

Farmers' Guide to the Farm Storage Facility Loan Program

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Farmers' Guide to the Farm Storage Facility Loan Program

June 2019

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Introduction

I. The Need for On-Farm Storage

For many farmers—especially beginning and small-scale farmers—securing access to affordable storage can be a significant barrier to sustaining a viable farming operation. Having the option to maintain on-farm storage enables farmers to sell their crops at times when the market is favorable, rather than being forced to sell immediately after harvest or to pay for outside commercial storage.¹ With appropriate storage, farmers are also able to grow and store their own livestock feed, which helps to negate the need to buy feed off-farm.² In a time when the popularity of farmer's markets and farm-to-table restaurants is increasing, it is essential that farmers have the ability to store and transport the fruits of their labor to meet this demand.

The Farm Storage Facility Loan (FSFL) program is designed to address these needs by providing low-interest loans for farmers so that they may construct or upgrade their on-farm and portable storage and handling facilities, including handling trucks.³ The FSFL program benefits farmers who lack access to local commercial storage, or those who have limited marketing options for their commodities at harvest time.⁴

This Guide provides a detailed outline of how the FSFL program works, including eligibility requirements, security requirements, and the application process. The Guide also includes a brief overview of the appeals process if a farmer is found ineligible for an FSFL program loan. The aim of this Guide is to provide an accessible tool for farmers to use when considering applying for an FSFL.

II. History of the FSFL Program

The origins of the FSFL program can be traced to the Commodity Credit Corporation (CCC) Charter Act of 1948, which authorized the CCC to make loans to grain growers for on-farm storage of grains in places where there was otherwise a shortage of available storage facilities.⁵ By 2001, the first version of the FSFL program was in place.⁶ As with the original CCC loans to grain growers, the intent of the FSFL program was to address shortages in whole grain storage.⁷

In 2008, with the passing of the Food, Conservation, and Energy Act of 2008 (commonly known as the 2008 Farm Bill), the FSFL program began to expand in size and scope.⁸ Under the 2008

¹ Portable Storage Facilities and Reduced Down Payment for FSFL Microloans, 81 Fed. Reg. 25,587, 25,589 (Apr. 29, 2016).

² 81 Fed. Reg. 25,587, 25,589 (Apr. 29, 2016).

³ 7 C.F.R. §§ 1436.1(a), 1436.2(a), 1436.2(g) (2019). The FSFL program is a Community Credit Corporation (CCC) Program administered by the Farm Service Agency (FSA) of the United States Department of Agriculture (USDA).

⁴ 81 Fed. Reg. 25,587, 25,588 (Apr. 29, 2016).

⁵ The CCC Charter Act can be found at 15 U.S.C. § 714b(h). See also Farm Storage Facility Loan and Sugar Storage Facility Loan Programs, 74 Fed. Reg. 41,581 (Aug. 18, 2009).

⁶ Administratively, the FSFL program began with an FSA interim rule published in the Federal Register in May of 2000. That rule was finalized on January 18, 2001. Farm Storage Facility Loan Program, 65 Fed. Reg. 30,345 (May 11, 2000); Farm Storage Facility Loan Program, 66 Fed. Reg. 4607 (Jan. 18, 2001).

⁷ 65 Fed. Reg. 30,345, 30,347 (Interim Rule, May 11, 2000).

⁸ The FSFL program is codified at 7 U.S.C. § 8789.

Farm Bill, the maximum FSFL loan amount was increased from \$100,000 to \$500,000, and the maximum loan term was extended to 12 years.⁹ The 2008 Farm Bill also expanded the FSFL-eligible commodities to include hay, renewable biomass, fruits, vegetables, and nuts, and also made cold storage facilities eligible for FSFL funding.¹⁰

In 2014, the FSFL program was amended to make the loan process simpler and less expensive, particularly for small-scale farmers.¹¹ As part of this amendment, the loan level at which additional security is required was increased from \$50,000 to \$100,000.¹²

The most recent amendments to the FSFL program, enacted in 2016, expanded eligibility to include loans for portable storage structures as well as handling and storage trucks.¹³ The 2016 changes also added a new category of loans—FSFL microloans—which are available to farmers seeking loans of \$50,000 or less.¹⁴ The FSFL microloan provisions allow for smaller down payments and ease other FSFL requirements to make the loans more accessible to small-scale farmers.¹⁵

The changes made to the FSFL program since its inception have been aimed at expanding the program in order to better meet the needs of specialty crop farmers and smaller-scale farmers.¹⁶ Since 2000, more than 33,000 FSFL program loans have been disbursed, totaling roughly \$1.8 billion in funding.¹⁷

III. Administration of the FSFL program

While the FSFL program is administered under the general supervision of the CCC, local administration of the program is carried out through various FSA state and county offices.¹⁸ However, unless federal regulations expressly grant local FSA offices the authority to alter the provisions of the FSFL program, local offices cannot change or waive program requirements on their own.¹⁹

IV. Sources for this Guide

The primary sources for this Guide include federal statutes, regulations, and rules. In addition, this Guide relies upon information published in the FSA Handbook, “Farm Storage Facility Loan Program,” 1-FSFL (Revision 3) (“FSFL Handbook”).²⁰ Although FSA handbooks are interpretive

⁹ 7 U.S.C. § 8789(c)-(d); 7 C.F.R. §§ 1436.7(a), 1436.9(c) (2019); 74 Fed. Reg. 41,581, 41,583 (Aug. 18, 2009).

¹⁰ 7 U.S.C. § 8789(a); 74 Fed. Reg. 41,581, 41,582-585 (Aug. 18, 2009).

¹¹ Farm Storage Facility Loan Program, Security Requirements, 79 Fed. Reg. 13,189, 13,190 (Mar. 10, 2014).

¹² 79 Fed. Reg. 13,189, 13,189 (Mar. 10, 2014).

¹³ 81 Fed. Reg. 25,587, 25,588-89 (Apr. 29, 2016).

¹⁴ 81 Fed. Reg. 25,587, 25,588 (Apr. 29, 2016).

¹⁵ 81 Fed. Reg. 25,587, 25,588-89 (Apr. 29, 2016).

¹⁶ 81 Fed. Reg. 25,587, 25,587 (Apr. 29, 2016).

¹⁷ 79 Fed. Reg. 13,189, 13,189 (Mar. 10, 2014); see also <https://www.fsa.usda.gov/programs-and-services/price-support/facility-loans/farm-storage/index>.

¹⁸ 7 C.F.R. § 1436.2(a) (2019).

¹⁹ 7 C.F.R. § 1436.2(b) (2019).

²⁰ FSA Handbook 1-FSFL (Revision 3), “Farm Storage Facility Loan Program” (June 20, 2018), available at: <https://www.fsa.usda.gov/FSA/webapp?area=home&subject=empl&topic=hbk>.

only, and do not carry the same force as official regulations,²¹ courts can consider and defer to handbook interpretations of the laws and regulations that govern FSA programs.²² Accordingly, the FSFL Handbook should carry great weight with farmers interested in participating in the program because it provides important guidance as to how FSA interprets and implements the various FSFL program provisions.

V. Meaning of the Term “Facility”

For purposes of the FSFL program, FSA broadly defines the term “facility” to mean any on-farm storage structure, storage and handling equipment, or storage and handling truck.²³ Accordingly, when this Guide refers generally to a facility it is referencing all three categories—structures, equipment, and trucks—for which an FSFL may be obtained. When a rule applies only to a specific type of facility, the Guide will reference that type of facility by name.

VI. FSFL Funds Paid After Facility is Complete

As a general rule, farmers will not receive FSFL funding until after the facility’s construction and installation is complete (or partially complete, in the case of a partial loan disbursement). For this reason, some farmers may need to obtain outside financing in order to initially construct, install, or renovate the FSFL facility.

VII. FSFL Microloans vs. Standard FSFL

The FSFL program allows for both standard FSFL loans, as well as what FSA calls “FSFL microloans,” which are loans that do not exceed a total outstanding balance of \$50,000 and have reduced down payment and documentation requirements.²⁴ Most program rules apply to both standard FSFL program loans and FSFL microloans. However, in those instances where the rules differ for FSFL standard loans and microloans, this Guide will expressly state those differences.

VIII. Sugar Storage Facility Loans Not Covered in this Guide

Although raw and refined sugar is listed as an eligible commodity under the federal regulations,²⁵ FSA has developed a separate program—the Sugar Storage Facility Loan (SSFL) Program—that sets out specific rules and procedures for farmers seeking loans to store raw or refined sugar.²⁶ While many of the rules governing the SSFL program are similar to those that govern the FSFL program,²⁷ there are important differences between the two. This Guide is limited to discussing the FSFL program only, and does not address any of the specific rules for sugar storage loans.

²¹ See *Mittelstadt v. Perdue*, 913 F.3d 626, 634 (7th Cir. 2019) (citing *Westcott v. United States Dep't of Agric.*, 765 F.2d 121, 122 (8th Cir. 1985)).

²² For example, see *Maple Drive Farms Ltd. P'ship v. Vilsack*, 781 F.3d 837, 855-57 (6th Cir. 2015).

²³ 7 C.F.R. § 1436.3, “Facility” (2019).

²⁴ FSA Notice FSFL-142, page 1 (Apr. 17, 2017) (expired Oct. 1, 2017); FSFL Handbook, page 4-5, para. 59.A (June 20, 2018).

²⁵ 7 C.F.R. § 1436.3, “Facility loan commodity” (2019).

²⁶ See FSA Handbook 12-SU, “Sugar Storage Facility Loan Program” (April 28, 2003);

²⁷ Both the FSFL program and the SSFL program are governed by 7 C.F.R. part 1436. See SSFL Handbook, page 1-1, para. 1.B (April 28, 2003); see also FSFL Handbook, page 1-2, para. 1.C (June 20, 2018).

IX. Current Through June 2019

This version of the Farmers' Guide to the Farm Storage Facility Loan Program is current through June 1, 2019.

Chapter One - Borrower Eligibility

I. Introduction

To be eligible to receive an FSFL program loan, a farmer must meet a number of eligibility requirements. These requirements are summarized in the checklist below and described in detail in the sections that follow.

FSFL Program Loan Eligibility Checklist
<ul style="list-style-type: none"><input type="checkbox"/> Natural person or legal entity<input type="checkbox"/> U.S. citizen or legal resident alien<input type="checkbox"/> Landowner, landlord, operator, producer, leaseholder, tenant, or sharecropper<input type="checkbox"/> Satisfactory credit history<input type="checkbox"/> Ability to repay the FSFL debt<input type="checkbox"/> No disqualifying federal debt<input type="checkbox"/> Produce an FSFL-eligible commodity<input type="checkbox"/> Proof of crop insurance<input type="checkbox"/> Proof of flood insurance<input type="checkbox"/> Proof of all-peril structural insurance for FSFL-funded structures<input type="checkbox"/> Comply with highly erodible land and wetland conservation rules<input type="checkbox"/> Comply with the National Environmental Policy Act (NEPA) regulations<input type="checkbox"/> Comply with local zoning, land use, and building code rules<input type="checkbox"/> No conviction for a disqualifying controlled substance violation<input type="checkbox"/> No crop insurance violation<input type="checkbox"/> Demonstrate need for increased storage capacity for FSFL-funded structures

II. Borrower Eligibility

A farmer must satisfy the following requirements in order to be eligible for the FSFL program.

A. Natural Person or Legal Entity

Any natural person, persons, or legal entity may be eligible to borrow under the FSFL program.²⁸ A legal entity includes a partnership, corporation, estate, trust, association, cooperative, tribal venture, other business venture, or other legal entity.²⁹

B. Citizen of the United States or Legal Resident Alien

An eligible borrower must be a citizen of the United States or a legal resident alien.³⁰ For business entities, this means the members of the entity must be citizens of the United States or legal resident aliens.

C. Landowner, Landlord, Operator, Producer, Leaseholder, Tenant, or Sharecropper

An eligible borrower can be a landowner, landlord, operator, producer, leaseholder, tenant, or sharecropper.³¹

D. Satisfactory Credit History

Any farmer applying for an FSFL program loan must have a satisfactory credit history.³² A satisfactory credit history means a history of repaying debts as they came due.³³

A farmer with a credit history that includes late payments or nonpayment may still be eligible for an FSFL so long as the reason for the late or nonpayment was due to circumstances beyond the farmer's control.³⁴ FSA will use information and evidence provided by the farmer to determine whether the farmer's particular circumstances fall within this exception.³⁵

FSA may also consider other factors—beyond patterns of late payments or nonpayment—when determining whether an applicant's credit history is satisfactory. For example, the FSA Handbook directs FSA officers to look for bankruptcy and foreclosures, as well as heavy usage of short-term or high-interest loans or credit cards.³⁶

²⁸ 7 C.F.R. § 1436.5(a) (2019); FSFL Handbook, page 2-12, para. 35.A, Exhibit 2, "Person" (June 20, 2018).

²⁹ FSFL Handbook, Exhibit 2, "Person" (June 20, 2018).

³⁰ FSFL Handbook, Exhibit 2, "Person" (June 20, 2018).

³¹ 7 C.F.R. § 1436.5(a) (2019); FSFL Handbook, page 2-12, para. 35.A (June 20, 2018).

³² 7 C.F.R. §1436.5(a)(1) (2019); FSFL Handbook, page 2-12, para. 35.A (June 20, 2018).

³³ 7 C.F.R. § 1436.3, "Satisfactory credit history" (2019).

³⁴ 7 C.F.R. §§ 1436.3, "satisfactory credit history," 1436.5(a)(1) (2019); FSFL Handbook, Exhibit 2, page 2 "Satisfactory credit history" (June 20, 2018).

³⁵ 7 C.F.R. §§ 1436.3, "satisfactory credit history," 1436.5(a)(1) (2019).

³⁶ FSFL Handbook, page 5-3, para. 82.E (June 20, 2018).

E. Ability to Repay FSFL Debt

Eligibility to receive an FSFL program loan requires that farmers show the ability to pay an initial down payment on the FSFL-funded structure, equipment, or truck, as well as the ability to pay the annual installments on the underlying FSFL program loan itself.³⁷

F. No Disqualifying Federal Debt

The Debt Collection Improvement Act of 1996 (DCIA) prohibits FSA from providing certain loans, including FSFL program loans, to any person who is delinquent on a federal non-tax debt.³⁸ Accordingly, the FSFL application requires farmers to certify that they are not delinquent on any federal non-tax debt.³⁹

A federal non-tax debt is a debt that is owed to the Federal Government, other than a tax debt.⁴⁰ For example, a federal student loan debt is a federal non-tax debt.⁴¹

Whether a specific debt is deemed delinquent may depend on a variety of factors, including the specific arrangement between the parties to the underlying loan. However, for purposes of FSFL program eligibility, a farmer will be considered to have a delinquent federal non-tax debt if the farmer fails to pay the annual FSFL installment within 90 calendar days of its due date and the overdue installment balance is greater than \$500.⁴²

If a farmer has a delinquent federal non-tax debt, but the farmer can show that the debt will be resolved on or before the FSFL program loan disbursement date, the farmer may still be eligible to receive the loan.⁴³ If the farmer's delinquent debt is paid in full during the application process, the farmer should provide proof that the debt has been paid.⁴⁴

³⁷ 7 C.F.R. §§ 1436.5(a)(2), 1436.10(a), 1436.13(a) (2019); FSFL Handbook, page 2-12, para. 35.A (June 20, 2018).

³⁸ 31 U.S.C. § 3720B(a); *Hildebrandt v. Vilsack*, 102 F. Supp. 3d 318, 323 (D.D.C. 2015) (“A borrower who is delinquent on any federal debt may not obtain a loan from FSA.”) (citing 31 U.S.C. § 3720B); FSFL Handbook page 2-12, para. 35.A (June 20, 2018).

³⁹ 7 C.F.R. § 1436.5(a)(3) (2019); see also FSA form CCC-185, available at: <https://forms.sc.egov.usda.gov/efcommon/eFileServices/eFormsAdmin/CCC0185.pdf>. If the FSFL application is a joint application, *all* applicants will be reviewed for delinquent federal non-tax debt. FSFL Handbook, page 5-7, para. 83.C (June 20, 2018). Similarly, if the borrower on the FSFL application is a joint venture, *all* members of the entity will be reviewed for delinquent debt.

⁴⁰ 7 C.F.R. § 1436.5(a)(3); 31 C.F.R. § 285.13(a) (2019); FSFL Handbook, page 5-7, para. 83.A (June 20, 2018).

⁴¹ FSFL Handbook, page 5-7, para. 83.A (June 20, 2018).

⁴² 31 C.F.R. § 285.13(d)(1) (2019); FSFL Handbook, page 13-3, para. 262.E (June 20, 2018). The rule on delinquency is somewhat confusing as it states that an FSFL program loan will be considered delinquent (for purposes of the Debt Collection Improvement Act) when *either* an installment is not fully paid within 90 days, *or* if the farmer's outstanding installment balance—after making a payment—exceeds \$500 within 90 calendar days after its due date. However, because the Handbook directs local FSA offices to mark a loan as delinquent only when a payment is not paid within 90 days and the balance is over \$500, that is likely how the rule will be implemented.

⁴³ FSFL Handbook, page 2-12, para. 35.A, page 5-7, para. 83.A (June 20, 2018).

⁴⁴ FSFL Handbook, page 5-8, para. 83.D (June 20, 2018).

G. Produces an Eligible FSFL Commodity

Only farmers who produce FSFL-eligible commodities may receive an FSFL program loan.⁴⁵

FSA decides which commodities are eligible for FSFL program loans, and it can change the list of eligible commodities at any time.⁴⁶ Therefore, if a farmer does not produce a commodity that is currently eligible, the farmer may contact his or her local FSA office to inquire about the possibility of getting an amendment to the FSFL-eligible commodity list.⁴⁷ A detailed description of the commodities that are currently eligible for the FSFL program is provided in Chapter Two.

H. Provide Annual Proof of Crop Insurance—With Some Exceptions

In most cases, to qualify for FSFL funds the farmer must obtain and provide annual proof of crop insurance or coverage under the Noninsured Crop Disaster Assistance Program (NAP).⁴⁸ There are exceptions to this general rule.⁴⁹ Details about FSFL program crop insurance requirements can be found in Chapter Six.

I. Provide Annual Proof of Flood Insurance

Farmers are required to provide annual proof of flood insurance if FSA determines that flood insurance is necessary to protect its interest in the farmer's FSFL collateral.⁵⁰ More specific requirements for flood insurance can be found in Chapter Six.

⁴⁵ 7 C.F.R. § 1436.5(a)(4) (2019); FSFL Handbook, page 2-12, para. 35.A (June 20, 2018).

⁴⁶ 7 C.F.R. § 1436.3, "Facility loan commodity" (2019) explicitly states that a facility loan commodity can include, in addition to the commodities specifically listed, "other grains and oilseeds as determined and announced by the CCC," and "other storable commodities as determined by the Secretary [of Agriculture]." See also, FSFL Handbook, page 2-2, para. 33.A (June 20, 2018).

⁴⁷ FSFL Handbook, page 2-2, para. 33.A (June 20, 2018). To gain approval for the addition of a commodity that is not currently eligible for an FSFL loan, an applicant's State FSA office must seek written approval from the National FSA office. In most cases, the Office of the Secretary of Agriculture will make the final determination as to whether a commodity may be added the FSFL eligible commodity list.

⁴⁸ 7 C.F.R. § 1436.5(a)(6) (2019); FSFL Handbook, page 2-12, para. 35.A, page 6-1, para. 96.A (June 20, 2018).

⁴⁹ 7 C.F.R. § 1436.5(a)(6) (2019); FSFL Handbook, page 6-1, para. 96.A (June 20, 2018); FSA Notice FSFL-142, page 28 (Apr. 17, 2017) (expired Oct. 1, 2017). In general, there must be crop insurance for the farmer's economically significant crops. There must also be crop insurance or NAP coverage for crops to be stored in the funded facility. Crop insurance, as FSA notes, may not be available for all commodities. However, for FSFL program loans that fund drying and handling equipment, or storage and handling trucks, insurance or NAP coverage is generally not required.

⁵⁰ 7 C.F.R. § 1436.5(a)(9) (2019); FSFL Handbook, page 2-13, para. 35.A, pages 6-5 and 6-6, para. 99.A (June 20, 2018).

J. Annual Proof of All-Peril Structural Insurance—Permanently Affixed and Portable Storage Structures

Farmers must provide annual proof that all storage structures financed by FSFL program loans are covered by all-peril structural insurance.⁵¹ The insurance coverage must equal or exceed the farmer's outstanding FSFL balance.⁵² The complete FSFL program requirements for all-peril structural insurance are discussed in Chapter Six.

K. Complies with the USDA Conservation Rules

All FSFL-funded projects must comply with USDA regulations governing wetland conservation (WC) and highly erodible land conservation (HELIC).⁵³

L. Complies with the National Environmental Policy Act Regulations

FSFL-funded projects must comply with the National Environmental Policy Act (NEPA).⁵⁴ Before FSA will approve any FSFL application, FSA must conduct an environmental evaluation to determine whether the proposed FSFL facility is likely to have adverse environmental impacts.⁵⁵

The rules and regulations governing NEPA can be complicated and unfamiliar. It is therefore a good first step for farmers to consult with their county FSA offices early on in the application process to ensure they are in compliance with NEPA.⁵⁶

M. Complies with Applicable Local Zoning, Land Use, and Building Codes

All proposed FSFL projects must adhere to state and county zoning, land use, and building code requirements.⁵⁷ FSA may contact local code enforcement officials to determine whether a proposed project is subject to any land use laws.⁵⁸

⁵¹ 7 C.F.R. §§ 1436.5(a)(9), 1436.15(d) (2019); FSFL Handbook, page 6-3, para. 97.A-B (June 20, 2018); FSA Notice FSFL-142, page 29 (Apr. 17, 2017) (expired Oct. 1, 2017). Insurance is required for both permanently affixed or portable structures.

⁵² FSFL Handbook, page 6-3, para. 97.B (June 20, 2018).

⁵³ 7 C.F.R. § 1436.5(a)(7) (2019); FSFL Handbook, page 2-12, para. 35.A (June 20, 2018). The Federal Regulations governing highly erodible land and wetlands conservation can be found at 7 C.F.R. § 12.4 (2019).

⁵⁴ 7 C.F.R. § 1436.5(a)(10) (2019); FSFL Handbook, page 2-12, para. 35.A (June 20, 2018).

⁵⁵ To comply with the requirements of NEPA, FSA will prepare an environmental screening worksheet—form FSA-850—which helps FSA determine whether an additional environmental assessment (EA) is warranted. The completion of an EA is generally not necessary for loans being made to individual farmers or farms. 7 C.F.R. § 799.20 (2019); FSFL Handbook, page 6-21, para. 109.A, page 6-22, para. 110.A (June 20, 2018). A copy of form FSA-850 can be found here: https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/Energy/BCAP/FSA0850_161017V01Fillable.pdf.

⁵⁶ FSFL Handbook, page 6-22 to 6-23, Par. 110 (June 20, 2018).

⁵⁷ 7 C.F.R. § 1436.5(a)(8) (2019); FSFL Handbook, page 2-13, para. 35.A, page 6-25, para. 112.A (June 20, 2018).

⁵⁸ FSFL Handbook, page 6-25, para. 112.A (June 20, 2018).

N. No Conviction for a Disqualifying Controlled Substance Violation

To be eligible for an FSFL, a farmer cannot have a conviction—under federal or state law—of a disqualifying controlled substance violation.⁵⁹ A disqualifying controlled substance violation means that the farmer has been convicted of planting, cultivating, growing, producing, harvesting, or storing a controlled substance.⁶⁰

If a farmer has been convicted of a disqualifying controlled substance offense, the farmer will be ineligible for FSFL payments and benefits during the crop year in which the farmer was convicted, as well as the four succeeding crop years.⁶¹

O. No Crop Insurance Violations

A farmer will be ineligible for the FSFL program if the farmer has a crop insurance violation.⁶² For example, under the Federal Crop Insurance Act (FCIA), a farmer may be disqualified from receiving FSFL program benefits if the farmer provides false or inaccurate information to the Federal Crop Insurance Corporation (FCIC) or an approved insurance provider.⁶³

A crop insurance violation disqualification can last for up to five years and can include the imposition of civil fines.⁶⁴ However, prior to any loss of FSFL benefits due to a crop insurance violation, the farmer must be provided with notice of the violation and an opportunity for a hearing on the matter.⁶⁵

P. Demonstrates a Need for Increased Storage Capacity—for Storage Structure Loans Only

To be eligible to receive an FSFL for a new or used storage structure—as opposed to an equipment or truck loan—the farmer must demonstrate a need for increased storage capacity.⁶⁶

The way in which a farmer's storage needs are calculated will depend on the amount of the loan, as well as the particulars of the his or her farming operation. For a full description of how to calculate storage capacity needs, see Chapter Five.

⁵⁹ 7 C.F.R. § 1436.5(a)(11) (2019); FSFL Handbook, page 2-12, para. 35.A (June 20, 2018).

⁶⁰ 7 C.F.R. § 718.6(b)(1)(v) (2019); FSA Handbook 1-CM (Revision 3), “Common Management and Operating Provisions,” page 30-1, para. 871.B (Apr. 2, 2009). The governing definition of a controlled substance can be found at 21 U.S.C. § 802(6) and does not include distilled spirits, wine, malt beverages, or tobacco.

⁶¹ 7 C.F.R. § 718.6(b)(1)(v) (2019); FSA Handbook 1-CM (Revision 3), “Common Management and Operating Provisions,” page 30-1, para. 871.C (Apr. 2, 2009).

⁶² 7 C.F.R. § 1436.5(a)(11) (2019); FSFL Handbook, page 2-12, para. 35.A (June 20, 2018).

⁶³ 7 C.F.R. §§ 718.11(a)(4), 1436.5(a)(11) (2019); 7 U.S.C. § 1515(h)(3)(B)(iv), (h)(3)(C).

⁶⁴ 7 U.S.C. § 1515(h)(3). Civil fines cannot exceed the greater of \$10,000 or the amount of the pecuniary gain obtained as a result of the false or inaccurate information.

⁶⁵ 7 U.S.C. § 1515(h)(1); 7 C.F.R. § 718.11(a) (2019).

⁶⁶ 7 C.F.R. § 1436.5(a)(5) (2019); FSFL Handbook, page 2-12, para. 35.A (June 20, 2018).

Chapter Two - Eligible Commodities

I. Introduction

To be eligible for an FSFL program loan, a farmer must produce an FSFL-eligible commodity.⁶⁷ The federal rules and regulations, in combination with the FSA Handbook, provide an extensive list of commodities that are currently eligible under the FSFL program.⁶⁸

II. Current List of FSFL Eligible Commodities

The following represents the list of FSFL-eligible commodities as of June 1, 2019. This list of eligible commodities is subject to change.⁶⁹

A. Aquaculture

Aquaculture species are FSFL-eligible commodities.⁷⁰ For purposes of the FSFL program, aquaculture species are defined as any species of aquatic organism grown as food for human consumption, or any fish raised as feed for fish that are consumed by humans. Aquaculture species include, but are not limited to, the following:

- Sturgeon fish,
- Fish eggs,
- Caviar,
- Catfish,
- Crustaceans (crabs, crawfish for food, lobster, prawns, shrimp, fin fish),
- Mollusks (abalone, clams, mussels, oysters, scallops), and
- Seaweed (kelp, dulse, laver, gacilaria, sea lettuce).⁷¹

FSA must be able to determine that the farmer has owned or leased—for at least thirty calendar days—property that has readily identifiable boundaries within which to produce the aquaculture species.⁷²

B. Butter, Cheese, Eggs, Yogurt

Butter, cheese, eggs, and yogurt are all eligible commodities for the FSFL program.⁷³ To qualify, FSA must be able to determine that the commodity came from livestock or an egg-laying species that the farmer has owned or leased for at least thirty calendar days.

