

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

Notice FSFL-117

For: State and County Offices

NEPA and Environmental Compliance for FSFL's

Approved by: Acting Deputy Administrator, Farm Programs



1 Overview

A Background

The FSFL Program provides low-interest financing for producers to build, install, or upgrade permanently affixed farm storage and handling facilities to store eligible commodities they produce. NEPA regulations at 7 CFR Part 799 **must** be adhered to for FSFL eligibility.

NEPA regulations require that agencies complete the NEPA process **before** approving the proposed action, which includes coordination and consultation on protected resources with regulatory agencies and entities responsible for managing protected resources, such as surface water quality, wetlands, threatened and endangered species, and cultural resources.

Federal agencies **not** in compliance with NEPA subject themselves to the risk of lawsuits that can ultimately delay or prevent implementing a needed activity.

B Purpose

This notice informs State and County Offices that:

- NEPA regulations at 7 CFR Part 799 and 1-EQ and 2-EQ policy must be adhered to for FSFL eligibility
- new policy has been established for producers starting actions before CCC-185 approval.

Note: 1-FSFL will be revised to include this policy.

Disposal Date

November 1, 2015
3-26-15

Distribution

State Offices; State Offices relay to County Offices

Notice FSFL-117

1 Overview (Continued)

C Contact

If there are questions about this notice or specific environmental situations that require additional assistance or guidance, it is strongly recommended that State and County Office employees first contact the State Environmental Coordinator (SEC) **or** State Office employees may contact the following.

IF the question relates to...	THEN contact...
FSFL	Toni Williams, Program Manager, at either of the following: <ul style="list-style-type: none">• e-mail to toni.williams@wdc.usda.gov• telephone at 202-720-2270.
environmental concerns	Nell Fuller, National Environmental Compliance Program Manager, at either of the following: <ul style="list-style-type: none">• e-mail to nell.fuller@wdc.usda.gov• telephone at 202-720-6303.
cultural resource concerns	Ben Horter, Federal Preservation Officer, at either of the following: <ul style="list-style-type: none">• e-mail to ben.horter@wdc.usda.gov• telephone at 202-690-1164.

2 FSFL and NEPA Compliance

A Preparing Environmental Evaluations

All FSFL requests to construct or renovate farm storage facilities or to purchase and install permanently affixed drying and/or handling equipment, require FSA-850, according to 1-EQ. All required FSA-850's require a site visit.

Note: NRCS-CPA-052 can be accepted instead of FSA-850.

The environmental evaluation **must** be completed **before** CCC-185 approval, and **no** adverse impacts must be determined.

If MOU is established with the State Historic Preservation Office, Tribal Historic Preservation Office, Tribes, and/or FWS, this policy does not invalidate those MOU's.

All FSFL's secured by real estate will also be evaluated by completing FSA-851, on the real estate offered as collateral, according to 2-EQ. 1-EQ, 2-EQ, and 1-FSFL, paragraphs 82 and 83 should continue to be followed for completing FSA-850 and FSA-851, and evaluating potential environmental effects.

2 FSFL and NEPA Compliance (Continued)

A Preparing Environmental Evaluations (Continued)

FSA-850 is considered successfully completed when preparation, signature requirements, and an environmental determination has been made, according to 1-EQ, paragraph 23.

For additional FSA-850 guidance or questionable situations, State and County Offices must work directly with their SEC's. State Offices may contact the National Office, according to subparagraph 1 C.

B Actions That May Impede Completing FSA-850

The following producer actions must **not** occur at the FSFL site location before FSA-850 is considered successfully completed, according to 1-EQ:

- accepted delivery of equipment and/or materials in previously undisturbed areas (no disturbance below plow zone)
- site preparation or foundation construction in previously undisturbed areas (no disturbance below plow zone)
- no alterations to any structures that are 50 years old or older or within a historic district.

Important Reminders: The actions in this subparagraph by the producer should carefully be reviewed.

If FSA-850 **cannot** be successfully completed according to 1-EQ, CCC-185 must **not** be approved and a programmatic waiver request is **not** authorized.

2 FSFL and NEPA Compliance (Continued)

C FSA-850 Completed Before CCC-185 Approval

FSA-850 **must** be completed according to 1-EQ **before** CCC-185 can be approved.

To ensure NEPA compliance, the CCC-185 approval date **cannot** be earlier than the FSA-850 preparer's signature date in item 19D. The FSA-850 preparer, as well as the concurring official, if necessary, **must** sign FSA-850 before the environmental evaluation can be considered complete, according to 1-EQ, paragraph 23.

