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SUBCHAPTER G—ENVIRONMENTAL PROTECTION

PART 799—ENVIRONMENTAL QUALITY AND RELATED ENVIRONMENTAL CONCERNS—COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT

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AUTHORITY: Pub. L. 91–190, 83 Stat. 852, as amended (42 U.S.C. 4321); E.O. 11514; E.O. 11991; 40 CFR 1507.3, 7 CFR 3100.

SOURCE: 45 FR 32313, May 16, 1980, unless otherwise noted.

§ 799.1 Background.

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) establishes national policies and goals for the protection of the environment. Section 102(2) of NEPA contains certain procedural requirements directed toward the attainment of such goals. Section (102)(2) also requires all Federal agencies to give appropriate consideration to the environmental effects of their proposed actions in their decisionmaking and to prepare detailed environmental statements on recommendations or reports on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. Executive Order 11991 of May 24, 1977 (42 FR 26967), directed the Council on Environmental Quality (CEQ) to issue regulations to implement the procedural provisions of NEPA. Accordingly, CEQ issued final NEPA regulations (40 CFR parts 1500 through 1508) on November 29, 1978, which are binding on all Federal agencies as of July 30, 1979. These regulations provide that each Federal agency shall as necessary adopt implementing procedures to supplement the regulations. The U.S. Department of Agriculture adopted such procedures in a final rule (7 CFR part 3100) published on July 30, 1979. The CEQ regulations at 40 CFR 1507.3 (b) identify those items which must be addressed in agency procedures.

§ 799.2 Purpose.

The purpose of this part is to establish agency procedures which supplement NEPA regulations issued by CEQ and USDA. This regulation, together with such NEPA regulations issued by CEQ and USDA, will supersede regulations issued by the Farm Service Agency (FSA) on December 20, 1974 (39 FR 43996).

§ 799.3 Applicability.

This part, together with NEPA regulations issued by CEQ and USDA, applies to all programs administered by FSA which might have significant impacts on the environment.

§ 799.4 Definitions.

(a) The term *environmental evaluation* means agency appraisal of the potential or likely environmental impacts of proposed legislation, a new program, a major change in a program, an action related to a program or an action related to part of a program which will be used by the responsible agency official to determine whether or not an environmental assessment and/or an environmental impact statement is needed. Such appraisal shall relate to the same environmental concerns as an environmental impact statement. The environmental evaluation shall particularly

focus on the adverse affects of FSA actions on the environmental factors listed on Form FSA–929 (see Appendix 2) and on the significance of the action as discussed in the CEQ regulations concerning NEPA at 40 CFR 1508.27. As required, the environmental evaluation shall be made by an interdisciplinary team.

(b) In the regulations in this part and in all instructions, forms, and documents in connection therewith, all other words and phrases shall, unless the context or subject matter otherwise requires, have the meanings assigned to them in the regulations governing reconstitution of farms, allotments and bases, part 719 of this chapter, as amended.

§ 799.5 FSA officials and offices responsible for carrying out NEPA.

(a) *Responsible officials.* The Administrator of FSA, or his or her designee, is the responsible Federal official for carrying out the purpose of NEPA for all FSA programs. County committees, State committees, and Directors of Washington Divisions, within their respective areas of responsibility with the assistance of the FSA representative on the USDA Environmental Quality Committee, shall assist the Administrator in complying with the policies and purposes of NEPA generally, and, in particular, in determining whether the quality of the human environment will be significantly affected in implementing agency programs and preparing the necessary environmental documents.

(b) *Offices responsible for carrying out NEPA*—(1) *Washington divisions.* Washington divisions are responsible for carrying out NEPA with regard to legislative proposals and multi-State and national programs or major revisions of national programs.

(2) *State committees.* State committees are responsible for carrying out NEPA with regard to major actions in a State or area within a State.

(3) *County committees.* County committees are responsible for carrying out NEPA with regard to major actions within a county.

(c) All environmental assessments, environmental impact statements (EISs) and similar documents will be forwarded through the appropriate agency channels to the FSA representative on the USDA Environmental Quality Committee for review and submission to the Administrator.

§ 799.6 Adoption of regulations issued by others in implementing the procedural provisions of NEPA.

In addition to provisions provided for in this part 799, FSA adopts the NEPA regulations issued by CEQ (40 CFR parts 1500 through 1508) and NEPA regulations issued by USDA (7 CFR part 3100).

§ 799.7 Early involvement in private and state and local activities requiring Federal approval.

