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Guaranteed Loan Assistance and Environmental Compliance

This document contains a brief overview of the process that the Farm Service Agency is required to complete prior to the approval of a loan guarantee in order to comply with the National Environmental Policy Act and other related environmental and cultural resource laws, executive orders, and regulations.

This document is intended for information only and does not replace the environmental review or any environmental compliance requirements that must be completed before a loan guarantee can be approved by FSA.

Background on Loan Guarantees

FSA guaranteed loans provide lenders (e.g., banks, Farm Credit System institutions, credit unions) with a guarantee of up to 95 percent of the loss of principal and interest on a loan. Farmers and ranchers apply to an agricultural lender, which then arranges for the guarantee. The FSA guarantee permits lenders to make agricultural credit available to farmers who do not meet the lender's normal underwriting criteria.

FSA guaranteed loans are for both Farm Ownership and Operating purposes. Like the Direct Loan Program, a percentage of Guaranteed Loan funds are targeted to beginning farmers/ranchers and minority applicants.

Loan Purposes

Farm Ownership Loans

Guaranteed Farm Ownership (FO) Loans may be made to purchase farmland, construct or repair buildings and other fixtures, develop farmland to promote soil and water conservation, or to refinance debt.

Operating Loans

Guaranteed Operating Loans (OL) may be used to purchase livestock, farm equipment, feed, seed, fuel, farm chemicals, insurance, and other operating expenses. Operating Loans can also be used to pay for minor improvements to buildings, costs associated with land and water development, family living expenses, and to refinance debts under certain conditions.

Background on the National Environmental Policy Act

The National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) was signed into law in 1969 as a result of increasing concern over the deterioration of the environment. NEPA has several purposes which are as follows:

- To declare a national policy which will encourage productive and enjoyable harmony between man and his environment;
- To promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man;
- To enrich the understanding of the ecological systems and natural resources important to the Nation; and
- To establish a Council on Environmental Quality (CEQ).

The CEQ published regulations (40 CFR 1500-1508) in 1978 (reprinted in 1992). The CEQ regulations require all Federal agencies and departments to develop implementing procedures. As a result of this requirement, FSA has its own NEPA regulations that are published at 7 CFR part 1940 subpart G.

NEPA is best defined as a decision making tool designed to be used **early** in the decision making process. NEPA also requires that the environmental effects of an action are considered equally with economic, technical, environmental justice, and other factors associated with the proposed action.

Interrelationship of Environmental Laws and Loan Guarantees

A Federal action means that either Federal jurisdiction, Federal money, or Federal employees are involved. The CEQ regulations at 40 CFR §1508.14 define an action as: new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by Federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals.

FSA loan guarantees are considered Federal actions. Prior to approval of a loan guarantee, FSA must consider the potential effects of the action upon the human environment as required by NEPA and implementing regulations. Many times the long term viability of the entire operation is a direct result of the alternatives considered in the environmental assessment.



FSA's Environmental Review Process of Loan Guarantees

As previously stated, FSA published regulations implementing NEPA at 7 CFR part 1940 subpart G. These regulations require FSA to complete the review under one of 3 different processes dependent upon potential impacts or size and scope of the action. Every action that requires FSA's approval must be considered under at least one of the following processes:

- Documentation as a Categorical Exclusion (CE)
 - Covers actions that do not individually or cumulatively have a significant effect on the human environment unless extraordinary circumstances exist which could cause the proposed action to lose its exclusion.
 - If consultation is required, completion may take up to 30-45 days.
- Completion of an Environmental Assessment (EA) resulting in either a Finding of No Significant Impact (FONSI) or a finding that an Environmental Impact Statement (EIS) must be prepared.
 - An EA is a concise public document for which a Federal agency is responsible that provides sufficient evidence and analysis for determining whether to prepare an EIS or a FONSI (with or without mitigation requirements).
 - A FONSI is a document prepared by a Federal agency briefly presenting the reasons why an action, not categorically excluded, will not have a significant effect on the human environment and for which an EIS will not be prepared.
 - Completion may take from 30-180 days.
- Completion of an EIS and a record of decision (ROD)
 - An EIS is a detailed written statement that is used to analyze projects and programs that have the potential for significant environmental effects.
 - A ROD is a document prepared by a Federal agency briefly presenting the reasons why an action, not categorically excluded, will not have a significant effect on the human environment and for which an EIS will not be prepared.
 - Completion may take from 12-24 months.

The environmental review process should begin as early as possible. Section 1501.2(d) of the CEQ regulations requires agencies to provide for the early application of NEPA to cases where actions are planned by private applicants or non-Federal entities and are, at some stage, subject to Federal approval of permits, loans, loan guarantees, insurance or other actions. This is essential because NEPA requires the Agency to consider information compiled through the environmental review process in reaching its decision.

What can FSA and participating lenders do to apply NEPA early in the process of approving requests for loan guarantees?

- a. FSA should foster a working relationship with lenders participating in its guaranteed loan program so that they understand the environmental review steps required for processing a guarantee request as well as the responsibilities of all parties involved.
- b. Lenders are encouraged to contact FSA anytime one of their applicants or borrowers is considering an expansion or construction of facilities, or other actions that may require an FSA guarantee. Once the construction work begins, it becomes very difficult to consider any alternatives and would result in a denial of assistance.
- c. FSA and the lender should work together to ensure that the lender's loan applicant has applied for all Federal and State permits as early as possible to avoid unnecessary delays. It is best if this is done prior to any work with local or state regulatory agencies. We want to try to complete our process concurrently with any other state or local permitting requirements to minimize duplication and delay to the applicants. Permits may include floodplain development permits; land use permits; storm water pollution permits; and confined animal feeding operation (CAFO) permits.
- d. The lender and its applicant should ensure that all requirements are met to comply with Title XII of the Food Security Act of 1985 concerning the protection of wetlands and highly erodible land. For loans involving construction activities, the applicant must obtain a **Certified Wetland Determination** from the Natural Resources Conservation Service (NRCS) for the site where the construction will occur as well as on or off-site borrow and fill areas. Lenders and applicants should keep in mind that no guaranteed loan funds can be used for any purpose that drains, dredges, fills, converts, or otherwise manipulates a wetland¹.
- e. The lender or applicant will be responsible for any costs associated with publication of notices related to the environmental review process. Also, if required, the lender or applicant may be responsible for costs associated with archaeological surveys or biological assessments.²
- f. Lenders and applicants should assist FSA personnel by obtaining and providing information about a proposed action such as the historical use of a property; presence of threatened or endangered species; and special concerns of any neighboring property owners. Even though the lender or applicant may supply information used in the preparation of an environmental review, FSA is still responsible for independently evaluating the environmental issues and taking responsibility for the environmental review.
- g. Lenders will be responsible to monitor any required mitigation measures.

NOTE: For purposes of fulfilling the requirements of Section 106 of the National Historic Preservation Act, FSA must conduct all consultation with the SHPO or THPO. FSA cannot allow lenders or applicants to consult on behalf of the Agency. However, the lender or applicant may gather background information that will be useful to FSA during the consultation process.

¹ Section 363 of the Consolidated Farm and Rural Development Act (CONACT) – The Secretary shall not approve any loan under this title to drain, dredge, fill, level, or otherwise manipulate a wetland (as defined in section 1201(a)(16) of the Food Security Act of 1985 (16 U.S.C. 3801(a)(16)), or to engage in any activity that results in impairing or reducing the flow, circulation, or reach of water, except in the case of activity related to the maintenance of previously converted wetlands, or in the case of such activity that is already commenced before November 28, 1990. This section shall not apply to a loan made or guaranteed under this title for a utility line.

² Archaeological surveys may be required at the request of the State Historic Preservation Officer (SHPO) or the Tribal Historic Preservation Officer (THPO). Biological assessments may be required at the request of U.S. Fish and Wildlife Service as part of formal consultation.

Resources and Special Issues Considered

The following resources and special issues are considered in regards to potential environmental impacts whenever completing a CE worksheet, EA, or EIS:

- Wetlands
- Floodplains
- Sole Source Aquifer Recharge Area
- Threatened & Endangered Species
- Wilderness Areas
- Coastal Zone Management Areas
- Coastal Barriers
- Wild and Scenic Rivers
- Natural Landmarks
- Water Quality
- Air Quality
- Important Farmland
- Prime Forestland
- Prime Rangeland
- Cultural Resources (Archaeological and historical sites)
- Environmental Justice
- Socio-Economic impacts



Alternatives and Mitigation Measures

When completing an EA or EIS, FSA is required to develop a reasonable range of alternatives. The Alternatives section of an EA or EIS is the heart of the document. Based on the information and analysis presented in the Affected Environment and Environmental Consequences sections, it should present the environmental impacts of the proposed action and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public.

For example, an EA prepared for a proposed poultry operation might include alternatives such as the following:

- a. Proposed Action – Construct four broiler houses with a total capacity of 120,000 birds.
- b. Reduced Action – Construct two broiler houses with a total capacity of 60,000 birds.
- c. No Action – No broiler houses would be constructed.

If FSA determines through the completion of an EA that a proposed action has the potential to significantly impact a resource or special issues, then the potential impact must be mitigated in order to issue a FONSI. If the impact cannot be legally and successfully mitigated, then FSA must issue a determination to prepare an EIS.

Mitigation includes:

- Avoiding the impact altogether by not taking a certain action or parts of an action.
- Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- Compensating for the impact by replacing or providing substitute resources or environments
 - Please note that wetland impacts identified in Section 363 of the CONACT cannot be mitigated for Farm Loan Program approved actions.

Conclusion of the Environmental Review Process

For those actions that are classified as a CE and require no further environmental review, FSA may proceed with approval of the loan guarantee after:

- The CE worksheet is completed, and
- Any required consultation with SHPO, THPO, and FWS is completed.

For those actions normally classified as a CE but that require the completion of an EA (Class I) due to potential impacts to one of the listed resources, FSA may proceed with approval of the loan guarantee only after:

- The EA is completed,
- All required mitigation measures are documented,
- Any required consultation with SHPO, THPO, and FWS is completed, and
- A FONSI is prepared.

When a proposed action is not normally a CE and instead requires the completion of an EA (Class I or Class II), FSA may proceed with approval of the loan guarantee after:

- The EA is completed,
- All required mitigation measures are documented,
- Any required consultation with SHPO, THPO, and FWS is completed,
- A FONSI is prepared and the public notice process/comment review process is complete, and
- Any additional issues raised during the review are considered and resolved.

Should a proposed action require the completion of an EIS, FSA would not be able to approve a loan guarantee until the record of decision was published and the comment period was over.

For Further Information

Lenders participating in the guaranteed loan program should contact their local FSA office for further information regarding the environmental compliance requirements associated with approval of a loan guarantee. Information may also be obtained by contacting the FSA State Environmental Coordinator located in the FSA State Office. Information may also be obtained about FSA's environmental and cultural resource compliance requirements at <http://www.fsa.usda.gov/dafp/cepd/epb/default.htm>.

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