

**FSA**  
**HANDBOOK**

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## Environmental Quality Programs

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To access the transmittal page click on the short reference

For State and County Offices

SHORT REFERENCE

1-EQ  
(Revision 3)

UNITED STATES DEPARTMENT OF AGRICULTURE  
Farm Service Agency  
Washington, DC 20250



UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency  
Washington, DC 20250

<b>Environmental Quality Programs 1-EQ (Revision 3)</b>	<b>Amendment 3</b>
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Approved by: Administrator



**Amendment Transmittal**

**A Background**

In accordance with the May 8, 2023, Amended Order in *Dakota Rural Action v. USDA* (ECF No. 57, 18-cv-02852), certain loan actions involving medium Concentrated Animal Feeding Operations (CAFO's) cannot be CatExed.

**B Reasons for Amendment**

Subparagraph 3 C has been amended to include medium CAFO's in the 24 months or longer limitation placed on refinancing or terming out.

Subparagraph 33 C has been amended to eliminate guidance providing for use of supported categorical exclusions for the construction or expansion of a medium CAFO or the refinancing of a newly constructed medium CAFO.

Exhibit 17 has been amended according to the following:

- Supported CatEx (S) 7 b) to remove applicability to medium CAFO's
- Supported With Ground Disturbance CatEx (SG) 10 a) to remove applicability to medium and small CAFO's
- the table for "Possible Example CatExs for CAFOs" to remove applicability to medium and small CAFO's.

Page Control Chart		
TC	Text	Exhibit
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## Part 1 General Information

### 1 Purpose and Mission

#### A Purpose

This handbook:

- will assist FSA staff, technical service providers, contractors, and others in carrying out environmental compliance reviews and environmental impact analyses according to NEPA requirements of 40 CFR Part 1500, CEQ regulations, and USDA implementing regulations as provided by 7 CFR Part 799
- contains procedures and guidelines for completing the appropriate level of environmental compliance review or environmental impact analyses while ensuring compliance with all applicable environmental and cultural resource laws, regulations, and Executive Orders
- applies to all programs administered by FSA, including but not limited to CCC programs, FLP's, and FP's.

The Environmental and Cultural Resource Compliance Web Page at <http://www.fsa.usda.gov/programs-and-services/environmental-cultural-resource/index> provides information to FSA staff, technical service providers, contractors, and others about how FSA is ensuring that the implementation of its programs meet all applicable environmental review requirements.

Environmental SharePoint Site at <https://sharepoint.fsa.usda.net/states/cepd/FSAEC/SitePages/Home.aspx> provides additional tools, related references and training materials to assist FSA staff in implementing environmental responsibilities.

#### B Environmental Compliance Program Mission

FSA's environmental compliance program mission is to use all practicable means to ensure FSA compliance with all applicable environmental laws, regulations, and procedures. USDA and FSA goals include provisions for promoting environmental compliance, protection of important environmental resources, and promotion of their resiliency (7 CFR 799.1).

## 2 Sources of Authority and Regulations

### A Sources of Authority

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

### B NEPA, CEQ, and FSA Regulation Implementation Overview

NEPA requires that:

- Federal agencies must consider all potential environmental impacts of their proposed actions by incorporating an analysis of impacts into their decision-making processes and considering reasonable alternatives to those activities **before** implementing activities that have the potential to significantly impact the human environment
- all environmental processes must be fully completed before an action can be approved; therefore actions **may not** be approved contingent to completion of any portion of the environmental review processes
- agencies consult with and obtain comments from Federal agencies that manage or have expertise about resources that are potentially affected (40 CFR 1502.25).

NEPA established CEQ. CEQ's regulations (40 CFR Parts 1500-1508) inform Federal agencies of how to comply with NEPA and require agencies to establish their own procedures for implementing CEQ regulations.

FSA's NEPA implementing regulations are found in 7 CFR Part 799. The process for implementing these regulations is described in Parts 2 and 3.

### C Related Environmental Regulations

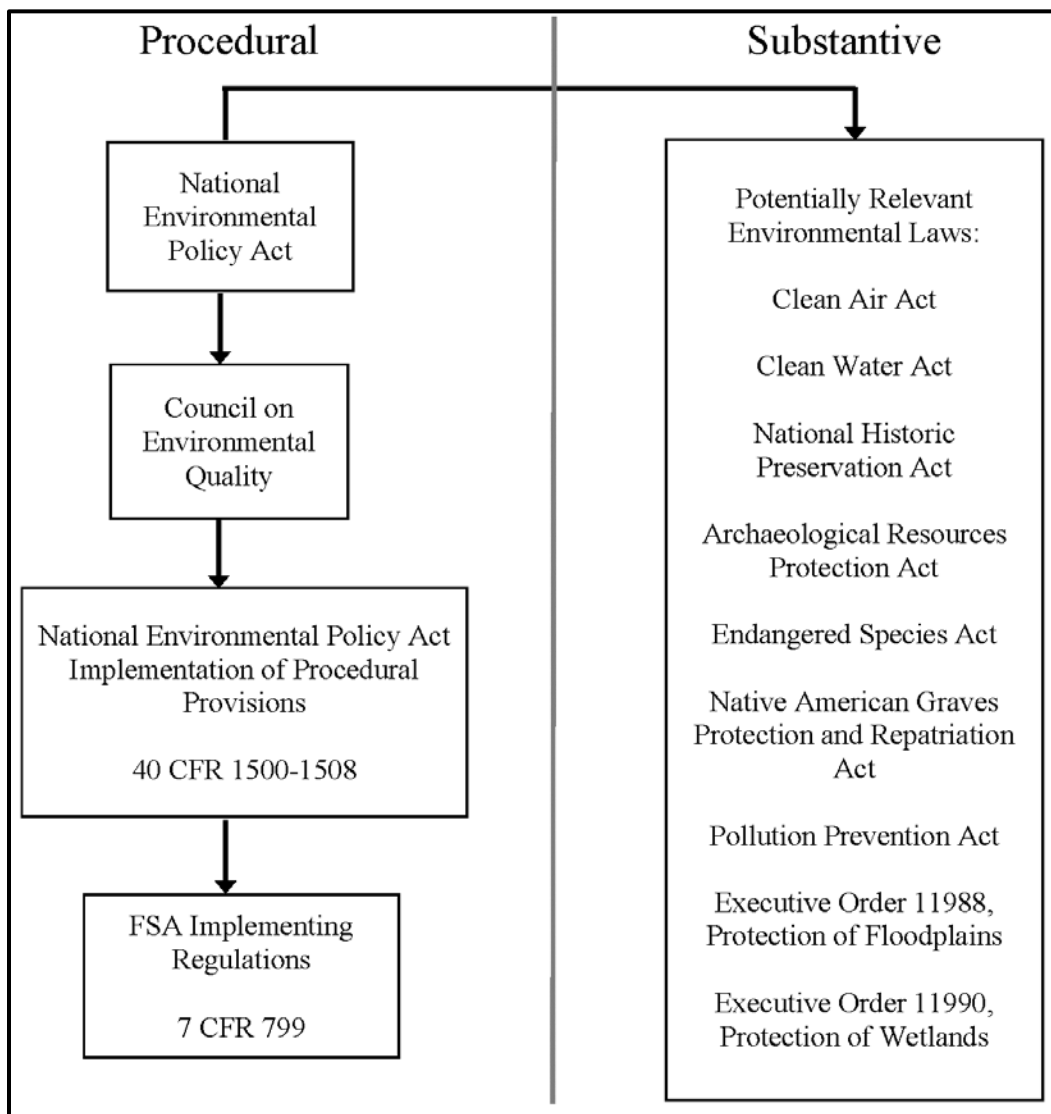
NEPA, CEQ, and FSA implementing regulations require compliance with relevant environmental regulations. A variety of laws, regulations, and Executive Orders apply to protected environmental resources and actions carried out by Federal agencies. These laws, regulations, and Executive Orders form the basis of NEPA analyses. Part 4 describes these regulations by resource area and provides guidance on how to ensure FSA compliance.



2 Sources of Authority and Regulations (Continued)

C Related Environmental Regulations (Continued)

The following diagram provides an overview of the relationship between NEPA, implementing regulations, and environmental laws and regulations that protect valuable resources. The “procedural” rules mandate the general processes for environmental compliance. The “substantive” rules dictate how to follow those processes for specific resources. So we evaluate the specific (substantive) within the processes established by the procedural. This is also known as an “umbrella,” whereby many laws fall under the umbrella process that is NEPA.



NEPA is a procedural law that ensures Federal agencies consider the environmental impacts of their activities and requires Federal agencies comply with a variety of substantive environmental laws and regulations. Federal agencies not in compliance with NEPA subject themselves to the risk of lawsuits that can ultimately delay implementing, or stop altogether, a needed activity.

## 2 Sources of Authority and Regulations (Continued)

### D NEPA Timing

NEPA regulations require agencies to complete the NEPA processes **before** any agency action is approved; however, during emergency procedures described in 40 CFR 1506.11 when action is necessary to protect life and property, FSA's National Office will consult with CEQ and other authorizing Federal agencies, depending on the resource APE, about alternative arrangements and implementation. This only occurs in very limited instances and must be negotiated by the National Office with CEQ and appropriate regulatory authorities.

The environmental review process is to be initiated as early in the planning process as possible and shall begin when the application is received. Whenever it is anticipated FSA assistance may be needed, the potential applicant is to contact FSA for guidance and to identify the type of environmental information that will be needed. The collection of environmental information about a proposed project may begin before an application has been received by the Agency. This is especially important when the environmental review process involves development of engineering or other specialized plans, permits, input from or consultation with other Agencies, or public notices. Staff are advised to tell applicants:

- not to begin any related work before FSA's completes the environmental compliance process and fully approve/close their loan/contract
- if they do so, they jeopardize FSA's ability to cooperate on that project by disallowing the completion of our environmental compliance review.

To facilitate development and the consultation necessary to complete reviews, a scoping (kick-off) meeting (Exhibit 15), as provided by 40 CFR 1501.7, should be held with the applicant and other stake holders, as appropriate, to review the proposed project and formulate an action plan. This step is of the utmost importance for proposed projects that require an environmental assessment.

- Depending on the nature of the proposed project, these meetings can be a formal process or as simple as a telephone call.
- At this meeting the applicant must be counselled not to prematurely act or begin the project as provided by subparagraph 4 C. A follow up letter or checklist similar to Exhibit 15 should be sent to participants to underscore the above, outline timeframes, and identify actions and items to be provided by all parties involved.

### 3 Basic Requirements

#### A Public and Agency Involvement

NEPA requires:

- NEPA requires that a federal agency document its consideration of the impacts of its major activities on the natural and human environment and consider those impacts in its decision making
- the public be informed when appropriate of planned Federal activities potentially impacting the environment as provided by 40 CFR 1506.6

**Note:** Paragraph 6 provides information on required public notices

- coordination with regulatory agencies and entities responsible for managing protected resources, including but not limited to surface water quality, threatened and endangered species, and cultural resources

**Note:** Paragraph 5 provides information on consultation requirements for agencies and entities.

#### B Levels of NEPA Documentation

NEPA regulations contain requirements to ensure the proper level of environmental analysis is completed. There are several levels of review and documentation that provide compliance with NEPA. The level of environmental analysis needed depends on the nature, complexity, and scope of the proposed activity. FSA uses an environmental review process to determine the appropriate level of NEPA analysis and documentation required. The environmental review process, detailed in Parts 2 and 3, is the same for all FSA programs.

In general, there are 3 levels of NEPA analysis as follows.

- **Categorical Exclusions (CatEx)** are activities that have been demonstrated through prior analysis to not significantly affect the environment and in the absence of extraordinary circumstances, qualify for CatEx. Each agency has a list of CatEx's that have been determined by the agency to have little or no effect on the environment and have been approved by Council on Environmental Quality (CEQ).

**FSA has the following two tiers of CatEx's:**

- **listed CatEx's** are specific exclusions from further review as listed in Exhibit 17, merely require identification and recording on the FSA-850, Environmental Screening Worksheet.
- **supported CatEx's**, as listed in Exhibit 17, require no further review when documented by completion of the FSA-850 review, and the attachment of appropriate of supporting material, such as copies of plans, permits, or consultation responses.

### 3 Basic Requirements (Continued)

#### B Levels of NEPA Documentation (Continued)

An Environmental Assessment (Exhibit 21) is prepared for activities that do not qualify for CatEx based on completion of the FSA-850, existence of extraordinary circumstances, or are activities that inherently require an EA as listed in subparagraph 34 B. Exhibit 21 must also be prepared when it is unclear whether an activity will significantly affect the environment.

- **Environmental Assessments (EA)** are concise documents prepared as provided by the template in Exhibit 21, and which provide analyses sufficient to determine whether the proposed action would significantly affect the environment. Finding of No Significant Impact (FONSI) is also prepared using the template in Exhibit 23 when Exhibit 21 determines significant impacts will not occur as a result of the proposed action.
- **Environmental Impact Statements (EIS)** are prepared for major Federal actions which are expected to have significant impact on the human environment and must be addressed with the highest level of NEPA documentation. EIS's are managed from FSA's National Office and are not covered in this handbook.

#### C Level of NEPA Review and Segmentation

**[40 CFR 1502.4] Proposals or part of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.**

In determining the appropriate level of NEPA review, segmentation must be avoided. Segmentation is the division of a project into component parts or temporal "phases." The courts have held segmentation cannot be used as a device to circumvent the intent of NEPA and avoid requirements for conducting an appropriate level of NEPA review.

**[40 CFR 1508.25 (a) (1) ...Actions are connected if they:**

- (i) **automatically trigger other actions which may require environmental impact statements**
- (ii) **Cannot or will not proceed unless other actions are taken previously or simultaneously**
- (iii) **are independent parts of a larger action and depend on the larger actions for their justification**

### 3 Basic Requirements (Continued)

#### C Level of NEPA Review and Segmentation (Continued)

**[40 CFR 1508.27 (b) (7) ....Significance cannot be avoided by terming an action temporary or breaking it down into small component parts.**

NEPA specifies actions cannot be evaluated in isolation and requires “connected actions” be evaluated simultaneously as “but for” one action, another would not be possible or required; therefore the entire proposed project and related action(s) must be evaluated. Potential applicants and lenders contemplating FSA assistance must come to FSA early in the initial project planning processes to be able to comply with NEPA. Care must be exercised, especially when refinancing is involved, to ensure “creative planning” or other devices which may give the appearance of an attempt to circumvent NEPA compliance were not employed. While refinancing of existing debt does not typically create the potential for adverse impacts; due to specific NEPA constraints against segmentation of a project/action, it is necessary to consider the timeline when refinancing or “terming out” construction related debt.

Once the construction phase of a connected project/action has started, it becomes segmented as it is not possible for a Federal agency to complete the requisite level of environmental review and consultations after-the fact, and the request must be denied. FSA officials must follow the guidance in 1-APP when notifying an applicant of denial.