(a) The NEPA regulations at 40 CFR 1501.2(d) require agencies to provide for early involvement in actions which, while planned by private applicants or other non-Federal entities, require some form of Federal involvement.

(b) To implement the requirements of 40 CFR 1501.2(d) with respect to these actions FSA shall:

(1) Prepare, where practicable, generic guidelines describing the scope and level of environmental information required from applicants seeking assistance from FSA as a basis for evaluating their proposed actions, and make these guidelines available upon request.

(2) Provide such guidance on a project-by-project basis to applicants seeking assistance from FSA.

(3) Upon receipt of an application for agency approval, or notification that an application will be filed, consult as required with other appropriate parties to initiate and coordinate the necessary environmental analyses.

(c) The responsibilities under this section shall be coordinated by the Conservation and Environmental Protection Division of the Farm Service Agency, Washington, D.C.

(d) To facilitate compliance with paragraph (a) of this section, private applicants seeking assistance from FSA and other non-Federal entities are expected to:

(1) Contact FSA as early as possible in the planning process for guidance on the scope and level of environmental

information required to be submitted in support of their application;

(2) Conduct any studies which are deemed necessary and appropriate by FSA to determine the impact of the proposed action on the human environment;

(3) Consult with appropriate Federal, regional, State and local agencies and other potentially interested parties during preliminary planning stages to ensure that all environmental factors are identified;

(4) Submit applications for all Federal, regional, State and local approvals as early as possible in the planning process;

(5) Notify FSA as early as possible of all other Federal, regional, State, local and Indian tribe actions required for project completion so that FSA may coordinate all Federal environmental reviews; and

(6) Notify FSA of all known parties potentially affected by or interested in the proposed action.

§ 799.8 Making supplements to EISs part of the final administrative record.

Where FSA evaluates a proposal on the basis of a formal administrative record and an EIS on the proposal has been prepared, any supplement to the EIS shall be made a part of the formal record before a final decision on the proposal is made.

§ 799.9 Ensuring that environmental factors are considered in agency decisionmaking.

(a) The NEPA regulations at 40 CFR 1501.1 contain requirements to ensure adequate consideration of environmental factors in decisionmaking. To fulfill these requirements, FSA officials shall:

(1) Consider all relevant environmental factors in evaluating proposals for agency action;

(2) Make all relevant environmental documents, comments and responses part of the record in formal rulemaking or adjudicatory proceedings.

(3) Ensure that all relevant environmental documents, comments and responses accompany the proposal through existing review processes;

(4) Consider only those alternatives encompassed by the range of alternatives discussed in the relevant environmental documents when evaluating proposals for agency action.

(5) Where an EIS has been prepared, consider the specific alternatives analyzed in the EIS when evaluating the proposal which is the subject of the EIS.

(b) The four categories of FSA activities that have or are likely to have significant environment impacts on the human environment are:

(1) Legislative proposals.

(2) Initial program implementation.

(3) Major changes in ongoing programs.

(4) Major environmental concerns with ongoing programs.

(c) Initial NEPA involvement in program categories in paragraph (b) of this section shall begin at the time FSA begins developing proposed legislation, begins the planning stage for implementing a new or changed program or receives notice that an ongoing program may have a significant adverse impact on the quality of the human environment. Where a legislative EIS or environmental assessment is part of the formal transmittal of a legislative program proposal to Congress, such legislative EIS or assessment may negate the need for the subsequent preparation of a program impact statement when FSA implements the resulting program. The decision whether such additional statement is needed will be made by an interdisciplinary team. The NEPA process on legislative proposals and FSA programs is carried out at the national level.

(d) Individual farm participation in FSA programs will normally not require any major involvement with the NEPA process. The practices carried out under FSA programs that might have impacts on the quality of the human environment will normally have been discussed in environmental assessments or impact statements on the applicable programs. However, for those practices that might significantly affect the quality of the human environment, the county committee

shall make an environmental evaluation before approval. If the environmental evaluation shows that the implementation of a proposed FSA practice on an individual farm will have significant adverse affects on the quality of the human environment, the county committee will not approve the practice implementation until after the completion of the NEPA-EIS process in accordance with this part. For those actions for which technical assistance is provided by an agency other than FSA, and such technical agency is required by its regulations to implement NEPA requirements when providing such assistance, the county committee shall use the environmental determination and considerations of such agency instead of duplicating the NEPA-EIS process. Individual farm participation in acreage set-aside, acreage allotments, price support and loans and other similar or related programs will not significantly affect the quality of the human environment.