Note: If the CED, SEC, or FSA employee with loan approval authority is the FSA-850 preparer, then no concurring signature is required.

Example: The producer requested FSFL to install a grain bin on February 27, 2015. FSA-850 was prepared and an environmental evaluation site visit was completed on March 5, 2015, and no potential environmental impacts were determined. The FSA-850 preparer, who is CED, signed and dated FSA-850 on March 5, 2015. COC determined the producer met all FSFL eligibility requirements and CCC-185 was approved on March 10, 2015.

According to 1-EQ, paragraph 23, and guidance from the National Environmental Compliance Manager, because CED prepared FSA-850, a concurring signature is not required.

3 New Policy for Producers Taking Actions Before CCC-185 Approval and Authorities

A Producer Started Actions Before CCC-185 Approval

Submitting CCC-185's does **not** ensure approval nor does it create any liability on CCC's behalf.

For all FSFL requests, FSA-850 **must** be successfully completed **before** CCC-185 approval.

Producers may request a programmatic waiver request, in writing, when actions according to subparagraph 2 B started **before** CCC-185 approval. **All** of the following must have been completed **before** the producer performed the actions:

- FSA-850 and FSA-851, if applicable, was successfully completed with **no** adverse impacts identified, according to paragraph 2, 1-EQ, and 2-EQ
- CCC-185 was completed, signed, and dated by the producer and received in the County Office
- \$100 application fee per producer was received and deposited in NRRS (Direct Sales), as applicable.

3 New Policy for Producers Taking Actions Before CCC-185 Approval and Authorities (Continued)

A Producer Started Actions Before CCC-185 Approval (Continued)

The following provisions **must** be met before forwarding the case to the appropriate approving authority, according to subparagraph B:

- all required documentation for financial analysis for all applicants and/or entities were received

Note: A favorable financial analysis must be received from the FSA employee with loan approval authority.

- all applicant eligibility, equipment eligibility, and collateral security requirements, if necessary, must be met.

The producer's written waiver request must:

- include the reasons why the producer started the action **before** receiving FSFL approval
- be documented in COC or STC minutes.

Example: The producer requested FSFL in the amount of \$99,000 to install a grain bin on February 27, 2015. CCC-185 was properly completed and the \$100 application fee was collected. FSA-850 was prepared and an environmental evaluation site visit was completed on March 5, 2015, and no potential environmental impacts were determined. FSA-850 was signed and considered successfully completed on March 5, 2015. The producer started site preparation on March 9, 2015. The FSA employee with loan approval authority recommended approval of FSFL on March 11, 2015. COC determined the producer met all FSFL eligibility requirements and CCC-185 was approved on March 12, 2015.

Based on new policy provided in this subparagraph, FSFL can be approved by the appropriate approving authority (COC), according to subparagraph B.

Notice FSFL-117

3 New Policy for Producers Taking Actions Before CCC-185 Approval and Authorities (Continued)

B Approval Authority for Producers Taking Actions Before CCC-185 Approval

All waiver requests for producers starting any actions according to subparagraphs A and 2 B **must** be reviewed, approved, or disapproved by the following table.

IF the total aggregate outstanding FSFL balance amount is...	THEN the approval authority is...
\$100,000 or less	COC.
\$100,000.01 to \$250,000	COC approval after DD review.
\$250,000.01 to \$500,000	STC or STC can delegate approval authority to SED only.

The following provisions also are applicable:

- conditional approval is **not** authorized
- interest rate of FSFL is based on CCC-185 approval date
- waiver provisions are **not** authorized for producers who requested FSFL **after** the FSFL project has been completed.

4 Transition Period for Pending STC, COC, and DAFP Waiver Requests

A Transition Period

A transition period of 60 calendar days is authorized to ensure that pending STC and COC waiver requests involving producer's starting actions according to subparagraph 2 B before CCC-185 approval are NEPA compliant.

Note: The 60-calendar-day transition period is considered anytime between the dates of March 26, 2015, through May 26, 2015.

Notice FSFL-117

4 Transition Period for Pending STC, COC, and DAFP Waiver Requests (Continued)

A Transition Period (Continued)

The following table provides required actions that **must** be followed during the transition period when a producer started any actions according to subparagraph 2 B before CCC-185 approval.