- If there has been new ground disturbance/construction and the facility has been in operation less than 12 months, then any related refinancing request is deemed to be part of the same/original construction project.
- \*--Being highly controversial, large and medium CAFOs are further limited and may not--\* be refinanced or “termed out” unless/until the facility has been in operation for 24 months or longer.

### 3 Basic Requirements (Continued)

#### C Level of NEPA Review and Segmentation (Continued)

**[7 CFR 799.2 (a) (5) ... if an FSA action represents one of several phases of a larger proposal, the entire proposal is the subject of an environmental review independent of the phases of funding. If the FSA action is one segment of a larger action funded by private parties or other governmental agencies, the entire action will be used in determining the appropriate level of FSA environmental review.**

Attempts to segment or avoid the need for an appropriate level of environmental review may include but are not limited to proposals that may involve refinancing, phased construction, subordinations, releases without compensation, creative or ambiguous transactions which are not clearly commercial arm's length, or related to additional credit, joint financing, or shared facilities. Common examples of proposals we cannot approve include but are not limited to the following:

Applicant A is anxious to start construction of a new milking barn. His lender agrees to provide construction funds without waiting for completion of FSA environmental reviews needed for a guaranteed loan and indicates an FSA guarantee can be obtained later by refinancing the "existing" operation after construction is complete. Such an action constitutes an inappropriate device to avoid NEPA compliance.

Applicant B obtains financing from lender to build a large CAFO without an EA and creates a new operating entity which applies for FSA loan assistance to finance the transfer/purchase of the "existing" operation to the entity, and additional funds to renovate an existing dwelling on the farm so applicant can live on the farm now that livestock is present. Such an action gives the appearance of being an inappropriate device to avoid NEPA compliance and creates questions regarding the "test for credit."

### 3 Basic Requirements (Continued)

#### C Level of NEPA Review and Segmentation (Continued)

Applicant C has sufficient funds to clear a project site and complete site work for building a barn (or FSFL), but will need to request an FSA loan to fund the materials and labor to build the rest of the barn (or FSFL). “But for” the land clearing and site work, it would not be possible to build the barn (FSFL); therefore, the environmental review with related consultations to evaluate the entire project and related action(s) would be necessary **before** the project is begun (i.e., applicant did not have sufficient funds to complete the project when it was begun). We cannot approve a project that has already been started – it has been segmented and we cannot complete our environmental compliance.

Applicant D requests a subordination or release to obtain loans from a lender to construct a hog barn constituting a large CAFO. Without the FSA subordination or release it would not be possible for the borrower to build the hog barn; therefore an EA of the entire proposed project and related action(s) is a necessary component for approval of the subordination or release.

Older Family Farmers E pool their collective funds and/or personal loans from various sources to build a large CAFO without an EA. Upon completion, family member X applies for FSA loan assistance as a beginning farmer to finance the purchase of the “existing” large CAFO (and in effect repay family members.) Such an action is not an arm’s length transaction and gives the appearance of being an inappropriate device to avoid NEPA compliance, and creates questions regarding the “test for credit.”

Applicant F’s lender proposes to fund loans to purchase real estate and build basic poultry house structures. A request for a FSA loan is made specifying use of FSA loan funds will be limited to the purchase and installation of poultry house equipment. “But for” both of these actions/loans it would not be possible for the project to come to fruition as a functioning poultry house; therefore, the entire project and both the house construction and equipment must be jointly evaluated with completion of related consultations.

Mr. Non-Farmer’s lender gives him an equity loan (interest-only payments) to build a large CAFO without an EA on a 500 acre track of unencumbered real estate. When livestock is placed, Mr. Non Farmer’s long-time “companion” applies for a FSA loan as an individual to purchase 5 acres with the “existing” large CAFO (that will pay off the non-farmer companion’s equity loan). This is not an “arm’s length” transaction and gives the appearance of being a device to avoid NEPA compliance and could create questions regarding the test for credit.

State Environmental Coordinators (SEC) should consult the National Environmental Compliance Manager (NECM) for guidance when it appears segmentation has occurred or devices to avoid NEPA compliance may be involved.

## 4 Roles and Responsibilities

### A Overview

The following roles and responsibilities for environmental compliance with related authorities have been established and may not be redelegated.

### B National Level

- **FSA Administrator or Designee**

FSA's Administrator or designee is responsible for carrying out NEPA for all FSA and CCC programs. The Administrator:

- ensures responsibility for complying with NEPA is adequately delegated to FSA staff within their respective areas of responsibility and expertise at the National, State, and county levels
- remains informed on the general status of FSA's compliance, and the need for any necessary improvements in FSA's NEPA process
- ensures adequate staffing levels and financial resources for accomplishing compliance with this handbook are reflected in budget requests for Departmental consideration.

- **National Environmental Compliance Manager (NECM):**

NECM

- is responsible for:
  - complying with NEPA provisions for legislative proposals, multi-State and national programs, and/or major revisions of national programs
  - providing education and training pertinent to implementing NEPA and related environmental compliance (EC) authorities to appropriate FSA personnel
  - complying with environmental policy articulated in NEPA, other statutes, Executive Orders, and regulations
- serves as:
  - the principal FSA advisor on NEPA and EC-related requirements
  - FSA's representative in NEPA and EC-related matters
  - intra- and interagency liaison and coordinator on NEPA and EC-related matters on a national basis



## 4 Roles and Responsibilities (Continued)

### B National Level (Continued)

- **National Environmental Compliance Manager (NECM) (Continued):**

- provides:
  - expert advice on NEPA and EC-related matters to the Administrator, FSA divisions, program managers, State and County Offices
  - periodic updates to FSA environmental compliance program guidance
  - coordination of NEPA with the requirements of all environmental and cultural resource laws, regulations, and Executive Orders
  - approval of SED nominations for State Environmental Coordinator (SEC) selection and determines related needs to ensure continuity of operations and timely compliance.
  - review and approval of State Environmental Guides and related amendments and notices
  - maintains records of FSA's environmental activities and advances the national environmental policy
  - ensures State and County Office compliance;
  - coordinates remedial action with DAFO and SED's when SEC's fail to appropriately fulfill their responsibilities or otherwise act outside the scope of their authority.

- **Federal Preservation Officer (FPO):**

FPO:

- serves as:
  - the principal FSA advisor on National Historic Properties Act (NHPA)-related requirements and coordinating NHPA with the requirements of laws and regulations
  - FSA liaison on NHPA-related matters
- provides:
  - expert advice on NHPA-related matters to the Administrator, NECM, FSA divisions, program managers, State and County Offices
  - periodic updates to FSA program guidance

## 4 Roles and Responsibilities (Continued)

### B National Level (Continued)

- **Federal Preservation Officer (FPO) (Continued):**
  - maintains records of environmental activities related to NHPA and advances the national preservation policy articulated in NHPA, other statutes, Executive Orders, and regulations
  - reports directly to NECM
  - ensures State and County Office compliance.

### C State Level

- **State Executive Directors (SED's)**

SED:

- serves as responsible approving official for
  - ensuring NEPA compliance for all FSA actions in their State
  - consulting with NECM and FPO, as appropriate, on environmental issues and concerns
  - nominating FP and FLP (and other) staff, with appropriate prior or field experience and/or education in preparing NEPA and other environmental compliance documents, to serve as SEC. The SED will also name a lead SEC to be responsible for initiating and coordinating state level activities and actions and communications with National Office.

**Notes:** FSA-855, SEC Nominations for FP and FLP (and others with appropriate experience), are to be completed and submitted to NECM for consideration. Separate SEC's are to be nominated for FP and FLP to provide expertise within the respective program areas and, as appropriate, provide backup functions necessary for continuity of operations. Most States should have at least two SEC's.

SEC nominations or responsibilities are not to be assigned on a rotational basis and whenever possible, State Office-level employees should be considered for SEC duties. Those without program specific field experience and expertise or in trainee level positions are not appropriate candidates for SEC.

Revised position description language and performance standards may be created in consultation with NECM and must specify that SEC's report directly to SED for these functions.

## 4 Roles and Responsibilities (Continued)

### C State Level (Continued)

- **State Executive Directors (SED's) (Continued)**

- adjusts and balances SEC workload demands, as appropriate, to ensure NEPA compliance and timely completion of requisite environmental compliance reviews.

- **State Environmental Coordinators (SEC's)**

SEC's:

- facilitate completing NEPA and EC requirements
- act as the program coordinator on all environmental matters
- coordinate requirements of this handbook and 2-EQ
- advise SED's on environmental matters
- represent SED at conferences and meetings about environmental matters of a State Office nature
- act as liaison on State Office environmental matters with interested public groups and local, State, tribes, when appropriate, and other Federal agencies
- serve as SED's alternate on State-level USDA committees about environmental, land use, and historic preservation matters
- solicit expert advice and assistance of other professional staff members within the State Office to adequately implement this handbook, including but not limited to working with GIS specialists to develop tools that incorporate available State and local GIS resources.
- provide technical assistance on an activity-by-activity basis to State and County Office staffs
- develop controls for avoiding or mitigating adverse environmental impacts and monitor their implementation
- review FSA actions that are **not** categorically excluded from further environmental review according to this handbook and notify the responsible official of their concurrence and/or need for denial or modification after analyzing and considering anticipated adverse environmental impacts and consistency with NEPA and the requirements of this handbook

**4 Roles and Responsibilities (Continued)****C State Level (Continued)**

- **State Environmental Coordinator's (SECs) (Continued)**
  - as needed, conduct environmental assessments for FSA actions in the State as needed
  - provide assistance to resolve post-approval environmental matters detailed in 2-EQ at the State Office level
  - provide direction and training to State and County Office staffs on the requirements of this handbook and 2-EQ and as necessary, draft and issue State amendments
  - maintain records of actions required by 1-EQ, including but not limited to the number and types of consultations and reviews completed each year for reporting to NO and preparation of requisite annual reports to Congress
  - develop and coordinate, for SED, monitoring of the States compliance with this handbook and keep SED advised of the results of the monitoring process, including advising:
    - SED of the need for remedial action when employees are found not to appropriately fulfill their responsibilities for environmental compliance, pressure or otherwise direct them to take inappropriate action or act outside the authority of environmental regulations
    - NECM and SED should they be pressured to act outside of regulatory compliance or become aware of actions taken outside of prescribed guidance

## 4 Roles and Responsibilities (Continued)

### C State Level (Continued)

- **SECs (Continued)**

- compile, distribute, and maintain a State Environmental Guide (SEG) to supplement information in this handbook, 2-EQ, and 7 CFR Part 799.

**Notes:** SEG's and all related amendments and notices shall be submitted to NECM for review and approval

At a minimum SEG's shall include:

- State policies, strategies, and processes established for completing environmental reviews and assessments
- State and local information and requirements, including related guidance, essential for completing environmental reviews and assessments. Including but not limited to:
  - specific state or local permitting or plan requirements and processes
  - examples of prevalent State or regional wetland vegetation
  - State and local resources and contact information
- examples and/or completion instructions for state and local forms, checklists or workflows used in that State as part of the environmental review process.
- SEGs should not duplicate this handbook, but instead supplement it with State-specific EC needs.

## 4 Roles and Responsibilities (Continued)

### D Applicant or Producer Responsibilities

Applicants or producers seeking to participate in FSA programs must:

- contact appropriate FSA personnel about environmental compliance early in the planning process when it appears FSA financial or program assistance may need to be considered
- consider the potential environmental impacts of their requests at the earliest planning stages
- develop actions that minimize the potential to adversely impact the environment
- agree not to initiate or undertake project actions pending completion of all NEPA and environmental processes
- as needed, participate in a scoping (kick-off) meeting (Exhibit 15) with FSA to coordinate and review the requirements and processes for completing the environmental review
- provide necessary information for FSA to complete the requisite level of environmental review of their proposal's potential environmental impacts and bear related costs
  - \*--for specialized surveys, plans or permits which may be necessary, including but not limited to archeological surveys and biological assessment for FLP and FSFL projects.--\*
- ensure that all required materials are current, sufficiently detailed and complete, and are submitted directly to the FSA office processing the application. Information to be provided may include but is not limited to:
  - \*--activity design specifications and detailed or digitalized plan for the layout of the project and all related infrastructure
  - topographical, aerial, and activity location maps sufficient for FSA to identify and define the APE and initiate development of the environmental review processes--\*
  - current AD-1026

## 4 Roles and Responsibilities (Continued)

### D Applicant or Producer Responsibilities (Continued)

- surveys, plans and permits deemed necessary and appropriate by FSA to determine the impact of the proposed action on the human environment, such as:
  - wetland determinations or jurisdictional delineations, if required
  - cultural resource survey, if necessary, for proper review by SHPO/THPO/Tribe
  - biological assessment, if necessary, for proper evaluation by USFWS or other agencies
  - applications and/or permits for all Federal, regional, State, Tribal and local approvals including construction permits, storm water run-off and operational permits, and engineering plans
  - \*--Conservation Plans, Comprehensive Nutrient Management Plan (CNMP), Nutrient Management Plan (NMP), Animal Waste, Water Quality, or other plans for Animal Feeding Operations or Concentrated Animal Feeding Operations as required by their respective and/or applicable State regulatory and permitting agencies.--\*
- provide public notification as directed by FSA, including associated costs, and attend and fully cooperate in holding public information meetings, as needed.

\*--When required at the project level, completion of the requisite level of environmental--\* review is necessary before an offer of FSA assistance can be made to the applicant; therefore, applicants must not take any actions with respect to their proposed actions during the period of review and processing that could have a potential adverse impact on the environment or limit the range of alternatives. Examples include: site work requiring excavation, clearing, or hauling of fill dirt on or to the activity site. This requirement does not preclude developing preliminary plans or designs, or performing other administrative work necessary to support an application for Federal, State, Tribal, or local permits or assistance. However, developing detailed plans and specifications is discouraged when the costs involved inhibit the realistic consideration of alternative proposals.

Failure to provide complete environmental materials or delayed submittals may seriously jeopardize consideration of a proposed action by FSA or CCC.

5 **Consultations**

**A Consultation Requirements**

Consultation with the appropriate lead agency is required when a protected resource is potentially affected, such as threatened and endangered species or their critical habitat, cultural resources, wetlands, or floodplains, and must be completed by FSA. If agreed to in writing, lenders and contractors may assist with initiating consultations; however, this is rarely done because consultation is a federal responsibility, especially regarding consultations with tribes, which are required to be government-to-government. Even if a lender assists with consultations, FSA is still responsible for reviewing, preparing responses, and concluding the process.

All required consultations under environmental laws must be completed before a FONSI can be made and the environmental review documentation is signed or activity approved. Agencies are rarely able to complete consultation “after the fact” if projects are begun prematurely. When consultation cannot be completed, FSA will not be able to complete the requisite level of environmental review required for approval of the requested action; therefore the request must be denied.

Through 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 consultations may be carried out after FONSI (Exhibit 23) is issued, but must be stipulated in the FONSI document. There are time stipulations for consultation that should be accounted for in the overall activity timeline. The following table provides average consultation times.

<b>Consultation</b>	<b>Timing</b>
CWA	30 to 90 calendar days
CZMA	30 to 90 calendar days
EPA-Sole Source Aquifer	30 to 90 calendar days
ESA	
Formal	up to 135 calendar days
Informal	30 to 45 calendar days
SHPO/THPO	30 calendar days
Tribes without THPO	Tribes without THPO will be consulted with SHPO. The 30 calendar day time period applies concurrently to both the tribe and SHPO.
National Parks Service (NPS) - Nationwide Rivers Inventory (NRI)	NRI 30 calendar days



## 5 Consultations (Continued)

### B Endangered Species Act (ESA)

If proposed, threatened, or endangered species or their designated critical habitat have the potential to be affected, consultation under ESA, Section 7, must occur. See Part 4 for steps to determine if a protected species or its habitat occurs within the activity area. See Exhibit 5 for an example of coordination letter to be sent to the US Fish and Wildlife Service (USFWS) or National Marine Fisheries Service (NMFS), a.k.a. National Oceanic and Atmospheric Administration (NOAA) Fisheries, for migrating fish.

A copy of the consultation letter and response letter or form providing concurrence with the agency's determination, as well as any mitigation measures specified, are to be attached to the FSA-850 for a Supported CatEx, or as an appendix to EA to provide documentation for compliance.

Mitigation measures to reduce or eliminate significant impacts to an acceptable level for protected species identified by USFWS/NMFS are to be included in EA as part of the proposed action. If USFWS/NMFS determine that the action has the potential to adversely affect proposed, threatened, or endangered species or critical habitat, formal consultation and additional documentation is required from FSA. All formal consultation must be referred to FSA's National Office.

**Note:** State Offices that have entered into agreements for ecological services with their respective USFWS/NMFS offices should follow agreement protocols rather than the letter in Exhibit 5 (see Exhibit 10).

### C National Historic Preservation Act (NHPA)

If historic properties (also referred to as cultural resources) have the potential to be affected, consultation under NHPA, Section 106 (36 CFR 800) must be coordinated with SHPO, THPO, and/or tribes. See Part 4 for the steps to determine if cultural resources may be affected. See Exhibit 6 for an example coordination letter to be sent to the appropriate SHPO, THPO, and/or tribes, as appropriate, to solicit their comments on FSA's proposed action.

A copy of the consultation letter and response letter or form providing concurrence with the agency's determination, as well as any mitigation measures specified, are to be attached to the FSA-850 for Supported CatEx, or as an appendix to EA to provide documentation for compliance.

**5 Consultations (Continued)****D Coastal Zone Management Area (CZMA)**

If the proposed action will take place in the coastal zone, consultation with the State coastal zone agency is necessary. A coastal consistency review can take up to 60 calendar days. See Part 4 for steps for identifying the coastal zone. The agency preparing the NEPA document should provide a copy of the EA or a sufficient description of the proposed action details, with a request for a consistency determination to document they are in compliance with the enforceable policies of the State's coastal zone management program (see Exhibit 7 for an example letter).

A copy of the consultation letter and response letter or form providing concurrence with the agency's determination, as well as any mitigation measures specified, are to be attached to the FSA-850 for Supported CatEx, or as an appendix to EA to provide documentation for compliance.

**E Sole Source Aquifer**

As provided by the Safe Drinking Water Act, the EPA sets standards to protect drinking water quality and is responsible for the designation of "sole source" aquifers that supply at least 50 percent of the drinking water consumed in an area overlying the aquifer. When a sole source aquifer is within the APE and there is potential for it to be impacted by the proposed project the EPA is to be consulted.

A copy of the consultation letter (see Exhibit 8) and response letter or form providing concurrence with the agency's determination, as well as any mitigation measures specified, are to be attached to the FSA-850 for Supported CatEx, or as an appendix to EA to provide documentation for compliance.

**F Wild and Scenic Rivers/Nationwide Rivers Inventory (NRI)**

Under an August 2, 1979 Presidential Directive, and related CEQ procedures, all federal agencies must seek to avoid or mitigate actions that would adversely affect one or more Wild and Scenic Rivers/Nationwide River Inventory (NRI) segments. If a river is listed in the NRI or is designated as a Wild and Scenic River Segment, and has the potential to be effected by the proposed action, FSA (or lead agency) must consult with the land managing agency, or the National Park Service, if the river is on private lands, in an attempt to avoid or mitigate adverse effects. This consultation is required pursuant to a directive from CEQ.

A copy of the consultation letter (see Exhibit 9) and response letter or form providing concurrence with the agency's determination, as well as any mitigation measures specified, are to be attached to the FSA-850 for Supported CatEx, or as an appendix to EA to provide documentation for compliance.

## 5 Consultations (Continued)

### G Memo of Agreement (MOA) and State Level Agreements (SLA)

Federal agencies may develop interagency MOA's to streamline consultation or review processes. Agency wide MOAs shall be developed by the National Office. SLAs shall be developed at the state level, and are typically developed for routine actions with minimal or no adverse environmental effects or for a group of similar actions that will occur within the same geographic location and time. The process for developing SLA's and associated templates are provided, as follows:

- Exhibit 10 for USFWS/NMFS
- Exhibit 11 for SHPO/THPO/Tribe template
- Exhibit 12 for CZMA authorities
- Exhibit 13 for USACE.

**Note:** All SLA's and other agreements developed according to this handbook must be sent to NECM for review and concurrence before approval.

## 6 Public Involvement

### A Introduction

Public participation is required by NEPA, as provided by 40 CFR 1506.6, and can include a variety of activities. The level and kind of public participation depends on the nature of the proposed action and the environmental resources identified during internal activity kickoff to be potentially impacted by the proposed action. The methods and amount of public involvement should be commensurate with the nature of the activity, expected impacts, potential for public controversy, and potentially significant issues.

Public involvement in the NEPA process can range from a 1-on-1 meeting with a stakeholder to small group discussions and soliciting comments from the public on EA's to facilitated meetings and mediation. The requirement of meetings and mediation may indicate that the action is controversial enough to merit an EIS. FSA's NECM should be consulted whenever public meetings or mediation is required.

### B FSA-850 CatEx

Activities for which completion of FSA-850 (Exhibit 18) for a listed or supported CatEx (Exhibit 15) is determined to be the appropriate level of NEPA environmental review have no public notice requirements. By definition, these actions have been determined to have **no/negligible** potential to impact the quality of the human environment.

## 6 Public Involvement (Continued)

### C Environmental Assessments

EA's can require varying degrees of public involvement depending on the complexity, geographic scope, and controversy associated with the proposed action. For EA's, the most basic level of public involvement is preparation and publication of a Notice of Availability (NOA) of the Draft EA for 3 consecutive calendar days or 2 consecutive weeks in a weekly newspaper to inform the public of the proposed action, the availability of related information for their review, and solicit their comments. The notice is to be placed in the body of a general newspaper (not in the legal or classified advertisement section) which is widely circulated in the project area. The public is to be given 30 calendar days from the first date of publication to review and provide comments to FSA for consideration. A template for the NOA is in Exhibit 14.

For controversial actions or activities with potential environmental impacts, public meetings may be held before or during the development of EA. These meetings serve to inform the public of the proposed action and to solicit input that may help in the development of the proposed action and alternatives. The NECM should be informed of any proposed action or activity that could require public meetings to assist in determining if the proposed action or activity should be funded because of the proposed action or activity's controversial nature. County Offices should clear the need for any public meeting through their SEC before setting up a public meeting. SEC's will notify NECM to determine the appropriate course of action.

No additional comment period is necessary in the absence of significant comments, which would require an EIS.

### D Findings of No Significant Impact

NEPA requires that the "affected public" be notified of our decisions.

If no comments were received on the Draft EA, there is no "affected public"; thus, no announcement of the decision in the FONSI is necessary.

If comments were received on the draft EA, but those comments were not substantive and/or do not result in substantive changes to the final EA, do either of the following:

- send a letter with text similar to that of NOA to commenters announcing the final decision and the availability of FONSI
- publish NOA.

The number of comment letters received will dictate the response.

If comments received on the draft EA were substantive and/or resulted in substantive changes to the final EA, publish NOA of the decision and FONSI as directed under subparagraph C.

If FONSI covers an action that would normally require EIS or is precedent-setting (e.g., largest operation in the state), FSA is required to publish NOA for the draft FONSI and allow a 30-day comment period before signing FONSI (40 CFR 1501.4(e)(2)).

**6 Public Involvement (Continued)****E Environmental Impact Statements and Records of Decision**

For controversial actions with effects of national concern, notice shall include publication in FR and notice by mail to national organizations reasonably expected to be interested in the matter or activities with potential environmental impacts. Public meetings may be held before or during the development of EIS. These meetings serve to inform the public of the proposed action and to solicit input that may help in the development of the proposed action and alternatives. These meetings and notices will be coordinated by NECM.

**F Public Involvement Procedures When Important Resources Are Affected**

In addition to requisite consultation requirements, special public involvement procedures apply for actions that take place and potentially adversely affect the following critical resources:

- floodplains
- wetlands.

A preliminary public notice must be published for 3 consecutive calendar days or 2 consecutive weeks in a weekly newspaper, as soon as practicable, to inform the public that the proposed action would take place in and potentially adversely affect these resources. This notice requirement is applicable to both CatEx's when supported by appropriate permits and documentation, as well as for EA's. NOA (Exhibit 14) can be used to satisfy this requirement for both and should include specific reference to wetlands and/or floodplains impacts, as applicable.

**Note:** SEC should be consulted about projects that would take place in and potentially adversely affect wetlands or floodplains.

## 6 Public Involvement (Continued)

### G FOIA

FOIA is a law ensuring public access to government records. When a written request is received, agencies must provide records, including NEPA documents, policy, and decision documents, etc., unless they can be lawfully withheld under 1 of the 9 specific FOIA exemptions as follows:

- matters of national defense or foreign policy
- internal personnel rules and practices
- information exempted by other statutes
- trade secrets and commercial or financial information (confidential business information)
- privileged interagency or intra-agency memoranda or letters
- personal information affecting an individual's privacy
- records compiled for law enforcement purposes
- records of financial institutions
- geological and geophysical information concerning wells.

According to 2-INFO, State FOIA officers will coordinate FOIA responses in consultation with the National Office and provisions of 7 CFR Part 798 and 7 CFR Part 1, Subpart A.

### H NEPA Inquiries and Requests for Information

It is FSA's policy to make records available to the public consistent with the provisions of FOIA, the Privacy Act, and NEPA. There are significant differences in what can be released under the respective provisions of each. When responding to a request for information as a result of a NEPA public notice, it is important to recognize that the provisions of 40 CFR Parts 1500-1508 are applicable, as opposed to the more restrictive limitations of FOIA. Often, requestors do not understand or make distinctions in how they request information related to environmental assessments completed by FSA and simply make very broad requests. Accordingly, it is incumbent upon the Responsible Agency Official to be able to recognize and properly respond to requests for information and documents which are a part of an ongoing NEPA process.

NEPA mandates the public be informed of, and allowed to comment on, planned activities with potential impacts to help determine their significance. Federal agencies not in compliance with NEPA subject themselves to the risk of lawsuits, delays in implementing, and/or denial of a needed or desired activity. The courts have determined the public interest in environmental compliance and related records outweighs the privacy interest of the individual. Therefore, only high risk PII, commercial data, and protected cultural or wildlife information that may be part of EA records need to be redacted.

- As part of EA, applicants provide personal documents and notify the public that they are available as part of the NEPA documentation. It is the applicant who is responsible (at FSA direction), for publishing public notices to tell the public about the proposed action and that their documents are available for public review.

## 6 Public Involvement (Continued)

### H NEPA Inquiries and Requests for Information (Continued)

- The general public, including special interest groups or any other interested party or entity, may have access to the EA and supporting environmental documents with redaction of high risk PII, commercial data (pricing, quotes, contractual terms, considerations or trade formulas), or protected cultural or wildlife info (e.g., location of an unexcavated archeological site or the nest of an endangered bird) to prevent misuse of the info.
- FSA considers high risk PII to be those data elements that pose the greatest concern with respect to identity theft. Items, such as full name when connected to social security number, date of birth, place of birth, Mother's maiden name, home address, and financial information. Therefore, EAs are to be written in a fashion that excludes such information and any such information in underlying EA documentation should be redacted.

EA's and NEPA documentation should be maintained in a separate extension file that only contains pertinent environmental information and related underlying documents (no financial, credit, loan info., or commercial data), which can be readily made available for public review.

Requests for information outside of the scope of NEPA and the EA/FONSI process (i.e., loan or financial information) fall under FOIA and should be handled according to 2-INFO.

### I Responding to Comments from the Public and Interested Parties

All comments received shall be assessed both individually and collectively. Those which are substantive legal and technical comments will be considered and appropriate changes incorporated into the EA. This could involve:

- modifying alternatives including the proposed action
- developing and evaluation of alternatives not previously given serious consideration
- supplementing analyses
- making factual corrections.

## 6 Public Involvement (Continued)

### I Responding to Comments from the Public and Interested Parties (Continued)

All comments received should be attached to the final EA whether or not the comment is thought to merit individual discussion in the text of the EA.

- If changes in response to comments are minor, or if no changes were needed, an errata sheet similar in format to Exhibit 25 (Sample Errata Sheet) may be prepared and attached to the EA.
- If substantive changes are warranted or further study finds significant issues, a supplemental EA shall be prepared and circulated for review and comment.
- In consultation with the SEC and NECM, a FONSI will be prepared and distributed or published, as appropriate.

All parties or individuals who submit comments shall be notified of the agency's final decision.

## 7 Contracting

### A Purpose

Due diligence must be exercised to protect the Agency's interests and mitigate risk; therefore, EA's may be contracted out using FLP's PLCE funds to address:

- situations which may require a more detailed examination of potential impacts:
  - those which may be precedent setting
  - increased anti-farming constituency in an area
  - contentious issue(s) which cannot be resolved or is of technical or scientific nature and beyond the expertise of FSA staff
  - when a commenter raises substantive issues or provides negative comments of an environmental nature that are questionable or cannot be resolve
- short term needs during period of heavy workload or staffing limitations.



## 7 Contracting (Continued)

### B Limitations

Requests for contracted EA's need to be submitted to SEC for coordination with the State contracting officer unless otherwise directed by specific SEG provisions as:

- there are some constraints against consultations being completed by contractors (unless authorized in writing, they are not to perform consultations)
- contractors can prepare draft EA's and final EA's that propose FONSI's, including drafts for Exhibit 23, but SEC must review and finalize/approve for use as the agency's NEPA decision document.

**Note:** FSA is the signatory for FONSI or ROD and is responsible for ensuring that contractor-prepared EA's meet FSA standards.

### C Resources

Sample templates for statements of work, related exhibits for collection of information, and suggested workflows are available from NECM.

A listing of previously approved contractors with blanket purchase agreements in place can be found at <http://www.gsaelibrary.gsa.gov/ElibMain/scheduleList.do?catid=699&famid=34&sched=yes>.

## 8 Processing Considerations

### A Background and AD-1026

Preparation of EA can be a complex and lengthy process requiring actions by multiple agencies, entities, and the public. Accordingly, action should be initiated early in the planning and application process and development proceed simultaneously.

All applicants for FSA loan assistance are responsible for providing information necessary for FSA to complete the appropriate level of environmental review and for providing a current AD-1026.

A current AD-1026 is required as part of a complete application for all applicants for FLP loan making and servicing assistance regardless of the nature of the farming operation or which farm or farm loan programs or other USDA programs they may or may not participate. The AD-1026 serves as means to:

- document the applicant has been informed of and understands the requirements for them to operate in compliance with HELC and WC provisions and not to use proceeds from any FSA loan or USDA financial assistance program in such a way that might result in negative impacts to a wetland
- identify and track affiliated persons

## 8 Processing Considerations (Continued)

### A Background and AD-1026 (Continued)

- determine whether the applicant is in compliance and eligible for certain USDA benefits and/or related payments
- provide signed certification that the applicant agrees not to violate HEL and WC provisions as a condition of eligibility and, in particular, for the term of any USDA loan (term can be up to 40 years)
- make referrals to NRCS for determinations which are within their jurisdictions
- provide written authorization for USDA representatives to enter and inspect all farms in which the applicant has an interest.

**Note:** It is not necessary to complete a new AD-1026 if a previously filed AD-1026 is on file in the FSA servicing office and there have not been any changes as provided by 6-CP, paragraph 305 in the farming operation or changes to the previously listed affiliates.

A copy of the current AD-1026 is to be attached to the FSA-850 or EA/FONSI and retained in the environmental compliance file for each action.

An NRCS determination of noncompliance with the terms and conditions of the AD-1026 causes that person to be ineligible as provided by 6-CP for price support payments, farm storage facility loans, disaster payments, crop insurance subsidies, payments made for the storage of an agricultural commodity, and payments received under a CRP Contract.

Applicants who rely or plan to rely on any of these other USDA financial assistance programs as a source of funds to repay FSA loans and fail to meet the other program(s)' eligibility criteria related to wetland or highly erodible land conservation, may jeopardize their repayment ability. Consequently, the related effect of the loss of income and subsidies must be considered in evaluating the feasibility of any loan request. Those applicants need to demonstrate their ability to meet the other program(s)' eligibility criteria or document an alternative, equivalent source of revenues or, if possible, agree to undertake any steps necessary to gain eligibility for the other program(s).

Always consult the appropriate FLP handbook when evaluating an applicant's repayment ability.

## 8 Processing Considerations (Continued)

### A Background and AD-1026 (Continued)

Noncompliant applicants or borrowers may be eligible for FLP assistance; however, loan funds may not be used for prohibited HEL or WC activities that contribute to either excessive erosion of highly erodible land or the conversion of wetlands to produce an agricultural commodity by paying the costs of any of the following:

- purchase of the affected land
- necessary planning, feasibility, or design studies
- obtaining any necessary permits
- purchase, contract, lease or renting of any equipment or materials necessary to carry out the land modification or conversion to include all associated operational costs such as fuel and equipment maintenance costs
- any labor costs
- planting, cultivating, harvesting, or marketing of any agricultural commodity produced on nonexempt highly erodible land to include any associated operational or material costs such as fuel, seed, fertilizer, and pesticide costs
- within the crop year in which the wetland conversion was completed plus the next ten crop years thereafter, the planting, cultivating, harvesting, or marketing of any agricultural commodity produced on the affected land to include any associated operational or materials costs such as fuel, seed, fertilizer and pesticide costs; or
- for the same time period as above, any costs associated with using for on-farm purposes an agricultural commodity grown on the affected land

Additionally, **if loan proceeds will be or have been substituted to pay other costs** at any time during the life of the loan so that non-loan funds can be used to pay any of the above costs, it is deemed that loan proceeds will be or have been used for a purpose that contributes to the prohibited activities described in this paragraph.

Consequently, any application proposing to use loan proceeds for an activity contributing to either such purpose must be denied as an unauthorized use of loan funds. FSA will conclude that excessive erosion of highly erodible land or conversion of a wetland to produce an agricultural commodity has occurred or will occur, as determined by NRCS. Any borrower found to have used loan proceeds in a manner that contributes to either such purpose or who is otherwise found in violation of their AD-1026 agreement is also considered to be in violation of the terms and conditions of their loan agreements and may be subject to nonmonetary default. SEC should be consulted on a case by case basis and consultation with National Office as appropriate when FSA borrowers are cited by NRCS with compliance violations for guidance in facilitating suitable resolution and evaluating the potential to return the operation to compliance. See 6-CP for information about compliance and exemptions.

## 8 Processing Considerations (Continued)

### B Processing Applications

Applications **may not be approved** “**subject to,**” completion of the requisite level of environmental review including but not limited to obtaining and providing to FSA copies of all permits and plans. Accounting for and tracking time frames required to complete EA’s are necessary; however, the time needed to process or obtain permits, plans, approvals, etc., or complete EA’s does not constitute a basis for withdrawing an application as incomplete.

From an environmental compliance perspective, an application is considered complete upon receipt of a current AD-1026 and for:

- guaranteed loan applications, all necessary environmental information to make an approval decision, as provided by 2- FLP, subparagraphs 95 D and 96 A.

**Note:** In the event of “automatic” PLP approval, as provided by 2-FLP, subparagraph 83 B, the order of funding priority is established; however:

- the lender may not close the loan until funds are obligated and the lender receives the conditional commitment according to 2-FLP, subparagraph 245 A
- FSA may not act to obligate funds or issue a conditional commitment until after SEC review and the conclusion of all NEPA processes as provided by 40 CFR 1505.2 and 1506.1.

If upon SEC review, the environmental documentation is found to be incomplete, the lender and applicant will be notified and processing will continue. If SEC review determines FONSI cannot be substantiated, the lender and applicant will be notified the request cannot be approved and appeal rights provided.

- direct loan applications, information within the applicant’s ability to control about the specific location and nature of the proposed action so that the appropriate level of environmental review can be completed, according to 3-FLP, subparagraph 42 A
- 1-FSFL provides specific guidance about FSFL’s.

More specifically, applications **are not to be withdrawn** as incomplete for environmental reasons as:

- plans and permits required for EA’s require lengthy processing by the other responsible agencies or entities (over which the applicant has not control) before the approval and/or permit can be issued
- withdrawal of an application can adversely affect funding status associated with the protection afforded by the initial filing date

## 8 Processing Considerations (Continued)

### B Processing Applications (Continued)

- all applicants must be treated the same, decisions regarding if or when to withdraw an application as incomplete must be consistent
- when FSA is not able to complete EA due to lack of a key component within the applicant's ability to control, there are appropriate processes in place to reject the application and provide appeal rights.

For example, an applicant fails to submit an application for a NPDES permit, does not publish the NOA, or refuses to work with appropriate authorities to formulate an acceptable storm water plan.

**Note:** See 2-EQ, paragraphs 12 and 13 about lender due diligence for completion of a FSA-851 before perfecting liens on real estate security.

### C FLP Goals and Reports

Proposed actions requiring EA are excluded from computations for the FLP goals report provided data about the type of environmental review and consultations are appropriately coded in the related loan processing systems.

- Applications requiring EA's shall be identified and coded along with consultation data *in real time* by County office staff in DLS and GLS. Failing to enter data until after loan closing may distort report computations.
- Entering the type of EA in the "Explanation" field of the DLS process application screen information will display the information as a "Note" on the Direct Application Report.

SEC's shall maintain records of the number of and type of consultation and EA's completed within their State, and provide the data to NECM and FPO upon request for annual reports to Congress, CEQ, and other related management needs.

### D Human Resources and Time and Attendance

The webTA reporting system provides the means of reporting time expended on completing environmental reviews, EA's, and tasks related to environmental compliance.

At all levels, time expended by FSA employees performing environmental activities shall be reported in webTA in the appropriate environmental compliance category, as provided by 21-AO, Exhibit 4.

For example, the preparation of EA or an environmental risk survey for an FLP direct loan application would be reported as program "FLPDL" and activity "environmental compliance."

## 9 Special Compliance and Processing Provisions

### A Micro and Youth Loans

County Offices will be responsible for ensuring a current AD-1026 is on file and FSA-850 completed according to instructions. Provided FSA-850 item 3 is answered “Yes,” the environmental review shall be considered complete and no further review or NEPA compliance is required. If item 3 is answered “No” the remainder of the form will be completed to determine whether additional NEPA or other compliance documentation may be required.

### B Subordination and Releases Without Consideration

The following must be evaluated to determine the appropriate level of environmental review to be completed for:

- subordinations, including release with refiling according to 4-FLP, Part 2
- subordinations, according to 2-FLP, subparagraph 278 B, which include provisions for obtaining additional credit to fund changes, expansion, or improvements
- release of security without monetary consideration, according to 4-FLP, subparagraph 146 C and D
- partial release of real estate security without monetary consideration, according to 4-FLP, subparagraph 196 H
- partial release of security, according to 2-FLP, subparagraph 280 B, when necessary to secure credit for changes, expansion, or improvements.

The FSA-2060, or for guaranteed loans information obtained from the lender, shall be reviewed to determine the nature of the proposed action and the potential for environmental impacts. Requests that are a condition of a borrower obtaining additional credit require an environmental review of the connected action or project. Actions with any planned development of real estate security to be performed as directed by the lessor or creditor, must be approved by the Agency, and comply with the terms and conditions of § 7 CFR 761.10, including that for completing the necessary level of environmental review, as provided by 7 CFR Part 799.

## 9 Special Compliance and Processing Provisions (Continued)

### B Subordination and Releases Without Consideration (Continued)

A categorical exclusion is applicable, per 7 CFR 799.31, for those requests whose intended purpose involves:

- no or minimal construction or changes in operations (may require NHPA consultation)
- no extraordinary circumstances, as specified by 7 CFR 799.33 and according to paragraph 25
- no “connection,” per 40 CFR 1508.25 (a) (1), to other actions with potentially significant impacts that would not occur or be possible *but for* FSA approval of the request.

Requests that will facilitate proposed actions with construction, demolition, or ground disturbance require further analysis and consultation, as provided by 7 CFR 799.33, to determine the appropriate level of environmental review.

Preparation of EA is required, per 7 CFR 799.41, when FSA’s action of approving the request will facilitate the construction or establishment of a large CAFO or the expansion of the capacity of an existing large CAFO by 30% more (i.e., a “major” expansion).

### C Partial Release of Real Estate With Consideration

Requests for partial release, according to 4-FLP, paragraph 196 or 2-FLP, subparagraph 280 B, to dispose of security at current market value (CMV) with application of proceeds to lien holders in order of priority which results in termination of the borrower’s ownership interest in the property, constitutes a final sale of security.

A categorical exclusion may be applicable without further review when the Borrower’s and FSA interest in, and connection to, the property is finally and legally severed as a result of the transaction. However, when proceeds are being reinvested in remaining loan security to fund changes or improvements, then that proposed action must be screened to determine the appropriate level of environmental review required.

**Example:** Release of 20 acres with valuable road frontage is requested. Proceeds will not be applied to reduce debt but will fund an activity that would require EA, such as the construction of facilities for organic egg production on the remaining 60 acres of loan security.

## 9 Special Compliance and Processing Provisions (Continued)

### D Partial Releases for Timber, Gravel, Oil, Gas, Coal, or Other Minerals

Requests for partial release, according to 4-FLP, subparagraph 196 C, for transactions and payments related to removal of, or exploration for, resources, but not the conveyance of the underlying real estate (which remains subject to FSA liens and the borrower's obligation to protect loan security), must be evaluated to determine the appropriate level of environmental review to be completed.

A categorical exclusion may be applicable as provided by 7 CFR 799.31; however, ground disturbance and controversy are commonly associated with these activities, which require consultations and/or a higher level of environmental review.

### E Limitations on Actions During NEPA Process

Until the agency has completed an environmental review and issued a final decision, as provided by 40 CFR 1506.1 and 1505.2 (for EIS's), no action concerning the project shall be taken toward initiating the proposed action nor loan approval. To do so is contrary to NEPA, impedes other agencies' ability to complete necessary consultations, limits alternatives, and may prejudice or prevent completion of requisite environmental reviews necessary for application processing to proceed.

Applicants should be cautioned accordingly and promptly notified that FSA assistance may be jeopardized anytime FSA or lenders become aware any such action has been initiated before or during FSA's environmental review.

**Note:** all consultations must be concluded, public notice provided, comments addressed and copies of all plans and permits provided for review before FSA can complete the final review processes and reach a decision.

### F Mitigation

Mitigation refers to taking additional measures to reduce or eliminate the potential effects from implementing a proposed action. The intent is not to avoid compliance or proceed in the absence of complete information, but rather in the presence of known circumstances and concurrence of the lead agency for the resource, to provide for reasonable accommodation when feasible to do so.

Appropriate mitigation measures can be imposed as enforceable approval conditions, or adopted as part of the agency final decision (Question 39, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations).

Mitigation and related agreements are to be developed and agreed to in coordination with the agency that manages the resources potentially affected. See paragraph 5 for consultation requirements and Part 4 for permitting and mitigation measures specific for each resource.



**9 Special Compliance and Processing Provisions (Continued)****F Mitigation (Continued)**

Once related documents are prepared and the source of any funds which may be necessary to fulfill the obligations of the mitigation plan are confirmed, the FSA-850 or FONSI may be signed; however, the mitigations actions, terms, and timeline must be stipulated in FSA-850 and FONSI, and included in all loan agreements and conditional commitments.

Mitigation measures could include:

- avoiding the impact by not taking a certain action or parts of an action
- limiting the magnitude of the action, timing, or geographic extent of an action and its implementation
- rectifying the impact by repairing, rehabilitating, or restoring the affected environment
- performing additional studies or surveys to ensure protected resources are not present on site
- reducing or eliminating the impact over time by implementing various preservation and maintenance operations during the life of the action
- compensating for the impact by replacing or providing substitute resources or environments
- monitoring the affected environment for an established period of time to ascertain degree of impact.

Common examples of mitigation include but are not limited to:

- relocating, reconfiguring, downsizing, or redesign of the proposed action:
  - adjust location, placement, or configuration to avoid proximity or jeopardizing protected resources
  - redesign to avoid impacts of historical or cultural significance, such as use of historically-correct or similar materials and/or limiting the height or foregoing features that are not in keeping with the cultural significance of the area
- timing activities or operations to specific times of the year:
  - limit ground or vegetation disturbance and construction to periods of time when proposed, threatened, or endangered species are not present
  - limiting storage, removal, or application of livestock waste to certain months.

**9 Special Compliance and Processing Provisions (Continued)****F Mitigation (Continued)**

- formulating site-specific management and operating plans to minimize or avoid impacts such as Animal Waste Plans (AWP), Nutrient Management Plans (NMP), and Comprehensive Nutrient Management Plans (CNMP), Storm Water Pollution Prevention Plans (SWPPP), etc.
- obtaining site-specific permits and agreements which incorporate provisions to minimize or avoid impacts:
  - NPDES permits
  - USACE Section 401 permits
  - State operating permits
- compensation agreement or SLA with permitting or lead agency for the impacted resource for:
  - purchase of environmental remediation credits as specified by the lead agency for the impacted resource
  - payment into a remediation fund approved or established by the lead agency for the resource.
  - agreement to establish substitute/replacement resource sites, such as constructing functional wetlands
  - agreement with the lead agency to ameliorate impacts, such as establishing vegetated buffers, filter strips, or catch basins.

## 10 Adopting Other Environmental Analyses

### A Options

There are 2 options to use an environmental review done by another agency to streamline FSA's environmental compliance, incorporation by reference and adoption. Some States have a State Environmental Policy Act which requires they prepare the equivalent of a NEPA environmental review for actions with which State is involved.

The NECM is to be consulted before adopting or incorporating by reference environmental documents prepared by others.

### B Incorporation by Reference

If an EA prepared by another agency or commercial entity is relevant to an FSA proposed action, a new EA shall be prepared by FSA which incorporates by reference the applicable *portions* of the other document(s). The information incorporated by reference should be specifically "incorporated by reference," summarized, and cited.

### C Adopting Another Federal Agency's EA

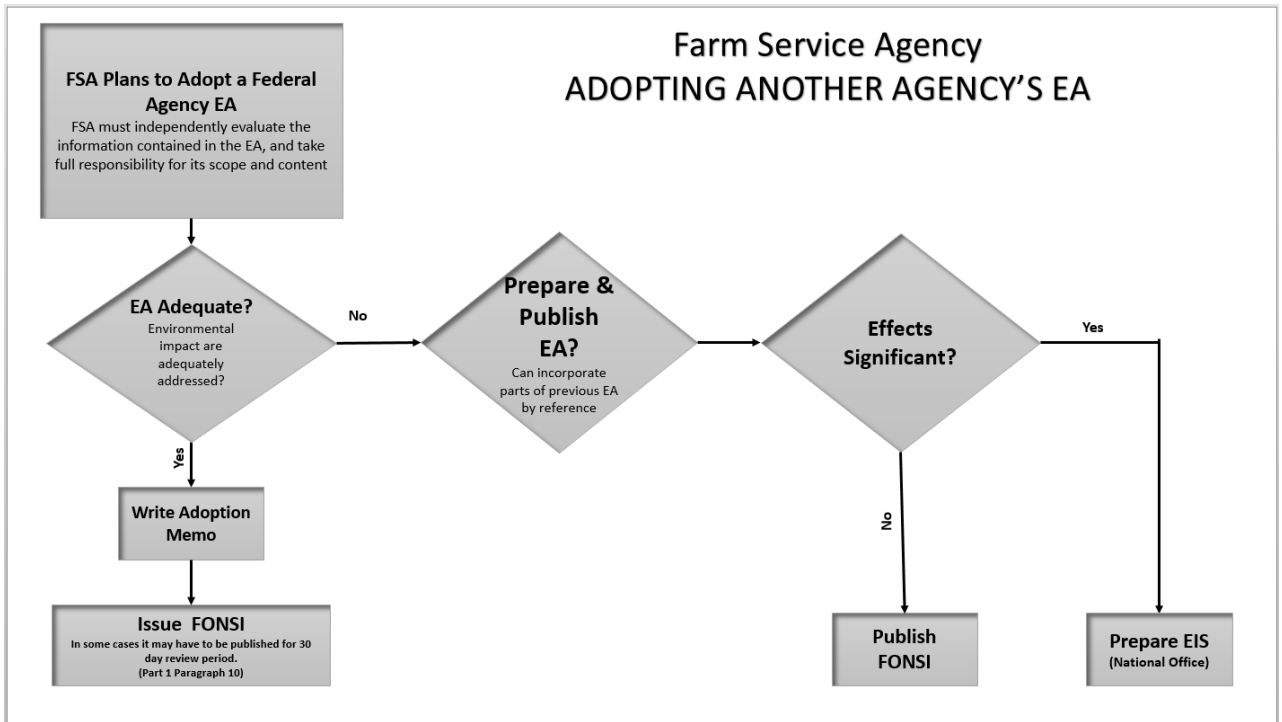
EA's which are prepared by another federal agency may be adopted for FSA decision making, as appropriate, only when the requirements below can be met and are consistent with the following requirements (see CEQ guidance regarding NEPA regulations, 48 Fed. Reg. 34263 (July 28, 1983)).

- FSA must independently evaluate all information in the EA, and take full responsibility for its scope and content. The information in the EA must be evaluated to ensure: 1) that it adequately addresses the environmental impacts of FSA's proposed action, and 2) ensure that the EA to be adopted fully satisfies FSA's own NEPA procedures. If FSA has acted as a cooperating agency, any concerns raised during the process of preparing the EA must have been adequately addressed (CEQ Guidance Regarding NEPA Regulations, 48 Fed. Reg. 34263). An interdisciplinary team may be useful in evaluating another agency's EA for adoption.
- If it is determined that environmental impacts are adequately addressed, an adoption memo must be prepared and attached to the EA. FSA will then prepare a FONSI to document the formal adoption of the EA and related conclusions about the adequacy of the adopted EA. In certain limited circumstances as listed below, a FONSI must be published using Exhibit 24 and made available for public review for 30 days.
  - The proposal is a borderline case, (such as when there is a reasonable argument for preparation of EIS).
  - It is a new kind of action or a precedent-setting case, such as a first intrusion of even a minor development into a pristine area or the largest CAFO in the State.

10 Adopting Other Environmental Analyses (Continued)

C Adopting Another Federal Agency's EA (Continued)

The following is a flowchart for adopting another agency's EA.



11-20 (Reserved)

Part 2 Environmental Reviews

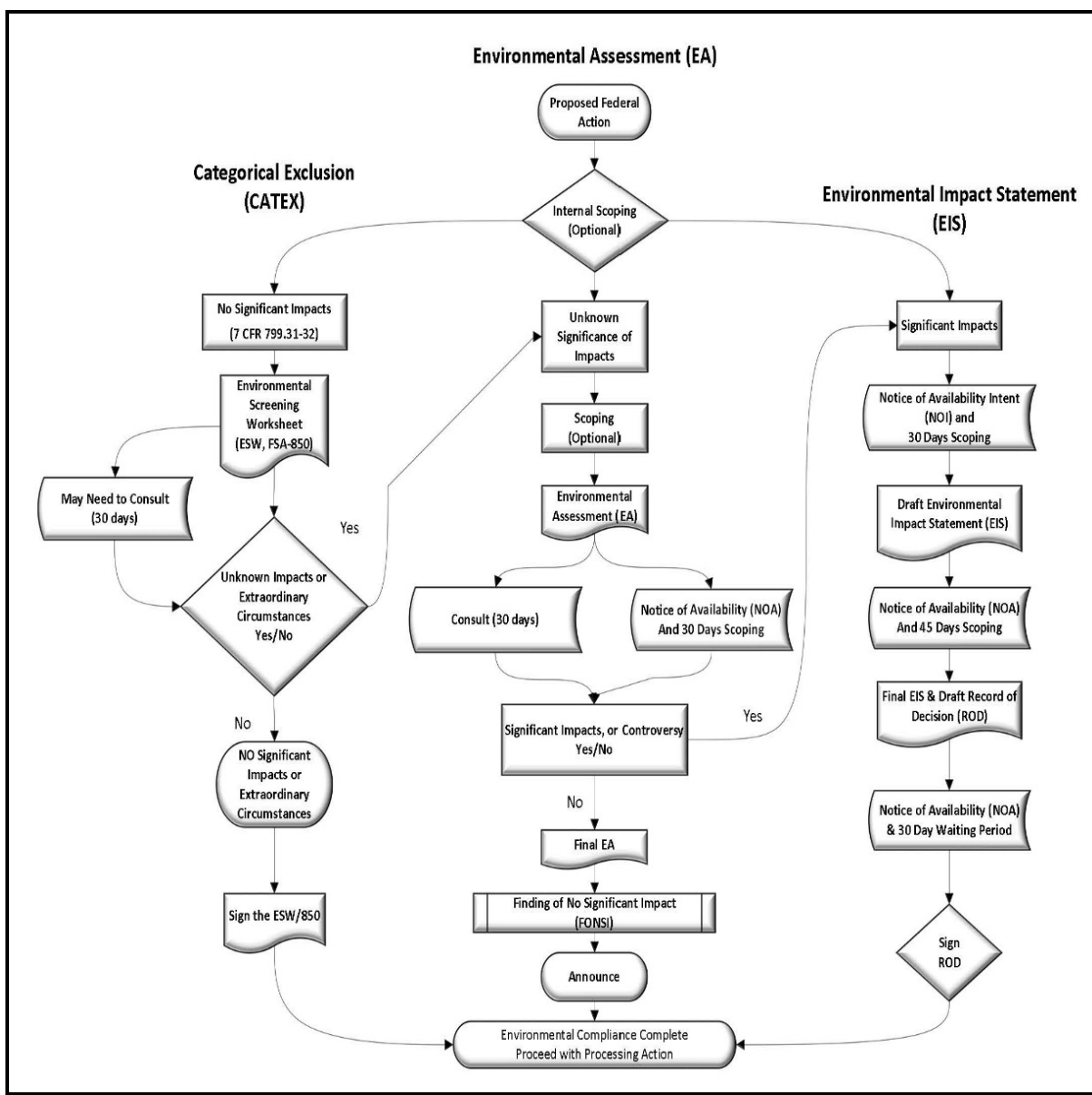
21 Introduction

A Implementing Regulation

All FSA programs and activities operate according to 7 CFR Part 799, which establishes procedures for implementing NEPA requirements. These regulations ensure that environmental factors are considered in agency decision-making.

B Overview

The following chart details specific FSA processes to be followed for NEPA compliance.



**22 Environmental Documents and Records****A Environmental Review Documents**

**[7 CFR 799.9] FSA may prepare the following documents during the environmental review process:**

- (1) Environmental Screening Worksheet (FSA-850) (Exhibit 18)**
- (2) Programmatic Environmental Assessment (PEA)**
- (3) Environmental Assessment (EA)**
- (4) Supplemental Environmental Assessment (SEA)**
- (5) Environmental Impact Statement (EIS)**
- (6) Programmatic and/or Supplemental Environmental Impact Statement (PEIS, SEIS)**
- (7) Finding of No Significant Impact (FONSI)**
- (8) Record of Decision (ROD)**

In preparing the above, it may also be necessary to prepare and publish related public notices. NO is responsible for preparing EIS and related FONSI and ROD documents

**B Administrative Environmental Records**

**[7 CFR 799.10] FSA will maintain an administrative record of documents and material FSA created or considered during its NEPA decision making process.**

This record is to be maintained as a supplement of the applicant's file in an organized form that can be made readily available for public review, under the Privacy Act and as provided by NEPA.

SECs will maintain a record of the number and type of environmental reviews completed by the State for annual reporting purposes to the National Office, as appropriate.

## 23 Acting During NEPA Reviews

### A Restriction on Actions During NEPA Reviews

**[7 CFR 799.11] FSA or a program participant must not take any action, implement any component of an action, or make any final decision during FSA’s NEPA review process that could have an adverse environmental impact or limit the range of alternatives, until FSA completes its environmental review and officially and conclusively approving the action in writing.**

Interim actions or expenditures must not compromise FSA’s review and decision making process; however, preliminary design, plans, or permitting work may be developed.

### B Emergency Circumstances

**[7 CFR 799.12(d)] If emergency circumstances exist that make it necessary to take action to mitigate harm to life, property, or important natural, cultural, or historic resources, FSA may take an action.**

NECM must, however, still consult with CEQ and the FPO and follow emergency procedures specified in 36 CFR 800.12.

FSA assistance provided in response to a Presidentially-declared disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C 5121 - 5207, is exempt from NEPA requirements, as specified in 42 U.S.C. 5159. Under a Presidentially-declared disaster, the following actions to specifically address immediate post-emergency health or safety hazards are exempt from environmental compliance requirements:

- clearing roads and constructing temporary bridges necessary for performing emergency tasks and essential community services
- emergency debris removal in support of performing emergency tasks and essential community services
- demolishing unsafe structures that endanger the public or could create a public health hazard if not demolished
- disseminating public information and assistance for health and safety measures;
- providing technical assistance to State, regional, local, or Tribal governments on disaster management control
- reducing immediate threats to life, property, and public health and safety; and warning of further risks and hazards.

**23 Acting During NEPA Reviews (Continued)****B Emergency Circumstances (Continued)**

Proposed actions other than those specified above that are not specifically to address immediate post-emergency health or safety hazards require the full suite of environmental compliance requirements and are not exempt.

**Example 1:** ECP has been authorized in a region after a significant flood event. The proposed project will consist solely of removing woody debris that was left after flood waters receded. Removing the debris will **not** result in disturbing any of the soil below the debris and the debris will be moved off-site to be chipped for mulch. This type of debris removal would be considered a “listed” CatEx and **would not** require the full completion of the FSA-850 (only the top portion). FSA would **not** be required to consult under NHPA Section 106 or ESA Section 7. However, if the debris would be buried onsite, instead of mulched, then FSA-850 would be required.

**Example 2:** ECP has been authorized in a region after a significant flood event. The proposed project will consist of removing woody debris and removing a fence that was heavily damaged by the debris. The removal will be conducted by using a bull dozer that will disturb the soil and that may also uproot trees that have grown up around the damaged fence. This type of proposed project would **require** completing a full review with the FSA-850, including NHPA Section 106 and ESA Section 7 consultations, because implementing the practice would disturb the soil and uproot nearby trees. If disturbance would not go below the plow zone, then a full review with the FSA-850 is not needed (just the recording of the “listed” CatEx on the form) and consultations would be not required.



## 24 Environmental Screening

### A Purpose

**[7 CFR 799.31] FSA uses the Environmental Screening Worksheet (ESW/FSA-850) as an initial screening tool to evaluate and document any likely environmental impacts of a proposed action and to determine if additional analyses are required.**

If, through completing the Environmental Screening Worksheet, it is determined that there is no potential for an activity or program to impact the environment, ESW serves to document FSA's compliance with NEPA as well as the requirements of other environmental laws, regulations, and Executive Orders.

### B Environmental Screening Worksheet

The environmental review process for proposed FSA actions begins with the completion of FSA-850 to evaluate environmental impacts. FSA-850 establishes the administrative record to record and documents the level of environmental review required and identifies the need for related documentation, as appropriate.

FSA-850 may be prepared by employees who have received appropriate environmental training. The authorized agency official who has been delegated the appropriate level of approval authority (and completed environmental training) for the proposed action must review and concur with the Preparer's findings before processing of the proposed action may continue. Guidance for completing the FSA-850 has been incorporated into the form. Part 4 provides definitions for various protected resources and guidance for determining whether the potential for impacts exists.

## 25 Extraordinary Circumstances, Controversy and Cumulative Effects

### A Background

**[7 CFR 799.33] Extraordinary circumstances are unique situations presented by specific proposals. Extraordinary circumstances include, but are not limited to (1) Effects to one or more Protected Resources described in Part 4, 2) Scientific controversy about environmental effects of the proposal, and (3) Uncertain effects or effects involving unique or unknown risks.**

FSA must review all proposed actions to determine if extraordinary circumstances exist that could impact environmentally sensitive resources. The presence and impacts of extraordinary circumstances require heightened review of proposed actions that would otherwise be categorically excluded. In other words, if you have an action that could be categorically excluded, but an extraordinary circumstance exists that cannot be avoided through mitigation, the action cannot be categorically excluded and an EA must be prepared. Situations become controversial as the degree or extent of possible impacts and effects is uncertain, the potential is high that effects may occur or the risks are uncertain, or the proposed project is connected to other actions with potentially significant or cumulative impacts.

When the review, consultation, or attachment of a specific plan, permit, or other appropriate document is unable to definitively rule out concerns for **adverse impacts to one or more protected resources** for any action evaluated with an FSA-850, **an EA will be required** (7 CFR 799.33).

### B Projects With Extraordinary Circumstances

In addition to the items in 7 CFR 799.33 (a), projects with extraordinary circumstances may warrant a higher level of review and analysis, and include but are not limited to those which:

- are precedent-setting
- are connected to other, larger efforts with potentially significant impacts (see subparagraph C for definition and Exhibit 2 or 40 CFR 1508.27)
- have scientific controversy over impacts
- have an unclear extent or degree of possible impacts
- have high potential that effects may occur or risks are uncertain
- involve highly controversial or contentious issues associated with water quality, oil, gas and mineral exploration or removal, hydraulic fracking, cell towers, wind and geo thermal, or alternative energy sources that have not been resolved by permits or regulatory action
- 
- does not comply with 40 CFR 1506.1, “Limitations on actions during NEPA process”

## 25 Extraordinary Circumstances and Controversy (Continued)

### B Projects With Extraordinary Circumstances (Continued)

- violate a law, regulation, or policy of a federal, state, or local government
- include the establishment or major expansion of the capacity of a large CAFO (7 CFR 799.41).

**Note:** “Major” is defined herein as an increase in animal capacity by 30 percent or greater.

If extraordinary circumstances cannot be avoided through mitigation, the action cannot be categorically excluded and an EA must be prepared.

### C Significant Impacts

The meaning of significant varies with context (location) and intensity (severity of impact). A significant effect from implementing a proposed action would cause a substantial change to existing environmental conditions and provide a major influence in the decision making process. CEQ regulations (40 CFR 1508.27 (b)) state that many factors should be considered when determining the intensity of impacts:

- beneficial and adverse impacts do not cancel each other out
- unique characteristics of area (proximity to endangered species habitat or historic property) may cause an impact to be significant whereas in another location it may normally not be significant
- the degree to which impacts or the activity is likely to be controversial
- the degree to which impacts are highly uncertain or have unknown risks
- the degree to which an action may establish a precedent for future actions
- whether the action is related to other actions with individually insignificant but cumulatively significant impacts
- whether the action has the potential to violate Federal, State, or local environmental laws.

NEPA requires that projects with significant effects must be evaluated in an EIS. This is why our threshold for CatEx’s is no/negligible impacts, and for EA’s the standard is that some impacts are acceptable, but none should rise to the level of significance, as we have defined it. As such, when crafting EA’s, be sure to identify the significance triggers to help demonstrate that the proposed action falls below them.

**25 Extraordinary Circumstances and Controversy (Continued)****D Protected Resources**

Per 7 CFR 799.33 (a) (2), protected resources with the potential to have extraordinary circumstances and/or generate controversy include, but are not limited to:

- property (for example, sites, buildings, structures, and objects) of historic, archeological, or architectural significance designated by Federal, Tribal, State, or local governments or property eligible for listing on the National Register of Historic Places
- federally-listed threatened or endangered species or their habitat (including critical habitat), federally proposed species or their habitat
- important and prime agricultural, forest, and range lands
- wetlands
- highly erodible land
- floodplains
- areas having a special designation, such as Federally- and State-designated wilderness areas, national parks, national natural landmarks, wild and scenic rivers, rivers listed on the Nationwide Rivers Inventory, State and Federal wildlife refuges, and marine sanctuaries
- special sources of water such as sole-source aquifers, wellhead protection areas, and other water.

**E Cumulative Impacts and Their Analysis**

Per 7 CFR 799.33 (a)(4), the potential for cumulative impacts is an extraordinary circumstance. Therefore, a proposed action with this potential requires the preparation of at least an EA. The cumulative impacts analysis portion of an EA is important to understanding how multiple actions in a particular time and space (e.g., geographic area) impact the environment. The CEQ regulations define cumulative effects as "...the impact on the environment, which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such actions" (40 CFR § 1508.7). Whereas the individual impact of one project in a particular area or region may not be considered significant, the result of numerous projects in the same area or region may cumulatively result in significant impacts. Cumulative impact analysis is subject to interpretation in analyzing the magnitude of impacts to a particular area or region. For every EA, you must establish the area and time period of the cumulative effects analysis. This should be based on the size of the Proposed Action and the area it could affect (e.g., watershed, county, region) and the potential duration of effects of the Proposed Action.

**25 Extraordinary Circumstances and Controversy (Continued)****E Cumulative Impacts and Their Analysis**

For your cumulative impacts analysis (Chapter 4 of the EA Template), it is necessary to evaluate all Federal, State, local, and private activities that are currently taking place, have occurred in the past, or may reasonably be assumed to take place in the future in the cumulative effects area. As such, the EA will need to include a summary of the Past, Present, and Reasonably Foreseeable Actions identified in the area (see section 4.1 of EA Template), including what is proposed, where, when, how long the activity will occur, and who is proposing it. Actions should include other agriculture, presence and development in communities, any managed land and activities that are taking place on that land, industry, etc. This can be presented in the EA in paragraphs, bullets, or a table.

Be sure to discuss the potential cumulative impacts anticipated to result from implementing the Proposed Action Alternative for those resources included in the EA's section titled, Resources Carried Forward for Detailed Analysis (section 3.2 in the EA Template).

One potential cumulative impact related to agriculture is greenhouse gas (GHG) emissions. Recent guidance from CEQ recommends evaluation of GHGs if emissions from a given action are expected to reach or surpass 25,000 metric tons. Individual farming/ranching operations should not surpass this threshold for analysis (per NRCS). But aggregations of farms, such as aggregations of large CAFOs within a limited geographic proximity, may trigger the need for an analysis of the potential cumulative GHG emissions. If this is the case, contact the NECM for assistance.

Resources to assist with cumulative impacts analyses are:

- CEQ 1997. Council on Environmental Quality (CEQ). 1997. Considering Cumulative Effects Under the National Environmental Policy Act. January.
- CEQ 2016. Council on Environmental Quality (CEQ). 2016. Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews. August 1.

These are both available on the EC SharePoint site.

**26-30 (Reserved)**



## Part 3 Completing Environmental Reviews

### 31 Introduction

#### A Who Prepares Environmental Reviews

NECM is responsible for preparing (or reviewing/approving contractor-prepared) programmatic EAs and EISs for FSA. EA's can also be prepared by contractors when authorized by FSA in consultation with the NECM if the activity is complex or if there are workload or other time constraints.

All other environmental reviews are to be prepared by FSA employees that have completed requisite training for the type of analysis being completed. The NECM is to be consulted and will provide guidance and oversight as appropriate when EA's are controversial or have extraordinary circumstances. If an FSA field employee is unsure if they are authorized or trained to complete environmental reviews, EA's, or whether they should request contractor assistance, they should consult with SEC who may also consult NECM.

If any portion of the environmental review or EA is completed by outside sources, FSA shall independently evaluate and be responsible for the accuracy of the information submitted.

**Note: Consultations are not to be routinely initiated by lenders or contractors.**

#### B Who May Concur/Approve/Review Environmental Reviews for FSA Activities

**[7 CFR 799.6] FSA State office environmental responsibilities include “Reviewing FSA actions that are not categorically excluded from NEPA, or that otherwise require State office approval or clearance, and making appropriate recommendations to the approving official”.**

31 Introduction (Continued)

**B Who May Concur/Approve/Review Environmental Reviews for FSA Activities (Continued)**

Environmental reviews and assessments may be prepared by various levels of employees; however, they must be reviewed for concurrence or approval by the appropriate level of authority, as provided below, before processing of the proposed action may continue.

Submissions to reviewing officials for concurrence approval shall include all supporting documentation. Electronic digital signatures based by FSA employee LincPass validation are acceptable.

Type of Evaluation	Preparer	ENV Review Official	Project Official
Environmental Screening Worksheet (ESW), FSA-850 (Exhibit 18)	FSA employees with appropriate training	Farm Loan approval official/Farm Program designated employee	none required
EA (Exhibit 21)	FSA employees with appropriate training	SEC	none required
FONSI (Exhibit 23)	FSA employees with appropriate training	SEC	Farm Loan approval official/Farm Program designated employee

The FSA-850 may be prepared by various levels of employee who have completed training by the SEC in how to meaningfully complete the form and assemble appropriate supporting documentation. The FSA-850 must also be reviewed by an authorized agency official to provide concurrence (or not, with an adequate reason provided) with the recommended environmental determination of the preparer. The authorized agency official may or may not be the same as the preparer but must have been delegated FLP loan approval authority, as provided by 1-FLP, or have been delegated Farm Program signature authority, as provided by 16-AO. Said authorities encompass related responsibilities associated with the administration of the specified program(s) for which authority is delegated. When the authorized agency official is the preparer of the FSA-850, they should sign as both of the following:

- the preparer, to reflect they have the requisite training to complete this function
- the official, with designated authority.



## 32 Levels of Environmental Review

### A Pathways for Environmental Reviews

Environmental reviews are divided into three pathways depending on the potential environmental concerns of the proposed action:

- CatEx
  - **Listed** CatEx, as enumerated in Exhibit 17, based on specific exclusion and recorded on FSA-850 (Exhibit 18)
  - **Supported** CatEx, as enumerated in Exhibit 17, based on completion of FSA-850 (Exhibit 18) review and attachment of supporting documentation, when appropriate
- EA (Exhibit 21) and FONSI (Exhibit 23)
- EIS and ROD

## 33 CatEx's

### A Background

As 7 CFR 799.30 sets forth, FSA has determined that certain categories of actions do not normally individually or cumulatively have a significant effect on the human environment. If upon completion of the FSA-850 it is determined that an action falls within one of these categories and there are no extraordinary circumstances as provided by 7 CFR 799.33, the action can be categorically excluded from the need to prepare an EA or EIS.

Detailed information about extraordinary circumstances warranting a higher level of review is provided in paragraph 25. Projects which are precedent-setting or controversial, have impacts to protected resources or that are unclear, are considered to have extraordinary circumstances and, therefore, require EA.

Also, when consultation or provisions of specific plan or permits or other appropriate documents are unable to definitively rule out concerns for a protected resource for actions evaluated with FSA-850, an EA will be required. If it is already known that an EA or EIS is warranted, the FSA-850 step is not needed.

When referenced in any of the following categories or anywhere within this handbook, "previous disturbance" shall refer to soils that are not likely to possess intact and distinct soil horizons and have the reduced likelihood of possessing historic properties with their original depositional contexts in the area and to the depth to be excavated. This is also referred to as the "plow zone" and means the depth or previous disturbance or tillage.

## 33 CatEx's (Continued)

**B Listed CatEx**

Listed CatEx are actions with no new ground disturbance below the existing plow zone and, as provided by 7 CFR 799.31, that fit within specific categories that may be categorically excluded if there are no extraordinary circumstances, as specified in § 799.33, without the need to complete further review. Documentation is limited to identification of the appropriate category from the CatEx Catalog in Exhibit 17 and recording the related alpha numeric code on FSA-850.

Unless otherwise noted, these actions also do not have the potential to cause effects to historic properties, and will, therefore, not be reviewed for compliance with section 106 of NHPA (16 U.S.C. 470f) or its implementing regulations, 36 CFR Part 800.

**C Supported CatEx**

Supported CatEx, as provided by 7 CFR 799.32, are actions that fit within specific categories which are eligible for categorical exclusion **after** completion of a review with an FSA-850 with the attachment of appropriate documentation and confirmation that the action does not involve any of the extraordinary circumstances specified in 7 CFR 799.33.

Supported CatEx's consist of actions with no/limited ground disturbance (S) and those with ground disturbance or construction (SG). \* \* \*

**\*--Note:** Under a court order in *Dakota Rural Action v. USDA* (18-cv-02852), an EA is required for financing to medium CAFO's, as defined by the EPA at 40 CFR 122.23(b)(6), for the following activities: (1) construction or expansion of a medium CAFO; or (2) refinancing of a newly constructed medium CAFO that has been in operation for 24 months or less.--\*

In completing the FSA-850 review, attachment of supporting documentation and consultations under NHPA, ESA, and other relevant environmental mandates, may be required to substantiate that the proposed project will not have an adverse impact. Supported CatEx categories are further enumerated in the CatEx Catalog in Exhibit 17 for reference in completing FSA-850 and other documents.

**34 Environmental Assessments**

**A Background**

The following are the principle purposes for preparing EA's:

- inform the affected and interested public
- provide information on alternatives and impacts sufficient to assist the decision-maker in making an informed decision
- document that the procedural NEPA requirements have been followed
- evaluate the impacts of the proposed action and mitigate any potential adverse impacts on the human environment
- identify any additional requirements for environmental compliance with substantive laws, regulations or Executive Orders
- determine if EIS is required for the proposed action.

A generic template for EA is provided in Exhibit 21.

Detailed information about public notices is provided in paragraph 6.

## 34 Environmental Assessments (Continued)

**B Actions That Always Require Preparation of an EA (7 CFR 799.41)**

The following actions always require preparation of an EA:

- new CREP agreements
- development of farm ponds or lakes greater than or equal to 20 acres
- restoration of wetlands greater than or equal to 100 acres aggregate
- installation or enlargement of irrigation facilities, including storage reservoirs, diversions, dams, wells, pumping plants, canals, pipelines, and sprinklers designed to irrigate greater than 320 acres aggregate
- land clearing operations (for example, vegetation removal, including tree stumps; grading) involving greater than or equal to 40 acres aggregate
- clear cutting operations for timber involving greater than or equal to 100 acres aggregate
- construction or enlargement by 30 percent or greater of the capacity of a Concentrated Aquatic Animal Production Facility (CAAP), as defined by the U.S. Environmental Protection Agency in 40 CFR 122.24
- construction of commercial facilities or structures for processing or handling of farm production or for public sales when it involves a change in land use and a related change in zoning, variance, or special use permit due to the presence of the public or a workforce for which accommodations for access, health, and safety must be considered
- construction or expansion in capacity of 30 percent or greater of a large CAFO, (as defined by the EPA) regardless of the type of manure handling system or water system:

**Note:** See Exhibit 16 for the EPA's CAFO definitions and animal number/type table.

- refinancing of a newly constructed large CAFO that has been in operation for 24 months or less (see Exhibit 16)

**Notes:** To avoid potential consultation issues, segmentation disputes, or the appearance of a device to avoid NEPA, EA should be completed before construction if there is any consideration of a need for subsequent refinancing. Once construction has started it is not possible for the requisite level of review to be completed unless a NEPA compliant review was completed by another agency which can be adopted or incorporated by reference. Alternatively, refinancing as an existing operation may be considered after 24 months of operations based on a supported CatEx provided there are no extraordinary circumstances found by the environmental review.

There must always be a demonstrated need for refinancing established with related improvements in cash flow, according to 2-FLP, subparagraph 123 B.

## 34 Environmental Assessments (Continued)

**B Actions That Always Require Preparation of an EA (7 CFR 799.41) (Continued)**

- issuance of substantively discretionary FSA regulations, Federal Register notices, or amendments to existing programs that authorize FSA or CCC funding for proposed actions that have the potential to adversely affect the human environment
- any action for which the FSA-850 review finds or triggers extraordinary circumstances as specified in § 799.33(b), or otherwise have a potential impact on the quality of the human environment
- any action for which the FSA-850 review, consultation, or attachment of a specific plan, permit, or other appropriate document is unable to definitively rule out concerns for impacts to one or more protected resources (7 CFR 799.33)
- any action that will involve the planting of a potentially invasive species, unless exempted by Federal law.

**C Preparing EA's**

EAs must contain the information required in 7 CFR 799.42.

To prepare an adequate EA, the preparer should follow the outline provided in Exhibit 21, involve the public, and provide notice, as provided by paragraph 6, and:

- use an interdisciplinary approach involving personnel with expertise in the natural and social sciences to evaluate the potential for impacts to protected resources

**Example:** NRCS staff, State agencies, university extension service, and technical service providers.

- write in easily understood language and use graphics to make proposed action and analysis of impacts clear by decision-makers and the public
- be specific; writers should avoid lengthy discussions of issues irrelevant to those resources potentially impacted by activities
- the assessment of impacts should be analytical and incorporate other studies and documents by reference, providing enough information to make informed decisions
- focus on relevant environmental issues and alternatives
- ensure the environmental review correctly assesses environmental impacts of the proposed action, as opposed to justifying decisions already made.

## 35 Environmental Impact Statements

### A When to Prepare

**[7CFR 799.50] FSA will prepare an EIS for proposed actions that are expected to have a significant effect on the human environment.**

Because of the broad scope, complex nature, and expense of EIS's, they are prepared and managed at the National Office level and not typically warranted for individual actions.

## 36 Environmental Reviews for GSA Leases

### A Requirements for Lease Approvals

In 2006, the annual appropriations language was amended to eliminate the FSA independent leasing authority. Since that time, FSA has been making strides in establishing an FSA-specific process for handling its leases. Part of this process involves requesting delegated authority from GSA to approve USDA leases. When granted according to Federal Management Regulation (FMR) Bulletin C-2, Delegations of Lease Acquisition Authority, FSA has to complete the environmental compliance portion of the process according to GSA's NEPA Desk Guide.

In cases where FSA or other Service Center Agencies (SCA's) have been granted delegated authority to procure space for USDA, the State Environmental Coordinators (SEC's) are now required to complete the appropriate level of environmental review. All leases will now be referred to as "USDA leases".

To comply with GSA requirements for lease approvals, FSA needs to follow the process as detailed below. In general, when an environmental review is needed for a proposed leasing action, the Real Property Leasing Officer (RPLO) will:

- provide the SEC with adequate detail for the environmental review
- provide SEC with 1 of the 2 FSA-authorized GSA forms (Automatic CatEx or Checklist CatEx)
- appropriately handle responses to SEC when additional information is required.

The two FSA-authorized GSA forms are available on the FSA EC SharePoint site at <https://sharepoint.fsa.usda.net/states/cepd/FSAEC/SitePages/Home.aspx>.

## 36 Environmental Reviews for GSA Leases (Continued)

**B FSA Process for Categorical Exclusions Regarding GSA Leases**

To determine whether “extraordinary circumstances” exist, GSA breaks CatEx actions into the following two types:

- the “Automatic CatEx” that will use Exhibit 1 from the GSA’s NEPA Desk Guide: actions that have virtually no potential for significant environmental effects
- the “Checklist CatEx” that will use Exhibit 2 from the GSA’s NEPA Desk Guide: actions that require a cursory analysis, using a checklist, to ensure that no “extraordinary circumstances” exist that would require a higher level of environmental analysis.
- **Automatic CatExs** are actions that, by their nature, obviously have no potential to affect the environment. Such actions may be excluded from further NEPA review without analysis of any kind.
  - There may be circumstances—although they are almost unimaginable—in which an automatic CatEx action could have significant impacts on the environment, If it appears that such impacts could occur, you should take the action through further review by completing the checklist used with “checklist” CatEx’s. If FSA is proposing an action where one alternative is an automatic CatEx and one is a checklist CatEx (that is, requires the preparation of a CatEx checklist), you must perform the more rigorous of the two CatEx options for the action. To determine whether a CatEx may have significant effects, use the “Indicators of Significance” presented in Section 3.5 of the GSA NEPA Desk Guide.
  - No specific documentation is required for an automatic CatEx, other than the Exhibit 1 AutoCatEx form.
- **Categorical Exclusions Requiring Completion of a Checklist**
  - A Checklist CatEx action is one that is normally CatExed, but has some potential, under certain extraordinary circumstances, to have a significant effect. To determine whether it is in fact a CatEx or whether extraordinary circumstances apply that require either an EA or EIS, complete a checklist with regard to each action.
  - Documentation for this level of analysis is a completed and officially approved Checklist CatEx form, together with whatever supporting data are needed to substantiate the conclusions reached.
  - If during the site visit or review of the listed resources the SEC is not able mark “no” on the CatEx form, then in this case, SEC’s signature on the Exhibit 2: they have identified environmental compliance concerns that require more review by RPLO it is the responsibility for the RPLO to address these concerns possibly with an EA.

**36 Environmental Reviews for GSA Leases (Continued)**

**C Environmental Assessments**

Once you have determined that your proposed action cannot be an Automatic CatEx, or you have completed the CatEx Checklist and concluded that your action will not automatically be the subject of an EIS but requires further review, your action must undergo an EA (Exhibit 21).

**37-40 (Reserved)**



**Part 4 Protected Resources****41 Introduction****A Background**

This part provides descriptions of each protected resource typically examined during the NEPA process. Each paragraph includes the following:

- resource
- lead agency
- FSA policy and objectives
- applicable forms of documentation
- review process including the following:
  - flowchart
  - process for determining potential for impacts
- possible data sources
- associated permits
- consultation
- acceptable types of documentation.

**41 Introduction (Continued)****A Background (Continued)**

Protect resources typically addressed in NEPA documents and discussed in detail in this part include the following:

- wildlife and habitat
  - vegetation
  - wildlife
  - threatened and endangered species and critical habitat
- cultural resources (historic properties)
  - archaeological resources
  - architectural resources
  - traditional cultural properties
- coastal barriers
- CZMA areas
- wilderness areas
- wild and scenic rivers/nationwide rivers inventory
- national natural landmarks
- sole source aquifers
- floodplains
- wetlands
- soils
- water quality
- air quality
- noise

## 41 Introduction (Continued)

### A Background (Continued)

- important land resources
  - prime and unique farmland
  - prime forestland
  - prime rangeland
- socioeconomic impacts.

### B Eliminating Resources

According to CEQ (40 CFR 1501.15), EA's should focus **only** on protected resources potentially impacted by a proposed action and all other resource areas should be eliminated from any detailed review. This allows EA to be clear, concise, and focused on important issues.

### C Acceptable Forms of Documentation

FSA requires a variety of forms to either accompany the NEPA document or serve as the NEPA documentation, depending on the type of action being proposed and the protected resources that may be affected. Refer to the relevant section of this handbook for a discussion of each type of compliance documentation required to be attached to the FSA-850, EA, or other compliance document.

FSA understands that the environmental compliance process **cannot** be completely standardized and special circumstances will occur. Contact applicable SEC when special circumstances exist or if additional assistance is needed during the environmental review process.

## 42 Wildlife and Habitat

### A Resource

These resources include vegetation, wildlife, and protected species including threatened and endangered species and their designated critical habitat. Critical habitats are specific areas designated by the U.S. Fish and Wildlife Service (USFWS) and the NOAA, National Marine Fisheries Service (NMFS), as essential for conserving threatened, and endangered species that may require special management. Vegetation and wildlife refer to the plant and animal species, both native and introduced that characterize a region.

The Endangered Species Act (ESA):

- provides for conserving species that are in danger of becoming extinct
- applies to threatened and endangered species and designated critical habitats prohibit “taking of species under Federal jurisdiction:
  - pursuing, shooting, poisoning, wounding, killing, capture, possessing, trapping, collecting, molesting, or disturbing listed species
  - removing, reducing or possessing listed species.

The Migratory Bird Treaty Act implements various treaties and conventions between the United States and Canada, Japan, Mexico, and the former Soviet Union, for the protection of migratory birds. Under the Migratory Bird Treaty Act, taking, killing, or possessing migratory birds is unlawful.

The Bald and Golden Eagle Protection Act imposes criminal and civil penalties for taking or possessing bald or golden eagles. Taking includes pursuing, shooting, poisoning, wounding, killing, capturing, trapping, collecting, molesting, or disturbing.

Executive Order 13112 of February 3, 1999, requires that Federal agencies prevent introducing invasive species and provide for their control to minimize the economic, ecological, and human health impacts that invasive species cause.

### B Lead Agency for Resource

USFWS and NMFS provide consultation for actions that may impact threatened and endangered species or their designated critical habitat. NMFS has jurisdiction over marine species and their designated critical habitat and USFWS has jurisdiction over all other listed threatened and endangered species and their designated critical habitat.

**42 Wildlife and Habitat (Continued)**

**C FSA Policy and Objectives**

FSA will not approve actions or activities that could adversely affect threatened and endangered species or their formally designated critical habitats.

**D Review Process**

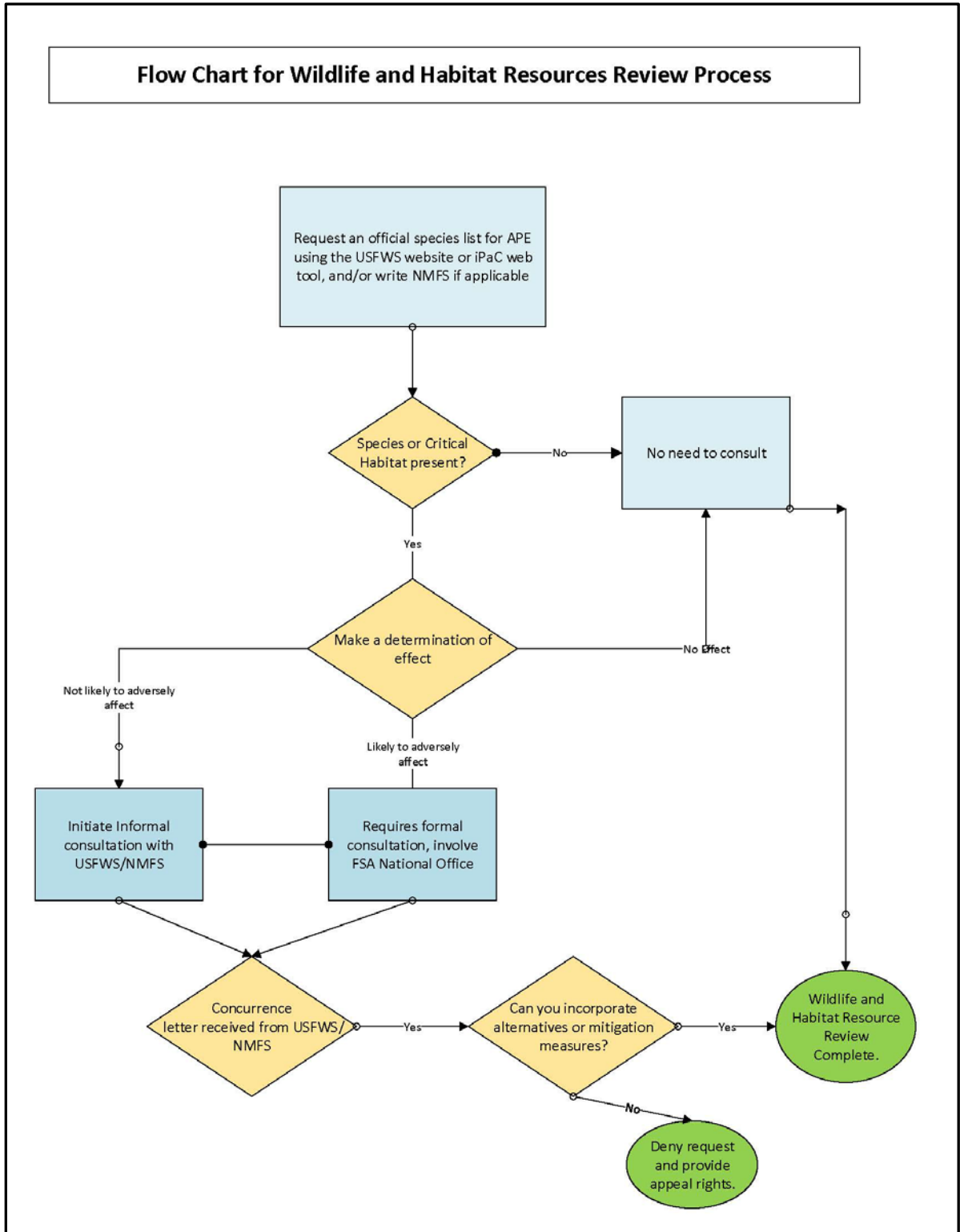
Review the area of impact for the presence of listed endangered and threatened species and their potential habitat within the APE. If a habitat for a listed species does not exist or there is no change in land use, a “No Effect” determination can be made.

If any type of habitat for a listed species exists, whether it is critical or non-critical habitat, potential effects must be analyzed. If adverse effects are not likely, initiate informal consultation with USFWS and/or NMFS, collectively referred to as “the Services.” If adverse effects are likely, formal consultation is required. Contact the NECM for assistance.