⁶⁷ 7 C.F.R. § 1436.5(a)(4) (2019); FSFL Handbook, page 2-12, para. 35.A (June 20, 2018).

⁶⁸ 81 Fed. Reg. 25,587, 25,590 (April 29, 2016); FSFL Handbook, pages 2-3 through 2-11, para. 33.B-M (June 20, 2018).

⁶⁹ 7 C.F.R. § 1436.3, “Facility loan commodity” (2019); FSFL Handbook, Exhibit 2, page 3, “Eligible facility loan commodity” (June 20, 2018).

⁷⁰ 7 C.F.R. § 1436.3, “Facility loan commodity” (2019); FSFL Handbook, page 2-10, para. 33.K (June 20, 2018).

⁷¹ FSFL Handbook, page 2-10, para. 33.K (June 20, 2018).

⁷² FSFL Handbook, page 2-10, para. 33.K (June 20, 2018).

⁷³ FSFL Handbook, page 2-8, para. 33.I (June 20, 2018). A farmer’s individually packaged or bulk butter, cheese, eggs and yogurt are all eligible for FSFL financing.

C. Floriculture

Floriculture can be eligible for the FSFL program.⁷⁴ For purposes of the FSFL program, floriculture is defined as potted or cut plants, bulbs, tubers, and seeds which are grown in either a field or nursery. Floriculture includes, but is not limited to, the following:

- Flowering shrubs and bushes,
- Potted flowering plants,
- Foliage plants,
- Cultivated greens,
- Deciduous flowering trees,
- Ornamental plants, and
- Christmas trees.⁷⁵

D. Grains

A number of grains are eligible under the FSFL program. The following grains are eligible both as a whole grain and as other than whole grain:

- Barley,
- Corn,
- Grain sorghum,
- Oats, and
- Wheat.⁷⁶

Several other grains are also eligible. They include:

- Buckwheat,
- Spelt,
- Triticale,
- Rye, and
- Malted small grains.⁷⁷

E. Hay

Hay can be an eligible commodity under the FSFL program.⁷⁸ Hay is defined as a grass or legume that has been cut and stored.⁷⁹

⁷⁴ 7 C.F.R. § 1436.3, “Facility loan commodity” (2019); FSFL Handbook, page 2-8, para. 33.G (June 20, 2018).

⁷⁵ For a more complete list of eligible floriculture, see FSFL Handbook, page 2-8, para. 33.G (June 20, 2018).

⁷⁶ 7 C.F.R. § 1436.3, “Facility loan commodity” (2019); 81 Fed. Reg. 25,587, 25,588 (Apr. 29, 2016); FSFL Handbook, page 2-3, para. 33.B (June 20, 2018).

⁷⁷ 81 Fed. Reg. 25,587, 25,588-90 (Apr. 29, 2016); FSFL Handbook, page 2-3, para. 33.B (June 20, 2018).

⁷⁸ 7 C.F.R. § 1436.3, “Facility loan commodity” (2019); FSFL Handbook, page 2-5, para. 33.D (June 20, 2018).

⁷⁹ 7 C.F.R. § 1436.3, “Hay” (2019); FSFL Handbook, page 2-5, para. 33.D (June 20, 2018).

Hay includes all FSFL commodities that are baled after harvest for the purpose of becoming animal feed.⁸⁰ This means, for example, that wheat straw, peanuts, and corn stubble could all qualify as hay. FSFL-eligible hay does not include processed hay.⁸¹

The following common grass mixtures are eligible as hay under the FSFL program:

- Brome,
- Costal Bermuda,
- Fescue grass,
- Orchard grass,
- Rye grass,
- Timothy grass, and
- Other native grass species prevalent in the farmer's region.⁸²

The following forage legumes are eligible as hay under the FSFL program:

- Alfalfa,
- Clovers, and
- Trefoil.⁸³

Grain legumes that are eligible as hay include, but are not limited to, the following:

- Lentils,
- Peas, and
- Soybeans.⁸⁴

F. Honey

Honey can be eligible as an FSFL commodity.⁸⁵ However, honey that is processed is not eligible for FSFL funding.⁸⁶ According to FSA, processed honey includes honey that is stored in jars.

G. Hops

Hops are eligible for FSFL funds so long as the farmer owns or leases property that has readily-identifiable boundaries.⁸⁷

⁸⁰ FSFL Handbook, page 2-5, para. 33.D (June 20, 2018).

⁸¹ FSFL Handbook, page 2-5, para. 33.D (June 20, 2018). Although not defined by FSA, processed hay probably means hay that is not baled. This would include, for example, haylage.

⁸² FSFL Handbook, page 2-5, para. 33.D (June 20, 2018).

⁸³ FSFL Handbook, page 2-5, para. 33.D (June 20, 2018).

⁸⁴ FSFL Handbook, page 2-5, para. 33.D (June 20, 2018).

⁸⁵ 7 C.F.R. § 1436.3, "Facility loan commodity" (2019); 81 Fed. Reg. 25,587, 25,588, 25,590 (Apr. 29, 2016). The Handbook also provides a list of 59 eligible floral sources. For the full list, see FSFL Handbook, page 2-7, para. 33.F (June 20, 2018).

⁸⁶ FSFL Handbook, page 3-14, para. 51.A (June 20, 2018).

⁸⁷ 7 C.F.R. § 1436.3, "Facility loan commodity" (2019); 81 Fed. Reg. 25,587, 25,588, 25,590 (Apr. 29, 2016); FSFL Handbook, page 2-11, para. 33.L (June 20, 2018).

H. Maple Sap and Maple Syrup

Maple sap and maple syrup can be eligible FSFL commodities so long as the farmer has owned or leased a sugar bush (a stand of sugar maple trees) with readily-identifiable boundaries for at least thirty calendar days.⁸⁸

I. Meat and Poultry

Meat and poultry can be eligible under the FSFL program.⁸⁹ The following rules apply.

1. Eligible Livestock Species

To be eligible for an FSFL program loan, the farmer must have owned or leased the FSFL-eligible livestock for at least thirty calendar days.⁹⁰ The following are the eligible livestock species for purposes of the FSFL program:

- Alpacas,
- Beefalo/buffalo (adult and nonadult),
- Beef cattle (adult and nonadult),
- Dairy cattle (adult and nonadult),
- Deer,
- Elk,
- Emus,
- Goats,
- Llamas,
- Moose,
- Poultry, including egg-producing poultry,
- Rabbits,
- Sheep, and
- Swine.

2. Meat and Poultry Processing Requirements

For meat or poultry to be eligible for FSFL financing, the meat and poultry must be processed in one of the following ways:

- Cured (salt or sugar),
- Cut/sliced,
- Smoked, or
- Ground.⁹¹

⁸⁸ 7 C.F.R. § 1436.3, “Facility loan commodity” (2019); FSFL Handbook, page 2-11, para. 33.M (June 20, 2018).

⁸⁹ 7 C.F.R. § 1436.3, “Facility loan commodity” (2019); FSFL Handbook, page 2-9, para. 33.J (June 20, 2018).

⁹⁰ FSFL Handbook, page 2-9, para. 33.J (June 20, 2018).

⁹¹ FSFL Handbook, page 2-9, para. 33.J (June 20, 2018). Farmers must comply with all applicable state laws for the storage of slaughtered meat and poultry.

All other processing methods make the meat or poultry not eligible for FSFL financing.⁹² This means that meat or poultry that is cooked, baked, churned, canned, jarred, or dyed is not eligible for an FSFL.

J. Milk

Milk can be an FSFL-eligible commodity.⁹³ To qualify, the milk must come from either a cow, goat, sheep, or buffalo that the farmer has owned or leased for at least thirty calendar days.⁹⁴

K. Oilseeds

Oilseeds are eligible as FSFL commodities.⁹⁵ Oilseeds include the following:

- Canola,
- Crambe,
- Flaxseed,
- Mustard seed,
- Rapeseed,
- Safflower,
- Sesame seeds,
- Soybeans, and
- Sunflower seeds.⁹⁶

L. Peanuts

Peanuts are eligible as an FSFL commodity.⁹⁷

M. Pulse crops

Pulse crops are FSFL-eligible commodities.⁹⁸ Pulse crops include the following:

- Chickpeas, both large and small,⁹⁹
- Dry peas,
- Lentils, and

⁹² FSFL Handbook, page 2-9, para. 33.J (June 20, 2018).

⁹³ 7 C.F.R. § 1436.3, "Facility loan commodity" (2019); FSFL Handbook, page 2-8, para. 33.H (June 20, 2018).

⁹⁴ FSFL Handbook, page 2-8, para. 33.H (June 20, 2018).

⁹⁵ 7 C.F.R. § 1436.3, "Facility loan commodity" (2019); FSFL Handbook, page 2-3, para. 33.B (June 20, 2018).

⁹⁶ FSFL Handbook, page 2-3, para. 33.B (June 20, 2018).

⁹⁷ 7 C.F.R. § 1436.3, "Facility loan commodity" (2019); FSFL Handbook, page 2-3, para. 33.B (June 20, 2018).

⁹⁸ 7 C.F.R. § 1436.3, "Facility loan commodity" (2019); FSFL Handbook, page 2-3, para. 33.B (June 20, 2018).

⁹⁹ Regulations, but not the Handbook, say they must have been harvested as whole grain. 7 C.F.R. § 1436.3, "Facility loan commodity" (2019).

- Dry beans.¹⁰⁰

N. Perishable Commodities

The largest category of FSFL-eligible commodities contains what FSA calls “perishable commodities.”¹⁰¹ This category includes fruits, vegetables, and nuts. The following chart lists the currently-eligible perishable commodities.¹⁰²

Eligible Perishable Commodities			
Almonds	Chestnuts	Leeks	Plums
Apples	Chicory/radicchio	Lemons	Pomegranates
Apricots	Coconuts	Lettuce	Potatoes
Aronia berries	Corn	Limes	Sweet potatoes
Artichokes	Cranberries	Macadamia nuts	Prunes
Asparagus	Cucumbers	Mangos	Pumpkins
Avocados	Currants	Mushrooms	Radishes
Bamboo shoots	Dates	Nectarines	Raisins
Bananas	Eggplant	Okra	Rhubarb
Beans	Elderberries	Olives	Rutabaga
Beets	Figs	Onions	Saskatoon berries
Blueberries	Garlic	Oranges	Scallions
Broccoli	Ginger	Papaya	Shallots
Brussel sprouts	Grapefruit	Parsnip	Squash
Cabbage	Grapes	Peaches	Strawberries
Caneberries*	Green peanuts	Peas	Tangelos
Cantaloupes	Greens	Pears	Tomatoes
Carrots	Hazelnuts	Pecans	Turnips
Cashews	Herbs	Peppers	Walnuts
Cauliflower	Honeydew	Pineapple	Water cress
Celery	Kiwifruit	Pistachios	Watermelon
Cherries	Kohlrabi	Plantain	Yams

*Caneberries include blackberries and raspberries

¹⁰⁰ Dry beans are not expressly listed as eligible commodities in the Federal Regulations, but they are listed as eligible in the Handbook. See FSFL Handbook, page 2-3, para. 33.B (June 20, 2018).

¹⁰¹ 7 C.F.R. § 1436.3, “Facility loan commodity” (2019); FSFL Handbook, page 2-4, para. 33.C (June 20, 2018).

¹⁰² FSFL Handbook, page 2-4, para. 33.C (June 20, 2018).

O. Renewable Biomass

Renewable biomass can be an FSFL-eligible commodity.¹⁰³ For purposes of the FSFL program, renewable biomass means any organic matter that is available on a renewable or recurring basis.¹⁰⁴ To qualify, the organic matter must be used for the production of energy in the form of heat, electricity, or a liquid, solid, or gaseous fuel. Manure, from any source, is not an eligible renewable biomass.¹⁰⁵

The following are all eligible types of renewable biomass:

- Algae,
- Crop residue (including, but not limited to, corn stover, orchard prunings, and various straws and hulls),
- Plants and trees (not including old growth timber),
- Renewable plant materials (including, but not limited to, feed grains, soybeans, and switch grass), and
- Vegetative waste material, or compost (including, but not limited to, food waste, wood residue, wood waste, and yard waste).¹⁰⁶

P. Rice and Wild Rice

Rice and wild rice are eligible as FSFL commodities.¹⁰⁷

III. Ineligible FSFL Commodities

Several types of commodities are ineligible for FSFL financing.¹⁰⁸ These include the following:

- Cider,
- Corn gluten,
- Firewood,
- Illegal substances,
- Juices processed from an FSFL-eligible commodity,
- Manure,
- Marijuana,
- Old growth timber,
- Most processed commodities, including those that are baked, canned, or jarred,¹⁰⁹
- Waste from domestic, residential, or municipal sources,

¹⁰³ 7 C.F.R. § 1436.3, "Facility loan commodity" (2019); FSFL Handbook, page 2-6, para. 33.E (June 20, 2018).

¹⁰⁴ 7 C.F.R. § 1436.3, "Renewable biomass" (2019); FSFL Handbook, page 2-6, para. 33.E (June 20, 2018).

¹⁰⁵ 7 C.F.R. § 1436.3, "Renewable biomass" (2019).

¹⁰⁶ FSFL Handbook, page 2-6, para. 33.E (June 20, 2018).

¹⁰⁷ 7 C.F.R. § 1436.3, "Facility loan commodity" (2019); FSFL Handbook, page 2-3, para. 33.B (June 20, 2018).

¹⁰⁸ FSFL Handbook, page 2-11, para. 34.A (June 20, 2018).

¹⁰⁹ However, individually packaged or bulk butter, cheese, eggs, and yogurt products remain eligible for FSFL financing. In addition, some processed meat and poultry, including meat and poultry that is cured, cut/sliced, smoked, or ground, is eligible for FSFL. See FSFL Handbook, page 2-8, para. 33.I, page 2-9, para. 33.J, and page 2-11, para. 34.A (June 20, 2018).

- Waste from food source operations or food processing plants,
- Wine, and
- Any commodity without a food or energy value.

IV. Eligible Commodity List Can Expand

Both the federal regulations and the FSFL Handbook expressly state that USDA has the authority to approve the eligibility of commodities that are not currently listed as FSFL-eligible.¹¹⁰ If a farmer produces a commodity that is not listed above, and the farmer is interested in applying for an FSFL program loan, the farmer should contact his or her local FSA office to learn about the process for requesting the addition of a new eligible commodity.¹¹¹

¹¹⁰ 7 C.F.R. § 1436.3, “Facility loan commodity” (2019); FSFL Handbook, page 2-2, para. 33.A (June 20, 2018). 7 C.F.R. § 1436.4 (2019) explicitly states that a facility loan commodity can include, in addition to those commodities listed, “other grains and oilseeds as determined and announced by the CCC,” and “other storable commodities as determined by [USDA].”

¹¹¹ FSFL Handbook, page 2-2, para. 33.A (June 20, 2018).

Chapter Three - Eligible Facilities—Structures, Equipment, and Trucks

I. Introduction—Loans are for Facilities

As a general rule, FSFL program loans are only granted for facilities.¹¹² The term “facility” is broadly defined to include storage structures, equipment, and trucks.

A. Structures

An FSFL program loan may be used for on-farm storage and handling structures.¹¹³ The structures may be acquired, constructed, installed or upgraded.

B. Equipment

An FSFL program loan may be used to acquire storage and handling equipment.¹¹⁴

C. Trucks

An FSFL program loan may be used to acquire a storage and handling truck.¹¹⁵

II. General Eligibility Rules for All Facilities

The following rules apply to all types of FSFL facilities, whether a structure, equipment, or truck.

A. Storage, Handling, or Transport of Eligible Commodities

An FSFL-funded facility must be used to store, handle, or transport FSFL-eligible commodities for the entire term of the loan.¹¹⁶

B. New or Used

An FSFL facility may be either new or used.¹¹⁷

¹¹² 7 C.F.R. § 1436.3, “Facility” (2019); FSFL Handbook, page 1-1, para. 1.A (June 20, 2018).

¹¹³ 7 C.F.R. § 1436.3, “Facility” (2019); FSFL Handbook, page 1-1, para. 1.A (June 20, 2018). For stand-alone structures, a farmer may receive one FSFL for each structure. However, if two or more structures are adjoined, the farmer must fund the entire project with only one FSFL. FSFL Handbook, page 4-8, para. 60.A (June 20, 2018). For a complete definition of a stand-alone structure, see FSFL Handbook, Exhibit 2, page 8, “Stand-alone structures” (June 20, 2018).

¹¹⁴ 7 C.F.R. § 1436.3, “Facility” (2019); FSFL Handbook, page 1-1, para. 1.A (June 20, 2018).

¹¹⁵ 7 C.F.R. § 1436.3, “Facility” (2019); FSFL Handbook, page 1-1, para. 1.A (June 20, 2018).

¹¹⁶ 7 C.F.R. § 1436.6(b), (d), (g) (2019); FSFL Handbook, page 1-1, para. 1.A, and page 1-6, para. 5.A (June 20, 2018); FSA Notice FSFL-142, page 10 (Apr. 17, 2017) (expired Oct. 1, 2017);

¹¹⁷ 7 C.F.R. § 1436.3, “Facility” (2019); 81 Fed. Reg. 25,587, 25,589 (April 29, 2016); FSA Notice FSFL-142, page 10 (Apr. 17, 2017) (expired Oct. 1, 2017); FSFL Handbook, page 1-1, para. 1.A (June 20, 2018).

C. Portable or Permanently Affixed

An FSFL facility may be either portable or permanently affixed.¹¹⁸

FSA defines portable to mean non-affixed equipment and storage containers that have a primary function of storing or handling eligible FSFL commodities.¹¹⁹ The storing or handling must occur at farm, market, or storage locations.

Portable structures and equipment must be manufactured to be mounted, hitched, or transported with a farm vehicle, truck, or trailer. They can include (but are not limited to) the following: bulk tanks, conveyors, augers, scales, vacuums, pilers, scales, batch dryers, and storage containers.¹²⁰

D. Useful Life of Facility Must Equal or Exceed Term of Loan

To be eligible for funding, all FSFL facilities and collateral must have a useful life of at least the entire term of the farmer's FSFL program loan.¹²¹

III. FSFL Storage Structure Eligibility

FSFL program loans fund only certain categories of storage structures, and many types of structures are not eligible for financing.¹²²

A. Eligible Storage Structures

The following types of storage structures are eligible for FSFL financing.¹²³

¹¹⁸ 7 C.F.R. § 1436.3, "Facility" (2019); FSFL Handbook, page 2-16, para.36.C (June 20, 2018); FSA Notice FSFL-142, page 10 (Apr. 17, 2017) (expired Oct. 1, 2017); FSFL Handbook, page 1-1, para. 1.A, and page 2-37, para. 43.A, page 2-44, para. 44.A (June 20, 2018). Portable structures and equipment were added as eligible facilities in 2016 in order to cater to the needs of small-scale and specialty crop farmers, such as fruit and vegetable farmers, who often market their commodities at various locations. 81 Fed. Reg. 25,587, 25,588 (April 29, 2016).

¹¹⁹ 7 C.F.R. § 1436.3, "Portable equipment and storage structures" (2019); FSFL Handbook, Exhibit 2, "Portable equipment and storage structures" (June 20, 2018).

¹²⁰ 7 C.F.R. § 1436.3, "Portable equipment and storage structures" (2019); 81 Fed. Reg. 25,587, 25,589 (April 29, 2016); FSFL Handbook, Exhibit 2, "Portable equipment and storage structures" (June 20, 2018).

¹²¹ 7 C.F.R. § 1436.6(a) (2019); FSA Notice FSFL-142, page 10 (Apr. 17, 2017) (expired Oct. 1, 2017); FSFL Handbook, page 1-6, para. 5.B (June 20, 2018).

¹²² 7 C.F.R. § 1436.6(a) (2019); FSFL Handbook, pages 2-16 through 2-18, para. 36.C (June 20, 2018).

¹²³ 7 C.F.R. § 1436.6(a) (2019); FSFL Handbook, pages 2-16 through 2-18, para. 36.C (June 20, 2018). Although the Federal Regulations and the FSFL Handbook provide similar lists of eligible structures, they differ slightly in their definitions of each structure. The Handbook also includes eligible structures that are not currently referenced in the Federal Regulations. Because the Handbook was published more recently (and reflects how FSA intends to implement the FSFL program), this Guide includes the descriptions of eligible structures as they are listed in the Handbook. For reference, however, both the Federal Regulations and the Handbook are cited when applicable.

1. Conventional-Type Cribs or Bins

Conventional-type cribs or bins are eligible as FSFL storage structures, but they must be designed and engineered for storage of the eligible commodity.¹²⁴

2. Oxygen-Limiting Structures, Including Remanufactured Structures

Oxygen-limiting structures that are designed to store eligible commodities qualify for FSFL financing.¹²⁵

Remanufactured oxygen-limiting structures are also eligible for FSFL financing, so long as they are built to the original manufacturer's design specifications using the manufacturer's rebuild kit.¹²⁶ If the farmer intends to use a rebuild kit from a company other than the original manufacturer, the farmer should make a request to his or her state FSA office.¹²⁷

3. Upright Silo Storage Structures

Upright silo-type structures qualify as FSFL-eligible structures so long as they are designed for commodity storage.¹²⁸

4. Flat-Type Storage Structures

Flat-type storage structures that are designed to store FSFL commodities, and which are primarily used for such storage, are eligible for FSFL financing.¹²⁹ This includes permanent concrete floors and bulkheads.

5. Concrete Foundations, Aprons, and Pits

Concrete foundations, aprons, and pits that are essential to the proper operation of FSFL-eligible storage and handling equipment can qualify for FSFL funds.¹³⁰

6. Concrete Pads

Concrete pads can be eligible for FSFL financing under either of two circumstances. First, if the concrete pads are essential to the proper operation of FSFL-eligible storage and handling equipment, the pads qualify for FSFL financing.¹³¹ Second, concrete pads are eligible for FSFL funds if the pads do not

¹²⁴ 7 C.F.R. § 1436.6(a)(1) (2019); FSFL Handbook, page 2-16, para. 36.C (June 20, 2018).

¹²⁵ 7 C.F.R. § 1436.6(a)(2) (2019); FSFL Handbook, page 2-16, para. 36.C (June 20, 2018).

¹²⁶ 7 C.F.R. § 1436.6(a)(2) (2019); FSFL Handbook, page 2-17, para. 36.C (June 20, 2018).

¹²⁷ It is unclear what criteria FSA will use to determine whether to approve a rebuild kit from a company other than the original manufacturer. However, the Handbook says that state FSA offices are "strongly encouraged" to only approve rebuild kits from the original manufacturer. See FSFL Handbook, page 2-17, para. 36.C (June 20, 2018). This suggests that getting a waiver to use a different rebuild kit may be difficult.

¹²⁸ 7 C.F.R. § 1436.6(a)(2) (2019); FSFL Handbook, page 2-16, para. 36.C (June 20, 2018).

¹²⁹ 7 C.F.R. § 1436.6(a)(3) (2019); FSFL Handbook, page 2-16, para. 36.C (June 20, 2018).

¹³⁰ 7 C.F.R. § 1436.6(b)(5) (2019); FSFL Handbook, page 2-16, para. 36.C (June 20, 2018).

¹³¹ 7 C.F.R. § 1436.6(b)(5) (2019); FSFL Handbook, page 2-16, para. 36.C (June 20, 2018).

have walls (or have separate, detachable sides) and the pads are used to store an FSFL-eligible commodity.¹³²

7. Bunker-Type, Horizontal, or Open Silo Structures

Structures that are bunker-type, horizontal, or open silo—and that have at least two concrete walls and a concrete floor—are eligible for FSFL financing.¹³³ The structures must be designed to store FSFL commodities.

8. Area Housing Electronic and Control Equipment

FSFL funds can finance the area of a shed or shelter that is used to house and protect electronic and control equipment.¹³⁴

9. Portable Storage Structures and Containers

Portable, manufactured storage structures and containers can qualify for FSFL financing under either of two circumstances.¹³⁵ First, a portable structure or container is eligible for an FSFL if it is designed to be transported, hitched, or mounted on a trailer or truck for the purpose of storing and handling eligible commodities.¹³⁶ Second, a portable container is eligible for FSFL financing if it is essential to the proper storage of an eligible commodity.

10. Pre-Owned Structures

FSFL financing may be used to purchase a used or pre-owned storage structure, including any required site preparation, foundation materials, installation costs, and off-farm labor.¹³⁷ However, the farmer is responsible for paying any costs associated with disassembling and moving the structure.¹³⁸ In addition, the farmer must pay for the underlying real estate—FSFL funds may not be used to purchase any required real estate.

¹³² FSFL Handbook, page 2-16, para. 36.C (June 20, 2018).

¹³³ 7 C.F.R. § 1436.6(a)(4) (2019); FSFL Handbook, page 2-17, para. 36.C (June 20, 2018).

¹³⁴ FSFL Handbook, page 2-18, para. 36.C (June 20, 2018).

¹³⁵ FSFL Handbook, page 2-18, para. 36.C (June 20, 2018).

¹³⁶ 7 C.F.R. § 1436.3, “Portable equipment and storage structures” (2019); FSFL Handbook, page 2-18, para. 36.C (June 20, 2018).

¹³⁷ FSFL Handbook, page 2-32, para. 41.B (June 20, 2018). The federal regulations and the Handbook conflict with respect to what costs associated with a pre-owned or used structure may be paid for using FSFL funds. Under the Handbook’s guidance, the cost of the pre-owned or used structure itself is eligible for FSFL financing. FSFL Handbook, page 2-32, para. 41.B (June 20, 2018). By contrast, the federal regulations expressly state that FSFL financing may not be used to pay for the cost of the pre-owned or used structure itself. 7 C.F.R. § 1436.6(e) (2019). Because the Handbook was published more recently, and considering that an FSA Notice also suggests that the cost of the pre-owned structure can be paid using FSFL funds, it seems likely that FSA will allow FSFL funds to be used to pay for a used or pre-owned structure. See FSA Notice FSFL-142, Exhibit 1, Q4 (Apr. 17, 2017) (expired Oct. 1, 2017);

¹³⁸ FSFL Handbook, page 2-32, para. 41.B (June 20, 2018); FSA Notice FSFL-142, Exhibit 1, page 1 (Apr. 17, 2017) (expired Oct. 1, 2017).

11. Renovated Structures

FSFL financing may be used to renovate an existing storage structure.¹³⁹ The eligibility rules for renovated structures are somewhat confusing. The Handbook states that eligible renovations include both the modification of existing structures as well as additions to existing structures.¹⁴⁰ At the same time, however, the Handbook also says that the renovation should not increase the storage capacity of the facility.¹⁴¹

Examples of eligible renovations include replacing cement or wood floors, modifying refrigeration units, replacing deteriorated bin walls or roof panels, and renovating equipment such as drying, aeration, or handling equipment.¹⁴²

The structure to be renovated must have an expected useful life of at least the term of the farmer's loan.¹⁴³ This means that FSFL funds cannot be used to maintain, repair, or replace worn out items—such as motors, fans, and wiring—that do not have a useful life that meets or exceeds the term of the loan.

12. Maple Sap Bulk Tanks

Bulk tanks that are suitable for storing maple sap are eligible for FSFL financing.¹⁴⁴

13. Honey Storage

Both honey storage structures and flooring can be eligible for FSFL financing.

a. Honey Storage Structures

To be eligible for FSFL financing as a honey storage structure, the structure must be built according to acceptable design guidelines from either a land grant university or the National Institute of Food and Agriculture (NIFA).¹⁴⁵ Eligible honey storage structures must also be built with proper drainage and be of sufficient quality that they can be insured. In addition, a honey structure must protect the honey from adverse weather conditions and must be able to support the snow load for the area.

FSFL honey-storage financing can also be used for additions or modifications to existing honey storage structures, so long as FSA is able to determine there is a need for the storage capacity.¹⁴⁶

¹³⁹ 7 C.F.R. § 1436.6(d) (2019); FSFL Handbook, page 2-17, para. 36.C, and page 2-31, para. 41.A (June 20, 2018).

¹⁴⁰ 7 C.F.R. § 1436.6(d) (2019); FSFL Handbook, page 2-31, para. 41.A (June 20, 2018).

¹⁴¹ FSFL Handbook, page 2-17, para. 36.C (June 20, 2018).

¹⁴² FSFL Handbook, page 2-31, para. 41.A (June 20, 2018).

¹⁴³ 7 C.F.R. § 1436.6(d) (2019).

¹⁴⁴ 7 C.F.R. § 1436.6(a)(7) (2019); FSFL Handbook, page 2-18, para. 36.C (June 20, 2018).

¹⁴⁵ FSFL Handbook, page 2-25, para. 39.A (June 20, 2018).

¹⁴⁶ FSFL Handbook, page 2-25, para. 39.A (June 20, 2018).

Any FSFL-financed storage structure for honey must be used for its intended purpose for the entire term of the loan.¹⁴⁷

b. Flooring for Honey Storage

Flooring that is regionally-appropriate for storing honey, and which is designed using acceptable guidelines from the National Institute of Food and Agriculture (NIFA) or a land-grant university, is eligible for FSFL financing.¹⁴⁸ The flooring must also avert water so that it does not retain moisture.¹⁴⁹

14. Hay Storage

Both hay storage structures and flooring for hay can be eligible for FSFL financing.

a. Hay Storage Structures

In order for a hay storage structure to be eligible, the structure must be built according to acceptable design guidelines from either a land grant university or the National Institute of Food and Agriculture (NIFA).¹⁵⁰ The structure needs to be insurable, be built with proper drainage, and must be able to support the snow load for the farmer's area.¹⁵¹ Any FSFL-financed structure to store hay must be used for its intended purpose for the entire term of the loan.¹⁵²

Farmers requesting an FSFL for the storage of hay must also submit a building plan for the structure to their county FSA office.¹⁵³ The plan need not be professionally prepared, but it is required to include details pertaining to the following:

- Type of structure,
- Structure's exact size and shape,
- Access to the structure,
- Work necessary to prepare the site (such as leveling or soil compaction), and
- Information on the base and construction materials (including the size and depth of rock or gravel used, and the type and gauge of material used to build the structure).

¹⁴⁷ FSFL Handbook, page 2-25, para. 39.A (June 20, 2018).

¹⁴⁸ 7 C.F.R. § 1436.6(b)(6) (2019); FSFL Handbook, page 2-26, para. 39.B (June 20, 2018).

¹⁴⁹ FSFL Handbook, page 2-22, para. 37.B (June 20, 2018).

¹⁵⁰ 7 C.F.R. § 1436.6(a)(5) (2019); FSFL Handbook, page 2-20, para. 37.A (June 20, 2018).

¹⁵¹ FSFL Handbook, page 2-20, para. 37.A (June 20, 2018).

¹⁵² FSFL Handbook, page 2-20, para. 37.A (June 20, 2018).

¹⁵³ FSFL Handbook, page 2-21, para. 37.A (June 20, 2018).

b. Flooring for Hay Storage

Flooring that is regionally-appropriate for storing hay, and which is designed using acceptable guidelines from the National Institute of Food and Agriculture (NIFA) or a land-grant university is eligible for FSFL financing.¹⁵⁴ The flooring must avert water so that it does not retain moisture.¹⁵⁵ If a farmer intends to use asphalt flooring, special rules apply.¹⁵⁶

15. Structures to Store Renewable Biomass

Both storage structures and flooring for renewable biomass can be eligible for FSFL financing.

a. Renewable Biomass Storage Structures

To be eligible for FSFL financing as a storage structure for renewable biomass, the structure must be built according to acceptable industry guidelines.¹⁵⁷ In addition, the structure must be insurable, allow proper drainage, and be able to support the snow load for the farmer's area.¹⁵⁸ Any FSFL-financed structure to store renewable biomass must be used for its intended purpose for the entire term of the loan.

Farmers requesting an FSFL for the storage of renewable biomass must also submit a building plan for the structure to their county FSA office.¹⁵⁹ The plan need not be professionally prepared, but it is required to include the following details:

- Type of structure,
- Structure's exact size and shape,
- Access to the structure,
- Work necessary to prepare the site (such as leveling or soil compaction), and
- Information on the base and construction materials (including the size and depth of rock or gravel used, and the type and gauge of material used to build the structure).

Finally, Farmers applying for an FSFL structural loan for renewable biomass must provide either a contract or letter of commitment from the

¹⁵⁴ 7 C.F.R. § 1436.6(b)(6) (2019); FSFL Handbook, page 2-22, para. 37.B (June 20, 2018). If the farmer lives in a region of the country for which NIFA and land-grant universities do not recommend the use of concrete flooring, the farmer should use an acceptable alternative (such as compacted coarse gravel or small rock).

¹⁵⁵ FSFL Handbook, page 2-22, para. 37.B (June 20, 2018).

¹⁵⁶ See FSFL Handbook, pages 2-28 and 2-29, para. 40 (June 20, 2018).

¹⁵⁷ 7 C.F.R. § 1436.6(a)(6) (2019); FSFL Handbook, page 2-20, para. 37.A (June 20, 2018).

¹⁵⁸ FSFL Handbook, page 2-20, para. 37.A (June 20, 2018).

¹⁵⁹ FSFL Handbook, page 2-21, para. 37.A (June 20, 2018).

company or facility that intends to purchase the farmer’s biomass commodity.¹⁶⁰

b. Flooring for Renewable Biomass Storage

Flooring that is regionally-appropriate for storing renewable biomass, and which is designed using acceptable guidelines from the National Institute of Food and Agriculture (NIFA) or a land-grant university is eligible for FSFL financing.¹⁶¹ The flooring must avert water so that it does not retain moisture.¹⁶² If a farmer intends to use asphalt flooring, special rules apply.¹⁶³

16. Cold Storage Structures for Perishable Commodities

For purposes of the FSFL program, a cold storage facility means any facility, or room within a facility, that is designed and built for the cold temperature storage of FSFL-eligible perishable commodities.¹⁶⁴ The structure must be able to regulate both temperature and humidity in order to meet the conditions necessary for the specific commodity that is being stored.

To be eligible for FSFL financing, any cold storage structure for perishable commodities must be used for its intended purpose for the entire term of the loan.¹⁶⁵ The structure must be built according to acceptable design guidelines from the manufacturer, land grant universities, or the National Institute of Food and Agriculture (NIFA). In addition, the structure must be built to protect the perishable commodities from contaminants, must support the area’s climate conditions, and must be of such quality that it can be insured.

The following structures are all eligible for the storage of perishable commodities.

a. Walk-In Storage Coolers or Containers

Walk-in storage coolers or containers, including prefabricated ones, are eligible for FSFL financing so long as they are suitable for storing the farmer’s perishable commodities.¹⁶⁶

¹⁶⁰ FSFL Handbook, page 3-5, para. 49.A (June 20, 2018).

¹⁶¹ 7 C.F.R. § 1436.6(b)(6) (2019); FSFL Handbook, page 2-22, para. 37.B (June 20, 2018). If the farmer resides in a region of the country for which NIFA and land-grant universities do not recommend the use of concrete flooring, the farmer should use an acceptable alternative (such as compacted coarse gravel or small rock).

¹⁶² FSFL Handbook, page 2-22, para. 37.B (June 20, 2018).

¹⁶³ See FSFL Handbook, pages 2-28 and 2-29, para. 40.A-C (June 20, 2018).

¹⁶⁴ 7 C.F.R. § 1436.3, “Cold storage facility” (2019); FSFL Handbook, Exhibit 2, “Cold storage facility” (June 20, 2018).

¹⁶⁵ FSFL Handbook, page 2-23, para. 38.A (June 20, 2018).

¹⁶⁶ 7 C.F.R. § 1436.6(g)(2)(ii) (2019); FSFL Handbook, page 2-18, para. 36.C, and page 2-23, para. 38.A (June 20, 2018).

b. Freezer Units

Freezer units that are suitable for storing eligible commodities qualify for FSFL financing.¹⁶⁷

c. Wood, Steel, or Concrete Cold Storage Structures

Storage structures that are suitable for storing a farmer's perishable commodities, and which are made of wood pole and post construction, steel, or concrete, are eligible for FSFL financing.¹⁶⁸

17. Milk Bulk Tanks

Bulk tanks that are suitable for storing milk can be eligible for FSFL financing so long as the milk tank is used for its intended purpose for the duration of the farmer's FSFL program loan.¹⁶⁹ The tanks can be new, used, portable, or permanent.

An eligible milk bulk tank must be built according to acceptable design guidelines from the manufacturer, a land grant university, or the National Institute of Food and Agriculture (NIFA).¹⁷⁰ In addition, the bulk tank must be of sufficient quality to be insured, it must protect milk from contaminants, be properly drained, and it must support the climate conditions for the area in which it is located.

18. Cheese Storage Structures

Structures to store cheese are eligible for FSFL financing.¹⁷¹

B. Ineligible Storage Structures

The following types of storage structures are not eligible for FSFL financing.

1. Temporary Structures

Structures of a temporary nature, which require the bulk and weight of the commodity to maintain the structure's shape, and which do not have a useful life of at least the term of the loan, are ineligible for FSFL financing.¹⁷²

2. Structures to Store Purchased Commodities

Storage structures that are intended to store purchased commodities are not eligible for FSFL financing.¹⁷³

¹⁶⁷ FSFL Handbook, page 2-23, para. 38.A (June 20, 2018).

¹⁶⁸ 7 C.F.R. § 1436.6(g)(2)(i) (2019); FSFL Handbook, page 2-23, para. 38.A (June 20, 2018).

¹⁶⁹ 7 C.F.R. § 1436.6(a)(7) (2019); FSFL Handbook, page 2-44, para. 44.A (June 20, 2018).

¹⁷⁰ FSFL Handbook, page 2-44, para. 44.A (June 20, 2018).

¹⁷¹ FSFL Handbook, page 2-18, para. 36.C (June 20, 2018).

¹⁷² 7 C.F.R. § 1436.6(c)(1) (2019); FSFL Handbook, page 2-19, para. 36.D (June 20, 2018). FSA rules list fences and bags as things that might not qualify for this reason.

¹⁷³ FSFL Handbook, page 2-19, para. 36.D (June 20, 2018).

3. Commercial Storage of Grains

Structures intended to store grains for a commercial purpose are not eligible for FSFL financing.¹⁷⁴ A “commercial purpose” means that the structure is storing or handling grain for persons other than the FSFL borrower, family members of the borrower, tenants of the borrower, or landlords of the borrower who have a share in the crop that requires storage.¹⁷⁵ FSA will also consider any storage structure that is in working proximity to a commercial storage operation to be part of a commercial storage operation.¹⁷⁶

4. Structures Not Suitable for FSFL Commodities

Any structure that is not suitable for storing the FSFL-eligible commodity for which it is intended will not be eligible for FSFL financing.¹⁷⁷ FSA does not define suitable.

5. Area in which Handling Equipment and Storage/Handling Trucks are Housed

FSFL funds cannot be used to finance that portion of a storage structure that houses handling equipment or a storage or handling truck.¹⁷⁸ FSA will look to the farmer’s storage capacity worksheet to determine what portion of the structure is ineligible for funds under this rule.

6. Ineligible Honey Storage Structures

FSFL funds cannot be used to finance space for storing honeybees, nor temporary structures that require the weight or bulk of the honey in order to maintain their shape.¹⁷⁹ In addition, controlled atmosphere structures are ineligible for FSFL funding.¹⁸⁰

7. Ineligible Cold Storage Structures for Perishable Commodities

FSFL funds cannot be used to finance storefront space for marketing perishable commodities, nor controlled atmosphere structures to house perishable commodities.¹⁸¹

¹⁷⁴ 7 C.F.R. § 1436.6(c)(3) (2019); FSFL Handbook, page 2-19, para. 36.D (June 20, 2018).

¹⁷⁵ FSFL Handbook, Exhibit 2, “Commercial purpose” (June 20, 2018).

¹⁷⁶ 7 C.F.R. § 1436.6(c)(3) (2019); FSFL Handbook, page 2-19, para. 36.D (June 20, 2018).

¹⁷⁷ 7 C.F.R. § 1436.6(c)(2) (2019); FSFL Handbook, page 2-19, para. 36.D (June 20, 2018).

¹⁷⁸ FSFL Handbook, page 2-19, para. 36.D (June 20, 2018).

¹⁷⁹ FSFL Handbook, page 2-27, para. 39.D (June 20, 2018).

¹⁸⁰ Although the Handbook does not provide a precise definition of a controlled atmosphere structure, it does note that such structures tend to require rooms to be sealed in order to control gaseous exchange. FSFL Handbook, page 2-24, para. 38.D.

¹⁸¹ FSFL Handbook, page 2-24, para. 38.D (June 20, 2018). Although the Handbook does not provide a precise definition of a controlled atmosphere structure, it does note that such structures tend to require rooms to be sealed in order to control gaseous exchange.

IV. FSFL Equipment and Handling Component Eligibility

FSFL program loans may be used to purchase equipment and handling components so long as they are used for an FSFL-eligible commodity.¹⁸²

A. General Rules for Equipment and Handling Components

The following rules apply to all eligible equipment and handling components.

1. New or Used

Eligible equipment and handling components can be new or used.¹⁸³

2. Portable or Permanently Affixed

Eligible equipment and handling components can be portable or permanently affixed.¹⁸⁴

3. Must be Purchased After the Farmer's FSFL Application is Approved

To be eligible for FSFL financing, equipment and handling components must be purchased after the farmer's FSFL application is approved.¹⁸⁵

B. Eligible Types of Equipment and Handling Components

The following are eligible types of equipment and handling components.

1. Electrical Equipment

FSFL funds can be used to finance electrical equipment that is essential to the proper operation of the storage or handling facility.¹⁸⁶ This could include, for example, lighting, motors, and wiring. However, FSFL funds cannot be used to install electrical services to the electrical meter.¹⁸⁷

2. Safety Equipment

The cost of safety equipment that is required by FSA, and which meets OSHA standards, can be covered using FSFL funds.¹⁸⁸ For example, lighting and indoor or outdoor ladders would fall within this category.

¹⁸² FSA Notice FSFL-142, page 13 (Apr. 17, 2017) (expired Oct. 1, 2017); FSFL Handbook, page 2-37, para. 43.A (June 20, 2018).

¹⁸³ FSFL Handbook, page 2-37, para. 43.A (June 20, 2018).

¹⁸⁴ FSFL Handbook, page 2-37, para. 43.A (June 20, 2018).

¹⁸⁵ FSFL Handbook, page 2-37, para. 43.A (June 20, 2018). A down payment on equipment that is made to a dealer or vendor before a farmer's FSFL application is approved is not considered to be a purchase, and therefore does not violate this rule.

¹⁸⁶ 7 C.F.R. § 1436.6(f)(1)(vii) (2019); FSFL Handbook, page 2-18, para. 36.C (June 20, 2018).

¹⁸⁷ FSFL Handbook, page 2-18, para. 36.C (June 20, 2018).

¹⁸⁸ 7 C.F.R. § 1436.6(b)(2) (2019); FSFL Handbook, page 2-18, para. 36.C, page 2-21, para. 37.B, page 2-26, para. 39.B, page 2-41, para. 43.B, page 2-44, para. 44.B (June 20, 2018).

3. Liquefied Petroleum Tanks to Fuel Dryers

FSFL funds can be used to purchase liquefied petroleum tanks to fuel dryers.¹⁸⁹

4. Equipment to Monitor Quality

FSFL funds can finance eligible equipment that is used to monitor, maintain, and improve the quality of a stored FSFL commodity.¹⁹⁰ This includes financing things such as cleaners, moisture testers, and heat detectors.

5. Milk Bulk Tank Equipment and Components

Equipment and components for portable or permanent milk bulk tanks can be eligible for FSFL funding.¹⁹¹ As a general rule, the FSFL program will only finance post-milking equipment.¹⁹² To be eligible, the equipment or components must be insured and cannot be used for commercial purposes.¹⁹³

Eligible milk bulk tank equipment and components include the following:

- Plate coolers,
- Compressors,
- Washing equipment and water lines,
- Automation equipment,
- Electrical equipment
- Condensers,
- Plumbing from bulk tank used for cleaning purposes,
- Hot water tanks necessary for milk house use, and Hot air recovery systems.¹⁹⁴

6. Drying and Handling Equipment

FSFL funds may be used for drying and handling equipment.¹⁹⁵ This includes the cost of perforated floors that FSA has determined are needed and essential to the proper functioning of a storage system.¹⁹⁶ The drying and handling equipment does not need to be used for an FSFL-funded structure in order to be eligible.¹⁹⁷

¹⁸⁹ FSFL Handbook, page 2-18, para. 36.C (June 20, 2018).

¹⁹⁰ 7 C.F.R. § 1436.6(b)(3) (2019); FSFL Handbook, page 2-18, para. 36.C, page 2-21, para. 37.B, page 2-26, para. 39.B, page 2-42, para. 43.B, page 2-44, para. 44.B (June 20, 2018).

¹⁹¹ FSFL Handbook, page 2-44, para. 44.B (June 20, 2018).

¹⁹² FSFL Handbook, page 2-45, para. 44.B (June 20, 2018).

¹⁹³ FSFL Handbook, page 2-45, para. 44.B (June 20, 2018). For purposes of this rule, a commercial purpose likely means use of milk bulk tank equipment or components by persons other than the FSFL borrower, family members of the borrower, tenants of the borrower, or landlords of the borrower who have a share in the milk that requires storage. See FSFL Handbook, Exhibit 2, “Commercial purpose” (June 20, 2018).

¹⁹⁴ For a more detailed list of eligible components for milk bulk tanks, see FSFL Handbook, page 2-44, para. 44.B (June 20, 2018).

¹⁹⁵ 7 C.F.R. § 1436.6(b)(1) (2019); FSFL Handbook, page 2-18, para. 36.C (June 20, 2018).

¹⁹⁶ 7 C.F.R. § 1436.6(b)(1) (2019).

¹⁹⁷ FSFL Handbook, page 2-18, para. 36.C (June 20, 2018).

7. Uptake and Discharge Re-Circulatory Systems for Aquaculture Products

Uptake and discharge re-circulatory systems for aquaculture products may be eligible for FSFL financing.¹⁹⁸ To qualify, the water used must come exclusively from on-farm aquifers and be discharged back onto the farm.¹⁹⁹

FSFL-Eligible Equipment and Handling Components		
This chart provides examples of equipment and handling components that may be eligible for FSFL funds. This chart is not exhaustive. ²⁰⁰		
Augers	Fans	Pallet jacks
Automatic bale stackers	Forklifts	Pilers
Back-up generators	Front and rear-end loader attachments	Refrigeration units/systems
Baggers/unloaders (but not bags)	Fruit/vegetable hoppers	Roller creepfeeders
Bale band-its (but not ties)	Generators	Self-propelled fork lifts
Bale wrappers (but not supplies)	Grain carts with auger systems	Shelves
Bottler systems for honey and milk (but not containers)	Grain hauler trailers	Skid steers
Boxers	Grain vacuums	Solar panels
Case palletizers	Gravity flow wagons	Sorting bins/tables
Circulation fans	Hay wagons and trailers	Walk-in coolers
Cold dip tanks	Hoppers	Washers (but not truck washers)
Conveyors	Hydrolifts	Waxers (but not truck waxers)
Drying sheds, trailers, and tunnels	Hydrocoolers	Weight graders and scales

¹⁹⁸ FSFL Handbook, page 2-18, para. 36.C (June 20, 2018).

¹⁹⁹ The Handbook also allows for uptake and discharge water to come from natural sources, tributaries, coastal and ocean waters, or perennial waterways. FSFL Handbook, page 2-18, para. 36.C (June 20, 2018).

²⁰⁰ For a more detailed list of eligible equipment and handling components, see FSFL Handbook, pages 2-38 through 2-42, para. 43.B (June 20, 2018).

C. Ineligible Equipment and Handling Components—Items Used for Production or Processing

Because FSFL loans are intended to assist farmers in the storage and transport of eligible commodities, loans will not be issued to finance certain types of equipment and handling components that assist with the production or processing of commodities.²⁰¹ Below are examples of the types of equipment and handling components that are not eligible for FSFL funding. This list is not exhaustive—a more detailed list of ineligible components is provided in a chart at the end of this section.

1. Crop Production Equipment

Crop production equipment is not eligible for FSFL financing.²⁰²

2. Harvesting Equipment

Harvesting equipment is ineligible for FSFL financing.²⁰³

3. Livestock Feeding Equipment

FSFL program loans cannot be used to fund livestock feeding equipment.²⁰⁴

4. Feed Handling and Processing Equipment

Feed handling equipment and processing equipment are ineligible for FSFL financing.²⁰⁵

5. Honey Processing or Packaging Equipment

Honey processing equipment and packaging equipment, including retail honey containers, are ineligible for FSFL financing.²⁰⁶

6. Bin Boxes for Perishable Commodities

Bin boxes used to store perishable commodities are not eligible for FSFL financing.²⁰⁷

7. Certain Milking Equipment and Components

Robotic milkers, milk pulsators, and pasteurization units are not eligible for FSFL financing.²⁰⁸

²⁰¹ For example, an FSFL loan can be made for a facility to store aquaculture products, but not the tank in which to raise live aquaculture species. 81 Fed. Reg. 25,587, 25,588 (April 29, 2016).

²⁰² FSFL Handbook, page 2-37, para. 43.A (June 20, 2018).

²⁰³ FSFL Handbook, page 2-37, para. 43.A (June 20, 2018).

²⁰⁴ FSFL Handbook, page 2-37, para. 43.A (June 20, 2018).

²⁰⁵ FSFL Handbook, page 2-19, para. 36.D (June 20, 2018).

²⁰⁶ FSFL Handbook, page 2-27, para. 39.D (June 20, 2018).

²⁰⁷ FSFL Handbook, page 2-24, para. 38.D (June 20, 2018).

²⁰⁸ FSFL Handbook, page 2-45, para. 44.C (June 20, 2018).

Ineligible Equipment and Handling Components		
This chart provides examples of the types of equipment and handling components that are not eligible for FSFL funds. ²⁰⁹ This chart is not exhaustive.		
ATV/gator	Grinders	Milking machine pulsation units
Backhoes	Hay balers	Milking parlor equipment
Chicken houses	Hay mowers	Pay (wheel) loaders
Combines	Hay rakes	Processing equipment
Crushers	Hay tedders	Production and feed facilities
Extractors	Hops baler	Robotic milkers
Feed handling and processing equipment	Hops picker	Seed carts (pull or trailered)
Fuel trailers	Livestock pens and trailers	Silage blowers
Greenhouses	Malting equipment	Tractors

V. FSFL Truck Eligibility

FSFL loans may finance the purchase of new or used storage and handling trucks that store, handle, and/or transport FSFL-eligible commodities from the farm to market or storage.²¹⁰ Such trucks can include cold storage reefer trucks, grain haulers, and trucks with chassis units.²¹¹

A. General Requirements

To qualify for FSFL financing for a storage or handling truck, all of the following requirements must be met.

1. Truck Must be \$100,000 or Less

To receive an FSFL for a storage or handling truck, the truck must cost \$100,000 or less.²¹²

²⁰⁹ FSFL Handbook, page 2-24, para. 38.D (June 20, 2018).

²¹⁰ 7 C.F.R. § 1436.6(h) (2019); 81 Fed. Reg. 25,587, 25,589 (April 29, 2016). According to the Federal Regulations and FSFL Handbook, a “storage and handling truck” is defined as “a CCC-approved commodity storage truck or van designed to carry eligible commodities and may be equipped with a variety of mechanical refrigeration systems and will be used to store, handle, and move eligible commodities from the producer's farm location to market or storage.” 7 C.F.R. § 1436.3 (2019); FSFL Handbook, Exhibit 2, “Storage and handling truck” (June 20, 2018).

²¹¹ 7 C.F.R. § 1436.6(h) (2019).

²¹² FSFL Handbook, page 2-34, para. 42.A (June 20, 2018).

2. New or Used, but Less than Fifteen Years Old

To be eligible for an FSFL, the truck can be new or used, but must be less than 15 years old.²¹³

3. Maximum of Four Axles

An eligible truck cannot have more than four axles.²¹⁴ Trailers are not included when making this determination.

4. Gross Weight Rating Cannot Exceed 60,000 Pounds

An eligible truck cannot have a gross weight rating in excess of 60,000 pounds.²¹⁵ Trailers are not included when making this determination.

5. Purchased After FSFL Approval

To be eligible for FSFL financing, a storage or handling truck must be purchased after the farmer's FSFL application is approved.²¹⁶

6. Suitable for the Intended Commodity

The truck must be suitable to store or handle the intended commodity in order to be eligible for FSFL funding. If FSA determines that the truck is not suitable for the commodity, the truck will be ineligible to receive FSFL financing.²¹⁷

7. Must be Used in a Commercial Farming Operation

An FSFL-funded truck must be used in a commercial farming operation. Accordingly, although there is not a limit on the number of storage and handling trucks that a farmer may request FSFL financing for, if a farmer seeks a loan for more than one truck, FSA will likely review the farmer's business operation to ensure that the trucks will be used in a commercial farming operation.²¹⁸

8. Lifespan Not Less than Term of Loan

In order to receive FSFL financing for a storage or handling truck, the truck must have a lifespan that meets or exceeds the term of the farmer's FSFL program loan.²¹⁹

²¹³ FSFL Handbook, page 2-33, para. 42.A, page 2-34, para. 42.A (June 20, 2018). The national FSA office will review requests for FSFL program loans that involve trucks older than fifteen years old on a case-by-case basis.

²¹⁴ FSFL Handbook, page 2-34, para. 42.A (June 20, 2018).

²¹⁵ FSFL Handbook, page 2-34, para. 42.A (June 20, 2018).

²¹⁶ FSFL Handbook, page 2-34, para. 42.A (June 20, 2018).

²¹⁷ FSFL Handbook, page 2-36, para. 42.B (June 20, 2018).

²¹⁸ FSFL Handbook, page 2-34, para. 42.A (June 20, 2018).

²¹⁹ FSFL Handbook, page 2-36, para. 42.B (June 20, 2018).

B. Borrower Requirements for FSFL-Funded Trucks

Any farmer who purchase a storage or handling truck using FSFL funds must satisfy the following requirements.

1. Properly Register the Truck

Any truck purchased with FSFL funds must be properly registered with the farmer's state Motor Vehicle Administration (MVA) office.²²⁰ Farmers must also comply with all state and local MVA laws and insurance requirements.

2. Obtain a Clear Certificate of Title

The farmer must obtain a clear certificate of title for the truck.²²¹ A truck with a salvaged title is ineligible for FSFL financing.²²²

3. Provide a Valid VIN for the Truck

The farmer must provide FSA with a valid VIN for the truck.²²³

4. Obtain the Required State Emissions and Vehicle Inspection

The farmer must obtain any required state emissions and vehicle inspections.²²⁴

5. Obtain and Annually Renew Full Coverage Automobile Insurance

The farmer must obtain full coverage automobile insurance for the truck, meaning that both comprehensive and collision coverage is obtained.²²⁵ Full coverage could also include hazard insurance.²²⁶ Liability insurance is not sufficient insurance coverage for a truck purchased with FSFL funds.

The full coverage insurance must be renewed annually for the duration of the loan, and the farmer must provide FSA with a copy of the insurance policy.²²⁷ CCC, and not FSA, must be listed as loss payee on the policy.²²⁸

6. Use the Truck for the Duration of the FSFL

The farmer must use the truck for at least the duration of the loan.²²⁹

²²⁰ FSFL Handbook, page 2-35, para. 42.A (June 20, 2018).

²²¹ FSFL Handbook, page 2-35, para. 42.A (June 20, 2018).

²²² FSFL Handbook, page 2-36, para. 42.B (June 20, 2018).

²²³ FSFL Handbook, page 2-35, para. 42.A (June 20, 2018).

²²⁴ FSFL Handbook, page 2-35, para. 42.A (June 20, 2018).

²²⁵ FSFL Handbook, page 2-35, para. 42.A, and page 6-4, para. 98.A (June 20, 2018).

²²⁶ FSFL Handbook, page 6-4, para. 98.A (June 20, 2018).

²²⁷ FSFL Handbook, page 2-35, para. 42.A, and page 6-4, para. 98.A (June 20, 2018).

²²⁸ FSFL Handbook, page 6-4, para. 98.A-B (June 20, 2018).

²²⁹ FSFL Handbook, page 2-35, para. 42.A (June 20, 2018).

C. Types of Eligible and Ineligible Storage and Handling Trucks

The FSFL Handbook provides a list of those trucks that are eligible and ineligible to receive FSFL funding. Neither of these lists is exhaustive.²³⁰

1. Eligible Storage and Handling Trucks

Eligible storage and handling trucks can be broadly categorized into the following four types.

a. Cold Storage Trucks or Vans

Eligible cold storage trucks or vans are those which are designed to carry perishable goods at specific temperatures.²³¹ They can be ice-cooled or equipped with any type of mechanical refrigeration system. Importantly, however, cold storage trucks and vans do not include insulated and ventilated vans, which—though commonly used to transport fruit—are not eligible for FSFL funds.

b. Flatbed Trucks

Eligible flatbed trucks have an open platform with no side walls, which allows for easy loading and unloading.²³² Flatbed trucks are generally categorized by size. They can be light, medium, or heavy duty; compact or full-size; or have short or expandable beds.

c. Grain Trucks

Eligible grain trucks are farm trucks that are designed to accommodate the transportation of grains.²³³ In many cases, a grain truck will have a chassis unit with a mountain grain “dump” body, where grain commodities are transported from the field to either a storage bin or grain elevator.

d. Storage Trucks with Chassis Unit

Eligible storage trucks that have a chassis unit are trucks that have a cargo body mounted on the same chassis as the engine and cab.²³⁴ These types of trucks are also known as box trucks, box vans, or straight trucks.

²³⁰ 7 C.F.R. § 1436.6(h) (2019). FSA has the power to set guidelines for FSFL storage and handling trucks, and therefore may broaden or narrow these lists. In addition, FSA may decide to remove this provision—and not allow FSFL loans to be made for storage and handling trucks—should FSA decide that such loans result in increased defaults and are therefore not in the best interests of the government.

²³¹ FSFL Handbook, page 2-33, para. 42.A (June 20, 2018).

²³² FSFL Handbook, page 2-33, para. 42.A (June 20, 2018).

²³³ FSFL Handbook, page 2-33, para. 42.A (June 20, 2018).

²³⁴ FSFL Handbook, page 2-33, para. 42.A (June 20, 2018).

2. Ineligible Storage and Handling Trucks

The following types of trucks are ineligible as storage and handling trucks for purposes of the FSFL program.

a. Pickup Trucks

Pickup trucks are not eligible to receive FSFL financing.²³⁵ Pickup trucks are defined as a light or heavy-duty trucks that have enclosed cabs and open beds with low sides and tailgates.

b. Semi-Trucks

Semi-trucks, also known as semi-tractors, road tractors, or tractor-trailers, are not eligible to receive FSFL financing.²³⁶ The most common type of semi-truck has a forward engine compartment, one front steering axle, two rear drive axles, and a fifth-wheel trailer coupling to hitch the trailer over its rear axles.

c. Dump Trucks

A dump truck is not eligible to receive FSFL financing.²³⁷ Dump trucks are most commonly used in construction and excavation projects that involve the transport of nonfarm-related materials, such as gravel, dirt, or sand. Dump trucks have a truck chassis with a dump body that is mounted to the frame and has the ability to tilt.

²³⁵ FSFL Handbook, page 2-36, para. 42.B (June 20, 2018).

²³⁶ FSFL Handbook, page 2-36, para. 42.B (June 20, 2018).

²³⁷ FSFL Handbook, page 2-36, para. 42.B (June 20, 2018).

Chapter Four - The Loan Itself

I. Introduction

This chapter discusses various aspects of an FSFL program loan, including how the maximum loan amount is calculated, when and how loan funds are disbursed to the farmer, what expenses the farmer may use FSFL funds for, as well as the available loan terms.

II. Calculating the FSFL Program Loan Amount

In general, the maximum principal on an FSFL program loan is calculated as a percentage of the total net cost of the facility, not to exceed a certain amount.²³⁸ The percentage that is used typically reflects the difference between the net cost of the facility and its required down payment.

As an example, suppose a farmer applies for an FSFL structural loan that has a net cost of \$75,000.²³⁹ The farmer's required down payment is 15 percent of the structure's cost, or \$11,250. The maximum principal loan amount the farmer is eligible to receive is therefore \$63,750, which represents the remaining 85 percent of the structure's net cost. Because this total is well under the farmer's overall FSFL cap of \$500,000, the farmer is eligible to receive the entire \$63,750.

As this example demonstrates, FSA will determine the FSFL amount a farmer is eligible to receive by considering the total net cost of the facility, the required down payment for the facility, as well as the applicable loan cap. Each of these components of an FSFL program loan is described in detail below.

A. Determining Net Costs

When determining a facility's total net cost, FSA will consider a variety of expenses, including the cost of the eligible facility itself, the cost of services after discounts and rebates, the cost of accessories, as well as numerous specific expenses that are outlined below.²⁴⁰ The total net cost of a facility may be subject to a maximum per-bushel, per-ton, or per-cubic foot cost, as established by FSA.²⁴¹ If FSA believes the farmer's costs are excessive, FSA may question the farmer about the costs.²⁴²

1. Eligible Net Cost Expenses

The eligible expenses that FSA will consider when calculating a facility's overall net cost include, but are not limited to, the following.

a. Appraisal costs

FSFL funds may be used to cover the costs of appraisals.²⁴³

²³⁸ FSFL Handbook, page 4-5, para. 59.A, page 4-8, para. 60.B (June 20, 2018).

²³⁹ This example is adapted from one outlined in the Handbook. See FSFL Handbook, page 4-14, para. 63.B (June 20, 2018).

²⁴⁰ 7 C.F.R. § 1436.9(a) (2019); FSFL Handbook, page 4-8, para. 60.C (June 20, 2018).

²⁴¹ FSFL Handbook, page 4-8, para. 60.C (June 20, 2018).

²⁴² FSFL Handbook, page 2-15, para. 36.B (June 20, 2018).

²⁴³ 7 C.F.R. § 1436.9(b)(1) (2019); FSFL Handbook, page 2-15, para. 36.B (June 20, 2018).

b. Facility Purchase Price

The price to purchase the facility can be paid using FSFL funds.²⁴⁴

c. Services, After Discounts and Rebates

FSFL funds can be used to pay for the cost of eligible services performed for the farmer.²⁴⁵ However, rebated or discounted service costs are not eligible for funding.

d. Sales Tax, Shipping, and Delivery Charges

Any applicable sales tax, shipping fees, or delivery charges can be financed through an FSFL.²⁴⁶

e. Site Preparation Costs

Site preparation costs can be paid using FSFL financing.²⁴⁷ This includes on-farm site preparation and construction equipment costs, so long as they do not to exceed commercial rates approved by FSA.²⁴⁸

f. Installation Costs

Installation costs for the facility can be financed through an FSFL.²⁴⁹

g. Attorneys' Fees

FSFL funds may be used to pay for the farmer's attorneys' fees.²⁵⁰

h. Environmental and Historic Review Fees

Costs associated with environmental and historic reviews, including archaeological study fees, can be covered by an FSFL.²⁵¹

i. Flooring—Material and Labor

Costs associated with the materials and labor for concrete pads, foundations, and other acceptable flooring can be financed with an FSFL.²⁵²

²⁴⁴ 7 C.F.R. § 1436.9(b)(1) (2019); FSFL Handbook, page 2-15, para. 36.B (June 20, 2018).

²⁴⁵ 7 C.F.R. § 1436.9(a) (2019); FSFL Handbook, page 4-8, para. 60.C (June 20, 2018).

²⁴⁶ 7 C.F.R. § 1436.9(b)(1) (2019); FSFL Handbook, page 2-15, para. 36.B (June 20, 2018).

²⁴⁷ 7 C.F.R. § 1436.9(b)(1) (2019); FSFL Handbook, page 2-15, para. 36.B (June 20, 2018).

²⁴⁸ 7 C.F.R. § 1436.9(b)(1) (2019).

²⁴⁹ 7 C.F.R. § 1436.9(b)(1) (2019); FSFL Handbook, page 2-15, para. 36.B (June 20, 2018).

²⁵⁰ 7 C.F.R. § 1436.9(b)(1) (2019); FSFL Handbook, page 2-15, para. 36.B (June 20, 2018).

²⁵¹ 7 C.F.R. § 1436.9(b)(1) (2019); FSFL Handbook, page 2-15, para. 36.B (June 20, 2018).

²⁵² 7 C.F.R. § 1436.9(b)(1) (2019); FSFL Handbook, page 2-15, para. 36.B (June 20, 2018).

j. Electrical Wiring—Material and Labor

The material and labor costs related to electrical wiring can be covered by FSFL funds.²⁵³

k. Utility Hookup—Material and Labor

Any material and labor costs needed for utility hookup from the meter to the FSFL facility can be financed using FSFL funds.²⁵⁴ This includes utility hookups for electrical lines, natural gas lines, and liquefied petroleum tanks that the facility uses to operate.

l. On-Farm Materials

Recently acquired on-farm material that is approved by FSA may be financed using an FSFL program loan.²⁵⁵

m. Solar Power

FSFL financing can be used to pay for solar power, so long as the solar power is used as an energy source for the FSFL structure or equipment.²⁵⁶

n. Electrical Motors

FSFL financing can be used to pay for electrical motors.²⁵⁷

o. Off-Farm Paid Labor

FSFL funds may be used to pay for off-farm labor, which includes any laborer that does not work for the farmer on a regular or seasonal basis.²⁵⁸

p. Equipment to Monitor Quality

FSFL funds can finance eligible equipment that is used to monitor, maintain, and improve the quality of the stored FSFL commodity.²⁵⁹ This includes financing things such as cleaners, moisture testers, and heat detectors.

q. Fees

FSFL funds can finance certain fees, such as title insurance fees and motor vehicle title fees.²⁶⁰

²⁵³ 7 C.F.R. § 1436.9(b)(1) (2019); FSFL Handbook, page 2-15, para. 36.B (June 20, 2018).

²⁵⁴ FSFL Handbook, page 2-15, para. 36.B (June 20, 2018).

²⁵⁵ 7 C.F.R. § 1436.9(b)(1) (2019); FSFL Handbook, page 2-15, para. 36.B (June 20, 2018).

²⁵⁶ FSFL Handbook, page 2-15, para. 36.B (June 20, 2018).

²⁵⁷ 7 C.F.R. § 1436.9(b)(1) (2019); FSFL Handbook, page 2-15, para. 36.B (June 20, 2018).

²⁵⁸ 7 C.F.R. § 1436.9(b)(1) (2019); FSFL Handbook, page 2-15, para. 36.B, Exhibit 2, “Off-farm labor” (June 20, 2018).

²⁵⁹ 7 C.F.R. § 1436.6(b)(3) (2019); FSFL Handbook, page 2-15, para. 36.B (June 20, 2018).

²⁶⁰ FSFL Handbook, page 2-15, para. 36.B (June 20, 2018).

2. Ineligible Net Cost Expenses

The following expenses will not be included when calculating the eligible net cost of an FSFL facility.

a. On-Farm Labor

A farmer cannot use FSFL funds to pay for on-farm labor.²⁶¹ For purposes of the FSFL program, on-farm labor includes labor performed by the farmer, a family member, or a hired hand.²⁶²

b. Real Estate

FSFL financing cannot be used to pay for the cost of real estate property.²⁶³

c. Vendor Travel Expenses

FSFL financing cannot be used to pay a vendor's travel expenses.²⁶⁴

d. Gas or Electrical Hookups from Source to Meter

FSFL financing cannot be used to pay for gas line or electrical hookups from the source to the farmer's meter.²⁶⁵

e. Cost to Tear Down Existing Structures

FSFL financing cannot be used to pay for the cost of tearing down an existing structure.²⁶⁶

f. Secondhand Materials

Secondhand materials are not eligible for FSFL financing.²⁶⁷

B. Down Payment Requirements

Every farmer seeking an FSFL program loan will be required to pay an out-of-pocket down payment on the facility, regardless of whether it is a structure, equipment, or truck.²⁶⁸ The down payment will not be reimbursed by FSA nor factored into the total amount of FSFL funds that a farmer is eligible to receive. The following rules apply.

²⁶¹ FSFL Handbook, page 2-16, para. 36.B (June 20, 2018).

²⁶² FSFL Handbook, Exhibit 2, page 6, "On-farm labor" (June 20, 2018).

²⁶³ FSFL Handbook, page 2-15, para. 36.B (June 20, 2018).

²⁶⁴ FSFL Handbook, page 2-15, para. 36.B (June 20, 2018).

²⁶⁵ FSFL Handbook, page 2-15, para. 36.B (June 20, 2018).

²⁶⁶ FSFL Handbook, page 2-15, para. 36.B (June 20, 2018).

²⁶⁷ 7 C.F.R. § 1436.9(b)(2) (2019); FSFL Handbook, pages 2-15 and 2-16, para. 36.B (June 20, 2018).

²⁶⁸ 7 C.F.R. § 1436.10(a) (2019).

1. Minimum Down Payment Amount

The minimum down payment that a farmer is required to pay will differ depending on whether the farmer has requested a standard FSFL or an FSFL microloan.

a. Standard FSFL Minimum Down Payment—15 Percent

The minimum down payment for a standard FSFL is 15 percent of the total net cost of the facility.²⁶⁹

b. FSFL Microloan Minimum Down Payment—5 Percent

The minimum down payment for a microloan is 5 percent of the total net cost of the facility.²⁷⁰

2. Paid to Contractor, Supplier, Vendor, or Seller

Farmers must pay the down payment to the contractor, supplier, vendor, or seller of the facility.²⁷¹

3. Paid Before Final FSFL Disbursement

Farmers must pay the down payment before any FSFL disbursement is made, whether partial or final.²⁷²

4. Paid in Cash

The down payment must be paid in cash, unless FSA expressly permits another form of payment.²⁷³ The farmer may obtain the funds for the down payment from a lending source other than the FSA.²⁷⁴

5. Not Offset by Other Discounts

The down payment cannot include any trade-in, discount, rebate, credit, deferred payment, post-dated check, or promissory note to the supplier or contractor.²⁷⁵ Farmers must pay the full value of the down payment.

²⁶⁹ 7 C.F.R. § 1436.10(a), (d) (2019); FSFL Handbook, page 4-10, para. 61.A (June 20, 2018).

²⁷⁰ 7 C.F.R. § 1436.10(a), (d) (2019); FSFL Handbook, page 4-7, para. 59.C (June 20, 2018).

²⁷¹ 7 C.F.R. § 1436.10(a) (2019); FSFL Handbook, page 4-10, para. 61.A (June 20, 2018).

²⁷² 7 C.F.R. § 1436.10(a) (2019); FSFL Handbook, page 4-10, para. 61.A, page 10-1, para. 170.A-B (June 20, 2018).

²⁷³ 7 C.F.R. § 1436.10(b) (2019).

²⁷⁴ 7 C.F.R. § 1436.10(b) (2019); FSFL Handbook, page 4-10, para. 61.B (June 20, 2018).

²⁷⁵ 7 C.F.R. § 1436.10(c) (2019); FSFL Handbook, page 4-11, para. 61.C, page 10-8, para. 172.D (June 20, 2018).

C. Overall Loan Cap

A farmer may apply for multiple FSFL program loans, but there are caps on the principal amount that the farmer may receive for each loan.²⁷⁶ These rules differ depending on whether the farmer applies for a standard FSFL or an FSFL microloan.

1. Standard FSFL

The maximum principal on a standard FSFL is 85 percent of the net cost of the facility, not to exceed \$500,000.²⁷⁷ In other words, the principal on a standard FSFL typically reflects the overall net cost of the facility minus the farmer's required down payment of 15 percent. If a farmer applies for more than one standard FSFL program loan, each loan will have a cap of \$500,000.²⁷⁸

2. FSFL Microloan

The maximum principal on an FSFL microloan is 95 percent of the net cost of the facility, not to exceed an overall cap of \$50,000 on the farmer's total outstanding FSFL balance.²⁷⁹ For example, if a farmer already has an outstanding FSFL balance of \$20,000, the farmer is only eligible for an FSFL microloan of \$30,000 or less. The cap on FSFL microloans is therefore based on all of a farmer's outstanding FSFL balances, as opposed to being a cap on each individual loan (as is the case with standard FSFL program loans).

3. When the Cost of a Facility Exceeds the Loan Cap

If the difference between the net cost of the facility and its required down payment exceeds the overall loan cap, the farmer may still receive an FSFL program loan, but the farmer will be responsible for paying the remaining balance out of pocket.²⁸⁰

As an example, suppose a farmer was approved for a \$50,000 FSFL microloan in order to fund equipment that has a total net cost of \$53,000. The minimum down payment of 5 percent would be \$2,650 ($\$53,000 \times .05$), which the farmer would pay to the supplier. After the down payment is paid, however, the remaining balance on the equipment is \$50,350 ($\$53,000 - \$2,650 = \$50,350$), which is \$350 more than the farmer is eligible to receive for an FSFL microloan. The farmer is responsible for paying the supplier the \$350 difference before the FSFL closing date.²⁸¹

²⁷⁶ FSFL Handbook, page 4-5, para. 59.A, and page 4-8, para. 60.A (June 20, 2018).

²⁷⁷ 7 C.F.R. § 1436.9(c) (2019); FSFL Handbook, page 4-8, para. 60.B (June 20, 2018).

²⁷⁸ 7 C.F.R. § 1436.9(c) (2019); FSFL Handbook, page 4-8, para. 60.A (June 20, 2018).

²⁷⁹ 7 C.F.R. § 1436.9(c) (2019); FSFL Handbook, page 4-5, para. 59.A (June 20, 2018).

²⁸⁰ FSFL Handbook, page 4-7, para. 59.C, page 4-10, para. 61.A (June 20, 2018); FSA Notice FSFL-142, page 8 (Apr. 17, 2017) (expired Oct. 1, 2017).

²⁸¹ FSFL Handbook, page 4-7, para. 59.C (June 20, 2018).

III. Loan Disbursements—Partial Payments or a Single, Full Payment

It is the farmer's choice whether an FSFL program loan is paid out as one lump sum or divided into one partial disbursement and one final disbursement.²⁸² In both cases, however, farmers will not receive any FSFL funding until after the facility's construction and installation is complete (or partially complete, in the case of a partial loan disbursement). For some farmers, this will mean that outside financing may be necessary in order to initially construct, install, or renovate the facility.

The timing of loan disbursements for partial payments and single, lump sum payments is discussed more fully below.

A. General Loan Disbursement Rules for All FSFL Program Loans

The following rules apply to all FSFL program loan disbursements, both partial payments and single, lump sum payments.²⁸³

1. Must Elect on FSFL Application

Farmers must elect on their FSFL application whether they prefer partial and final disbursements or a single, lump sum payment.²⁸⁴ Once the election has been made it cannot be changed.

2. Disbursements Paid Jointly to Farmer and Contractor or Supplier

As a general rule, both partial and lump sum loan disbursements will be made jointly to the farmer and the contractor or supplier who has provided goods or services related to the FSFL-funded facility.²⁸⁵ However, if a farmer provides evidence that the contractor or supplier has been paid all amounts that are due and owing on the FSFL project, the FSFL funds may be paid solely to the farmer.²⁸⁶

B. Partial Loan Disbursements

Partial payments are intended to help farmers repay the initial costs of purchasing, constructing, or acquiring an FSFL facility.²⁸⁷ When a farmer elects to receive a partial disbursement, the farmer will receive two FSFL payments. The following rules apply.

²⁸² 7 C.F.R. § 1436.11(a) (2019); FSFL Handbook, page 4-1, para. 57.A (June 20, 2018). The exact amount of any partial FSFL payment will be determined by the CCC after the farmer provides the necessary documentation.

²⁸³ FSFL Handbook, page 4-1, para. 57.A, and page 4-5, para. 59.A (June 20, 2018).

²⁸⁴ FSFL Handbook, page 4-1, para. 57.A (June 20, 2018).

²⁸⁵ 7 C.F.R. § 1436.11(c) (2019).

²⁸⁶ In order for a payment to be made solely to the farmer, the farmer must also demonstrate that all applicable liens, security interests, or other encumbrances have been released. 7 C.F.R. § 1436.11(c).

²⁸⁷ 7 C.F.R. § 1436.11(a) (2019).

1. Treated as Two Separate Loans

If the loan is divided into one partial and one final payment, FSA will treat the two payments as two separate FSFL program loans, with separate installment payments due each year,²⁸⁸ and the possibility of two separate notes and security instruments.²⁸⁹

2. Cannot Exceed 50 Percent of Loan or \$250,000

If a farmer chooses to receive a partial disbursement, the amount of the partial payment will reflect the amount of money that was needed for the partial construction of the project.²⁹⁰ A partial payment can be made for up to 50 percent of the total approved FSFL, not to exceed \$250,000.²⁹¹

3. Partial Construction Complete Before Disbursement Will be Made

Before a partial disbursement will be made, the farmer must have completed the partial construction of the facility.²⁹² This means the farmer is responsible for paying for the costs of the partial construction before a partial disbursement will be disbursed to the farmer.

4. Provide Satisfactory Evidence of Partial Completion Costs

Before a partial disbursement will be paid, farmers must provide what FSA calls “satisfactory evidence” of the cost of the facility’s partial construction.²⁹³ FSA does not define what satisfactory evidence means. An FSA employee will inspect the construction to ensure it is proportionate to the requested amount of the partial disbursement.²⁹⁴

5. Debts on the Facility Must be Paid

Before a farmer can receive a partial disbursement, the farmer must provide evidence that all debts on the FSFL facility and collateral—in excess of the FSFL loan amount—have been paid.²⁹⁵

6. Security Requirements for Partial Disbursements

Farmers must provide sufficient security for any partial loan disbursement.²⁹⁶ The security requirements for a partial payment—including whether additional security is required—will be determined as if the partial disbursement were a separate loan. In other words, if the amount of a partial disbursement would necessitate additional security if it were a stand-alone loan, additional security

²⁸⁸ 7 C.F.R. § 1436.13(a) (2019); FSFL Handbook, page 4-1, para. 57 (June 20, 2018).

²⁸⁹ 7 C.F.R. § 1436.11(b) (2019).

²⁹⁰ FSFL Handbook, page 4-1, para. 57.B (June 20, 2018).

²⁹¹ 7 C.F.R. § 1436.11(a)(1) (2019); FSFL Handbook, page 4-1, para. 57.B (June 20, 2018).

²⁹² 7 C.F.R. § 1436.11(a) (2019).

²⁹³ 7 C.F.R. § 1436.11(a)-(b) (2019); FSFL Handbook, page 10-1, para. 170.B (June 20, 2018).

²⁹⁴ 7 C.F.R. § 1436.11(a) (2019); FSFL Handbook, page 10-3, para. 170.E (June 20, 2018).

²⁹⁵ 7 C.F.R. § 1436.11(b); FSFL Handbook, page 10-1, para. 170.B (June 20, 2018).

²⁹⁶ 7 C.F.R. § 1436.11(a)(2) (2019).

would be required before the farmer could receive the partial loan disbursement.²⁹⁷

As an example, suppose FSA approves an FSFL structural loan for \$202,000. Once half of the structure is constructed, the farmer requests a partial disbursement of \$101,000. Because this amount is over the \$100,000 threshold for when additional security is required, the farmer must provide additional security before both the \$101,000 partial payment disbursement and before the \$110,000 final payment.²⁹⁸

By contrast, suppose the original FSFL approval was for \$110,000. A partial payment following construction of half of the structure would only amount to \$55,000, which is under the additional security threshold. The partial payment would therefore not require additional security. Instead, the farmer would need to provide additional security for the entire \$110,000 loan before the FSFL closing on the final disbursement.²⁹⁹

The security requirements for FSFL program loans are discussed in Chapter Seven.

C. Single, Lump Sum Loan Disbursements

If a farmer elects to receive a single lump sum payment, the following rules apply.

1. Facility Complete Before Disbursement Will be Paid

The single FSFL disbursement will be made after the FSFL-funded facility has been fully delivered, erected, constructed, assembled, or installed, and after it has been inspected and approved by an FSA representative.³⁰⁰ This means the farmer is responsible for paying for the entire cost of the facility and any installation before any FSFL funds will be disbursed to the farmer.

2. Provide Satisfactory Evidence of Total Cost

Farmers must provide what FSA calls “satisfactory evidence” of the total cost of the FSFL-funded facility before a lump sum loan disbursement will be paid.³⁰¹ FSA does not define what satisfactory evidence means.

3. Debts on the Facility Must be Paid

In order to receive the lump sum FSFL disbursement, farmers must provide evidence that all debts on the FSFL facility and collateral—in excess of the FSFL program loan amount—have been paid.³⁰²

²⁹⁷ FSFL Handbook, page 11-6, para. 187.A (June 20, 2018).

²⁹⁸ FSFL Handbook, page 11-6, para. 187.A (June 20, 2018).

²⁹⁹ FSFL Handbook, page 11-6, para. 187.A (June 20, 2018).

³⁰⁰ 7 C.F.R. § 1436.11(a)(3) (2019); FSFL Handbook, page 10-4, para. 170.F (June 20, 2018).

³⁰¹ 7 C.F.R. § 1436.11(b) (2019); FSFL Handbook, page 10-1, para. 170.B (June 20, 2018).

³⁰² 7 C.F.R. § 1436.11(b) (2019); FSFL Handbook, page 10-1, para. 170.B (June 20, 2018).

IV. Approved Usage of FSFL Facility

So long as the farmer's FSFL program loan is outstanding, the FSFL-funded facility may only be used to store those commodities that were a part of the farmer's original FSFL application.³⁰³ During the farmer's loan term, FSA may monitor a farmer's facility to ensure that—for a “good portion” of each year—the facility is being used for its intended purposes.³⁰⁴ If the farmer uses the facility for another purpose, such as office space or a display area, the loan amount may be adjusted accordingly.³⁰⁵

However, with prior approval, and after the farmer's FSFL-eligible commodities have been marketed, the farmer may be allowed to store other agricultural-related items in the facility, temporarily, until the next harvest season.³⁰⁶

V. Term of Loan

The term for an FSFL program loan depends upon whether the loan is a standard FSFL or an FSFL microloan. In either case, the farmer must elect the loan term when submitting the FSFL application, and once made, that election cannot be changed unless the final FSFL amount increases.³⁰⁷ FSA has the authority to extend the term of a loan—for both standard loans and microloans—by one or two years, but only upon the farmer's written request.³⁰⁸

A. Loan Terms for Standard FSFLs

The loan term for an FSFL is calculated from the date the promissory note and security agreement is completed.³⁰⁹ If a farmer has chosen to receive a partial and final loan disbursement, with two separate notes and agreements, there will be two loan terms calculated from the date that each note and agreement is completed.

In general, loan terms can be three, five, seven, ten, or twelve years, but no FSFL may exceed twelve years.³¹⁰ As described below, FSFL loan terms will vary according to the principal amount of the loan, as well as the type of facility being funded and whether the facility is used or new.

1. New Facility—Three, Five, Seven, Ten, or Twelve Years

The following loan terms are available for FSFL loans that are funding new facilities.

³⁰³ 7 C.F.R. § 1436.9(f) (2019); FSFL Handbook, page 12-15, para. 217.A (June 20, 2018).

³⁰⁴ FSFL Handbook, page 12-16, para. 217.E (June 20, 2018).

³⁰⁵ 7 C.F.R. § 1436.9(f) (2019).

³⁰⁶ FSFL Handbook, page 12-15, para. 217.B (June 20, 2018).

³⁰⁷ FSFL Handbook, page 4-9, para. 60.D (June 20, 2018).

³⁰⁸ 7 C.F.R. § 1436.7(b) (2019). The written request must be received by FSA before the farmer's original loan term expires. FSA will then determine whether an extension is “appropriate,” though it is unclear what factors go into that determination. However, farmers do not have a right to a loan extension.

³⁰⁹ 7 C.F.R. § 1436.7(a) (2019). FSA uses form CCC-186 for the FSFL promissory note and security agreement.

³¹⁰ 7 C.F.R. § 1436.7(a) (2019); FSFL Handbook, page 4-9, para. 60.D (June 20, 2018).

a. FSFL of \$1000,000 or Less—Three, Five, or Seven Years

For loans of \$100,000 or less, the available loan terms are three, five, or seven years.³¹¹

b. FSFL Between \$100,000.01 and \$250,000—Three, Five, Seven, or Ten Years

For loans with a principal between \$100,000.01 and \$250,000, the available loan terms are three, five, seven, or ten years.³¹²

c. FSFL Between \$250,000.01 and \$500,000—Three, Five, Seven, Ten, or Twelve Years

For loans with a principal between \$250,000.01 and \$500,000, the available loan terms are three, five, seven, ten, or twelve years.³¹³

2. Used Facility—Three or Five Years Only

For loans intended to finance used facilities—whether structures, equipment, or trucks—the loan terms shall be a maximum of either three or five years.³¹⁴

3. FSFL for Both New and Used Equipment

If a farmer is seeking a loan for both new and used equipment, FSA will decide whether to allow a single FSFL request, or whether to require the farmer to make two separate FSFL requests.³¹⁵ If a single FSFL request is allowed for both the new and used equipment, the loan term will be based on the equipment with the lowest maximum loan term.

B. Loan Terms for FSFL Microloans

The maximum loan term for an FSFL microloan depends on whether the facility—be it a structure, equipment, or truck—is new or used. In general, the loan terms for FSFL microloans can be three, five, or seven years.

1. New Facility—Three, Five, or Seven Years

For an FSFL microloan that will finance a new facility, the maximum available loan terms are three, five, or seven years.³¹⁶

³¹¹ FSFL Handbook, page 4-9, para. 60.D (June 20, 2018).

³¹² FSFL Handbook, page 4-9, para. 60.D (June 20, 2018).

³¹³ FSFL Handbook, page 4-9, para. 60.D (June 20, 2018).

³¹⁴ 7 C.F.R. § 1436.7(a) (2019); FSFL Handbook, page 4-9, para. 60.D (June 20, 2018).

³¹⁵ FSFL Handbook, page 4-9, para. 60.D (June 20, 2018).

³¹⁶ FSFL Handbook, page 4-6, para. 59.B (June 20, 2018).

2. Used Facility—Three or Five Years

For used facilities, the maximum available loan terms for an FSFL microloan are three or five years.³¹⁷

3. Microloan for Both New and Used Equipment

If a farmer is seeking a microloan to fund both new and used equipment, FSA will decide whether to allow a single FSFL request, or whether to require that two separate FSFL requests be made.³¹⁸ If a single FSFL microloan request is allowed for both the new and used equipment, the loan term will be based on the equipment that has the lowest maximum loan term.

As an example, suppose a farmer submits a microloan application in the amount of \$46,000, which would finance both a new portable grain vacuum and a used batch dryer.³¹⁹ The new grain vacuum has a maximum loan term of seven years, while the used batch dryer has a maximum loan term of five years. Accordingly, if FSA allows both pieces of equipment to be covered by the same FSFL microloan, the maximum loan term would be five years.

VI. Interest Rates

Interest rates for FSFL program loans are determined based upon the date the loan is initially approved, and will remain in effect for the duration of the loan.³²⁰ The rates will be the same for both partial and single, lump sum loan disbursements.³²¹

Interest rates may vary depending on the term of the loan.³²² As of June 2019, the interest rate for an FSFL program loan with a three-year or five-year loan term was 2.250 percent; the interest rate for a loan with a seven-year term was 2.275 percent; the interest rate for a loan with a ten-year or twelve-year loan term was 2.5 percent; and the interest rate for a loan with a fifteen-year loan term was 2.625 percent.³²³ These interest rates are updated monthly.³²⁴

³¹⁷ FSFL Handbook, page 4-6, para. 59.B (June 20, 2018).

³¹⁸ FSFL Handbook, page 4-6, para. 59.B (June 20, 2018).

³¹⁹ FSFL Handbook, page 4-6, para. 59.B (June 20, 2018).

³²⁰ 7 C.F.R. § 1436.12(a)-(b) (2019); FSFL Handbook, page 4-12, para. 62.A (June 20, 2018).

³²¹ FSFL Handbook, page 4-12, para. 62.A (June 20, 2018).

³²² 7 C.F.R. § 1436.12(b) (2019); FSFL Handbook, page 4-12, para. 62.B (June 20, 2018).

³²³ For the current FSFL program loan interest rates, see <https://www.fsa.usda.gov/about-fsa/structure-and-organization/commodity-credit-corporation/current-interest-rates/index>

³²⁴ FSFL Handbook, page 4-12, para. 62.B (June 20, 2018).

Chapter Five - Calculating Storage Capacities—FSFL Structural Loans Only

I. Introduction

To be eligible to receive an FSFL program loan for a new or used storage structure—as opposed to an equipment or truck loan—the farmer must demonstrate a need for increased storage capacity.³²⁵ The way in which a farmer’s storage needs are calculated will depend on the type of FSFL (standard or microloan), as well as the type of commodity being stored in the structure. FSA allows waivers of this requirement under certain circumstances, as described later in this chapter.

II. Establishing Storage Capacity Needs for Standard FSFL Structural Loans

Before FSA will approve an FSFL to build or increase the size of a storage structure, FSA must determine that the farmer has a demonstrated need for the storage capacity being sought.³²⁶

FSA calculates a farmer’s storage needs based, in part, on the duration of time that the commodity can be stored. For example, FSA allows for a one-year production storage capacity for aquaculture, butter, cheese, eggs, yogurt, floriculture, honey, hops, meat, poultry, perishable commodities, nuts, and renewable biomass.³²⁷ By contrast, the storage needs for hay, grains, and oilseeds, among others, are calculated based on a farmer’s storage needs for two years’ worth of production.

As described immediately below, FSA provides different storage calculations for: (a) commodities that can be stored for two years; (b) hay and renewable biomass commodities; (c) perishable commodities; (d) honey; (e) maple sap; and (f) milk. FSA also provides online storage capacity calculators that farmers can use to determine whether they are eligible for the increased storage they have requested.³²⁸

A. Storage Needs for Structures Holding Two Years of Commodity Production

The following rules apply for structures that can store commodities for up to two years.³²⁹

1. Three-Year Average Acreage Usually Required

As a general rule, FSA determines the farmer’s storage needs based upon a three-year historical average acreage for each of the eligible commodities that will be

³²⁵ 7 C.F.R. § 1436.5(a)(5) (2019); FSFL Handbook, page 3-2, para. 48.A (June 20, 2018).

³²⁶ FSFL Handbook, page 3-2, para. 48.A (June 20, 2018).

³²⁷ FSFL Handbook, page 2-1, para. 32.A (June 20, 2018).

³²⁸ FSFL Handbook, page 3-2, para. 48.A (June 20, 2018). The storage capacity calculator can be downloaded at <https://www.fsa.usda.gov/programs-and-services/price-support/Index>.

³²⁹ The FSFL Handbook does not expressly state which commodities FSA believes can be stored for up to two years. See FSFL Handbook, page 3-2 through 3-4, para. 48.A-D (June 20, 2018).

stored in the FSFL-funded structure.³³⁰ FSA will use the farmer's three most recent Reports of Acreage (form FSA-578) to make this determination.³³¹

2. One-Year Average Acreage Sometimes Allowed

There are four situations in which a reasonable one-year average acreage and yield projection may be used in place of the three-year historical average requirement.³³²

a. Newly-Acquired Operations

FSA may use a one-year average with yield projection if the farmer's operation is a newly-acquired farm.³³³

b. First Year Growing FSFL-Eligible Crops

If the farmer is growing FSFL-eligible crops for the first time, the one-year average with yield projection may be allowed.³³⁴

c. When Crop Rotations Negatively Affect Acreage Production

In situations where crop rotations negatively impact the farmer's acreage production, a one-year average with yield projection may be used.³³⁵

d. Prevented Planting or Disasters

If prevented planting or a disaster negatively impacts the farmer's average production, a one-year average with yield projection may be allowed.³³⁶

3. Steps for Determining Storage Needs for Commodities Stored for Two Years

In general, FSA uses the following steps to decide how much additional storage a farmer is eligible to receive funding for when storing commodities with a capacity for two years of storage.³³⁷

Step One: Determine the three-year historical average for each eligible commodity to be stored in the structure, using form FSA-578.

³³⁰ FSFL Handbook, page 3-2, para. 48.B (June 20, 2018). If a farming organization reorganizes, but the same individuals or entities continue to operate the farm, the historical average acreages from the previous operation may be used for purposes of determining storage needs. See FSFL Handbook, page 3-3, para. 48.B (June 20, 2018).

³³¹ FSFL Handbook, page 3-2, para. 48.B (June 20, 2018). Form FSA-578 is available at: https://forms.sc.egov.usda.gov/efcommon/eFileServices/eFormsAdmin/FSA0578MANUAL_031015V01.pdf.

³³² FSFL Handbook, page 3-2, para. 48.B (June 20, 2018).

³³³ FSFL Handbook, page 3-2, para. 48.B (June 20, 2018).

³³⁴ FSFL Handbook, page 3-2, para. 48.B (June 20, 2018).

³³⁵ FSFL Handbook, page 3-2, para. 48.B (June 20, 2018).

³³⁶ FSFL Handbook, page 3-2, para. 48.B (June 20, 2018).

³³⁷ FSFL Handbook, page 3-4, para. 48.D (June 20, 2018).

Step Two: Multiply the average acreage for each commodity by the corresponding crop yield.

Step Three: Multiply each result of Step Two by the corresponding average found in Step One and total the values.

Step Four: Multiply the total from Step Three by two (to represent storage for two years' worth of production).

Step Five: Take the result of Step Four and subtract any existing storage capacity that is available to the farmer.

Conclusion: If the result of Step Five is greater than zero, the farmer is eligible for additional storage (but not in excess of the amount proposed by the farmer). If the result of Step Five is less than zero, the farmer is ineligible for additional storage and therefore ineligible for an FSFL program loan. Finally, if the result is greater than zero, but less than the amount proposed by the farmer—meaning that the proposed structure would be larger than what is needed to store the eligible commodities—the farmer will still be eligible for an FSFL program loan, but the amount of the loan will be prorated to reflect the storage space that will actually be used to house the FSFL-eligible commodities.³³⁸

B. Storage Needs for Hay and Renewable Biomass

The following rules apply to farmers who are seeking a standard FSFL program loan to fund storage structures for hay or renewable biomass.³³⁹

1. Three-Year Average Acreage Required

A three-year historical average acreage for the farmer's hay or biomass is required.³⁴⁰

2. Structural Dimensions Needed

In order to demonstrate a storage need for hay or renewable biomass, farmers will need to provide FSA with either the dimensions of the facility (dimensions that can be converted into cubic feet), or the capacity of the proposed structure (in pounds or tons) according to the contractor who will be constructing the structure.³⁴¹

³³⁸ FSFL Handbook, page 3-4, para. 48.D and page 3-20, para. 54.B (June 20, 2018).

³³⁹ FSFL Handbook, page 3-5, para. 49.A (June 20, 2018). To view an example worksheet for determining the storage capacity of a structure that holds hay or renewable biomass, see FSFL Handbook, Exhibit 20, page 1 (June 20, 2018).

³⁴⁰ FSFL Handbook, page 3-3, para. 48.B, and page 3-5, para. 49.B (June 20, 2018).

³⁴¹ FSFL Handbook, page 3-6, para. 49.D (June 20, 2018). Unless the farmer provides detailed documentation of an appropriate conversion factor, FSA will use the following conversion for hay: 1 pound of hay requires 0.125 cubic feet of space, or 1 short ton of hay requires 250 cubic feet of space.

When making storage capacity determinations, FSA offices will likely get assistance from NIFA and land-grant universities, or use a worksheet designed to determine storage capacities.³⁴² FSA will also take into consideration any applicable laws, regulations, construction codes, and zoning ordinances that may impact the size or location of a proposed storage structure.

3. Steps for Determining Storage Needs for Hay and Renewable Biomass

FSA will use the following steps to determine whether a farmer has a sufficient need for additional hay or renewable biomass storage.³⁴³ When calculating yields of hay and renewable biomass, farmers should use tons as the unit of measure.³⁴⁴

Step One: Determine up to a three-year average acreage for each commodity (either hay or renewable biomass). The three-year average should take into account the farmer's share, if it is not 100 percent.

Step Two: Multiply each average acreage by the applicable crop yield for the hay or biomass, and total that amount.

Step Three: Multiply the result of Step Two by two (to represent storage for two years' worth of production).

Step Four: Subtract from the result of Step Three any existing storage capacity the farmer has for the hay or biomass.

Result: If the result of Step Four is greater than zero, the farmer remains eligible for the FSFL. If the result of Step Four is less than zero, the farmer is ineligible for the loan. If the result is greater than zero, but less than the amount of space in the farmer's proposed structure, FSA will prorate the amount of the FSFL.³⁴⁵

C. Storage Needs for Perishable Commodities

Farmers seeking to fund storage structures for perishable commodities must show a need for that cold storage.³⁴⁶ The following rules apply.

³⁴² FSFL Handbook, page 3-6, para. 49.D (June 20, 2018). Additional publications that FSA may consult when determining the storage capacity of a proposed structure are listed in the Handbook. See FSFL Handbook, page 3-6, para. 49.D (June 20, 2018).

³⁴³ FSFL Handbook, page 3-7, para. 49.D (June 20, 2018).

³⁴⁴ FSFL Handbook, page 3-5, para. 49.C (June 20, 2018).

³⁴⁵ When a storage structure has a larger capacity than what the farmer needs, FSA will prorate the loan amount to reflect only that portion of the storage structure that the farmer requires. For a more detailed explanation of how FSA will prorate the loan, see FSFL Handbook, page 3-20, para. 54.B (June 20, 2018).

³⁴⁶ FSFL Handbook, page 3-5, para. 49.A (June 20, 2018). To view an example worksheet for determining the storage capacity of cold storage structure, see FSFL Handbook, Exhibit 21, page 1 (June 20, 2018).

1. Three-Year Average Acreage Usually Required

As a general rule, FSA determines the farmer's storage needs based upon a three-year historical average acreage for each of the eligible commodities that will be stored in the FSFL-funded structure.³⁴⁷ FSA will use the farmer's three most recent Report of Acreage forms to make this determination.³⁴⁸

2. One-Year Average Acreage Sometimes Allowed

There are three situations in which a reasonable one-year acreage and yield projection may be used in place of the three-year historical average requirement.³⁴⁹

a. Newly-Acquired Operations

A farmer may use a one-year average with yield projection if the operation is a newly-acquired farm.³⁵⁰

b. First Year Growing the Perishable Commodity

If the farmer is growing the FSFL-eligible perishable commodity for the first time, the one-year average with yield projection may be allowed.³⁵¹

c. When Disasters Negatively Affect Acreage Production

In situations where disasters negatively impact the farmer's average production, a one-year average with yield projection may be used.³⁵²

3. Storage Capacity Based on One Year's Worth of Production

The capacity needs for perishable commodities are based on one year's worth of production.³⁵³

4. Steps for Determining Storage Needs for Perishable Commodities

FSA will use the following steps to determine whether a farmer has a sufficient need for additional storage for eligible perishable commodities.³⁵⁴

Step One: Determine the three-year average acreage for each eligible perishable commodity.

³⁴⁷ FSFL Handbook, page 3-9, para. 50.A, page 3-10, para. 50.B (June 20, 2018).

³⁴⁸ FSFL Handbook, page 3-10, para. 50.B (June 20, 2018). Form FSA-578 is available at: https://forms.sc.egov.usda.gov/efcommon/eFileServices/eFormsAdmin/FSA0578MANUAL_031015V01.pdf.

³⁴⁹ FSFL Handbook, page 3-9, para. 50.A (June 20, 2018).

³⁵⁰ FSFL Handbook, page 3-9, para. 50.A (June 20, 2018).

³⁵¹ FSFL Handbook, page 3-9, para. 50.A (June 20, 2018).

³⁵² FSFL Handbook, page 3-9, para. 50.A (June 20, 2018).

³⁵³ FSFL Handbook, page 3-9, para. 50.A (June 20, 2018).

³⁵⁴ FSFL Handbook, page 3-13, para. 50.D (June 20, 2018).

Step Two: Multiply each average acreage by the applicable crop yield for each commodity, and total that amount.

Step Three: Subtract from the result of Step Two any existing storage capacity the farmer has for the perishable commodities.

Result: If the result of Step Three is greater than zero, the farmer remains eligible for the FSFL. If the result of Step Three is less than zero, the farmer is ineligible for the loan. If the result is greater than zero, but less than the amount of space in the farmer's proposed structure, FSA will prorate the amount of the FSFL.³⁵⁵

D. Storage Needs for Honey

The following rules apply to farmers applying for an FSFL program loan to fund a honey storage structure.

1. Three-Year Average Honey Production Required

Farmers must demonstrate their three-year average honey production at the location where their proposed FSFL facility will be situated.³⁵⁶ FSA will determine whether this average yield is "reasonable."³⁵⁷

2. Formula for Determining Honey Storage Needs

FSA will use the following steps to determine whether a farmer has a sufficient need for additional honey storage.³⁵⁸

Step One: Determine the average honey production for the farmer's most recent three years of honey production at the proposed location.

Step Two: With the assistance of NIFA, land-grant universities, or publications by the Agricultural Research Service (ARS), determine the storage space required for one year's worth of honey storage.³⁵⁹

Result: Compare the storage capacity of the farmer's proposed structure with the storage capacity required by Step Two in order to determine whether the farmer is eligible for the additional honey storage.

³⁵⁵ When a storage structure has a larger capacity than what the farmer needs, FSA will prorate the loan amount to reflect only that portion of the storage structure that the farmer requires. For a more detailed explanation of how FSA will prorate the loan, see FSFL Handbook, page 3-20, para. 54.B (June 20, 2018).

³⁵⁶ FSFL Handbook, page 3-15, para. 51.C (June 20, 2018).

³⁵⁷ For more details on the resources FSA may consult when determining whether a honey yield is "reasonable," see FSFL Handbook, page 3-14, para. 51.B (June 20, 2018).

³⁵⁸ FSFL Handbook, page 3-15, para. 51.C (June 20, 2018).

³⁵⁹ In order to calculate the storage space that is required for honey, FSA will need to determine each of the following: (1) aisle space needed; (2) honey containers; (3) lateral and head space; (4) volume of product to be stored; (5) volume required per container; and (6) available site space. See FSFL Handbook, page 3-14, para. 51.A (June 20, 2018).

E. Storage Needs for Maple Sap

Maple sap can only be stored for a limited time while maintaining its quality. Accordingly, FSA will permit funding for a maple sap bulk tank that has a capacity to store one week's worth of sap production.³⁶⁰ To determine this capacity, FSA will take the farmer's production for one season and divide that by the average number of weeks of production. To account for potential production expansion, local FSA offices have the discretion to allow for an increase of up to 50 percent in the storage capacity for maple sap bulk tanks.³⁶¹

As an example, suppose a farmer's maple sap starts running on February 16 and continues for 42 days until it ends on March 30.³⁶² This farmer therefore had six weeks of maple sap production (42 days divided by 7 days). On average, each of the farmer's 10,000 taps produce 10.75 gallons of maple sap throughout the season, for a total of 107,500 gallons of maple sap. The farmer's weekly average production for the six-week season is therefore 17,918 gallons (107,500 gallons divided by 6 weeks). If the farmer's local FSA office allows for a 50 percent increase in storage capacity, the farmer would be eligible to receive FSFL funding for a bulk storage tank that holds no more than 26,877 gallons of maple sap (17,918 x 1.5 percent).

F. Storage Needs for Milk

The following rules apply to farmers applying for an FSFL program loan to fund a milk bulk tank.

1. Three Days' Worth of Milk Production

FSA will provide funding for milk bulk tanks with a capacity to store up to three days' worth of milk production.³⁶³

2. Production Typically Determined from Highest Milk Shipment Receipt

To determine a farmer's milk production, FSA will generally use the farmer's highest milk shipment receipt from within the past twenty-four months.³⁶⁴

3. Reasonable Yield Sometimes Allowed

There are three situations in which FSA will determine a farmer's average production using reasonable yields based on daily milk production per animal and the number of animals milked per day.³⁶⁵

³⁶⁰ FSFL Handbook, page 3-16, para. 52.A (June 20, 2018).

³⁶¹ FSA offices may allow for this increase on a case-by-case basis. See FSFL Handbook, page 3-16, para. 52.A (June 20, 2018).

³⁶² FSFL Handbook, page 3-16, para. 52.A (June 20, 2018).

³⁶³ FSFL Handbook, page 2-1, para. 32.A (June 20, 2018).

³⁶⁴ FSFL Handbook, page 3-17, para. 52.B (June 20, 2018).

³⁶⁵ FSFL Handbook, page 3-17, para. 52.B (June 20, 2018).

a. Newly-Acquired Operations

If the operation is a newly-acquired farm, FSA may use reasonable yields to determine the farmer's milk production.³⁶⁶

b. Milk Produced for First Time

For farms where milk is being produced for the first time, FSA may use reasonable yields to determine the farmer's milk production.³⁶⁷

c. Disaster Adversely Affects Average Milk Production

In situations where a disaster has adversely affected the farmer's average production, FSA may use reasonable yields to determine the farmer's milk production.³⁶⁸

4. Production Records May be Required

Farmers may be required to provide verifiable records to FSA in order to prove their milk production.³⁶⁹

5. Steps for Determining Storage Needs for Milk Bulk Tanks

FSA will use the following steps to determine the size of bulk tank for which a farmer is eligible to receive FSFL funding.³⁷⁰

Step One: Determine the quantity of milk produced from the farmer's highest milk shipment receipt from within the past twenty-four months, or—if applicable—determine the farmer's average production using reasonable yields. Typically, this amount will be in pounds.

Step Two: In order to determine the quantity of milk produced every three days, take the result of Step One and multiply by either three (if the milk is picked up every day) or multiply by 1.5 (if milk pick-up is every other day).

Step Three: Divide the result of Step Two by 8.6 in order to get the average number of gallons of milk produced every three days.³⁷¹

Result: Subtract any existing milk storage from the result of Step Three in order to determine whether the farmer is eligible for additional milk storage.

³⁶⁶ FSFL Handbook, page 3-17, para. 52.B (June 20, 2018).

³⁶⁷ FSFL Handbook, page 3-17, para. 52.B (June 20, 2018).

³⁶⁸ FSFL Handbook, page 3-17, para. 52.B (June 20, 2018).

³⁶⁹ FSFL Handbook, page 3-17, para. 52.B (June 20, 2018).

³⁷⁰ FSFL Handbook, page 3-17, para. 52.B (June 20, 2018).

³⁷¹ FSA uses the industry average conversion that one gallon of milk weighs 8.6 pounds. See FSFL Handbook, page 3-18, para. 52.B (June 20, 2018).

III. FSFL Microloans—Self-Certify Storage Needs

For a farmer seeking to fund a storage structure with an FSFL microloan, FSA permits self-certification of the farmer's storage need.³⁷²

A. Advantage of Self-Certification

Self-certification allows farmers to declare their storage needs without having to first demonstrate a three-year historical average (which FSA requires for standard FSFL program loans). The ability to self-certify therefore allows beginning farmers and smaller start-up farming operations to qualify for FSFL program loans even if they do not have demonstrated production histories to justify their storage needs.³⁷³

B. Applies to FSFL Microloans Only

Only farmers applying for FSFL microloans are permitted to self-certify their storage needs.³⁷⁴ Microloans are available to farmers who are seeking loans of \$50,000 or less whose total outstanding FSFL balances are also \$50,000 or less.³⁷⁵

To be eligible for self-certification, a farmer must be sure to select the microloan option on the FSFL application—FSA will not automatically assume that a loan request of \$50,000 or less is a request for an FSFL microloan.³⁷⁶

C. Submit Self-Certification Worksheet

Farmers who wish to self-certify their storage needs must complete, sign, and date a self-certification calculator worksheet and attach it to their FSFL application.³⁷⁷

IV. Storage Need Waivers

If a farmer has not previously filed a Report of Acreage (FSA-578) with FSA—and therefore if the farmer does not have a record of his or her three-year historical average acreage—the farmer may be eligible for a storage need waiver. The following rules apply.

A. General Waiver for Farmers of All Commodities Except Perishable Commodities

If a farmer has not previously filed a Report of Acreage, the farmer may be eligible for a storage need waiver.³⁷⁸ The farmer must submit the waiver request in writing. If

³⁷² 7 C.F.R. § 1436.9(d)(5) (2019); 81 Fed. Reg. 25,587, 25,589 (Apr. 29, 2016); FSFL Handbook, page 3-1, para. 47.A (June 20, 2018); FSA Notice FSFL-142, page 9 (Apr. 17, 2017) (expired Oct. 1, 2017). Any farmer with a total outstanding FSFL balance of \$50,000 or less may self-certify, regardless of whether the loans are microloans or standard FSFL program loans.

³⁷³ 81 Fed. Reg. 25,587, 25,589 (Apr. 29, 2016).

³⁷⁴ FSFL Handbook, page 3-1, para. 47.A (June 20, 2018).

³⁷⁵ FSFL Handbook, page 4-5, para. 59.A (June 20, 2018).

³⁷⁶ 7 C.F.R. § 1436.9(d)(5) (2019); FSFL Handbook, page 3-1, para. 47.A (June 20, 2018); FSA Notice FSFL-142, Exhibit 1, page 2 (Apr. 17, 2017) (expired Oct. 1, 2017).

³⁷⁷ FSFL Handbook, page 3-1, para. 47.B (June 20, 2018). The self-certification worksheet is available at: <https://www.fsa.usda.gov/programs-and-services/price-support/Index>.

³⁷⁸ FSFL Handbook, page 3-19, para. 53.A (June 20, 2018).

accepted, FSA will use the farmer's production records and actual yield in order to determine a three-year average that can be used when calculating the farmer's storage capacity needs.

B. Loans of \$100,000 or Less—Waiver of Fees for Late-Filed Reports of Acreage

For a farmer requesting an FSFL program loan of \$100,000 or less, FSA may—on a case-by-case basis—accept late-filed Reports of Acreage and waive the late-filing fees.³⁷⁹

C. Waiver for Farmers of Perishable Commodities

A farmer of perishable commodities may be eligible for the general storage need waiver described immediately above if two conditions apply.³⁸⁰ First, the farmer must have a total outstanding FSFL balance of \$100,000 or less. Second, the farmer must produce, at minimum, three different types of perishable commodities. If both conditions apply, the farmer can request a storage need waiver as described above.

³⁷⁹ FSFL Handbook, page 3-19, para. 53.A (June 20, 2018).

³⁸⁰ FSFL Handbook, page 3-19, para. 53.B (June 20, 2018).

Chapter Six - Insurance Requirements

I. Introduction

Farmers applying for FSFL program loans will likely be required to obtain at least one form of insurance. As described in this Chapter, there are specific rules for when a farmer must obtain crop insurance, dairy coverage, NAP coverage, all-peril structural insurance, and flood insurance.

II. Requirements for Crop Insurance, Dairy Coverage and NAP

In most situations, farmers applying for an FSFL program loan will be required to obtain crop insurance, dairy coverage, or coverage under FSA's Noninsured Crop Disaster Assistance Program (NAP).³⁸¹ The following rules apply.

A. When Insurance is Required

Any farmer with a total outstanding FSFL balance greater than \$25,000 must obtain insurance or coverage on all FSFL-eligible commodities that fall into one of two categories.³⁸² The specific rules for this coverage are outlined immediately below.

1. Outstanding FSFL Balance Greater than \$25,000

The requirements for crop insurance, dairy coverage, and NAP coverage apply to farmers with total outstanding FSFL balances of \$25,000.01 or more.³⁸³

2. Required for Crops of Economic Significance or When Commodities are Stored in an FSFL-Funded Structure

Farmers with total outstanding FSFL balances greater than \$25,000 must obtain crop insurance, dairy coverage, or NAP coverage if the farmer's FSFL-eligible commodities fall into one of the following two categories.

a. Crops of Economic Significance

FSA requires crop insurance or NAP coverage for all crops that it calls crops of "economic significance," when those crops are located on farms operated by the farmer and in the same county as the county where the FSFL-funded facility is located.³⁸⁴

A crop of economic significance means an insurable commodity that contributes at least 10 percent of the total expected value of all commodities that the farmer grows.³⁸⁵ However, a crop is not considered economically significant if the expected liability under the catastrophic

³⁸¹ 7 C.F.R. § 1436.5 (a)(6) (2019); FSFL Handbook, page 6-1, para. 96.A (June 20, 2018).

³⁸² FSFL Handbook, page 2-12, para. 35.A, and page 6-1, para. 96.A (June 20, 2018).

³⁸³ FSFL Handbook, page 2-12, para. 35.A, and page 6-1, para. 96.A (June 20, 2018).

³⁸⁴ 7 C.F.R. § 1436.5 (a)(6) (2019); FSFL Handbook, page 6-1, para. 96.A (June 20, 2018).

³⁸⁵ 7 C.F.R. § 1436.3, "Crop of economic significance" (2019); FSFL Handbook, page 6-1, para. 96.A, Exhibit 2, page 2, "Crop of economic significance" (June 20, 2018).

level of crop insurance for the crop is equal or less than the administrative fee for the crop.³⁸⁶

b. Commodities Stored in the FSFL-Funded Facility

Crop insurance, NAP coverage, or dairy coverage is required for all eligible commodities that are stored in the farmer's FSFL-funded facility.³⁸⁷ In general, therefore, coverage under this category is only required for FSFL program loans that finance storage structures. Under limited circumstances, coverage may be required for equipment and trucks—those rules are described below.

B. When Insurance is Not Required

Farmers are not required to obtain crop insurance, dairy coverage, or NAP coverage if any of the following four circumstances apply.

1. Farmer's Outstanding FSFL Balance is \$25,000 or Less

Farmers are not required to obtain crop insurance, dairy coverage, and NAP coverage when their total outstanding FSFL balances are \$25,000 or less.³⁸⁸

2. Farmer Provides an Irrevocable Letter of Credit

Unless FSA determines otherwise, crop insurance, dairy coverage, and NAP coverage is not required when a farmer provides an irrevocable letter of credit to secure the FSFL-funded facility.³⁸⁹ Irrevocable letters of credit are discussed in more detail in Chapter Seven.

3. For Drying and Handling Equipment, and Storage and Handling Trucks

In most cases, crop insurance, dairy coverage, and NAP coverage are not required for farmers who receive FSFL program loans for drying and handling equipment, or storage and handling trucks.³⁹⁰

There are two exceptions to this general rule. First, coverage will be required for equipment and trucks if FSA establishes a state-wide policy requiring such coverage.³⁹¹ Second, a farmer may be required to obtain the coverage if FSA performs a financial analysis and determines that coverage is necessary.

³⁸⁶ 7 C.F.R. § 1436.3, "Crop of economic significance" (2019); FSFL Handbook, Exhibit 2, page 2, "Crop of economic significance" (June 20, 2018).

³⁸⁷ 7 C.F.R. § 1436.5 (a)(6) (2019); FSFL Handbook, page 6-1, para. 96.A (June 20, 2018).

³⁸⁸ FSFL Handbook, page 6-1, para. 96.A (June 20, 2018).

³⁸⁹ FSFL Handbook, page 6-1, para. 96.A (June 20, 2018).

³⁹⁰ FSFL Handbook, page 6-1, para. 96.A (June 20, 2018).

³⁹¹ FSFL Handbook, page 6-1, para. 96.A (June 20, 2018). FSA does not have the discretion to implement more restrictive insurance requirements on a case-by-case basis.

4. Uninsurable Commodities that are also Ineligible for NAP

For some commodities, such as certain renewable biomass commodities, crop insurance or NAP coverage may not be available. In such cases, the unavailability of the insurance should not prevent a farmer from receiving an FSFL program loan, so long as the farmer meets all of the other loan requirements and successfully requests a coverage waiver from FSA.³⁹²

C. Acceptable Types of Crop Insurance, Dairy Coverage, and NAP Coverage

Farmers have a variety of options for obtaining crop insurance, dairy coverage, or NAP coverage that meets the FSFL program requirements.

1. Any Insurance under the FCIP is Acceptable

Any level of available coverage under the USDA's Federal Crop Insurance Corporation (FCIC) constitutes acceptable crop insurance for purposes of the FSFL program.³⁹³ This includes insurance under Whole Farm Revenue Protection, the Rainfall and Vegetation Index, or farm and ranch insurance policies, so long as the policy specifies the eligible commodities that are being covered. Insurance under FSA's Margin Protection Program (MPP) or the Livestock Gross Margin (LGM) program is not required.³⁹⁴

2. Coverage under the Noninsured Crop Disaster Assistance Program (NAP)

For commodities that are ineligible for crop insurance, farmers must get coverage through FSA's NAP, if available.³⁹⁵ Coverage under NAP provides crop loss assistance to farmers of crops that otherwise do not qualify for crop insurance.³⁹⁶ Any level of NAP coverage is sufficient for purposes of FSFL eligibility.³⁹⁷

3. Special Insurance Requirements for Dairy Farmers

Dairy farmers who are required to obtain insurance must obtain a policy that insures, at minimum, the death of dairy cattle as well as the unexpected decrease in milk production.³⁹⁸

³⁹² 7 C.F.R. § 1436.5(a)(6) (2019); FSFL Handbook, page 6-2, para. 96.A (June 20, 2018); 74 Fed. Reg. 41,581, 41,583 (Aug. 18, 2009). For more information on waivers for crop insurance, dairy coverage, or NAP coverage, see FSFL Handbook, pages 9-9 through 9-11, para. A-D (June 20, 2018).

³⁹³ FSFL Handbook, page 6-2, para. 96.B (June 20, 2018).

³⁹⁴ FSFL Handbook, page 6-2, para. 96.A (June 20, 2018). This rule will likely continue to apply to the new Dairy Margin Coverage (DMC) program, which was authorized by the 2018 Farm Bill and will replace the MPP-Dairy program.

³⁹⁵ 7 C.F.R. § 1436.5(a)(6) (2019); FSFL Handbook, page 6-2, para. 96.B (June 20, 2018).

³⁹⁶ 7 C.F.R. § 1437.4(a)(4) (2019). For more information on NAP coverage, see <https://www.fsa.usda.gov/programs-and-services/disaster-assistance-program/noninsured-crop-disaster-assistance/index>.

³⁹⁷ FSFL Handbook, page 6-2, para. 96.B (June 20, 2018).

³⁹⁸ FSFL Handbook, page 6-1, para. 96.A (June 20, 2018).

D. Proof of Coverage

Farmers must meet the insurance and coverage requirements described above before the closing of their loans.³⁹⁹ Accordingly, farmers should provide FSA with proof of their crop insurance, NAP coverage, or dairy coverage. FSA requires what it calls “acceptable” forms of proof.⁴⁰⁰ Although FSA does not define exactly what acceptable means, the Handbook provides two examples of acceptable proof of coverage: statements of coverage for the applicable crop year, and insurance applications that are signed by an agent.

E. Crop Insurance, Dairy Coverage, and NAP Coverage Waivers

Under certain circumstances, local FSA offices have the authority to waive the FSFL insurance coverage requirements.⁴⁰¹ FSA allows for a general waiver of crop insurance, dairy coverage, or NAP coverage, as well as specific waivers for hay farmers, perishable commodity farmers, and farmers of commodities that are not stored in an FSFL-funded structure.⁴⁰²

For all coverage waivers—except waivers for commodities not stored in an FSFL structure—state FSA offices have the authority to establish more restrictive policies and requirements than those indicated below.⁴⁰³

1. General Crop Insurance Waivers

Crop insurance waivers can be received for both a prior crop year as well as the current crop year.⁴⁰⁴ A farmer may be eligible to receive a crop insurance waiver if all of the following three conditions are met.⁴⁰⁵

a. Outstanding FSFL Balance of \$100,000 or Less

To be eligible for a crop insurance waiver, the farmer must have a total outstanding FSFL balance of \$100,000 or less.⁴⁰⁶

b. Too Late to Obtain the Required Insurance for the Crop Year

Crop insurance waivers may be granted only if it is too late for the farmer to obtain the necessary insurance for the crop year.⁴⁰⁷

³⁹⁹ FSFL Handbook, page 6-2, para. 96.D (June 20, 2018).

⁴⁰⁰ FSFL Handbook, page 6-2, para. 96.C (June 20, 2018).

⁴⁰¹ 7 C.F.R. § 1436.5(a)(6) (2019); FSFL Handbook, page 9-9 to 9-12, para. 157.A-E (June 20, 2018).

⁴⁰² 7 C.F.R. § 1436.5(a)(6) (2019); FSFL Handbook, pages 9-9 to 9-12, para. 157.A-E (June 20, 2018).

⁴⁰³ 7 C.F.R. § 1436.5(a)(6) (2019); FSFL Handbook, pages 9-9 to 9-11, para. 157.A-D (June 20, 2018).

⁴⁰⁴ FSFL Handbook, page 9-9, para. 157.A (June 20, 2018).

⁴⁰⁵ 7 C.F.R. § 1436.5(a)(6) (2019); FSFL Handbook, page 9-8, para. 156 (June 20, 2018).

⁴⁰⁶ FSFL Handbook, page 9-9, para. 1567.A (June 20, 2018).

⁴⁰⁷ FSFL Handbook, page 9-9, para. 1567.A (June 20, 2018).

c. Farmer Did Not Forget or Neglect to Obtain the Insurance

Crop insurance waivers are not available if the farmer forgot to obtain the insurance, or if the farmer did not realize that coverage needed to be obtained until it was too late.⁴⁰⁸

2. Waivers for Hay Farmers

For hay farmers, local FSA offices are authorized to waive the multi-peril crop insurance or NAP coverage requirements on a case-by-case basis.⁴⁰⁹ The following rules apply.

a. Outstanding FSFL Balance of \$100,000 or Less

The hay farmer must have a total outstanding FSFL balance of \$100,000 or less.⁴¹⁰

b. Cost of Insurance or NAP Coverage Must be Between \$500 and \$700

The farmer's cost of multi-peril crop insurance or NAP coverage must be between \$500 and \$700.⁴¹¹

c. Must Obtain All-Peril Structural Insurance Instead

Any hay farmer seeking a waiver of the FSFL crop insurance or NAP coverage requirements must instead obtain all-peril structural insurance for the hay stored in the FSFL structure.⁴¹²

d. Must Annually Request Waiver in Writing

Any hay farmer seeking a waiver of the FSFL crop insurance requirements must submit an annual request for the waiver in writing.⁴¹³

Hay farmers must submit their insurance or NAP coverage waiver request annually, and in writing, to their local county FSA office.⁴¹⁴ If the insurance or NAP coverage is waived, the hay farmer must still obtain and maintain all-peril structural insurance on any hay stored in the FSFL structure.

⁴⁰⁸ FSFL Handbook, page 9-9, para. 1567.A (June 20, 2018).

⁴⁰⁹ FSFL Handbook, page 9-10, para. 157.C (June 20, 2018).

⁴¹⁰ FSFL Handbook, page 9-10, para. 157.C (June 20, 2018).

⁴¹¹ FSFL Handbook, page 9-10, para. 157.C (June 20, 2018).

⁴¹² FSFL Handbook, page 9-10, para. 157.C (June 20, 2018).

⁴¹³ FSFL Handbook, page 9-10, para. 157.C (June 20, 2018).

⁴¹⁴ 7 C.F.R. § 1436.5(a)(6) (2019); FSFL Handbook, page 9-10, para. 157 (June 20, 2018).

3. Waivers for Farmers of Perishable Commodities

For farmers of eligible perishable commodities, local FSA offices are authorized to waive, on a case-by-case basis, the FSFL crop insurance, dairy coverage, or NAP coverage requirements.⁴¹⁵

The FSFL Handbook suggests that the decision to grant an insurance waiver for farmers of perishable commodities is based on whether or not such coverage is *feasible* for the farmer.⁴¹⁶ According to the Handbook, when determining the feasibility of obtaining coverage, FSA will consider the number of crops the farmer produces, the typical area planted for each crop, and whether the farmer markets his or her products in a manner that provides a price premium above traditional markets (for example, by marketing directly to consumers, through a food hub, to a local restaurant, or as certified organic).

The following rules apply to insurance waivers for farmers of perishable commodities.

a. Outstanding FSFL Balance of \$100,000 or Less

The farmer must have a total outstanding FSFL balance of \$100,000 or less in order to be eligible for an insurance waiver.⁴¹⁷

b. Produce a Minimum of Three Different Perishable Commodities

The farmer must produce, at minimum, three different perishable commodities to be eligible for an insurance waiver.⁴¹⁸

c. Farmer Must Annually Seek Waiver in Writing

The farmer must submit an annual request for the waiver, in writing, to the farmer's local FSA office.⁴¹⁹

d. For Dairy Farmers—Waiver if Dairy Coverage Unavailable

If dairy coverage is unavailable to a farmer, FSA may waive—on a case-by-case basis—the dairy coverage requirement.⁴²⁰

4. Waivers for Commodities Not Stored in an FSFL-Funded Structure

State FSA offices are authorized to determine whether to allow crop insurance waivers for farmers who have commodities that will not be stored in an FSFL-

⁴¹⁵ FSFL Handbook, page 9-11, para. 157.D (June 20, 2018).

⁴¹⁶ FSFL Handbook, page 9-11, para. 157.D (June 20, 2018).

⁴¹⁷ FSFL Handbook, page 9-11, para. 157.D (June 20, 2018).

⁴¹⁸ FSFL Handbook, page 9-11, para. 157.D (June 20, 2018).

⁴¹⁹ FSFL Handbook, page 9-11, para. 157.D (June 20, 2018).

⁴²⁰ FSFL Handbook, page 6-2, para 96.A and page 9-11, para. 157.D (June 20, 2018).

funded structure.⁴²¹ This waiver is only available for farmers who have total outstanding FSFL balances of \$100,000 or less.

If a waiver is granted, the farmer will be unable to store any uninsured commodities in the FSFL-funded structure, and the farmer will be required to initial and date a statement on the FSFL application that says: “I understand that I am **not** authorized to store my [*enter commodity*] production in the structure during the FSFL term.”⁴²²

III. All-Peril Structural Insurance—Storage Structures Only

Farmers seeking FSFL program loans for permanently affixed or portable storage structures, including hoop buildings, must obtain all-peril structural insurance.⁴²³ The following rules apply.

A. Policy Must Equal or Exceed Farmer’s Outstanding FSFL Balance

When all-peril structural insurance is required, the policy must equal or exceed the farmer’s outstanding FSFL balance.⁴²⁴

B. Provide Proof of Insurance Before Closing and Annually Thereafter

Farmers must provide proof of all-peril structural insurance before their FSFL closing date, and annually thereafter.⁴²⁵

C. Not Required If Existing Policy is Amended to Include FSFL Structure

If there is an insurance policy already in place for the farm, and the policy is made to include coverage for the new FSFL structure, that insurance policy can meet the FSA requirements.⁴²⁶ In such a case, a separate all-peril structural insurance policy may not be needed.

D. CCC Must be Listed as the Loss Payee or Mortgage Payee

The CCC, and not FSA, must be listed as either a loss payee or a mortgage payee on the all-peril structural insurance policy.⁴²⁷

E. Waivers of All-Peril Structural Insurance—Under Limited Circumstances Only

Local FSA offices may waive the all-peril structural insurance requirement, on a case-by-case basis, for farmers who have a total outstanding FSFL balance of \$100,000 or less.⁴²⁸ Waivers are only allowed if the FSFL-funded structure is a concrete bunker silo (with no

⁴²¹ FSFL Handbook, page 9-10, para. 157.B (June 20, 2018).

⁴²² FSFL Handbook, page 9-10, para. 157.B (June 20, 2018).

⁴²³ FSFL Handbook, page 6-3, para. 97.A-B, and page 9-12, para. 157.E (June 20, 2018).

⁴²⁴ FSFL Handbook, page 6-3, para. 97.B (June 20, 2018).

⁴²⁵ 7 C.F.R. § 1436.5(a)(9) (2019); FSFL Handbook, page 6-3, para. 97.C (June 20, 2018).

⁴²⁶ FSFL Handbook, page 6-3, para. 97.B (June 20, 2018).

⁴²⁷ 7 C.F.R. § 1436.15(d) (2019); FSFL Handbook, page 6-3, para. 97.B (June 20, 2018).

⁴²⁸ FSFL Handbook, page 9-12, para. 157.E (June 20, 2018).

chance of a loss due to fire or other risks), or if FSA determines that the storage structure cannot be insured by all-peril structural insurance. All-peril structural insurance cannot be waived if the FSFL-funded structure is a hoop building.

IV. Flood Insurance

Flood insurance is generally required for FSFL facilities that are located in flood hazard areas. The following rules apply.

A. FSFL Facility Located in a Flood Hazard Area

Flood insurance is required for all farmers who have an FSFL facility located in a flood hazard area, or when FSA determines that flood insurance is necessary to protect its interest in the farmer's FSFL collateral.⁴²⁹ County FSA offices will make the determination of whether flood insurance is required by viewing county flood maps or national flood insurance program maps.⁴³⁰

If an FSFL program loan has already been disbursed and a county flood map is later updated to include the farmer's area, the farmer must immediately obtain flood insurance.⁴³¹ Similarly, if FSA later discovers that the farmer should have been required to purchase flood insurance before the FSFL disbursement, the farmer must immediately obtain the insurance.

B. Applicable to All FSFL-Funded Facilities Except Portable Equipment or Storage and Handling Trucks

The flood insurance requirements apply to all FSFL-funded facilities except for portable equipment or storage and handling trucks.⁴³²

C. Provide Proof of Insurance Before FSFL Closing and Annually Thereafter

If flood insurance is required, the farmer must provide proof of insurance prior to the closing of the FSFL.⁴³³ Proof of flood insurance must be submitted to FSA on an annual basis.⁴³⁴

D. No Waivers Allowed

FSA does not allow for any waivers of flood insurance, and it will not approve an FSFL application if the farmer does not obtain flood insurance when it is required.⁴³⁵ Even if a

⁴²⁹ 7 C.F.R. § 1436.5(a)(9) (2019); FSFL Handbook, page 2-13, para. 35.A, and page 6-5, para. 99.A (June 20, 2018). FSA will look to national flood insurance program maps to determine whether flood insurance is required.

⁴³⁰ FSFL Handbook, page 6-5, para. 99.A (June 20, 2018).

⁴³¹ FSFL Handbook, page 2-13, para. 35.A, and page 12-11, para. 214.D (June 20, 2018).

⁴³² FSFL Handbook, page 6-5, para. 99.A (June 20, 2018).

⁴³³ FSFL Handbook, page 6-6, para. 99.C (June 20, 2018).

⁴³⁴ 7 C.F.R. § 1436.5(a)(9) (2019); FSFL Handbook, page 12-10, para. 214.A (June 20, 2018).

⁴³⁵ FSFL Handbook, page 6-5, para. 99.A (June 20, 2018). Even if a farmer provides an irrevocable letter of credit, flood insurance must be obtained if it is required. In addition, if flood insurance is required but unavailable, FSA will not accept the farmer's FSFL application.

farmer provides an irrevocable letter of credit, flood insurance must be obtained if FSA determines it is required. If flood insurance is required but unavailable, FSA will not accept the farmer's FSFL application.

E. Failure to Obtain Flood Insurance

If a farmer fails to purchase required flood insurance before the FSFL closing date, FSA will notify the farmer in writing that the farmer's FSFL application will be withdrawn if the farmer does not provide proof of insurance within fifteen calendar days.⁴³⁶

⁴³⁶ FSFL Handbook, page 6-6, para. 99.C (June 20, 2018). State FSA offices have the discretion to extend—by an additional fifteen calendar days—the period within which the farmer must purchase flood insurance before the application will be withdrawn.

Chapter Seven - Security

All FSFL program loans must be secured with sufficient collateral.⁴³⁷ A variety of factors determine the type and value of the collateral that is required. The applicable rules are described below.

I. General Security Requirements for All FSFL Program Loans

The following rules apply to all FSFL program loans, regardless of the loan amount, the type of facility being funded, or where the facility is located.

A. FSFL Facility as Collateral

The collateral required to secure an FSFL program loan is typically the FSFL-funded storage structure, equipment, or truck itself.⁴³⁸

B. Additional Security Required for FSFL Balances Greater than \$100,000

As a general rule, when a farmer's total outstanding FSFL balance is more than \$100,000, the farmer will need to provide additional collateral—along with the facility—to secure the loan.⁴³⁹ The rules for additional security are described in more detail later in this Chapter.

C. Promissory Note and Security Agreement Required

Farmers applying for an FSFL program loan are required to provide a promissory note and security agreement granting the CCC a security interest in the collateral.⁴⁴⁰ The promissory note and security agreement must be executed and perfected according to the laws of the state where the collateral is located.

Once an FSFL program loan is approved, additional liens or encumbrances may not be placed on the FSFL collateral without the CCC's written approval.⁴⁴¹

D. CCC Must Have Sole Security Interest in Collateral

As a general rule, the security interest that the farmer grants the CCC must be the sole security interest in that collateral.⁴⁴² There will be times, however, when the collateral is encumbered by a prior lien and the CCC will not automatically be granted a first lien position—the requirements for those situations are described later in this chapter.

⁴³⁷ 7 C.F.R. § 1436.8(a) (2019); FSFL Handbook, page 7-1, para. 120.A (June 20, 2018); 79 Fed. Reg. 13,189, 13,189 (March 10, 2014).

⁴³⁸ 7 C.F.R. § 1436.8(a) (2019); FSFL Handbook, page 7-2, para. 121.A (June 20, 2018).

⁴³⁹ 7 C.F.R. § 1436.8(i) (2019); FSFL Handbook, page 7-1, para. 120.B (June 20, 2018).

⁴⁴⁰ 7 C.F.R. § 1436.8(a)(1) (2019); FSFL Handbook, page 7-1, para. 120.A (June 20, 2018). FSA uses form CCC-186 for the FSFL promissory note and security agreement.

⁴⁴¹ 7 C.F.R. § 1436.8(a)(2) (2019).

⁴⁴² 7 C.F.R. § 1436.8(a)(2) (2019); FSFL Handbook, page 8-9, para. 144.E (June 20, 2018); FSA

E. Once FSFL Approved, No Additional Liens Allowed

Once an FSFL program loan is approved, additional liens or encumbrances may not be placed on the FSFL collateral without the CCC's written approval.⁴⁴³

F. Security-Related Costs

For all FSFL program loans, the farmer is generally responsible for paying the cost of any required title opinions, title insurance, title searches, filings fees, recording of all real estate liens, appraisals, and subordination or severance agreement filings.⁴⁴⁴

CCC will pay for credit reports, collateral and property lien searches, as well as filing and recording financing statements for the FSFL collateral.⁴⁴⁵

II. Security Rules for Specific Circumstances

In addition to the general requirements described above, the individual circumstances of a farmer's FSFL program loan can create a variety of additional security requirements. These requirements are described below.

A. Security Requirements for Renovated Structures

If the FSFL is being used to remodel an existing structure, and the remodeling includes attaching an addition that is integral to the structure, the CCC's security interest must include both the remodeled addition and the original structure.⁴⁴⁶

B. When Collateral is Located on Land the Farmer Leases or Does not Own

If a farmer seeks to put an FSFL-funded structure on land that the farmer either leases or otherwise does not own, the farmer must obtain a severance agreement from the landowner.⁴⁴⁷ A severance agreement is a document that is used to legally separate the FSFL structure from the property on which it sits.⁴⁴⁸ Severance agreements are discussed in more depth below.

In addition to a severance agreement, the landowner must provide a written agreement permitting the farmer and FSA to access the facility at any time throughout the duration of the loan.⁴⁴⁹

⁴⁴³ 7 C.F.R. § 1436.8(a)(2) (2019).

⁴⁴⁴ 7 C.F.R. § 1436.8(h) (2019); FSFL Handbook, page 4-4, para. 58.C, page 7-8, para. 122.A (June 20, 2018).

⁴⁴⁵ 7 C.F.R. § 1436.8(h) (2019); FSFL Handbook, page 4-4, para. 58.C (June 20, 2018).

⁴⁴⁶ 7 C.F.R. § 1436.8(g) (2019); FSFL Handbook, page 7-1, para. 120.C (June 20, 2018).

⁴⁴⁷ FSFL Handbook, page 7-1, para. 120.D (June 20, 2018).

⁴⁴⁸ 7 C.F.R. § 1436.3, "Severance agreement" (2019); FSFL Handbook, page 11-41, para. 196.A (June 20, 2018); 81 Fed. Reg. 25,587, 25,589 (Apr. 29, 2016).

⁴⁴⁹ FSFL Handbook, page 7-1, para. 120.D (June 20, 2018).

C. When Collateral is Attached to Land with an Existing Lien

In some situations, a farmer's FSFL-funded facility will be considered attached to the land on which it sits. If that land is already encumbered with a prior lien, a severance agreement will need to be obtained to ensure that the CCC maintains a first lien position on the farmer's collateral.⁴⁵⁰ Severance agreements are discussed more fully later in this Chapter.

III. Irrevocable Letters of Credit

An irrevocable letter of credit is a legal document issued by a bank or other financial institution that guarantees payment of another's debt. If a farmer is applying for an FSFL program loan, an irrevocable letter of credit would guarantee payment of that loan. As described below, irrevocable letters of credit can be used in place of certain FSFL security requirements.

A. General Requirements

To be an acceptable form of security, an irrevocable letter of credit must meet several conditions. Three of these are described below.⁴⁵¹

1. Official Letter of Intent

If a farmer is relying upon an irrevocable letter of credit as security, the farmer must provide an official letter of intent from the financial institution indicating that it will provide the necessary letter of credit.⁴⁵²

2. Guarantee Principal and Interest

The irrevocable letter of credit must guarantee the principal amount of the FSFL, as well as the interest for the first year of the loan.⁴⁵³

3. Allow for Partial Draws

The irrevocable letter of credit must be written to allow for partial draws on the credit in case the farmer's annual installment payment is not provided by its due date.⁴⁵⁴

B. When Allowed

Irrevocable letters of credit can be used in a variety of ways, and in some cases they can replace other FSFL program loan requirements. The following are five circumstances under which an irrevocable letter of credit may be used.

⁴⁵⁰ FSFL Handbook, page 8-9, para. 144.E (June 20, 2018).

⁴⁵¹ For a full description of the requirements for submitting an irrevocable letter of credit, see FSFL Handbook, pages 7-5 through 7-7, para. 121.E (June 20, 2018).

⁴⁵² For an example letter of intent from a financial institution, see FSFL Handbook, Exhibit 69, page 1 (June 20, 2018).

⁴⁵³ FSFL Handbook, page 7-5, para. 121.E (June 20, 2018). State FSA offices have the authority—on a statewide basis only—to require that irrevocable letters of credit include up to 60 additional days' worth of interest in order to adequately secure the loan.

⁴⁵⁴ FSFL Handbook, pages 7-5 through 7-7, para. 121.E (June 20, 2018).

1. As Security for an FSFL Program Loan

If a farmer obtains an irrevocable letter of credit for the full amount of the FSFL program loan, the facility is not required to be collateral for the loan.⁴⁵⁵

2. In Place of Financial Review

If a farmer secures the entire FSFL program loan with an irrevocable letter of credit, FSA may decide not to conduct a financial review or obtain the farmer's credit report.⁴⁵⁶ This is true for FSFL microloans as well as standard FSFL program loans.⁴⁵⁷

3. In Place of Crop Insurance Requirements

In most cases, if a farmer secures the FSFL program loan with an irrevocable letter of credit, the farmer is not required to obtain crop insurance, NAP coverage, or dairy coverage.⁴⁵⁸

4. To Replace Severance Agreement Requirements

If a farmer's FSFL program loan would otherwise require a severance agreement, and the loan is fully secured by an irrevocable letter of credit, the severance agreement will not be required.⁴⁵⁹

5. As an Alternate Form of Additional Security

When a farmer's FSFL program loan requires additional security, FSA may accept an irrevocable letter of credit or bond to satisfy the additional security requirements.⁴⁶⁰ Additional security is described in more detail later in this Chapter.

IV. Severance Agreements

For purposes of the FSFL program, a severance agreement is a document that is used to legally separate an FSFL facility from the property on which it sits, when that property is subject to a prior lien.⁴⁶¹ In effect, a severance agreement allows the CCC to obtain a security interest in the FSFL facility, while ensuring that if the farmer defaults on the loan FSA will have the legal right

⁴⁵⁵ FSFL Handbook, page 7-1, para. 120.B, and page 7-5, para. 121.E (June 20, 2018).

⁴⁵⁶ FSFL Handbook, page 5-1, para. 82.A, and page 5-13, para. 85.G (June 20, 2018).

⁴⁵⁷ FSFL Handbook, page 4-5, para. 59.A, page 5-1, para. 82.A, and page 5-13, para. 85.G (June 20, 2018).

⁴⁵⁸ FSFL Handbook, page 6-1, para. 96.A (June 20, 2018). However, if the farmer's state FSA office determines that it is necessary, the farmer may nonetheless be required to obtain insurance or coverage.

⁴⁵⁹ FSFL Handbook, page 7-1, para. 120.D, and page 11-42, para. 196.B (June 20, 2018).

⁴⁶⁰ 7 C.F.R. § 1436.8(f) (2019); FSFL Handbook, page 7-5, para. 121.E (June 20, 2018).

⁴⁶¹ 7 C.F.R. § 1436.3, "Severance agreement" (2019); FSFL Handbook, page 11-41, para. 196.A (June 20, 2018).

to take possession of and remove the facility from the property. The severance agreement that is used for purposes of the FSFL program is form CCC-297.⁴⁶²

A. When Severance Agreements are Required

Severance agreements are required under the following circumstances, regardless of the underlying amount of the loan.

1. FSFL Structure is on Real Estate Security Not Owned by the Farmer

A severance agreement is required when an FSFL-funded facility is placed on property that is owned by someone other than the farmer, and the property serves as security for the farmer's loan.⁴⁶³ This includes when an FSFL-funded facility is located on leased or rented land.⁴⁶⁴ In other words, severance agreements will be required from: (1) lienholders with a position that is superior to that of FSA;⁴⁶⁵ (2) any lienholder if the underlying land is leased; and (3) all landowners of the underlying real estate.

2. If FSFL is Assigned

A severance agreement is required if the farmer assigns the FSFL program loan and any remaining co-borrowers do not independently satisfy all FSFL eligibility requirements.⁴⁶⁶ If the remaining co-borrowers do meet all eligibility requirements, a severance agreement may not be required.

3. When Required by a State FSA Office

When a state FSA office believes it is necessary to protect the interests of FSA, the state office may create more restrictive security policies and require severance agreements for any FSFL in an amount greater than \$50,000.⁴⁶⁷ For example, a state FSA office could decide that a severance agreement is necessary for any FSFL greater than \$70,000.

If a state chooses to adopt a more restrictive severance agreement policy, it must be applied on a statewide basis and not on a case-by-case basis.⁴⁶⁸

B. When Severance Agreements are Not Required

Severance agreements are not required under each of the following circumstances.

⁴⁶² A copy of the applicable severance agreement, form CCC-297, form can be found here: https://forms.sc.egov.usda.gov/efcommon/eFileServices/eFormsAdmin/CCC0297_120323V01.pdf.

⁴⁶³ 7 C.F.R. § 1436.8(a)(2) (2019); FSFL Handbook, page 11-41, para. 196.A (June 20, 2018).

⁴⁶⁴ FSFL Handbook, page 11-41, para. 196.A (June 20, 2018).

⁴⁶⁵ This is true even if the superior lienholder is FSA, unless USDA waives the requirement. FSFL Handbook, page 11-41, para. 196.A (June 20, 2018).

⁴⁶⁶ FSFL Handbook, page 11-41, para. 196.A (June 20, 2018).

⁴⁶⁷ 7 C.F.R. § 1436.8(b) (2019); FSFL Handbook, page 11-43, para. 196.B (June 20, 2018); 79 Fed. Reg. 13,189, 13,190 (March 10, 2014).

⁴⁶⁸ 7 C.F.R. § 1436.8(b) (2019).

1. When FSFL Collateral is Not Considered a Fixture

If the FSFL collateral is not considered a fixture, a severance agreement is not required in order to secure the loan.⁴⁶⁹ In general, a fixture is property that is solidly attached to land. In some states, for example, a storage bin or a silo—once installed—might be a fixture. Courts tend to look to a number of factors to decide if something is a fixture—such as the purpose of the object, the extent to which it is attached to the land, and whether the object was intended to be temporary or permanent.⁴⁷⁰

2. When FSFL is Secured by First Lien on Property Owned by the Farmer

If the FSFL-funded facility is secured by a first lien on property that the farmer owns, a severance agreement is not required.⁴⁷¹

3. When FSFL Secured by an Irrevocable Letter of Credit

If the FSFL-funded facility is secured by an irrevocable letter of credit—for the full value of the loan—a severance agreement is not required.⁴⁷²

4. When Waived by USDA Office of the General Counsel

Under some state laws, the need for severance agreements is unnecessary. In such a situation, the USDA Office of the General Counsel (OCG) may waive the requirement for a severance agreement.⁴⁷³

5. When Outstanding FSFL Balance is \$100,000 or Less and Conditions Met

A severance agreement will not be required when a farmer's outstanding FSFL balance is \$100,000 or less and the farmer satisfies one of the following two conditions.⁴⁷⁴ First, if the farmer has a standard FSFL (and not a microloan), and the farmer increases the amount of his or her down payment from 15 percent to 20 percent, a severance agreement will not be required. Second, if the farmer provides another form of acceptable collateral that secures the entire value of the FSFL program loan, a severance agreement will not be required.⁴⁷⁵

⁴⁶⁹ FSFL Handbook, page 11-42, para. 196.B (June 20, 2018).

⁴⁷⁰ See, for example: *Cheshire Land Tr., LLC v. Casey*, 115 A.3d 497, 509 (Conn. App. Ct. 2015); *Hilty Ltd. Family P'ship, Ltd. P'ship v. Scott*, 379 S.W.3d 883, 887 (Mo. Ct. App. 2012); *Farm Credit Bank v. Kasten*, 472 N.W.2d 249 (Wis. Ct. App. 1991).

⁴⁷¹ FSFL Handbook, page 11-42, para. 196.B (June 20, 2018). However, if determined to be necessary by a state FSA office or the Office of the General Counsel (OGC) for USDA, a severance agreement may nonetheless be required even if an irrevocable letter of credit is provided.

⁴⁷² FSFL Handbook, page 7-1, para. 120.D, and page 11-42, para. 196.B (June 20, 2018).

⁴⁷³ FSFL Handbook, page 11-42, para. 196.B (June 20, 2018).

⁴⁷⁴ 7 C.F.R. § 1436.8(b) (2019); FSFL Handbook, page 11-43, para. 196.B (June 20, 2018).

⁴⁷⁵ If the farmer provides both an irrevocable letter of credit as well as the FSFL facility as collateral, the farmer will not need to obtain a severance agreement so long as the value of the irrevocable

C. Filing a Severance Agreement

Severance agreements must be signed by the landowner and filed with the appropriate county real estate records office before the FSFL closing date.⁴⁷⁶

V. Additional Security

Under certain circumstances, farmers will be required to provide additional security—beyond the interest in their FSFL-funded facility—in order to qualify for an FSFL program loan. The following rules apply.

A. Required When Outstanding FSFL Balance is Over \$100,000

Additional security is required when a farmer applies for an FSFL greater than \$100,000, or when the farmer's total outstanding FSFL balance will exceed \$100,000 with the approval of an additional FSFL program loan.⁴⁷⁷ For example, if a farmer has an existing FSFL with an outstanding balance of \$75,000, and the farmer applies for a new FSFL in the amount of \$30,000, the farmer must provide additional security for the new \$30,000 loan because the farmer's total outstanding FSFL balance will be \$105,000.⁴⁷⁸

State FSA offices may create more restrictive additional security policies, but they must be implemented on a statewide basis and not on a case-by-case basis.⁴⁷⁹ Under no circumstances can additional security be required when a farmer's total outstanding FSFL balance is \$50,000 or less.⁴⁸⁰

B. Types of Additional Security

When additional security is required, it may take the form of a real estate lien, a subordination agreement, or an irrevocable letter of credit.⁴⁸¹ Items such as livestock, machinery, vehicles, or equipment, are not acceptable forms of additional security.⁴⁸²

1. First Position Real Estate Liens Preferred

When additional security is required, FSA prefers that it take the form of a lien on the real estate on which the FSFL structure or equipment is located.⁴⁸³ The following rules apply.

letter of credit exceeds the amount of the FSFL program loan by 20 percent or more. FSFL Handbook, page 11-43, para. 196.B (June 20, 2018).

⁴⁷⁶ FSFL Handbook, page 11-41, para. 196.A (June 20, 2018).

⁴⁷⁷ 7 C.F.R. § 1436.8(i) (2019); FSFL Handbook, page 7-2, para. 121.A (June 20, 2018).

⁴⁷⁸ FSFL Handbook, page 7-2, para. 121.A (June 20, 2018). See also FSA Notice FSFL-142, page 30 (Apr. 17, 2017) (expired Oct. 1, 2017).

⁴⁷⁹ 7 C.F.R. § 1436.8(i) (2019); FSFL Handbook, page 7-2, para. 121.A (June 20, 2018).

⁴⁸⁰ There are various ways in which a state FSA office could implement more restrictive security requirements. For example, a state FSA office may determine that additional security is required for all FSFLs greater than \$50,000 or for all FSFLs greater than \$75,000.

⁴⁸¹ 7 C.F.R. § 1436.8(c), (e), (f) (2019); FSFL Handbook, page 7-3, para. 121.B (June 20, 2018).

⁴⁸² FSFL Handbook, page 7-3, para. 121.B (June 20, 2018).

⁴⁸³ 7 C.F.R. § 1436.8(c) (2019); FSFL Handbook, page 7-3, para. 121.B (June 20, 2018).

a. Lien Should Cover Underlying Real Estate When Possible

The real estate lien should cover the specific acreage on which the FSFL-funded structure or equipment is situated.⁴⁸⁴

b. Value Must Adequately Secure FSFL

The value of the real estate lien must adequately secure the farmer's FSFL.⁴⁸⁵ As a general rule, this means that the value of the real estate offered as collateral must at least equal the amount of the farmer's loan.⁴⁸⁶ If the value of the real estate is in doubt, FSA may request that the farmer pay for an appraisal.⁴⁸⁷ The farmer must agree to this request. More details on how security is valued can be found later in this Chapter.

c. In General, Lien Must be Superior to All Other Liens

When land is used as collateral to satisfy the additional security requirement, the CCC's interest in the land must generally be superior to all other interests.⁴⁸⁸ If the land is already encumbered by a prior lien, the farmer may nonetheless meet this additional security requirement by obtaining a subordination agreement from the prior lienholder.⁴⁸⁹ A subordination agreement is a legal document used to grant first lien status to a lienholder—such as the CCC—who would otherwise be second in line to another lienholder.⁴⁹⁰ It appears that a severance agreement can serve this same purpose as well.⁴⁹¹

2. Alternate Forms of Additional Security

In some situations, a superior first position lien on the underlying real estate may not be feasible to obtain, or the underlying real estate may not be of sufficient value to adequately secure the loan. In such situations, FSA may accept alternate forms of collateral to satisfy the additional security requirements.

a. First Lien on Separate Property

If a lien on the underlying real estate is not worth enough to adequately secure the FSFL program loan, it may be possible to obtain the required additional security through a lien on land that is separate from where the FSFL-funded structure or equipment is located.⁴⁹²

⁴⁸⁴ FSFL Handbook, page 7-4, para. 121.C (June 20, 2018).

⁴⁸⁵ FSFL Handbook, page 7-3, para. 121.B, and page 7-8, para. 122.A (June 20, 2018).

⁴⁸⁶ 7 C.F.R. § 1436.8(c)(2) (2019); FSFL Handbook, page 7-8, para. 122.A (June 20, 2018).

⁴⁸⁷ FSFL Handbook, page 7-8, para. 122.A (June 20, 2018). For more information on real estate appraisal requirements, see FSFL Handbook, pages 7-10 and 7-11, para. 122.C-D (June 20, 2018).

⁴⁸⁸ 7 C.F.R. § 1436.8(c)(1) (2019); FSFL Handbook, page 7-3, para. 121.B (June 20, 2018).

⁴⁸⁹ 7 C.F.R. § 1436.8(c)(3) (2019); FSFL Handbook, page 7-3, para. 121.B (June 20, 2018). If the prior lien holder is any USDA agency, the CCC will not require a subordination agreement.

⁴⁹⁰ For an example of a subordination agreement, see FSFL Handbook, Exhibit 57 (June 20, 2018).

⁴⁹¹ See 7 C.F.R. § 1436.8(c)(1) (2019).

⁴⁹² 7 C.F.R. § 1436.8(e) (2019); FSFL Handbook, page 7-4, para. 121.D (June 20, 2018).

A lien on separate land will be sufficient only if the farmer can meet the following three requirements.⁴⁹³ First, the farmer must own the separate land.⁴⁹⁴ Second, the separate land cannot be subject to another superior lien or mortgage.⁴⁹⁵ Third, at the time of the farmer's FSFL application, the value of the separate land must at least equal the amount of the FSFL program loan so that it can be adequately secured.⁴⁹⁶

When a first lien on separate property is used to secure an FSFL structural loan, FSA will only allow the structure to account for a maximum of 20 percent of the value of the FSFL.⁴⁹⁷

b. Second Lien Position—Under Limited Circumstances Only

County FSA offices may accept a second lien position on real estate as sufficient additional security for a farmer's FSFL program loan if two conditions are met. First, the FSFL must be adequately secured.⁴⁹⁸ Second, the prior lienholder must execute an agreement, such as form FSA-2319 ("Agreement with Prior Lienholder"), which expressly states that the prior lienholder will not extend additional liens on the property.⁴⁹⁹

c. Irrevocable Letter of Credit or Bond

In place of a lien on the real estate where the FSFL-funded structure or equipment is located, county FSA offices may accept an irrevocable letter of credit or bond to satisfy the additional security requirements.⁵⁰⁰

VI. Valuation of Security

There are two circumstances when the value of collateral offered to secure an FSFL program loan must be determined.⁵⁰¹ First, when a farmer's loan requires additional security in the form

⁴⁹³ 7 C.F.R. § 1436.8(e) (2019); FSFL Handbook, page 7-4, para. 121.D (June 20, 2018).

⁴⁹⁴ State FSA offices have the authority to allow a lien on separate land that is not owned by the farmer, so long as a severance agreement is obtained. States may adopt such a policy on a statewide basis only, and cannot make case-by-case determinations. See FSFL Handbook, page 7-4, para. 121.D (June 20, 2018).

⁴⁹⁵ Even if there is a superior lien on the property, the farmer may still satisfy the additional security requirements by obtaining a subordination agreement from the prior lienholder (which will put FSA in a first lien position). FSFL Handbook, page 7-4, para. 121.D (June 20, 2018).

⁴⁹⁶ 7 C.F.R. § 1436.8(e) (2019); FSFL Handbook, page 7-4, para. 121.D (June 20, 2018). The farmer's county FSA office will make the determination as to whether the separate land is of sufficient value to adequately secure the loan.

⁴⁹⁷ FSFL Handbook, page 7-12, para. 122.E (June 20, 2018).

⁴⁹⁸ An FSFL is considered "adequately secured" when the value of the real estate offered as security is at least equal to the FSFL amount. FSFL Handbook, page 7-8, para. 122.A (June 20, 2018).

⁴⁹⁹ FSFL Handbook, page 7-3, para. 121.B (June 20, 2018).

⁵⁰⁰ 7 C.F.R. § 1436.8(f) (2019); FSFL Handbook, page 7-5, para. 121.E (June 20, 2018).

⁵⁰¹ FSFL Handbook, page 7-8, para. 122.A (June 20, 2018).

of land, the value of that land must be determined. Second, collateral must be valued when the farmer's loan is for portable or used equipment or used trucks.⁵⁰²

A. Valuation of Land When Additional Security is Required

When additional security is required for an FSFL, the total value of the FSFL-funded facility and the land serving as additional security must meet certain thresholds in order to adequately secure the loan. As described below, these thresholds vary depending on the method of land valuation the farmer uses.

1. Land Appraisal

An appraisal can be used to determine the value of land serving as collateral for an FSFL program loan.⁵⁰³ When this method is used, the land must—at minimum—be valued at 100 percent of the farmer's FSFL program loan.⁵⁰⁴ If the farmer's FSFL-funded facility is situated on the land being appraised, the facility may be included in the appraisal value. However, if the facility is not located on the land being appraised, the value of the facility cannot be included in the appraisal.

An appraisal can be requested by either the farmer or FSA, but in both cases the farmer is responsible for paying for the appraisal costs.⁵⁰⁵ FSA will accept appraisals by either a Farm Loan Program-approved appraiser, or a third-party appraiser.⁵⁰⁶

2. County Tax Assessed Value

Another method of valuation that a farmer may use is the land's tax assessed value (TAV) from the farmer's current county property tax bill.⁵⁰⁷ If the TAV is provided as a percentage, the farmer should use a table provided in the FSFL Handbook to determine the land's fair market value.⁵⁰⁸

When a TAV is used to determine the value of land, any FSFL-funded facility that is located on that land may account for up to—but no more than—50 percent of the farmer's FSFL program loan amount.⁵⁰⁹ The combined value of the land and any facility that sits upon it must be at least 100 percent of the farmer's loan.⁵¹⁰

⁵⁰² For new portable structures, equipment and trucks, FSA will use sales documents, invoices or bills to determine the value of the facility. FSFL Handbook, page 7-17, para. 122.J (June 20, 2018).

⁵⁰³ FSFL Handbook, page 7-10, para. 122.C (June 20, 2018).

⁵⁰⁴ FSFL Handbook, page 7-10, para. 122.C, Exhibit 51, page 1 (June 20, 2018).

⁵⁰⁵ FSFL Handbook, pages 7-10 and 7-11, para. 122.C and 122.D (June 20, 2018).

⁵⁰⁶ FSFL Handbook, page 7-10, para. 122.C (June 20, 2018).

⁵⁰⁷ FSFL Handbook, page 7-14, para. 122.H (June 20, 2018).

⁵⁰⁸ To view the TAV table, see FSFL Handbook, page 7-14, para. 122.H (June 20, 2018).

⁵⁰⁹ FSFL Handbook, page 7-15, para. 122.H (June 20, 2018).

⁵¹⁰ FSFL Handbook, Exhibit 51, page 1 (June 20, 2018).

As an example, suppose a farmer applies for an FSFL program loan in the amount of \$250,000, which requires additional security.⁵¹¹ The farmer's local FSA office will allow the farmer's FSFL-funded facility to equal 50 percent of the farmer's loan, or \$125,000. The farmer owns an 80-acre parcel of land on which the facility will sit. The current county property tax bill shows that the parcel is worth \$62,500, and the TAV is 50 percent. Using the chart provided in the Handbook, the fair market value of the 80-acre parcel is \$62,500 x 2, or \$125,000. Therefore, the farmer has adequately secured the FSFL program loan by providing \$125,000 in value from the facility and another \$125,000 from the 80-acre parcel, for a total of \$250,000.

3. Other Authorized Valuation Methods

FSA will accept additional valuation methods—other than an appraisal or TAV—so long as the value of the land and corresponding facility is at least 125 percent of the farmer's FSFL program loan amount.⁵¹²

When an alternate valuation method is used, and the FSFL-funded facility is located on the land being used as collateral, the value of the facility may account for, at most, 50 percent of the farmer's loan amount.⁵¹³ If the farmer's facility is not located on the land that is being used as collateral, the facility may only account for up to 20 percent of the amount of the loan.

For alternate valuation methods, the Handbook directs local FSA offices to use the most practicable method available.⁵¹⁴ The following sources are all authorized methods for determining the value of land to be used as additional collateral:

- NASS Land Values Summary,⁵¹⁵
- Market value estimates from an FSA employee who has loan approval authority,
- NIFA farmland value surveys,
- Published reports from land-grant universities, or
- An Agricultural Sales and Median Ratio Report published by the state or county.⁵¹⁶

⁵¹¹ FSFL Handbook, page 7-15, para. 122.H (June 20, 2018).

⁵¹² FSFL Handbook, page 7-15, para. 122.I, Exhibit 51, page 1 (June 20, 2018).

⁵¹³ FSFL Handbook, page 7-15, para. 122.I (June 20, 2018).

⁵¹⁴ FSFL Handbook, page 7-15, para. 122.I (June 20, 2018).

⁵¹⁵ The FSFL Handbook says the 2015 NASS Land Values Summary should be used. This is probably a mistake. It is more likely that the most recent Land Values Summary will be used. For the 2018 version see https://www.nass.usda.gov/Publications/Todays_Reports/reports/land0818.pdf.

⁵¹⁶ FSFL Handbook, page 7-16, para. 122.I (June 20, 2018).

B. Valuation of Used Facilities

All used structures, equipment, and trucks must be assigned a value that meets a certain minimum threshold in order for FSA to consider the loan adequately secured.⁵¹⁷ The valuation of the used facilities must be done regardless of whether the farmer's loan requires additional security. The following rules apply

1. Valuation of Used Facilities when Additional Security is Not Required

When an FSFL-funded used facility does not require additional security, the assigned value of the used facility must be equal to, or greater than, the amount of the farmer's loan.⁵¹⁸

2. Valuation of Used Facilities when Additional Security is Required

When an FSFL-funded used facility does require additional security, the assigned value of the used facility cannot exceed 50 percent of the farmer's loan amount.⁵¹⁹ The total value of the used facility plus the value of the additional security must be at least 125 percent of the farmer's FSFL program loan amount.

3. Sources for Determining Value of Used Facilities

Local FSA offices have the discretion to decide what sources are used to determine the value of a used facility.⁵²⁰ Among the options available to FSA are the following sources:

- National Automobile Dealers Association (NADA),
- Kelly Blue Book,
- Local auction or internet sales,
- Reputable auction websites, such as Auctiontime.com,
- Bills of sale or invoices for similar equipment, or
- A qualified FSA expert.⁵²¹

⁵¹⁷ FSFL Handbook, pages 7-17 and 7-18, para. 122.K (June 20, 2018).

⁵¹⁸ FSFL Handbook, page 7-18, para. 122.K (June 20, 2018).

⁵¹⁹ FSFL Handbook, page 7-18, para. 122.K (June 20, 2018). State FSA offices are authorized to implement a stricter policy—on a statewide basis only—that limits the assigned value of a used facility to 20 percent of the farmer's loan.

⁵²⁰ FSFL Handbook, page 7-18, para. 122.K (June 20, 2018).

⁵²¹ FSFL Handbook, page 7-17, para. 122.K (June 20, 2018).

Chapter Eight - Applying for an FSFL Program Loan

I. FSFL program Loan Application and Nonrefundable Fee

The FSFL program application is form CCC-185, which can be obtained online or at any FSA office.⁵²² In addition to the application, FSA requires a nonrefundable application fee of \$100 per eligible borrower on each FSFL program loan.⁵²³ The fee must be paid when the application is submitted. The nonrefundable fee applies for both FSFL microloans and standard FSFL program loans.

II. Where to Apply

Form CCC-185 should be submitted to the farmer's local FSA office.⁵²⁴

III. Required Forms and Supporting Documentation

FSA requires various forms and documents to be submitted before an FSFL application will be considered complete.⁵²⁵

A. Forms

The forms listed below may be required for farmers who are applying for FSFL program loans.⁵²⁶ Each form may be downloaded by visiting the following website and conducting a search for the form:

<https://forms.sc.egov.usda.gov/eForms/searchAction.do?pageAction=BrowseForms&MenuAction=Yes>.

1. FSFL Application Form

As described above, farmers must submit the FSFL program application, form CCC-185.⁵²⁷

⁵²² FSFL Handbook, page 4-27, para. 68.A (June 20, 2018). To download an online application, visit <https://www.sc.egov.usda.gov>. The Handbook provides detailed instructions for how to fill out the FSFL program application. See FSFL Handbook, Exhibit 28 (June 20, 2018).

⁵²³ FSFL Handbook, page 4-3, para. 58.A, and page 4-5, para. 59.A (June 20, 2018). Spouses will each be charged an application fee only if both spouses are receiving farm program payments on the farm whose production is used to determine eligibility for the FSFL program. Farming entities (excluding joint ventures) that apply for an FSFL program loan, and which are paid under one taxpayer identification number (TIN), will only need to pay one application fee. FSFL Handbook, page 4-3, para. 58.B (June 20, 2018).

⁵²⁴ The farmer should apply at the FSA administrative county office that maintains the farmer's farm records for the farm that is the subject of the application. If the farmer does not have any established farm records, CCC-185 may be submitted to either the FSA county office for the county in which the FSFL-funded facility will be located, or to the FSA office that serves the county where the farm that is the subject of the application is located. FSFL Handbook, page 4-27, para. 68.B (June 20, 2018).

⁵²⁵ FSFL Handbook, page 4-28, para. 69.B (June 20, 2018).

⁵²⁶ FSFL Handbook, pages 4-28 and 4-29, para. 69.B (June 20, 2018).

⁵²⁷ FSFL Handbook, page 4-28, para. 69.B (June 20, 2018).

2. Report of Acreage—If Applicable

For farmers who are not applying for a microloan, and who are therefore not self-certifying their storage needs, a planting history must be on file with FSA.⁵²⁸ Typically, this requires that farmers have form FSA-578 (Report of Acreage) on file with FSA.⁵²⁹

3. Conservation Compliance Form

To comply with the applicable conservation rules, as described in Chapter One, farmers must submit form AD-1026 (Highly Erodible Land Conservation (HELIC) and Wetland Conservation (WC) Certification).⁵³⁰

4. Authorization for FSA or CCC to Perfect their Interest in the Farmer’s Collateral

Farmers are required to submit form CCC-10, which serves as a notice that FSA (or the CCC) intends to perfect its security interest in the farmer’s collateral.⁵³¹ Perfecting a security interest ensures that the lender’s interest in that security is effective against third parties.

5. Member’s Information Form or Farm Operating Plan

FSA requires that farmers submit either form CCC-901 or form CCC-902.⁵³² Form CCC-901 is a Member’s Information Form and identifies all of the applicants (farmers or entities) that are requesting an FSFL program loan. Form CCC-902 is a Farm Operating Plan that identifies each applicant’s interest in the farm (land, equipment, capital, etc).

6. Authorization to Release Information—If Applicable

If FSA requires access to a credit report for a person who did not sign the FSFL application form, FSA may request that form FSA-2004 (Authorization to Release Information) be submitted.⁵³³

7. Farm Business Plan Worksheets or Similar Financial Forms

Every farmer who applies for an FSFL program loan must demonstrate the ability to repay the underlying loan debt, including interest. To do this, the farmer must prepare and submit (or have a financial institution prepare and submit) an “acceptable” financial statement within 90 calendar days of the date of the farmer’s program application.⁵³⁴ Acceptable financial statements include the

⁵²⁸ FSFL Handbook, page 4-29, para. 69.B (June 20, 2018).

⁵²⁹ FSFL Handbook, pages 3-2 and 3-3, para. 48.B (June 20, 2018).

⁵³⁰ FSFL Handbook, page 4-28, para. 69.B (June 20, 2018).

⁵³¹ FSFL Handbook, page 4-28, para. 69.B, and page 8-1, para. 141.A (June 20, 2018).

⁵³² FSFL Handbook, page 4-28, para. 69.B (June 20, 2018).

⁵³³ FSFL Handbook, page 4-28, para. 69.B, and page 5-2, para. 82.B (June 20, 2018).

⁵³⁴ 7 C.F.R. § 1436.5(a)(2) (2019); FSFL Handbook, page 4-28, para. 69.B, and page 5-10, para. 85.A-B (June 20, 2018). To view a copy of forms FSA-2037 and FSA-2038, visit <https://forms.sc.egov.usda.gov/eForms/searchAction.do>.

Farm Business Plan Worksheets FSA-2037 (Balance Sheet) and FSA-2038 (Projected/Annual Income and Expense), or similar forms such as balance sheets and cash flow statements.⁵³⁵

B. Supporting Documentation

FSA requires a variety of documents to provide support for FSFL program applications. The specific documentation that will be required will depend on each farmer's circumstances and farming operation, as well as the type of facility the loan will fund. Listed below are some of the documents that FSA will require.

1. Proof of Insurance

As described more fully in Chapter Six, most farmers who apply for FSFL program loans will be required to provide proof of crop insurance, NAP coverage, or dairy coverage.⁵³⁶

If applicable, farmers may also need to provide proof of flood insurance or all-peril structural insurance.⁵³⁷ See Chapter Six for more details.

2. Legal Description of All Properties Offered as Additional Security

If the farmer's FSFL program loan requires additional security, FSA will require a legal description of each property the farmer is offering as additional security.⁵³⁸

3. FSFL Structure Plan Documentation

For FSFL structural loans, farmers must provide documentation to support the structure's plan, including a detailed building plan, dimensions, cost estimates, and any purchase orders.⁵³⁹

4. Legal Description of Parcel Where Structure Will Sit—if Permanently Affixed

If the farmer's FSFL program loan will fund a structure that will be permanently affixed to real estate, FSA will require a legal description of the parcel on which the structure will sit.⁵⁴⁰

5. Written Authorization to Access Structure, if Not Located on Farmer's Land

If the farmer's FSFL program loan will fund a structure that is located on real estate the farmer does not own, the farmer must provide written authorization allowing access to the structure.⁵⁴¹

⁵³⁵ FSFL Handbook, page 5-10, para. 85.B (June 20, 2018).

⁵³⁶ 7 C.F.R. § 1436.5(a)(6) (2019); FSFL Handbook, page 4-29, para. 69.B (June 20, 2018).

⁵³⁷ 7 C.F.R. § 1436.5(a)(9) (2019).

⁵³⁸ FSFL Handbook, page 4-29, para. 69.B (June 20, 2018).

⁵³⁹ FSFL Handbook, page 4-29, para. 69.B (June 20, 2018).

⁵⁴⁰ FSFL Handbook, page 4-29, para. 69.B (June 20, 2018).

⁵⁴¹ FSFL Handbook, page 4-29, para. 69.B (June 20, 2018).

6. Plat Map or Aerial Photograph of the Structure’s Location

For FSFL structural loans, FSA requires a plat map or aerial photograph that indicates where the structure will be located.⁵⁴²

7. Contract with Buyer—For Renewable Biomass Commodities Only

For loans funding storage of renewable biomass commodities, FSA will require the farmer to provide either a contract or letter of commitment from the company or facility that intends to purchase the farmer’s biomass commodity.⁵⁴³

8. Valid State-Issued Driver’s License or State-Issued ID, if Required by State Law for UCC Filing Information

FSA may require the farmer to provide a valid state-issued driver’s license or ID if the farmer’s home state requires such documentation in order for FSA to properly file its security interest in the farmer’s collateral.⁵⁴⁴

9. Supporting Documentation for Any Irrevocable Letter of Credit

If the farmer is providing an irrevocable letter of credit to help secure the loan, FSA may require a letter of intent from the financial institution that will be providing the credit.⁵⁴⁵

10. Required Documentation for Entity Applicants

If an entity is applying for an FSFL program loan, FSA will require documentation that provides the following information.⁵⁴⁶

- List of entity members along with the number of shares and percentage of ownership for each,
- Balance sheet and projected income and expenses for those members with the greatest shares,⁵⁴⁷
- Authorization to incur debt, and
- List of those parties who are required to sign security and debt instruments.

⁵⁴² FSFL Handbook, page 4-29, para. 69.B (June 20, 2018).

⁵⁴³ FSFL Handbook, page 3-5, para. 49.A, and page 4-29, para. 69.B (June 20, 2018).

⁵⁴⁴ FSFL Handbook, page 4-29, para. 69.B (June 20, 2018).

⁵⁴⁵ FSFL Handbook, page 4-29, para. 69.B, and page 7-5, para. 121.E (June 20, 2018).

⁵⁴⁶ FSFL Handbook, page 4-30, para. 69.B (June 20, 2018).

⁵⁴⁷ For more information, see FSFL Handbook, page 5-14, para. 85.G (June 20, 2018).

Chapter Nine - Loan Repayment and Delinquency

I. Loan Repayment—Annual Installment Payments

Every farmer who receives an FSFL program loan must make annual installment payments on the loan.⁵⁴⁸ The following rules apply.

A. Incorporate Loan Principal and Interest

The installment payments will be calculated to incorporate both the loan principal as well as accrued interest.⁵⁴⁹

B. Paid Annually

The installment payments must be made no later than the last day of each twelve-month period, beginning on the date of the farmer's loan disbursement.⁵⁵⁰ Installment payments must be made annually until the principal and interest have been paid in full.

If a farmer chooses to receive a partial and final FSFL disbursement, the farmer will receive a separate payment plan for each disbursement, and therefore the farmer will need to make two installment payments each year based upon the disbursement dates of the partial and final loan disbursements.⁵⁵¹

C. Spread Out in Equal Installments

Installments will be spread out in equal payments over the duration of the FSFL term.⁵⁵² Each payment will be applied first to the accrued interest on the loan and then to the loan principal.⁵⁵³

D. Acceptable Payment Types

Each installment payment may be paid in cash, by money order, wire transfer, or by a personal, certified or cashier's check.⁵⁵⁴ Installments may also be paid through a setoff, when applicable.⁵⁵⁵ For dairy farmers, FSA will accept a milk assignment from the farmer's milk purchaser, so long as the farmer agrees to that arrangement.⁵⁵⁶

E. No Grace Period for Late Payments

There is no grace period for loan installment payments.⁵⁵⁷ If a farmer fails to pay an installment on time, and the farmer has an outstanding installment balance greater than

⁵⁴⁸ 7 C.F.R. § 1436.13(a) (2019); FSFL Handbook, page 12-5, para. 211.A (June 20, 2018).

⁵⁴⁹ 7 C.F.R. § 1436.13(a) (2019); FSFL Handbook, page 12-5, para. 211.A (June 20, 2018).

⁵⁵⁰ 7 C.F.R. § 1436.13(a) (2019); FSFL Handbook, page 12-5, para. 211.A (June 20, 2018).

⁵⁵¹ 7 C.F.R. § 1436.13(a) (2019); FSFL Handbook, page 4-1, para. 57.B (June 20, 2018).

⁵⁵² 7 C.F.R. § 1436.13(a) (2019); FSFL Handbook, page 12-5, para. 211.A (June 20, 2018).

⁵⁵³ 7 C.F.R. § 1436.13(b) (2019).

⁵⁵⁴ 7 C.F.R. § 1436.13(b) (2019); FSFL Handbook, page 12-5, para. 211.B (June 20, 2018).

⁵⁵⁵ FSFL Handbook, page 12-5, para. 211.B (June 20, 2018).

⁵⁵⁶ A periodic milk assignment payment does not affect the way FSA calculates annual installments or other amounts owed. FSFL Handbook, page 12-5, para. 211.B (June 20, 2018).

⁵⁵⁷ FSFL Handbook, page 12-5, para. 211.A (June 20, 2018).

\$100, FSA will consider the loan delinquent on the workday immediately following the installment due date.⁵⁵⁸

When an FSFL installment is not made on time, FSA will mail the farmer a demand letter for payment.⁵⁵⁹ Two additional demand letters may be mailed—at thirty calendar-day intervals—if FSA does not receive the required payment and the farmer does not submit a financial plan that is acceptable to FSA.⁵⁶⁰ If, after receiving all three demand letters, the farmer still does not pay the installment, FSA may begin to use one of its available remedies described below.

F. Installment Extensions

If a farmer knows that he or she will be unable to make the annual installment payment on time, the farmer may make a written request for an extension of up to 120 additional calendar days within which to make payment.⁵⁶¹ If granted, the extension will not change the due date of the farmer's next installment payment. Farmers are permitted to request one extension for each installment payment that is due during the term of the loan.

II. FSA's Remedies When a Farmer Cannot Make Payment or Comply with Loan Terms

At times, farmers may find themselves unable to meet their installment payment deadlines, or otherwise unable to comply with the terms of the FSFL program. If this happens, FSA has many possible courses of action that it may take. While some of these options could lead to foreclosure or liquidation of the farmer's FSFL collateral, FSA also has ways to assist farmers in order to avoid foreclosure.

The various remedies available to FSA include the following.

A. Discharge Loan Debt

The farmer's loan can sometimes be discharged. For example, CCC is required to discharge a debt that has been discharged in a bankruptcy, or when a court orders CCC to do so.⁵⁶² In addition, CCC has the ability to discharge part of the debt when CCC and the farmer agree to compromise the debt.⁵⁶³ CCC may also discharge part or all of the debt if CCC decides that it is in its best interests to do so.⁵⁶⁴ Other circumstances under which CCC can discharge a debt include when the entity owing the money is dissolved (and CCC has no legal remedy to collect the debt), when the farmer who received the

⁵⁵⁸ FSFL Handbook, page 13-1, para. 262.B (June 20, 2018).

⁵⁵⁹ 7 C.F.R. §§ 1403.4(a), 1436.13(c)(1) (2019); FSFL Handbook, page 13-1, para. 262.B (June 20, 2018).

⁵⁶⁰ 7 C.F.R. §§ 1403.4(a), 1436.13(c)(2) (2019); FSFL Handbook, page 13-1, para. 262.B (June 20, 2018).

⁵⁶¹ FSFL Handbook, page 12-6, para. 211.E (June 20, 2018). When requesting an extension, the farmer must submit to FSA all of the following: (1) a written request within the 60 calendar-day period before or after the installment due date; (2) a current balance sheet; and (3) a current cash flow statement showing that the installment can be paid within 120 calendar days after the due date.

⁵⁶² 7 C.F.R. § 1403.15(a)(1)-(2) (2019).

⁵⁶³ 7 C.F.R. § 1403.15(a)(3) (2019).

⁵⁶⁴ 7 C.F.R. § 1403.15(b) (2019).

loan has died and recovery from the estate is not possible, or when the farmer is declared legally insane or incompetent and future payment of the debt is not reasonably likely.⁵⁶⁵

So, while FSA may enforce various penalties if a farmer defaults on his or her loan, it may be possible to negotiate with FSA and encourage FSA to discharge the debt rather than seek to employ one of its other remedies.

B. Offsets

If a farmer fails to pay an installment by its due date, and the amount the farmer is behind exceeds \$100, FSA may choose to offset the delinquent installment balance by retaining money from any future payments that CCC or FSA would otherwise owe the farmer.⁵⁶⁶

C. Accelerate the Loan

Any time a farmer violates a term or condition of an FSFL program loan—for example, if the farmer fails to pay an installment on time or uses the loan collateral for an unauthorized purpose—FSA has the authority to declare the entire indebtedness on the loan due immediately.⁵⁶⁷ This is called “accelerating” the loan. Before FSA will accelerate a loan, it will send out up to three demand letters, at thirty calendar-day intervals, in order to provide the farmer with the opportunity to pay the overdue balance.⁵⁶⁸ If the farmer continues to fail to pay what is due, FSA can accelerate the loan.

D. Call the Loan

If the farmer fails to pay what is due after receiving the three demand letters, and FSA accelerates the farmer’s loan by declaring the entire loan amount immediately due, FSA can next “call” the loan. This means that FSA will begin actions that could lead to foreclosure or liquidation of the farmer’s FSFL collateral.⁵⁶⁹ FSA has the authority to call a loan when a farmer does any of the following:

- Fails to make an installment payment when its due, and does not request a deferral,
- Fails to maintain any required insurance, including auto, crop, flood, and structural,
- Fails to comply with the terms of any FSFL program agreement,
- Abandons the FSFL collateral without repaying the loan or authorizing FSA to sell the collateral, or
- Dies or becomes incompetent with no one to continue the loan.⁵⁷⁰

⁵⁶⁵ 7 C.F.R. § 1403.15(c)(1)-(3) (2019).

⁵⁶⁶ FSFL Handbook, page 13-1, para. 262.B (June 20, 2018).

⁵⁶⁷ 7 C.F.R. § 1436.13(e); FSFL Handbook, page 13-4, para. 262.F (June 20, 2018).

⁵⁶⁸ For a more detailed timeline of the process leading up to a loan acceleration, see FSFL Handbook, page 13-5, para. 262.G (June 20, 2018).

⁵⁶⁹ FSFL Handbook, pages 13-8 and 13-9, para. 263.E, F (June 20, 2018).

⁵⁷⁰ FSFL Handbook, page 13-6, para. 263.A (June 20, 2018).

FSA may also call a loan if the farmer's FSFL collateral is relocated without proper approval, if land serving as collateral is seized as part of a court process, or if FSA has "sound reason" to believe it is insecure with respect to the farmer's loan.⁵⁷¹

As part of the process of calling a loan, FSA will send the farmer a call letter thirty calendar days after the date of the final demand letter.⁵⁷² Unlike a demand letter, however, a call letter will require the farmer to pay the entire loan indebtedness, including any accrued interest.⁵⁷³ The farmer will have thirty calendar days from the date of the call letter within which to pay what is owed. If the farmer fails to pay within that timeframe, FSA can initiate foreclosure or liquidation proceedings.

E. Collection and Liquidation of Delinquent Debts

Any time FSA calls a farmer's loan, FSA may choose to foreclose or liquidate the collateral that is securing the loan.⁵⁷⁴ Any such liquidation would occur only if the farmer has received a call letter but continues to fail to make the required payments.⁵⁷⁵

1. General Liquidation Process

To begin the liquidation process, FSA will send a liquidation letter to the farmer.⁵⁷⁶ Upon receipt of the liquidation letter, the farmer may either agree to the sale by signing an agreement for sale, or the farmer may object to the removal and sale of the collateral.⁵⁷⁷ If the farmer objects, the foreclosure laws of the farmer's home state will govern the process.

2. Liquidation of Various Types of Collateral

Whenever a farmer's loan has been called, and the farmer has been sent a liquidation letter, FSA may begin to sell the collateral securing the farmer's loan.⁵⁷⁸ The way that FSA liquidates a farmer's collateral will depend on the type of collateral that is being sold. The following rules apply.

a. Liquidation of Portable Collateral

If FSA liquidates a farmer's loan that is secured by portable collateral, and the loan is not additionally secured by a real estate lien, FSA may sell the collateral for the best obtainable price.⁵⁷⁹ FSA can sell the collateral by

⁵⁷¹ FSFL Handbook, page 13-6, para. 263.A (June 20, 2018).

⁵⁷² For an example call letter, see FSFL Handbook, page 13-9, para. 263.E (June 20, 2018).

⁵⁷³ FSFL Handbook, page 13-9, para. 263.E (June 20, 2018).

⁵⁷⁴ 7 C.F.R. § 1436.16(a) (2019); FSFL Handbook, pages 13-4 and 13-9, paras. 262.F and 263.E (June 20, 2018).

⁵⁷⁵ FSFL Handbook, pages 13-4 and 13-9, paras. 262.F and 263.E (June 20, 2018).

⁵⁷⁶ 7 C.F.R. § 1436.16(a)(1) (2019); FSFL Handbook, page 13-10, para. 264.A (June 20, 2018). For an example liquidation letter, see FSFL Handbook, page 13-12, para. 264.C (June 20, 2018).

⁵⁷⁷ 7 C.F.R. § 1436.16(a)(2) (2019); FSFL Handbook, page 13-10, para. 264.B (June 20, 2018).

⁵⁷⁸ FSFL Handbook, page 13-32, para. 272.A (June 20, 2018).

⁵⁷⁹ 7 C.F.R. § 1436.16(a)(3) (2019); FSFL Handbook, page 13-34, para. 272.D (June 20, 2018).

conducting a public auction, a private sale, or through a sealed bidding process.⁵⁸⁰

The proceeds of a liquidation sale will go first to satisfy the farmer's FSFL program loan debt and any costs associated with the sale of the collateral, and then to pay any junior lienholders.⁵⁸¹ If proceeds remain after payment to FSA and the junior lienholders, that money will go to the farmer.⁵⁸²

b. Liquidation of Debts Secured by Non-Portable Collateral Without a Real Estate Lien

If FSA liquidates a farmer's FSFL that is secured by non-portable collateral or collateral that FSA has determined cannot be sold, and the loan is not additionally secured by a real estate lien, FSA can use various options for collecting on the outstanding debt.⁵⁸³ For example, FSA can arrange for a new installment payment plan.⁵⁸⁴ FSA can also offset future FSFL payments or withhold a future FSFL program loan payment altogether.⁵⁸⁵ FSA may refer the debt to the IRS so that it can be offset from any tax refund due to the farmer, or refer the debt to an outside collection agency or the Department of Justice for collection.⁵⁸⁶ Finally, FSA can report the debt to a credit reporting agency.⁵⁸⁷

c. Foreclosure of Real Estate

To collect on a farmer's FSFL program loan that is secured by a real estate lien, FSA may foreclose on the real estate any time after the farmer's loan has been called and a liquidation letter has been sent to the farmer.⁵⁸⁸ The proceeds of the foreclosure sale will go first to satisfy the farmer's FSFL program loan debt and any costs associated with the appraisal and sale of the property, and then to pay any junior lienholders.⁵⁸⁹ If proceeds remain after payment to FSA and the junior lienholders, that money will go to the farmer.⁵⁹⁰

⁵⁸⁰ FSFL Handbook, page 13-34, para. 272.D (June 20, 2018). If a sealed bidding process is used, there should be a minimum of thirty calendar days between the bid announcement and the opening bid.

⁵⁸¹ 7 C.F.R. § 1436.16(a)(3) (2019); FSFL Handbook, page 13-38, para. 272.H (June 20, 2018).

⁵⁸² 7 C.F.R. § 1436.16(a)(3)(ii) (2019); FSFL Handbook, page 13-38, para. 272.H (June 20, 2018).

⁵⁸³ 7 C.F.R. § 1436.16(a)(4) (2019).

⁵⁸⁴ 7 C.F.R. §§ 1403.6, 1436.16(a)(4) (2019).

⁵⁸⁵ 7 C.F.R. §§ 1403.7, 1403.8 (2019).

⁵⁸⁶ 7 C.F.R. §§ 1403.17, 1403.18, 1403.20 (2019). The CCC may only refer the debt to a private collection agency if its collection efforts have been unsuccessful for at least 90 days and the debt remains unpaid. 7 C.F.R. § 1403.20 (2019).

⁵⁸⁷ 7 C.F.R. § 1403.16 (2019).

⁵⁸⁸ 7 C.F.R. § 1436.16(a)(5) (2019); FSFL Handbook, page 13-41, para. 274.A (June 20, 2018).

⁵⁸⁹ 7 C.F.R. § 1436.16(a)(5) (2019); FSFL Handbook, page 13-41, para. 274.D (June 20, 2018).

⁵⁹⁰ 7 C.F.R. § 1436.16(a)(5) (2019); FSFL Handbook, page 13-41, para. 274.D (June 20, 2018).

Chapter Ten - Disapproval Notification, Appeals, and Equitable Relief

If a farmer is denied approval for an FSFL program loan, FSA must notify the farmer and provide information on appeals and other relief.

I. FSFL Disapproval Notification

FSA is required to notify a farmer in writing if the farmer's FSFL application is not approved.⁵⁹¹ The letter must state the reasons why FSA is not approving the loan request, and it must provide a reference to the specific federal regulation and Handbook paragraphs that support FSA's decision.⁵⁹²

II. Request for Reconsideration

If a farmer wishes to request reconsideration of an adverse decision by FSA, the farmer must submit the request in writing within thirty calendar days from the date the farmer receives the disapproval notice from FSA.⁵⁹³ Additional rules apply.⁵⁹⁴

III. Appeals

Farmers have the right to appeal certain decisions that FSA makes with respect to FSFL applications.⁵⁹⁵ Farmers have thirty calendar days from the date they receive a disapproval notification to make a written appeal of the decision.⁵⁹⁶ Additional rules apply.⁵⁹⁷

Examples of FSA decisions that farmers may appeal include, but are not limited to, the following: (2) the denial of an FSFL application; (2) program compliance determinations; and (3) errors in documentation and calculations (that are necessary to determine FSFL program eligibility).⁵⁹⁸

⁵⁹¹ FSFL Handbook, page 1-41, para. 13.A, and page 9-6, para. 155.B (June 20, 2018).

⁵⁹² FSFL Handbook, Exhibit 8 (June 20, 2018). Notification letters follow the guidelines in FSA Handbook, 1-APP (Rev. 2), Program Appeals, Mediation, and Litigation (Sept. 12, 2016).

⁵⁹³ 7 C.F.R. § 780.15(c) (2019); FSA Handbook, 1-APP (Rev. 2), Program Appeals, Mediation, and Litigation, page 2-19, para. 16.B (Sept. 12, 2016).

⁵⁹⁴ For more detailed information on how to request reconsideration, and what rights that affords the farmer, see the FSA Handbook, 1-APP (Rev. 2), Program Appeals, Mediation, and Litigation (Sept. 12, 2016).

⁵⁹⁵ FSFL Handbook, page 1-59, para. 26.A (June 20, 2018).

⁵⁹⁶ 7 C.F.R. § 780.15(c) (2019); FSA Handbook, 1-APP (Rev. 2), Program Appeals, Mediation, and Litigation, page 2-19, para. 16.B (Sept. 12, 2016).

⁵⁹⁷ For more detailed information on how to appeal an adverse decision, and what rights that affords the farmer, see the FSA Handbook, 1-APP (Rev. 2), Program Appeals, Mediation, and Litigation (Sept. 12, 2016).

⁵⁹⁸ FSA Handbook, 1-APP (Rev. 2), Program Appeals, Mediation, and Litigation, page 2-3, para. 9.A (Sept. 12, 2016).

Farmers may not appeal matters that are generally applicable to all applicants—as opposed to the farmer himself or herself—such as definitions of eligible commodities, yields, and signup dates or deadlines.⁵⁹⁹

IV. Mediation

Under certain circumstances, farmers may also request mediation of an adverse decision. To do so, the farmer must submit a written request for mediation within thirty calendar days from the date the farmer received the disapproval notice from FSA.⁶⁰⁰ Farmers may only mediate the same issue or adverse decision one time.⁶⁰¹ Additional rules apply.⁶⁰²

V. Equitable Relief

Though not expressly stated in the FSFL Handbook, equitable relief rules should also apply to the FSFL program.⁶⁰³ The decision to grant or deny equitable relief is entirely at the discretion of FSA.⁶⁰⁴

VI. Discrimination is Illegal

USDA prohibits discrimination on the bases of race, color, religion, age, national origin, marital status, sex, sexual orientation, gender identity, familial/parental status, disability, political beliefs, or because all or a part of an individual's income is derived from a public assistance program.⁶⁰⁵

⁵⁹⁹ FSA Handbook, 1-APP (Rev. 2), Program Appeals, Mediation, and Litigation, page 2-4, para. 10.A (Sept. 12, 2016).

⁶⁰⁰ 7 C.F.R. § 780.15(c) (2019); FSA Handbook, 1-APP (Rev. 2), Program Appeals, Mediation, and Litigation, page 2-19, para. 16.B (Sept. 12, 2016).

⁶⁰¹ FSA Handbook, 1-APP (Rev. 2), Program Appeals, Mediation, and Litigation, page 5-4, para. 52.A (Sept. 12, 2016).

⁶⁰² For more detailed information on how to request mediation, and what rights that affords the farmer, see the FSA Handbook, 1-APP (Rev. 2), Program Appeals, Mediation, and Litigation (Sept. 12, 2016).

⁶⁰³ 7 C.F.R. § 780.4(a)(ii) (2019); FSA Handbook, 1-APP (Rev. 2), Program Appeals, Mediation, and Litigation, page 2-1, para. 8.A (Sept. 12, 2016).

⁶⁰⁴ FSA Handbook, 1-APP (Rev. 2), Program Appeals, Mediation, and Litigation, page 2-5, para. 10.A (Sept. 12, 2016).

⁶⁰⁵ 7 C.F.R. pt. 15d (2019).