		# Personnel	Critical Action Letter *
City		# Parking Spaces	Floodplain Justification
State	Zip Code	Type of Space (office, lab, etc.)	RHPO Notification

* Critical Action Letter required within the 500-yr floodplain. "Critical Action" is any activity for which even a slight chance of flooding would be too great a risk.

Section III – Action Description

(e.g., new lease for 5 years with an option for a 5-year succeeding lease, and relate to the category selected below)

<input type="checkbox"/> Supplemental Documentation Attached? <i>(e.g., site map, floodplain map, additional project details)</i>	Description:
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Section IV – Types of Action

Based on the definitions provided in Section VI, this action qualifies for an automatic categorical exclusion (CATEX) as selected below. As such, it is excluded from the requirements to prepare an EA or an EIS, pursuant to paragraph 5.3 of the PBS NEPA Desk Guide (October 1999).

Please select the categories that best apply to the action described in Section III.

<input type="checkbox"/> a	<input type="checkbox"/> e	<input type="checkbox"/> i	<input type="checkbox"/> m	<input type="checkbox"/> q	<input type="checkbox"/> u
<input type="checkbox"/> b	<input type="checkbox"/> f	<input type="checkbox"/> j	<input type="checkbox"/> n	<input type="checkbox"/> r	<input type="checkbox"/> v
<input type="checkbox"/> c	<input type="checkbox"/> g	<input type="checkbox"/> k	<input type="checkbox"/> o	<input type="checkbox"/> s	
<input type="checkbox"/> d	<input type="checkbox"/> h	<input type="checkbox"/> l	<input type="checkbox"/> p	<input type="checkbox"/> t	

Section V – Approval

Project Representative (Print Name)		Environmental Protection (Print Name)	
Signature	Date	Signature	Date

Example of GSA’s AutoCATEX Form, “Automatic Categorical Exclusion NEPA Memo to File” (Continued)

GSA Public Buildings Service

Automatic Categorical Exclusion
NEPA Memo to File

AutoCATEX Form
Last Revised 1/18/12

Section VI – Category Descriptions

Pursuant to paragraph 5.3 of the PBS NEPA Desk Guide (October 1999) the following are automatic CATEXs and require no checklist:

- (a) Outleases, licenses, and other arrangements for non-federal use of space in existing Federal office buildings, where such use is consistent with local planning and zoning, where Section 106 of the NHPA is complied with where applicable; and there is no evidence of community controversy or unresolved environmental issues.
- (b) Acquisition of space within an existing structure, either by purchase or lease, where no change in the general type of use and only minimal change from previous occupancy level is proposed (previous occupant need not have been a Federal tenant).
- (c) Relocation of employees into existing Federally controlled space that does not involve a substantial change in the number of employees or motor vehicles.
- (d) Reductions in force or other personnel, administrative, or ministerial actions, including bargaining with employee unions and managing routine activities normally conducted to protect or maintain GSA-controlled properties (e.g., security and custodial services).
- (e) Lease extensions, renewals, or succeeding leases.
- (f) Outlease or license of government-controlled space, or sublease of government-leased space to a non-Federal tenant when the use will remain substantially the same.
- (g) Acquisition of land or easements that result in no immediate change in use and where subsequent compliance with NEPA and other applicable laws and regulations will take place as needed.
- (h) Site characterization studies and environmental monitoring, including siting, construction, operation, and dismantling or closing of characterization and monitoring devices. Such activities include, but are not limited to the following:
 - Site characterization and environmental monitoring activities under the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
 - Geological, geophysical, geochemical, and engineering surveys and mapping, including the establishment of survey marks
 - Installation and operation of field instruments, such as stream-gauging stations or flow-measuring devices, telemetry systems, geochemical monitoring tools, and geophysical exploration tools
 - Drilling of wells for sampling or monitoring of groundwater, well logging, and installation of water-level recording devices in wells
 - Aquifer response testing
 - Installation and operation of ambient air monitoring equipment
 - Sampling and characterization of water, soil rock, or contaminants
 - Sampling and characterization of water effluents, air emissions, or solid waste streams;
 - Sampling of flora or fauna
 - Historic property identification and evaluation studies in compliance with the National Historic Preservation Act (NHPA)
- (i) Administrative actions such as procurement of consultant services for appraisal or environmental analysis.
- (j) Repair and alteration projects involving, but not adversely affecting, properties listed on or eligible for the National Register of Historic Places, when there is no evidence of community controversy or other environmental issues. The process required by Section 106 of the NHPA must be followed; see ADM 1020.2.
- (k) Other repair and alteration projects where:
 - No toxic or hazardous substances are involved with the project or exist in or on the property where the project takes place;
 - No properties listed on or eligible for the National Register of Historic Places are involved;
 - The building footprint or envelope will not be increased;
 - There is no evidence of community controversy; and
 - There is no evidence of other unresolved environmental issues.
- (l) Repairs and alterations or modernization conducted in accordance with applicable plans, such as Facility Master Plans, where such plans have been reviewed under NEPA and there is no evidence of community controversy or unresolved environmental issues. The process required by Section 106 of the NHPA must be followed; see ADM 1020.2.
- (m) Repair to or replacement in kind of equipment or components in GSA-controlled facilities without change in location, e.g. HVAC, electrical distribution systems, windows, doors or roof where there is no evidence of unresolved environmental issues.
- (n) Facility maintenance, custodial, and groundskeeping activities not involving environmentally sensitive areas (such as eroded areas, wetlands, cultural sites, etc.), including window washing, lawn mowing, trash collecting, and snow removal.
- (o) Procurement contracts for professional services and supplies not addressed elsewhere here.
- (p) Preparation of implementation guidance.
- (q) Studies that involve no commitment of resources other than manpower and funding.
- (r) Assisting Federal agencies in public utilities management (excluding communications), negotiating for public utility services on behalf of Federal agencies, and providing expert testimony before public utility regulatory bodies.
- (s) Federal real property utilization surveys in accordance with Executive Order 12348.
- (t) Real property inspections for compliance with deed restrictions.
- (u) Administrative action by GSA to remove clouds on titles.
- (v) Disposal of real property required by public law wherein Congress has specifically exempted the action from the requirements of NEPA.

Example of GSA’s Categorical Exclusion Checklist for FSA Actions



GSA Public Buildings Service

CATEGORICAL EXCLUSION CHECKLIST FOR FSA ACTIONS

Action Name:
 Lease Number:
 Action Location:
 Action Description:
 Category:

ALL CHECKLIST CATEX ACTIONS		YES	NO	NEED DATA
A. Is the action likely to be inconsistent with any applicable Federal, State, Indian tribal, or local law, regulation, or standard designed to protect any aspect of the environment?				
COMMENTS:	WL/HEL: ESA: NHPA: Tribal: Other environmental resource concerns:			
B. Is the action likely to have results that are inconsistent with locally desired social, economic, or other environmental conditions?				
COMMENTS:				
C. Is the action likely to result in the use, storage, release and/or disposal of toxic, hazardous, or radioactive materials, or in the exposure of people to such materials?				
COMMENTS:				
D. Is the action likely to adversely affect a significant aspect of the natural environment?				
COMMENTS:				
E. Is the action likely to adversely affect a significant aspect of the socio-cultural environment?				
COMMENTS:				
F. Is the action likely to generate controversy on environmental grounds?				
COMMENTS:				

Example of GSA’s Categorical Exclusion Checklist for FSA Actions (Continued)

G. Is there a high level of uncertainty about the action’s environmental effects?				
COMMENTS:				
H. Is the action likely to do something especially risky to the human environment?				
COMMENTS:				
I. Is the action part of an ongoing pattern of actions (whether under the control of GSA or others) that are cumulatively likely to have adverse effects on the human environment?				
COMMENTS:				
J. Is the action likely to set a precedent for, or represent a decision in principle about, future GSA actions that could have significant effects on the human environment?				
COMMENTS:				
K. Is the action likely to have some other adverse effect on public health and safety or on any other environmental media or resources that are not specifically identified above?				
COMMENTS:				

CONCLUSION:	
The action is a CATEX and requires no further environmental review.	
The action is a CATEX but requires further review under one or more other environmental authorities.	
The action requires an EA.	
The action requires an EIS.	

Conclusion Comments:

FSA SEC Date

Attachments:

References: