
Environmental Quality Programs

To access the transmittal page click on the short reference.

For State and County Offices

SHORT REFERENCE

1-EQ
(Revision 1)

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

Environmental Quality Programs 1-EQ (Revision 1)	Amendment 4
---	--------------------

Approved by: Deputy Administrator, Farm Programs



Amendment Transmittal

A Reason for Amendment

Section 11 and Exhibits 29 through 32 have been withdrawn because they is are longer valid.

Page Control Chart		
TC	Text	Exhibit
5-8	5-481 through 5-550	29, page 1 (remove) 30, pages 1-6 (remove) 31, pages 1, 2 (remove) 32, page 1 (remove)

Table of Contents

	Page No.
Part 1 General Information	
1 Purpose and Background	1-1
2 Sources of Authority and Related References	1-4
3 Basic Requirements	1-5
4 Responsibilities	1-8
5-25 (Reserved)	
Part 2 FSA Process for Environmental Compliance	
Section 1 Classes of Action for Environmental Analysis and Documentation	
26 Background	2-1
27 Levels of Review	2-1
28-48 (Reserved)	
Section 2 Compliance Process	
49 Normal Circumstances	2-45
50 Considerations in Decision Making	2-46
51 Expedited Emergency Procedures	2-50
52 Tiering (40 CFR 1508.28)	2-50
53-71 (Reserved)	
Section 3 Working With Other Agencies in NEPA Review	
72 When FSA Is Lead Agency	2-91
73 When FSA Is Cooperating Agency	2-92
74 When FSA Is Commenter	2-93
75 Adopting EE, EA, or EIS Prepared by Another Federal Agency	2-93
76-99 (Reserved)	
Section 4 Other Stipulations	
100 Program Termination	2-121
101 Environmental Information	2-121
102 Decision Making and Monitoring	2-122
103 Ensuring Environmental Compliance	2-123
104 Public Access to FSA NEPA Information	2-123
105-130 (Reserved)	

Table of Contents (Contents)

Page No.

Part 3 Scoping and Planning for Public Involvement

Section 1 Scoping

131	Policy	3-1
132	Internal Scoping	3-2
133	External Scoping	3-2
134-170	(Reserved)	

Section 2 Public Participation and Consultation

171	Public Participation.....	3-81
172	Consultation	3-86
173-200	(Reserved)	

Part 4 Environmental Review Process

Section 1 Categorical Exclusions

201	CATEX Process	4-1
202	Types of CATEX's	4-1
203	CATEX's and Further Review Under Other Laws	4-4
204	Action Requiring EE.....	4-5
205	Timing.....	4-9
206	Responsibilities	4-9
207	Scoping for CATEX's	4-9
208	Public Participation in CATEX's.....	4-10
209	Completing the Environmental Checklist.....	4-10
210	Follow Through for CATEX Determinations	4-11
211-250	(Reserved)	

Section 2 Environmental Assessments

251	Purpose.....	4-81
252	What is EA	4-82
253	Timing for Preparing EA	4-86
254	Who Prepares EA for FSA Projects	4-86
255	Characteristics of a Good EA.....	4-87
256	Methodology for Completing EA's	4-88
257	Finding of No Significant Impact.....	4-91
258	Supplemental EA's.....	4-91
259-300	(Reserved)	

Table of Contents (Continued)

Page No.

Part 4 Environmental Review Process (Continued)

Section 3 Environmental Impact Statements

301	Purpose	4-171
302	Types of EIS's	4-171
303	Agency Decision Making	4-172
304	Determining Need for EIS	4-173
305	Criteria for Determining a Significant Impact	4-175
306	Notice of Intent	4-177
307	Timing and Compliance	4-177
308	Record of Decision	4-179
309	Responsibilities	4-179
310	Characteristics of a Good EIS	4-180
311	Preparing EIS	4-181
312	Requirements for Environmental Analysis	4-183
313	Structure of EIS	4-185
314	Dealing With DEIS	4-186
315	Dealing With FEIS	4-187
316-350	(Reserved)	

Section 4 Supplements and Revisions to NEPA Documents

351	Supplementing and Revising NEPA Documents	4-251
352-400	(Reserved)	

Part 5 Environmental Resources and Special Issues

Section 1 Evaluation

401	Introduction	5-1
402-424	(Reserved)	

Table of Contents (Continued)

Page No.

Part 5 Environmental Resources and Special Issues

Section 2 Wetlands

425	Background	5-43
426	Implementation	5-44
427	Data Requirements	5-47
428-450	(Reserved)	

Section 3 Floodplains

451	Background	5-93
452	Implementation	5-93
453	Data Requirements	5-98
454-475	(Reserved)	

Section 4 Sole Source Aquifer Recharge Areas

476	Background	5-151
477	Implementation	5-152
478	Data Requirements	5-153
479-500	(Reserved)	

Section 5 Threatened and Endangered Species

501	Background	5-197
502	Implementation	5-198
503	Data Requirements	5-200
504-520	(Reserved)	

Section 6 Wilderness Areas

521	Background	5-235
522	Implementation	5-235
523	Data Requirements	5-236
524-550	(Reserved)	

Table of Contents (Continued)

Page No.

Part 5 Environmental Resources and Special Issues (Continued)

Section 7 Coastal Barriers

551	Background.....	5-301
552	Implementation	5-301
553	Data Requirements.....	5-304
554-570	(Reserved)	

Section 8 Coastal Zone Management Areas

571	Background.....	5-341
572	Implementation	5-341
573	Data Requirements.....	5-342
574-600	(Reserved)	

Section 9 Wild and Scenic Rivers

601	Background.....	5-401
602	Implementation	5-402
603	Data Requirements.....	5-404
604-620	(Reserved)	

Section 10 National Natural Landmarks

621	Background.....	5-441
622	Implementation	5-441
623	Data Requirements.....	5-442
624-640	(Reserved)	

Section 11 (Withdrawn--Amend. 4)

641-643	(Withdrawn--Amend. 4)	
644-669	(Reserved)	

Table of Contents (Continued)

Page No.

Part 5 Environmental Resources and Special Issues (Continued)

Section 12 Water Quality

670 Background..... 5-551
671 Implementation 5-554
672 Data Requirements..... 5-556
673-690 (Reserved)

Section 13 Air Quality

691 Background..... 5-601
692 Implementation 5-602
693 Data Requirements..... 5-603
694-720 (Reserved)

Section 14 Noise

721 Background..... 5-661
722 Implementation 5-662
723 Data Requirements..... 5-663
724-750 (Reserved)

Section 15 Important Land Resources

751 Background..... 5-711
752 Implementation 5-711
753 Data Requirements..... 5-715
754-770 (Reserved)

Section 16 Environmental Justice Studies

771 Background..... 5-751
772 Implementation 5-752
773 Data Requirements..... 5-754
774-790 (Reserved)

Section 17 Social and Economic Impacts

791 Background..... 5-791
792 Implementation 5-791
793 Data Requirements..... 5-793
794-820 (Reserved)

Table of Contents (Continued)

	Page No.
Part 6 LBP	
821 Background.....	6-1
822 Responsibilities.....	6-1
823-830 (Reserved)	
Part 7 Environmental Risk Management	
Section 1 Process for Conducting Due Diligence	
831 Statutory and Regulatory Requirements.....	7-1
832 Responsibilities.....	7-3
833 Due Diligence Process.....	7-4
834-840 (Reserved)	
Section 2 Solid and Medical Waste	
841 Overview.....	7-31
842 Responsibilities.....	7-31
843-850 (Reserved)	
Section 3 Asbestos	
851 Overview.....	7-41
852 Responsibilities.....	7-41
853-860 (Reserved)	
Section 4 Leasing of Real Property	
861 Overview.....	7-51
862 Responsibilities.....	7-51
863-870 (Reserved)	
Section 5 Reporting to Regulatory Authority	
871 Overview.....	7-61
872 Responsibilities.....	7-61
873-880 (Reserved)	
Section 6 Notification and Advertisement	
881 Overview.....	7-71
882 Responsibilities.....	7-71

Table of Contents (Continued)

Exhibits

1	Reports, Forms, Abbreviations, and Redelegations of Authority
2	Definitions of Terms Used in This Handbook
3	(Reserved)
4	Sources of Authority
5	National Environmental Policy Act, as amended
6-8	(Reserved)
9	Developing and Implementing the State Environmental Guide
10	SEC Position Description and Performance Standards
11	FSA-855, State Environmental Coordinator Nomination Form
12	FSA-853B, Environmental Assessment for Farm Loan Program Projects
13	FSA-857, Finding of No Significant Impact (FONSI)
14	FSA-853A, Environmental Assessment
15	Responsibilities Associated with Contracting for EA's Paid for by the National Office
16	(Reserved)
17	Distributing EIS
18	(Reserved)
19	Executive Order 11990 of May 24, 1977, Protection of Wetlands
20	Executive Order 11988 of May 24, 1977, Floodplain Management
21	Section 7 of the Endangered Species Act of 1973
22	(Reserved)
23	Letters to SHPO/THPO
24-28	(Reserved)
29-32	(Withdrawn--Amend. 4)
33	Executive Order 12898 of February 11, 1994, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
34	Sales Contract Contingency Language for LBP
35	FSA-851, Environmental Risk Survey Form
36	Deed Language

Part 1 General Information

1 Purpose and Background [7 CFR Parts 799.1, 799.2, and 7 CFR Part 1940.301]

A Handbook Purpose

This handbook:

- will assist FSA staff, contractors, and others to carry out the requirements of NEPA (Exhibit 5), according to CEQ regulations at 40 CFR Parts 1500-1508, FSA regulations at 7 CFR Part 799, and 7 CFR Part 1940 Subpart G
- enables FSA to comply with NHPA, ESA, and all applicable environmental and cultural resource laws, regulations, and EO's--*

This handbook:

- contains the major environmental policies and directives for FSA
- provides procedures and guidelines for preparing the appropriate environmental impact *-analyses required for a series of Federal laws, regulations, and EO's--*
- establishes basic FSA and CCC procedures that supplement NEPA regulations issued by CEQ and USDA
- integrates all environmental requirements referenced in 7 CFR Part 799.1.

This handbook supplements the NEPA regulations issued by CEQ (40 CFR Parts 1500 through 1508) and all other applicable regulations, including 36 CFR Part 800 and regulations implementing Section 106 of NHPA. In addition to provisions provided for in this handbook, FSA adopts the NEPA regulations issued by CEQ and ACHP * * *.

FSA will use its NEPA process to meet its responsibilities under 36 CFR Part 800. The procedures in this handbook will serve as the Agency's notification to SHPO's, THPO's, and ACHP that FSA is applying 36 CFR Part 800.8(c), authorizing agencies to use their established NEPA process for Section 106 purposes.

1 Purpose and Background [7 CFR Parts 799.1, 799.2, and 7 CFR Part 1940.301] (Continued)

A Handbook Purpose (Continued)

The procedures in 7 CFR Part 799 and Part 1940 Subpart G require that:

- environmental information, including information on potential effects on historic properties, be available to the public before decisions are made about actions that have the potential to significantly affect the human environment
- FSA-assisted actions are supported to the extent possible by accurate scientific analyses that are technically acceptable to FSA
- FSA-prepared NEPA documents be available for public scrutiny
- NEPA documents concentrate on the issues that are timely and significant to the action in question rather than amassing needless detail.

B Background

NEPA [42 U.S.C. 4321 et seq.] established national policies and goals for protecting the environment. NEPA Section 102(2):

- contains procedural requirements directed toward attaining these goals
- requires all Federal agencies to appropriately consider the environmental effects of their proposed actions in their decision making.

--Agencies are required to prepare environmental reviews on recommendations or-- proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

1 Purpose and Background [7 CFR Parts 799.1, 799.2, and 7 CFR Part 1940.301] (Continued)

B Background (Continued)

--EO 11991 of May 24, 1977 (42 FR 26967), directed CEQ to issue regulations to-- implement the procedural provisions of NEPA. Accordingly, CEQ issued final NEPA regulations (40 CFR Parts 1500 through 1508) on November 29, 1978, which have been binding on all Federal agencies since July 30, 1979. These regulations provide that each Federal agency shall adopt, as necessary, implementation procedures to supplement CEQ regulations. CEQ regulations at 40 CFR Part 1507.3(b) identify those items that must be addressed in FSA procedures. USDA adopted these procedures in final rules 7 CFR Part 799 (for FP) and 7 CFR Part 1940 subpart G (for FLP).

NEPA:

- articulates the Federal policy that encourages protecting the quality of the human environment
- requires Federal agencies to consider the impacts of their proposed activities, programs, and projects on the quality of the environment.

The NEPA review:

- helps FSA decide whether to approve a proposed action, considering all reasonable alternatives, including the no action alternative
- affords interested agencies and the public the opportunity to learn about and have input into FSA's decision
- requires specific analyses and documentation, but may vary depending on the nature of the proposed action and its expected environmental impacts.

FSA shall, to the fullest extent possible, integrate the requirements of NEPA with other planning and environmental review procedures required by law or by Agency practice *--such as Section 106 of NHPA or Section 7 of ESA so that all procedures run concurrently--* rather than consecutively.

2 Sources of Authority and Related References

A Overview

--FSA is required to comply with a wide range of laws, EO's, and regulations to--
implement FSA and CCC programs to protect and enhance the human environment.

B Sources of Authority

*--FSA's environmental compliance program is governed by numerous sources of authority.
See Exhibit 4.--*

3 Basic Requirements

A Applicability

This handbook, together with the NEPA regulations issued by CEQ, USDA, and FSA, and other environmental and historic preservation regulations, applies to all programs administered by FSA, including but not limited to, CCC programs, FLP's, and FP's which might have significant impacts on the environment.

--A portion of NEPA is evaluating the effects of the proposed action on the human and natural environment, which is separate from any permitting process administered by State or-- Federal regulatory agencies. An action permitted by a local, State, or Federal agency may not have considered appropriate mitigation alternatives that will reduce or minimize the impacts on the human or natural environment. Therefore, alternatives or mitigation measures *--may be required by FSA that could change the scope of the proposed project.

This part deals with environmental considerations required by the environmental and--* cultural resource laws but does not incorporate FSA highly erodible land and wetland compliance requirements contained within the Food Security Act laws and amendments. FSA will follow 6-CP for compliance requirements associated with highly erodible land and wetlands.

B Program Mission

The mission of FSA's environmental program is to use all practicable means to promote, restore, and achieve a point in which nature and society can exist in harmony while furthering the overall mission of the agency.

3 Basic Requirements (Continued)

C FSA Policy

Before a decision is made on a proposed Federal action that could affect the environment, *--FSA must first comply with NEPA and laws such as NHPA and ESA that NEPA encompasses. NEPA requires that FSA conduct an analysis of the impacts the proposed action will have on the environment.

With each Federal action, the Agency must follow the decision making process of analysis and review set forth in NEPA. FSA must apply the NEPA process in the early planning stages before a decision is made and carry it out in good faith.

NEPA activities take time. Completing EE may take only a few hours, but preparing EA or EIS for a complex project may take many hours to several months to properly complete. Specific public review and agency consultation timeframes are cited.--*

RAO must be objective and take the time necessary to accomplish the purposes of NEPA and not arbitrarily establish time limits that could hamper needed analyses and consultations. If the NEPA process is included early in the planning stages, costly delays can be avoided.

The NEPA process must be completed before approving the proposed action (payments, *--program participation, loan benefits, guarantees, etc.). Actions that are permitted during--* the NEPA process include assistance for planning purposes, management and feasibility studies, or environmental analyses.

3 Basic Requirements (Continued)

C FSA Policy (Continued)

FSA shall to the fullest extent possible:

- interpret and administer the policies, regulations, and public laws of the United States while providing assistance to rural America
- integrate the requirements of NEPA, NHPA, ESA, CWA, CERCLA, RCRA, and other ~~applicable~~ laws, regulations, departmental policies, and EO's with other planning ~~and~~ environmental review procedures required by law or Agency practices so that all these procedures run concurrently rather than consecutively with the decision making process in program services
- identify and develop methods and procedures that will ensure that environmental issues and values are considered early in the economic and technical decision making process so that no practical alternatives are eliminated from consideration
- encourage and facilitate public involvement in decisions that affect the quality of the human environment
- use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of environment
- use all practicable means, consistent with the requirement of the various laws and other essential consideration of national policy, to restore and enhance the quality of the environment and avoid or minimize any possible adverse effect of the actions before providing technical and financial assistance
- consider environmental quality equal to economic, social, and other factors in decision making.

--4 Responsibilities [7 CFR Part 799.5, 7 CFR Parts 1940.306-309, and 7 CFR Part 1940.331]--

A Responsible Federal Official

The Administrator, FSA, or designee, is RFO for carrying out NEPA and other environmental and historic preservation statutes for all FSA and CCC programs. NECM, FPO, SED's, SEC's, and National Office division directors, within their respective areas of responsibility shall assist RFO in complying with the policies and purposes of NEPA, NHPA, CWA, ESA, etc. These individuals shall determine whether the quality of the human environment will be affected in implementing FSA programs and prepare the necessary environmental documents in support of their determination.

RFO ensures that this responsibility is adequately delegated to FSA staff and remains informed on the general status of FSA's compliance, as well as the need for any necessary improvements in FSA's NEPA process.

--RFO is also responsible for ensuring that adequate staffing levels and financial resources-- for accomplishing * * * compliance with this handbook are reflected and documented in budget requests for Departmental consideration.

B National Office Responsibilities

National Office is responsible for complying with the provisions of NEPA, NHPA, etc. with regard to legislative proposals, and multi-State and national programs and/or major revisions of national programs.

NECM:

- serves as the principal FSA advisor on NEPA-related requirements
- *--coordinates NEPA with the requirements of all environmental and cultural resource laws, regulations, and EO's--*
- provides expert advice on NEPA-related matters to FSA divisions, programs, State and County Offices
- serves as intra-agency and interagency liaison and coordinator on NEPA-related matters on a national basis
- *--provides and periodically updates FSA environmental program guidance, after consultation with OGC--*

--4 Responsibilities [7 CFR Part 799.5, 7 CFR Parts 1940.306-309, and 7 CFR Part 1940.331] (Continued)--

B National Office Responsibilities (Continued)

- provides education and training pertinent to implementing NEPA and related authorities to FSA personnel
- maintains a record of FSA's environmental activities and advances the national *--environmental policy articulated in NEPA, other statutes, EO's, and regulations--*
- serves as FSA's representative in coordinating with outside groups at the national level about NEPA-related matters
- prepares, where practicable, generic policy guidelines describing the scope and level of environmental information required from producers and applicants seeking assistance from FSA as a basis for evaluating their proposed actions, and make these guidelines available upon request.

FPO:

- serves as the principal FSA advisor on NHPA-related requirements and coordinating NHPA with the requirements of the laws and regulations
- provides expert advice on NHPA-related matters to FSA divisions, programs, State and County Offices
- serves as intra-agency and interagency liaison and coordinator on NHPA-related matters on a national basis
- provides and periodically updates FSA program guidance, after consulting with OGC
- provides education and training pertinent to implementing NHPA and related authorities to FSA personnel
- maintains a record of FSA's environmental activities and advances the national *--preservation policy articulated in NHPA, other statutes, EO's, and regulations--*
- serves as FSA's representative in coordinating with outside groups at the national level about NHPA-related matters
- provides guidance on environmental justice related matters.

*--4 **Responsibilities [7 CFR Part 799.5, 7 CFR Parts 1940.306-309, and 7 CFR Part 1940.331]**
(Continued)--*

B National Office Responsibilities (Continued)

FSA National Office division liaisons will:

- serve as a contact within their respective division to address compliance with the requirements of this handbook
- coordinate with NECM and FPO to ensure Agency-wide NEPA consistency in program delivery
- be responsible for carrying out NEPA with regard to legislative proposals and multi-State and national programs or major revisions of national programs.

C State Office Responsibilities

SED's and SEC's are responsible for carrying out NEPA with regard to major actions in a State or an area within a State.

- SED will serve as the responsible FSA official at the State Office level for ensuring compliance with the requirements of this handbook and appoint an individual using FSA-855 (Exhibit 11) to serve as SEC. SEC serves as SED's point person in environmental matters for all FSA program areas.
- SEC will act as the program coordinator on all environmental matters and coordinate the requirements of this handbook. SEC can redelegate certain duties as approved by NECM.

***--4 Responsibilities [7 CFR Part 799.5, 7 CFR Parts 1940.306-309, and 7 CFR Part 1940.331]
(Continued)--***

C State Office Responsibilities (Continued)

SEC:

- advises SED on environmental matters and coordinates the requirements of this handbook
- represents SED at conferences and meetings dealing with environmental matters of a State Office nature
- acts as liaison on State Office environmental matters with interested public groups and local, State, and other Federal agencies
- serves as SED's alternate on State-level USDA committees dealing with environmental, land use, and historic preservation matters
- solicits the expert advice and assistance of other professional staff members within the State Office to adequately implement this handbook
- provides technical assistance on a project-by-project basis to State, District, and County Office staffs
- develops controls for avoiding or mitigating adverse environmental impacts and monitor their implementation
- reviews those FSA actions that are not CATEX from further environmental review by this handbook and require the approval and/or clearance of the State Office and recommends to the approving official either project approval, disapproval, or modification after analyzing and considering the:
 - anticipated adverse environmental impacts
 - anticipated benefits
 - action's consistency with the requirements of this handbook
- provides assistance in resolving post-approval environmental matters at the State Office level

***--4 Responsibilities [7 CFR Part 799.5, 7 CFR Parts 1940.306-309, and 7 CFR Part 1940.331]
(Continued)--***

C State Office Responsibilities (Continued)

- *--maintains decision records/files for those actions required by this handbook--*
- coordinates for SED the development of the State Natural Resources Management Guide (State Environmental Guide (SEG))

Note: See Exhibit 9 for SEG template.

- provides direction and training to State, District, and County Office staffs on the requirements of this handbook
- coordinates for SED monitoring of the State Office's compliance with this handbook and keeps SED advised of the results of the monitoring process.

D District and County Office Responsibilities

DD's, FLM's, FLO's, and CED's are responsible for preparing and implementing NEPA with regard to Federal actions on FP and FLP activities within a specific geographic area. These individuals will make the determinations for CATEX's, EA's, or EIS's. They will also prepare the necessary documentation and obtain the required concurrence from SEC, as appropriate.

DD, FLM, FLO, or CED with appropriate training, will be responsible for carrying out the actions required by this handbook that are completed at the County Office level.

On the county level, the environmental review process is the responsibility of the appropriate local FLM, FLO, or CED.

*--4 **Responsibilities [7 CFR Part 799.5, 7 CFR Parts 1940.306-309, and 7 CFR Part 1940.331]**
(Continued)--*

D District and County Office Responsibilities (Continued)

In discussing FSA programs, DD, FLM, FLO, or CED will inform potential applicants of FSA's environmental requirements, as well as the environmental information needs and responsibilities that the applicant is expected to fulfill. Specifically, DD, FLM, FLO, or CED will:

- provide guidance on a project-by-project basis to producers or applicants and guaranteed lenders seeking assistance from FSA
- upon receipt of an application for approval, or notification that an application will be filed, consult as required with other appropriate parties to initiate and coordinate the necessary environmental analyses
- provide guidance to producers, applicants, or guaranteed lenders seeking assistance from FSA and other non-Federal entities.

Note: These individuals or entities should contact FSA as early as possible in the planning process for guidance on the scope and level of environmental information that is required to be submitted in support of their request.

--4 Responsibilities [7 CFR Part 799.5, 7 CFR Parts 1940.306-309, and 7 CFR Part 1940.331] (Continued)--

D District and County Office Responsibilities (Continued)

The following table summarizes the responsibilities of FSA officials associated with the different levels of review.

Level of Review	Responsible Official
Site Specific Environmental Evaluation FSA-850 (FP) or NRCS-CPA-52 *--RD 1940-22 (FLP)--*	FLM FLO CED SEC
Site Specific Environmental Assessment EA - FP Class I - FLP *--Modified Class I - FLP--* Class II - FLP	FLM FLO CED SEC
Programmatic Environmental Assessment FP or FLP	SEC National Office division directors NECM
Programmatic Environmental Impact Statement FP or FLP	NECM

--4 Responsibilities [7 CFR Part 799.5, 7 CFR Parts 1940.306-309, and 7 CFR Part 1940.331] (Continued)--

E Applicant Responsibilities

FSA expects applicants, borrowers, guaranteed lenders, and program participants to:

- consider the potential environmental impacts of their requests at the earliest planning stages
- *--develop actions that minimize the potential to adversely impact the environment.--*

Prospective applicants should contact FLO, FLM, CED, or DD, as appropriate, to determine FSA's environmental requirements as soon as possible after they decide to pursue FSA financial or program assistance.

The applicant or participant will:

- provide, as early as possible in the planning process, information necessary for FSA to evaluate their proposal's potential environmental impacts and alternatives to them, including, but not limited to:
 - AD-1026/AD-1026(A) for the action
 - wetland determination, if required
 - project design specification
 - topographical, aerial, and project location maps
 - notification of all parties potentially affected by or interested in the proposed action *--when it involves AFO or CAFO--*
- provide surveys that are deemed necessary and appropriate by FSA to determine the impact of the proposed action on the human environment such as:
 - cultural resource survey, if necessary, for proper review by SHPO or THPO
 - biological assessment, if necessary, for proper evaluation by FWS
- submit applications and/or permits for all Federal, regional, State, and local approvals as early as possible in the planning process such as:
 - appropriate Federal, State, or local permits for the operation including construction permits, if applicable, including engineering plans as appropriate for the proposed action
 - *--CNMP or NMP--*

--4 Responsibilities [7 CFR Part 799.5, 7 CFR Parts 1940.306-309, and 7 CFR Part 1940.331] (Continued)--

E Applicant Responsibilities (Continued)

- ensure that all required materials are current, sufficiently detailed and complete, and are submitted directly to the FSA office processing the application

Note: Incomplete materials or delayed submittals may seriously jeopardize consideration or postponement of a proposed action by FSA.

- *--not take any actions with respect to their proposed actions during the period of--* application review and processing which would have an adverse impact on the environment or limit the range of alternatives

Note: This requirement does not preclude developing preliminary plans or designs or performing other work necessary to support an application for Federal, State, or local permits or assistance. However, developing detailed plans and specifications is discouraged when the costs involved inhibit the realistic consideration of alternative proposals.

- provide public notification and fully cooperate in holding public information meetings as required.

Note: The applicant will be responsible for all costs associated with the public notification process.

For FLP, RD 1940-20 will be used by FSA for obtaining environmental information from applicants whose proposals require EA. If the applicant's proposal meets the definition of a Class I action as defined in Section 311 of RD Instruction 1940-G, complete the face of the form and parts (1), (2), (13), (15), (16), and (17). If the applicant's proposal meets the definition of a Class II action as defined in Section 312 of RD Instruction 1940-G, complete all of RD 1940-20.

Exception: An application for an action that is normally CATEX but requires a Class I assessment for any of the reasons stated in Section 1940.317(e) of RD Instruction 1940-G is not required to complete RD 1940-20. Additionally, for Class I actions a site visit by the FSA official completing EA alleviates the need for the applicant to complete any of the form * * *.

5-25 (Reserved)

Part 2 FSA Process for Environmental Compliance

Section 1 Classes of Action for Environmental Analysis and Documentation

26 Background

A General Overview

CEQ regulations set forth a general sequence of determinations that agencies can make to help decide how much environmental analysis the proposed action needs.

One of the first steps in complying with NEPA is to classify the action to decide which level of analysis is required.

B Legal Requirements

NEPA regulations at 40 CFR Parts 1501.3 and 1501.4 contain requirements to ensure that the proper level of environmental analysis is completed.

27 Levels of Review

A CATEX Actions

A CATEX action is not subject to NEPA analysis and documentation if it has no significant individual or cumulative effect on the environment.

For FLP actions, RAO will refer to RD Instruction 1940-G, paragraph 1940.310 for a listing of CATEX actions and will document this decision with RD 1940-22. If a normally excluded action may have a significant environmental effect, CEQ requires that FSA provide for extraordinary circumstances. To determine whether extraordinary circumstances exist, RAO will refer to RD Instruction 1940-G, paragraph 1940.317 and will follow the required actions according to this paragraph.

Example: An FLP loan application for refinancing CAFO would not be considered CATEX as it has the potential to affect water quality. This would also include the refinancing of some AFO's.

For individual FP actions such as CRP, ECP, and Farm Storage Facility Loan Programs that do not normally require completing EA, certain extraordinary circumstances have the potential to adversely affect the human environment. To determine whether these types of actions are CATEX or whether extraordinary circumstances apply that require either EA or EIS, complete FSA-850 with regard to each action. Documentation for this level of analysis is supported with data to substantiate the conclusions reached in FSA-850.

If NRCS is providing technical assistance for an FSA program such as CRP or ECP, FSA may accept a completed NRCS-CPA-52.

27 Levels of Review (Continued)

A CATEX Actions (Continued)

FSA may also accept NRCS-CPA-52 completed by NRCS for FP actions where technical assistance is provided by NRCS. Some State NRCS Offices may use a modified version of the form that should be reviewed by SEC to determine if it meets the minimum requirements of this handbook. RAO will complete the applicable sections of the NRCS-CPA-52 to document that FSA has completed any required consultation and make the final *--determination. RAO will also ensure that all necessary supporting documentation such as field notes, correspondence, photographs, and permitting information is attached to FSA's copy of NRCS-CPA-52 and placed in the producer's file.

B Environmental Assessment

The proposed action will require EA if it is not CATEX, and does not obviously require EIS. To determine whether the action is in fact a “major Federal action significantly affecting the quality of the human environment” and thus requires EIS, RAO will complete an EA. Documentation for this level of analysis consists of either of the following for:

- FLP actions:
 - Class I EA prepared using RD 1940-21 or a Class II EA prepared using FSA-853B (Exhibit 12) and FSA-857 (Exhibit 13)
 - Modified Class I EA prepared using RD 1940-21 for CATEX actions that lose their exclusion--*
 - a set of analysis files and NOI to prepare EIS
- FP actions:
 - EA prepared according to FSA-853A (Exhibit 14) and FSA-857 (Exhibit 13)
 - a set of analysis files and NOI to prepare EIS.

27 Levels of Review (Continued)

C Environmental Impact Statement

An action requires EIS when it is a major Federal action with the potential for significant effect on the quality of the human environment. If FSA knows automatically that the proposal is for such an action, there is no reason to go through the time and expense of preparing EA; instead, the responsible FSA official should undertake preparing EIS as early *--as possible in planning process.

In some cases EA review may indicate a significant environmental affect that cannot adequately be mitigated and, thus, requires preparing EIS. Documentation for this level of--* analysis consists of a draft and final EIS, including responses to public comments and comments from other Federal and State agencies, and ROD signed by RFO describing FSA's final action decision. See Exhibit 17 for a distribution list for EIS.

28-48 (Reserved)

Section 2 Compliance Process

49 Normal Circumstances

A Steps for Environmental Compliance

FSA’s compliance with the procedural requirements of environmental review is handled by RAO according to the following table.

Step	Action
1	Determine a purpose and need for an action, and develop a preliminary description of the action.
2	Determine the appropriate level of environmental analysis and documentation required. If a question exists, RAO will consult SEC.
3	Arrange for necessary environmental analysis and documentation to take place, including early public involvement and consultation where appropriate. Where legal issues or public controversy may occur in the action or the environmental analysis, RAO will contact SEC.
4	Consult with SEC to ensure that the appropriate analysis and documentation are completed, circulated, and filed.
5	Decide whether and how the action will proceed, and if so, how any potential adverse effects will be mitigated.
6	After a decision has been made ensure that any required final public notification takes place.
7	Ensure that the action proceeds, subject to mitigation and monitoring activities identified, if any.
8	Monitor any mitigation performed to ensure that it is carried out.

Note: The extent to which all these steps must be carried out varies with the type of action under consideration.

50 Considerations in Decision Making**A Background**

Ensure that environmental factors are considered early in, and throughout, FSA's decision making process.

B Legal Requirements

NEPA regulations at 40 CFR 1501.1 and 1507.3(b) contain requirements to ensure early and adequate consideration of environmental factors in the decision making process. Regulations at 36 CFR 800.1(c) also require early involvement of consulting parties in the planning process.

To fulfill legal requirements, RAO shall complete the following actions.

- Commence the NEPA process at the earliest possible time.
- Consult early with appropriate State and local agencies, American Indian tribes, and interested private persons and organizations when FSA's own involvement is reasonably foreseeable.
- Consider the following 2 elements, in addition to the specific project elements, for which an action is being requested:
 - if the action represents 1 of several phases of a larger proposal, the action will undergo the environmental review required for the elements or the size of the total proposal
 - if the action represents 1 segment of a larger project being funded by private parties or other government agencies, the size and elements of the entire project are used in determining the proper level of environmental review to be conducted.

50 Considerations in Decision Making (Continued)

B Legal Requirements (Continued)

- Implement 36 CFR Section 800 to identify historic properties in the area of potential effect of a proposed project. These resources include districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, or culture that are listed on or eligible for listing on NRHP. See Exhibit 31 for National Register eligibility criteria. FSA must consult with SHPO, THPO, if appropriate, and others and allow ACHP an opportunity to comment, if needed.
- Determine that an activity will be consistent with the appropriate State coastal zone management plan to the maximum extent practical. This is applicable only in those States that possess a federally approved coastal zone management plan.
- Consider the Coastal Barrier Resources Act that places restrictions on construction and other activities taking place on lands within the Coastal Barrier System. RAO shall consult and/or advise the appropriate FWS Regional Office concerning projects * * * within the Coastal Barrier System.
- Coordinate with the applicant, any cooperating agencies, and the lead Federal agency when applicable, to ensure the project is planned, constructed, and operated to ensure the protection, preservation, and enhancement of wetlands to the fullest extent practicable. Appropriate opportunity for early review of proposals for new construction affecting wetlands should be provided to the public and to agencies with special interest in *--wetlands. Consider all laws, EO's, and regulations requiring the protection of wetlands, including but not limited to, CWA Section 404 and EO 11990 (Exhibit 19).--*
- Determine if a project is located in a base floodplain (100-year floodplain). This *--determination should be made using the official FIRM prepared by FEMA. EO 11988--* (Exhibit 20) requires that agencies avoid the base floodplain unless it is the only practicable alternative. Appropriate opportunity for early review of proposals for new construction affecting floodplains should be provided to the public and to agencies with special interest in floodplains.
- *--Determine if a project is located in or will affect a wetland as determined by NRCS. Consolidated Farm and rural Development Act, Section 363 does **not** allow FLP loans to be approved if they will adversely affect a floodplain.
- For FP activities, the requirements of CWA and EO 11990, Section 404 must be complied with.--*

50 Considerations in Decision Making (Continued)**B Legal Requirements (Continued)**

- Request from the local or regional FWS and, if applicable, NMFS, information on whether any federally listed threatened or endangered species or designated critical habitat may be present in the area of a proposed action. RAO shall ensure that an action is not likely to jeopardize the continued existence of any species listed as endangered or threatened and also enhances the species continued existence according to ESA Section 7 (Exhibit 21).
- Examine the effects of the action on important farmlands, and if there are adverse effects, consider alternatives to lessen them. FSA shall assess actions using the criteria provided by regional, State, or local land evaluation and site assessment systems or if unavailable, use the criteria in 7 CFR Section 658.5.
- Locate minority and low income communities and determine whether any proposed action will cause disproportionately high * * * adverse human health or other environmental effects to these communities.
- Determine if the action will affect a river or portion of a river that is either included in the National Wild and Scenic Rivers system or designated for potential addition to the system, or identified in NRI prepared by NPS.
- Evaluate the project's consistency with CAA, the State's Air Quality Implementation Plan, the Classification of the Air Quality Control Region within which the project is located, and status of compliance with air quality standards within that region.

50 Considerations in Decision Making (Continued)**B Legal Requirements (Continued)**

- Evaluate the impact of the action on existing water quality, aquifer recharge areas, or sole source aquifer, as designated by EPA.
- Assess the impact of any actions that would be located within or would affect a federally designated wilderness area or Federal wilderness study area.
- Ensure that all relevant environmental documents, comments, and responses accompany *--the proposal through any review and approval processes and remain part of the producer's official file.--*
- Consider only those alternatives encompassed by the range of alternatives discussed in the relevant environmental documents when evaluating proposals involving FSA assistance.
- *--Where EA or EIS has been prepared, consider the specific alternatives analyzed when evaluating the proposal that is the subject of EA or EIS.--*
- Make all relevant environmental documents, comments, and responses part of the record in formal rulemaking or adjudicatory proceedings.
- *--If necessary and approved by the Keeper of NRHP, maintain confidentiality of locations of archaeological sites and other cultural resources when releasing NEPA documents--* to the public.

51 Expedited Emergency Procedures [7 CFR Part 799.11 and 7 CFR Part 1940.332]**A Emergencies**

*--Some emergency circumstances make it necessary to take immediate action to protect life and property. These actions may have significant environmental impact. In an emergency, such as life threatening natural or human-caused disasters, the step-by-step NEPA process cannot be followed, FSA will consult with CEQ and/or EPA about alternative arrangements as prescribed in 40 CFR Part 1506.11. RAO will also follow 36 CFR Part 800.12 as they relate to historic properties.

Consultation with CEQ, EPA, and other appropriate entities, about emergency arrangements should always involve SEC and NECM. SEC should work with FPO, SHPO or THPO,--* ACHP, and others to develop procedures to follow for considering potential adverse impacts to historic properties during emergencies. In lieu of these procedures, in case of an emergency, SEC will allow SHPO or THPO, ACHP, and others 7-calendar-days to comment on emergency actions, or within actual time available. If it is not possible to allow any comment time, SEC and FPO will inform the consulting parties after the fact about what was done and what, if any, impacts to historic properties occurred.

--52 Tiering [40 CFR Part 1508.28]*A Tiering Process**

Tiering may be used to define the relation of the proposed review to earlier statements. Tiering is 1 of 19 methods used to help streamline the NEPA process. It can help reduce delays and paperwork. Tiering means addressing general matters in broader EIS's with subsequent narrower review, such as EA's, incorporating by reference the general discussions. The narrower review concentrates solely on the issues specific to the project. For example, the National Office might prepare a nationwide programmatic EIS on a national program such as CREP. Then as a State develops its CREP proposal, SEC would develop a programmatic EA on CREP in that State and tier the programmatic EA off the information analyzed in the programmatic EIS. As individual CREP contracts are reviewed, EE would be tiered off programmatic EIS and programmatic EA.--*

53-71 (Reserved)

Section 3 Working With Other Agencies in NEPA Review**72 When FSA Is Lead Agency****A NEPA and Interagency Planning**

FSA will use interagency planning which involves coordinating the activities of the lead agency and cooperating agencies in a process to determine the scope of the NEPA review and the amount of public participation appropriate to the scope of the NEPA process.

B FSA's Role as Lead Agency

When FSA is the lead agency in NEPA review of a multi-agency action, FSA conducts the pertinent NEPA analysis and prepares the appropriate documents, circulates them, compiles and responds to comments, makes final determinations, and is otherwise responsible for the conduct of NEPA review. Other agencies, individuals, and entities may provide data, analyses, expertise, review, and comment, but FSA is responsible for the final NEPA product and the final project decision. FSA can and should invite other involved agencies to participate as cooperating agencies, as appropriate to the program.

When FSA is the lead agency, the participating agencies must prepare MOA defining who the lead Agency is. Lead agency status is determined by the:

- magnitude of the agency's involvement
- approval or disapproval authority
- expertise on potential environmental effects
- duration of the agency's involvement
- sequence of agency involvement.

The lead agency is responsible for supervising development of EE, EA, or EIS and coordinating the role of other participating agencies.

FSA shall be the lead agency for actions under programs it administers. If the actions affect more than 1 State, NECM shall designate 1 FSA SEC as RAO.

FSA normally takes the role of lead agency in actions that share program responsibilities among USDA agencies, if FSA provides the majority of funds for the actions. If the lead agency role is in question, the role of FSA and other USDA agencies is to be determined by RFO and the heads of the other agencies involved.

72 When FSA Is Lead Agency (Continued)**B FSA's Role as Lead Agency (Continued)**

If FSA and other Federal agencies outside USDA cannot agree on which will be the lead agency and which will be the cooperating agencies, the procedure in 40 CFR Part 1501.5(e) is to be followed.

FSA, as lead agency, coordinates the participation of all concerned agencies in developing EE, EA, or EIS according to the provisions of 40 CFR Part 1501.6(a). FSA shall request assistance in determining the scope of issues to be addressed and identifying the significant issues related to a proposed action from Federal agencies that have jurisdiction by law or special expertise.

73 When FSA Is Cooperating Agency**A FSA's Role as a Cooperating Agency in Another Lead Agency's Activity**

FSA shall act as a cooperating agency, if requested and appropriate. FSA may request to be designated as a cooperating agency if proposed actions may affect areas of its expertise. FSA, as a cooperating agency, shall comply with the requirements of 40 CFR Part 1501.6(b) to the extent possible depending on funds, personnel, and priority. If insufficient funds or other resources prevent FSA from participating fully as a cooperating agency, FSA shall request the lead agency to provide funds or other resources that will allow full participation.

MOA, or other written correspondence, will be developed with the lead Agency to define FSA's role as the cooperating agency. SEC will coordinate FSA's participation as a cooperating agency at the State Office level.

When requested to be a cooperating agency on a basis other than that discussed, SEC will consider the expertise that FSA could add to the particular EE, EA, or EIS process and existing workload commitments.

As a cooperating agency, FSA will participate in developing and implementing the scoping process. If requested by the lead agency and resources are readily available, FSA will provide the lead agency with staff support and descriptive materials with respect to the analyses of the FSA portion of the actions to be covered; review and comment on all preliminary draft materials before circulating for public review and comment; and attend and participate in public scoping called by the lead agency concerning EIS.

If a decision is made not to participate as a cooperating agency, a letter signed by SED or NECM will inform the lead agency of the decision and CEQ will be sent a copy.

74 When FSA Is a Commenter**A FSA's Role as a Commenter**

FSA, through State and National Offices, is authorized to comment on EE, EA, or EIS prepared by another Federal agency. Comments should be as specific as possible. Any recommendations for analyzing additional information should indicate why there is a need for the material.

Comments should concentrate on matters of primary importance to FSA and on areas of Agency expertise. Any potential conflicts with FSA programs, plans, or actions should be clearly identified and recommendations made to avoid any conflicts.

Whenever SEC has serious concerns about another agency's EA or EIS, SEC shall confer with NECM before making official comments.

75 Adopting EE, EA, or EIS Prepared by Another Federal Agency**A General**

FSA may adopt EE, EA, or EIS, or portion thereof, prepared by another Federal agency if an independent review of the document is conducted by RAO and it is concluded that the document meets the requirements of this handbook.

B Adopting EE and EA from Other Federal * * * Agencies

For those actions for which assistance is provided by a Federal * * * agency other than FSA, and the agency providing the assistance is required by its regulations to implement NEPA, RAO may use the environmental determination and considerations of the agency to document the NEPA review rather than duplicating the NEPA process. If this documentation is used it must meet FSA standards for an adequate assessment of the action as determined by RAO.

75 **Adopting EE, EA, or EIS Prepared by Other Federal Agencies (Continued)****B Adopting EE and EA from Other Federal * * * Agencies (Continued)**

--The acceptance of EE or EA is accomplished by RAO preparing FSA-852. FSA-852 will-- be placed in each FSA case file.

When all of another Federal agency's EE or EA is adopted without supplementation, no public notification of FSA's FONSI is required if:

- the other Federal agency or its designee published a similar finding in a newspaper of general circulation in the vicinity of the proposed action
- the other Federal agency's, or its designee's, public notice clearly described the action subject to the FSA environmental review
- the other Federal agency's, or its designee's, public notice was published less than 18 months from the date FSA adopted EE or EA.

--C EIS from Other Federal Agencies--

If FSA proposes to adopt EIS, or portions thereof, prepared by another Federal or State agency, RAO shall review the document to ensure that it meets the requirements of CEQ regulations and FSA's NEPA procedures in this handbook.

- If the actions included in EIS are substantially the same as those proposed by FSA, the RAO shall re-circulate EIS as "final." The final EIS shall include an appropriate explanation of the action. If the actions are not substantially the same, EIS shall be supplemented and recirculated as a draft EIS. RAO shall inform the preparing agency of the proposed action.
- *--If the adopted EIS is not final or if it is the subject of a referral under 40 CFR Part 1504, RAO shall include an appropriate explanation in EIS.
- If the EIS' adequacy is questioned by litigation, RAO should consult the NECM for assistance.--*
- RAO shall take appropriate action to inform the public and appropriate agencies of the proposed action.

* * *

75 Adopting EE, EA, or EIS Prepared by Other Federal Agencies (Continued)***--C EIS's From Other Federal Agencies (Continued)**

If there are differences between the actions or the environmental conditions as discussed in the original EIS, EIS will be updated to cover these differences and recirculated as a draft EIS with the public so notified. From that point, it will be reviewed and processed in the same manner as any other FSA EIS.

For circulation, filing, and timing requirements, see Part 4, Section 3 and 40 CFR Parts 1506.3(c), 1506.9, and 1506.10. If the adopted subject EIS was not finalized by the originating agency, or if the action it assesses is the subject of referral under 40 CFR Part 1504, FSA must so specify and provide an explanation in the recirculated EIS.

76 Using Information from State or Local Agencies**A Agency Cooperation**

FSA shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the State and/or local agencies are specifically barred from doing so by some other law. Such cooperation may include joint:

- planning processes
- environmental research and studies
- public hearings
- EA's.

B Permit Issuance

Certain State or local agencies may issue permits for certain projects such as cattle feedlots. As a condition of approving a permit, the State or local agencies may consider the impacts on certain resources, particularly water quality. In these cases, FSA may request copies of any environmental review documentation from these regulatory authorities to reduce the amount of analysis required for completion of the required FSA environmental review.

If the information received from a State or local agency is suitable to FSA, it may be incorporated by reference into the FSA environmental review document (40 CFR Part 1502.21). No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons.--*

77-99 (Reserved)

Section 4 Other Stipulations**100 Program Termination****A When a Program Is Terminated**

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

B Documentation

NECM will document in writing that EA or EIS is not required and maintain a permanent record of this decision.

101 Environmental Information**A Disseminating Local Information**

FSA's policy is to disseminate environmental information about local, regional, and national programs. Interested persons may contact SEC in each State for information of local *-concern. Protect locality information when necessary.

NEPA regulations at 40 CFR Part 1501.2(d) require agencies to provide for early involvement in actions that, while planned by private applicants or other non-Federal entities, require some form of Federal involvement [7 CFR Part 799.7(a)]. In assessing the potential environmental impacts of its actions, FSA will consult early with appropriate Federal, State, and local agencies and other organizations to provide decision makers with both the technical and human aspects of environmental planning [7 CFR Part 1940.303(b)]. Upon receipt of an application for Agency approval, consult as required with other appropriate parties to initiate and coordinate the necessary environmental analyses.--*

B Disseminating National or Regional Information

Interested persons may contact the FSA National Office for information about regional and national FSA compliance with NEPA.

102 Decision Making and Monitoring

A Decision Making

The NEPA process is a part of FSA's decision making and no decision on an FSA action shall be approved until the environmental review process is completed by FSA. RFO shall ensure that FSA complies with the policies and purposes of NEPA and CEQ regulations in decision making by:

- including in all environmental documents and related decision making documentation, a discussion of all alternatives considered in the decision

Note: Alternatives to be considered in reaching a decision will be available to the public.

- submitting relevant environmental documents, comments, and responses with other decision documents through the review process
- including in the record of formal rulemaking or adjudication proceedings relevant environmental documents, comments, and responses.

B Monitoring

RFO is responsible for providing for pre- and post-project monitoring [40 CFR Parts 1505.2(c) and 1505.3] and evaluation in representative projects to ensure that planning and evaluation procedures are performed according to sound criteria.

This will be accomplished through mitigation measures provided within EA or EIS. These mitigation measures will also be a part of the approval processes or the post monitoring process of particular actions.

Example: Within FLP, the pre-monitoring will be those issues relating to the approval of a loan, direct or guaranteed, with conditions. Post-monitoring activities will be provided within the loan agreement signed with the producer.

103 Ensuring Environmental Compliance

A Procedures

FSA shall develop, and update as necessary, this handbook and other guidance materials as necessary to carry out the requirements of NEPA.

104 Public Access to FSA NEPA Information

A General

NEPA is, among other things, a public disclosure law. Therefore, it is important that the public have access to FSA decision-making processes and environmental information. Most information gathered during the NEPA process is subject to FOIA. Certain information, such as location of archaeological sites, should be redacted before providing NEPA documents to the public. In addition, during specific steps of the FSA NEPA process, the public is specifically invited to share and access information as part of FSA's public involvement process.

105-130 (Reserved)

Part 3 Scoping and Planning for Public Involvement

Section 1 Scoping

131 Policy

A Requirements for Scoping

Scoping is discussed in the CEQ regulations largely in the context of EIS preparation, but truly is an element to any kind of environmental analysis.

The CEQ regulations state that scoping is a key tool to:

- help eliminate unimportant issues
- focus the analysis on important issues
- prevent redundancy and excess bulk in documents.

B FSA Policy on Scoping

FSA shall use scoping for all environmental analysis. This includes the simplest of EE actions to EA's and complex, multi-agency EIS's. Scoping helps to identify and categorize significant environmental issues in its environmental review.

Formalized scoping is used to ensure that analytical EA's and EIS's can be prepared that will reduce paperwork and avoid delay.

Scoping allows FSA to obtain the assistance and consultation of affected agencies that have special expertise or legal jurisdiction in the proposed action. If early analysis associated with EE or EA identifies a need for EIS, FSA shall publish NOI to prepare EIS in FR. NOI is to request the assistance of all interested agencies, groups, and persons in determining the scope of the evaluation of the proposed action.

Some kind of scoping is used at all 3 levels of environmental analysis.

- For EE, completing FSA-850 or RD-1940-22 is a form of scoping.
- For EA and EIS, scoping is needed to determine what issues to address, and the kinds of expertise, analyses, and consultations likely to be needed. Scoping can, thus, serve as the basis for budgeting the time and money necessary for environmental review. Scoping for EA also may lead to the identification of significant potential effects, and the decision to prepare EIS.

With the advice of, or at the direction of SEC, it will be determined how much and what kind of scoping is necessary for a specific action, and which specific methods of obtaining Agency, tribal, and other public participation will be used.

131 Policy (Continued)**B FSA Policy on Scoping (Continued)**

Scoping streamlines the environmental process by limiting the range of analysis to only those issues that are significant, while ensuring that a full range of action alternatives is explored and all potential impacts are identified at the beginning of the planning process.

The written results of scoping depend on the level at which scoping is done. For example, the documentary result of scoping a CATEX is a completed EE checklist; that of EA or EIS is typically the scope of work for the analysis to be performed, or a scoping document that serves as the basis for developing a scope of work.

132 Internal Scoping**A Process**

--FSA personnel and contractors carry out internal scoping. Internal scoping includes discussion among agency employees, interdisciplinary analysis, review of previous-- actions, and review of pertinent background data. SEC or NECM should always be involved in internal scoping if the environmental review is at a level higher than CATEX.

B Appropriate Use

It may be the only kind of scoping required for CATEX documented with EE or in scoping a simple EA, or it may be used before and in conjunction with external public scoping.

133 External Scoping**A Implementation**

Normally external scoping is conducted with Federal, State, or local agencies that have special expertise or legal jurisdiction in resource values that may be significantly affected.
* * *The scoping will identify agencies that may become cooperating agencies.

External scoping includes formal public involvement, consultations with agencies with jurisdiction by law or expertise, and publication of notices and draft documents. It is used to refine, adjust, or correct the issues identified by internal scoping.

Agencies with jurisdiction by law are those whose permission or assistance may be required by FSA for the action to proceed (such as, USACE, if wetlands may be affected), and those with other kinds of regulatory or advisory authority (such as, FWS with respect to ESA, or ACHP with respect to historic properties).

133 External Scoping (Continued)**A Implementation (Continued)**

Agencies with expertise are those that are likely to have authoritative information and opinions about the area where the action is proposed, or about environmental impacts (such as, SHPO/THPO).

RAO should consult with other Federal, State, and local government agencies, and with Indian tribes through government-to-government mechanisms, as appropriate.

In the scoping meeting, determine the range of actions, alternatives, and impacts to be evaluated and included in EIS as defined in 40 CFR Part 1508.25. Appropriate, timely requests and notification are to be made to promote public participation in scoping.

Conduct periodic meetings of the cooperating agencies at important decision making points to provide timely interagency, interdisciplinary participation.

As part of its scoping process FSA shall:

- invite any Federal, State, and local agencies, Indian tribe, and other interested individuals and organizations that might be affected by the project to participate in developing the appropriate environmental review
- determine which issues should be analyzed in depth
- eliminate any issues that are not significant or that have been the subject of prior environmental review
- identify other environmental studies that have been completed, are being completed, or will need to be completed as a result of this review
- identify any other environmental review or consultation requirements.

* * *

133 External Scoping (Continued)**B Time and Page Limits**

RAO, through the scoping process, will set time and page limits as prescribed in 40 CFR Part 1501.8. Time and page limits are established by FSA in consultation with sponsors and others according to the projected availability of resources. RAO is to make the applicant aware of the possible need for revising time and page limits because of changes in the scope of the project or identification of resources.

When dealing with timing, consider the following factors:

- potential for environmental harm
- size of the proposed action
- state of the art analytic techniques
- degree of public need for the project
- consequences of project delays
- number of persons and agencies affected by the proposed project
- degree to which relevant information is known and if not known the time that would be required to obtain the needed information
- degree to which the proposed action is controversial
- *--other time limits placed on the Agency or the project by law, regulation or EO.--*

CEQ makes recommendations on the length for EIS's. The text of a final EIS should normally be less than 150 pages for non-controversial proposed actions and less than 300 pages for proposed actions of unusual scope or complexity. When judging the page length, look at the purpose, alternatives, affected environment, and environmental consequences sections only.

During scoping, RAO will initiate review under Section 106 of NHPA, establish the scope of efforts necessary to identify historic properties and identify effects of actions and alternatives on such properties. RAO will initiate consultation with SHPO, THPO, or both, and other concerned parties, establish the action's area of potential effect, arrange for appropriate public participation, and establish the scope of necessary analysis and further consultation under Section 106.

134-170 (Reserved)

Section 2 Public Participation and Consultation

171 Public Participation

A Background

FSA will involve the public in the NEPA process as early as possible and maintain public involvement throughout the process. * * *For example, extensive public participation activities are required in implementing new programs and project actions, but limited public participation is appropriate for project technical and financial assistance.

Public involvement is appropriate during:

- scoping
- the actual analysis of alternatives, the affected environment, and potential impacts
- review of the results of analyses as recorded in EA's and EIS's.

Identification of interested public is an important part of NEPA. The interested public consists of but is not limited to, individuals, groups, organizations, and government agencies. *--These entities shall be identified, sought out, and encouraged to participate in and contribute to the interdisciplinary planning involved with the completion of the EE, EA, or EIS.--*

B Types of Public Participation

The level and kind of public involvement varies widely and depends on the nature of the action and the issues involved. The important thing to remember is that public involvement is not simply a matter of holding a meeting, hearing the public's views, and ignoring them. It involves:

- ongoing dialogue with concerned members of the public, aimed, to the extent feasible, at reaching agreement
- developing mitigation measures, if appropriate
- implementing the project.

There are many ways to accomplish appropriate public involvement. Specific kinds of public participation may include workshops; formal and informal consultation; field trips; facilitated and mediated consultation; public meetings; and solicitation and review of and response to comments. One-way information flow, often called public relations or public education, can be achieved through various kinds of paper or electronic publications, information fairs, and electronic interactive media. Professional assistance in interactive media, meeting management, facilitation, and mediation may be necessary in complex or controversial cases.

*--**Note:** It is FSA's decision whether a public meeting will be held. FSA should carefully consider whether a meeting will result in obtaining useful feedback for the environmental review process before deciding to hold a meeting.--*

171 Public Participation (Continued)**C Methods for Involving the Public**

Recommended methods of involving the concerned public include:

- finding who the potential “stakeholders” (that is, those with an economic, cultural, social, or environmental "stake") are through background research, consultation with knowledgeable parties, and public meetings
- consulting with stakeholders to establish and address their concerns
- where appropriate and necessary, using facilitators or mediators
- where feasible and consistent with the Federal Advisory Committees Act, seeking formal, written agreement with stakeholders on whether or how to move forward with the action, what mitigation is appropriate, etc.

Where there may be language or cultural barriers to effective communication about a decision (such as, where a low-income or minority community is involved that is not proficient in English), be sure that public participation measures are sensitive to such barriers and help people try to overcome them. Translations into the community's usual language, and meetings conducted to accommodate cultural traditions, values, and modes of communication may be necessary. Professional assistance may be necessary.

When public meetings are held for purposes of scoping:

- ensure that meeting facilities are accessible to the disabled
- provide sign language interpreters for the hearing impaired
- make special arrangements, as needed, for consultation with affected Indian tribes or other Native American groups who have environmental concerns that cannot be shared in a public forum.

171 Public Participation (Continued)

D Providing Public Notice for Projects of Local or Regional Concern

*--If the effects of a project or program are of a local concern and covered by a site specific EA, public notice will be provided as follows:

- FSA will:
 - share information on the project or program with SHPO and THPO, Indian tribes, and other interested parties whenever Section 106 review is initiated and used to elicit expressions of interest from members of the general public

Note: Public notice is not a substitute for consultation as required by Section 106 but is a tool that may be used in initiating consultation and dialogue.
 - provide individual copies of all correspondence to any individuals, groups, local, State, and Federal agencies known to be interested in the project; affected property owners; and to any other parties that FSA has identified to be so notified
- the applicant will:
 - publish the NOA for the draft EA (**FP only**) for at least 3 consecutive days in a daily newspaper or in 2 consecutive issues of a local newspaper in easily readable type in the non-legal section of the newspaper with a 15-calendar-day comment period

Note: The notice will be bilingual if the affected area is largely non-English speaking or is bilingual.
 - publish NOA of the final EA and FONSI (FP and FLP) for at least 3 consecutive days in a daily newspaper or in 2 consecutive issues of a local newspaper with a 15-calendar-day comment period--*

171 Public Participation (Continued)

D Providing Public Notice for Projects of Local or Regional Concern (Continued)

- *--provide FSA with copies of the NOA for the draft and/or final EA's as they appeared in the newspapers, and the dates published.

Level of Environmental Review	NOA for the Draft EA	NOA for the Final EA	FONSI
EE - FLP or FP	No	No	No
Class I EA - FLP	No	No	Yes*
Modified Class I EA - FLP	No	No	Yes*
Class II EA - FLP	No	Yes	Yes
EA - FP	Yes	Yes	Yes

*FONSI is prepared but not published for public comment.

E Providing Public Notice for Projects or Programs of Regional Concern

If the effects of a project or program are identified to be of a regional concern, such as an action covered by a programmatic EA, FSA will:

- share with SHPO and THPO, Indian tribes, and other interested parties whenever Section 106 review is initiated and used to elicit expressions of interest from members of the general public

Note: Public notice is not a substitute for consultation as required by Section 106 but is a tool that may be used in initiating consultation and dialogue.

- share information on the environmental review process with FWS and NMFS whenever the project or program has the potential to affect threatened or endangered species or critical habitat of these species

Note: FSA will initiate informal consultation with FWS and/or NMFS early in the environmental review process.

- publish the NOA for the draft and final EA in 2 consecutive issues of a sufficient number of newspapers or other publications that serve the area of potential effect in easily readable type in the non-legal section of the newspaper
- post the draft EA on the FSA National Office public website
- provide for a 30-calendar-day comment period for the NOA for the draft EA
- publish NOA for the final EA and FONSI in 2 consecutive issues of a sufficient number of newspapers or other publications that serve the area of potential effect with a 30-calendar-day comment period--*

171 Public Participation (Continued)

***--E Providing Public Notice for Projects or Programs of Regional Concern (Continued)**

- post the final EA and FONSI on the FSA National Office public website
- maintain copies of the NOA's for the draft and final EA's as they appeared in the newspapers and the dates published.

Note: For some regional projects or programs, FSA may elect to publish the preliminary and final notices in the FR.

F Providing Public Notice for Programs of National Concern

If a programmatic EA or EIS is developed for a program or proposed action that will be implemented on a national basis, FSA will:

- publish NOI as necessary
- publish the NOA of draft EA or EIS in the FR with a 30-calendar-day comment period for an EA and with a 90-calendar-day comment period for an EIS
- post the draft EA or EIS on the FSA National Office public website
- publish NOA for FONSI for an EA or NOA and ROD for a final EIS with a 30-calendar-day comment period
- post the final EA with FONSI or EIS with ROD on the FSA public website.

For programs or projects that require an EIS, the first element of formal public participation is publishing the NOI to prepare an EIS. The content of the NOI will include the date of the scoping meetings and will be published in the FR. Press releases can be another method in which to make the public aware of the contents of the NOI and request public participation in the development of the draft EIS. Bilingual press releases should also be available if the affected area is largely non-English speaking or bilingual.

Individual copies of the NOI will be sent to the appropriate EPA office; any State or Federal agencies planning to provide financial assistance to this or related actions or required to review permit applications for the proposed action; any potentially affected Indian tribes; and individuals, groups, local, State, and Federal agencies known to be interested in the proposed action; and to any other parties that FSA has identified to be notified.--*

171 Public Participation (Continued)

***--G Projects Affecting Floodplains or Wetlands**

For projects involving construction that will be located in floodplains, FSA will be required to provide both a preliminary and a final notice as required by EO 11988, Floodplain Management. This notification process applies to all construction projects, FP or FLP, located in or affecting floodplains regardless of the level of environmental review completed. For FLP projects only, no financial assistance can be provided to applicants to drain, dredge, fill, or otherwise manipulate a wetland.

For those actions that are considered repetitive and have no potential to adversely affect floodplain values, FSA may complete a class review according to EO 11988. For those actions for which a class review is appropriate, FSA will not be required to make findings of no practicable alternative or to publish notices for subsequent actions in the class.

Type of Notice Required when Floodplains and Wetlands are Affected		
Level of Review	FLP Project in Floodplain	FP Project in Floodplain
EE – FLP or FP	N/A	N/A
Modified Class I EA - FLP	N/A	
EA - FP Class I EA - FLP Class II EA - FLP	Preliminary and Final Notice	Preliminary and Final Notice

The notices required for projects affecting floodplains may be combined with the preliminary and final notices associated with the completion of EA's. For those projects only requiring an EE, Class I EA, or Modified Class I EA, the notices providing information on the project's potential effects on wetlands and floodplains must still be provided even though public notice for NEPA is not required. In this case, a 15-calendar-day timeframe for both the preliminary and final notice will be sufficient.--*

171 Public Participation (Continued)

H Public Meetings

RAO, after consulting with the applicant, determines when public meetings or hearings will be held. Public meetings may be in the form of a workshop, tour, open house, or similar forum. Environmental information is to be presented and discussed with other appropriate information. To the extent practical, FSA will make pertinent information available before the meetings. If a draft EIS is being considered at a public hearing, EIS should be made available to the public at least 15-calendar-days in advance unless the purpose of the hearing is to obtain information for the draft EIS.

I Documentation

RAO shall maintain a reviewable record of public participation in the environmental review process. This record will be available to the public upon request.

--All environmental review documents may be made available to the public in accordance with FOIA and subject to restrictions on pre-decisional, proprietary, and otherwise confidential-- information, including archaeological site locations.

172 Consultation

A Understanding Consultation and Public Participation

RAO and others should not confuse public participation and consultation. Public participation is required by NEPA and can include a variety of actions. The level and kind of public participation depends on the nature of the proposed action and the likely environmental issues identified during internal scoping. Scoping will also help identify appropriate entities to include in the public participation.

B Requirement for Consultation

Consultation is also required by other statutes including NHPA, NAGPRA, and ESA. Consultation is a much more formal process of seeking, discussing, and considering the views of specifically identified groups such as SHPO, THPO, appropriate Indian tribes, and FWS. Exhibit 23 provides sample letters for SHPO/THPO consultation.

173-200 (Reserved)

Part 4 Environmental Review Process

Section 1 Categorical Exclusions

201 CATEX Process

A Overview

Some FSA programs or parts of programs do not normally create significant individual or cumulative impacts on the human environment. Certain programs have been designated as such by Congress and therefore have been exempted from NEPA review in specific legislation.

Other classes of actions that do not individually or cumulatively have potential for a significant effect on the environment and, therefore, do not require further environmental analysis, have been established as CATEX's * * * according to 40 CFR Part 1507.3(b)(2)(ii).

B Purpose

This section provides guidance on the CATEX process for FSA's actions that do not require completing EA or EIS.

202 Types of CATEX's

A Categorizing CATEX's

CATEX's cover categories of actions that usually do not require either EA or EIS (in the absence of extraordinary circumstances) and include actions:

- that have only minimal adverse effects on environmental quality
- that result in no measurable change to existing environmental conditions
- too small to contribute measurably to cumulative environmental impacts
- that have socioeconomic effects only.

For FSA actions, CATEX's fall into the following categories.

- Actions that are listed by the Agency as not requiring any type of review or documentation
- Actions that may have the potential to cause * * * impacts to the human environment but do not require completing EA to make this determination. For these types of actions, FSA will complete FSA-850 for FP actions or RD 1940-22 for FLP actions to determine if the proposed action is categorically excluded from further environmental review.

202 Types of CATEX's (Continued)**B Identified CATEX's**

* * *The following actions have been identified by FSA as CATEX's that do not require completing EE, EA, or EIS:

- award of financial assistance for planning purposes, management and feasibility studies, or environmental analyses
- individual farm participants receiving:
 - dairy and other indemnity payments
 - marketing assistance loans and LDP's
 - sugar loan payments
 - Crop Disaster Program payments
 - PFC's
 - direct and counter-cyclical payments
 - NAP payments

* * *

- Ewe-Lamb Replacement and Retention Program payments
- reconstitutions of farm tracts
- production adjustment programs for tobacco, peanuts, and extra long staple cotton
- trade adjustment assistance payments
- similar types of program payments that are not provided for the purpose of completing a site-specific action

202 Types of CATEX's (Continued)

B Identified CATEX's (Continued)

- *--the award of financial assistance for planning purposes, management and feasibility studies, or environmental impact analyses
- loan closing and servicing activity including partial releases, for all FSA/CCC loan programs except for those specifically addressed in subparagraph 204 C
[7 CFR Part 1940.310(e)(2)]
- construction management activities, amendments and revisions to approved projects, including the provision of additional financial assistance, that do not alter the purpose, operation, location, or design of the project as originally approved
[7 CFR Part 1940.310(e)(2)]
- issuing regulations, handbooks, and internal guidance as well as amendments to them, describing administrative and financial procedures for processing, approving, and implementing FSA programs [7 CFR Part 1940.310(e)(3)]
- procurement activities for goods and services, routine facility operations, personnel actions, and other management activities related to the operation of FSA
[7 CFR Part 1940.310(e)(4)]
- reduction in force or employee transfers resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar circumstances
[7 CFR Part 1940.310(e)(5)]
- the lease or disposal of real property by FSA whenever the transaction is either not controversial for environmental reasons, is not a historic property, or will not result in a change in use of the real property within the reasonably foreseeable future.
[7 CFR Part 1940.310(e)(6)]

When 1 of the actions listed in this subparagraph is completed, RAO should include the following statement in the running record of the producer's or project case file:

“This action was reviewed in accordance with 1-EQ, paragraph 202 B and determined that the proposed action will have minimal effect on environmental quality with **no** potential to significantly affect the quality of the human environment. Therefore, an environmental evaluation or environmental assessment is **not** required.”--*

203 CATEX's and Further Review Under Other Laws**A Section 106 of NHPA**

During consideration of whether an action is CATEX under NEPA, RAO will also consider whether the action is the type of action that has the potential to affect historic properties and subsequently require review under Section 106 of NHPA.

If this potential exists, RAO will complete the Section 106 review, according to FSA regulations while screening the action to determine whether extraordinary circumstances exist, requiring further review under NEPA for other protected resources. An action may require Section 106 review and still be categorically excluded under NEPA review; however, a severe, unmitigated, or very controversial Section 106 impact may constitute an extraordinary circumstance triggering further review or assessment under NEPA.

B Section 7 of ESA

In the same manner, ESA requires review as part of or separate from the CATEX process. Actions that are typically categorically excluded may still have an impact on threatened and endangered species and, therefore, could trigger a higher level of assessment if there is a potential impact to a threatened and endangered species. If the project is located within, or has the potential to adversely affect any of the protected resources considered in the EE process, complete EA if the potential impacts cannot be successfully mitigated or other feasible alternatives are unavailable.

204 Actions Requiring EE

A Overview

Some of FSA's actions require completing EE to ensure that no "extraordinary circumstances" exist and to indicate a need for EA or EIS. These would be those actions that are not listed as CATEX's or as requiring EA or EIS.

The actions carried out under FSA programs that might have impacts on the quality of the human environment will normally have been discussed in programmatic EA's or EIS's on the applicable programs. Individual farm participation in FSA programs will normally not *--require major involvement with the NEPA process, although Section 106 of NHPA and ESA is still applicable. Individual farm participation in acreage set-aside, acreage allotments, price support and loans, and other similar or related programs generally will not significantly affect the quality of the human environment. RAO shall use the EE screening process to--* determine the appropriate NEPA consideration for all FSA actions, except for those specifically identified in subparagraph 202 B as CATEX. EE can be completed on either a site specific or programmatic basis. Actions specifically identified in subparagraph 252 C will automatically require completing EA and will not require completing EE.

B Screening Actions to Determine CATEX Status

The EE screening process shall:

- focus particularly on the potential environmental adverse affects of FSA actions by considering the appropriate environmental factors and protected resources listed on *--FSA-850, NRCS-CPA-52, or RD 1940-22--*
- be designed to consider the significance of the potential * * * effects of the action, as defined in 7 CFR Section 799.9, Section 1940.310 of RD Instruction 1940-G, and discussed in CEQ NEPA regulations at 40 CFR Part 1508.27
- be used by RAO to determine and document FSA's decision whether or not at least 1 of either of the following circumstances exist:
 - *--extraordinary circumstances that would cause a significant effect on the human--* environment and require EA
 - potential for significant impact on the human environment and EIS is needed.

204 Actions Requiring EE (Continued)

C Screening Actions Involving Financial Assistance

The EE screening will be used for financial assistance for:

- individual contracts approved under CRP, CREP, or continuous CRP
*--[7 CFR Part 799.10(e)]
- payments issued under ECP or TAP [7 CFR Part 799.10(d)]
- purchasing an existing farm, or enlarging 1, provided no major shifts in land use are proposed [7 CFR Part 1940.310(d)(1)]
- purchasing livestock and essential farm equipment, including crop storing and drying equipment, provided this equipment is not to be used to accommodate major shifts in land use [7 CFR Part 1940.310(d)(2)]
- paying annual operating expenses other than those specifically addressed in subparagraph 202 B [7 CFR Part 1940.310(d)(3)]
- refinancing debts, provided there is no potential to adversely effect important resources or other environmental issues [7 CFR Part 1940.310(d)(3)(iii)]
- constructing essential farm dwellings and service buildings of modest design and cost, as well as repairs and improvements to them [7 CFR Part 1940.310(d)(4)]
- onsite water supply facilities to serve a farm dwelling, farm buildings, and livestock needs [7 CFR Part 1940.310(d)(5)]
- installing or enlarging irrigation facilities, including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers designed to irrigate less than 80 acres [7 CFR Part 1940.310(d)(6)]--*

* * *

204 Actions Requiring EE (Continued)**C Screening Actions Involving Financial Assistance (Continued)**

- replacing or restoring irrigation facilities only, to include those facilities previously discussed, with minimal change in use, size, capacity, or location from the original facility [7 CFR Part 1940.310(d)(7)]
- developing farm ponds or lakes of no more than 5 acres in size [7 CFR Part 1940.310(d)(8)]
- converting:
 - land in agricultural production to pastures or forests [7 CFR Part 1940.310(d)(9)(i)]
 - pastures to forests [7 CFR Part 1940.310(d)(9)(ii)]
- land clearing operations of no more than 15 acres, provided no wetlands are affected [7 CFR Part 1940.310(d)(10)]
- converting no more than 160 acres of pasture to agricultural production [7 CFR Part 1940.310(d)(11)]
- constructing grain storage facilities under the Farm Storage Facility Loan Program [7 CFR Part 799.10(d)].--*

204 Actions Requiring EE (Continued)

C Screening Actions Involving Financial Assistance (Continued)

- *--transfers, assumptions, and subordinations [7 CFR Part 1940.310(e)(2)]
- leasing or disposing of real property by FSA whenever the transaction is either controversial for environmental reasons, is a historic property, or will result in a change in use of the real property within the reasonably foreseeable future [7 CFR Part 1940.310(e)(6)]
- individual participation in the Debt Cancellation Conservation Contract Program (debt-for-nature) [7 CFR Part 1940.310(e)(2)].

D Loss of Categorical Exclusion

When completing RD 1940-22 or FSA-850, the reviewer will determine if any of the circumstances listed below for the specified resources will occur:

Note: If any of these circumstances have the potential to occur:

- an EA must be completed for FP actions
- a Modified Class I EA must be completed for FLP actions.
- wetlands, the proposed action would either:
 - be located adjacent to a wetland or a wetland is within the project site
 - alter the hydrology or vegetation of the wetland
 - affect the values and functions of the wetland by such means as converting, filling, draining, or directly discharging into it
- floodplains, the proposed action would either:
 - include or involve existing structures located within a 100-year floodplain (500 year floodplain if critical action)
 - be located within a 100-year floodplain (500-year floodplain if critical action) and affect the values and functions of the floodplain by such means as converting, dredging, or filling or clearing the natural vegetation;
- wilderness (designated or proposed), the proposed action would either:
 - be located in a wilderness area (inholding)
 - affect a wilderness area such as by being visible from the wilderness area--*

204 Actions Requiring EE (Continued)***--D Loss of Categorical Exclusion (Continued)**

- wild or scenic river (proposed or designated or identified in the NRI), the proposed action would 1 of the following:
 - be located within 1/4 mile of the banks of the river
 - involve withdrawing water from the river or discharging water to the river via a point source
 - be visible from the river
- historical and archaeological sites (listed on or eligible for NRHP), the proposed action would 1 of the following:
 - contains a historical or archaeological site within the construction site or APE
 - adversely affect a historical or archaeological site
 - involve the disposal of inventory property
- critical habitat or endangered/threatened species (listed or proposed), the proposed action would:
 - contain a critical habitat within the project site
 - be adjacent to a critical habitat
 - affect a critical habitat or endangered/threatened species
- coastal barrier included in coastal barrier resources system, the proposed action would be located within the coastal barrier resources system
- natural landmark (listed on National Register of Natural Landmarks), the proposed action would either:
 - contain a natural landmark within the project site
 - affect a natural landmark
- important farmlands, the proposed action would convert important farmland to nonagricultural uses except when the conversion would result from the construction of on-farm structures necessary for farm operations
- prime forest lands, the proposed action would convert prime forest land to other uses, except when the conversion would result from the construction of on-farm structures necessary for farm operations--*

204 Actions Requiring EE (Continued)

***--D Loss of Categorical Exclusion (Continued)**

- prime rangelands, the proposed action would convert prime rangeland to other uses except when the conversion would result from the construction of on-farm structures necessary for farm operations
- approved coastal zone management area, the proposed action would be located within an approved coastal zone management area and no agreement exists with the responsible State agency requiring a consistency determination for the type of action under consideration
- sole source aquifer recharge area, the proposed action would be located within a sole source aquifer recharge area and no agreement exists with the EPA requiring an EPA review of the type of action under consideration
- State water quality standard, the proposed action would impair a water quality standard, including designated and/or existing beneficial uses, or would not meet applicable antidegradation requirements for point or nonpoint sources.

For FLP actions, whenever a CATEX loses its status as an exclusion for any of the reasons listed in this subparagraph, the environmental impacts of the action must be reviewed through the preparation of a Class I EA that will be referred to as a Modified Class I EA. Not all of the procedural requirements for a Class I EA apply in this limited case, however. The following exemptions exist:

- no public notice provisions of subparagraph 171 D apply
- the applicant does **not** complete RD 1940-20
- the action does **not** require a Class II EA if more than 1 important land resource is affected.

If the exclusion is lost for an FP action for any of the reasons listed in this subparagraph, an EA **must** be completed.

Note: The public notice provisions of subparagraph 171 D apply.--*

205 Timing**A Overview**

CATEX's listed in subparagraph 202 B require no timing since there is no EE screening involved.

B Process

--For CATEX's requiring EE screening, FSA-850, NRCS-CPA-52, or RD 1940-22 should-- be completed as early as possible to ensure that NEPA and any other required environmental compliance is met before RAO decides to initiate the action.

206 Responsibilities**A Overview**

RAO is responsible for determining whether the action meets the criteria for CATEX and documenting that determination.

B Process

--FSA-850, NRCS-CPA-52, or RD 1940-22 must be completed by RAO, with the oversight-- of, or in consultation with SEC, as needed.

207 Scoping for CATEX's**A Overview**

EE's require internal and, possibly, external scoping for RAO to determine the basis for *--preparing FSA-850, NRCS-CPA-52, or RD 1940-22. External environmental experts and--* agencies with jurisdiction by law or expertise (such as FWS and the appropriate SHPO/THPO) must be consulted, along with local government representatives, interest groups, and Indian tribes, as appropriate. Consultation should be documented in the project file. This document can include copies of correspondence, notes from telephone calls, and printed e-mails.

B Purpose

This level of scoping ensures that no “extraordinary circumstances” exist that would require preparing EA or EIS. Usually, the necessary information can be obtained through the library or other internal FSA research. Consultation with outside parties can be accomplished by telephone and written correspondence. The information gathering process can be accomplished without public meetings.

208 Public Participation in CATEX's**A Overview**

Generally, CATEX's require no public participation except in projects or actions in a floodplain, wetland, or with the potential to effect historic property. This public participation is not the same as the NEPA and NHPA requirements of consultation.

B Process

--In cases where FSA-850 or RD 1940-22 indicates that the proposed action is affecting-- floodplains, wetlands, or historic property, RAO will follow the requirements of public participation listed in Part 3, Section 2.

209 Completing the Environmental Checklist**A Overview**

--The environmental checklist, RD 1940-22 for FLP and FSA-850 for FP activities, must-- be completed before commencing with any project. Site visits are required for all initial and subsequent actions (including loans) when there has been a substantial change in the operation.

B Preparer

EE can be prepared by FSA employees who have received training for the type of evaluation being completed.

Because of the complexity of the project or time constraints, EE can be completed by contract with outside consultants. If any portion of EE is completed by outside agency sources, FSA shall independently evaluate the information submitted and shall be responsible for its accuracy and any required consultation with SHPO/THPO and FWS. FSA-852, FSA's administrative review of EE's and EA's, will be used to assist RAO in the review of the documents provided from outside sources.

210 Follow Through for CATEX Determinations

A Overview

--RAO should not file FSA-850, NRCS-CPA-52, or RD 1940-22 and forget it. Ensure--
that whatever is necessary to carry out the conclusions reached is done. If it is concluded that
the CATEX finding requires no further review, then file EE with the project files, and make
--it available to others, as needed. If the conclusion is that further review and consultation is--
needed under another authority (such as ESA, NHPA), make sure that this review occurs.

B Conclusion

If the conclusion is that EA or EIS must be completed, make sure that the appropriate level of
analysis and documentation is carried out (see Part 4, Section 2 for EA's and Section 3 for
EIS's). * * *

211-250 (Reserved)

Section 2 Environmental Assessments

251 Purpose

A Reasons for Preparing EA

The principle purposes for preparing EA are to:

- evaluate the impacts of the proposed actions and to mitigate any potential adverse impacts on the human environment
- help determine whether to prepare EIS for the proposed action.

Note: FSA uses EA's as a method to streamline NEPA compliance for actions that are not major Federal actions significantly affecting the quality of the human environment.

*--This handbook uses the term EA in a general sense. For:

- FLP activities, EA will either mean:
 - Class I EA or Modified Class I EA, RD 1940-21
 - Class II EA, FSA-853B (Exhibit 12)
- FP activities, EA will mean EA prepared according to the format contained in FSA-853A (Exhibit 14).--*

If a proposed action is listed in paragraph 252, or if EE indicates a higher level of review is needed, EA will be necessary.

B Possible Results of Preparing EA

There are 3 possible results of EA:

- FONSI
- preparing EIS (see Part 4, Section 3)
- withdrawing the proposal on the basis of its environmental impacts.

252 What Is EA**A EA Overview**

CEQ NEPA regulations at 40 CFR Part 1507.3(b)(2)(iii) require FSA to develop specific criteria for identifying those typical classes of action that normally require EA's but not necessarily EIS's. EA shall be prepared for programs or actions when the reviewer determines that the action may have extraordinary circumstance such that EA is necessary to adequately assess the impacts of the proposed action.

EA shall include brief discussions of the purpose and need for the proposal, of alternatives as required by NEPA Section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

The extent of the analysis performed shall be limited to the potential environmental impact of the proposed action as directed by CEQ regulations.

EA shall result in either FONSI or the decision to prepare EIS. FONSI shall include EA or a summary of it and shall note any other environmental documents related to it. If EA is included, FONSI need not repeat any of the discussion in EA. Instead, it may be incorporated by reference.

RAO shall distribute FONSI to interested agencies and individuals. Notice of its availability shall be published according to subparagraph 171 D.

B EA's and Section 106 of NHPA

RAO will ensure compliance with Section 106 of NHPA during the EA analysis, and that the results of this compliance are documented in EA and/or FONSI.

An adverse effect on a historic property as determined under Section 106 of NHPA does not necessarily trigger preparing EIS. Adverse effects that are not resolved by executing MOA with SHPO and/or THPO and other interested parties, or that are very complex, controversial, or otherwise significant despite MOA, may trigger preparing EIS.

252 What Is EA (Continued)

C Actions That Normally Require EA

As a minimum, actions for which EA normally would be prepared include any of the following.

- State CREP agreements.
- Financial assistance for a livestock-holding facility, project, or feedlot having a capacity at 1 time as large or larger than 1 of the following:

***--Note:** The following table will be used to determine the level of EA to complete and whether a CNMP or NMP is required to satisfy mitigation requirements. If head of animals or AU's match those in:

- column 1, a Class I EA will be completed
- column 2, a Class II EA will be completed.

Animal Type	1		2	
	Class I EA		Class II EA	
	Head	AU's	Head	AU's
Slaughter steers and heifers	500	500	1,000	1,000
Mature dairy cattle (milkers or dry cows)	350	490	700	980
Swine (each weighing 55 lbs or more)	1,250	500	2,500	1,000
Swine (each weighing 55 lbs or less)	12,500	500	25,000	1,000
Sheep	5,000	500	10,000	1,000
Broilers regardless of the type of manure handling or watering system used	50,000	5,000	100,000	10,000
Layer hens regardless of the type of manure handling or watering system used	50,000	5,000	100,000	10,000
Horses	250	500	500	1,000
Combination of animal units	500		1,000	

--*

Note: If the operation is comprised of a combination of the above, the capacity will be determined based on a combination of animal units. Animal unit means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

252 What Is EA (Continued)**C Actions That Normally Require EA (Continued)**

- Financial assistance for installing or enlarging irrigation facilities including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers. If designed to irrigate:
 - at least 80 acres, but no more than 160 acres, a Class I EA will be completed
 - more than 160 acres or a wetland is affected, a Class II EA will be completed.
- Financial assistance for developing farm ponds or lakes. If total size of area covered by ponds or lakes is 5 to 10 acres, a Class I EA will be completed. If total size of area covered by ponds or lakes is more than 10 acres or a wetland is affected, a Class II EA will be completed. Financial assistance for constructing or enlarging aquaculture facilities will require completing a Class II EA.
- Financial assistance for land clearing operations. If 15 to 35 acres are cleared, a Class I EA will be completed. If more than 35 acres are cleared or a wetland is affected, a Class II EA will be completed.
- Financial assistance for constructing energy producing facilities designed for on-farm needs such as methane digesters and fuel production facilities. A Class I EA will usually be sufficient unless extraordinary circumstances exist which could cause adverse impacts to the environment.
- Financial assistance for converting pasture to agricultural production. If 160 to 320 acres are converted, a Class I EA will be completed. If more than 320 acres are converted or a wetland is affected, a Class II EA will be completed.
- Financial assistance for using a farm or portion of a farm for recreational purposes or nonfarm enterprises. If no more than 10 acres are affected, a Class I EA will be completed. If more than 10 acres are affected or a wetland is affected, a Class II EA will be completed.
- Constructing commercial storage facilities.
- Any proposed action which is normally considered CATEX, but which is controversial for environmental reasons, or which is the subject of an environmental complaint raised by another agency, interested group, or citizen. For FLP activities, these cases will usually be handled by completing a Class I EA. If a proposed FLP action normally considered a Class I is controversial for environmental reasons, a Class II EA should be completed unless the complaint focuses on a single impact.

252 What Is EA (Continued)**C Actions That Normally Require EA (Continued)**

- FLP loan closing and servicing activities, transfers, assumptions, subordinations, construction management activities, and amendments and revisions to all approved actions that alter the purpose, operation, location, or design of the proposed action as originally approved. The decision as to whether to complete a Class I or Class II EA will be determined by what level of EA would be done for a proposed action that is equivalent in size or type. For example, if a transfer is being considered for a dairy operation with a current herd size of 350 mature dairy cows and no further change is planned, based on the number of animal units, a Class I EA would be completed.
- Proposals for legislation as defined in CEQ regulations, Section 1508.17. For FLP legislative proposals, Class II EA will be completed. For FP legislative proposals, EA prepared according to the format described in this handbook will be completed.
- Leasing or disposal of real property that is controversial for environmental reasons such as a change in use in the reasonably foreseeable future. Class I EA will be completed.
- issuing regulations, FR notices, or amendments to existing programs that describe either the entities, proposals, and activities eligible for FSA assistance, or the manner in which these proposals and activities must be located, constructed, or implemented.

D Structure and Content

Prepare:

- *--Class I EA's using RD 1940-21--*
- Class II EA's for FLP activities according to FSA-853B (Exhibit 12)
- EA's for FP activities according to FSA-853A (Exhibit 14).

253 Timing for Preparing EA**A When to Prepare EA**

Begin preparing EA for the action as soon as it is determined that the action cannot be categorically excluded from NEPA review, and that the action will not automatically be the subject of EIS. Prepare EA concurrently with the initial technical and economic studies for the project.

B Incorporating Consultation Requirements

Any required consultations under other environmental laws such as ESA or NHPA must be completed before RAO signs FONSI. Through these consultations, measures to reduce or mitigate impacts below the level of significance may be identified and agreed upon with the relevant permitting or consulting agencies and groups. Mitigation agreed to through these consultations may be carried out after FONSI is issued, and must be stipulated in FONSI.

254 Who Prepares EA for FSA Projects**A Internal Preparation**

EA can be prepared by FSA employees who have received training for the type of assessment being completed.

B External Preparation

Because of the complexity of the project or time constraints, EA can be completed by contract using outside consultants. If any portion of EA is completed by outside sources, FSA shall independently evaluate the information submitted and shall be responsible for its accuracy. RAO shall use FSA-852 to assist in reviewing the documents provided from outside sources.

255 Characteristics of a Good EA

A Overview

EA is not a "mini-EIS." If the action or the nature of its potential issues and impacts is complex and requires detailed and comprehensive analysis, EIS should be performed.

B Preparing an Adequate EA

To prepare an adequate EA, RAO should:

- be analytic, not encyclopedic [**40 CFR Part 1502.2**]
- use an interdisciplinary approach and integrate the natural and social sciences, and the environmental design arts [**40 CFR Part 1502.6**]
- write in plain language, and use graphics to make it readily understandable by decision makers and the public [**40 CFR Part 1502.8**]
- be concise, usually less than 15 pages in length, EA should be no longer than absolutely necessary to comply with NEPA and CEQ regulations [**40 CFR Part 1502.2**]
- encompass the range of alternatives to be considered by the decision maker including the no action alternative [**40 CFR Part 1502.2**]
- describe how the alternatives and conclusions reached in EA will or will not achieve the requirements of NEPA Sections 101 and 102(1) and other environmental laws and policies [**40 CFR Part 1502.2**]
- focus on significant environmental issues and alternatives; avoid including extraneous background data [**40 CFR Part 1502.1**]
- be clear, and to the point; support the alternatives and conclusions with evidence that RAO has made the necessary environmental analyses [**40 CFR Part 1502.1**]
- ensure that EA serves as a means to correctly assess environmental impacts of a proposed action, not as justification for decisions already made [**40 CFR Part 1502.2**].

256 Methodology for Completing EA's

A Site Specific Actions

When completing EA for site specific actions do the following:

- obtain information from the applicant listed in subparagraph 4 E
- obtain copies of the following:
 - general location map
 - topographical map
 - floodplain map
 - soils maps with soils identification or standard soil survey
 - aerial survey
- visit site to view environmental issues and assess potential impacts
- *--take digital photos--*
- identify and consider alternatives related to the proposed action
- consider each of the protected resources in Part 5 to organize consultation and coordinate impact determinations
- identify other Federal, State, and local related activities; document consultation; and consider cumulative impacts
- obtain written or documented oral comments from State and Federal agencies, universities, local and private groups

Note: Document consultation and consider cumulative impacts and as a minimum *--contact SHPO, THPO, and FWS with detailed information and preliminary--* determination about the project. See Exhibit 23 for sample letters.

- identify any cooperating Federal or State agencies directly involved with the FSA activity and coordinate the environmental impact determination
- consider a public meeting if impacts are complex, interrelated, or difficult to assess
- publish notice, as noted in Part 3, Section 1, to meet early public involvement requirements
- if necessary, develop mitigation measures and document in the assessment.

Note: Include mitigation measures in the offer of financial assistance as special conditions or in the implementation requirements.

256 Methodology for Completing EA's (Continued)

A Site Specific Actions (Continued)

The completed EA will be forwarded to:

- *--SEC for review and concurrence when approval authority for the action exceeds that of the preparer--*
- SHPO and THPO for final compliance of Section 106 requirements.

Note: It is not necessary to send to SHPO or THPO if they responded in their initial contact that they do not wish to review the final EA document.

B Programmatic Actions

A programmatic EA is an EA that addresses a group of actions by different applicants as a whole, rather than 1 at a time in separate EA's. For example, programmatic EA might address a group of different actions occurring in the same place, or a single action occurring in many different places. Programmatic EA's can save great amounts of staff * * * time, but are appropriate only in certain types of situations.