(e) Pooling agreements and special projects carried out under several FSA programs involving two or more farmers in a local geographic area will not normally require any major involvement with the NEPA process. However, the county committee shall, with the assistance of a local interdisciplinary team, as necessary, make an environmental evaluation of proposed pooling agreements or special projects that have a potential for significantly affecting the quality of the human environment. The NEPA process shall begin with the initial involvement of FSA personnel in the planning or development of pooling agreements or special projects. If it is determined from an environmental evaluation that the implementation of a proposed pooling agreement or a proposed special project will have a significant adverse impact on the quality of the human environment, the completion of the NEPA-EIS process in accordance with these regulations will be necessary before approval. For those actions for which technical assistance is provided by an agency other than FSA and such technical agency is required by its regulations to implement NEPA when providing such assistance the county committee shall use the environmental determinations and considerations of such agency instead of duplicating the NEPA-EIS process.

§ 799.10 Criteria and identification of FSA actions as to degree of involvement under the NEPA process.

(a) FSA will for each of its legislative proposals, initial program implementations, program changes or any actions under its ongoing programs make a determination by the use of an environmental evaluation as to whether or not an environmental assessment or EIS is required.

(b) The NEPA regulations issued by CEQ at 40 CFR 1507.3(b)(2) in conjunction with the regulations at 40 CFR 1508.4 require agencies to determine those typical classes of actions for treatment under NEPA. The typical classes of FSA actions for treatment under NEPA are set forth as follows:

(1) Actions normally requiring an EIS are:

(i) Production adjustment programs to balance supply and demand of specified commodities, through cropland set-aside or other acreage diversion.

(ii) Agricultural Conservation Program.

(iii) Rural Clean Water Program.

(iv) Other major actions that are determined after an environmental evaluation and/or an environmental assessment to significantly affect the quality of the human environment.

(2) Actions normally not requiring an assessment or an EIS are:

(i) Individual farm participation in FSA programs.

(ii) Pooling agreements and special projects under FSA programs.

(iii) Production adjustment programs for tobacco, peanuts and extra long staple cotton.

(iv) Emergency Conservation Program.

(v) Water Bank Program.

(vi) Forestry Incentives Program.

(vii) Sugar Program.

(viii) Wool and Mohair Incentives Program.

(ix) Bee and Dairy Indemnity Programs.

(x) Commodity Income and Support and Disaster Protection Programs.

(xi) Facility Loan Program.

(xii) Grain Reserve Program.

(xiii) Livestock Feed Program.

(xiv) Naval Stores Program.

(xv) Indian Acute Distress Donation Program.

(xvi) Other major actions that are determined after an environmental evaluation not to significantly affect the quality of the human environment.

(c) FSA will independently determine by an environmental evaluation whether an environmental assessment or an EIS is required on actions included in paragraph (b) of this section where the presence of extraordinary circumstances or other unforseeable factors indicate that some other level of environmental review may be appropriate.

(d) If an environmental evaluation indicates that an action will significantly affect the quality of the human environment, the preparation of an environmental assessment and/or an EIS will be necessary before the action is carried out.

§ 799.11 Expedited procedures.

Where emergency circumstances make it necessary to take action with significant environmental impact without following the provisions of the NEPA regulations issued by CEQ, USDA, and FSA, FSA will, by working through the USDA Office of Environmental Quality, consult with CEQ and/or EPA about alternative arrangements (7 CFR 3100.35).