Before Issuance of Notice FSFL-117	
IF a programmatic waiver request was approved by DAFP, STC, or COC...	THEN...
within 30 calendar days before issuance of this notice (February 24, 2015)	<p>FSA-850 must be reviewed to ensure:</p> <ul style="list-style-type: none"> • it is successfully completed • required signatures were obtained. <p>If FSA-850 was not completed:</p> <ul style="list-style-type: none"> • complete FSA-850 • document any adverse environmental impacts • consult with SEC to determine whether the adverse impacts can be mitigated, if necessary. <p>No further actions are required.</p>
During the Transition Period of March 26, 2015, Through May 26, 2015	
IF a programmatic waiver request is currently pending STC or COC review and...	THEN...
construction is in progress	<ul style="list-style-type: none"> • immediately notify the producer that continuing with construction is at his or her own risk and does not create a liability on CCC's behalf <p>Note: Continuing with construction may cause a negative impact with the programmatic waiver request.</p> <ul style="list-style-type: none"> • ensure that FSA-850 has been or can be successfully completed • document any adverse environmental impacts • consult with SEC to determine whether the adverse impacts can be mitigated, if necessary • STC or COC may approve or disapprove the programmatic waiver request.

Notice FSFL-117

4 Transition Period for Pending STC, COC, and DAFP Waiver Requests (Continued)

A Transition Period (Continued)

During the Transition Period of March 26, 2015, Through May 26, 2015 (Continued)	
IF a programmatic waiver request is currently pending STC or COC review and...	THEN...
construction has been completed	<ul style="list-style-type: none"> • ensure that FSA-850 has been or can be successfully completed • document any adverse environmental impacts • consult with SEC to determine whether the adverse impacts can be mitigated, if necessary • STC or COC may approve or disapprove the programmatic waiver request.
FSA-850 was not successfully completed	<ul style="list-style-type: none"> • immediately complete FSA-850 • document any adverse environmental impacts • consult with SEC to determine whether the adverse impacts can be mitigated, if necessary • STC or COC may approve or disapprove the programmatic waiver request.
After the Transition Period Starting on May 27, 2015	
IF...	THEN...
a programmatic waiver request is requested	<p>State and County Offices must determine whether new policy provided in paragraph 3 would apply for the programmatic waiver request.</p> <p>Notes: Conditional approvals are not authorized.</p> <p>DAFP, STC, and COC waivers are not authorized for any case where FSA-850 was not successfully completed before any actions according to subparagraph 2 B started.</p> <p>Example: Producer completed construction of the grain bin on March 5, 2015, and requested FSFL on March 11, 2015. FSA-850 was not successfully completed before construction had started. The FSFL request must be disapproved and a DAFP, STC, or COC waiver is not authorized, as provided in subparagraph 3 B.</p>

Note: During the transition period, for all cases, when adverse impacts cannot be mitigated, **and** after consulting with SEC, the case must be forwarded to the National Office for review.

Notice FSFL-117

5 National Office Review of Waiver Approvals and Disapprovals

A Waiver Approvals and Disapprovals

In an effort to ensure that State and County Offices are properly following guidance provided in this notice, State Offices must forward to Toni Williams a copy of COC and/or STC minutes documenting approval or disapproval of waiver requests when a producer started any action according to subparagraph 2 B before CCC-185 approval, **and** FSA-850 was or was **not** successfully completed before CCC-185 approval, according to new policy in paragraph 3.

B National Office Review Period

COC and/or STC minutes documenting approval or disapproval according to subparagraph A must be forwarded to Toni Williams until September 22, 2015.

6 Action

A State Office Action

State Offices must:

- ensure that County Offices are aware of the policy established in this notice
- assist County Offices with questions about this notice
- contact National Office staff with any questions about this notice, according to subparagraph 1 C
- ensure that County Offices are aware that FSFL approval letters **must** only be provided to the producer after it is determined FSA-850 was successfully completed and FSFL requirements are met.

Notice FSFL-117

6 Action (Continued)

B County Office Action

County Offices must:

- follow policy established in this notice, 1-FSFL, 1-EQ, and 2-EQ for determining and evaluating NEPA and other environmental compliance
- at the beginning of the loanmaking process, discuss with FSFL applicants the importance of **not** starting any actions as provided in subparagraph 2 B before CCC-185 approval
- file the completed FSA-850, FSA-851, and all associated attachments in the producer's FSFL folder
- contact the State Office or SEC with concerns about procedure in this notice or any questionable situations.