The central problem in preparing programmatic EA is having sufficient information to determine and evaluate effects when the exact number and scope of actions taking place may be uncertain. As a result, programmatic EA's typically will be successful only when the activities being addressed in the proposed project are relatively well defined and not overly conjectural, are similar in nature or geography, and occur at similar points in time or within a predictable time line. Programmatic EA's can be prepared at the time a group of actions is proposed. To expedite small-scale actions, they can also be prepared before specific project proposals, if the proposals can be defined in advance and are reasonably foreseeable.

Programmatic EA's are prepared following the same steps for the site-specific EA in subparagraph A.

C Scoping in the EA Process

RAO must conduct sufficient interdisciplinary environmental analysis to determine whether to prepare EIS or FONSI for the proposed action. Use scoping to limit and focus the range of analyses RAO conducts to those needed to make the determination.

Scoping should determine what effects of the proposed action and its alternatives may, upon analysis, be **significant** to the human environment. Scoping should focus on, but not necessarily be bound by, the indicators of significance. Scoping is an analytic activity that must be carried out in consultation with agencies having jurisdiction by law or expertise, the proponent (if any), neighborhood groups, local citizens, business and civic organizations, Tribes, and the public.

256 Methodology for Completing EA's (Continued)**C Scoping in the EA Process (Continued)**

Agencies and other parties that need to be consulted during EA preparation vary depending on the character of the action and its effects. If the action will take place in the coastal zone, consultation with the State coastal zone agency will be necessary. If historic properties may be affected, consultation under NHPA Section 106 should be coordinated with SHPO and/or THPO. Where a neighborhood may be affected, its residents and their representatives should be consulted. Where an agency has specific procedures or regulations about how it is to be consulted, these should be followed. Where a low-income or minority community is involved, consultation must be carried out in a manner that takes into account language, cultural, educational, and economic barriers.

*--Provide for public involvement during EA preparation on at least 3 occasions:

- during scoping
- after draft EA is completed
- after final EA and FONSI are completed.--*

The methods and amount of public involvement should be commensurate with the nature of the project, expected impacts, potential for public controversy, and potentially significant issues, as determined by RAO in consultation with SEC.

The basic rule is that those parties who may have concerns about, or information on, the potential environmental effects of the action should be involved in preparing and reviewing EA. Under no circumstances should EA instead of EIS be prepared in an attempt to minimize public knowledge of, or involvement in, an action. Involving the public in EA does not necessarily mean that EA must be distributed in draft for comment, though this may often be appropriate. Public involvement in EA preparation is a flexible matter, generally involving one-on-one meetings, small group discussions, and other forms of consultation. In rare cases organized workshops, facilitated meetings, and mediation may be appropriate, but if these elaborate forms of involvement become necessary, this may be a strong indicator that the action is controversial enough on environmental grounds to merit preparing EIS.

Scoping may reveal that no new data is needed to determine whether or not the action will have significant effects. If this is the case, then scoping can lead directly to completing EA. On the other hand, scoping may lead to the conclusion that additional data are needed, both to determine whether or not an expected environmental impact is significant and to help develop suitable mitigation measures.

257 Finding of No Significant Impact**A Overview**

FONSI is a document that briefly presents the reasons why an action, not otherwise excluded will not have a significant effect on the human environment and for which EIS therefore will not be prepared. It shall include EA or a summary of it.

--FONSI's may be issued that include mitigation measures. In these cases, FSA may approve actions with mitigated FONSI's as long as applicants are fully aware of the required mitigation measures and appropriate timeframes provided for implementation of required mitigation measures. The EA process is considered complete when the comment period for the FONSI has ended.--

B FONSI Process

The process for arriving at FONSI includes:

- complete analysis and if no significant impacts are identified, prepare FONSI
- *--if FONSI determination is reached, the NOA of the final EA and FONSI will be published for:
 - 15-calendar-days for projects of local concern
 - 30-calendar-days for projects of regional concern

Note: For projects of local concern, the applicant is responsible for publication and--* all associated costs. Comments to FONSI are to be sent to RAO, who will in turn consider comments and include them in the assessment, if deemed appropriate.

- if environmental review cannot support FONSI, then EIS becomes necessary.

*--**Note:** Immediately notify the applicant, SEC, and NECM if EIS is necessary.--*

258 Supplemental EA's**A Conditions Allowing a Supplemental EA**

If conditions change after RAO completes EA (such as, project plans change), supplement EA as needed to accommodate the changed circumstances and address any previously unconsidered impacts.

B Conditions Not Allowing a Supplemental EA

If major changes occur, it may be necessary to prepare EIS.

259-300 (Reserved)

Section 3 Environmental Impact Statements

301 Purpose

A Purpose of EIS

EIS is required for major Federal actions significantly affecting the quality of the human environment.

The primary purpose of EIS is to serve as an action-forcing device to ensure that the policies and goals defined in NEPA are infused into the ongoing programs and actions of the Federal government. EIS is used by Federal officials in conjunction with other relevant material to plan actions and make decisions.

B Background

EIS:

- analyzes the environmental impacts of a proposed action and its alternatives, and displays them in a report for consideration by the decision-maker in determining which alternative, if any, to implement
- reveals the impacts to the public before the decision is made and provides an opportunity for the public to understand the impacts and influence the decision
- is usually a more complex and lengthy document than EA
- is subject to more stringent preparation and review standards
- is prepared only on what appear to be major Federal actions significantly affecting the quality of the human environment.

302 Types of EIS's

A Programmatic EIS

Agencies may prepare EIS on a broad Federal action, such as a program or plan for which only very general environmental information is known. This is called a programmatic EIS.

302 Types of EISs (Continued)**B Site Specific EIS**

The EE process will be used to identify those site-specific cases that require preparing EIS. Agencies may prepare EIS on site specific proposals for which substantial environmental detail is available. This is the usual type of site-specific or project-specific EIS. In some cases, a site-specific EIS may be "tiered" to a programmatic EIS.

Both site specific and programmatic EISs go through a published DEIS that is distributed for public and Agency review. This is followed by FEIS, which contains responses to those public and Agency comments on DEIS.

If new circumstances warrant, it may be necessary to prepare SEIS. SEIS can be added to either DEIS or FEIS and should focus on only those changes that warrant it. Incorporate the earlier discussions and analyses by reference (40 CFR 1502.9).

303 Agency Decision Making**A Overview**

The NEPA regulations at 40 CFR 1501.1 contain requirements to ensure that adequate consideration of environmental factors in decision making.

B Steps in Decision Making

To fulfill these requirements, NECM shall:

- consider all relevant environmental factors in evaluating proposals for FSA action
- make all relevant environmental documents, comments and responses part of the record in formal rulemaking or adjudicatory proceedings
- ensure that all relevant environmental documents, comments and responses accompany the proposal through existing review processes
- consider only those alternatives encompassed by the range of alternatives discussed in the relevant environmental documents when evaluating proposals for FSA action
- where EIS has been prepared, consider the specific alternatives analyzed in EIS when evaluating the proposal that is the subject of EIS.

304 Determining Need for EIS**A Criteria for Completing EIS**

FSA has developed specific criteria to identify typical classes of action that normally require EIS, according to CEQ NEPA regulations at 40 CFR 1507.3(b)(2)(i). In general, the 4 categories of FSA activities that have or are likely to have significant impacts on the human environment are:

- legislative proposals that would result in major program changes
- initial implementation of a program that could produce major environmental concerns
- major changes in ongoing programs
- major environmental concerns with ongoing programs.

B When to Prepare EIS

In addition to the EIS criteria set forth in 7 CFR Section 799.9 and 7 CFR Section 1940.320, use following information to determine whether to prepare EIS.

EIS is required for:

- broad federal assistance programs administered by FSA when EE indicates there may be significant cumulative impacts on the human environment
- other major Federal actions that are determined, after completing EE, to significantly affect the quality of the human environment.

Note: If it is difficult to determine whether it is likely that there will be significant impact on the human environment, it may be necessary to complete EE and prepare EA to determine if EIS is required.

304 Determining Need for EIS (Continued)**B When to Prepare EIS (Continued)**

RAO, in consultation with the SEC and/or NECM, determines the need for an EIS for each action, program, or regulation. EE or EA, using a systematic interdisciplinary analysis and evaluation of data and information responding to the 5 provisions of NEPA Section 102(2)(C), will assist RAO, SEC and/or NECM in deciding if the action requires preparing EIS. In analyzing and evaluating environmental concerns, RAO will address these questions.

- Will the proposed action significantly affect the quality of the human environment (see 40 CFR 1508.14)? For example, will it significantly alter or destroy valuable wetlands, important farmlands, historic properties, or threatened and endangered species? Will it affect social values, water quality, fish and wildlife habitats, or wilderness and scenic areas?
- What are the important environmental amenities that would be lost if the proposed action were implemented?
- Are there alternative ways of accomplishing the action that would achieve the planning objectives but avoid adverse environmental effects?
- Will the proposed actions, in combination with other actions, sacrifice the enhancement of significant long-term productivity as a tradeoff for short-term uses?

Initial NEPA review of FSA programs shall begin at the time FSA begins developing proposed legislation; begins the planning stage for implementing a new or changed program; or receives notice that an ongoing program may have a significant adverse impact on the environment.

305 Criteria for Determining a Significant Impact**A Determining Significance**

Prepare EIS for proposed actions that are determined to have a significant impact on the human environment per CEQ regulations at Section 1508.27.

When determining significance, NEPA requires consideration of both context and intensity.

- Context means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend on the effects in the locale rather than in the world as a whole. Both short and long term effects are relevant.
- Intensity refers to the severity of impact. RAO must bear in mind that more than 1 agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

- impacts that may be both beneficial and adverse

Note: A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial

- the degree to which the proposed action affects public health or safety
- unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, wetlands, wild and scenic rivers, or ecologically critical areas
- the degree to which the effect on the quality of the human environment is likely to be highly controversial
- the degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks
- the degree to which the action may establish precedent for future actions with significant effects or represents a decision in principle about a future consideration

305 Criteria for Determining a Significant Impact (Continued)**A Determining Significance (Continued)**

- whether the action is related to other actions with individually insignificant but cumulatively significant impacts

Note: Significance:

- exists if it is reasonable to anticipate a cumulatively significant impact on the environment
- cannot be avoided by terming an action temporary or by breaking it down into small component parts.
- the degree to which the action may adversely affect districts, sites, structures, or objects listed in or eligible for the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historic resources
- the degree to which the action may adversely affect a listed threatened or endangered species or designated critical habitat
- whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

Use the 2 components of context and intensity as the basis for analyzing the significance of a potential effect.

B Addressing Cumulative Impacts

In using the criteria for a significant impact, the cumulative impacts of other FSA actions planned or recently approved in the proposal's area of environmental impact, other related or similarly located Federal actions, and non-Federal related actions must be given consideration. This is particularly relevant for frequently recurring FSA actions that on an individual basis may have relatively few environmental impacts but create a potential for significant impacts on a cumulative basis.

306 Notice of Intent**A Preparing Notice of Intent**

To ensure adequate Agency coordination and public participation, FSA shall publish NOI in FR. As set forth in the NEPA regulations at 40 CFR 1508.22, NOI shall briefly:

- describe the proposed action and possible alternatives
- describe the Agency's proposed scoping process including whether, when, and where any scoping meeting will be held
- state the name and address of a person within the Agency who can answer questions about the proposed action and EIS.

307 Timing and Compliance**A When to Prepare EIS**

Before EIS is prepared, NECM must define the proposed action.

Begin preparing EIS as soon as it is determined that neither EE nor EA appropriately address the environmental effects of the proposed action. EIS may be supplemented at a later stage, if necessary, based on new information or changes in the proposed action (40 CFR 1502.5). This supplemental material shall be introduced into the formal administrative record in the same manner as that in the original EIS.

A copy of FEIS is provided to each Federal and State agency, organization, group, or individual that furnished substantive comments on DEIS.

307 Timing and Compliance**B PEIS's**

PEIS is required if EE or EA reveals that actions carried out under the program are individually insignificant but cumulatively have significant environmental impacts.

RFO, through the process of tiering, determines if a site specific EA or EIS is required for an individually significant action that is included in PEIS.

C Circulation and Review

EIS's must be circulated and reviewed at the same time as other planning documents to which EIS pertains, and accompanied by any proposed decision document pertaining to the subject of EIS.

EIS's shall be prepared in draft and final stages. The DEIS must be submitted to the SHPO/THPO, other consulting parties in the Section 106 review process, and ACHP. FEIS is filed with CEQ.

D Compliance with Other Statutes

EIS must document compliance, as applicable, with Section 106 of NHPA, ESA, etc. The draft EIS shall identify the potential impacts of the proposed action and alternatives on historic properties, endangered species, etc. Means of resolving adverse effects will be developed during review of public comments on DEIS, and documented in FEIS and/or ROD.

308 Record of Decision**A What Constitutes ROD**

As a part of the EIS process, FSA shall prepare ROD that:

- states what the decision is
- identifies all alternatives considered by FSA in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable
- states whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why such mitigation measures were not adopted.

B Preparing and Filing ROD

*--RFO shall prepare and sign ROD following the 30-calendar-day administrative action period initiated by EPA's publication of NOA of FEIS in FR. It shall serve as the public record of the decision as described in 40 CFR Part 1505.2 of CEQ regulations. ROD shall be distributed to all who provided substantive comments on the DEIS and all others who request it.

NOA of ROD will be published in FR for national programs or in local newspapers--* serving the project area for site specific or regional projects. RFO may choose to publish the entire ROD.

309 Responsibilities**A Preparing EIS at National or Regional Level**

Whenever trained FSA personnel determine there is a need to prepare EIS, SEC will coordinate with NECM to coordinate activities in completing EIS. EIS will be completed, generally by contract method, at the State or National Office level.

B Preparing EIS at State Level

SEC and SED will be responsible for actions initiated in the State. NECM will be consulted as required.

310 Characteristics of a Good EIS

A Interdisciplinary Approach

Prepare EIS using an interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts. The disciplines of the preparers will be appropriate to address the potential environmental impact associated with the project. This can be accomplished both in the information collection stage and the analysis stage by communication and coordination with environmental experts at local, State, and Federal agencies and universities near the project site. When needed information or expertise is not readily available, these needs should be met through procurement contracts with qualified consulting firms.

B Elements of a Good EIS

To prepare a good EIS, RAO should:

- be analytic, not encyclopedic [40 CFR Part 1502.2]
- use an interdisciplinary approach and integrate the natural and social sciences, and the environmental design arts [40 CFR Part 1502.6]
- write in plain language and use graphics to make it readily understandable by decision makers and the public [40 CFR Part 1502.8]
- be concise, usually less than 150 pages in length, EIS should be no longer than absolutely necessary to comply with NEPA and CEQ regulations [40 CFR Part 1502.2], unless the proposal is of unusual scope or complexity [40 CFR Part 1502.7]

Note: EIS length varies first with the nature of potential environmental problems, and then with project size [40 CFR Part 1502.2].

- encompass the range of alternatives to be considered by the decision maker, including the no-action alternative [40 CFR Part 1502.2]
- describe how the alternatives and conclusions reached in EIS will or will not achieve the requirements of NEPA Sections 101 and 102(1) and other environmental laws and policies [40 CFR Part 1502.2]
- focus on significant environmental issues and alternatives; avoid including extraneous background data [40 CFR Part 1502.1]
- be clear, and to the point; support alternatives and conclusions by evidence that the necessary environmental analyses have occurred [40 CFR Part 1502.1]
- ensure that EIS serves as a means to correctly assess the environmental impacts of a proposed action, not as justification for decisions already made [40 CFR Part 1502.2].

311 Preparing EIS

A Scoping

As soon as possible after a decision has been made to prepare EIS, the following process will be initiated by the preparer for identifying the major issues to be addressed in EIS and for developing a coordinated government approach to preparing and reviewing EIS.

- The first step in this process will be publicizing NOI to prepare EIS. The notice will indicate that EIS will be prepared and will briefly describe the proposed action and possible alternatives; state the name, address, and phone number of the preparer, indicating that this person can answer questions about the proposed action and EIS; list any cooperating agencies, and include the date and time of the scoping meeting. If the latter information is not known at the time NOI is prepared, it will be incorporated into a special notice, when available, and published and distributed in the same manner as NOI. It is the responsibility of the preparer of EIS to inform NECM of the need to publish NOI.
- A scoping meeting will be held and should be integrated with any other early planning meetings of FSA or other involved agencies. The scoping meeting will be chaired by the preparer of EIS and will be organized to accomplish the following major purposes (as well as other purposes listed in 40 CFR Part 1501.7).
 - Invite the participation of affected Federal, State, and local agencies, any affected Indian Tribe, the proponent of the action, and any interested parties including those who may disagree with the action for environmental reasons.
 - Determine the scope and the significant issues to be analyzed in depth in EIS.
 - Prepare other required analyses and studies concurrently with, and integrated with EIS.
 - Indicate the relationship between the timing of preparing environmental analyses and FSA's tentative planning and decision making schedule.

Note: Minutes of the scoping meeting, including the major points discussed and decisions made, will be prepared and retained by the preparer of EIS as part of the environmental file. The preparer will offer, during the scoping meeting, to send copies of the minutes to any interested party upon written request.

311 Preparing EIS (Continued)

B Public Involvement

The first element of formal public participation in the EIS process involves the publication of NOI to prepare EIS. With respect to notification within the project area, the applicant will be requested to publish a copy of NOI and the date of the scoping meeting in the newspaper of general circulation in the vicinity of the proposed action and in any local or community-oriented newspapers within the proposed action's area of environmental impact. The notice will be published in easily readable type in the non-legal section of the newspaper. It will also be bilingual if the affected area is largely non-English speaking or bilingual.

Individual copies of the notice will be sent by the applicant to:

- the appropriate regional EPA office
- *--any State and regional review agencies established under EO 12372--*
- SHPO/THPO
- local radio stations and other news media
- any State or Federal agencies
 - planning to provide financial assistance to this or related actions
 - required to review permit applications for this action
- any potentially affected Indian tribe
- any individuals, groups, local, State, and Federal agencies known to be interested in the project
- affected property owners
- any other parties that FSA has identified to be notified.

The notice will also be posted at a readable location on the project site. The applicant will provide FSA with a copy of the notice as it appeared in the newspaper, the dates published, and a list of all parties receiving an individual notice. Publication and individual transmittal of the notice for the scoping meeting will be accomplished at least 14-calendar-days before the date of the meeting.

Concurrent with the distribution of either DEIS or FEIS, a notice of the statement's availability will be published within the project area in the same manner as NOI to prepare EIS. NECM will request EPA to publish in FR a notice of EIS's availability according to EPA's requirements and pursuant to 40 CFR Part 1506.10.

312 Requirements for Environmental Analysis**A Purpose**

Environmental analysis in EIS determines the nature and severity of any potential environmental impacts from the proposed action or reasonable alternative before deciding whether and how to go ahead with the proposed action or alternative. This is different from the purpose of the analysis that goes into preparing EA, which is focused specifically on determining whether the proposed action or alternatives may significantly affect the quality of the human environment.

Environmental analysis should be commensurate with the significance of the environmental issues and potential effects on those resources discussed in Part 5 identified during scoping. Analyze issues that are not significant only enough to confirm that they are not significant (40 CFR 1502.2). However, the preparer may recognize through analysis that these issues are significant, and other issues may be recognized as analysis proceeds.

The mere fact that an issue has been identified as insignificant during scoping, or not addressed during scoping, does not exclude that issue from analysis if its significance or potential significance is identified during analysis.

B Professional Integrity

FSA must "insure the professional integrity, including scientific integrity, of the discussions and analyses in Environmental Impact Statements" (40 CFR 1502.24). This means:

- use appropriately qualified experts
- carry out the analysis according to:
 - the generally accepted principles and methods of the disciplines relevant to the analysis
 - explicitly justified alternative approaches
- provide adequate time for the analysis
- ensure that analysts not compromise or alter their data or conclusions to accommodate the adoption of a preferred alternative.

312 Requirements for Environmental Analysis (Continued)**C Adequate Detail**

Environmental impacts and values must be "identified in adequate detail so they can be compared to economic and technical analyses" (40 CFR 1501.2(b)). This does not mean that all such impacts and values must be quantified; many environmental factors by their nature cannot be quantified. It does mean that environmental impacts and values must be:

- given sufficient authoritative analysis
- sufficiently well translated into language that decision makers and the public can understand
- able to be realistically factored into decision making on a "level playing field" with economic and technical analyses.

D Data Gathering

Based on scoping, RAO, in consultation with SEC, determines what data need to be gathered and analyzed for EIS, and arranges for the necessary studies.

E Dealing with Incomplete or Unavailable Information

CEQ regulations at 40 CFR 1502.22 prescribe a 4-step process for dealing with situations when needed information is not available, or is incomplete.

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment and there is incomplete or unavailable information, the agency shall always make clear that this information is lacking.

- If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in EIS.

312 Requirements for Environmental Analysis (Continued)**E Dealing With Incomplete or Unavailable Information (Continued)**

- If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means for obtaining it are not known, the agency shall include within EIS:
 - a statement that this information is incomplete or unavailable
 - a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse effects on the human environment
 - a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment
 - FSA's evaluation of these impacts based upon theoretical approaches or research methods generally accepted in the scientific community.

313 Structure of EIS**A Size**

CEQ recommends that EIS be concise and to the point, and that RAO set page limits; "tier" to higher level documents; and incorporate, by reference, reports, analyses and data as a way of reducing redundancy, paperwork, and bulk.

B Tiering

If EIS is a follow-on action to a previous EIS, RAO should not repeat material already covered in the previous EIS, but should simply state that the EIS is being "tiered" to the previous EIS.

C Incorporation by Reference

CEQ requires agencies to use "incorporation by reference" to reduce bulk in EISs (40 CFR 1502.21). This means ROA can cite references to data sources or standard methodologies without repeating verbatim, or paraphrasing, all the detail in the source referenced.

Thus, for example, RAO can state in EIS that a wetland has been delineated according to the standard practice described in USACE's Wetland Delineation Manual, include the manual in the list of references cited, and state the results of the study. RAO would not include lengthy descriptions of field methods, mapping techniques, and types of equipment used.

313 Structure of EIS (Continued)**D Contents**

The substantive contents of EIS are specified by CEQ regulations at 40 CFR 1502.10, based on the requirements of NEPA at 102(2)(C). Thus, EIS must include discussion of the following topics, in the order listed, unless a compelling reason to do otherwise is provided:

- purpose of and need for action
- alternatives, including the proposed action
- affected environment
- environmental consequences
- list of preparers
- list of agencies, organizations, and persons to whom copies of EIS are sent.

Note that this organization is not altogether logical. For example, material discussed in detail in the "Environmental Consequences" chapter is summarized in the "Alternatives" chapter, and the critical matter of scoping must be squeezed into the "Purpose and Need" chapter. Nevertheless, this is the organization that CEQ regulations specify, and RAO must follow it to provide for government-wide consistency among EIS's.

314 Dealing With DEIS**A Distributing and Reviewing DEIS**

Once DEIS has been completed, FSA shall publish a notice of availability in FR, and in a local newspaper if the project is of local concern. FSA shall also obtain comments from any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved. The agency should also request comments from appropriate State and local entities. The applicant, if any, the public, or organizations who may be interested or affected by the proposal should be requested to comment.

B Response to Comments on DEIS

The preparer of EIS will respond to comments on draft EIS as required by 40 CFR 1503.4. The major and most frequently raised issues during the public information meeting will also be identified and addressed.

315 Dealing With FEIS

A Distributing FEIS

FEIS's are filed with EPA and CEQ and provided to all cooperating agencies. Final EIS are made available to, but are not necessarily automatically provided to, all who commented on draft EIS.

B FEIS Notice of Availability

Concurrent with the distribution of either a draft or final EIS, a notice of the statement's availability will be published within the project area in the manner as NOI to prepare EIS as provided for in subparagraph 311 B.

C Filing EIS

The Administrator or designee that has been delegated the authority to prepare EIS must file EIS with EPA according to 40 CFR 1506.9.

316-350 (Reserved)

Section 4 Supplements and Revisions to NEPA Documents**351 Supplementing and Revising NEPA Documents****A Purpose**

To maintain flexibility in the face of changing circumstances, and to eliminate redundancy in its environmental process, agencies are permitted by CEQ regulations to revise and issue supplements to environmental documents. Supplemental analyses and documents should focus on the environmental issues or concerns that led to the need for a supplement.

EAs and EISs may be supplemented or revised. This supplemental or revised material shall be introduced into the formal administrative record in the same manner as that in the original document.

B When to Revise or Supplement

A revision is a relatively simple change, usually involving a simple errata sheet or sheets, or a few replacement pages. A revision is used when a factual error is discovered, or when minor changes take place that need to be recognized in the NEPA document.

A supplement is a more substantial change of sufficient magnitude that a new draft and final document must be prepared and circulated in the same manner as the original document.

Never use a revision to make significant substantive changes in an environmental document. CEQ regulations require that a supplement be prepared if either of the following apply:

- substantial changes in the proposed action that are relevant to environmental concerns
- significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

Examples of these changes include:

- changes in the purpose and need for the action
- changes in key assumptions about population trends, environmental conditions, or economic forecasts
- changes in environmental conditions so that the environmentally preferable alternative changes.

351 Supplementing and Revising NEPA Documents (Continued)**C Timing**

Prepare the supplement as soon as practicable after a change in circumstance that warrants a supplement is identified. Revisions may be prepared at any time.

FSA may also prepare revisions and supplements whenever it determines that additional environmental documentation is needed.

D Responsibilities

Trained FSA staff must be alert to the possible need for revisions and supplements, and are responsible for preparing them as needed, in consultation with or with the direction of SEC.

E Preparing Supplements to EE, EA, EIS

County, State, or the National Office, as appropriate, will prepare supplements to EE, EA, or EISs. If the preparer of the draft or final EIS determines that the changes or new circumstances do not require preparing a supplemental EIS, the preparer will complete EA which will document the reasons for this determination.

The preparer will be responsible for advising the approval official of the need for a supplement.

F Public Involvement

The public should be involved in supplemental environmental analyses to the extent necessary to perform adequate analysis of the issues of concern. A draft supplemental EA or EIS must be circulated to agencies and the public in the same manner as the original environmental document.

G Circulation and Filing

Copies of revisions and supplements must be provided to all parties reviewing the original NEPA document and included with the original NEPA document.

352-400 (Reserved)

Part 5 Environmental Resources and Special Issues**Section 1 Evaluation****401 Introduction****A Background**

Evaluating environmental resources and special issues includes those environmental analyses which are necessary as part of the environmental planning process for a project. Some of the more common types of resources and special issues that FSA must consider as part of its environmental analyses include:

- wetlands
- floodplains
- sole source aquifer recharge area
- threatened and endangered species and designated critical habitat
- wilderness areas
- coastal barrier resources system or approved coastal zone management area
- wild or scenic river
- national natural landmark
- historical properties and cultural resources
- water quality
- air quality
- noise
- important farmland
- environmental justice
- social and economic impacts.

Evaluating these resources provides the background for considering alternatives and preparing environmental documents, which form the basis for environmental decision making.

Decisions about the need for evaluating environmental resources, and about what kinds of special studies are needed, should be based on scoping. RAO should begin any evaluation as early as possible in the course of completing EA or EIS analysis. Evaluating resources take time, and if an evaluation begins too late, it can hold up completing environmental review and project planning.

401 Introduction (Continued)**B General Actions of the Preparer of the Environmental Document**

An evaluation of protected resources and special issues is often used to comply with other environmental laws and related requirements. CEQ regulations at 40 CFR 1502.25 require that environmental assessments designed to meet the requirements of other laws “to the fullest extent possible” be conducted concurrently with and integrated into the environmental review process, to reduce delay and to ensure that the necessary information is available to the decision maker.

RAO will closely coordinate the evaluation of protected resources and special issues with each of the other protected resources while evaluating the project for applicability to the request for FSA program involvement. Basically, FSA must carry out **interdisciplinary** analysis, not merely multidisciplinary analysis, of environmental impacts.

Specifically, RAO will conduct those evaluations required by NHPA, ESA, and other environmental review laws and Executive orders.

C Obtaining Special Studies

Studies to evaluate potential impacts on other protected resources may be obtained using in-house technical experts, through interagency agreements, or by contracting with outside consultants. For individual program participation, the cost of the study, if any, will be the responsibility of the applicant applying for program assistance.

D Organization of This Part

This part provides guidance on the basics of conducting various kinds of evaluations of each of the protected resources and special issues. Each topic has its own subsection, containing a legal reference, broad outline of data requirements, brief description of field or other evaluation methods.

This part can serve as a guide to the preparer of the environmental document, along with consulting with SEC, contract consultants, or other FSA experts.

402-424 (Reserved)

Section 2 Wetlands

425 Background

A Overview

--FSA is required by various laws to protect wetlands while implementing its various-- programs. This section implements the requirements of CWA Section 404, EO 11990, DR 9500-3, and CONACT Section 363.

B Legal Requirements

CWA Section 404 establishes a program to regulate the discharge of dredge and fill material into waters of the United States, including wetlands. Individuals are required to have a permit before discharging dredged or fill material.

EO 11990 requires FSA to avoid undertaking or providing assistance for new construction in wetlands unless FSA finds that:

- there is no practicable alternative to this construction
- the proposed action includes all practicable measures to minimize harm to wetlands that may result from this use.

*--Economic, environmental, and “other pertinent” factors may be considered in reaching these findings.

Note: For FLP proposed actions, CONACT Section 363 prohibits the use of loan funds to drain, dredge, fill, level, or otherwise manipulate a wetland (as defined in the Food Security Act of 1995, Section 1201(a)(16) [16 U.S.C. 3801(a)16]), or to engage in any activity that results in impairing or reducing the flow, circulation, or reach of water, except in the case of activity related to the maintenance of previously converted wetlands. This includes refinancing requests that would involve FSA being associated with actions like buildings that were constructed in wetlands.--*

Compliance with HEL/WC * * * is addressed in 6-CP.

426 Implementation**A FSA Policy**

FSA must review, at the earliest possible stage, whether its proposed action or alternatives will be located in or affect a wetland.

B Objectives

The objectives of wetland protection:

- avoid, to the extent possible, the long and short-term adverse impacts associated with the destruction or modification of wetlands
- avoid direct and indirect support of construction in wetlands when there are practicable alternatives
- protect the Nation's long-term capability to produce food and fiber
- reduce sedimentation
- improve water quality
- assist in preserving the Nation's wetlands
- create better habitat for fish and wildlife through improved food and cover
- curb production of surplus commodities by removing certain incentives for persons to produce agricultural commodities on wetland or converted wetland areas.

CONACT Section 363 provides for further protection and interrelationship of FSA FLP and wetlands. Section 363 requires that FLP funds cannot be used to drain, dredge, fill, level, or otherwise manipulate a wetland or to engage in any activity that results in impairing or reducing the flow, circulation, or reach of water, except in the case of activity related to the maintenance of previously converted wetlands, or in the case of activity that was commenced before November 18, 1990.

426 Implementation (Continued)**C Review**

The first step in determining if the proposed action under review will have any adverse effects upon wetlands is to determine if there are any wetlands that could potentially be directly or indirectly affected by the proposed action.

D Consultation and Documentation

Several Federal agencies may be involved in wetland delineations.

- NRCS is first contact and primary agency used by FSA in the delineation, determination, and designation of wetland areas.
- USACE issues permits under CWA Section 404 for any discharge of dredging or fill material in a wetland.
- FWS has the authority to define and delineate wetlands, and maintain the National Wetland Inventory maps.
- EPA administers portions of the CWA Section 404 permit program, and issues the NPDES permits for discharge of pollutants into any waters of the United States, including wetlands.

In many States, EPA has delegated its NPDES permitting authority to a State-level EPA office. In addition, some States have established Soil and Water Boards for evaluating operations under CWA Section 404 that are not regulated under State EPA agencies.

426 Implementation (Continued)

E Process

This table provides the process for documenting compliance with the various laws related to wetlands.

Step	Action
1	<p>For covered programs, program participants must have a current AD-1026 on file at the time they request program assistance. The program participant, with guidance from RAO, must review AD-1026 on file to ensure that the self-certification is accurate. See 6-CP for guidance for completing AD-1026.</p> <p>In FLP cases involving construction, and where “yes” is answered to question 10, FSA requires a certified wetland determination only for that specific site and an appropriate amount of adjacent land, not for the entire farm. FSA may rely upon self-certification for the rest of the property in these cases. This includes certified wetland determination on non-inventoried wetlands and pastureland, if construction activity is taking place on that area.</p> <p>RAO must verify that FSA has received any required WC determinations and associated documentation by reviewing AD-1026 and AD-1026A at the time of completing the appropriate environmental review documentation.</p>
2	<p>As noted in Step 1, certain answers on AD-1026 predicate the program participant’s completing NRCS-CPA-038, with the local NRCS Office (only on new construction sites or those built within the last 12 months). Results of the NRCS findings are provided to the program participants through NRCS-CPA-026 and this data is then entered into the FSA data collection tract file. If wetlands, or converted wetlands, are found on the property a statement is provided by NRCS to the program participant with information on whether or not the program participant qualifies for a particular exemption to the provisions.</p>
3	<p>When wetlands are in close proximity or within the project area, there is a potential to affect the wetlands and the proposed action must be properly evaluated. This evaluation is done for all FSA programs. If the proposed action for new construction occurs in a wetland, early public involvement is required. Contact SEC for further guidance.</p>
4	<p>When the proposed action is in close proximity to, or within the project area, alternative sites or practicable alternatives must be carefully analyzed with the program participant, interested public, and RAO. Possible alternatives include:</p> <ul style="list-style-type: none"> • selecting an alternative site • selecting an alternative means to meet the applicant’s objectives • denying the application/program benefit, that is, the no action alternative. <p>This does not apply to prior converted wetlands.</p>
5	<p>Documentation normally consists of AD-1026, NRCS-CPA-026 with a delineation map and a report, defining the location and characteristics of any wetlands identified in the study area located in each producer's compliance file. To have a self-contained environmental document, NRCS-CPA-026 must be attached to EE or EA. AD-1026 must be reviewed thoroughly to see if NRCS-CPA-026 is needed, as noted in Step 1. If the action deals with pastureland only, NRCS-CPA-026 will not be applicable unless construction is a part of the action.</p>

427 Data Requirements

A General

Permits may or may not be necessary depending on the operation's size and/or State environmental requirements. RAO, preparing the environmental review, must remember a permit is the operation's legal ability/requirement to operate within the local/State level. EE is an evaluation process to determine if the operation will have an impact on the human and natural environments which includes wetlands issues.

B Permits

Permits may be needed on a local or State basis depending on the specific environmental requirement within each State for wetland restoration. RAO, preparing EE or EA, must refer to SEG or State Environmental Procedure to obtain further guidance on State or local requirements.

--For FLP projects, applicants cannot construct in wetlands; therefore, no permits should be obtained.--

C Documentation

Documentation of the decision will be within the appropriate environmental review document.

Form	Item	Documentation Needed
NRCS-CPA-52	1	NRCS review or certified determination.
FSA-852	2	
*--Class I EA	2a	
Modified Class I EA	2a	
RD 1940-22	2a and 3	
FSA-850	3a	
Class II EA	*--*	
EA	*	NRCS review or certified determination.**
EIS	*	

*Include in appropriate sections in EA or EIS concerning potential impacts to wetlands.

**Programmatic EA's and EIS's will not require site-specific wetland determinations.

428-450 (Reserved)

Section 3 Floodplains

451 Background

A Overview

FSA shall provide leadership and take action to:

- reduce the risk of flood loss
- minimize the impact of floods on human safety, health, and welfare
- restore and preserve the natural and beneficial values served by floodplains.

B Legal Requirements

EO 11988 requires FSA to:

- evaluate the potential effects of any actions taken in a floodplain
- ensure that its plans consider flood hazards and floodplain management needs
- *--consider alternatives.--*

DR 9500-3 requires that agencies discourage the unwarranted alteration of floodplains.

452 Implementation

A FSA Policy

FSA must review, at the earliest possible stage, whether its proposed action or alternatives will be located in or affect (that is, by stimulating development of) a floodplain, as defined in the FEMA guidelines.

- *--FSA will avoid construction and development in 100-year floodplains, except where no other practical alternative exists and then only after requiring mitigation measures and--* complying with public notification requirements of EO 11988 and NEPA.

452 Implementation (Continued)**B Objectives**

In general, floodplain objectives include:

- avoiding, to the extent possible, the long and short term adverse impacts associated with occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative
- preserving the special qualities (such as, floodwater storage, wildlife habitat, agricultural or forest products, stable ecosystems, and park and recreational area) of floodplains
- minimizing the impact of floods on human safety, health, and welfare.

The objectives of this section are to:

- clarify the requirements of floodplain compliance
- provide guidance on properly considering floodplain issues.

C Review

FEMA is the primary source of information for identification of floodplains. Under NFIP of 1968, FEMA conducts flood insurance studies and from these engineering studies prepares flood maps that illustrate the extent of 100-year and 500-year flood hazards to communities. These maps are called Flood Insurance Rate Maps. For some communities less detailed maps are available; these are called Flood Hazard Boundary Maps.

If a FEMA floodplain map does not exist for a particular area, assistance may be available from FWS, NRCS, USACE, or USGS, as well as State or local government agencies or offices established for flood prevention purposes.

If no floodplain information is available, there are still some options. For above ground structures, FSA may request the applicant to retain the services of an engineer to determine the site's elevation. The objective is to identify the location of floodplains. In doing so, independent, third party experts may be used whenever possible.

452 Implementation (Continued)

C Review (Continued)

In addition, FSA must evaluate the potential for a critical action. That is an action, if located or carried out in a floodplain, poses a greater than normal risk for flood-caused loss of property. That is, if flooded, the project could create an added dimension to the disaster, with the result being a greater than normal loss of life or property.

--SEC should have a copy of FEMA’s “Further Advice on Executive Order 11988 Floodplain Management” and make it available as needed, to program staff, with related guidance-- material issued by FEMA.

Effects of an action on a floodplain include not only the direct effect of actually doing something on the floodplain, but also of inducing someone else to do something. If FSA constructs a building outside the floodplain that stimulates development on the floodplain, this floodplain development must be considered under EO 11988 and it’s implementing guidelines.

The FEMA guidelines establish an 8-step process to follow in assessing and addressing floodplain effects.

Step	Action
1	<p>Review the most current FEMA-supplied Flood Insurance Rate Map to determine whether the proposed action is likely to occur within or affect a 100-year floodplain.</p> <p>If the area of interest is not covered by Flood Insurance Rate Maps, other maps prepared by USACE, USGS, or other Federal or State agencies may be used.</p> <p>In the absence of any previously mapped data, a geologist, hydrologist, botanist or other qualified professional must conduct an archival and/or field study to determine the boundaries of the 100-year (or 500-year) floodplain. Archival study methods include reviewing flood records, aerial photographs, and plat maps for the study area. Field study methods include visual inspection of the study area, excavation of trenches or other sub-surface examinations, and inspection of flood debris patterns and vegetation types. It may be efficient to combine these studies with due diligence studies and cultural resource assessments.</p> <p>If the action will not affect a floodplain, no further action is necessary other than to document the finding.</p>

452 Implementation (Continued)

C Review (Continued)

Step	Action
2	<p>Conduct early public review. If the action could affect a floodplain, the FEMA guidelines set forth specific requirements for public review, which should be coordinated with scoping and public involvement under NEPA.</p> <p>Preliminary Public Notice: FSA shall require the applicant or program participant to provide a preliminary public notice in accordance with subparagraph 171 D whenever an action may have an impact, direct or indirect, to a floodplain, and involve the affected and interested public in the decision making process. In the case of a guaranteed loan, FSA will notify the lending institution and require the lending institution to provide the requisite notice. If public notice has already been provided by another Federal or State agency, it is not necessary to duplicate the public notice.</p>
3	<p>Identify and evaluate “practicable alternatives” to locating the proposed action in the floodplain. This involves considering both alternative sites and alternative actions, including the "no action" alternative. If a practicable alternative exists outside the floodplain, FSA must locate the action at the alternative site.</p>
4	<p>If locating the action where it could affect a floodplain is the only practicable alternative, identify the full range of potential direct or indirect impacts of the action on the floodplain and its values, and on floodplain development.</p>
5	<p>Incorporate measures into the action, if it proceeds, to minimize impacts on floodplain values, and harm to the investment at risk and to others. Also incorporate measures where possible to restore and preserve floodplain values.</p> <p>Note: NFIP insurance requirements are primarily directed towards the protection of property. Requiring flood insurance of a loan applicant does not constitute compliance with EO 11988. Requiring flood insurance is a financial mitigation only after the determination has been made that no other practical alternative exists and then only after establishing mitigation measures.</p>
6	<p>Re-evaluate the proposed action to determine if it is still practicable in light of its exposure to flood hazards, the extent to which it will aggravate the hazards of others, and its potential to disrupt floodplain values.</p>
7	<p>Prepare and provide the finding to the public with an explanation of why affecting a floodplain is the only practicable alternative. This is accomplished as follows:</p> <p>Final Public Notice: In accordance with subparagraph 171 D, if a preliminary notice concerning a floodplain is given, the applicant or program participant will provide a final notice whenever it is not possible to avoid the impact, and after all practicable mitigation measures have been identified and agreed to by the applicant. The final notice can be combined with publication of FONSI.</p>
8	<p>With the conclusion of the decision-making process in steps 1-7, the proposed action would be implemented.</p>

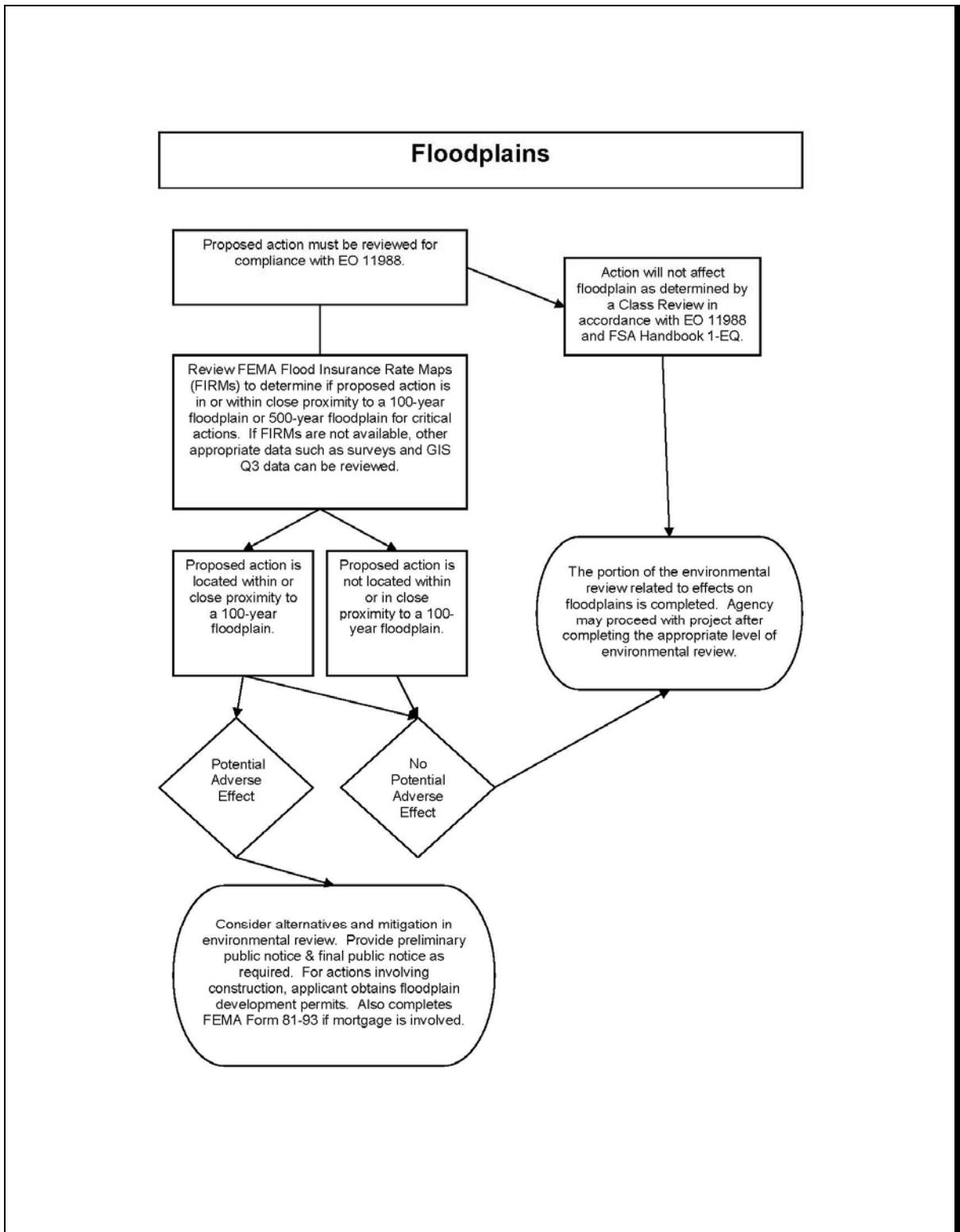
Note: Depending on the situation, this process may be carried out with fewer steps if all of the objectives of the decision-making process can be achieved.

452 Implementation (Continued)

C Review (Continued)

The following flowchart provides a summary of the steps necessary for the review.

*--



--*

453 Data Requirements

A General

FSA must determine whether its proposed action or alternatives will be located in or affect a floodplain, as defined in the FEMA guidelines.

Location of the project site on a FEMA flood map will serve as documentation for whether the proposed action is likely to occur within or affect a 100-year floodplain.

Alternatives and mitigation measures will be documented in EE, EA, or EIS. Preliminary and final public notices, as well as any comments received, will be integrated into EE, EA, or EIS, as appropriate.

Private party notification is required whenever any financial transaction guaranteed, approved, regulated, or insured by a Federal agency is in or pertains to a property located in a floodplain, and a private party is involved as an applicant, purchaser, or financier. FSA shall provide notice to private parties participating in a floodplain action of the hazards and financial risk associated with locating structures in a floodplain. Private party notification is required regardless of the type of environmental review.

B Documentation

Documentation of the decision will be within the appropriate environmental review document.

Form	Item	Documentation Needed
NRCS-CPA-52	1	Review FEMA floodplain maps.
FSA-852	2	
*--Class I EA	2b	
Modified Class I EA	2b	
RD 1940-22	2b and 2c	
FSA-850	3b	
Class II EA	*--*	
EA	*	Review FEMA floodplain maps.**
EIS	*	

*Include in appropriate sections in EA or EIS concerning potential impacts to floodplains.

**Programmatic EA's and EIS's will not require site-specific floodplain determinations but general information regarding impacts of proposed action on floodplains can be addressed.

453 Data Requirements (Continued)

C Permits

--NFIP requires a development permit for any construction development within a-- floodplain. Development includes any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations. For projects involving construction, if it is determined that the only practicable alternative is to construct the project within a floodplain, then applicable floodplain development permits must be obtained from local *--authorities. This includes any wetland or riparian area restorations as well as certain ECP projects like repairing irrigation control/diversion structures.--*

454-475 (Reserved)

Section 4 Sole Source Aquifer Recharge Areas

476 Background

A Overview

SSA is an underground water supply designated by EPA as the “sole or principal source” of drinking water for an area. FSA is directed to provide leadership and take action to reduce the risk of contamination or health hazards to a designated SSA.

B Legal Requirements

The Sole Source Aquifer Protection Program is authorized by Section 1424(e) of the Safe Drinking Water Act of 1974 (Public Law 93-523, 42 U.S.C 300 et. Seq). It states that:

"If the EPA Administrator determines, on his or her own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he/she shall publish notice of that determination in the Federal Register. After publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health. A commitment for Federal assistance may, if authorized under another provision of law, be entered into provided the plan or design for the project will assure that there will be no contamination of the aquifer."

EPA has the authority to designate SSAs. Although EPA can designate a SSA on its own, EPA's policy is to make designations only in response to formal petitions. Petitioned aquifers must meet the following criteria:

- the aquifer must supply at least 50 percent of the drinking water consumed in the area overlaying the aquifer
- there can be no other source of drinking water that could replace the sole source aquifer, should it become contaminated
- the aquifer boundaries must be clearly defined.

Note: Designations can be made for entire aquifers, connected aquifers (aquifer systems), or parts of an aquifer.

477 Implementation**A FSA Policy**

FSA will not commit Federal financial assistance, including loan guarantees, for any project that EPA has determined may contaminate a designated SSA. Federal funds may be used to modify projects to protect against aquifer contamination.

B Objectives

The overall objectives of the SSA program include protecting the sole drinking water source for certain communities.

The objectives of this section include:

- providing guidance on considering SSAs during FSA environmental review
- ensuring that FSA-funded projects, including guaranteed loans, will not have a negative impact on designated SSA.

C Review

Proposed Federal financially assisted projects, which have the potential to contaminate the designated SSA, are subject to EPA review. Proposed projects that are funded entirely by State, local, or private concerns are not subject to EPA review. It is important to remember that FSA's environmental review process must begin when Federal financial assistance has been requested for a project. The review process is specifically aimed at determining if a project is located in a designated area that has the potential to contaminate an aquifer through its recharge zone. Federal financial assistance means any financial benefit provided directly as aid to a project by department, agent, or instrumentality of the Federal Government in any form, including contracts, grants, and loans or loan guarantees.

Examples of federally funded projects, which have been reviewed by EPA under SSA protection, include:

- highway improvements and new road construction
- public water supply wells and transmission lines
- wastewater treatment facilities
- construction projects that involve disposal of storm water
- agricultural projects that involve management of animal waste.

478 Data Requirements

A General

The sole source aquifer location maps maintained by EPA will be checked for each proposed action to determine if the proposed action could have an adverse effect upon the aquifer. The results of this review will be documented on the appropriate environmental review form, EA, or EIS. If necessary, the EPA Regional Office serving the area in which the proposed action is located will be consulted for further guidance.

B Documentation

Documentation of the decision will be within the appropriate environmental review document.

Form	Item	Documentation Needed
NRCS-CPA-52	1	Review of EPA SSA listing
*--Class I EA	2m	
Modified Class I EA	2m	
RD 1940-22	2n	
FSA-850	3c	
FSA-852	5	
Class II EA	*--*	
EA	*	Review of EPA SSA listing**
EIS	*	

*Include in appropriate sections in EA or EIS concerning potential impacts to SSA's.
 **Programmatic EA's and EIS's should address potential impacts to SSA's.

479-500 (Reserved)

Section 5 Threatened and Endangered Species

501 Background

A Overview

FSA will not authorize, fund, or carry out any proposal or project that is likely to cause either of the following:

- jeopardize the continued existence of any plant or wildlife species listed by the Secretary of Interior or Commerce as threatened or endangered
- destroy or adversely modify the habitats of listed species when these habitats have been determined critical to the species' existence by the Secretary of Interior or Commerce, unless FSA has been granted an exemption for the proposal by the endangered species committee pursuant to ESA, Section 7, paragraph (h).

Congress passed ESA in 1973 to combine and strengthen its predecessors such as the Endangered Species Preservation Act of 1966.

B Legal Requirements

*--ESA, Section 7, paragraph (a) requires FSA to:

- in consultation with and with the assistance of FWS or NMFS, ensure that any action authorized, funded, or carried out by FSA is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species that is determined by the Secretary of Interior to be critical
- subject to such guidelines as the Secretary of Interior may establish, consult with FWS or NMFS on any prospective action if an endangered or threatened species may be present in the area affected by the project and that implementation of such action will likely affect such species
- confer with FWS and NMFS on any Agency action that is likely to jeopardize the continued existence of any species proposed to be listed under ESA, Section 4 or result in the destruction or adverse modification of critical habitat proposed to be designed for such species.--*

This includes those projects considered CATEX. It is 1 of the laws specifically referenced in the NEPA regulations (40 CFR Part 1502.25). FSA's evaluation of the protected resource must be integrated "to the fullest extent possible" with the environmental process.

ESA, Section 7 requires that FSA engage in interagency coordination and consultation on any action that is likely to jeopardize the continued existence of a threatened or endangered species or its critical habitat. Compliance with Section 7 usually is carried out in conjunction with the environmental review process, and the results are documented in EE, EA, or EIS for the project.

501 Background (Continued)**B Legal Requirements (Continued)**

ESA applies to federally listed species and to those “candidate” species that have been recommended for listing, but have not yet been officially listed. In addition, many species found on lists maintained by some Federal land managing agencies as well as by some States and conservation groups that believe them to be potentially subject to the ESA, should be considered during FSA planning, but the specific legal requirements vary. These are referred to as “indicator species.”

Regulations implementing ESA, Section 7 (50 CFR Part 402) prescribe specific data requirements, timetables, and consultation requirements for FSA actions.

DR 9500-4 states the USDA policies with respect to management of fish and wildlife and their habitats and prescribes specific action to implement the policies.

502 Implementation**A Policy**

FSA must determine if its action may have an adverse effect on any threatened or endangered species or critical habitat in the area of a proposed project or alternatives. FSA must also consult with FWS to determine whether the proposed action or alternative is likely to jeopardize the continued existence of any identified species. If, in the opinion of FWS, the FSA proposal or alternative would jeopardize this existence, FSA must develop acceptable mitigation measures in consultation with FWS or obtain an “exemption” from the Secretary of the Interior.

FSA must obtain background information on whether any threatened or endangered species in the vicinity of the proposed action are currently listed by FWS. If any species are currently listed for the general or specific areas under consideration, or if no previous field surveys have been performed, FSA must obtain sufficient data to determine whether any species or any critical habitat actually exists in the areas.

B Objectives

--FSA must consider and either eliminate or mitigate potential adverse impacts to threatened-- and endangered species or their critical habitat.

C Consultation

FSA will implement the consultation procedures required under ESA, Section 7 as specified in 50 CFR Part 402. It is important to note that these consultation procedures apply to any activity permitted, funded, or conducted by FSA that may affect a threatened or endangered

--species or a listed or designated critical habit. These activities include, but are not limited to, the disposal of FSA inventory property, conservation practices under the conservation programs,-- applications for financial assistance including guaranteed loan assistance and farm storage facilities loans. This process is commonly referred to as the Section 7 consultation process and involves both an informal and formal process. The latter results in a BA prepared by FSA and a biological opinion issued by FWS.

502 Implementation (Continued)

C Consultation (Continued)

FSA must identify listed or proposed threatened or endangered species or critical habitat *--within the area of potential effect before consultation with appropriate threatened and endangered species staff at FWS. Use maps to show species and habitat location. FSA--* must describe the species and critical habitat involved and where they are located and will coordinate with the appropriate FWS * * * office if:

- there is potential for the important resources to be affected through a proposed change in the farm’s land use
- the decision maker is unsure about the possible presence of threatened, endangered, or candidate species or their habitat.

In areas identified by FWS as a high priority for threatened or endangered species and/or migratory birds, especially waterfowl, RAO will allow FWS the opportunity to provide comments and will fully consider these comments in developing environmental mitigation measures for individual applications.

SEC may consult with FWS:

- *--to develop a State-specific Memorandum of Understanding to be signed by the SED and appropriate FWS official
- on a programmatic level to deal with large numbers of similar activities like large ECP projects resulting from a disaster.--*

D Process

Complete the following steps in the evaluation process.

Step	Action
1	Determine if the proposed action will have an adverse effect upon threatened or endangered species or their habitat. If it is determined that the proposed action will not have an adverse effect on threatened or endangered species or their habitat, document the finding of no effect in the appropriate environmental analysis document. No further review or consideration is needed.
2	If unsure of whether the proposed action will have an adverse effect on threatened or endangered species or habitat, contact FWS for assistance. If FWS assists in determining the proposed action will have no effect, document the finding in the appropriate environmental analysis document. No further review or consideration is needed.

502 Implementation (Continued)

D Process (Continued)

Step	Action
3	If the proposed action will have an adverse effect, document the findings and initiate the informal consultation process with FWS. The informal consultation should result in recommended conservation measures, alternatives and/or mitigation measures. The resulting information should be incorporated into the appropriate environmental analysis document.
4	If as a result of informal consultation with FWS, a biological assessment is recommended, SEC in consultation with NECM will complete or contract for completion of the biological assessment. Once completed, the biological assessment will be submitted to FWS for use in preparing a biological opinion. Upon receipt of the biological opinion, incorporate the findings into the environmental analysis document and proceed accordingly. No approval of the proposed action can occur until the biological opinion is received by FSA.

503 Data Requirements

A General

To jeopardize the continued existence of a species means to engage in a project which would be expected to reduce the reproduction, numbers or destruction of a listed species to such an extent as to appreciably reduce the likelihood of the survival and recovery of that species in the wild. The level of reduction necessary to constitute jeopardy would be expected to vary among listed species.

The destruction or adverse modification of a critical habitat means a direct or indirect alteration of critical habitat, which appreciably diminishes the value of the habitat for survival and recovery of a listed species. Some alterations include but are not limited to those diminishing the following requirements for:

- space for individual and population growth and for normal behavior
- food, water, air, light, mineral, or other nutritional or physiological requirements
- cover or shelter
- sites for breeding, reproduction, or rearing of offspring
- habitats that are protected from disturbance or are representatives of the geographical distribution of listed species.

If project is (or is not) within an area of habitat or potential habitat, documentation will be *--attached, as appropriate, according to instructions for FSA-850, RD 1940-21, RD 1940-22, EA, or EIS.--*

503 Data Requirements (Continued)

B Documentation

Documentation of the decision will be within the appropriate environmental review document.

Form	Item	Documentation Needed
NRCS-CPA-52	1	Determination of effect/consultation with FWS.
*--Class I EA	2f	
Modified Class I EA	2f	
RD 1940-22	2g	
FSA-850	3e	
FSA-852	5	
Class II EA	*--*	
EA	*	Determination of effect/consultation with FWS.**
EIS	*	

*Include in appropriate sections in EA or EIS concerning potential effects on threatened and endangered species.

**Programmatic EA's and EIS's should address potential effects on threatened and endangered species.

504-520 (Reserved)

Section 6 Wilderness Areas**521 Background****A Overview**

The Wilderness Act established the National Wilderness Preservation System and is composed of federally owned areas designated by Congress. NPS, FWS, FS, and BLM *--manage wilderness areas and wilderness study areas. Federal agencies **must** consider the--* impact of their actions on any recognized wilderness areas.

B Legal Requirements

The Wilderness Act of 1964 mandates that wilderness areas be “administered for the use and enjoyment of the American people in such a manner as will leave them unimpaired for future use and enjoyment as wilderness.”

522 Implementation**A FSA Policy**

FSA shall consider the impact of its actions on any designated wilderness areas or wilderness study areas. This includes not only direct impacts to the wilderness but also potential impacts such as auditory or visual impacts that could affect someone within the wilderness.

B Objectives

To protect wilderness areas from permanent improvements and human habitation, preserving the wilderness characteristics and ecological, geological, or other features of scientific, educational, scenic, or historical value.

C Review

Preparers of environmental reviews will familiarize themselves with the location of federally administered wilderness areas and wilderness study areas and determine if the proposed action will impact these resources. FSA will evaluate any potential for direct or indirect impacts of the project such as noise, air pollution, and visual impacts.

523 Data Requirements

A General

If the action has no potential for impacting a wilderness area, this finding will be documented in the environmental review document.

If there is a potential for impacting a wilderness area, results of the consultation process, including alternatives and mitigation measures will be incorporated into the environmental review document.

B Documentation

Documentation of the decision will be within the appropriate environmental review document.

Form	Item	Documentation Needed
NRCS-CPA-52	1	Consultation with NPS, USFS, FWS, or BLM.
FSA-852	2	
*--Class I EA	2c	
Modified Class I EA	2c	
RD 1940-22	2d	
FSA-850	3f	
Class II EA	*--*	
EA	*	Consultation with NPS, USFS, FWS, or BLM.**
EIS	*	

*Include in appropriate sections in EA or EIS concerning potential impacts on wilderness areas.

**Programmatic EA's and EIS's should address potential wilderness areas by identifying those areas that will be located within the geographical region to be affected by the proposed action.

524-550 (Reserved)

Section 7 Coastal Barriers**551 Background****A Overview**

Coastal barriers are unique landforms that provide protection for diverse aquatic habitats and serve as the mainland's first line of defense against the impacts of coastal storms and erosion.

B Legal Requirements

Congress recognized the vulnerability of coastal barriers to development by passing the Coastal Barrier Resources Act in 1982.

Section 5 of the Act restricts Federal expenditures and financial assistance that may have the effect of encouraging development of coastal barriers. In 1990, the Coastal Barrier Resources Act was amended by the Coastal Barrier Improvement Act. The Coastal Barrier Improvement Act broadened the definition of a coastal barrier and expanded the System to include areas in Puerto Rico, the U.S. Virgin Islands, the Great Lakes, and additional areas along the Atlantic and Gulf coasts. The Coastal Barrier Improvement Act also called for a study to review the need to protect coastal barriers along the Pacific coast of the United States.

552 Implementation**A FSA Policy**

FSA must identify if the proposed project is located within the boundaries of the Coastal Barrier Resources System. Under the requirements of the Coastal Barrier Resources Act, FSA shall not provide financial assistance for any activity to be located within the Coastal Barrier Resources System, unless this activity meets the criteria for an exception according to subparagraph D. Financial assistance means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, or any other form of direct or indirect Federal assistance.

B Objectives

The objectives of the protection of coastal barriers include:

- avoiding or reducing, to the extent possible, damage to fish and wildlife habitat and other valuable natural resources of coastal barriers
- avoiding direct and indirect support of development of coastal barriers
- minimizing loss of human life
- minimizing wasteful expenditures of Federal revenues.

552 Implementation (Continued)**C Review**

Designated areas as defined in the Coastal Barriers Resources Act include certain beaches and wetland areas along the coast. All of the following actions must be reviewed by RAO to determine if the project is located within the Coastal Barrier Resources System:

- any application for financial assistance or program payments (not benefits)
- any proposed direct expenditure of FSA funds for construction or maintenance purposes
- any proposed disposal of real estate that includes any form of financial assistance or subsidy to the purchaser.

D Consultation

Six categories of exceptions allow for actions to be taken within the system. It should be noted that the sixth category is more limited than the first five. No exception may be implemented without first consulting with the Secretary of the Interior. Following are the exceptions.

Notwithstanding Section 5 of the Act, FSA, after consultation with the Secretary of Interior, may make Federal expenditures or financial assistance available within the Coastal Barrier Resources System for:

- any use or facility necessary for the exploration, extraction, or transportation of energy resources which can be carried out only on, in, or adjacent to a coastal water area because the use or facility requires access to the coastal water body
- the maintenance or construction of improvements of existing Federal navigation channels (including the intracoastal waterway) and related structures (such as jetties), including the disposal of dredge materials related to such maintenance or construction
- the maintenance, replacement, reconstruction, or repair, but not the expansion of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system
- military activities essential to national security
- the construction, operation, maintenance, and rehabilitation of Coast Guard facilities and access thereto

552 Implementation (Continued)**D Consultation (Continued)**

- any of the following actions or projects, if a particular expenditure or the making available of particular assistance for the action or project is consistent with the purposes of this Act:
 - projects for studying, managing, protecting, and enhancing fish and wildlife resources and habitats; acquisition of fish and wildlife habitats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects
 - establishment, operation, and maintenance of air and water navigation aids and devices, and for access thereto
 - projects under the Land and Water Conservation Fund Act of 1965 (16 U.S.C 4601-4 through 11) and the Coastal Zone Management Act of 1972 (16 U.S.C 1451 et seq.)
 - scientific research, including aeronautical, atmospheric, space, geologic, marine, fish and wildlife, and other research, development, and applications
 - assistance for emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 402, 403, and 502 of the Disaster Relief and Emergency Assistance Act and section 1362 of the National Flood Insurance Act of 1968 (42 U.S.C. 4103) and are limited to actions that are necessary to alleviate the emergency
 - maintenance, replacement, reconstruction, or repair, but not expansion (except with respect to United States Route 1 in the Florida Keys), of publicly owned or publicly operated roads, structures, and facilities
 - nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore a natural stabilization system.

For purposes of consultation, a Federal navigation channel or a related structure is an existing channel or structure, respectively, if it was authorized before the date on which the relevant System unit or portion of the system unit was included within the System.

553 Data Requirements

A General

Documentation of whether the project is or is not within the boundaries of the Coastal Barrier Resources System, will be attached, as appropriate, to the required environmental review form or EA.

B Documentation

Documentation of the decision will be within the appropriate environmental review document.

Form	Item	Documentation Needed
NRCS-CPA-52	1	Consultation with FWS.
FSA-852	2	
*--Class I EA	2g	
Modified Class I EA	2g	
RD 1940-22	2h	
FSA-850	3f	
Class II EA	*--*	
EA	*	Consultation with FWS.**
EIS	*	

*Include in appropriate sections in EA or EIS concerning potential impacts on coastal barriers.

**Programmatic EA's and EIS's should address potential impacts on coastal barriers by identifying those coastal barriers that will be located within the geographical region to be affected by the proposed action.

554-570 (Reserved)

Section 8 Coastal Zone Management Areas**571 Background****A Overview**

Coastal zones include the coastal waters and the adjacent shore land “strongly influenced by each other and in proximity to the shorelines of the coastal States, and includes islands, transitional and inter-tidal areas, salt marshes, wetlands, and beaches.” This includes the coastal waters and shore lands of the Great Lakes.

B Legal Requirements

Congress passed the Coastal Zone Management Act of 1972 to establish the only national program to plan comprehensively for and manage development of the Nation’s coastal land and water resources. Public access to coastal zones is protected under the Act.

572 Implementation**A FSA Policy**

In preparing the environmental review, FSA must address the issue of Federal consistency. Therefore, it is imperative that Federal actions that are likely to affect any land or water use or natural resource of the coastal zone be consistent with the enforceable policies of the Coastal Management Plan. The key to effective and efficient consistency actions is early coordination and regular consultation between State coastal management agencies, Federal agencies, and applicants.

B Objectives

The Coastal Zone Management Act set out the following 4 basic objectives:

- to preserve, protect, develop, and where possible, restore or enhance the resources of the nation’s coastal zone
- to encourage and assist the States to develop and implement coastal zone management programs meeting specified national standards
- to provide for increased specificity in protecting natural resources, reasonable coastal-dependent economic growth, improved protection of life and property in hazardous areas, and improved predictability in governmental decision making
- to encourage the participation and cooperation of public, State, and local governments, and other regional agencies, and Federal agencies in achieving the purposes of the Act.

572 Implementation (Continued)

C Review

Upon receipt of an application for FSA assistance, the application will be reviewed to determine if the location of the proposal will be within a Coastal Zone Management Area. If the proposal is within the boundaries of the Coastal Zone Management Area, consultation with the State’s coastal zone management agency will be required to ensure that the proposal will be consistent with the Coastal Management Plan.

D Consultation

If located within the coastal management zone, RAO will initiate consultation with the State coastal zone management agency in accordance with SEG and/or the appropriate State regulations.

573 Data Requirements

A General

--RAO will document on FSA-850 for FP and on RD 1940-21, RD 1940-22, or EA for-- FLP project specific actions whether the project is located within a coastal zone. If located within the coastal zone, consultation will be initiated as stated above.

B Documentation

Documentation of the decision will be within the appropriate environmental review document.

Form	Item	Documentation Needed
NRCS-CPA-52	1	Consultation with State agency.
*--Class I EA	2l	
Modified Class I EA	2l	
RD 1940-22	2m	
FSA-850	3f	
FSA-852	5	
Class II EA	*--*	
EA	*	Consultation with State Agency.**
EIS	*	

*Include in appropriate sections in EA or EIS concerning potential impacts on coastal zone management areas.

**Programmatic EA’s and EIS’s should address potential impacts on coastal zone management areas by identifying those areas that will be located within the geographical region to be affected by the proposed action.

574-600 Reserved

Section 9 Wild and Scenic Rivers**601 Background****A Overview**

Consideration must be given by all Federal agencies involved in planning for development and other projects to protect national wild, scenic, and recreational river areas. Federal loans, grants, or other assistance for project construction may not proceed without assurance that the project will have no direct adverse effects on a designated river's special values.

B Legal Requirements

WSRA Section 7 states that no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct or adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration. However, the Act does not preclude licensing of, or assistance to, developments below or above a wild, scenic or recreational river area or on any stream tributary thereto which will not invade the area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area on the date of designation of a river as a component of the National WSRS.

A Presidential directive issued on August 2, 1979, stated that:

“Each Federal agency shall as a part of its normal planning and environmental review process, take care to avoid or mitigate adverse effects on rivers identified in the Nationwide River Inventory (NRI) prepared by the Department of the Interior.”

NRI is a listing of more than 3,400 free flowing river segments that possess 1 or more outstandingly remarkable natural or cultural values.

Individual States may have laws or policies that will be referenced for protection of wild and scenic rivers or comparable river resources.

602 Implementation**A FSA Policy**

As directed by WSRA, FSA will consult with the appropriate administering agency including NPS, FWS, USFS, BLM, or State agency, when applicable and will:

- consider the effects of proposed actions on rivers, river segments, and the lands adjacent thereto that are either included in WSRS, NRI, or any river designated for study and potential addition to WSRS by Congress
- not provide direct or indirect financial assistance or plan approval for any water resource project that would have a direct and adverse effect on the values for which a river has been either included in WSRS, NRI, or is designated for study and potential addition to WSRS by Congress
- not approve or assist any development located below or above a wild, scenic, or recreational river, or on any stream tributary, which will invade the area or diminish its scenic, recreational, or wildlife value.

Special management goals for new construction are best addressed through individual river management plans.

Following the presidential directive of 1979, FSA will avoid or mitigate adverse effects on rivers identified in NRI and will consult with the administering Agency before taking any action which could effectively jeopardize the wild, scenic, or recreational status on rivers in NRI.

B Objective

The objective of WSRS is to preserve in free-flowing condition, the scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values of certain selected rivers.

C Review

As part of the FSA environmental review process, every proposed action, as well as the disposal of real property, shall be reviewed to determine if it will affect a river or segment of a river that is either:

- included in WSRS
- under study for potential addition to WSRS
- listed in NRI.

602 Implementation (Continued)

C Review (Continued)

NPS maintains a list of rivers and river segments that are included in WSRS and NRI. SEG will include lists or maps of rivers and river segments that are included in WSRS and NRI, as well as NPS websites, which RAO will reference for the environmental review process.

Step	Action
1	<p>Determine whether the proposed action could affect a river in or under study for addition to WSRS or listed on NRI.</p> <p>If a river is within the proposed action’s area of potential effect, will any element of the action:</p> <ul style="list-style-type: none"> • occur in or require construction within the river • be located within the river corridor (one-quarter mile distance from the ordinary high water mark on either side of the river, except in Alaska where the distance is doubled) • be visible from the river • result in a point source withdrawal of water or a discharge of water to the river. <p>If the action will not affect a designated, study, or potential river, no further action is necessary other than to document the finding.</p>
2	<p>Determine whether the proposed action could have an adverse effect on the natural, cultural, or recreational values of the river.</p> <p>To determine if the action would invade or unreasonably diminish the wild, scenic, or recreational values of the area, FSA shall consult with the appropriate administering Agency to ensure that the action will not:</p> <ul style="list-style-type: none"> • destroy or alter all or a part of the free-flowing nature of the river • introduce visual, audible, or other sensory intrusions which are out of character with the river or alter its setting • deteriorate water quality. <p>Before the transfer or sale of federally-owned property adjacent to a designated river or NRI segment, FSA shall consult with the appropriate administering agency to determine appropriate conditions or restrictions for protecting the river and surrounding elements.</p>

602 Implementation (Continued)

C Review (Continued)

Step	Action
3	<p>Determine whether the proposed action could eliminate options to classify any portion of a river on NRI as wild, scenic, or recreational.</p> <p>If the proposed action could eliminate wild and scenic status or could have an adverse effect on a river on NRI; consultation with the NPS Regional Office is required to obtain an analysis of the impacts on natural, cultural, and recreational values that should enable a determination as to whether or not designation would be eliminated.</p>
4	<p>Incorporate avoidance or mitigation measures into the proposed action to the maximum extent feasible within the Agency's authority.</p> <p>Whenever the results of the consultation process include recommendations of appropriate administering agency to modify the proposal to avoid an adverse effect, those recommendations will be addressed and incorporated into the environmental review document</p> <p>Once completed, the consultation process shall be reinitiated by FSA if new information or modification of the proposal reveals impacts to a river within WSRS or NRI.</p>

603 Data Requirements

A General

If the action has no potential for impacting a river, this finding will be documented in the appropriate environmental review document

If there is a potential for impacting a river, results of the consultation process will be incorporated into the environmental review document.

603 Data Requirements (Continued)

B Documentation

Documentation of the decision will be within the appropriate environmental review document.

Form	Item	Documentation Needed
NRCS-CPA-52	1	Review of WSRS and NRI listing and consultation with NPS.
*--Class I EA	2d	
Modified Class I EA	2d	
RD 1940-22	2e	
FSA-850	3g	
FSA-852	5	
Class II EA	*..*	
EA	*	Review of WSRS and NRI listing and consultation with NPS.**
EIS	*	

*Include in appropriate sections in EA or EIS concerning potential impacts on wild and scenic rivers.

**Programmatic EA's and EIS's should address potential impacts on wild and scenic rivers by identifying those rivers that would be located within the geographical region to be affected by the proposed action.

C Permits

Water resource projects affecting the free-flowing characteristics of a river require a 404 permit from USACE. The producer or applicant is responsible for obtaining these permits.

604-620 (Reserved)

Section 10 National Natural Landmarks**621 Background****A Overview**

Federal agencies must consider the existence and location of national natural landmarks when assessing the impact of their actions on the environment.

A national natural landmark is a nationally significant natural area that has been designated by the Secretary of Interior. To be nationally significant, a site must be 1 of the best examples of a type of terrestrial or aquatic biotic community or geologic feature in its physiographic province. National natural landmarks can be owned by State, Federal, or private entities; approximately 1/3 of the currently listed national natural landmarks are privately owned.

B Legal Requirements

The program was established by the Secretary of the Interior in 1962 under authority of the Historic Sites of 1935, and administered by NPS. The revised National Natural Landmark program regulations, 36 CFR Part 62, were published in FR May 12, 1999.

622 Implementation**A FSA Policy**

FSA will endeavor to assure that national natural landmarks are not negatively impacted by Agency projects.

B Objective

National Natural Landmark regulations seek to protect and preserve the unique natural and geological features that have been designated as national natural landmarks.

C Reviews

If the proposed action has the potential to impact a listed national natural landmark, the preparer of the environmental document must consult with the regional NPS office. Consultation shall be documented in any environmental review document. * * *

623 Data Requirements

A General

NPS maintains a list of national natural landmarks for each State that will be reviewed for each environmental document.

B Documentation

Documentation of the decision will be within the appropriate environmental review document.

Form	Item	Documentation Needed
NRCS-CPA-52	1	Consultation with NPS.
*--Class I EA	2h	
Modified Class I EA	2h	
RD 1940-22	2e	
FSA-850	3g	
FSA-852	5	
Class II EA	*	
EA	*	Consultation with NPS.**--*
EIS	*	

*Include in appropriate sections in EA or EIS concerning potential impacts on coastal zone management areas.

**Programmatic EA's and EIS's should address potential impacts on coastal zone management areas by identifying those areas that will be located within the geographical region to be affected by the proposed action.

624-640 (Reserved)

Section 11 (Withdrawn--Amend. 4)

641-643 (Withdrawn--Amend. 4)

644-669 (Reserved)

Section 12 Water Quality

670 Background

A Overview

*--FSA is involved with many programs that have the potential to affect water quality. Some of these programs may provide financial assistance to applicants for projects that may have an adverse effect on the quality of both surface and ground water. In completing an environmental review, special attention should be given to addressing potential effects on water quality when a proposed action such as an AFO or CAFO is involved.

Most of the statutory requirements for water quality are contained in the CWA. The CWA contains provisions that affect wetlands, storm water runoff, and animal waste. EPA works in conjunction with State agencies to implement the permitting requirements that have resulted from implementation of the CWA. In addition to the environmental review process completed by FSA for proposed actions, applicants for FSA financial assistance may also have an obligation to obtain CWA related permits.

Most Americans get their drinking water from large scale municipal water systems that rely on surface water sources such as rivers, lakes, and reservoirs. However, millions of Americans depend on private water sources such as wells and aquifers. Therefore, both surface and ground water are important resources in our environment. Both surface and ground water are highly susceptible to contamination from agricultural runoff including AFO's and row cropping operations.

Example: Livestock and poultry manure, if not properly handled and managed by a CAFO can contribute to polluting the environment and pose a risk to human and ecological health.

Agricultural runoff may contain pollutants such as nutrients, pathogens, and heavy metals. As a result, FSA must ensure that a reasonable range of alternatives and sufficient analysis is contained in its environmental review documents to properly address potential effects on water quality.

Note: A good approach to take when completing an environmental review is to address potential impacts to a watershed. This is especially helpful in dealing with cumulative effects.

A watershed is the area of land where all of the water that is under it or drains off of it goes into the same place. Watersheds come in all shapes and sizes and they may cross county, State, and national boundaries. Because watersheds are defined by natural hydrology, they represent the most logical basis for managing water resources.--*

670 Background (Continued)**B Legal Requirements**

*--The Federal Water Pollution Control Amendments of 1972, as amended in 1977, has become commonly known as the CWA. CWA established the basic structure for regulating discharges of pollutants into the waters of the U.S. along with continued requirements to set water quality standards for all contaminants in surface waters.

The major sections of the CWA that must be considered when completing any environmental review process for FSA programs and activities are:

- Section 303(d) that addresses a State list that should include only those waters that are either threatened or impaired by pollutants only; waters impaired by “non-pollutants pollution” (like altered flow, channel modification, etc.) should be identified in the State’s 305(b) report
- Section 305(b) that addresses a report that includes all that State, tribe, or territory knows about all of its waters; healthy, threatened, and impaired

Note: This report should also provide information on which pollutants (chemicals, sediments, nutrients, metals, temperature, pH) and other stressors (altered flows, modification of the stream channel, introduction of exotic invasive species) are the most common causes of impairment to waterbodies and what are the most common sources of those stressors.

- Section 319 that addresses non-point sources of pollution, such as most farming and forestry operations, largely through grants
- Section 401 that requires that before a Federal agency can issue a license or permit for construction or other activity, the agency must have receive from the State in which the affected activity would take place a written certification that the activity will not cause or contribute to a violation of relevant State water quality standards

Note: A downstream State whose water quality standards might be exceeded as a result of Federal approval of the activity can also play a role in the 401 process. The certification is issued only if such increased loads would not cause or contribute to exceeding water quality standards.--*

670 Background (Continued)

B Legal Requirements (Continued)

- *--Section 402 that creates the NPDES regulatory program

Note: Point sources must obtain a discharge permit from the proper authority (usually a State, sometimes EPA, a tribe, or a territory). NPDES permits tend to cover industrial and municipal discharges, discharges from storm sewer systems in larger cities, storm water associated with numerous kinds of industrial activity, runoff from construction sites disturbing more than one acre, mining operations, and animal feedlots and aquaculture facilities above certain thresholds.

Exemptions: A number of types of discharges that meet the definition of a point source are not required to obtain an NPDES permit because of either statutory (congressional) or administrative (EPA) exemptions. These include the following:

- some abandoned mines on nonfederal lands (State, local, private)
 - return flows from irrigated agriculture
 - most drainage ditches associated with logging roads
 - most smaller feedlots and aquaculture facilities.
- Section 404 that regulates the placement of dredge or fill materials into wetlands and other waters of the U.S.

Note: Whenever practical, filling of waters of the U.S. should be avoided. If an impact on wetlands cannot be avoided entirely, then attempts to minimize the impacts are required. Often changes in the position or design of a project can significantly reduce the amount of wetland acreage affected. The 404 permit program is administered jointly by EPA and the U.S. Army Corps of Engineers with the Corps handling the actual issuance of permits.

- Section 502 that specifically defines the term “point source” to include CAFO’s.

Note: EPA published a final rule on February 12, 2003, that contains the NPDES permitting requirements for CAFO’s.--*

671 Implementation**A FSA Policy**

FSA will not provide program or financial assistance to any activity that would significantly impair * * * water quality * * * or not meet antidegradation requirements. When necessary, the proposed activity will be modified to protect water quality standards, including designated and/or existing beneficial uses that water quality criteria are designed to protect, and meet antidegradation requirements.

Potential changes in water quality should be projected based on the action's known and likely discharges. It is important to consider potential cumulative effects on water quality by FSA in combination with all other sources of pollutants.

B Objective

The policy encourages FSA to follow the spirit and intent of the various statutes and directives, both national and State, that protect water quality.

C Review

*--Water quality should be given special consideration in all of FSA's environmental reviews. Programs such as CRP and CREP usually have positive effects on water quality but certain conservation practices may have the potential to cause adverse effects on navigable waters and wetlands. Loans and loan guarantees for the purchase, construction, or refinancing of AFO's and CAFO's are another program area where it is essential that proper analysis and documentation be completed before approving an action.

In completing an environmental review for AFO's and CAFO's, the preparer must ensure that adequate analysis is contained in the environmental document to address potential effects on water quality. Both AFO's and CAFO's have the potential to cause adverse effects on water quality if they are not properly managed. If an EA is completed for an FSA action related to an AFO or CAFO, legally defensible mitigation measures must be included in the EA to support the issuance of a FONSI.

For CAFO's, the best method of developing legally defensible mitigation measures is to require that the applicant obtain and adhere to a CNMP. CNMP's:

- may be developed by NRCS, Cooperative Extension Service, or private consultants
- should address, as necessary, feed management, manure handling and storage, land application of waste, general land management, record keeping, best management practices, and other utilization options.--*

671 Implementation (Continued)**C Review (Continued)**

*--While nutrients are often the major pollutants of concern, CNMP's:

- should address risks from other pollutants, such as pathogens, to minimize water quality and public health impacts from CAFO's
- must include the method used to dispose of dead animals.

In accordance with subparagraph 257 A, FSA may issue a mitigated FONSI that requires a CNMP or NMP to be completed after the loan is closed.

In addition to protecting water quality and public health, CNMP's must be site specific and be developed and implemented to address the goals and needs of the operator. Issues such as the conditions of the farm (number of animals, total acreage of the farm operation, soils, crops, climate, etc.) must also be addressed. In certain cases, an applicant may be able to utilize a NMP in lieu of a CNMP.

For financial assistance for CAFO's where FSA is the lead agency for NEPA purposes, appropriate conditions may be included in conditional commitments for loan guarantees that condition the issuance of the guarantee on the lender's loan applicant obtaining a CNMP or NMP within a specified timeframe.

AFO's that do not meet the requirements to be considered a CAFO also have the potential to cause adverse effects on the environment as a result of animal waste. Generally, CNMP's or NMP's will not be required for these types of operations unless extraordinary circumstances exist such as being located in close proximity to a body of water. In order to issue a FONSI for these types of AFO's, the preparer of the EA should contain legally defensible mitigation measures. These mitigation measures should be developed based on best management practices which may be obtained from the NRCS National Handbook of Conservation Practices.--*

672 Data Requirements

A General

Within the environmental review, RAO must always keep in mind that compliance with NEPA and NHPA laws is separate and apart from the operation's ability to legally operate by either permitted or non-permitting agencies.

Typically, State-specific information should be available on the review/approval and monitoring process of the non-permitted operations. FSA personnel are expected to review projects for compliance with NEPA as well as State-enforced laws. Consultation with NRCS and appropriate State water agencies becomes critical in ensuring water quality issues are addressed properly.

B Permits

Section 404 provides for USACE to issue permits for the discharge of dredged or filled material into navigable waters, including streams, swamps, and marshes at specified disposal sites.

--State agencies in charge of water quality issues usually permit AFO/CAFO. RAO will-- contact SEC for State-specific requirements and/or permits for FP benefits and FLP requirements.

If FSA is providing loan or program assistance for practices that disturb 1 acre or more in a State that has not implemented regulations on storm water run-off associated with construction activities, NOI will be mailed to the appropriate EPA Regional Office * * *.

*--The NPDES form "Notice of Intent" can be found through the EPA web site. For all other States, the NOI and permitting process as required by that State will be completed.

Note: When completing an environmental review for an FSA action that requires a NPDES or other permit, the preparer needs to remember that obtaining a permit does not relieve FSA of any of its NEPA analysis requirements for water quality effects.--*

672 Data Requirements (Continued)

C Documentation

Documentation of the decision will be within the appropriate environmental review document.

Form	Item	Documentation Needed
NRCS-CPA-52	I	Analysis and permitting information.
*--Class I EA	3c	Analysis and permitting information and legally defensible mitigation measures to support FONSI. For:
Modified Class I EA	3c	
		<ul style="list-style-type: none"> • CAFO, CNMP • AFO, best management practices.
RD 1940-22	2o	Analysis and permitting information.
FSA-850	3c	
FSA-852	4	
Class II EA	*	Analysis and permitting information** and legally defensible mitigation measures to support FONSI. For:
		<ul style="list-style-type: none"> • CAFO, CNMP • AFO, best management practices.--*
EA	*	Analysis and permitting information.**
EIS	*	

*Include in appropriate sections in EA or EIS concerning potential impacts on water quality.

**Programmatic EA's and EIS's should address potential impacts water quality by identifying the impacts that would be brought about by the proposed action.

673-690 (Reserved)

Section 13 Air Quality

691 Background**A Overview**

Air pollution threatens the health of human beings and every other living thing on the planet. While often invisible, pollutants in the air create smog and acid rain, cause cancer, respiratory problems, heart or lung disease, and other serious health effects, and diminish the protective ozone layer in the upper atmosphere.

Federal agencies must consider air quality when assessing the impact of their actions on the environment. Project emissions, including those created by secondary beneficiaries, shall be examined for conformance to CAA and EPA's National Primary and Secondary Ambient Air Quality Standards.

--Since both EPA and the individual State are charged with the responsibility for clean air-- quality, each SEC shall provide for any special requirements in SEG.

B Legal Requirements

*--CAA is the comprehensive Federal law that regulates air emissions from area, stationary, and mobile sources. CAA authorizes EPA to establish NAAQAS to protect public health and the environment.

The goal of CAA was to set and achieve NAAQAS in every State by 1975. The setting of maximum pollutant standards was coupled with directing the States to develop State Implementation Plans applicable to appropriate industrial sources in the State.

CAA was amended in 1977 primarily to set new goals (dates) for achieving attainment of NAAQS since many areas of the U.S. had failed to meet the deadlines. The 1990 CAA amendments were intended to meet unaddressed or insufficiently addressed problems such as acid rain, ground-level ozone, stratospheric ozone depletion, and air toxics.

CAA is designed to improve air quality in areas of the country which do not meet federal standards and to prevent significant deterioration in areas where air quality exceeds those standards. The CAA and amendments are the basis for regulating emission of air pollutants and otherwise maintaining or enhancing air quality to protect public health and welfare throughout the U.S. CAA, Section 309 authorizes EPA to review certain proposed actions of other Federal agencies in accordance with NEPA and to make those reviews public.

691 Background (Continued)**A Overview (Continued)**

*--CAA:

- requires that emission standards be established for major sources of hazardous air pollutants
- contains a list of almost 200 hazardous air pollutants
- requires that the Administrator review the list periodically and , where appropriate, revise the list, adding pollutants which present, or may present, a threat of adverse human health effects or adverse environment effects through ambient concentrations, bioaccumulation, deposition or otherwise.

The term “adverse environmental effects” is defined in these provisions as any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.--*

692 Implementation**A Policy**

FSA will ensure that its projects will not have a long-term, adverse impact on the quality of the air in the area of potential effect.

B Objectives

The objective of this policy is to meet the intent of CAA, it is FSA’s objective to ensure that FSA’s projects do not unnecessarily contribute to air pollution.

C Review

FSA will review, as specified in each State’s clean air requirements, potential emissions from agriculture sources. These can include dust and ambient particulates from construction or grain storage; odor from livestock confinement operations, lagoons, concentrated manure holding facilities and poultry operations including incinerators; and emissions related to farm machinery or transportation of farm products. Special attention should be made to all large livestock confinement operations, as they are most vulnerable to possible air quality issues.

Each SEC will include guides and contact personnel within SEG to assist field staff in compliance with CAA. Field staff will follow their SEG to see that in each project all required State CAA requirements are met.

693 Data Requirements

A General

Clean air issues will be documented on EE, EA, or EIS.

B Documentation

Documentation of the decision will be within the appropriate environmental review document.

Form	Item	Documentation Needed
NRCS-CPA-52	1	Analysis and permitting information if required.
FSA-852	2	
*--Class I EA	3c	
Modified Class I EA	3c	
FSA-850	6	
RD 1940-22	*	
Class II EA	*--*	
EA	**	Analysis and permitting information if required.***
EIS	**	

*When completing RD 1940-22 for a proposed action that has potential air quality concerns, attach analysis and documentation to the RD 1940-22.

**Include in appropriate sections in EA or EIS concerning potential impacts on air quality.

***Programmatic EA's and EIS's should address potential impacts air quality by identifying the impacts that would be brought about by the proposed action.

694-720 (Reserved)

Section 14 Noise

721 Background

A Overview

The traditional definition of noise is “unwanted sound” that:

- interferes with normal activities such as sleep, conversation, or recreation
- causes actual physical harm such as hearing loss or an adverse effect on mental health.

With the passage of the Noise Control Act of 1972, Congress found that:

- inadequately controlled noise presents a growing danger to the health and welfare of the nation’s population particularly in urban areas
- the major sources of noise include transportation vehicles and equipment, machinery, appliances, and other products in commerce.

*--Noise is typically not a major issue with FSA programs. Long-term types of noise that should be addressed in environmental reviews include, but are not limited to:

- operation of fixed machinery such as fans, generators, or irrigation pumps
- traffic from large vehicles such as feed or milk trucks
- livestock noise when animals are kept in confinement

For long-term noise impacts, mitigation measures will vary depending on the proximity of the project to neighboring residences or businesses. Mitigation measures may include permanent planting of trees or installing artificial sound barriers around fixed machinery, such as generators or pumps that are used in the farming operation.

There may also be short-term noise impacts during construction activities that will produce noise levels that may be considered excessive. The major sources of short-term noise would be the operation of heavy machinery, trucks, and other tools. Short-term noise impacts can usually be mitigated by requiring construction activities to occur during normal working hours.

In 1972, EPA established its Office of Noise Abatement and Control. In 1982, the Noise Program was phased out and the responsibility for noise abatement and control was delegated back to State and local governments.--*

B Legal Requirements

The main Federal statute dealing with noise control is the Noise Control Act of 1972

--[42 U.S.C. 4901–4918]. This law directs all Federal agencies to comply with Federal, State, interstate, and local requirements respecting control and abatement of environmental noise to the same extent that any person is subject to such requirements.--

722 Implementation

A FSA Policy

To review each project that involves machinery or large numbers of livestock that may have the potential for producing loud, continuous, high decibel sound and provide possible mitigation measures to reduce the impact.

B Objectives

The objectives of noise control in each State will be to minimize the level of noise created by the FSA project either during the construction phase or the long-term noise of large fixed machinery.

C Reviews

--The amount of analysis to address potential noise concerns will vary by the type of project. For example, an EA prepared for a loan request to finance a CAFO will include analysis of potential noise concerns associated with both short-term and long-term sources of noise. An example where the preparer of an environmental review would not concentrate heavily on noise issues would be the installation of a fence with ECP funds.--

In completion of environmental reviews, the level and duration of sound must be considered as well as the time of the day the sound will be present. It is important to examine the total *--range and combination of noise resources. If noise issues are in question, the field staff should contact SEC for assistance.--*

* * *

723 Data Requirements

A General

--Each FSA project that has the potential to create noise should be reviewed closely to determine whether short-term or long-term noise may result from approval of the project. If noise will be a potential problem, FSA should develop suitable mitigation measures to address the noise or consider other alternatives during the environmental review process.--

B Documentation

Documentation of the decision will be within the appropriate environmental review document.

Form	Item	Documentation Needed
*--Class I EA	3c	Analysis and permitting information if required.
Modified Class I EA	3c	
FSA-850	6	
RD 1940-22	*	
Class II EA	*--*	
EA	**	Analysis and permitting information if required.***
EIS	**	

*When completing RD 1940-22 for a proposed action that has potential noise concerns, attach analysis and documentation to the RD 1940-22.

**Include in appropriate sections in EA or EIS concerning potential impacts from noise.

***Programmatic EA's and EIS's should address potential impacts from noise by identifying the impacts that would be brought about by the proposed action.

724-750 (Reserved)

Section 15 Important Land Resources**751 Background****A Overview**

--FSA actions must not convert, directly or indirectly, important land resources (also referred to as formerly classified lands) unless there is a demonstrated significant need and no-- practicable alternative exists. If conversion is unavoidable, mitigation measures to minimize the impact would be necessary.

B Legal Requirements

Important land resources include important farmland, prime forestland, and prime rangeland. The Farmland Protection Policy Act and DR 9500-3 provide the legal reference point for proper compliance. Each State may have laws or policies that will be referenced for protection of important farmland, prime forestland, prime rangeland, or comparable land resources.

752 Implementation**A FSA Policy**

DR 9500-3 applies to all USDA agencies and identifies 5 important land resources for protection from unwarranted conversion to other uses unless certain conditions are met. Protection of important farmland (prime farmland and unique farmland), prime forest land, and prime rangeland is important, as continued conversion to other uses may impair the ability of the United States to produce sufficient food, fiber, and wood to meet domestic needs and the demands of export markets.

FSA will not approve or fund any proposed action involving important farmlands, prime forest land, or prime rangeland that, as a result of the action's direct or indirect impact, would lead or accommodate the conversion of these land uses or encroachment upon them. The only exception to this policy is if FSA determines that the following conditions are first met:

- the action is determined to be an existing use or the action is consistent with the present existing use
- there is no reasonable alternative to the proposed action

752 Implementation (Continued)

A FSA Policy (Continued)

- the proposal includes all reasonable measures for reducing the adverse impacts and the amount of conversion or encroachment
- the proposal conforms to the following planning and siting criteria:
 - the project is not inconsistent with any existing comprehensive plan that guides community growth and reflects a realistic strategy for protecting natural resources
 - the project is compatible, to the extent practicable, with any existing State, local government, and private programs and policies to protect the indicated protected land resources
 - the project will encourage long-term, economically viable public investment by fostering development patterns that ensure compact community development.

B Objective

This policy seeks to minimize direct or indirect effects of FSA actions on the conversion of important land resources.

752 Implementation (Continued)

C Review

As part of the FSA environmental review process, important farmlands, prime forestlands, and prime rangelands will be evaluated to assess potential adverse impacts from FSA projects.

FSA is required to:

- apply exemptions when applicable
- identify and consider the adverse effects of Federal programs on the preservation of important farmland, prime forest land, and prime rangeland
- identify the important land resources

Note: FSA will follow NRCS regulations at 7 CFR 658.

- consult with NRCS when applicable
- consider alternative actions, as appropriate, that could lessen adverse effects
- ensure that Federal programs, to the extent practicable, are compatible with State, local government, and private programs and policies to protect the important land resources.

FSA will determine if an exemption to NRCS consultation applies. The following are exemptions and require no further review.

- The proposed action will not create a conversion of the existing use of the property.
- The proposed action involves renovating or repairing existing facilities, and the future use of these facilities remains unchanged from the original use of the facilities.
- The proposed action includes new facilities or improvements, but are for an agricultural purpose and effect only farmland.
- FSA reviews NRCS soil surveys, soil lists, and maps of important land resources (only those authorized for use by NRCS); and determined that the action will not effect important farmlands, prime forestlands, or prime rangelands.
- Farmland is already in urban development or water storage, and has been committed for those purposes.

752 Implementation (Continued)

C Review (Continued)

If no exemption applies, then FSA will consult with NRCS.

For farmland, NRCS will determine if an important farmland (prime farmland and unique farmland) is present in the action area. LESA will be used, and requires using AD-1006 and NRCS-CPA-106 or their successor forms.

If there is a potential impact to prime forestlands or prime rangelands, then FSA will consult with NRCS. DR 9500-3 will be used as a guide for prime forestlands. However, NRCS has no established procedure in evaluating prime rangelands.

If NRCS determines that there is no impact or conversion to the important land resources, then further review is not required of FSA.

If it is determined that there is an adverse effect to the important land resources, then mitigation or an alternative site should be considered.

If it is determined that there will be an adverse effect to the land resources and the project can only be considered on the original site; then EA would be required, with a determination of FONSI. The project can then proceed.

If FONSI is not possible, then the project will not be approved.

753 Data Requirements

A General

RAO must ensure through the environmental review process that all appropriate measures are taken to preserve and protect important land resources.

B Documentation

Documentation of the decision will be within the appropriate environmental review document.

Form	Item	Documentation Needed
NRCS-CPA-52	1	Analysis and review.
*--RD 1940-22	1, 2j, and 2k	
FSA-852	2	
Class I EA	2i, 2j, and 2k	
Modified Class I EA	2i, 2j, and 2k	
FSA-850	7	
Class II EA	*--*	
EA	*	Analysis and review.**
EIS	*	

*Include in appropriate sections in EA or EIS concerning potential impacts on important land resources.

**Programmatic EA's and EIS's should address potential impacts on important land resources by identifying the impacts that would be brought about by the proposed action.

754-770 (Reserved)

Section 16 Environmental Justice Studies**771 Background****A Overview**

Environmental justice means ensuring that low-income populations and minority populations (communities, neighborhoods, etc.) are not exposed to disproportionately high or adverse environmental or human health impacts from Agency programs, policies, and activities. Impacts that are solely socio-economic do not invoke an EI review.

Because FSA actions often take place in rural areas, there is potential for effects (beneficial or adverse) on minority populations and low-income populations; thus, some level of environmental justice study should be performed as part of each FSA NEPA review.

B Legal Requirements

EO 12898 (Exhibit 33):

- requires Federal agencies to identify and address, as appropriate, “disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations”
- directs these Federal agencies to make environmental justice part of their mission
- was strengthened by Presidential memorandum to all departments and agencies in which the President specifically recognized the importance of using NEPA procedures to address environmental justice concern.

DR 5600-002 provides direction to agencies for integrating environmental justice considerations into USDA programs and activities.

772 Implementation**A FSA Policy**

FSA's policy is to incorporate environmental justice into Agency policies and actions through its NEPA review process.

B Objectives

The objectives of environmental justice include allowing low-income and minority populations to have a role in decisions that may affect their health or environment.

C Review

Data actually required to incorporate environmental justice concerns into FSA's environmental planning are deceptively simple. Basically, FSA needs to answer 2 questions:

- Does the potentially affected community include minority and/or low-income populations?
- *--Are the projected environmental or human health impacts, if any, likely to fall--* disproportionately on members of these communities?

*--Note: This data can be obtained at 2 web sites:

- <http://aspe.hhs.gov/poverty>
- http://factfinder.census.gov/home/saff/main.html?_lang=en--*

If the answer is "yes" to both questions, FSA should develop mitigation or other methods to take these effects into account as part of the NEPA decision making process.

A "minority population" may be present in an area if the minority population percentage in the area of interest is "meaningfully greater" than the minority population in the general population, and/or if the minority population of the affected area exceeds 50 percent.

A "low-income" population is 1 identified with the Bureau of the Census Series P-60 statistical poverty threshold.

772 Implementation (Continued)

C Review (Continued)

--RAO will analyze the environmental effects (including human health) of loans and other FSA programs on minority and low-income populations. Whenever feasible, staff will identify-- mitigation measures that reduce significant and adverse environmental effects from loans or projects on these populations. Community input will be encouraged to identify potential effects and mitigation measures.

--Industry standard definitions of adverse environmental or human health effects to be-- considered include:

- bodily impairment, infirmity, illness, or death
- air, noise, and water pollution, and soil contamination
- destruction or disruption of manmade or natural resources

* * *

- destruction or disruption of community cohesion or economic vitality
- destruction or disruption of public and private facilities and services
- displacement of persons, businesses, farms, or nonprofit organizations
- isolation, exclusion, or separation of individuals within a community or from the broader community
- the denial, reduction in, or significant delay in the receipt of, benefits of USDA programs or activities.

Where a potential environmental justice issue is identified, FSA should state clearly in the *--environmental review document whether a disproportionately high and adverse human--* health or environmental impact will likely occur on minority populations and low-income populations as a result of the proposed action. The rationale for this conclusion, and its underlying analysis, should also be included in the environmental review.

Draft NEPA documents, as well as preliminary information and findings, should be shared with affected communities and groups, and their comments solicited. Environmental justice communities that may suffer disproportionate and adverse effects from the proposed action should be encouraged to participate in developing alternatives, and in identifying an environmentally preferred alternative * * *.

773 Data Requirements

A General

The results of the environmental justice study should include data on the current and projected health and other environmental effects of the proposed action or alternative on minority and/or low-income populations in the appropriate area of study. FSA should acquire an understanding of the cultural systems in the populations, so that it can estimate the impact of its actions on the culture. If the impacts are disproportionately high and adverse, FSA should develop suitable mitigation measures to ensure that environmental justice is achieved.

B Documentation

Documentation of compliance with EO 12898 will be achieved as follows:

Form	Item	Documentation Needed
NRCS-CPA-52	1	Analysis and review.
*--Class I EA	*	
Modified Class I EA	*	
FSA-852	4	
FSA-850	9	
RD 1940-22	*	
Class II EA	*--*	
EA	**	Analysis and review.***
EIS	**	

*--*When completing RD 1940-21 or 1940-22 for a proposed action, an attachment to the RD 1940-21 or 1940-22 should be included that addresses potential environmental--* justice concerns.

**Include in appropriate sections in EA or EIS concerning potential environmental justice concerns.

***Programmatic EA's and EIS's should address potential environmental justice concerns by identifying the impacts that would be brought about by the proposed action.

774-790 (Reserved)

Section 17 Social and Economic Impacts**791 Background****A Overview**

NEPA calls for the integrated use of the social sciences in assessing impacts “on the human environment.” One way to accomplish this is to look at how an action may affect the social and/or economic status of a community. Economic analysis includes reviewing how a *--project may affect economic variables such as job creation and loss, strains on community--* services, and impacts on the local tax base. Social impacts are defined as those that alter the ways in which people live, work, play, relate to one another, and the norms, values, and beliefs that guide and rationalize their cognition of themselves and their society.

792 Implementation**A Policy**

It is the policy of FSA to fully evaluate the social and economic impacts of its programs and loans before approval.

B Objective

The objective of this policy is to ensure that FSA actions do not have an adverse social or economic affect.

C Review

To assess the social and economic impacts, the Agency must first make a reasonable effort to characterize the ways in which people live, work, play, etc. in the areas where the action may have effects, and determine what norms, values, and beliefs may be important to them. Next, assess what the action may do to these variables.

792 Implementation (Continued)**C Review (Continued)**

The International Committee on Guidelines and Principles for Social Impact Assessment recommends the following.

- Develop an effective public involvement plan to involve all potentially affected public. This means identifying and reaching out to the communities, neighborhoods, and other human populations that may be affected.
- Describe the relevant human environment or area of influence and its base-line conditions. This means describing the social and cultural character of the potentially affected areas as it is now.
- Identify the full range of probable social impacts, based on discussions or interviews with members of potentially affected social groups. This should be initiated as part of scoping, and continue through the life of the analysis.
- Project estimated effects and investigate them. This analytic process typically involves the study of data on the proposed action itself, records of previous experience with similar actions, census, tax, real estate, and other records, and field research including interviews, group meetings, and surveys of the population.
- Predict responses to the impacts. This is a measure of significance and depends on how the affected community reacts to a proposed project. Predicting responses generally involves comparative analysis and interviews about what people will do if the action goes forward and specific impacts occur.
- Consider and recommend alternatives.
- Develop a mitigation plan.
- Develop a monitoring plan, which can be adopted as part of FONSI or ROD to ensure that mitigation is carried out, and that it is effective.

793 Data Requirements

A General

--The results of the social and economic analysis as reported in the environmental document, should:--

- describe how the diverse public was involved in the study
- address significant social, cultural, and economic impacts, not those that are insignificant
- describe the study methods and the assumptions on which the results were based
- carefully analyze impact equity (who wins and who loses, in the case of each alternative), particularly with respect to impacts on low-income and minority populations
- identify data sources, and identify any needed data that are unavailable, evaluating their importance and providing a strategy for proceeding either to obtain the missing data or to get by without them
- identify the practitioners who carried out the assessment
- include a description of proposed mitigation measures, and a proposed monitoring program.

B Documentation

Documentation of the decision will be within the appropriate environmental review document.

Form	Item	Documentation Needed
NRCS-CPA-52	1	Analysis and review.
FSA-852	4	
*--Class I EA	*	
Modified Class I EA	*	
FSA-850	10	
RD 1940-22	*	
Class II EA	*--*	
EA	**	Analysis and review.***
EIS	**	

*When completing RD 1940-21 or RD 1940-22 for a proposed action, an attachment to the RD 1940-21 or RD 1940-22 should be included that addresses potential social and economic concerns.

**Include in appropriate sections in EA or EIS concerning potential social and economic concerns.

***Programmatic EA's and EIS's should address potential social and economic concerns by identifying the impacts that would be brought about by the proposed action.

794-820 (Reserved)

--Part 6 LBP*821 Background****A Overview**

Regulations published by HUD implement Sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, Title X “ten” of the Housing and Community Development Act of 1992. Sections 1012 and 1013 of Title X amended the Lead-Based Paint Poisoning Prevention Act of 1971, the basic law covering LBP in Federally associated housing. The HUD regulations are found at Title 24 of CFR Part 35 and reference procedures described in EPA regulations at 40 CFR Part 745.227.

The HUD LBP regulation sets forth specific requirements for all federally owned residential property and property receiving Federal assistance. HUD’s LBP regulation applies to FSA in the disposal and management of inventory property on which there are residences, as well as to FSA’s loan making activities involving residential properties. The FSA regulation that addresses compliance with the Lead-Based Poisoning Prevention Act of 1971 is found at 7 CFR Part 1924, subpart A, Exhibit H.

This part applies to FSA’s direct loan programs. For loan guarantees, the responsibilities for compliance with the HUD LBP regulation and any applicable State regulations resides with the guaranteed lender.

B Purpose

This section provides guidance on how to determine if LBP may be present and how to deal with its presence.

--822 Responsibilities*A General Requirements for the Sale or Lease of Target Housing**

The following activities shall be completed before the purchaser or lessee is obligated under any sales contract or lease agreement to purchase or lease target housing that is not otherwise an exempt transaction according to 24 CFR Part 35.82. When selling or leasing real property containing target housing, FSA shall, according to 24 CFR Part 25.88:

- provide the purchaser or lessee with an EPA-approved lead hazard information pamphlet entitled, “Protect Your Family From Lead in Your Home”, available for download at http://www.fsa.usda.gov/dafp/cepd/epb/lead_based_paint.htm
- disclose the presence of any known LBP and/or LBP hazards in the target housing being sold or leased

Note: FSA shall also disclose any additional information available about the known LBP and/or LBP hazards, such as the basis for the determination that LBP and/or LBP hazards exist, the location of the LBP and/or LBP hazards, and the condition of the painted surfaces

- provide the purchaser or lessee with any records or reports available to FSA about LBP and/or LBP hazards in the target housing being sold or leased.

Note: This requirement includes records and reports about:

- common areas
- other residential dwellings in multifamily target housing, provided that the information is part of an evaluation or reduction of LBP and/or LBP hazards in the target housing as a whole.

If any of the disclosure activities identified in this section occurs after the purchaser or lessee has provided an offer to purchase or lease the housing, FSA shall complete the required disclosure activities before accepting the purchaser’s or lessee’s offer and allow the purchaser or lessee an opportunity to review the information and possibly amend their offer.--*

--822 Responsibilities (Continued)*A General Requirements for the Sale or Lease of Target Housing (Continued)**

Before a purchaser is obligated under any contract to purchase target housing, FSA shall permit the purchaser a 10-calendar-day period (unless the parties mutually agree, in writing, to a different period of time) to conduct a risk assessment or inspection for the presence of LBP and/or LBP hazards. The language provided in Exhibit 34 will be included as an addendum to the sales contract.

Note: A LBP inspection completed by a home buyer would be in addition to any LBP inspection that FSA may have completed.

According to 24 CFR Part 35.92(a), each sales contract to sell target housing shall include the following elements:

- a lead warning statement with the following language:

“Every purchaser of any interest in residential real property on which a residential dwelling was built before 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller’s possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.”

- a statement disclosing the presence of known LBP and/or LBP hazards in the target housing being sold or indicating no knowledge of the presence of LBP and/or LBP hazards.

Note: FSA shall also provide any additional information available about the known LBP and/or LBP hazards, such as the basis for the determination that LBP and/or LBP hazards exist, the location of the LBP and/or LBP hazards, and the condition of the painted surfaces.

- a list of any records or reports available to FSA pertaining to LBP and/or LBP hazards in the housing that have been provided to the purchaser.

Note: If no such records or reports are available, FSA shall so indicate.--*

--822 Responsibilities (Continued)*A General Requirements for the Sale or Lease of Target Housing (Continued)**

According to 24 CFR Part 35.92(b), each lease agreement for property containing target housing shall include the following elements:

- a lead warning statement with the following language:

“Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of LBP and/or LBP hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.”

- a statement disclosing the presence of known LBP and/or LBP hazards in the target housing being leased or indicating no knowledge of the presence of LBP and/or LBP hazards.

Note: FSA shall also disclose any additional information available about the known LBP and/or LBP hazards, such as the basis for the determination that LBP and/or LBP hazards exist in the housing, the location of the LBP and/or LBP hazards, and the condition of the painted surfaces.

- a list of any records or reports available to FSA pertaining to LBP and/or LBP hazards in the housing that have been provided to the lessee.

Note: If no such records or reports are available, FSA shall so indicate.

- according to 24 CFR Part 35.92(c), FSA shall retain a copy of the sales contract or lease agreement, amended according to this section, for no less than 3 years from the completion date of the sale or lease.--*

*--822 Responsibilities (Continued)

A General Requirements for the Sale or Lease of Target Housing (Continued)

IF the property was constructed...	THEN FSA will...
before 1960	<ul style="list-style-type: none"> • have a risk assessment and an LBP inspection of the property performed, see 24 CFR Part 35.210(a) • abate all LBP hazards identified in the above risk assessment <p>Note: An abatement shall not be considered complete until a clearance examination has been completed and the clearance levels set forth in 40 CFR Part 745.227(e)(8) have been achieved, see 24 CFR Part 35.210(b).</p> <ul style="list-style-type: none"> • in the case where abatement is not completed before the closing of the sale, FSA will ensure, with the following deed language, that abatement is carried out by the purchaser before occupancy of the property, see 24 CFR Part 35.210(b). “The Grantee is restricted from inhabiting or allowing the occupation of _____ (include a brief description of the dwelling) until the LBP hazards of the said dwelling have been abated according to the requirements of 24 CFR Part 35 and appropriate documentation has been provided to the Grantor.” • make available the results of the risk assessment and LBP inspection to prospective purchasers, see 24 CFR Part 35.88.
in or after 1960 but before 1978	<ul style="list-style-type: none"> • have a risk assessment and a LBP inspection of the property performed, see 24 CFR Part 35.215 • make available the results of the risk assessment and LBP inspection to prospective purchasers, see 24 CFR Part 35.88.

--*

***--822 Responsibilities (Continued)**

B Renovation or Repair of Residential Property Owned by FSA

FSA must minimize LBP hazards associated with renovation or repair work carried out on FSA-owned target housing.

In all cases, FSA must implement and document the following procedures:

- provide LBP informational pamphlet to occupants, see 24 CFR Part 35.910
- perform paint testing on all painted surfaces that will be disturbed or replaced during renovation or repair work, or presume that these painted surfaces are coated with LBP, see 24 CFR Part 35.930(a)
- provide notice to the occupants of the results of LBP hazard evaluation and reduction activity, see 24 CFR Parts 35.125(a) and (b).--*

*--822 Responsibilities (Continued)

B Renovation or Repair of Residential Property Owned by FSA (Continued)

The following additional practices must be implemented and documented based on estimates of the cost of repairs or renovations.

IF the estimated cost of repairs or renovations is...	THEN FSA must...
less than or equal to \$5,000 and LBP was found or assumed to be present on surfaces to be disturbed or replaced.	<ul style="list-style-type: none"> • implement safe work practices, see 24 CFR Part 35.930(b)(2) • repair disturbed paint surfaces, see 24 CFR Part 35.930(b)(2) • perform a clearance examination of the worksite, see 24 CFR Part 35.930(b)(3).
greater than \$5,000 and less than or equal to \$25,000	<ul style="list-style-type: none"> • conduct a risk assessment of the dwelling unit before rehabilitation work begins, see 24 CFR Part 35.930(c)(2) • establish interim control of all LBP hazards identified by the risk assessment, paint testing, or created as a result of rehabilitation or renovation work, see 24 CFR Part 35.930(c)(3) • perform a clearance examination of the affected site, see 24 CFR Part 35.1330(a)(3).
greater than \$25,000	<ul style="list-style-type: none"> • conduct a risk assessment of the dwelling unit before rehabilitation work begins, see 24 CFR Part 35.930(d)(2) • abate all LBP hazards identified in the risk assessment, paint testing, or created by renovation or repairs; except that interim controls may be used on exterior surfaces not disturbed by the rehabilitation, see 24 CFR Part 35.930(d)(3) • perform a clearance examination of the affected site, see 24 CFR Part 35.1330(a)(3) • perform ongoing LBP maintenance, see 24 CFR Parts 35.1355(a) and (b), on the renovated housing while it is owned by FSA.

--*

*--822 Responsibilities (Continued)

C Loans for Repair or Renovation of Target Housing

FSA must ensure that LBP hazards are minimized during renovation or repair of target housing funded in part or in full by FSA loans.

In all cases, FSA must ensure and document that the property owner performs paint testing on all painted surfaces that will be disturbed or replaced during renovation or repair work or presumes that these painted surfaces are coated with LBP, see 24 CFR Part 35.930(a).

If there are occupants other than the immediate family of the property owner living in the target housing being renovated, the property owner must:

- provide LBP informational pamphlet to occupants, see 24 CFR Part 35.910
- provide notice to the occupants of the results of LBP hazard evaluation and reduction activity, see 24 CFR Parts 35.125(a) and (b).

FSA must ensure that the property owner or borrower implements and documents the following additional practices based on the amount of the loan for repairs or renovations.

IF the amount of FSA funding is...	THEN the owner or borrower must...
less than or equal to \$5,000 and LBP was found or assumed to be present on surfaces to be disturbed or replaced	<ul style="list-style-type: none"> • implement safe work practices, see 24 CFR Part 35.930(b)(2) • repair disturbed paint surfaces, see 24 CFR Part 35.930(b)(2) • perform clearance examination of the worksite, see 24 CFR Part 35.930(b)(3).
greater than \$5,000 and less than or equal to \$25,000	<ul style="list-style-type: none"> • conduct a risk assessment of the dwelling unit before rehabilitation work begins, see 24 CFR Part 35.930(c)(2) • establish interim control of all LBP hazards identified in the risk assessment, paint testing, or created as a result of rehabilitation or renovation work, see 24 CFR Part 35.930(c)(3) • perform clearance examination of affected site, see 24 CFR Part 35.1330(a)(3).
greater than \$25,000	<ul style="list-style-type: none"> • conduct a risk assessment of the dwelling unit before rehabilitation work begins, see 24 CFR Part 35.930(d)(2) • abate all LBP hazards identified in the risk assessment, paint testing, or created as a result of renovation or repair work; except that interim controls may be used on exterior surfaces not disturbed by the rehabilitation, see 24 CFR Part 35.930(d)(3) • perform clearance examination of affected site, see 24 CFR Part 35.1330(a)(3).

--*

--822 Responsibilities (Continued)*D Properties Exempt from the HUD Regulation**

The following types of property and actions are exempt from the HUD regulation:

- housing built after 1978
- housing exclusively for the elderly or for people with disabilities, unless a child under age 6 is expected to reside there
- zero-bedroom dwellings, including efficiency apartments, single-room occupancy housing, dormitories, or military barracks
- property where all lead-based paint has been removed
- unoccupied property that will remain vacant until it is demolished
- non-residential property
- any rehabilitation or housing improvement that does not disturb a painted surface
- emergency repair actions needed to safeguard against imminent danger to human life, health, or safety, or to protect property from further structural damage
- residences sold or leased under the Homestead Protection Program.

E Requesting Professional Services

Contact the appropriate regional EPA office to identify companies that are certified to perform LBP inspections, risk assessments, and abatement in specific States. A listing of lead service providers, lead inspectors, risk assessors, and abatement contractors, renovators trained in lead-safe practices (lead-trained renovators), EPA-recognized lead analysis laboratories, and Lead Training Providers can also be found at <http://www.leadlisting.org> or by telephone at 1-888-LEADLIST.--*

823-830 (Reserved)

--Part 7 Environmental Risk Management*Section 1 Process for Conducting Due Diligence****831 Statutory and Regulatory Requirements****A Overview**

Subtitle E of the Omnibus Consolidated Appropriations Act of 1997, the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996 (the 1996 Act), Pub. L. 104-208 amended CERCLA, 42 U.S.C. 9601 et seq.

In administering its loan programs, FSA must ensure that adequate security is obtained and its risks from being associated with environmental contamination are greatly minimized. FSA must comply with applicable Federal, State, and local laws concerning managing and disposing of hazardous substances, hazardous waste, and petroleum products.

Section 2502 of the 1996 Act made several amendments to Section 101(20) of CERCLA. The most significant change effected by the 1996 Act was revising the definition of “owner-operator” to **exclude** lenders that did not participate in managing a facility before foreclosure and who seek to sell, lease, or otherwise dispose of the facility at the earliest practicable, commercially reasonable time on commercially-reasonable terms, taking into account market conditions and legal and regulatory requirements.

Section 2503 of the 1996 Act amended Section 9003(h) of the Solid Waste Disposal Act by adding the following:

The terms “owner” and “operator” do **not** include a person that, without participating in the management of UST and otherwise not engaged in petroleum production, refining, or marketing, holds indicia of ownership primarily to protect the person’s security interest.

On September 7, 1995, EPA published a final rule in FR, Underground Storage Tanks - Lender Liability, at 60 FR 46692 RCRA, Subtitle I-Regulation of UST's. This rule, at 40 CFR Parts 280 and 281:

- specifies conditions limiting the regulatory obligations of persons who hold a security interest in UST or in real estate containing UST, or that acquires title or deed to UST or property on which UST is located
- adopts changes made to the definition of the terms “owner” and “operator” made by the 1996 Act.--*

--831 Statutory and Regulatory Requirements (Continued)*B Purpose**

This part establishes and incorporates an environmental risk management policy for FSA lending practices in addition to land management practices for inventory properties. A major component of this risk management policy will be the performance of due diligence to:

- minimize adverse impacts to FSA's security interests in real property caused by potential contamination from hazardous substances, hazardous waste, and petroleum products
- establish a process by which FSA can minimize its liabilities under the law regulating management of hazardous substances, hazardous waste, and petroleum products
- include the Agency's policies and procedures for managing hazardous substances, hazardous waste, and petroleum products and implement requirements of the following environmental laws:
 - CERCLA, 42 U.S.C. 9601 et seq
 - RCRA, 42 U.S.C. 6991 et seq
 - Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 et seq
- provide guidance to conduct due diligence to reduce future losses from a reduction in market value and to ensure compliance with applicable Federal, State, and local laws about the management of hazardous substances, hazardous waste, and petroleum products
- provide guidance concerning response or corrective actions when hazardous substances, hazardous waste, or petroleum products are present according to the changes to CERCLA and RCRA.

Note: Even though this section provides guidance on certain exceptions allowed under CERCLA and RCRA to undertaking corrective actions on properties the Agency disposes of, the full requirements of CERCLA and RCRA may be triggered if FSA does not act within the boundaries of the secured creditor exemption.--*

--832 Responsibilities*A FSA Loan Approval Officials**

The FSA loan approval official is responsible for ensuring compliance with the requirements of this Section and coordinating activities with SEC, as needed.

B Appraisers

Appraisers are responsible for notifying or reporting to the appropriate FSA official any concerns about potential contamination from hazardous substances, hazardous waste, and petroleum products, which they become aware of through disclosure by interested parties, through normal observations, or research conducted during an appraisal assignment. When an environmental professional is employed to assist the appraiser in determining the security value of real estate, the appraiser should be in a position to estimate the property's "as is" value if the appropriate supporting documentation is available from an environmental professional.

C State Environmental Coordinators

SEC is responsible for the oversight of all technical and regulatory interactions under this section with CEPD in the National Office, other FSA staff, and the appropriate environmental regulatory authorities.

D Loan Applicants

Applicants are responsible for identifying and complying with all laws regulating management of hazardous substances, hazardous waste, and petroleum products that affect their financial operation or business interest. Recipients of FSA direct loans and farm storage facility loans involving real estate security are expected to maintain their operations in an environmentally sound manner and not place FSA's security interests at risk.

E Environmental Professionals

A qualified environmental professional shall:

- perform all Phase II ESA's
- perform all analytical procedures, including sampling and testing activities, concerning any environmental media, response actions, and environmental audits--*

--832 Responsibilities (Continued)*E Environmental Professionals (Continued)**

- be responsible, in the context of due diligence, for evaluating remedial options and providing a cost estimate for response actions on a subject property

Note: These cost estimates will be used by appraisers and/or FSA officials in security value determinations and in making risk analyses in loan processing and servicing decisions.

- be responsible for obtaining and analyzing environmental samples according to proper health and safety procedures required by 29 CFR Part 1910.120, “Hazardous Waste Operations and Emergency Response,” and the most current sampling and laboratory protocols promulgated by the appropriate environmental regulatory authority.

833 Due Diligence Process**A Overview**

FSA must conduct due diligence on property being offered as security for initial loans or subsequent loans including farm storage facility loans, and property offered as additional security to determine the presence of hazardous substances and to accurately determine market or security values. [1941.19(c)(2), 1943.19(d)(1), and 1436.17(d)(1)]

FSA will conduct due diligence for EM loans including those where an appraisal is not required. FSA will also conduct due diligence for acquisition of real property. Certain servicing actions including subordinations or described elsewhere in this Part will also require due diligence.

FSA’s due diligence process for direct loans consists of 2 steps that include:

- FSA-851’s (Exhibit 35)
- Phase II ESA’s.

Note: It may not be necessary to complete both steps in performing due diligence. It is necessary only to complete the level of review required to ascertain and document environmental and economic risk posed by potential contamination.

If market value is being determined, due diligence should be completed before the appraisal or as part of the appraisal in those cases where the appraiser completes the site assessment.--*

--833 Due Diligence Process (Continued)*A Overview (Continued)**

The 2-step due-diligence process is further explained as follows:

- FSA-851 is defined as the initial level of inquiry which evaluates the environmental condition of security and concludes whether additional evaluation is necessary

Note: Proper completion of FSA-851 will assist FSA in qualifying for the innocent landowner's defense to CERCLA liability. FSA-851 is designed as a series of questions that determine present or past land uses or activities which may have or appear to have the potential for adversely impacting the environmental conditions and market value of collateral or acquired property.

- if the results of FSA-851 are inconclusive and professional review and judgment are needed, then the next level of review, Phase II ESA, shall be completed to clarify the issues raised by FSA-851
- Phase II ESA and ASTM Standard E-1528 (Standard Guide for Environmental Site Assessments, Phase II Environmental Site Assessment Process) is a detailed investigation and evaluation of a property's environmental condition and involves a review of all pertinent records, a site reconnaissance of the property, and the preparation of a brief narrative report communicating the findings and conclusions about the environmental condition of the property.

Note: In most cases, the environmental professional will be requested to provide cost estimates to remediate the environmental hazards to an acceptable level according to Federal, State, and local laws and regulations. This level of review for FSA direct loans will be coordinated by the SEC.

B Direct Loan Making – CERCLA Issues

The release or presence of a hazardous substance, hazardous waste, or a leaking UST on a property could affect the value of the property offered as security for a loan or as additional security. Furthermore, an applicant or borrower with substantial CERCLA or RCRA UST liability may have a severely diminished ability to repay. Therefore, due diligence will be:

- performed for all initial and subsequent loans including farm storage facility loans involving real estate as security, including real estate offered as additional security
- conducted for all real property being offered as security for subsequent loans.

It will not be necessary to perform due diligence on real property where FSA has a review on file that is less than 1 year old and there is no reason to suspect that any changes in the property's condition has taken place. For real property with a due diligence review on file that is 1 year old or older, it will only be necessary to update the existing review to reflect current information.--*

--833 Due Diligence Process (Continued)*B Direct Loan Making – CERCLA Issues**

If FSA determines that the property being offered as security contains possible hazardous waste contamination based on FSA-851, FSA will notify the applicant that no further processing of the loan application can take place until 1 of the following occurs:

- applicant provides an environmental site assessment completed by a qualified environmental professional that shows the property offered for security is not contaminated
- new noncontaminated property is offered as security for the loan
- contaminated property being offered as security has been fully remediated by the applicant according to a plan approved by the appropriate regulatory agency
- contaminated property can be subdivided, thus leaving a noncontaminated property to offer as security.

Note: Proof **must** be provided that the potential contamination will not impact the adjoining property that is being used as security.

Any contamination found by FSA should be reported, in writing, to the applicant with instructions that the applicant may have a reporting requirement depending upon applicable State regulatory requirements.

C Direct Loan Making - UST's

FSA will notify the applicant that no further processing of the loan application can take place until the following requirements are met; when it is determined that real property being offered as security for a loan contains a:

- regulated UST, the applicant will be requested to provide evidence that it is complying with all applicable environmental laws and regulations including, but not limited to, the following:
 - UST is registered with the appropriate State regulatory agency along with tank installation data to show what type of tank was installed and measures employed to prevent or contain leakage; evidence may also consist of test results from a qualified environmental professional
 - evidence that the tank has been removed in accordance with state regulations and that no contamination exists; this removal and testing must be completed by a firm authorized by the State to perform such removals.--*

--833 Due Diligence Process (Continued)*C Direct Loan Making – Underground Storage Tanks (Continued)**

- **nonregulated** UST, the applicant will be required to either:
 - remove or permanently close the UST according to State and local laws and regulations and provide evidence that no contamination exists
- provide evidence that the tank is not leaking and will not leak during the term of the loan.

Note: Excavated UST's may not be left on the security property.

Note: Evidence may consist of:

- tank installation data to show what type of tank was installed and measures employed to prevent leakage
- test results from a qualified environmental professional.

Any contamination found by FSA will be reported to the applicant, in writing, with instructions that it may have a reporting requirement depending upon State regulatory requirements.

D Guaranteed Loans

Guaranteed lenders are required to perform due diligence in conjunction with a request for a guarantee of a loan involving real estate as security. For loan guaranteed requests, FSA will accept 1 of the following processes as documentation that due diligence has been completed:

- FSA-851
- ASTM transaction screen questionnaire
- ASTM Phase I ESA
- similar environmental risk checklist that has been approved by the SEC.

If potential environmental risks are noted by the lender, FSA should assist the lender in determining the best methods of ensuring that appropriate actions are taken to ensure that adequate security is obtained for the loan request.

For lenders that use their own environmental risk checklists and operate lending institutions in more than 1 State, the appropriate SEC's should coordinate their reviews and approval of the lenders' checklists to maintain consistency.

When processing loss claims for loan guarantees that involve real estate security that may be affected by environmental risks, FSA will take into account the due diligence that was completed by the lender.--*

--833 Due Diligence Process (Continued)*E Direct Loan Servicing**

For transfers and assumptions, FSA-851 will be completed to document the condition of the property at the time of approving the transfer or assumption. If the security property is found to be contaminated, the transferor must fully remediate the property according to a plan approved by the appropriate regulatory agency before FSA will approve the transfer and assumption.

For debt restructuring involving new or additional security being offered, FSA will complete FSA-851. If any new or additional security is found to be significantly contaminated or contains UST, it will be handled according to subparagraphs C and D.

For a Debt for Nature contract, FSA will complete FSA-851 for all property being placed under the contract. As a member of the contract-review team, FSA will be responsible for completing FSA-851 at the time of the field visit. If required, any corrective action must be taken by the borrower before FSA approves the conservation contract.

F Foreclosure and Voluntary Conveyance

Due diligence will be completed on all properties being considered for foreclosure or voluntary conveyance by first completing FSA-851. If necessary, further evaluation in the form of a Phase II ESA will be completed.

To determine the foreclosure bid amount to take property into inventory or accept as a voluntary conveyance offer, deductions for the potential cleanup of hazardous substances, hazardous waste, or UST's, as determined by a Phase II ESA prepared by an environmental professional will be included in RD Instruction 1955-A, Exhibits G or G-1, line 3k. Estimates other than those derived by completion of a Phase II ESA will only be allowed on Exhibits G or G-1 when the estimated cost to complete the Phase II ESA exceeds the equity recovery value of the security.

G Management and Disposal of Inventory Property

To take advantage of the secured creditor exemption, FSA must seek to sell or otherwise divest itself of acquired property (foreclosure or voluntary conveyance) in a reasonably expeditious manner using whatever commercially reasonable means are available or appropriate and according to the statute, after taking all facts and circumstances into account. The determination of whether the secured creditor exemption is available must be based on a review of the facts involved in each case.--*

--833 Due Diligence Process (Continued)*G Management and Disposal of Inventory Property (Continued)**

Under normal circumstances (where the secured creditor exemption is available), FSA will not conduct cleanups or remediation of hazardous waste contamination on inventory properties before, or as a condition of, a sale except where:

- FSA actively participated in the management of the property before its acquisition
- property has been held in inventory for longer than the statutorily prescribed maximum period and no diligent efforts have been made by FSA to dispose of the property

Note: FSA will not consider the maximum prescribed period to begin until clear title is obtained to the property. Also, FSA will take no corrective or remedial action on property which is under lease with an option to purchase. The maximum prescribed period begins for a leased property when it becomes available for sale (lease expires or option to purchase was not exercised) and all appeals are concluded.

- contamination is of such an extent or nature that it is of immediate concern to the health and safety of neighboring property owners or to the potential purchasers of the property
- property is being sold to a beginning farmer and FSA is providing credit assistance through direct, participation, or guaranteed loan programs. The sales price of the property shall reflect the value as if the property does not contain any contamination.

A Phase II ESA will be required if the UST on the inventory property has not been upgraded or replaced to meet the requirements of 40 CFR Part 280.20 for new UST systems or 40 CFR Part 280.21 for upgraded systems, or if no external release detection method is in operation.

AST's and heating oil tanks are not regulated under RCRA, Subtitle I, but may be regulated by State laws and regulations.

The appropriate environmental regulatory authority should be consulted to determine whether corrective action is necessary or if the State has statutory or regulatory exclusions for lenders that make loans to borrowers who own or operate AST's or heating oil tanks.--*

--833 Due Diligence Process (Continued)*G Management and Disposal of Inventory Property (Continued)**

Under normal circumstances, FSA will not conduct removal or corrective actions for UST's unless 1 of the following actions occurs:

- FSA actively participated in managing the property before its acquisition
- the property has been held in inventory for longer than the statutorily prescribed maximum period and no diligent efforts have been made by FSA to dispose of the property

Note: FSA will not consider the maximum prescribed period to begin until clear title is obtained to the property. Also, FSA will take no corrective/remedial action on property which is under lease with an option to purchase. The maximum prescribed period begins for these leased properties when it becomes available for sale (lease expires or option was not exercised).

- any known leakage presents an immediate concern to the health and safety of neighboring property owners or to the potential purchasers of the property

Example: A leaking UST may be contaminating groundwater that is used for human consumption.

- the property is being sold to a beginning farmer or rancher and FSA is providing credit assistance through direct, participation, or guaranteed loan program; the sales price of the property will be the "as improved" value determined by an appraisal.

Note: If it is determined that corrective action may be necessary for UST, FSA will take corrective action by contracting with an environmental professional to remove UST and backfill the removal site according to Federal, State, and local laws and regulations. In addition to removing UST, FSA must also ensure that all contaminated soil has been removed and disposed of according to all applicable laws and regulations.

EPA considers UST's to be in use and in operation if petroleum is added to, dispensed from, or stored in UST. Therefore, FSA cannot continue to use, store, dispense, or fill petroleum in UST or UST system after obtaining marketable title and access to UST or UST system without incurring Subtitle I liability. Affirmative actions such as tank emptying, capping and securing lines, permanent or temporary closure, and release reporting are not considered participation in management and will not incur Subtitle I liability (60 FR 46692, 46669 (September 7, 1995)). For property under a Homestead Protection lease, the SEC should be consulted for guidance in how to deal with usage of UST's during the term of the lease.--*

--833 Due Diligence Process (Continued)*G Management and Disposal of Inventory Property (Continued)**

Performing due diligence is no guarantee that UST's will be found. The property acquired by FSA may contain UST's which are not detectable, difficult to identify, and not registered with the State. If a tank is not discovered until after the property is sold, FSA may still take appropriate corrective action if necessary according to this Section.

Property may be acquired by FSA that has been or is used for the production of petroleum. The production of petroleum includes, but is not limited to, activities involved in the production of crude oil or other forms of petroleum, as well as the production of petroleum products from purchased materials, either domestically or abroad. In most of these cases, FSA will not be liable under Federal law for corrective action concerning the production of petroleum, but may be liable under RCRA for spills, releases, or remedial action resulting from some actions concerning the production activities.

SEC should consult with the Regional OGC and the appropriate environmental regulatory authority to determine if State laws or regulations require corrective action.

When the property is being sold back to PRP who was the debtor, FSA will not undertake response or corrective actions.

Even though no corrective action may be taken on a property as a condition of disposal, FSA will obtain the proper level of documentation according to subparagraph 3 A. This documentation will be retained in a permanent file by SEC in the State Office.

When disposing of inventory properties for which FSA will provide corrective actions, the servicing official shall incorporate the following 2 paragraphs into the main body of the deed:

“The GRANTOR agrees to be responsible for responding to hazardous substances (as defined by 42 U.S.C. § 9601(14)) located on the property at the time of transfer, whether such hazardous substances have been identified at the time of transfer of title to the Grantee or are identified after transfer of title. Subject to availability of appropriations, the Grantor agrees to respond to hazardous substances on or from the property, not inconsistent with the requirements of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended (42 U.S.C. § 9601 et seq) and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR Part 300).

The GRANTOR and its employees, agents, contractors, and subcontractors have the right, upon reasonable notice to the Grantee or any assignee, to enter upon the property for response actions.”--*

***--833 Due Diligence Process (Continued)**

G Management and Disposal of Inventory Property (Continued)

The servicing official shall also incorporate the language contained in Exhibit 36 as an attachment to the deed where hazardous substances are or have been stored for more than 1 year, or released, on the property in excess of the quantities described in 40 CFR Part 373.2 and regardless of whether corrective action will be taken by FSA. FSA may also provide a copy of the FSA-851 and any related ESA's to the prospective purchaser before the purchaser signs any contract for the purchase of the property. This action will not be necessary if the property is being sold back to a PRP.--*

834-840 (Reserved)

***--Section 2 Solid and Medical Waste**

841 Overview

Nonhazardous solid waste (garbage) and medical waste are not regulated by CERCLA, but may be regulated under the provisions of RCRA as in the case of abandoned batteries or appliances containing substances regulated under RCRA or CERCLA. Unless required by State or local laws or regulations, solid waste may be cleaned up at the discretion of FSA depending on the effect of the waste on the market value of the property and if it contains significant amounts of regulated substances which require cleanup.

842 Responsibilities

In the case of medical waste, SEC should consult with the appropriate environmental regulatory authority to determine State or local requirements for response or corrective actions.

When the property is being sold to PRP or other person who may be responsible for the dumping of waste, FSA will not undertake any response or corrective action.--*

843-850 (Reserved)

--Section 3 Asbestos*851 Overview**

Asbestos is made up of microscopic bundles of fibers that may become airborne when distributed. Once released into the air, these fibers can be inhaled into the lungs, where they may cause significant health problems. Symptoms of these health problems may take several years to develop.

ACM's in buildings do not always pose a hazard to occupants and workers in those buildings. Hazards usually only occur when fibers from ACM's are released into the air. Physical damage and deterioration over time can contribute to release of the fibers.

The term "friable" is used to describe asbestos that can be reduced to dust by hand pressure. "Nonfriable" means asbestos that is too hard to be reduced to dust by hand pressure. Nonfriable materials, like transite siding and floor tiles, are not regulated provided it does not become friable. Machine grinding, sanding, and dry-buffing are ways of causing nonfriable materials to become friable.

852 Responsibilities

FSA-851 will indicate in Table 1 if any structures appear to contain ACM's. The following construction materials may be some of those commonly found on farm properties:

- cement pipes
- cement wallboard
- cement siding
- asphalt floor tile
- vinyl floor tile and sheet flooring
- construction mastics
- fireproofing materials
- HVAC duct insulation
- roofing singles
- roofing felt
- wallboard
- spray-applied insulation.

In making a determination if an environmental professional should be consulted for further evaluation of potential ACM's, FSA-851 should state if products such as cement siding has sustained physical damage or is suffering from deterioration that could cause it to become friable. Corrective action is usually not necessary for nonfriable ACM on exterior surfaces of structures.--*

853-860 (Reserved)

***--Section 4 Leasing of Real Property**

861 Overview

FSA may lease inventory property under programs such as Homestead Protection. If a leased property contains a UST, it is especially important for FSA to take measures to prevent the UST from causing harm to the environment. It is also important to prevent other unwise uses of the leased property that could contribute to contamination.

862 Responsibilities

When leasing property, appropriate restrictions should be placed in the lease agreement to avoid further contamination of the inventory property. Restrictions may include:

- restricting any use of UST
- restricting the filling of spray equipment within close proximity to wells
- prohibiting the dumping of hazardous substances on the subject property.--*

863-870 (Reserved)

***--Section 5 Reporting to Regulatory Authority**

871 Overview

If corrective action is taken or not, FSA is responsible after foreclosure or voluntary conveyance, for reporting to the appropriate environmental regulatory authority any discovery of a release of regulated substances or a suspected release at UST site or in the surrounding area.

Reporting is necessary to ensure protection of human health and the environment.

872 Responsibilities

SEC will contact the appropriate State regulatory authority when reporting releases of regulated substances becomes necessary. This reporting will be documented in writing and filed with FSA-851.--*

873-880 (Reserved)

--Section 6 Notification and Advertisement*881 Overview**

For property that is contaminated based on appropriate documentation and analysis, FSA will provide notice in the sales advertisement that the property contains hazardous waste contamination or UST's and that a copy of the environmental documentation may be reviewed at the local FSA office.

882 Responsibilities

The advertisement of an inventory property that is subject to a response or corrective action by the Government according to subparagraph A shall contain the following:

- brief statement acknowledging that the property is contaminated with hazardous substances, hazardous waste, or a leaking UST
- guarantee to the purchaser that the Government will clean up the contamination present on the property at the time of the sale
- description of the contaminated area.

Advertisement of an inventory property that is **not** subject to a response or corrective action by the Government shall contain a brief statement acknowledging that the property is contaminated with hazardous substances, hazardous waste, or a leaking UST; but that **no** corrective action will be taken by FSA.

Note: The property will be sold "as is".

FSA will **not** provide notification or warranties in its deeds conveying the title of inventory property when corrective action is **not** to be undertaken by FSA. When corrective action will be taken by FSA, the language included in Exhibit 2 should be included as part of the deed.--*

Reports, Forms, Abbreviations, and Redelegations of Authority

Reports

None

Forms

This table lists all forms referenced in this handbook.

Number	Title	Display Reference	Reference
AD-1026	Highly Erodible Land Conservation and Wetland Conservation Certification		4, 426
AD-1026-A	Supplemental to AD-1026 (Continuation)		4, 426
FSA-850	Environmental Evaluation		Text
FSA-851	Environmental Risk Survey Form	Ex. 35	833, 837, 841
FSA-852	Administrative Review of Environmental Evaluations and Assessments		Text
FSA-853A	Environmental Assessment	Ex. 14	27, 252
FSA-853B	Environmental Assessment for Farm Loan Program Project	Ex. 12	27, 252
FSA-855	State Environmental Coordinator Nomination Form	Ex. 11	4
FSA-857	Finding of No Significant Impact (FONSI)	Ex. 13	27
NRCS-CPA-026	Highly Erodible Land and Wetland Conservation Determination		426
NRCS-CPA-038	Request for Certified Wetland Determination and Delineation		426
NRCS-CPA-052	Environmental Evaluation Checklist		Text
NRCS-CPA-106	Farmland Conversion Impact Rating for Corridor Type Projects		752
RD 1940-20	Request for Environmental Information		4, 204
RD 1940-21	Environmental Assessment for Class I Action		27, 252, 503, 573
RD 1940-22	Environmental Checklist for Categorical Exclusions		Text

Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)

Abbreviations Not Listed in 1-CM

The following abbreviations are not listed in 1-CM.

Approved Abbreviation	Term	Reference
ACHP	Advisory Council on Historic Preservation	Text
ACM	asbestos-containing materials	836, 837
AFO	Animal Feeding Operation	4, 671, 672
AHPA	Archaeological and Historic Preservation Act	641
AIRFA	American Indian Religious Freedom Act	641
ARPA	Archaeological Resources Protection Act	641
AST	above ground storage tank	833, Ex. 35
ASTM	American Society for Testing and Materials	833
CAA	Clean Air Act	50, 691, 692
CAFO	Confined Animal Feeding Operation	4, 671, 672
CATEX	Categorical Exclusion	Text
CATEX-EE	Categorical Exclusion with Environmental Evaluation	171
CEQ	Council on Environmental Quality	Text
CERCLA	Comprehensive Environmental Response Compensation and Liability Act	3, 831, Ex. 35, Ex. 36
CNMP	Comprehensive Nutrient Management Plan	4, 252, 670, 671
CO	Contracting Office	Ex. 15
CONACT	Consolidated Farm and Rural Development Act	425, 426
CPSC	Consumer Protection Safety Commission	795
CREP	Conservation Reserve Enhancement Program	132, 204, 252
CWA	Clean Water Act	34, 50, 425, 426, 670

Reports, Forms, Abbreviations, and Delegations of Authority (Continued)

Abbreviations Not Listed in 1-CM (Continued)

Approved Abbreviation	Term	Reference
DEIS	Draft Environmental Impact Statement	302
EA	Environmental Assessment	Text
EE	Environmental Evaluation	Text
EIS	Environmental Impact Statement	Text
EM	emergency loans	832
EO	Executive Order	Text
ESA	Endangered Species Act	Text, Ex. 35
FEIS	Final Environmental Impact Statement	302
FIRM	floodplain insurance rate maps	50
FLM	Farm Loan Manager	4
FLO	Farm Loan Officer	4
FONSI	Finding of No Significant Impact	Text
FPO	Federal Preservation Officer	4, 51, 643
FR	Federal Register	171
HUD	Department of Housing and Urban Development	794, 795
LBP	lead-based paint	795, 821, 822, Ex. 34, 35
LESA	Land Evaluation and Site Assessment	752
MOA	Memorandum of Agreement	72, 73, 252, 642
NAAQS	National Ambient Air Quality Standards	691
NAGPRA	Native American Graves Protection and Repatriation Act	172, 641
NECM	National Environmental Compliance Manager	Text
NEPA	National Environmental Policy Act	Text
NFIP	National Flood Insurance Program	452, 453
NHPA	National Historic Preservation Act	Text

Reports, Forms, Abbreviations, and Delegations of Authority (Continued)

Abbreviations Not Listed in 1-CM (Continued)

Approved Abbreviation	Term	Reference
NMFS	National Marine Fisheries Service	50, 171
NMP	nutrient management plan	4, 252, 670, 671
NOA	Notice of Availability	171, 308
NOI	Notice of Intent	Text
NPDES	National Pollution Discharge Elimination System	426, 670, 672
NPS	National Park Service	Text
NRHP	National Register of Historic Places	641, 642, Ex. 4
NRI	National River Inventory	50, 601, 602
PEA	Programmatic Environmental Assessment	132, 256
PEIS	Programmatic Environmental Impact Statement	132
PRP	Potentially Responsible Party	833, 835
RAO	Responsible Agency Official	Text
RCRA	Resource Conservation and Recovery Act	3, 831, 833
RFO	Responsible Federal Official	4, 27, 72, 75, 102, 304, 307
ROD	Record of Decision	Text
SEC	State Environmental Coordinator	Text, Ex. 35
SEG	State Environmental Guide	4, 427, 602, 691, 692
SEIS	Supplemental Environmental Impact Statement	302
SHPO	State Historic Preservation Officer	Text
SOW	Statement of Work	Ex. 15
SSA	Sole Source Aquifer	476
THPO	Tribal Historic Preservation Officer	Text
USACE	US Army Corps of Engineers	Text
USGS	US Geological Survey	452
UST	underground storage tank	Text, Ex. 35, 36
WMP	Waste Management Plan	4
WSRA	Wild and Scenic River Act	602
WSRS	Wild and Scenic River System	601, 602

Definitions of Terms Used in This Handbook

*--Abatement

Abatement is any set of measures designed to permanently eliminate LBP hazards. These measures must be implemented by firms and individuals certified to do so.

[24 CFR Part 35.110]

Animal Feeding Operation

An animal feeding operation means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: (1) Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and (2) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. [40 CFR Part 122.23 (b)(1)]

Clearance Examination

A clearance examination is an activity conducted following LBP hazard reduction activities to determine that the hazard reduction activities are complete and that no soil-lead hazards or settled dust-lead hazards exist in the dwelling unit or worksite. The process includes a visual inspection and collection and analysis of environmental samples. The clearance examination must be completed by a certified inspector or risk assessor who was not involved in performing the lead hazard control activities. [24 CFR Part 35.110]

Encapsulation

Encapsulation means the application of a covering or coating that acts as a barrier between lead-based paint and the environment and that relies for its durability on adhesion between the encapsulant and the painted surface, and on the integrity of the existing bonds between paint layers and between the paint and the substrate. Encapsulation may be used as a method of abatement if it is designed and performed so as to be permanent. [24 CFR Part 35.110]--*

Definitions of Terms Used in This Handbook (Continued)***--Federal Action**

Federal action includes new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals. Federal actions tend to fall within 1 of the following categories:

- adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreement; formal documents establishing an agency's policies which will result in or substantially alter agency programs
- adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribed alternative uses of federal resources, upon which future agency actions will be based
- adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive
- approval of specific projects, such as construction or management activities located in a defined geographic area; projects include actions approved by permit or other regulatory decision as well as federal and federally-assisted activities.--*

Financial Assistance

Financial assistance is any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, or any other form of direct or indirect Federal assistance.

Federal Financial Assistance

Federal financial assistance is any financial benefit provided directly as aid to a project by department, agent, or instrumentality of the Federal Government in any form, including contracts, grants, and loans or loan guarantees.

Definitions of Terms Used in This Handbook (Continued)

Floodplains

Floodplains are lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands. At a minimum, floodplains consist of those areas subject to a 1 percent or greater chance of flooding in any given year. The term floodplain will be taken to mean the base floodplain, unless the action involves a critical action, in which case the critical action floodplain is the minimum floodplain of concern.

- Base floodplain (or 100-year floodplain) is the area subject to inundation from a flood of a magnitude that occurs once every 100 years on the average (the flood having a 1 percent chance of being equaled or exceeded in any given year).
- Critical action floodplain (or 500-year floodplain) is the area subject to inundation from a flood of a magnitude that occurs once every 500 years on the average (the flood having 0.2 percent chance of being equaled or exceeded in any given year).

Hazardous Substance

A hazardous substance, as identified by 42 U.S.C. 9601, is any:

- substance designated under CWA, Section 311 (b)(2)(A)
- element, compound, mixture, solution, or substance designated according to CERCLA, Section 102
- hazard waste having characteristics listed under RCRA, Section 3001
- toxic pollutant listed under CWA, Section 307(a)
- hazardous air pollutant listed under CAA, Section 112.

Also, any imminently hazardous chemical substances or mixtures, with respect to which EPA has taken action according to TSCA, Section 7.

Hazardous Waste

Hazardous waste is a solid waste, combination of solid waste, wastewater, or liquid which because of its quality, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or pose a substantial present or potential hazard to human health. Refer to 40 CFR Part 261.3 for the regulatory definition of a hazardous waste and 40 CFR Part 261.4 for waste material excluded from the definition of hazardous waste.

Definitions of Terms Used in This Handbook (Continued)

Historic Property

Historic property means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within these properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the

--National Register criteria. [36 CFR Part 800.16]--

Human Environment

Human environment means the natural and physical environment and the relationship of people with that environment. However, as described in the NEPA regulations at 40 CFR Part 1508.14, economic or social effects are not intended by themselves to require preparing EIS. Human environment includes those resources covered by 36 CFR Part 800.

* * *

Interim Control

Interim control is a set of measures designed to reduce temporarily human exposure or likely exposure to LBP hazards. These measures may include specialized cleaning, repairs, maintenance, temporary containment, ongoing monitoring of LBP hazards or potential hazards, and establishment and operation of management and resident education programs.

--[24 CFR Part 35.110]--

Indicia of Ownership

Indicia of ownership is evidence of a secured interest, evidence of an interest in a secured interest, or evidence of an interest in real or personal property security for a loan or other obligation, including any legal or equitable title or deed to real or personal property acquired through or incident to foreclosure. Evidence of such interests include, but are not limited to mortgages, deeds of trusts, liens, surety bonds and guaranteed for obligations and legal or equitable title obtained according to foreclosure or voluntary conveyance.

[40 CFR Part 280.200]

*--LBP Inspection

A LBP inspection is a surface-by-surface investigation by a certified inspector or risk assessor to determine the presence of LBP and the provision of a report explaining the result.--*

Definitions of Terms Used in This Handbook (Continued)

*--LBP Risk Assessment

LBP Risk Assessment means both of the following:

- an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards
- the provision of a report by the individual or firm conducting the risk assessment explaining the results of the investigation and options for reducing lead-based paint hazards. [24 CFR Part 35.110]--*

Major Federal Action

Major Federal action means actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning *--independent of “significantly” for NEPA evaluation purposes. [40 CFR Part 1508.18]

Manipulation

Manipulation, as related to wetlands, is generally considered, but not limited to, the alteration of the hydrology and/or removal of woody vegetation (including stems and stumps) on a wetland.

Memorandum of Agreement

Memorandum of Agreement means a legally binding document that records the terms and conditions agreed upon to resolve the potential effects of a Federal agency program or action. [36 CFR Part 800.16]--*

Mitigation

Mitigation includes:

- avoiding the impact altogether by not taking a certain action or parts of an action
- minimizing impacts by limiting the degree or magnitude of the action and its implementation
- rectifying the impact by repairing, rehabilitating, or restoring the affected environment
- reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action
- compensating for the impact by replacing or providing substitute resources or environments.

Definitions of Terms Used in This Handbook (Continued)

Notice of Intent (NOI)

Notice of Intent (NOI) means a notice that EIS will be prepared and considered. NOI is a brief statement inviting public reaction to the decision by the responsible Federal official to prepare an EIS for a major Federal action. NOI is to be published in FR, circulated to interested agencies, groups, and individuals, and published in 1 or more newspapers serving the area of the proposed *--action. [40 CFR Part 1508.22]

Paint Testing

Paint testing is the process of determining, by a certified LBP inspector or assessor, the presence or absence of LBP on deteriorated paint surfaces or painted surfaces to be disturbed or removed. [24 CFR Part 35.110]--*

Participate in Management

Participate in management is a term used to describe a lender who exercised decision making control over the environmental compliance concerning the facility or operation or exercised control at a level comparable to that of a manager of the facility or operation, undertaking responsibility for hazardous substance handling or disposal practices [40 CFR Part 280.210], while the borrower was still in possession of the property.

Petroleum Products

Petroleum products (and their derivatives) are uncontaminated petroleum products that are not, by definition, a hazardous substance. Petroleum products include crude oil or any fraction thereof which is not specifically listed under the definition of "hazardous substances" found in 42 U.S.C. 9601(14).

Potentially Responsible Party (PRP)

Potentially responsible party is a term encompassing the definition found at 12 U.S.C. 9607. The term PRP encompassing the following definitions:

- current owner, operator, or owner and operator of a facility from where there is a release or a threatened release of hazardous substances, whether or not they disposed of hazardous substances during their ownership
- prior owner, operator, owner and operator of a facility, if they disposed of hazardous substances during ownership or acquired actual knowledge of a release or threatened release during ownership and later transferred ownership without disclosure of the knowledge to the purchaser
- transporters who brought hazardous substances to a facility selected by them.

Generators and other owners or possessors of hazardous substances, who arranged for disposal or treatment.

Definitions of Terms Used in This Handbook (Continued)**Practicable Alternative**

Practicable alternative means an alternative that is capable of attainment within the confines of relevant constraints. The test of practicability, therefore, depends upon the particulars of the situation under consideration and those constraints imposed by environmental, economic, legal, social and technological parameters. This test, however, is not limited by the temporary unavailability of sufficient financial resources to implement an alternative. That is, alternatives cannot be rejected solely on the basis of moderately increased costs. The range of alternatives that must be analyzed to determine if a practicable alternative exists includes the following 3 categories of alternatives [**7 CFR Part 1940.302**]:

- alternative project sites or designs
- alternative projects with similar benefits as the proposed action
- the no-action alternative, that is, the alternative of not approving an application for financial assistance or an Agency proposal.

Definitions of Terms Used in This Handbook (Continued)

Protected Resources

Protected resources are those sensitive resources that are protected by other statutes, regulations, or Executive Orders for which FSA's projects may pose highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks. The following resources are protected under NEPA: [7 CFR Part 1940.302]

- floodplain
- wetland
- important farmlands or prime forestlands or rangelands
- listed species or critical habitat for a threatened or endangered species
- property that is listed on or may be eligible for listing on the National Register of Historic Places.
- area within an approved State coastal zone management program
- coastal barrier or a portion of a barrier with the Coastal Barrier Resources System
- river or a portion of the river included in, or designated for potential addition to, the Wild and Scenic Rivers System
- sole source aquifer recharge area
- State water quality standard
- Federally designated wilderness area
- National natural landmark.

Residential Property

--Residential property means a dwelling unit, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences, and play equipment affixed to the land belonging to an owner and available for use by residents, but not including land used for agricultural, commercial, industrial, or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways. [24 CFR Part 35.110]--

Definitions of Terms Used in This Handbook (Continued)

Response Action

Response action is all investigative and remedial activities concerning a resolution of an environmental threat or contamination caused by a release or disposal of hazardous substances, hazardous waste, or petroleum products [42 U.S.C. 42 9601].

Responsible Agency Officials (RAO)

Responsible agency officials are FSA employees who have received environmental training and conduct the day to day duties of the environmental compliance process. These employees include, but are not limited to, SED, SEC, State FP and FLP specialists, District Directors, Farm Loan Managers, Farm Loan Officers, and CED's.

Responsible Federal Official (RFO)

The responsible Federal official is the agency official who is ultimately responsible for ensuring that NEPA policy and procedures are addressed in decision making.

Risk Assessment

Risk assessment is an onsite investigation performed by a certified LBP risk assessor to determine the existence, nature, severity, and location of LBP hazards and the provision of a report to the individual or firm having the risk assessment conducted explaining the results of the investigation and options for reducing LBP hazards.

Safe Work Practices

Safe work practices, as described in 24 CFR Part 35.1350, are work practices that do not use prohibited paint removal methods and protect occupants, their belongings, and the environment from lead contamination. Renovators may receive HUD or EPA training on safe work practices, but there is currently no certification process or requirement.

Safe work practices are not required when maintenance or hazard reduction activity does not disturb painted surfaces that total more than:

- 2 square meters (20 square feet) on exterior surfaces
- 0.2 square meters (2 square feet) on interior surfaces
- 10 percent of the total surface area on an interior or exterior type of component with small surface area.

Definitions of Terms Used in This Handbook (Continued)

Scoping

Scoping is the early and open process for determining the scope of issues to be addressed and identifying the significant issues related to a proposed action. Scope consists of the range of actions, alternatives, and impacts to be considered in EIS. This scope of an individual statement may depend on its relationship to other statements.

Significantly

Significantly, as used in NEPA, requires considerations of both context and intensity. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant. Intensity refers to the severity of impact. Responsible officials must bear in mind that more than 1 agency may make decisions about partial aspects of a major action. Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

--[40 CFR Part 1508.27]--

State Historic Preservation Officer (SHPO)

State Historic Preservation Officer means the official appointed or designated to administer the State historic preservation program or a representative designated to act for the State historic

--preservation officer. [36 CFR Part 800.16]--

Target Housing

Target housing is any housing constructed before 1978, except for the elderly or persons with disabilities, unless any child who is less than 6 years old resides or is expected to reside in this

*--housing or any zero-bedroom dwelling. [40 CFR Part 35.86]

Threatened Species

Threatened species is any species that is likely to become an endangered species within the

--foreseeable future throughout all or a significant portion of its range. [50 CFR Part 17.3]--

Tribal Historic Preservation Officer (THPO)

The tribal historic preservation officer is the tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of SHPO for purposes of Section 106 compliance on tribal lands.

--[36 CFR Part 800.16]--

Definitions of Terms Used in This Handbook (Continued)

Underground Storage Tank (UST)

Underground storage tank is any one or combination of tanks as defined in 40 CFR Part 280.12. UST is any one or combination of tanks, including underground piping connected thereto, that is used to contain an accumulation of regulated substances, and the volume of which, including the volume of underground pipes connected thereto is 10 percent or more beneath the surface of the ground. For the purposes of this handbook, regulated tanks are those subject to Federal regulation under RCRA [40 CFR Part 280.12].

Underground Storage Tank System

An underground storage tank system is UST, connected underground piping, underground ancillary equipment, and containment equipment, if any. [40 CFR Part 280.12]

Undertaking

Undertaking means any project, activity, or program funded in whole or in part under the direct *--or indirect jurisdiction of a Federal agency including those [36 CFR Part 800.16]:--*

- carried out by or on behalf of the Agency
- carried out with Federal financial assistance
- requiring a Federal permit, license, or approval
- subject to State or local regulation administered pursuant to a delegation or approval of a *--Federal agency. [37 CFR Part 800.16]--*

Undertakings must be evaluated to determine the potential to cause effects to historic properties.

Unregulated Underground Storage Tank

An unregulated UST is a tank not included in the definition of UST found at 40 CFR Part 280.12 and is not subject to the requirements of RCRA, Subtitle I, including:

- farm and residential tanks of 1,100 gallons or less capacity for storing motor fuel for noncommercial purposes
- UST's of any size used for storing heating oil for consumptive use on the premises where stored
- other types of tank systems listed in 40 CFR Part 280.12, such as septic tanks; pipeline facilities; surface impoundment, pit, pond, lagoons, or storm water retention facilities.

Definitions of Terms Used in This Handbook (Continued)**Wastewater Collection System**

A wastewater collection system is a flow-through process tanks; liquid trap or associated gathering lines directly related to oil or gas production and waste gathering operations; and storage tanks situated in an underground area (that is, basement, cellar, mineshaft, etc.) if the tank is situated on or above the surface of the floor.

Wetlands

Wetlands are those areas as determined by NRCS or the U.S. Army Corps of Engineers that are saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. [33 CFR Part 328.3]

Zero-Bedroom Dwelling

A zero-bedroom dwelling is a residential dwelling in which the living spaces are not separated from the sleeping area. A zero-bedroom dwelling includes:

- efficiencies
 - studio apartments
 - dormitory or single room occupancy housing
 - military barracks
- *--• rentals of individual rooms in residential dwellings. [24 CFR Part 36.86]--*

Sources of Authority

Following are sources of authority for FSA's environmental compliance program.

- National Environmental Policy Act [**42 U.S.C. 4321**]
- Safe Drinking Water Act Section 1424(e) [**42 U.S.C. 300h**]
- Clean Water Act, 33 U.S.C. 1251 et seq [**32 CFR Parts 200-230; 40 CFR Part 320**]
- Endangered Species Act, 16 U.S.C. 1531 [**50 CFR Parts 17 and 23**]
- Wild and Scenic Rivers Act, 16 U.S.C. 1271 [**36 CFR Part 797 Subpart A**]
- National Historic Preservation Act, 16 U.S.C. 470
- American Indian Religious Freedom Act, 42 U.S.C. 1996
- Archaeological and Historic Preservation Act, 16 U.S.C. 469-469c
- Coastal Zone Management Act, 16 U.S.C. 1451 et seq
- Farmland Protection Policy Act, subtitle I, Pub. L. 97-98 [**7 CFR Parts 657 and 658**]
- Coastal Barrier Resources Act, Pub. L. 97-348
- Clean Air Act, 42 U.S.C. 7401-7671q [**40 CFR Parts 50-53, 60, 61, 67, 81, and 82**]
- Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9620 [**40 CFR Parts 300, 302, 355, 370, and 373**]
- Resource Conservation and Recovery Act, 42 U.S.C. 6962 [**40 CFR Parts 240-280**]
- Archaeological Resources Protection Act, 16 U.S.C. 470aa-470mm [**43 CFR Part 7**]
- Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001-3013 [**40 CFR Part 10**]
- The Wilderness Act, 16 U.S.C. 1121; 1131-1136
- *--Migratory Bird Treaty Act, 16 U.S.C. 703-711--*

Sources of Authority (Continued)

- Executive Order 11593 of May 13, 1971
- Executive Order 11514 of March 5, 1970
- Executive Order 11988 of May 24, 1977
- Executive Order 11990 of May 24, 1977
- Executive Order 11991 of May 24, 1977
- Executive Order 12898 of February 11, 1994
- Executive Order 13007 of May 24, 1996
- Executive Order 13084 of May 14, 1998
- *--Executive Order 13186 of January 10, 2001--*
- Executive Order 13287 of March 3, 2003
- 7 CFR Parts 1b and 1c
- 7 CFR Part 3100
- 7 CFR Part 658
- 36 CFR 60 (NRHP)
- 36 CFR 63 (elig)
- 36 CFR Part 800
- 40 CFR Parts 1500-1508
- 87 CFR Part 12
- DR 9500-3, Land Use Policy
- DR 9500-4, Fish and Wildlife Policy.

National Environmental Policy Act of 1969, as amended

(Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982)

An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969."

Purpose

Sec. 2 [42 USC § 4321].

The purposes of this Act are:

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

Title I

Congressional Declaration Of National Environmental Policy

Sec. 101 [42 USC § 4331].

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

National Environmental Policy Act of 1969, as amended (Continued)

Sec. 101 [42 USC § 4331] (Continued)

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may --

1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
2. assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
5. achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
6. enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Sec. 102 [42 USC § 4332]

The Congress authorizes and directs that, to the fullest extent possible:

(1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and

(2) all agencies of the Federal Government shall --

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

National Environmental Policy Act of 1969, as amended (Continued)

Sec. 102 [42 USC § 4332]

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on --

- (i) the environmental impact of the proposed action,
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) alternatives to the proposed action,
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

- (i) the State agency or official has statewide jurisdiction and has the responsibility for such action,
- (ii) the responsible Federal official furnishes guidance and participates in such preparation,
- (iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and
- (iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

National Environmental Policy Act of 1969, as amended (Continued)

Sec. 102 [42 USC § 4332]

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by title II of this Act.

Sec. 103 [42 USC § 4333]

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

Sec. 104 [42 USC § 4334]

Nothing in section 102 [42 USC § 4332] or 103 [42 USC § 4333] shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Sec. 105 [42 USC § 4335]

The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

National Environmental Policy Act of 1969, as amended (Continued)

**Title II
Council On Environmental Quality**

Sec. 201 [42 USC § 4341]

The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Sec. 202 [42 USC § 4342]

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Sec. 203 [42 USC § 4343]

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

(b) Notwithstanding section 1342 of Title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

National Environmental Policy Act of 1969, as amended (Continued)

Sec. 204 [42 USC § 4344]

It shall be the duty and function of the Council --

1. to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 [42 USC § 4341] of this title;
2. to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;
3. to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;
4. to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;
5. to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;
6. to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;
7. to report at least once each year to the President on the state and condition of the environment; and
8. to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

Sec. 205 [42 USC § 4345]

In exercising its powers, functions, and duties under this Act, the Council shall --

1. consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order No. 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and
2. utilize, to the fullest extent possible, the services, facilities and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

National Environmental Policy Act of 1969, as amended (Continued)

Sec. 206 [42 USC § 4346]

Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates [5 USC § 5313]. The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates [5 USC § 5315].

Sec. 207 [42 USC § 4346a]

The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

Sec. 208 [42 USC § 4346b]

The Council may make expenditures in support of its international activities, including expenditures for:

- (1) international travel;
- (2) activities in implementation of international agreements; and
- (3) the support of international exchange programs in the United States and in foreign countries.

Sec. 209 [42 USC § 4347]

There are authorized to be appropriated to carry out the provisions of this chapter not to exceed \$300,000 for fiscal year 1970, \$700,000 for fiscal year 1971, and \$1,000,000 for each fiscal year thereafter.

The Environmental Quality Improvement Act, as amended (Pub. L. No. 91- 224, Title II, April 3, 1970; Pub. L. No. 97-258, September 13, 1982; and Pub. L. No. 98-581, October 30, 1984.

42 USC § 4372

(a) There is established in the Executive Office of the President an office to be known as the Office of Environmental Quality (hereafter in this chapter referred to as the "Office"). The Chairman of the Council on Environmental Quality established by Public Law 91-190 shall be the Director of the Office. There shall be in the Office a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The compensation of the Deputy Director shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Deputy Director of the Office of Management and Budget.

National Environmental Policy Act of 1969, as amended (Continued)

42 USC § 4372 (Continued)

(c) The Director is authorized to employ such officers and employees (including experts and consultants) as may be necessary to enable the Office to carry out its functions ;under this chapter and Public Law 91-190, except that he may employ no more than ten specialists and other experts without regard to the provisions of Title 5, governing appointments in the competitive service, and pay such specialists and experts without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no such specialist or expert shall be paid at a rate in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of Title 5.

(d) In carrying out his functions the Director shall assist and advise the President on policies and programs of the Federal Government affecting environmental quality by --

1. providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91- 190;
2. assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality;
3. reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;
4. promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encouraging the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;
5. assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;
6. assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established throughout the Federal Government;
7. collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

(e) The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to section 3324(a) and (b) of Title 31 and section 5 of Title 41 in carrying out his functions.

42 USC § 4373

Each Environmental Quality Report required by Public Law 91-190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report.

National Environmental Policy Act of 1969, as amended (Continued)

42 USC § 4374

There are hereby authorized to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality not to exceed the following sums for the following fiscal years which sums are in addition to those contained in Public Law 91- 190:

- (a) \$2,126,000 for the fiscal year ending September 30, 1979.
- (b) \$3,000,000 for the fiscal years ending September 30, 1980, and September 30, 1981.
- (c) \$44,000 for the fiscal years ending September 30, 1982, 1983, and 1984.
- (d) \$480,000 for each of the fiscal years ending September 30, 1985 and 1986.

42 USC § 4375

(a) There is established an Office of Environmental Quality Management Fund (hereinafter referred to as the "Fund") to receive advance payments from other agencies or accounts that may be used solely to finance --

- 1. study contracts that are jointly sponsored by the Office and one or more other Federal agencies; and
- 2. Federal interagency environmental projects (including task forces) in which the Office participates.

(b) Any study contract or project that is to be financed under subsection (a) of this section may be initiated only with the approval of the Director.

(c) The Director shall promulgate regulations setting forth policies and procedures for operation of the Fund.

Developing and Implementing the State Environmental Guide

- 1) SEC shall complete SEG. SEG shall be prepared in draft and provided for review and comment to NECM, appropriate Federal and State agencies, State and regional review agencies, as well as interested localities, groups, and citizens. Any concerns and comments of NECM will be addressed by SEC and the guide completed.
- 2) SEG needs to be developed in full recognition of its role as an internal FSA planning tool and with sensitivity to the FSA's mission.
- 3) Completed SEG's shall be reviewed every 2 years and updated, as necessary, by SEC to reflect newly identified geographical areas of concern or policy revisions at the national, State, regional, or local level. SEG will also be revised, as necessary, through appropriate guidance from NECM. Revisions shall be transmitted to NECM for approval and shall be considered approved if either no comments are raised by NECM within 30 calendar days of receipt or NECM specifically approves them before the 30 calendar days expire.
- 4) The foundation for SEG is the identification of the types of land uses or environmental factors deserving attention and their geographical location within the State. An inventory or listing shall be developed of the important environmental factors within the State. This inventory will be accomplished by assembling existing data and information compiled by those Federal, State, and local agencies that have jurisdiction or expertise about the land uses or environmental factors. At a minimum, the inventory shall consist of available documents, listings, maps, or graphic materials describing the location of the following:
 - a) National Register of Historic Places, any State historic preservation registry, and the State Historic Preservation Plans
 - b) rivers designated as part of the Wild and Scenic Rivers System, study units and NRI segments
 - c) important farmlands
 - d) wetland inventory
 - e) floodplain inventory as issued by FEMA
 - f) endangered species and critical habitats lists
 - g) sole source aquifer recharge areas
 - h) air quality control regions
 - i) National Registry of Natural Landmarks
 - j) Coastal Barrier Resources System
 - k) Coastal Zone Management Areas
 - l) agricultural districts or other similar zoning classifications for agricultural land protection.
- 5) NECM shall be responsible for assisting SEC's in obtaining listings and inventories of resources protected by Federal statutes and regulations. SEC has the responsibility for assembling documents on important environmental resources or areas identified in State laws, regulations, plans, and policies.

Developing and Implementing the State Environmental Guide (Continued)

- 6) Development of SEG by SEC will require consultation and assistance from a variety of agencies and experts. This consultation should begin with USDA agencies and be accomplished through appropriate, State-level USDA committees. The objective should be to determine the land classification data that has been compiled and that which is in the process of being compiled either by USDA agencies or their counterparts at the State level. MOU executed in May 1979 between NRCS and FSA should be used as the basis for seeking NRCS's assistance in this data collection effort. Direct contacts should then be made with State agencies, in particular with the appropriate office of State planning, to determine the availability of State inventories and State land use policies and priorities. Similar discussions should be held with regional planning agencies and clearinghouses with assistance being provided in this effort by District Directors. CED's and FLM's shall contact local officials and shall be responsible for being familiar with and for assembling similar inventories, land use policies, or protective requirements developed by the local government agencies within their territorial jurisdiction.

- 7) Another important element of SEG shall be the examination of any major environmental impacts on the State or local area resulting from the cumulative effects of FSA-assisted projects over the last several years. This should be done in consultation with experts within the appropriate State agencies and others, such as the U.S. Geological Survey. More detailed guidance on the accomplishment of this cumulative impact section of SEG, as well as the overall content of the guide, shall be provided by NECM. The material must be useable and serve as a tool for better decision making.

SEC Position Description and Performance Standards

SED shall nominate employees to serve as SEC when the position becomes open.

This individual should have some or all of the following qualifications, which are listed in order of importance:

- attended SEC training courses or other environmental training
- cross-trained with Rural Development environmental coordinators
- is familiar with FLP and FP regulations, functions, and procedures, including environmental duties and responsibilities required to administer these programs
- has hands-on experience in resolving environmental problems common to farm properties and farming operations in the State.

For each individual nominated to serve as SEC, the State Office shall provide the attached information at least 30 calendar days before the appointment, to FSA NECM. SEC's already appointed do not have to resubmit this material.

NECM shall:

- review the nomination to determine the qualifications of each individual to serve as SEC
- discuss concerns about qualifications with SED
- issue a notice:
 - confirming the appointment of SEC's
 - identifying each SEC's current areas of expertise.

Each SEC assignment:

- is a collateral duty where the duties and responsibilities will be assigned to the employee in addition to their primary duties and responsibilities
- will not be grade controlling
- should typically constitute less than 25 percent of the employee's time.

SEC Position Description and Performance Standards (Continued)

SEC will work under the oversight authority of SED on environmental matters and will perform the following duties and responsibilities.

- Act as advisory to SED on environmental matters and coordinate the requirements of 7 CFR 799, 7 CFR, 1940 subpart G, and this handbook
- Review FSA actions that are not categorically excluded by 7 CFR 799, 7 CFR, 1940 subpart G, and this handbook and require the approval and/or clearance of the State Office and recommend to the approving official either project approval, disapproval, or modification after analyzing and considering the following:
 - anticipated adverse environmental impacts
 - anticipated benefits
 - action's consistency with 7 CFR Part 1940 subpart G , and the requirements of this handbook.
- Represent SED at conferences and meetings dealing with State environmental matters.
- Maintain contact with interested public groups and local, State, and other Federal agencies concerning State Office environmental issues.
- Serve as SED alternate on State-level USDA committees dealing with environmental, land use, and historic preservation matters.
- Solicit, whenever necessary, the expert advice and assistance of other professional staff members within the State Office to adequately implement 7 CFR 799, 7 CFR Part 1940 Subpart G, and the requirements of this handbook.
- Provide technical assistance, as needed, on a project-by-project basis to State, District, and County Office staffs.
- Develop controls for avoiding or mitigating adverse environmental impacts and monitor their implementation.
- Provide assistance in resolving post-approval environmental matters at the State Office level.
- Maintain records for actions required by 7 CFR 799, 7 CFR Part 1940 Subpart G, and this handbook.
- Coordinate developing State SEG.

SEC Position Description and Performance Standards (Continued)

- Provide direction and training to State, District, and County Office staff on the requirements of 7 CFR 799, 7 CFR Part 1940 Subpart G, and this handbook.
- Coordinate monitoring the State Office's compliance with 7 CFR 799, 7 CFR Part 1940 Subpart G, and this handbook and keep SED advised of the results of the monitoring process.

Performance Elements

- Carries out SEC managerial and technical responsibilities.
- Assists in preparing and/or reviewing environmental assessments, scope of work, and independent government cost estimates for environmental service contracts.
- Plans and provides environmental training and coordinates overall management of the environmental program with State and Field Office staffs.
- Advises and represents SED on environmental issues dealing with other Federal, State, and local governments and the public.

Fully Successful

SEC's work performance is considered to be "fully successful" if the following criteria are met.

- Work normally completed to meet critical deadlines.
- Most environmental issues, problems, and concerns are adequately defined and analyzed. Alternatives and mitigation measures are developed when impact to resources are identified. Scope of work and cost estimates reasonably define services to be contracted. Products are understandable, clearly presented, and can typically be accepted by SED without modification. Occasional minor technical error is acceptable.
- Analyzes training needs, develops and provides environmental training for State and Field Office staffs. Typically makes decisions on important environmental issues after consulting with technical experts.
- Advises and represents SED on environmental matters at meetings concerning State Office issues. Solicits expert advice from local, State, and other Federal agencies concerning recommended course of actions in sufficient time for policy decisions and implementation. Serves as the point of contact for the National Office on environmental issues.
- Performs reviews required by 7 CFR 799, 7 CFR Part 1940 Subpart G, and this handbook. Provides technical assistance in timely manner, as needed, to State, District, and County Office staffs. Maintains required records.

FSA-855, State Environmental Coordinator Nomination Form

Following is an example of FSA-855.

This form is available electronically. FSA-855 (10-28-04)			U.S. DEPARTMENT OF AGRICULTURE Farm Service Agency		
STATE ENVIRONMENTAL COORDINATOR NOMINATION FORM					
1. NAME AND ADDRESS OF STATE OFFICE			2. TO: U.S. Department of Agriculture Farm Service Agency National Environmental Compliance Manager Conservation and Environmental Programs Division 1400 Independence Ave. S.W. STOP 0513 Washington, D.C. 20250-0513		
3. The following individual has been selected to serve as State Environmental Coordinator.					
A. NAME OF NOMINEE		B. JOB SERIES AND GRADE			
C. PRESENT POSITION					
4. Relevant work experience:					
5. Relevant education or course work:					
4. RECOMMENDATION AND APPROVAL BY SED:					
4A. State Executive Director Signature			4B. Date (MM-DD-YYYY)		
5. ACCEPTANCE OF NOMINEE:					
5A. Nominee Signature			5B. Date (MM-DD-YYYY)		
6. IMMEDIATE SUPERVISOR'S CONCURRENCE:					
6A. Immediate Supervisor's Signature			6B. Date (MM-DD-YYYY)		
7. NATIONAL ENVIRONMENTAL COMPLIANCE MANAGER:					
7A. Compliance Manager Signature		7B. ACTION:		7C. Date (MM-DD-YYYY)	
		<input type="checkbox"/> APPROVAL <input type="checkbox"/> DISAPPROVAL			
The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and mental or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410 or call (202) 720-5964 (voice or TDD). USDA is an equal opportunity provider and employer.					

FSA-853B, Environmental Assessment for Farm Loan Program Projects

Following is an example of FSA-853B.

U.S. DEPARTMENT OF AGRICULTURE
Farm Service Agency

Environmental Assessment for Farm Loan Program Projects

[Insert title]

[Insert date]

FSA-853B (09-22-04) Page 1

FSA-853B, Environmental Assessment for Farm Loan Program Projects (Continued)

COVER SHEET

Proposed Action:

Type of Statement:

Lead Agency:

Cooperating Agencies:

Further Information:

Abstract (Summary):

Comments:

FSA-853B, Environmental Assessment for Farm Loan Program Projects (Continued)

TABLE OF CONTENTS

	Page No.
1 Project Description and Need	
2 Primary Beneficiaries and Related Activities	
3 Description of Project Area	
4 Alternatives Including the Proposed Action	
4.1 Description	
4.1.1 Alternative A - No Action Alternative.....	
4.1.2 Alternative B - Proposed Action Alternative.....	
4.1.3 Alternative C - Optional Reasonable Alternative.....	
4.2 Cumulative Effects	
4.3 Summary of Environmental Consequences.....	
4.4 Preferred Alternative.....	
5 Environmental Impact	
5.1 Air Quality	
5.2 Water Quality.....	
5.2.1 Ground Water	
5.2.2 Surface Water	
5.2.3 Sole Source Aquifer	
5.3 Solid Waste Management.....	
5.4 Land Use.....	
5.5 Transportation	
5.6 Natural Environment.....	
5.7 Human Population	
5.7.1 Social-economic Impacts	
5.7.2 Environmental Justice.....	
5.8 Construction	
5.9 Energy Impacts.....	
5.10 Other Special Issues.....	
5.10.1 Noise	
5.10.2 Aesthetic considerations.....	

FSA-853B, Environmental Assessment for Farm Loan Program Projects (Continued)

- 6 Coastal Zone Management Act**
- 7 Historic Properties and Archaeological Sites**
- 8 Wild and Scenic Rivers**
- 9 Threatened and Endangered Species**
- 10 Farmland Protection**
- 11 Floodplain Management and Protection of Wetlands**
- 12 Coastal Barrier Resources Act**
- 13 State Environmental Policy Act**
- 14 Consultation Requirements of Executive Order 12372, Intergovernmental Review of Federal Programs**
- 15 Environmental Analysis of Participating Federal Agency**
- 16 Reaction to Project**
- 17 Adverse Impact**
- 18 Mitigation Measures**
- 19 Consistency with FSA Environmental Policies**
- 20 Environmental Determinations**
- 21 List of Preparers**
- 22 References**
- Appendix A Acronyms and Abbreviations**
- Appendix B Definitions**
- Appendix C Relevant Laws and Regulations**
- Appendix D Agencies and Individuals Consulted**
- Appendix E Supporting Documents**

FSA-853B (09-22-04)

Page 4

FSA-853B, Environmental Assessment for Farm Loan Program Projects (Continued)

Introduction:

1. Project Description and Need

2. Primary Beneficiaries and Related Activities

3. Description of Project Area

4. Alternatives including the Proposed Action

4.1 Description of Alternatives Considered

4.1.1 Alternative A - No Action Alternative (Required by NEPA)

4.1.2 Alternative B - Proposed Action Alternative (Required by NEPA)

4.1.3 Alternative C - Optional Reasonable Alternative(s)

4.2 Cumulative Effects

4.3 Summary of Environmental Consequences

4.4 Preferred Alternative

5. Environmental Impact

5.1 Air Quality

5.2 Water Quality

FSA-853B, Environmental Assessment for Farm Loan Program Projects (Continued)

5.2.1 Ground Water

5.2.2 Surface Water

5.2.3 Sole Source Aquifer

5.3 Solid Waste Management

5.4 Land Use

5.5 Transportation

5.6 Natural Environment

5.7 Human Population

5.7.1 Social-economic Impacts

5.7.2 Environmental Justice

5.8 Construction

5.9 Energy Impacts

5.10 Special Issues

5.10.1 Noise

5.10.2 Aesthetic considerations

6. Coastal Zone Management Act *

FSA-853B (09-22-04)

Page 6

FSA-853B, Environmental Assessment for Farm Loan Program Projects (Continued)

7. **Historic Properties and Archaeological Sites**
8. **Wild and Scenic Rivers**
9. **Threatened and Endangered Species**
10. **Farmland Protection**
11. **Floodplain Management and Protection of Wetlands**
12. **Coastal Barrier Resources Act**
13. **State Environmental Policy Act**
14. **Consultation Requirements of Executive Order 12372, Intergovernmental Review of Federal Programs**
15. **Environmental Analysis of Participating Federal Agency**
16. **Reaction to Project**
17. **Adverse Impact**
18. **Mitigation Measures**
19. **Consistency with FSA Environmental Policies**
20. **Environmental Determinations**

The following recommendations shall be completed:

- a) Based on an examination and review of the foregoing information and such supplemental information attached hereto, I recommend that the approving official determine that this project will have () a significant effect on the

FSA-853B (09-22-04)

Page 7

FSA-853B, Environmental Assessment for Farm Loan Program Projects (Continued)

quality of the human environment and an Environmental Impact Statement must be prepared. Will not have () a significant effect on the quality of the human environment.

b) I recommend that the approving official make the following compliance determinations for the below-listed environmental requirements.

Not in Compliance	In Compliance	
<input type="checkbox"/>	<input type="checkbox"/>	Clean Air Act
<input type="checkbox"/>	<input type="checkbox"/>	Federal Water Pollution Control Act
<input type="checkbox"/>	<input type="checkbox"/>	Safe Drinking Water Act – Section 1424(e)
<input type="checkbox"/>	<input type="checkbox"/>	Endangered Species Act
<input type="checkbox"/>	<input type="checkbox"/>	Coastal Barrier Resources Act
<input type="checkbox"/>	<input type="checkbox"/>	Coastal Zone Management Act – Section 307(c)(1) and (2)
<input type="checkbox"/>	<input type="checkbox"/>	Wild and Scenic Rivers Act
<input type="checkbox"/>	<input type="checkbox"/>	National Historic Preservation Act
<input type="checkbox"/>	<input type="checkbox"/>	Archaeological and Historic Preservation Act
<input type="checkbox"/>	<input type="checkbox"/>	Subtitle B, Highly Erodible Land Conservation, and Subtitle C, Wetland Conservation, of the Food Security Act
<input type="checkbox"/>	<input type="checkbox"/>	Executive Order 11988, Floodplain Management
<input type="checkbox"/>	<input type="checkbox"/>	Executive Order 11990, Protection of Wetlands
<input type="checkbox"/>	<input type="checkbox"/>	Farmland Protection Policy Act
<input type="checkbox"/>	<input type="checkbox"/>	Department Regulation 9500-3, Land Use Policy
<input type="checkbox"/>	<input type="checkbox"/>	E.O. 12898, Environmental Justice
<input type="checkbox"/>	<input type="checkbox"/>	State environmental laws

c) I have reviewed and considered the types and degrees of adverse environmental impacts identified by this assessment. I have also analyzed the proposal for its consistency with FSA environmental policies, particularly those related to important farmland protection, and have considered the potential benefits of the proposal. Based upon a consideration and balancing of these factors, I recommend from an environmental standpoint that the project

Be approved

Not be approved because of the reasons outlined in Appendix E

Signature of Preparer

Date (MM-DD-YYYY)

Name of Preparer

FSA-853B, Environmental Assessment for Farm Loan Program Projects (Continued)

Title of Preparer

** See Part 1 of this handbook for listing of officials responsible for preparing assessment.*

Signature of Concurring Official

Date

Title

State Environmental Coordinator's Review

I have reviewed this environmental assessment and supporting documentation. Following are my positions regarding its adequacy and the recommendations reached by the preparer. For any matter in which I do not concur, my reasons are discussed in Appendix E.

**Do Not
Concur**

Concur

Adequate Assessment
Environmental Impact Determination
Compliance Determinations
Project Recommendation

Signature of SEC

Date (MM-DD-YYYY)

FSA-857, Finding of No Significant Impact (FONSI)

FSA-857
(05-04-06)

United States Department of Agriculture
Farm Service Agency

Comment [h1]: To print document without comments choose: Print, Print What, document. This will allow the document to print without the comment boxes showing.

FINDING OF NO SIGNIFICANT IMPACT (FONSI)

(Insert title of proposed action here)

(Insert Date Here)

Introduction:

The United States Department of Agriculture Farm Service Agency (FSA) has prepared (Insert the name of the environmental document here) to evaluate the environmental consequences associated with (Insert a brief 1 or 2 sentences about what the action is that has triggered the preparation of a FONSI).

Comment [JF2]: Insert the abstract language from the cover page of the EA.

Preferred Alternative:

Comment [JF3]: For a FLP proposed action, insert the preferred alternative descriptive language from section 4.1.2 of the EA. For a FP proposed action, insert the preferred alternative descriptive language from section 3.1.2 of the EA.

Reasons for Finding of No Significant Impact:

In consideration of the analysis documented in the (Insert the name of the environmental document here) and the reasons outlined in this FONSI, the preferred alternative would not constitute a major State or Federal action that would significantly affect the human environment. Therefore, an Environmental Impact Statement will not be prepared. The determination is based on the following:

- Both beneficial and adverse impacts of implementing the preferred alternative have been fully considered within the . The beneficial impacts outweigh any adverse impacts. Adverse cumulative impacts are expected to be minor as implementation of the preferred alternative will cause very little if any adverse impact on the area of potential effect and the human environment.
- The preferred alternative would not significantly affect public health or safety.
- The preferred alternative would not significantly affect any unique characteristics which includes historic and cultural resources, parklands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
- The preferred alternative does not involve effects to the quality of the human environment that are likely to be highly controversial.
- The preferred alternative would not impose highly uncertain or involve unique or unknown risks.

Comment [JF4]: Describe in one to two sentences how the preferred alternative would not significantly affect public health or safety. Discuss any mitigation measures that may be required to reduce the effects of the proposed action on the environment.

Comment [JF5]: Explain

Comment [JF6]: Explain

FSA-857, Finding of No Significant Impact (FONSI) (Continued)

FSA-857 (05-04-06)

Page 2 of 2

- 6. The preferred alternative would not establish a precedent for future actions with significant effects and does not represent a decision in principle about a future consideration.
- 7. The preferred alternative is not related to other actions with individually insignificant but cumulative significant impacts. The Environmental Consequences section of the discusses potential cumulative impacts of implementing the preferred alternative. Cumulative impacts of implementing the preferred alternative were determined to not be significant.
- 8. The preferred alternative would not adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or cause loss or destruction of significant scientific, cultural, or historical resources. Consultation with the State Historic Preservation Office was completed.
- 9. The preferred alternative would not have adverse effects on threatened or endangered species or designated critical habitat. In accordance with section 7 of the Endangered Species Act, the effects of implementing the preferred alternative on threatened and endangered species and designated critical habitat were addressed in the . Informal consultation with the U.S. Fish Wildlife Service was completed.
- 10. The preferred alternative does not threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

Comment [JF7]: Explain

Comment [JF8]: If applicable, explain that consultation with federally recognized tribes was completed.

Determination:

In accordance with the National Environmental Policy Act and FSA's Environmental regulations at (insert regulation here) implementing the regulations of the Council on Environmental Quality, 40 CFR parts 1500-1508, I find that neither the proposed action nor any of the alternatives is a major Federal action significantly affecting the quality of the human environment. Therefore, no environmental impact statement will be prepared.

APPROVED:

Signature

Date (MM-DD-YY)

Name (Typed or Printed)

Title

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer.

FSA-853A, Environmental Assessment

Following is an example of FSA-853A.

U.S. DEPARTMENT OF AGRICULTURE
Farm Service Agency

ENVIRONMENTAL ASSESSMENT

[Insert Title]

[Insert Date]

FSA-853A (09-22-04): Page 1

FSA-853A, Environmental Assessment (Continued)

COVER SHEET

Proposed Action:

Type of Statement:

Lead Agency:

Cooperating Agencies:

Further Information:

Abstract (Summary):

Comments:

FSA-853A, Environmental Assessment (Continued)b

Table of Contents

Section No.	Page
1 Purpose and Need for Action	
1.1 Background	
1.2 Purpose	
1.3 Need	
1.4 Objectives	
1.5 Description of Area Covered by Proposed Action	
1.6 Related NEPA Documents	
1.7 Decision	
2 Scoping and Relevant Issues	
2.1 Scoping	
2.2 Relevant Issues	
2.3 Environmental Issues with Minor Impact	
2.4 Federal Permits, Licenses, and Entitlements Necessary to Implement the Proposed Action	
3 Alternatives Including the Proposed Action	
3.1 Description	
3.1.1 Alternative A - No Action Alternative	
3.1.2 Alternative B - Proposed Action Alternative	
3.1.3 Alternative C - Optional Reasonable Alternative	
3.2 Cumulative Effects	
3.3 Summary of Environmental Consequences	
3.4 Preferred Alternative	
4 Affected Environment	
4.1 Introduction	
4.2 Relevant Affected Resources That Are Issues	
4.2.1 Resource X	
4.2.2 Resource Y	
4.2.3 Resource Z	
4.2.4 Etc	
4.3 Relevant Affected Resources That Are Not Issues	

FSA-853A, Environmental Assessment (Continued)

Table of Contents (Continued)

Page No.

5	Environmental Consequences	
5.1	Introduction	
5.2	Resource X (Issue 1).....	
5.2.1	Effects of Alternative A (No Action)	
5.2.2	Effects of Alternative B (Proposed Action).....	
5.2.3	Effects of Alternative C (Reasonable Alternative(s)).....	
5.2.4	Cumulative Effects.....	
5.3	Resource Y (Issue 2).....	
5.3.1	Effects of Alternative A (No Action)	
5.3.2	Effects of Alternative B (Proposed Action).....	
5.3.3	Effects of Alternative C (Reasonable Alternative(s)).....	
5.3.4	Cumulative Effects.....	
5.4	Resource Z (Issue 3).....	
5.4.1	Effects of Alternative A (No Action)	
5.4.2	Effects of Alternative B (Proposed Action).....	
5.4.3	Effects of Alternative C (Reasonable Alternative(s)).....	
5.5	Etc	
5.6	Unavoidable Adverse Effects.....	
5.7	Relationship of Short Term Uses and Long Term Productivity	
5.8	Irreversible and Irretrievable Commitments of Resources.....	
5.9	Any Other Disclosures (If Needed).....	
6	Reaction to Proposed Action	
7	List of Preparers	
8	References	
Appendix A	Acronyms and Abbreviations	
Appendix B	Definitions	
Appendix C	Relevant Laws and Regulations	
Appendix D	Agencies and Individuals Consulted,	
Appendix E	Supporting Documents	

FSA-853A, Environmental Assessment (Continued)

1 Purpose of and Need for Action

1.1 Background

1.2 Purpose

1.3 Need

1.4 Objectives

1.5 Description of Area Covered by Proposed Action

1.6 Related NEPA Documents

1.7 Decision

2 Scoping and Relevant Issues

2.1 Scoping

2.2 Relevant Issues

2.3 Environmental Issues With Minor Impact

2.4 Federal Permits, Licenses, and Entitlements Necessary to Implement the Proposed Action

3 Alternatives Including the Proposed Action

3.1 Description of Alternatives Considered

3.1.1 Alternative A - No Action Alternative (Required by NEPA)

FSA-853A, Environmental Assessment (Continued)

3.1.2 Alternative B - Proposed Action Alternative (Required by NEPA)

3.1.3 Alternative C - Optional Reasonable Alternative(s)

3.2 Cumulative Effects

3.3 Summary of Environmental Consequences

3.4 Preferred Alternative

4 Affected Environment

4.1 Introduction

4.2 Relevant Affected Resources That Are Issues

4.2.1 Resources X (Issue 1)

4.2.2 Resources Y (Issue 2)

4.2.3 Resources Z (Issue 3)

4.2.4 Etc.....

4.3 Relevant Affected Resources That Are Not Issues

4.3.1 Resources X

4.3.2 Resources Y

4.3.3 Resources Z

4.3.4 Etc.....

5 Environmental Consequences

5.1 Introduction

FSA-853A, Environmental Assessment (Continued)

- 5.2 Resource X (Issue 1)**
 - 5.2.1 Effects of Alternative A (No Action)**
 - 5.2.2 Effects of Alternative B (Proposed Action)**
 - 5.2.3 Effects of Alternative C (Reasonable Alternative(s))**
 - 5.2.4 Cumulative Effects**
- 5.3 Resource Y (Issue 2)**
 - 5.3.1 Effects of Alternative A (No Action)**
 - 5.3.2 Effects of Alternative B (Proposed Action)**
 - 5.3.3 Effects of Alternative C (Reasonable Alternative(s))**
 - 5.3.4 Cumulative Effects**
- 5.4 Resource Z (Issue 3)**
 - 5.4.1 Effects of Alternative A (No Action)**
 - 5.4.2 Effects of Alternative B (Proposed Action)**
 - 5.4.3 Effects of Alternative C (Reasonable Alternative(s))**
 - 5.4.4 Cumulative Effects**
- 5.5 Etc.**
- 5.6 Unavoidable Adverse Effects**
- 5.7 Relationship of Short-Term Uses and Long-Term Productivity**

FSA-853A, Environmental Assessment (Continued)

5.8 Irreversible and Irretrievable Commitments of Resources

5.9 Any other Disclosures (If Needed)

6 Reaction to Proposed Action

7 List of Preparers

8 References

Appendix A - Acronyms and Abbreviations

Appendix B - Definitions

Alternatives

**Environmental
Assessment**

FSA Farm Service Agency is an agency of the United States Department of
Agriculture.

Human environment

Tier, Tiering

USDA United States Department of Agriculture

Appendix C - Relevant Laws and Regulations

Appendix D - Agencies and Individuals Consulted

Appendix E - Supporting Documents

***--Responsibilities Associated with Contracting for Environmental Assessments Paid for by the National Office**

Task	Environmental Compliance Manger	State Environmental Coordinator	State Program Specialist	Contractor
Developing SOW for contract.	X			
Providing SOW to CO and requesting purchase order.	X			
Performance monitoring.	X			
Evaluating the work of the contractor.	X			
Providing appropriate technical direction within the contract's scope.	X			
Advising the CO of the need for change orders.	X			
Conducting reviews, inspections, and accepting completed work (draft and final EA's and related NEPA documents) for the Agency.	X			
Reviewing and processing invoices received from contractor.	X			
Providing assistance to the CO when the contractor's performance evaluations are completed.	X			
Posting of the draft EA, final EA, and FONSI on the FSA environmental web site.	X			
Assisting the SEC and State Program Specialist with issues and questions that arise during the development and completion of the EA.	X			
Completing consultation with the State Historic Preservation Officer, and if applicable, Tribal Historic Preservation Officers, to comply with the provisions of the National Historic Preservation Act, Section 106.		X		
Completing consultation with Federally recognized Indian tribes.		X		
Completing consultation with the U.S. Fish and Wildlife Service to comply with the provisions of the Endangered Species Act, Section 7.		X		

--*

***--Responsibilities Associated with Contracting for Environmental Assessments Paid for by the National Office (Continued)**

Task	Environmental Compliance Manger	State Environmental Coordinator	State Program Specialist	Contractor
Assisting the contractor with scoping by mailing letters on Agency letterhead to individuals, entities, and governmental agencies identified as having a potential interest in the proposed action.		X	X	
Distribution of hard and electronic copies of the draft and final EA's and FONSI to requestors within the respective State.		X	X	
Assisting with scoping by identifying the individuals, entities, and governmental agencies that should be contacted.		X	X	
Review of the draft PEA to ensure that correct references and descriptions of the proposed action are used.			X	
Keeping the Environmental Compliance Manager, SEC, and contractor posted on any changes that may occur during the development of the EA that could potentially affect the outcome of the EA's analysis.			X	
Assisting the SEC with reviewing comments received in response to the external scoping letters, draft EA, and FONSI.			X	
Conduct scoping, both internal and external.				X
Preparation of the draft EA and NOA.				X
Advertisement of the NOA of the draft EA in at least 2 newspapers or similar publications in the geographical area where the proposed action will occur.		X	X	
Preparation of the final PEA, draft FONSI, and NOA.				X
Preparation of the final FONSI.				X
Advertisement of the NOA of the final EA and FONSI in at least 2 newspapers or similar publications in the geographical area where the proposed action will occur.		X	X	

--*

Distributing EIS

CEQ regulations require distributing EIS to the following.

A. Draft EIS

- Five copies shall be sent to the pertinent EPA Regional Offices and five copies shall be sent to the EPA National Office using 1 of the following:
 - by USPS to:

Office of Federal Activities
NEPA Compliance Division
EIS Filing Section
Mail Code 2242-A
401 M Street, SW
Washington, DC 20460.
 - by overnight mail or courier to:

Environmental Protection Agency
Office of Federal Activities
NEPA Compliance Division
Ariel Rios Building (South Oval Lobby)
Mail Code 2252-A, Room 7241
1200 Pennsylvania Ave., NW
Washington, DC 20044.
(Telephone 202-564-2410/2400 for building access).
- Other Federal, State, and local agencies with jurisdiction by law or expertise (including cooperating agencies).
- The applicant or program participant.
- Any person, organization, or agency requesting the entire EIS.
- Indian Tribes when the proposed action may effect a reservation.
- Any agency that has requested to receive EIS's on actions of the kind proposed.

B. Final EIS

A copy of the final EIS shall be provided to every one who received draft EIS, plus any person, organization, or agency that submitted substantive comments on the draft EIS.

Distributing EIS (Continued)

C. Supplemental EIS

A copy of any supplemental EIS shall be provided to every one who received final EIS.

D. Notice of NEPA-Related Hearings, Meetings, and Documents

FSA will use the following methods to provide notice of hearings, meetings, and EIS related documents:

- FR
- Local newspapers
- Newsletters (of the agency or other organizations).

Distribution to any or all of the following is appropriate where scoping, analysis, public participation, or expressed interest is indicated:

- U.S. Senators for the States in which the action will occur.
- U.S. Representatives for the districts in which the action will occur.
- Governor of the States in which the action will occur.
- Governing body of any Federally recognized Indian Tribe that may be affected by the action.
- Elected officials of the local jurisdictions in which the action will occur or which may be affected by the action.
- Federal agencies.
- State agencies.
- Non-governmental groups and organizations such as representatives of affected low-income and minority groups:
 - non-Federally recognized Indian Tribes
 - Native Hawaiian groups (in Hawaii)
 - other indigenous groups, where applicable
 - utility companies (gas, electric, water, etc.)
 - environmental groups (Sierra Club, Audubon, etc.)
 - industry groups (chamber of commerce, downtown associations)
 - neighborhood groups
 - adjacent landowners (residential and businesses)
 - print and electronic media.

Executive Order 11990 of May 24, 1977, Protection of Wetlands

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), in order to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative, it is hereby ordered as follows:

Section 1

- (a) Each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.
- (b) This Order does not apply to the issuance by Federal agencies of permits, licenses, or allocations to private parties for activities involving wetlands on non-Federal property.

Section 2

- (a) In furtherance of the National Environmental Policy Act of 1969 (42 U.S.C. 4331(b)(3)) to improve and coordinate Federal plans, functions, programs and resources to the end that the Nation may attain the widest range of beneficial uses of the environment without degradation and risk to health or safety, each agency, to the extent permitted by law, shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental and other pertinent factors.
- (b) Each agency shall also provide opportunity for early public review of any plans or proposals for new construction in wetlands, in accordance with Section 2(b) of Executive Order No. 11514, as amended, including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended.

Section 3

Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in wetlands, whether the proposed action is in accord with this Order.

Executive Order 11990 of May 24, 1977, Protection of Wetlands (Continued)

Section 4

When Federally-owned wetlands or portion wetlands are proposed for lease, easement, right-of-way or disposal to non-Federal public or private parties Federal agency shall (a) reference in the conveyance those uses that are restricted under identified Federal, State or local wetlands regulations; and (b) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successor, except where prohibited by law; or (c) withhold such properties from disposal.

Section 5

In carrying out the activities described in Section 1 of this Order, each agency shall consider factors relevant to a proposal's effect on the survival and quality of the wetlands. Among these factors are:

- (a) public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion;
- (b) maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and
- (c) other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

Section 6

As allowed by law, agencies shall issue or amend their existing procedures in order to comply with this Order. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order.

Section 7

As used in this Order:

- (a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting wetlands.
- (b) The term "new construction" shall include draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun or authorized after the effective date of this Order.
- (c) The term "wetlands" means those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

Executive Order 11990 of May 24, 1977, Protection of Wetlands (Continued)

Section 8

This Order does not apply to projects presently under construction, or to projects for which all of the funds have been appropriated through Fiscal Year 1977, or to projects and programs for which a draft or final environmental impact statement will be filed prior to October 1, 1977. The provisions of Section 2 of this Order shall be implemented by each agency not later than October 1, 1977.

Section 9

Nothing in this Order shall apply to assistance provided for emergency work, essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

Section 10

To the extent the provisions of Sections 2 and 5 of this Order are applicable to projects covered by of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, as amended.

Jimmy Carter
THE WHITE HOUSE
May 24, 1977

Executive Order 11988 of May 24, 1977, Floodplain Management

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.), and the Flood Disaster Protection Act of 1973 (Public Law 93-234, 87 Stat. 975), in order to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative, it is hereby ordered as follows:

Section 1

Each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

Section 2

In carrying out the activities described in Section 1 of this Order, each agency has a responsibility to evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of this Order, as follows:

- (a) (a)(1) Before taking an action, each agency shall determine whether the proposed action will occur in a floodplain -- for major Federal actions significantly affecting the quality of the human environment, the evaluation required below will be included in any statement prepared under Section 102(2)(C) of the National Environmental Policy Act. This determination shall be made according to a Department of Housing and Urban Development (HUD) floodplain map or a more detailed map of an area, if available. If such maps are not available, the agency shall make a determination of the location of the floodplain based on the best available information. The Water Resources Council shall issue guidance on this information not later than October 1, 1977. (2) If an agency has determined to, or proposes to, conduct, support, or allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplains. If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in this Order requires siting in a floodplain, the agency shall, prior to taking action, (i) design or modify its action in order to minimize potential harm to or within the floodplain, consistent with regulations issued in accord with Section 2(d) of this Order, and (ii) prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

Executive Order 11988 of May 24, 1977, Floodplain Management (Continued)

- (3) For programs subject to the Office of Management and Budget Circular A-95, the agency shall send the notice, not to exceed three pages in length including a location map, to the state and areawide A-95 clearinghouses for the geographic areas affected. The notice shall include: (i) the reasons why the action is proposed to be located in a floodplain; (ii) a statement indicating whether the action conforms to applicable state or local floodplain protection standards and (iii) a list of the alternatives considered. Agencies shall endeavor to allow a brief comment period prior to taking any action. (4) Each agency shall also provide opportunity for early public review of any plans or proposals for actions in floodplains, in accordance with Section 2(b) of Executive Order No. 11514, as amended, including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended.
- (b) Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in a floodplain, whether the proposed action is in accord with this Order.
- (c) Each agency shall take floodplain management into account when formulating or evaluating any water and land use plans and shall require land and water resources use appropriate to the degree of hazard involved. Agencies shall include adequate provision for the evaluation and consideration of flood hazards in the regulations and operating procedures for the licenses, permits, loan or grants-in-aid programs that they administer. Agencies shall also encourage and provide appropriate guidance to applicants to evaluate the effects of their proposals in floodplains prior to submitting applications for Federal licenses, permits, loans or grants.
- (d) As allowed by law, each agency shall issue or amend existing regulations and procedures within one year to comply with this Order. These procedures shall incorporate the Unified National Program for Floodplain Management of the Water Resources Council, and shall explain the means that the agency will employ to pursue the nonhazardous use of riverine, coastal and other floodplains in connection with the activities under its authority. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order. Agencies shall prepare their procedures in consultation with the Water Resources Council, the Director of the Federal Emergency Management Agency, and the Council on Environmental Quality, and shall update such procedures as necessary.

Section 3

In addition to the requirements of Section 2, agencies with responsibilities for Federal real property and facilities shall take the following measures:

- (a) The regulations and procedures established under Section 2(d) of this Order shall, at a minimum, require the construction of Federal structures and facilities to be in accordance with the standards and criteria and to be consistent with the intent of those promulgated under the National Flood Insurance Program. They shall deviate only to the extent that the standards of the Flood Insurance Program are demonstrably inappropriate for a given type of structure or facility.

Executive Order 11988 of May 24, 1977, Floodplain Management (Continued)

- (b) If, after compliance with the requirements of this Order, new construction of structures or facilities are to be located in a floodplain, accepted floodproofing and other flood protection measures shall be applied to new construction or rehabilitation. To achieve flood protection, agencies shall, wherever practicable, elevate structures above the base flood level rather than filling in land.
- (c) If property used by the general public has suffered flood damage or is located in an identified flood hazard area, the responsible agency shall provide on structures, and other places where appropriate, conspicuous delineation of past and probable flood height in order to enhance public awareness of and knowledge about flood hazards.
- (d) When property in floodplains is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, the Federal agency shall (1) reference in the conveyance those uses that are restricted under identified Federal, State or local floodplain regulations; and (2) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, except where prohibited by law; or (3) withhold such properties from conveyance.

Section 4

In addition to any responsibilities under this Order and Sections 202 and 205 of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4106 and 4128), agencies which guarantee, approve, regulate, or insure any financial transaction which is related to an area located in a floodplain shall, prior to completing action on such transaction, inform any private parties participating in the transaction of the hazards of locating structures in the floodplain.

Section 5

The head of each agency shall submit a report to the Council on Environmental Quality and to the Water Resources Council on June 30, 1978, regarding the status of their procedures and the impact of this Order on the agency's operations. Thereafter, the Water Resources Council shall periodically evaluate agency procedures and their effectiveness.

Section 6

As used in this Order:

- (a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting floodplains.
- (b) The term "base flood" shall mean that flood which has a one percent or greater chance of occurrence in any given year.
- (c) The term "floodplain" shall mean the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year.

Executive Order 11988 of May 24, 1977, Floodplain Management (Continued)

Section 7

Executive Order No. 11296 of August 10, 1966, is hereby revoked. All actions, procedures, and issuances taken under that Order and still in effect shall remain in effect until modified by appropriate authority under the terms of this Order.

Section 8

Nothing in this Order shall apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

Section 9

To the extent the provisions of Section 2(a) of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, as amended.

JIMMY CARTER
THE WHITE HOUSE
May 24, 1977

Section 7 of the Endangered Species Act of 1973

Section 7, Interagency Cooperation

(a) FEDERAL AGENCY ACTIONS AND CONSULTATIONS.

(1) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act.

(2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

(3) Subject to such guidelines as the Secretary may establish, a Federal agency shall consult with the Secretary on any prospective agency action at the request of, and in cooperation with, the prospective permit or license applicant if the applicant has reason to believe that an endangered species or a threatened species may be present in the area affected by his project and that implementation of such action will likely affect such species.

(4) Each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under section 4 or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. This paragraph does not require a limitation on the commitment of resources as described in subsection (d).

(b) OPINION OF SECRETARY.-

(1)(A) Consultation under subsection (a)(2) with respect to any agency action shall be concluded within the 90-day period beginning on the date on which initiated or, subject to subparagraph (B), within such other period of time as is mutually agreeable to the Secretary and the Federal agency;

(B) in the case of an agency action involving a permit or license applicant, the Secretary and the Federal agency may not mutually agree to conclude consultation within a period exceeding 90 days unless the Secretary, before the close of the 90th day referred to in subparagraph (A)-

Section 7 of the Endangered Species Act of 1973 (Continued)

(i) if the consultation period proposed to be agreed to will end before the 150th day after the date on which consultation was initiated, submits to the applicant a written statement setting forth-

(I) the reasons why a longer period is required;

(II) the information that is required to complete the consultation; and

(III) the estimated date on which consultation will be completed; or

(ii) if the consultation period proposed to be agreed to will end 150 or more days after the date on which consultation was initiated, obtains the consent of the applicant to such period. The Secretary and the Federal agency may mutually agree to extend a consultation period established under the preceding sentence if the Secretary, before the close of such period, obtains the consent of the applicant to the extension.

(2) Consultation under subsection (a)(3) shall be concluded within such period as is agreeable to the Secretary, the Federal agency, and the applicant concerned.

(3)(A) Promptly after conclusion of consultation under paragraph (2) or (3) of subsection (a), the Secretary shall provide to the Federal agency and the applicant, if any, a written statement setting forth the Secretary's opinion, and a summary of the information on which the opinion is based, detailing how the agency action affects the species or its critical habitat. If jeopardy or adverse modification is found, the Secretary shall suggest those reasonable and prudent alternatives which he believes would not violate subsection (a)(2) and can be taken by the Federal agency or applicant in implementing the agency action.

(B) Consultation under subsection (a)(3), and an opinion based by the Secretary incident to such consultation, regarding an agency action shall be treated respectively as a consultation under subsection (a)(2), and as an opinion issued after consultation under such subsection, regarding that action if the Secretary reviews the action before it is commenced by the Federal agency and finds, and notifies such agency, that no significant changes have been made with respect to the action and that no significant change has occurred regarding the information used during the initial consultation.

(4) If after consultation under subsection (a)(2) of this section, the Secretary concludes that-

(A) the agency action will not violate such subsection, or offers reasonable and prudent alternatives which the Secretary believes would not violate such subsection;

(B) the taking of an endangered species or a threatened species incidental to the agency action will not violate such subsection; and

Section 7 of the Endangered Species Act of 1973 (Continued)

(C) if an endangered species or threatened species of a marine mammal is involved, the taking is authorized pursuant to section 1371(a)(5) of this title; the Secretary shall provide the Federal agency and the applicant concerned, if any, with a written statement that-

(i) specifies the impact of such incidental taking on the species,

(ii) specifies those reasonable and prudent measures that the Secretary considers necessary or appropriate to minimize such impact,

(iii) in the case of marine mammals, specifies those measures that are necessary to comply with section 1371(a)(5) of this title with regard to such taking, and

(iv) sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or applicant (if any), or both, to implement the measures specified under clauses (ii) and (iii).

(c) **BIOLOGICAL ASSESSMENT.-**

(1) To facilitate compliance with the requirements of subsection (a)(2) each Federal agency shall, with respect to any agency action of such agency for which no contract for construction has been entered into and for which no construction has begun on the date of enactment of the Endangered Species Act Amendments of 1978, request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action. If the Secretary advises, based on the best scientific and commercial data available, that such species may be present, such agency shall conduct a biological assessment for the purpose of identifying any endangered species or threatened species which is likely to be affected by such action. Such assessment shall be completed within 180 days after the date on which initiated (or within such other period as is mutually agreed to by the Secretary and such agency, except that if a permit or license applicant is involved, the 180-day period may not be extended unless such agency provides the applicant, before the close of such period, with a written statement setting forth the estimated length of the proposed extension and the reasons therefor) and, before any contract for construction is entered into and before construction is begun with respect to such action. Such assessment may be undertaken as part of a Federal agency's compliance with the requirements of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(2) Any person who may wish to apply for an exemption under subsection (g) of this section for that action may conduct a biological assessment to identify any endangered species or threatened species which is likely to be affected by such action. Any such biological assessment must, however, be conducted in cooperation with the Secretary and under the supervision of the appropriate Federal agency.

(d) **LIMITATION ON COMMITMENT OF RESOURCES.-**After initiation of consultation required under subsection (a)(2), the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would not violate subsection (a)(2).

Section 7 of the Endangered Species Act of 1973 (Continued)

(e)(1) ESTABLISHMENT OF COMMITTEE.-There is established a committee to be known as the Endangered Species Committee (hereinafter in this section referred to as the "Committee").

(2) The Committee shall review any application submitted to it pursuant to this section and determine in accordance with subsection (h) of this section whether or not to grant an exemption from the requirements of subsection (a)(2) of this action for the action set forth in such application.

(3) The Committee shall be composed of seven members as follows:

(A) The Secretary of Agriculture.

(B) The Secretary of the Army.

(C) The Chairman of the Council of Economic Advisors.

(D) The Administrator of the Environmental Protection Agency. Agency.

(E) The Secretary of the Interior.

(F) The Administrator of the National Oceanic and Atmospheric Administration.

(G) The President, after consideration of any recommendations received pursuant to subsection (g)(2)(B) shall appoint one individual from each affected State, as determined by the Secretary, to be a member of the Committee for the consideration of the application for exemption for an agency action with respect to which such recommendations are made, not later than 30 days after an application is submitted pursuant to this section.

(4)(A) Members of the Committee shall receive no additional pay on account of their service on the Committee.

(B) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code.

(5)(A) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that, in no case shall any representative be considered in determining the existence of a quorum for the transaction of any function of the Committee if that function involves a vote by the Committee on any matter before the Committee.

(B) The Secretary of the Interior shall be the Chairman of the Committee.

(C) The Committee shall meet at the call of the Chairman or five of its members.

(D) All meetings and records of the Committee shall be open to the public.

Section 7 of the Endangered Species Act of 1973 (Continued)

- (6) Upon request of the Committee, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the Committee to assist it in carrying out its duties under this section.
- (7)(A) The Committee may for the purpose of carrying out its duties under this section hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Committee deems advisable.
- (B) When so authorized by the Committee, any member or agent of the Committee may take any action which the Committee is authorized to take by this paragraph.
- (C) Subject to the Privacy Act, the Committee may secure directly from any Federal agency information necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Committee, the head of such Federal agency shall furnish such information to the Committee.
- (D) The Committee may use the United States mails in the same manner and upon the same conditions as a Federal agency.
- (E) The Administrator of General Services shall provide to the Committee on a reimbursable basis such administrative support services as the Committee may request.
- (8) In carrying out its duties under this section, the Committee may promulgate and amend such rules, regulations, and procedures, and issue and amend such orders as it deems necessary.
- (9) For the purpose of obtaining information necessary for the consideration of an application for an exemption under this section the Committee may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.
- (10) In no case shall any representative, including a representative of a member designated pursuant to paragraph (3)(G) of this subsection, be eligible to cast a vote on behalf of any member.
- (f) REGULATIONS.-Not later than 90 days after the date of enactment of the Endangered Species Act Amendments of 1978, the Secretary shall promulgate regulations which set forth the form and manner in which applications for exemption shall be submitted to the Secretary and the information to be contained in such applications. Such regulations shall require that information submitted in an application by the head of any Federal agency with respect to any agency action include but not be limited to-
- (1) a description of the consultation process carried out pursuant to subsection (a)(2) of this section between the head of the Federal agency and the Secretary; and
- (2) a statement describing why such action cannot be altered or modified to conform with the requirements of subsection (a)(2) of this section.

Section 7 of the Endangered Species Act of 1973 (Continued)

(g) APPLICATION FOR EXEMPTION AND REPORT TO THE COMMITTEE.-

(1) A Federal agency, the Governor of the State in which an agency action will occur, if any, or a permit or license applicant may apply to the Secretary for an exemption for an agency action of such agency if, after consultation under subsection (a)(2), the Secretary's opinion under subsection (b) indicates that the agency action would violate subsection (a)(2). An application for an exemption shall be considered initially by the Secretary in the manner provided for in this subsection, and shall be considered by the Committee for a final determination under subsection (h) after a report is made pursuant to paragraph (5). The applicant for an exemption shall be referred to as the "exemption applicant" in this section.

(2)(A) An exemption applicant shall submit a written application to the Secretary, in a form prescribed under subsection (f), not later than 90 days after the completion of the consultation process; except that, in the case of any agency action involving a permit or license applicant, such application shall be submitted not later than 90 days after the date on which the Federal agency concerned takes final agency action with respect to the issuance of the permit or license. For purposes of the preceding sentence, the term "final agency action" means (i) a disposition by an agency with respect to the issuance of a permit or license that is subject to administrative review, whether or not such disposition is subject to judicial review; or (ii) if administrative review is sought with respect to such disposition, the decision resulting after such review. Such application shall set forth the reasons why the exemption applicant considers that the agency action meets the requirements for an exemption under this subsection.

(B) Upon receipt of an application for exemption for an agency action under paragraph (1), the Secretary shall promptly

(i) notify the Governor of each affected State, if any, as determined by the Secretary, and request the Governors so notified to recommend individuals to be appointed to the Endangered Species Committee for consideration of such application; and

(ii) publish notice of receipt of the application in the Federal Register, including a summary of the information contained in the application and a description of the agency action with respect to which the application for exemption has been filed.

(3) The Secretary shall within 20 days after the receipt of an application for exemption, or within such other period of time as is mutually agreeable to the exemption applicant and the Secretary

(A) determine that the Federal agency concerned and the exemption applicant have-

(i) carried out the consultation responsibilities described in subsection (a) in good faith and made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed agency action which would not violate subsection (a)(2);

(ii) conducted any biological assessment required by subsection (c); and

(iii) to the extent determinable within the time provided herein, refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (d); or

Section 7 of the Endangered Species Act of 1973 (Continued)

(B) deny the application for exemption because the Federal agency concerned or the exemption applicant have not met the requirements set forth in subparagraph (A) (i), (ii), and (iii). The denial of an application under subparagraph (B) shall be considered final agency action for purposes of chapter 7 of title 5, United States Code.

(4) If the Secretary determines that the Federal agency concerned and the exemption applicant have met the requirements set forth in paragraph (3)(A) (i), (ii) and (iii) he shall, in consultation with the Members of the Committee, hold a hearing on the application for exemption in accordance with sections 554, 555, and 556 (other than subsection (b) (1) and (2) thereof) of title 5, United States Code, and prepare the report to be submitted pursuant to paragraph (5).

(5) Within 140 days after making the determinations under paragraph (3) or within such other period of time as is mutually agreeable to the exemption applicant and the Secretary, the Secretary shall submit to the Committee a report discussing-

(A) the availability of reasonable and prudent alternatives to the agency action, and the nature and extent of the benefits of the agency action and of alternative courses of action consistent with conserving the species of the critical habitat;

(B) a summary of the evidence concerning whether or not the agency action is in the public interest and is of national or regional significance;

(C) appropriate reasonable mitigation and enhancement measures which should be considered by the Committee; and

(D) whether the Federal agency concerned and the exemption applicant refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (d).

(6) To the extent practicable within the time required for action under subsection (g) of this section, and except to the extent inconsistent with the requirements of this section, the consideration of any application for an exemption under this section and the conduct of any hearing under this subsection shall be in accordance with sections 554, 555, and 556 (other than subsection (b)(3) of section 556) of title 5, United States Code.

(7) Upon request of the Secretary, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the Secretary to assist him in carrying out his duties under this section.

(8) All meetings and records resulting from activities pursuant to this subsection shall be open to the public.

Section 7 of the Endangered Species Act of 1973 (Continued)

(h) EXEMPTION.-

(1) The Committee shall make a final determination whether or not to grant an exemption within 30 days after receiving the report of the Secretary pursuant to subsection (g)(5). The Committee shall grant an exemption from the requirements of subsection (a)(2) for an agency action if, by a vote of not less than five of its members voting in person-

(A) it determines on the record, based on the report of the Secretary, the record of the hearing held under subsection (g)(4), and on such other testimony or evidence as it may receive, that-

(i) there are no reasonable and prudent alternatives to the agency action;

(ii) the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest;

(iii) the action is of regional or national significance; and

(iv) neither the Federal agency concerned nor the exemption applicant made any irreversible or irretrievable commitment of resources prohibited by subsection (d); and

(B) it establishes such reasonable mitigation and enhancement measures, including, but not limited to, live propagation, transplantation, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the agency action upon the endangered species, threatened species, or critical habitat concerned.

Any final determination by Committee under this subsection shall be considered final agency action for purposes of chapter 7 of title 5 of the United States Code.

(2)(A) Except as provided in subparagraph (B), an exemption for an agency action granted under paragraph (1) shall constitute a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action-

(i) regardless whether the species was identified in the biological assessment; and

(ii) only if a biological assessment has been conducted under subsection (c) with respect to such agency action.

(B) An exemption shall be permanent under subparagraph (A) unless-

(i) the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of consultation under subsection

Section 7 of the Endangered Species Act of 1973 (Continued)

(a)(2) or was not identified in any biological assessment conducted under subsection (c), and

(ii) the Committee determines within 60 days after the date of the Secretary's finding that the exemption should not be permanent.

If the Secretary makes a finding described in clause (i), the Committee shall meet with respect to the matter within 30 days after the date of the finding.

(i) **REVIEW BY SECRETARY OF STATE.**-Notwithstanding any other provision of this Act, the Committee shall be prohibited from considering for exemption any application made to it, if the Secretary of State, after a review of the proposed agency action and its potential implications, and after hearing, certifies, in writing, to the Committee within 60 days of any application made under this section that the granting of any such exemption and the carrying out of such action would be in violation of an international treaty obligation or other international obligation of the United States. The Secretary of State shall, at the time of such certification, publish a copy thereof in the Federal Register.

(j) Notwithstanding any other provision of this Act, the Committee shall grant an exemption for any agency action if the Secretary of Defense finds that such exemption is necessary for reasons of national security.

(k) **SPECIAL PROVISIONS.**-An exemption decision by the Committee under this section shall not be a major Federal action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.): Provided, That an environmental impact statement which discusses the impacts upon endangered species or threatened species or their critical habitats shall have been previously prepared with respect to any agency action exempted by such order.

(l) **COMMITTEE ORDERS.**-

(1) If the Committee determines under subsection (h) that an exemption should be granted with respect to any agency action, the Committee shall issue an order granting the exemption and specifying the mitigation and enhancement measures established pursuant to subsection (h) which shall be carried out and paid for by the exemption applicant in implementing the agency action. All necessary mitigation and enhancement measures shall be authorized prior to the implementing of the agency action and funded concurrently with all other project features.

Section 7 of the Endangered Species Act of 1973 (Continued)

(2) The applicant receiving such exemption shall include the costs of such mitigation and enhancement measures within the overall costs of continuing the proposed action. Notwithstanding the preceding sentence the costs of such measures shall not be treated as project costs for the purpose of computing benefit-cost or other ratios for the proposed action. Any applicant may request the Secretary to carry out such mitigation and enhancement measures. The costs incurred by the Secretary in carrying out any such measures shall be paid by the applicant receiving the exemption. No later than one year after the granting of an exemption, the exemption applicant shall submit to the Council on Environmental Quality a report describing its compliance with the mitigation and enhancement measures prescribed by this section. Such report shall be submitted annually until all such mitigation and enhancement measures have been completed. Notice of the public availability of such reports shall be published in the Federal Register by the Council on Environmental Quality.

(m) NOTICE.-The 60-day notice requirement of section 11(g) of this Act shall not apply with respect to review of any final determination of the Committee under subsection (h) of this section granting an exemption from the requirements of subsection (a)(2) of this section.

(n) JUDICIAL REVIEW.-Any person, as defined by section 3(13) of this Act, may obtain judicial review, under chapter 7 of title 5 of the United States Code, of any decision of the Endangered Species Committee under subsection (h) in the United States Court of Appeals for

(1) any circuit wherein the agency action concerned will be, or is being, carried out, or

(2) in any case in which the agency action will be, or is being, carried out outside of any circuit, the District of Columbia, by filing in such court within 90 days after the date of issuance of the decision, a written petition for review. A copy of such petition shall be transmitted by the clerk of the court to the Committee and the Committee shall file in the court the record in the proceeding, as provided in section 2112, of title 28, United States Code. Attorneys designated by the Endangered Species Committee may appear for, and represent the Committee in any action for review under this subsection.

(o) EXEMPTION AS PROVIDING EXCEPTION ON TAKING OF ENDANGERED SPECIES.-Notwithstanding sections 1533(d) and 1538(a)(1)(B) and (C) of this title, sections 1371 and 1372 of this title, or any regulation promulgated to implement any such section-

(1) any action for which an exemption is granted under subsection (h) of this section shall not be considered to be a taking of any endangered species or threatened species with respect to any activity which is necessary to carry out such action; and

(2) any taking that is in compliance with the terms and conditions specified in a written statement provided under subsection (b)(4)(iv) of this section shall not be considered to be a prohibited taking of the species concerned.

Section 7 of the Endangered Species Act of 1973 (Continued)

(p) EXEMPTIONS IN PRESIDENTIALLY DECLARED DISASTER AREAS. In any area which has been declared by the President to be a major disaster area under the Disaster Relief Act of 1974, the President is authorized to make the determinations required by subsections (g) and (h) of this section for any project for the repair or replacement of a public facility substantially as it existed prior to the disaster under section 401 or 402 of the Disaster Relief Act of 1974, and which the President determines

(1) is necessary to prevent the recurrence of such a natural disaster and to reduce the potential loss of human life, and

(2) to involve an emergency situation which does not allow the ordinary procedures of this section to be followed. Notwithstanding any other provision of this section, the Committee shall accept the determinations of the President under this subsection.

Letters to SHPO/THPO

Send the following letter to SHPO/THPO to request assistance identifying historic properties that may be affected by a project.

Name

Address 1

Address 2

Dear (insert name):

The USDA Farm Service Agency (FSA) has received an application for (describe the project - for example a loan or loan guarantee for the construction of four broiler houses (- include size of structure, number of birds), that will occupy (insert number of acres) acres in (insert name of County) County or application for CRP which includes installing (insert description of practices).

As part of our environmental review, FSA is considering its Section 106 responsibilities. FSA is requesting your assistance in identifying historic properties that might be affected by this undertaking. We have reviewed the National Register of Historic Places list and conferred with (list whomever was contacted for information including NRCS staff, local experts, etc.)

(If a site visit has been done, explain the cultural resources results if any, especially if NRCS has prepared the conservation plan and related environmental review document which may indicate the presence or probability of a cultural resources then it is FSA's responsibility to consult on this.)

Aerial photographs and topographic maps of the property are attached. (Attach map and photographs.)

We believe that this project will not have an adverse affect on any historic properties. We are seeking your concurrence on this determination. If we do not hear from you within thirty (30) days, we will assume that you have no additional information to supply.

If you have any questions about this project, please contact (insert contact name and phone number).

Sincerely,

(Insert Name)

(Insert Title)

Letters to SHPO/THPO (Continued)

Send the following letter to SHPO/THPO to document that assistance is not needed because the project will not adversely affect any historic property.

<p>Name Address 1 Address 2</p> <p>Dear (insert name):</p> <p>The USDA Farm Service Agency (FSA) has received an application for (describe the project - for example a loan or loan guarantee for the construction of 4 broiler houses (-include size of structure, number of birds) that will occupy (<u>insert number of acres</u>) acres in (<u>insert name of County</u>) County or application for CRP which includes installing XYZ practices).</p> <p>After consultation with your office and (detail any other information gathering that has taken place), FSA has determined that this undertaking will not adversely effect an historic property listed on or eligible for listing on the National Register of Historic Places.</p> <p>We ask your concurrence with this determination. If we do not hear from you within 30 days, we will assume concurrence.</p> <p>We, of course, will provide for any unanticipated discoveries. We will also re-initiate review of this project should its parameters change in such a way as to alter our understanding of its possible effects.</p> <p>If you have any questions about this project, please contact (insert name and phone number).</p> <p>Sincerely,</p> <p>(Insert Name) (Insert Title)</p>

Letters to SHPO/THPO (Continued)

Send the following letter to initiate consultation with SHPO/THPO and others when there may be an adverse effect.

Name

Address 1

Address 2

Dear (insert name):

In consultation with your staff and other interested parties, FSA has determined that (insert description of project and location) may have adverse effects on (explain what historic property may be affected). The rationale for our determination is discussed on pages 4-29 through 4-31 of the enclosed Draft Environmental Impact Statement (DEIS).

Pursuant to 36 CFR 800.5(e), at this time we wish to initiate consultation to resolve any possible adverse effects. The enclosed DEIS contains the following background material for your review, although your staff already has much of this material in their possession:

- (a) Description of the undertaking, including photographs, maps, and drawings (Pages 1-1 through 1-20)
- (b) Description of our efforts to identify historic properties (Pages 3-37 through 3-42)
- (c) Description of the affected historic properties (Pages 3-42 through 3-45; also see Appendix 3-6);and
- (d) Description of the undertaking's effects on historic properties (Pages 4-29 through 4-31).

(Insert name) will be in touch with your office to schedule a meeting to discuss how to resolve the adverse effects. If you have any questions about this project, please contact (insert name and phone number).

Sincerely,

(Insert Name)

(Insert Title)

Executive Order 12898 of February 11, 1994, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1-1 Implementation

1-101 Agency Responsibilities.

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

1-102. Creation of an Interagency Working Group on Environmental Justice.

- (a) Within 3 months of the date of this order, the Administrator of the Environmental Protection Agency ("Administrator") or the Administrator's designee shall convene an interagency Federal Working Group on Environmental Justice ("Working Group"). The Working Group shall comprise the heads of the following executive agencies and offices, or their designees: (a) Department of Defense; (b) Department of Health and Human Services; (c) Department of Housing and Urban Development; (d) Department of Labor; (e) Department of Agriculture; (f) Department of Transportation; (g) Department of Justice; (h) Department of the Interior; (i) Department of Commerce; (j) Department of Energy; (k) Environmental Protection Agency; (l) Office of Management and Budget; (m) Office of Science and Technology Policy; (n) Office of the Deputy Assistant to the President for Environmental Policy; (o) Office of the Assistant to the President for Domestic Policy; (p) National Economic Council; (q) Council of Economic Advisers; and (r) such other Government officials as the President may designate. The Working Group shall report to the President through the Deputy Assistant to the President for Environmental Policy and the Assistant to the President for Domestic Policy.
- (b) The Working Group shall:
- (1) provide guidance to Federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;
 - (2) coordinate with, provide guidance to, and serve as a clearinghouse for, each Federal agency as it develops an environmental justice strategy as required by section 1-103 of this order, in order to ensure that the administration, interpretation and enforcement of programs, activities and policies are undertaken in a consistent manner;

Executive Order 12898 of February 11, 1994, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (Continued)

- (3) assist in coordinating research by, and stimulating cooperation among, the Environmental Protection Agency, the Department of Health and Human Services, the Department of Housing and Urban Development, and other agencies conducting research or other activities in accordance with section 3-3 of this order;
- (4) assist in coordinating data collection, required by this order;
- (5) examine existing data and studies on environmental justice;
- (6) hold public meetings as required in section 5-502(d) of this order; and
- (7) develop interagency model projects on environmental justice that evidence cooperation among Federal agencies.

1-103. Development of Agency Strategies.

- (a) Except as provided in section 6-605 of this order, each Federal agency shall develop an agency-wide environmental justice strategy, as set forth in subsections (b)-(e) of this section that identifies and addresses disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. The environmental justice strategy shall list programs, policies, planning and public participation processes, enforcement, and/or rulemakings related to human health or the environment that should be revised to, at a minimum: (1) promote enforcement of all health and environmental statutes in areas with minority populations and low-income populations; (2) ensure greater public participation; (3) improve research and data collection relating to the health of and environment of minority populations and low-income populations; and (4) identify differential patterns of consumption of natural resources among minority populations and low-income populations. In addition, the environmental justice strategy shall include, where appropriate, a timetable for undertaking identified revisions and consideration of economic and social implications of the revisions.
- (b) Within 4 months of the date of this order, each Federal agency shall identify an internal administrative process for developing its environmental justice strategy, and shall inform the Working Group of the process.
- (c) Within 6 months of the date of this order, each Federal agency shall provide the Working Group with an outline of its proposed environmental justice strategy.
- (d) Within 10 months of the date of this order, each Federal agency shall provide the Working Group with its proposed environmental justice strategy.

Executive Order 12898 of February 11, 1994, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (Continued)

- (e) By March 24, 1995, each Federal agency shall finalize its environmental justice strategy and provide a copy and written description of its strategy to the Working Group. From the date of this order through March 24, 1995, each Federal agency, as part of its environmental justice strategy, shall identify several specific projects that can be promptly undertaken to address particular concerns identified during the development of the proposed environmental justice strategy, and a schedule for implementing those projects. [§1-103(e) amended by E.O. 12948, 60 FR 6381, Feb. 1, 1995]
- (f) Within 24 months of the date of this order, each Federal agency shall report to the Working Group on its progress in implementing its agency-wide environmental justice strategy.
- (g) Federal agencies shall provide additional periodic reports to the Working Group as requested by the Working Group.

1-104. Reports to the President.

Within 14 months of the date of this order, the Working Group shall submit to the President, through the Office of the Deputy Assistant to the President for Environmental Policy and the Office of the Assistant to the President for Domestic Policy, a report that describes the implementation of this order, and includes the final environmental justice strategies described in section 1-103(e) of this order.

Sec. 2-2. Federal Agency Responsibilities for Federal Programs.

Each Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.

Sec. 3-3. Research, Data Collection, and Analysis.

3-301. Human Health and Environmental Research and Analysis.

- (a) Environmental human health research, whenever practicable and appropriate, shall include diverse segments of the population in epidemiological and clinical studies, including segments at high risk from environmental hazards, such as minority populations, low-income populations and workers who may be exposed to substantial environmental hazards.
- (b) Environmental human health analyses, whenever practicable and appropriate, shall identify multiple and cumulative exposures.
- (c) Federal agencies shall provide minority populations and low-income populations the opportunity to comment on the development and design of research strategies undertaken pursuant to this order.

Executive Order 12898 of February 11, 1994, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (Continued)

3-302. Human Health and Environmental Data Collection and Analysis.

To the extent permitted by existing law, including the Privacy Act, as amended (5 U.S.C. section 552a):

- (a) Each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income. To the extent practical and appropriate, Federal agencies shall use this information to determine whether their programs, policies, and activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;
- (b) In connection with the development and implementation of agency strategies in section 1-103 of this order, each Federal agency, whenever practicable and appropriate, shall collect, maintain and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding facilities or sites expected to have a substantial environmental, human health, or economic effect on the surrounding populations, when such facilities or sites become the subject of a substantial Federal environmental administrative or judicial action. Such information shall be made available to the public, unless prohibited by law; and
- (c) Each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding Federal facilities that are: (1) subject to the reporting requirements under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. section 11001-11050 as mandated in Executive Order No. 12856; and (2) expected to have a substantial environmental, human health, or economic effect on surrounding populations. Such information shall be made available to the public, unless prohibited by law.
- (d) In carrying out the responsibilities in this section, each Federal agency, whenever practicable and appropriate, shall share information and eliminate unnecessary duplication of efforts through the use of existing data systems and cooperative agreements among Federal agencies and with State, local, and tribal governments.

Sec. 4-4. Subsistence Consumption of Fish and Wildlife.

4-401. Consumption Patterns.

In order to assist in identifying the need for ensuring protection of populations with differential patterns of subsistence consumption of fish and wildlife, Federal agencies, whenever practicable and appropriate, shall collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence. Federal agencies shall communicate to the public the risks of those consumption patterns.

Executive Order 12898 of February 11, 1994, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (Continued)

4-402. Guidance.

Federal agencies, whenever practicable and appropriate, shall work in a coordinated manner to publish guidance reflecting the latest scientific information available concerning methods for evaluating the human health risks associated with the consumption of pollutant-bearing fish or wildlife. Agencies shall consider such guidance in developing their policies and rules.

Sec. 5-5. Public Participation and Access to Information.

- (a) The public may submit recommendations to Federal agencies relating to the incorporation of environmental justice principles into Federal agency programs or policies. Each Federal agency shall convey such recommendations to the Working Group.
- (b) Each Federal agency may, whenever practicable and appropriate, translate crucial public documents, notices, and hearings relating to human health or the environment for limited English speaking populations.
- (c) Each Federal agency shall work to ensure that public documents, notices, and hearings relating to human health or the environment are concise, understandable, and readily accessible to the public.
- (d) The Working Group shall hold public meetings, as appropriate, for the purpose of fact-finding, receiving public comments, and conducting inquiries concerning environmental justice. The Working Group shall prepare for public review a summary of the comments and recommendations discussed at the public meetings.

Sec. 6-6. General Provisions.

6-601. Responsibility for Agency Implementation.

The head of each Federal agency shall be responsible for ensuring compliance with this order. Each Federal agency shall conduct internal reviews and take such other steps as may be necessary to monitor compliance with this order.

6-602. Executive Order No. 12250.

This Executive order is intended to supplement but not supersede Executive Order No. 12250, which requires consistent and effective implementation of various laws prohibiting discriminatory practices in programs receiving Federal financial assistance. Nothing herein shall limit the effect or mandate of Executive Order No. 12250.

Executive Order 12898 of February 11, 1994, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (Continued)

6-603. Executive Order No. 12875.

This Executive order is not intended to limit the effect or mandate of Executive Order No. 12875.

6-604. Scope.

For purposes of this order, Federal agency means any agency on the Working Group, and such other agencies as may be designated by the President, that conducts any Federal program or activity that substantially affects human health or the environment. Independent agencies are requested to comply with the provisions of this order.

6-605. Petitions for Exemptions.

The head of a Federal agency may petition the President for an exemption from the requirements of this order on the grounds that all or some of the petitioning agency's programs or activities should not be subject to the requirements of this order.

6-606. Native American Programs.

Each Federal agency responsibility set forth under this order shall apply equally to Native American programs. In addition, the Department of the Interior, in coordination with the Working Group, and, after consultation with tribal leaders, shall coordinate steps to be taken pursuant to this order that address Federally-recognized Indian Tribes.

6-607. Costs.

Unless otherwise provided by law, Federal agencies shall assume the financial costs of complying with this order.

6-608. General.

Federal agencies shall implement this order consistent with, and to the extent permitted by, existing law.

6-609. Judicial Review.

This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, or any other person with this order.

/s/ William J. Clinton
THE WHITE HOUSE
February 11, 1994.

***--Sales Contract Contingency Language for LBP**

The following language is used in sales contracts to make the sale contingent upon a LBP inspection. This pertains to contracts between private parties.

Contract Contingency Language for LBP Inspection

This contract is contingent upon a lead-based paint inspection or risk assessment of the property for the presence of lead-based paint and/or lead-based paint hazards at the Purchaser's expense until 9 p.m. on the 10th calendar day after ratification. (Intact lead-based paint that is in good condition is not necessarily a hazard. See the Environmental Protection Agency pamphlet *Protecting Your Family From Lead in Your Home* for more information.) This contingency will terminate on *[Insert date 10 days after contract ratification or a date mutually agreed upon]* unless the Purchaser (or the Purchaser's agent) delivers to the Seller (or the Seller's agent) a written contract addendum listing specific and previously undisclosed deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within 5 days after the Delivery of the addendum, elect in writing whether to correct the conditions prior to settlement. If the Seller will correct the conditions, the Seller shall furnish the Purchaser with certification from a risk assessor or inspector demonstrating that the conditions have been remedied before the date of settlement. If the Seller does not elect to make repairs, or if the Seller makes a counter offer, the Purchaser shall have 5 days to respond to the counter-offer or remove this contingency and take the property in "as is" condition or this contract shall become void. The Purchaser may remove this contingency at any time without cause.

--*

***--Completing FSA-851, Environmental Risk Survey Form**

General Information [1941.19(c)(2), 1943.19(d)(1), and 1436.17(d)(1)]

FSA-851 is to be used by FSA personnel as a first step in the due diligence process to screen real property for the presence of contaminants, hazardous materials, UST's, lagoons, pits, ponds or other features which pose potential environmental hazards. Environmental contamination may have a significant adverse effect on the value of real estate offered as collateral for loans or on property being offered for sale.

The use of FSA-851 assists preparer in complying with the Comprehensive Environmental Response, Compensation, and Liability Act; the Resource Conservation and Recovery Act; the Clean Water Act; the Clean Air Act; and the Toxic Substances Control Act. Lenders participating in FSA guaranteed loan program may also use FSA-851.

Proper completion of FSA-851 enables FSA to determine if a higher level of site assessment by an environmental professional is necessary to determine the exact level of threat to the environment. Generally completion of FSA-851 will be sufficient, as the only level of review needed to document environmental risks associated with FSA's loan making and servicing actions, unless significant environmental risks are observed.

In conducting the site inspection, preparer should only conduct a visual inspection and indicate hazardous conditions on FSA-851. Do **not** attempt to touch, sample, taste, or smell any hazardous substances or containers. An environmental professional must do sampling of any substances. Preparer should **not** attempt to open any containers or enter any unsafe areas like confined spaces or buildings, which may not be structurally sound. If a building cannot be safely entered, this information should be noted on FSA-851.--*

*--Completing FSA-851, Environmental Risk Survey Form (Continued)

This form is available electronically.

FSA-851 (04-13-05)	U. S. DEPARTMENT OF AGRICULTURE Farm Service Agency	TYPES OF REVIEW: <input type="checkbox"/> A. Initial Review <input type="checkbox"/> B. Subsequent Review (Update 1) <input type="checkbox"/> C. Subsequent Update (Update 2)									
ENVIRONMENTAL RISK SURVEY FORM											
<i>Note: Please read instructions for completing before preparing this form.</i>											
PART A - SITE INFORMATION											
1. Site Name	2. Address (Include City, State, Zip Code and County)	3. Case Number									
4. Township	5. Range	6. Section									
7. Directions to property: (From nearest town)											
8. Nearest intersection	9. Property Size	10. Describe the current use of the property									
PART B - SITE OWNERSHIP HISTORY AND BACKGROUND											
11A. Current Owner	11B. Current Operator	13. Date FSA became involved with the property (Date of first loan or application)									
12. Previous owner(s):											
A. Name:	B. Dates owned:										
PART C - SITE DATA											
14. Are there any buildings on the property? <input type="checkbox"/> YES <input type="checkbox"/> NO <i>If "YES", complete TABLE 1.</i>											
TABLE 1 - Buildings or Other Structures. Insert the appropriate map symbol from Part F in column B											
A. Type of Structure	B. Map Symbol	C. Year Built	D. Used for Chemical Storage and or Mixing			E. Contains Lead Based Paint			F. Contains Asbestos		
			YES	NO	Unknown	YES	NO	Unknown	YES	NO	Unknown
Question	A. Owner or Occupant			B. Observed During Visit							
	YES	NO	Unknown	YES	NO	Unknown					
15. Has the property ever been used for industrial production such as a machine shop?											
16. Have any adjoining properties been used for industrial production such as a machine shop?											
17. Has the property ever been used for the production or exploration of petroleum?											
18. Has the property ever been used as a base location for an aerial crop spraying or dusting service?											

*--Completing FSA-851, Environmental Risk Survey Form (Continued)

FSA-851 (04-13-05) Page 2 of 6

	A. Owner or Occupant			B. Observed During Visit		
	YES	NO	Unknown	YES	NO	Unknown
19. Has a gasoline station or any other commercial activity that stored large amounts of solvents, pesticides or other chemicals ever operated on the property?						
20. Has a gasoline station or any other commercial activity that stored large amounts of solvents, pesticides or other chemicals ever operated on any adjoining properties?						
21. Has the property ever been used as a junkyard or landfill including a site where drums or other containers of chemicals were buried?						
22. Have any adjoining properties ever been used as a junkyard or landfill including a site where drums or other containers of chemicals were buried?						
23. Are there any USTs on the property which have been permanently closed?						
24. Are there any environmental liens or judgements filed against the property as a result of not complying with Federal or State environmental laws?						
25. Is the property involved in any lawsuits regarding environmental compliance issues?						

26. Are there any chemical containers including 55-gallon drums used for pesticides or other hazardous substances located on the property?
 YES NO Unknown *If "YES", complete TABLE 2.*

TABLE 2 - Containers or Drums. Insert the appropriate map symbol from Part F in column B.

A. Container Location	B. Map Symbol	C. Container Contents	D. EPA Reg. (if available)	E. Estimated Quantity	F. Is the Container Leaking?		
					YES	NO	Unknown

27. Are there any abandoned or discarded automotive, tractor, farm machinery, industrial, or other batteries present on the property?
 YES NO Unknown *If "YES", provide the estimated quantity and location in TABLE 3.*

TABLE 3 - Batteries. Insert the appropriate map symbol from Part F in column B.

A. Location of Batteries	B. Map Symbol	C. Estimated Quantity	D. Are Any of the Batteries Leaking?		
			YES	NO	Unknown

28. Are there any appliances, junk automobiles, tractors, farm machinery, abandoned tires, or other automobile or tractor related parts present on the property?
 YES NO Unknown *If "YES", provide the estimated quantity and location in TABLE 4.*

TABLE 4 - Abandoned Machinery, Tires or Other Equipment. Insert the appropriate map symbol from Part F in column B.

A. Location of Appliances, Machinery, Tires or Parts	B. Map Symbol	C. Estimated Quantity	D. Type of Tires or Parts

*--Completing FSA-851, Environmental Risk Survey Form (Continued)

FSA-851 (04-13-05)												Page 3 of 6		
29. Are there any signs of fill dirt present on the property which might indicate covering of contaminants? <i>If "YES", provide the location and map symbol:</i>												YES	NO	Unknown
30. Are there any areas of stained soil on the property? <i>If "YES", provide the location and map symbol, and appropriate size. Also attach photographs.</i>														
31. Are there any areas of the property such as floors in buildings which are stained? <i>If "YES", provide the location and map symbol for the affected buildings.</i>														
32. Are there any electrical transformers located on the property which are not labeled as "PCB Free"? <i>If "YES", provide the location and map symbol.</i>														
33. Does the property contain any USTs or above ground storage tanks (ASTs) currently in operation or which have been temporarily closed? <i>If "YES", complete TABLE 5.</i>														
TABLE 5 - Storage Tanks. Insert the appropriate map symbol from Part F in column C.														
A. Tank Location	B. Size if known	C. Map Symbol	D. What Type		E. If "UST", is it Registered?			F. Does the Tank Contain Any Substance?			G. If "YES", What Substance	H. Is the Tank Known to be Leaking?		
			AST	UST	YES	NO	Unknown	YES	NO	Unknown		YES	NO	Unknown
PART D - WATER AND WASTE INFORMATION														
34. Are there any lagoons, ponds or other liquid holding facilities present on the property? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> Unknown <i>If "YES", complete TABLE 6.</i>														
TABLE 6 - Lagoons, Ponds or Other Holding Facilities. Insert the appropriate map symbol from Part F in column C.														
A. Lagoon, Pond, or Other Location	B. Size	C. Map Symbol	D. Primary Use	E. Condition			F. Permitted or Registered							
				Good	Fair	Poor	YES	NO	Unknown					

*--Completing FSA-851, Environmental Risk Survey Form (Continued)

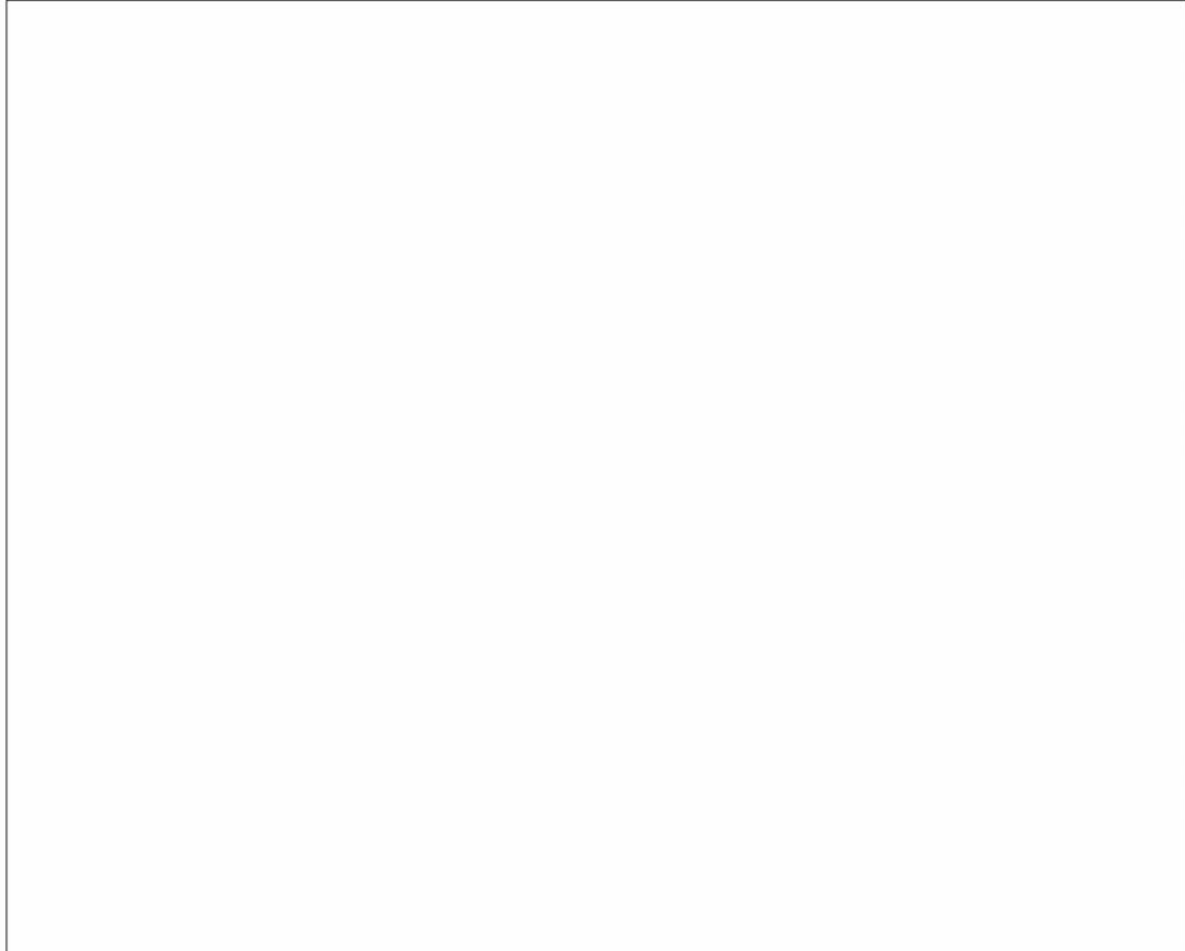
FSA-851 (04-13-05)										Page 4 of 6		
35. Are there any wells located on the property? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> Unknown <i>If "YES", complete TABLE 7.</i>												
TABLE 7 - Wells. Insert the appropriate map symbol from Part F in column B.												
A. Location of Well	B. Map Symbol	C. Use 1/				D. Depth	E. Described Condition of Well and Casing			F. Construction		
		D	I	O	A		Good	Fair	Poor	Casing	Drilled	Dug
1.												
2.												
3.												
4.												
5.												
6.												
<i>1/ "D" - Domestic "I" - Irrigation "O" - Other "A" - Abandoned</i>												
36. If applicable, is there evidence of well contamination such as signs of using an area immediately adjacent to the well(s) listed in TABLE 7 for the filling of spray tanks? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> Unknown <i>If "YES", provide the number of the well(s) from TABLE 7:</i>												
37. Is there any evidence or do you have prior knowledge that contaminants have been identified in either a well or water system with levels that exceed regulatory acceptable levels? <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> Unknown <i>If "YES", provide the number of the well(s) from TABLE 7:</i>												
38. If drinking water is not obtained from a groundwater source on the property, where does the supply come from?												
39. If a residence is located on the property, what type of waste or septic system is used? Describe condition of such system along with distance of system from any drinking water sources:												
PART E - RECORDS SEARCH												
40. Are there any National Priority List (NPL) sites within 1 mile of the property?											YES	NO
41. Are there any Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) sites located within .5 mile of the property?												
42. Are there any sites listed by the State within 1 mile of the property which are equivalent to NPL sites?												
43. Based on State maintained data, are there any Leaking Underground Storage Tanks (LUST) within 1 mile of the property?												
44. Based on State maintained data, are there any solid waste landfill sites located within 1 mile of the property?												

***--Completing FSA-851, Environmental Risk Survey Form (Continued)**

FSA-851 (04-13-05)

Page 5 of 6

PART F - VISUAL REPRESENTATION OF PROPERTY - In lieu of a sketch, the preparer may attach an aerial photograph with boundaries and areas of concern identified and/or multiple site photographs documenting/supporting form answers.



Legend and Map Symbols:

U	UST	++++	Railroad
A	AST	PL	Pond or lagoon
R	Residence	D	Dump or other possibly contaminated site
B	Building	GB	Grain bin or silo
ST	Septic Tank and System	WD	Well-Drinking Water
~~~	Creek, stream, river	WI	Well-Irrigation
===	Public road	WO	Well-Other
CM	Cemetery	WA	Well-Abandoned
—	Private road or driveway	SS	Stained Soil
BT	Batteries	W	Wetland
T	Tires	‡	Transformer
X	Barrel or drum	C	Containers

*--Completing FSA-851, Environmental Risk Survey Form (Continued)

FSA-851 (04-13-05)

Page 6 of 6

**PART G - CONCLUSION**

I have reviewed the documents in the case file and have made a site inspection. The result of this site inspection is:

- 1. Evidence of contamination was found or observed on the property and further evaluation through a Phase II ESA is recommended.
- 2. The preliminary environmental assessment results were found to be inconclusive and further evaluation through a Phase II ESA is recommended.
- 3. Evidence of contamination was found but was not noted to be significant to require further evaluation.
- 4. No evidence of contamination was found or observed and no further evaluation is needed.

To the best of my knowledge, the above statement and facts are true and correct, and to the best of my knowledge, no facts or information have been misrepresented or omitted:

5. Signature of Preparer _____

6. Date _____

7. Printed Name of Preparer _____

8. Title of Preparer and Agency or Lender	9. Address (Zip Code)	10. Telephone Number (Area Code)
-------------------------------------------	-----------------------	----------------------------------

**PART H - UPDATE INFORMATION**

<b>1. For Update 1:</b>		<b>2. For Update 2:</b>	
A. Date Updated	A. Date Updated	B. Updated by:	B. Updated by:
C. Title	C. Title	D. Agency/Lender	D. Agency/Lender

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, D. C. 20250-9410 or call (202) 720-5964 (voice or TDD). USDA is an equal opportunity provider and employer.

***--Completing FSA-851, Environmental Risk Survey Form (Continued)**

Complete FSA-851 according to this table.

Item	Instructions
<b>Types of Review</b>	Check box: <ul style="list-style-type: none"> <li>• A if this is the first or initial review of the property</li> <li>• B if this is a subsequent review of the property</li> <li>• C if this is an update of the last 2 reviews.</li> </ul> <p><b>Note:</b> Only 3 reviews of the property can be documented on each FSA-851. After 3 reviews preparer will need to use a new FSA-851.</p>
<b>Part A - Site Preparation</b>	The following items will be attached to the completed FSA-851 and labeled as follows: <ul style="list-style-type: none"> <li>• Attachment A - Legal description.</li> <li>• Attachment B - Plat map or aerial photo with the boundaries of the property outlined.</li> <li>• Attachment C - Photographs.</li> </ul>
1	Provide name of the owner of the property. For FLP, if an inventory property, provide name of the property as shown in the official Agency file.
2	Provide address of the property. Do <b>not</b> use post office box numbers.
3	For loan applicants, insert the case number assigned to the application. For FLP inventory property, provide inventory property identification number assigned to the official Agency file.
4	Provide the township number (assigned in the rectangular survey system) where the property is physically located.
5	Provide the range number (assigned in the rectangular survey system) where the property is physically located.
6	Provide the section number (assigned in the rectangular survey system) where the property is physically located.
7	Provide driving directions to the property from the nearest town. Include names of roads and any landmarks that would assist in easily locating the property.
8	If the property is located close to an intersection that would assist in determining its location, provide the name and location of the intersection.
9	Provide size of the property in acres.
10	Identify what the current use of the property is. <p><b>Example:</b> Explain that the property is used as a dairy farm, poultry farm, industrial site, or commercial business.</p>

--*



*--Completing FSA-851, Environmental Risk Survey Form (Continued)

Item	Instructions
<b>Part B - Site Ownership History and Background</b>	Every attempt should be made to search records and trace the use of the property back to 1940. Review FSA file to determine ownership history of the property. Make every attempt to interview the current property owner as well as adjoining property owners to determine the past uses of the property. If the property has been used solely for agricultural purposes, it will not require a large amount of detailed review. Pay close attention to the ownership history and background to determine if the property was ever used for an industrial use or the location of a facility such as a gas station.
11A	Provide name of current owner of the property. For loans, this will generally be the name of the loan applicant. For FLP inventory property, show FSA as the owner and indicate that it is an inventory property.
11B	Provide name of current operator of the property. For loans, this will generally be the name of the loan applicant. For FLP inventory property, leave blank unless the property is being leased. If the property is being leased, provide name of the lessee.
12 A	Provide names of any previous owners of the property.
12 B	Insert dates that the property was owned by the owners listed in Item 12 A.
13	Provide date of the first involvement by FSA with the property. This will usually be the date of the application for the applicant's first loan.
<b>Part C - Site Data</b>	The completion of this part requires a site inspection and a records search as a supplement. Make every attempt to interview either the owner or the occupant of the property.
14	Indicate if there are any buildings on the property.
Table 1, Column A	Provide the type of structure like barn, dwelling, or silo.
Table 1, Column B	Provide the appropriate map symbol from Part F.
Table 1, Column C	Provide the year the structure was constructed.
Table 1, Column D	Indicate if the structure was/is used for storing or mixing chemicals like pesticides.
Table 1, Column E	Indicate if the structure contains LBP. A test by a certified specialist will usually be necessary to properly ascertain this information.
Table 1, Column F	Indicate if the interior or exterior of the structure contains asbestos. Check "yes" if clear visible signs such as asbestos shingles are present. If clear visible evidence is not available, the assistance of a certified environmental specialist is generally needed to answer "yes" or "no".
17-25	These questions are self-explanatory. Answer these questions based on interviews, document searches, and visits to the property.

--*

*--Completing FSA-851, Environmental Risk Survey Form (Continued)

Item	Instructions
26	Indicate if there are any chemical containers located on the property. If “yes”, smaller containers can be grouped together if they have same or similar contents.
Table 2, Column A	Provide a brief description of where the container is physically located.  <b>Example:</b> Shed #1 rear floor.
Table 2, Column B	Provide appropriate map symbol from Part F.
Table 2, Column C	If known, list contents of the container. Be specific if the container label is intact and readable. If a label is not available, insert “unknown”.
Table 2, Column D	If available, provide EPA registration number from the container. If a label is not available, insert “unknown”.
Table 2, Column E	Provide estimated quantity that is present in the containers listed.
Table 2, Column F	Indicate if the container is leaking. Check “yes” if evidence such as stained soil around the container is easily observed. Do <b>not</b> attempt to move containers to make these determinations. Where evidence of leaking is not easily observed or is not present, check “no” or “unknown”.
27	Indicate if there are any batteries present on the property.
Table 3, Column A	If “yes”, provide a brief description of where the batteries are physically located.  <b>Example:</b> Shed #1 rear floor.
Table 3, Column B	Provide the appropriate map symbol from Part F.
Table 3, Column C	Provide the number of batteries for each location.
Table 3, Column D	Indicate if any of the batteries are leaking. Check “yes” if evidence such as stained soil around the battery is easily observed or if there are visible cracks. Do <b>not</b> attempt to move batteries to make these determinations. Where evidence of leaking is not easily observed or is not present, preparer should check “no” or “unknown”.
28	Indicate if there are any junk or abandoned appliances, automobiles, tractors, farm machinery, tires, or related parts on the property.
Table 4, Column A	If “yes”, provide a brief description of where the items are physically located.  <b>Example:</b> Shed #2.
Table 4, Column B	Provide the appropriate map symbol from Part F.
Table 4, Column C	Provide the number of items in each location
Table 4, Column D	Provide a brief description of the items.  <b>Example:</b> Auto tires or tractor tires.  <b>Note:</b> This is important, as there are large cost differences in disposing of different size items.

--*

*--Completing FSA-851, Environmental Risk Survey Form (Continued)

Item	Instructions
29	Indicate if any fill dirt has been deposited on the property. Check for signs of fresh fill dirt or an area where it is apparent that fill dirt was dumped as evidenced by differences in the growth of vegetation. If “yes”, provide a brief description of the site location along with the appropriate map symbol from Part F.
30	Indicate if there are any areas of stained soil on the property. If “yes”, provide a brief description of the site location along with the appropriate map symbol from Part F.
31	Indicate if there are any stained areas within buildings like floors. If “yes”, provide a brief description of the site location along with the appropriate map symbol from Part F.  <b>Note:</b> It is important to indicate the type of flooring in buildings such as if it is dirt or concrete.
32	Indicate if there are any electrical transformers located on the property. If “yes”, provide information on if they are owned by the property owner or the local power company. Provide a brief description of the location along with the appropriate map symbol from Part F.
33	Indicate if there are any UST’s or AST’s present on the property.
Table 5, Column A	If “yes”, provide a brief description of where the tank is physically located.  <b>Example:</b> Left of shed #2.
Table 5, Column B	If information is readily available, indicate the approximate or exact size of the tank.
Table 5, Column C	Provide the appropriate map symbol from Part F.
Table 5, Column D	Indicate the tank is UST or AST.
Table 5, Column E	If the tank is UST, indicate if it is registered. An interview with the owner or operator will usually be necessary.
Table 5, Column F	Indicate if the tank contains any substance or product. An interview with the owner or operator will usually be necessary.
Table 5, Column G	If “yes” is check in Column F, the name of the substance should be provided if it is known.
Table 5, Column H	Indicate if the tank is leaking. Check “yes” if evidence such as stained soil around the tank is easily observed. Where evidence of leaking is not easily observed or is not present, check “no” or “unknown”. An interview with the owner or operator will usually be necessary.

--*

*--Completing FSA-851, Environmental Risk Survey Form (Continued)

Item	Instructions
<b>Part D - Water and Waste Information</b>	Completion of this part requires a site inspection with a records search as a supplement. Make every possible attempt to interview either the owner or the occupant of the property.
34	Indicate if there are any holding facilities such as ponds or lagoons that may contain hazardous waste or serve as treatment facilities for animal waste, thus creating a potential environmental risk.
Table 6, Column A	Provide a brief description of where the lagoon, pond, or facility is physically located.  <b>Example:</b> 25 feet southwest of the dairy barn.
Table 6, Column B	Provide the approximate size of the lagoon, pond, or facility. Size should be provided in perimeter measurements. Provide capacity measurements if known.
Table 6, Column C	Insert the appropriate map symbol from Part F.
Table 6, Column D	Provide a brief description of what the lagoon, pond, or facility is used for.  <b>Example:</b> Manure lagoon for dairy.
Table 6, Column E	Provide an assessment of the condition of the lagoon, pond, or facility. Assess the condition of any berms or containment structures.
Table 6, Column F	Indicate if the lagoon, pond, or facility is permitted or registered by local or State governmental officials.
35	Indicate if there are any wells located on the property including wells used for domestic or irrigation purposes.
Table 7, Column A	Provide a brief description of where the well is physically located.  <b>Example:</b> 25 feet southwest of the dwelling
Table 7, Column B	Insert the appropriate map symbol from Part F.
Table 7, Column C	Check the appropriate box to indicate if the well is used for domestic, irrigation, or other water uses. If the well is abandoned, the "A" box may be checked.
Table 7, Column D	Provide the exact or approximate depth of the well, if known.
Table 7, Column E	Provide an assessment of the condition of the well and its casing. An interview with the owner or operator will usually be necessary.
Table 7, Column F	Indicate if the well is drilled or dug. Indicate if it has a casing.
36	Indicate if areas immediately adjacent to wells are being used for chemical mixing operations that could possibly contaminate the water source.
37	If information is available, like from an interview with the owner or operator, indicate if the well is contaminated with hazardous substances.
38	If the domestic water source on the property is not potable, indicate where drinking water comes from.
39	If a residence is located on the property, inspect it for the presence of a septic or waste system and the type identified. Other information, like the condition of such systems should be described along with its location.

--*

*--Completing FSA-851, Environmental Risk Survey Form (Continued)

Item	Instructions
40-42	<p>These questions pertain to lists maintained by either Federal or State regulatory authorities. The Federally maintained lists can be obtained through the Environmental Protection Agency's website at <a href="http://www.epa.gov/superfund/sites">www.epa.gov/superfund/sites</a> and <a href="http://www.epa.gov/enviro/html/ej/">www.epa.gov/enviro/html/ej/</a> or through The Right-To-Know Network at <a href="http://www.rtk.net">www.rtk.net</a>.</p>
43-44	<p>These questions are to be answered by checking State maintained lists that can be obtained either by:</p> <ul style="list-style-type: none"> <li>• accessing websites hosted by the appropriate State Regulatory Authority</li> <li>• calling their office and requesting a hard copy.</li> </ul> <p>The FSA SEC should be contacted if necessary for assistance in completing this section if data is difficult to obtain. If "yes" is checked on any question, provide further information in an attachment by describing the type of site, location, and distance from the property.</p>
<b>Part F - Sketch of Property</b>	<p>A sketch of the property is very important in locating any environmental risk factors such as UST's, stained soil, or leaking containers.</p> <ul style="list-style-type: none"> <li>• Start with a rough outline of the property boundaries and include any roads, railways, water channels, buildings, or other landmarks.</li> <li>• Draw in the appropriate map symbols provided in the legend.</li> </ul> <p>Note: If additional map symbols are needed they should be added to the legend. Indicate the orientation of the map. List the map symbols on the back of applicable photographs.</p> <p>In lieu of a sketch, a good quality copy of an aerial photograph may be attached. If an aerial photograph is used, the map symbols should still be used.</p> <p>When there are numerous findings of similar objects or sites, add a number to the map symbol.</p> <p><b>Example:</b> There may be 2 UST's on the property. The first UST would be given a map symbol of U-1 and the second UST would be given a map symbol of U-2.</p>

--*

*--Completing FSA-851, Environmental Risk Survey Form (Continued)

Item	Instructions
<p><b>Part G - Conclusion</b></p>	<p>Include all applicable information as requested. Preparer should draw a conclusion to the best of their ability. If preparer has any doubt as to the significance of a potential threat, they should recommend further investigation by a trained environmental professional or seek further advice from the SEC. The Agency's conclusion on future action is based on the following 10 response choices.</p>
<p>1</p>	<p>This response should be chosen if signs of contamination were observed that could potentially have significant effects upon the value of the real property and the environment.</p> <p>Examples would include, but not be limited to:</p> <ul style="list-style-type: none"> <li>• large amounts of abandoned hazardous waste</li> <li>• large areas of stained soil</li> <li>• known or suspected leaking UST's.</li> </ul> <p>Preparer should evaluate each property differently as a small stained area of sandy soil on one property may be just as significant as a large stained area of clay soil on another property. Another example of when further evaluation would be warranted is if the property is adjacent to or in close proximity to a Superfund National Priorities List site.</p> <p><b>Note:</b> Phase II ESA is a detailed investigation and evaluation of a property's environmental condition, including a review of all pertinent records, a site reconnaissance of the property, and taking soil, water, and air samples to determine contaminant content or verify that no contaminants are present or likely to be present.</p>
<p>2</p>	<p>This response should be chosen when Preparer is alerted to the fact through interview or research that the real property may be more significantly affected by environmental risks than is apparent through normal observation.</p> <p><b>Examples:</b> The discovery that unknown objects or substances were buried on the real property.</p> <p>Research or interview indicates that the property once contained a facility such as a gas station which could cause significant environmental contamination.</p>

--*

*--Completing FSA-851, Environmental Risk Survey Form (Continued)

Item	Instructions
3	<p>This response should be chosen if small amounts of environmental contamination are noted on the property but are not present in sufficient quantities to pose a significant threat to the environment.</p> <p>Examples that meet the requirements for this response include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• small shallow and insignificant soil stains</li> <li>• empty and rinsed pesticide containers</li> <li>• small quantities of tires</li> <li>• containers of hazardous substances stored in a protective structure.</li> </ul>
4	<p>This response should be chosen when the review of the property does not reveal any signs of potential contamination or other environmental concerns. Normal and safe storage of agricultural chemicals, tires, petroleum products, and batteries will not be considered as potential sources of contamination.</p>
5	<p>Preparer <b>must</b> sign the form in ink.</p>
6	<p>Preparer <b>must</b> provide the date that the form is signed.</p>
7	<p>Preparer <b>must</b> print or type their name.</p>
8	<p>Preparer <b>must</b> provide:</p> <ul style="list-style-type: none"> <li>• job title</li> <li>• name of the agency or lender for whom the form has been completed.</li> </ul>
9	<p>Preparer <b>must</b> provide the address of the agency or lender.</p>
10	<p>Preparer <b>must</b> provide their telephone number where they can be reached should any questions arise.</p>
<i>Part H - Update Information</i>	<p>Use this section when it is necessary to only update a previously completed form as allowed by procedure. The form may only be updated twice before a new form will need to be completed.</p>
1 A and 2 A	<p>Person completing the update <b>must</b> provide the date of the update.</p>
1 B and 2 B	<p>Person completing the update <b>must</b> provide their name.</p>
1 C and 2 C	<p>Person completing the update <b>must</b> provide their job title.</p>
1 D and 2 D	<p>Person completing the update <b>must</b> provide the name of the appropriate agency or lender for whom the update has been completed.</p>

--*





***--Deed Language**

The following provides wording required for real property with hazardous waste contamination.

**Deed Language for Real Property with Hazardous Waste Contamination**

When disposing of inventory properties for which FSA will provide corrective actions, the servicing official shall incorporate the following 2 paragraphs into the main body of the deed:

“The GRANTOR agrees to be responsible for responding to hazardous substances (as defined by 42 U.S.C. § 9601(14)) located on the property at the time of transfer, whether such hazardous substances have been identified at the time of transfer of title to the Grantee or are identified after transfer of title. Subject to availability of appropriations, the Grantor agrees to respond to hazardous substances on or from the property, not inconsistent with the requirements of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), as amended (42 U.S.C. § 9601 et seq.) and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR Part 300).

The GRANTOR and its employees, agents, contractors, and subcontractors have the right, upon reasonable notice to the Grantee or any assignee, to enter upon the property for response actions.”

The servicing official shall incorporate the following notice as an attachment to the deed where hazardous substances are or have been stored for more than 1 year, or released, on the property in excess of the quantities described in 40 CFR Part 373.2 and regardless of whether corrective action will be taken by FSA. If FSA records include a site investigation or other environmental report regarding hazardous substances, FSA should provide a copy of the report to the prospective purchaser before the purchaser signs any contract for the sale of the property.

--*

*--Deed Language (Continued)

<b>Notification Hazardous Substance Activity</b>					
<p>1. The property described as (a): [Enter legal description or refence legal description in deed]</p> <p>is known to have had hazardous substances stored on it for one year or more, or released or disposed of based on a complete search of Agency files. The identity of such hazardous substances and available information is contained in the following table.</p> <p>The following table documents the hazardous substances detected in a site investigation conducted by (b) [Enter name of envrionmental professional firm that prepared the investigation report along with the title of report and its date]. The TYPE identifies the hazardous substance by product name and chemical name, the REPORTED SITE CONCENTRATIONS indicates the amount in mg or kg or ppm for release solids and liquids, and the AMOUNT OF STORED CONTAMINANT indicates the amount in kilograms for hazardous substances stored on the property in containers.</p>					
2. Hazardous Substance	3. Regulatory Synonyms for Hazardous Substance 40 CFR Part 261, If Applicable	4. Hazardous Waste CASRN Number 1/	5. Reported Site Concentrations 2/ (mg/kg or ppm)	6. Amount of Stored Contaminant 3/	7. Date of Storage, Release, or Disposal If Known
<p>8. List any other information pertinent to describing the history of hazardous substances located on the property.</p>					
<p><b>9. Certification of Accuracy</b> The information contained in this notification is required under the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9620(h).</p>					
A. Name			B. Title		
C. Signature			D. Date (MM-DD-YYYY)		
<p>1/ CASRN - Chemical Abstracts Service Registry Number. This is a specific number assigned to known hazardous substances and is available from the analytical laboratories or USEPA lists. If known, the number must be on the notification that accompanies this deed, according to 40 CFR 373.3(a).</p> <p>2/ If hazardous substances have been stored on the property but there were no releases, the completion of this column is not required.</p> <p>3/ Use this column for reporting amounts of stored hazardous substances which are located on the property.</p>					