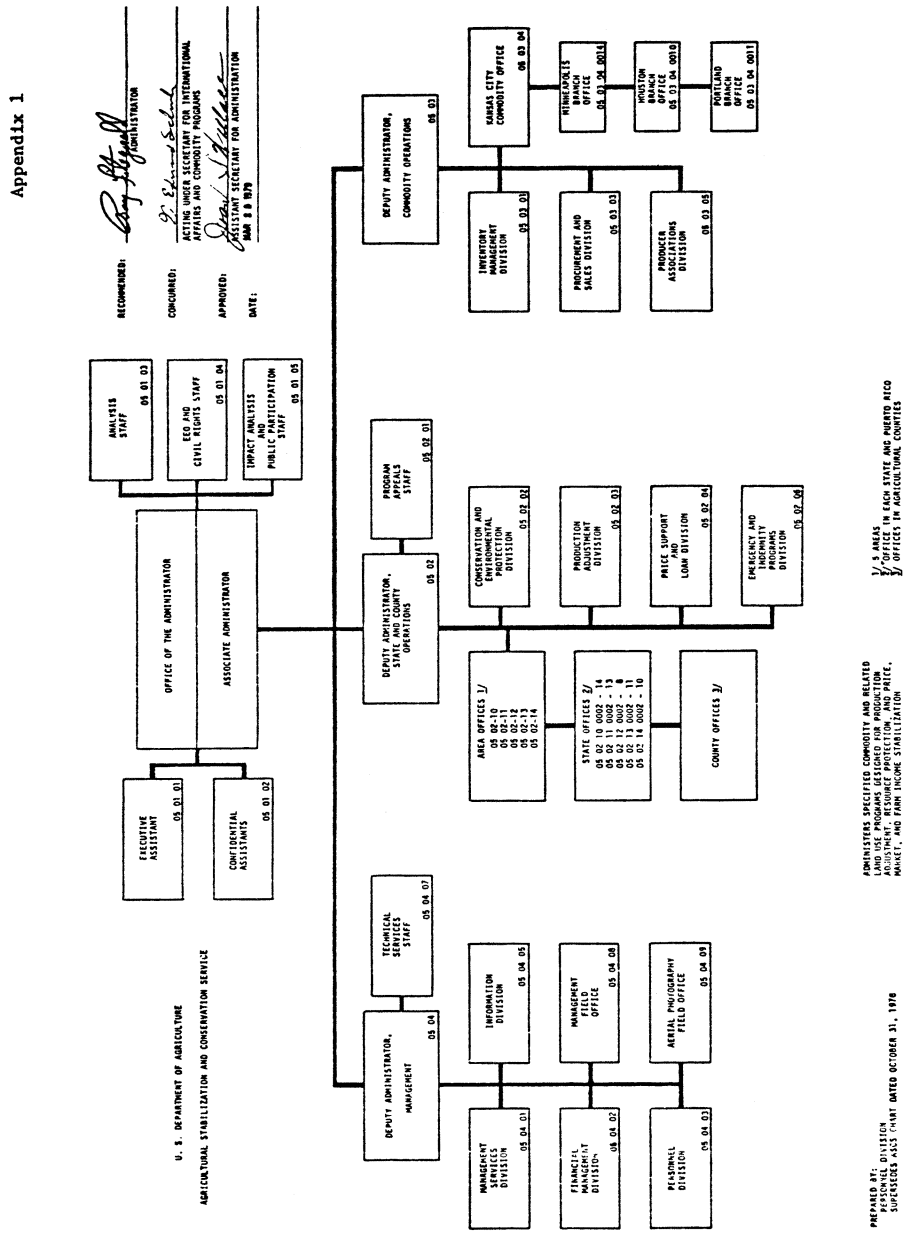
§ 799.12 Program termination.

An environmental assessment or an EIS will not be needed when a program or part of a program is discontinued because of a mandatory legislative requirement where the enabling legislation for such program does not provide authority to ameliorate or mitigate any resulting environmental effects on the quality of the human environment.

§ 799.13 Environmental information.

Interested persons may contact the Conservation and Environmental Protection Division, FSA, for information regarding FSA compliance with NEPA.

APPENDIX 1 TO PART 799—ORGANIZATION CHART FSA-USDA



APPENDIX 2 TO PART 799—FORM FSA–929

ASCS-929
(8-11-78)

U. S. DEPARTMENT OF AGRICULTURE
Agricultural Stabilization and Conservation Service

APPENDIX 2

MATRIX OF ENVIRONMENTAL RELATIONSHIPS

ENVIRONMENTAL FACTORS	POTENTIAL ALTERNATIVES				
	FUTURE WITHOUT PROGRAM	PROPOSED PROGRAM	1/	1/	1/
Land Cover					
Soil Erosion					
Loss of Prime Cropland					
Water Quantity					
Water Quality					
Ground-Water Quality					
Air Quality					
Odor					
Noise					
Radiation					
Energy Supply					
Pesticides					
Fertilizers					
Woodland Production					
Wildlife Habitat					
Fish Production					
Recreation					
Timber Production					
Wetlands					
Natural Streams					
Service Industries					
Economic					
Population Migration					
Social Values					
Unique					
Archaeological					
Historical					
Natural					
Endangered Species					
Landscape					

REMARKS

Relationship of Impacts Toward the Environment - + Slight; ++ Moderate; +++ Important. 1/ List alternative to proposed program.