42 Wildlife and Habitat (Continued)

D Review Process (Continued)

The following provides an overview of the wildlife and habitat resource review process.



42 Wildlife and Habitat (Continued)

D Review Process (Continued)

Topic	Background and Requirements
Vegetation and Wildlife	<p>Vegetation is often described in terms of ecoregions, areas of relatively homogenous soils, vegetation, climate, and geology. Each ecoregion has wildlife common to that environment and the habitat. EA's should describe the following for the area of the proposed action:</p> <ul style="list-style-type: none"> <li>• vegetation, based on the dominant plant community type</li> <li>• wildlife, based on the common species found in that area.</li> </ul> <p><b>Note:</b> See subparagraph E for possible data sources.</p> <p>Proposed actions must do the following:</p> <ul style="list-style-type: none"> <li>• prohibit introducing or spreading invasive species and noxious weeds</li> <li>• provide for invasive species and noxious weed management before activity approval.</li> </ul> <p><b>Note:</b> For certain actions, weeds are controlled under the producer's required conservation plan according to 2-CRP.</p>

42 Wildlife and Habitat (Continued)

D Review Process (Continued)

Topic	Background and Requirements
Threatened, Endangered, Species and Critical Habitat	<p>ESA requires Federal agencies to evaluate all actions for the potential to impact protected species or critical habitat, including activities considered CATEX that involve a shift in land use. In addition, many migratory birds (some of which are also threatened or endangered) and bald and golden eagles are protected from harm under related laws and are considered protected species.</p> <p>To verify the presence or absence of protected species and critical habitat, a protected resources list must be obtained from the Services. Official protected resources lists are only valid for <b>90 calendar days</b>, so if a project review has taken longer, be sure to obtain a current list to ensure the most accurate version is utilized.</p> <p>USFWS has two options for obtaining an official protected resources list. Official species lists may be printed from their website by county name or the Information for Planning and Conservation (IPaC) tool may be used to pull up a site-specific species list.</p> <p>NMFS has only one method of obtaining an official protected resources list, which is to formally request one in writing.</p> <p>If USFWS/NMFS species list indicates there are no protected species or critical habitat in the APE, then record the findings in the appropriate environmental analysis document (FSA-850 or EA) and consultation is complete.</p> <p>If USFWS/NMFS species list indicates that species or critical habitat is present, then the next step is to determine whether protected resources would be affected by the action. This step may require research by the reviewer. It is necessary to know the species and their habitat requirements (including seasonal and life cycle) to know if an action will impact them. The Services have this information readily available on their websites. Listed below are example questions and considerations that should be evaluated for each listed species and their critical habitat.</p> <ul style="list-style-type: none"> <li>• What does species X need for the following life functions: feeding, drinking, nesting, breeding, rearing, migrating, and resting?</li> <li>• When during the year does species X need those things? What time of year is this proposal going to be implemented? Are habitats that this species needs during that season found on the site?</li> <li>• How and where does species X get the things it needs for each life function? Do any of these occur on the property proposed for the action?</li> </ul>



42 Wildlife and Habitat (Continued)

D Review Process (Continued)

Topic	Background and Requirements
Threatened, Endangered, Species and Critical Habitat (Continued)	<p><b>Note:</b> If farm operating loans are involved and actions have already been <b>fully</b> evaluated through the Section 7 process for Conservation Plans, Nutrient Management Plans, etc., additional separate consultation is <b>not</b> required.</p> <ul style="list-style-type: none"> <li>• During summer months, many bat species, such as the Indiana bat, roost almost exclusively in trees.                             <ul style="list-style-type: none"> <li>• If proposal is in the range of this species, does it involve removing trees during the summer? Could the project wait until fall to be implemented?</li> <li>• Indiana bats often roost in older, dead, or dying trees. What types of trees are being removed? Could the project be limited to younger trees with intact bark?</li> </ul> </li> <li>• If the proposal provides for the use of pesticides, according to label requirements, consider the proximity to water bodies, wetlands, riparian areas, and non-target species that will be adversely impacted by the pesticide, including those needed as food sources.</li> <li>• Consultations are often needed for pesticide uses because of the potential impacts to riparian areas and non-target species, such as spraying for:                             <ul style="list-style-type: none"> <li>• mosquitoes – mosquito larvae are an important food source to juvenile salmonids and other invertebrates</li> <li>• moths – moths can be one of bats’ primary food sources and butterflies are often non-target losses</li> <li>• vegetation – some butterflies use a single type of plant for all life functions within a very small area.</li> </ul> </li> </ul> <p><b>Note:</b> These impacts also should be considered for land applications of animal waste.</p>

42 Wildlife and Habitat (Continued)

D Review Process (Continued)

Topic	Background and Requirements
Threatened, Endangered, Species and Critical Habitat (Continued)	<ul style="list-style-type: none"> <li>• Construction, harvest, land application of waste, and mowing can temporarily or permanently remove habitats. Consider ground nesting species, burrowing species (such as birds, foxes, beetles, etc.), or those species with extremely limited habitat distribution and/or connectivity (they cannot just “fly away”) before proposing to impact or remove these habitats.</li> <li>• Be aware of and avoid proposing to impact or remove key habitat features, such as perch sites, lekking sites, or caves.</li> <li>• Consider noise impacts, as some species are quite sensitive to noise, particularly during nesting and brood rearing.</li> <li>• Consider how the proposal could change vegetative cover in the area, particularly if converting from native species to non-native species. Were there species that used the natives? What will they use once it is removed or converted? Will the action result in possible invasive species problems and/or require long-term weed management to control?</li> <li>• If converting from non-native to native species, there will be a potential benefit to protected resources in the area. Be sure to note the beneficial impacts as well as the potential adverse effects. Benefits do not negate, balance, or outweigh adverse effects, but projects should get credit for their benefits when due.</li> </ul> <p>If research findings indicated listed species or critical habitat would not be affected by the action (a “no effect” determination), document the rationale in the appropriate environmental analysis document (FSA-850/EA). The document should include the list of species and critical habitat in the area and a description of the action with enough detail to analyze to the fullest extent possible the potential impacts. Concurrence from the Services for a “no effect” determination is not required. This ends consultation.</p>

42 Wildlife and Habitat (Continued)

D Review Process (Continued)

Topic	Background and Requirements
Threatened, Endangered, Species and Critical Habitat (Continued)	<p>If research findings indicate listed species or critical habitat may be affected by the action, determine whether the expected effects would be adverse or not. If the effects are not likely to be adverse (a “not likely to adversely affect” determination), initiate informal consultation with USFWS and/or NMFS, as appropriate. Informal consultation may be in letter format (consultation letter) or prepared as a separate analysis document (Biological Assessment or Biological Evaluation). The reviewer should prepare a consultation letter or document and request concurrence from the Services. It is important that the content and language specifies that the documentation is for consultation under Section 7 of the ESA.</p> <p>Using the research information previously gathered, prepare a consultation letter or document with the following information:</p> <ul style="list-style-type: none"> <li>• Description of action – what are you doing? Why, when, and how are you doing it?</li> <li>• Description of specific area that may be affected by the action – where are you doing it?</li> <li>• Description of any listed species and/or critical habitat that may be affected by the action – what species and habitats are in the area during the project and/or the project’s impacts (if impacts will outlive the project)?</li> <li>• Description of manner in which actions may affect listed species and/or critical habitat, with an analysis of cumulative effects – how will this project impact those protected resources, individually and cumulatively?</li> </ul> <p><b>Note:</b> Cumulative effects are defined under ESA as effects of other non-Federal actions that may occur in the action area, including State, tribal, local, or private activities that are reasonably certain to occur in the project area. This means reviewers have to assess their project’s impacts combined with the impacts of all the other ongoing non-Federal projects. Note that this is a narrower definition of cumulative effects than under NEPA.</p>

42 Wildlife and Habitat (Continued)

D Review Process (Continued)

Topic	Background and Requirements
Threatened, Endangered, Species and Critical Habitat (Continued)	<ul style="list-style-type: none"> <li>• Description of relevant reports, including any EA, EIS, Biological Assessments, Biological Opinions, or other analyses prepared for the action – where else has this project been analyzed, such as the NEPA document or the results of previous Section 7 determinations for similar actions?</li> <li>• Description of any other relevant studies or other information available on the action and affected species and/or critical habitat – what other information did you use in estimating the impacts?</li> </ul> <p>Informal consultation letters or documents are not intended to be extensive descriptions of all projects, species, or impacts. They are intended to be summary documents with enough information provided to demonstrate FSA’s rationale for making the determination and allow the Services to concur or not with FSA’s determination. If the Services need additional information, they will ask for it.</p> <p>The Services have 30 calendar days to respond following submission of the informal consultation request. In some states, due to workload, USFWS will notify FSA they need 45 calendar days to review and respond.</p> <p>After reviewing the consultation request, if the Services concur with the determination that effects are not likely to be adverse, they will provide a concurrence letter to that effect. This ends consultation.</p> <ul style="list-style-type: none"> <li>• If the Services include terms and conditions in their concurrence letters, incorporate those as required elements of the action. Failure to do so may invalidate their concurrence and the Section 7 compliance.</li> <li>• In the past, FSA has received letters intended as guidance from the Services, but the letters specify that they are not part of the consultation process.</li> <li>• In this case, users must continue to work with the Services until users have a letter from the Services verifying the completion of the consultation process.</li> </ul>

42 Wildlife and Habitat (Continued)

D Review Process (Continued)

Topic	Background and Requirements	
Threatened, Endangered, Species and Critical Habitat (Continued)	<p>If FSA or the Services determine effects are likely to be adverse (a “likely to adversely affect” determination), then formal consultation should be initiated to further discuss alternatives and/or mitigation measures. FSA’s National Office must be involved in all formal consultation.</p> <ul style="list-style-type: none"> <li>• For individual actions, FSA will not fund the action, as FSA does not have the staff and/or funding to accommodate the compliance needed for these proposals (Environmental Impact Statement). FSA will deny the request and provide appeal rights. This ends consultation.</li> <li>• For a group of actions, or on a program level, the NECM may prepare a more in depth Biological Assessment. If the Services concur, they will issue a Biological Opinion, also known as an incidental take statement, which serves as a permit for activities that would affect a known threatened or endangered species. This ends consultation.</li> </ul> <p>If NRCS is providing technical assistance, NRCS-CPA-052 can also be used to determine the presence or absence of protected species, however it is FSA’s responsibility to ensure that impacts to protected species or critical habitat are considered.</p>	
	<b>IF...</b>	<b>THEN...</b>
	USFWS/NMFS species list indicates there are no protected resources or critical habitat in the area	record findings in the appropriate environmental analysis document (FSA-850/EA) and consultation is complete.
	USFWS/NMFS species list indicates that species or critical habitat is present, and FSA makes determination of “no effect”	Environmental analysis document should: <ul style="list-style-type: none"> <li>• include the list of species and critical habitat in the area and a description of the activity with enough detail to analyze to the fullest extent possible the potential impacts</li> <li>• consider areas beyond the immediate footprint of the construction activity or proposed action and beyond the property line, depending on the indirect effects of the proposed action.</li> </ul>

42 Wildlife and Habitat (Continued)

D Review Process (Continued)

Topic	Background and Requirements	
Threatened, Endangered, Species and Critical Habitat (Continued)	IF...	THEN...
	USFWS/NMFS species list indicates that species or critical habitat is present, and FSA makes determination of “not likely to adversely affect”	<ul style="list-style-type: none"> <li>• initiate informal consultation with USFWS/NMFS</li> <li>• if Services concur, they will provide a concurrence letter.</li> </ul>
USFS/NMFS species list indicates that species or critical habitat is present, and FSA or the Services determine the proposed action is likely to adversely affect or likely to adversely modify a listed species or its critical habitat	<ul style="list-style-type: none"> <li>• formal consultation should be initiated to further discuss alternatives and/or mitigation measures.</li> <li>• FSA’s National Office must be involved in formal consultation.</li> </ul>	

## 42 Wildlife and Habitat (Continued)

## E Possible Data

This table provides web data sources.

<b>Data</b>	<b>Web Location</b>
USFWS species list by county	<a href="http://ecos.fws.gov/ecp/">http://ecos.fws.gov/ecp/</a> , then search for species by County name
USFWS IPaC web tool	<a href="http://ecos.fws.gov/ipac/">http://ecos.fws.gov/ipac/</a> , CLICK “Get Started”, CLICK “Enter Project Location”
NMFS species list	Mail request for species list to:  NOAA Fisheries 1315 East-West Highway Silver Spring, MD 20910.
Invasive Species Information	<a href="http://www.invasivespeciesinfo.gov">www.invasivespeciesinfo.gov</a>
Bailey’s Ecoregions Common Vegetation and Wildlife by Region	<a href="http://www.fs.fed.us/land/ecosysmgmt/ecoreg1_home.html">www.fs.fed.us/land/ecosysmgmt/ecoreg1_home.html</a>
NatureServe Species Habitat Descriptions	<a href="http://www.natureserve.org">www.natureserve.org</a>
Listed Species, and Critical Habitat Designations by State	<a href="http://ecos.fws.gov/ecp">http://ecos.fws.gov/ecp</a> and select items as needed under “Endangered Species”
USFWS General Guidance for Consultations With Federal Agencies	<a href="https://www.fws.gov/endangered/what-we-do/consultations-overview.html">https://www.fws.gov/endangered/what-we-do/consultations-overview.html</a>  Go to <a href="http://www.fws.gov">www.fws.gov</a> and on left, CLICK “Endangered Species”. Scroll down to the bottom of the page and under “What We Do”, CLICK “Consultations” and select required information.
USFWS Consultation Handbook titled, “Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act”, dated March 1998	<a href="https://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf">https://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf</a>

**42 Wildlife and Habitat (Continued)****F Associated Permits**

If likely to adversely affect, USFWS may issue a biological opinion, also known as an incidental take statement, which serves as a permit for activities that would affect a known threatened or endangered species. This will be accomplished through the formal consultation process.

**G Consultation**

USFWS and NMFS provide informal and formal consultation for actions that may impact threatened and endangered species or designated critical habitat. Consultations should be initiated as early as possible in the environmental review process. Keep a permanent record of all correspondence.

**H Acceptable Types of Documentation**

A completed FSA-850 or EA serves as documentation for threatened and endangered species or critical habitat impact discussion.

Attach to the FSA-850 or EA:

- USFWS/NMFS protected resources lists
- research findings obtained by FSA reviewer
- questions and considerations
- records of telephone contacts and other meeting notes
- advice or recommendations provided by the Services biologists
- copies of all written correspondence with the Services (e-mails and letters).

If NRCS is providing technical assistance, NRCS-CPA-052 may also be used. The FSA-850 or EA should reference any consultation undertaken. Informal consultation is required if adverse effects are not likely. Formal consultation is required if adverse effects are likely. The National Office must be involved with formal consultation.



**43 Cultural Resource****A Resource**

Cultural resources, in the broadest sense, are properties created by man and generally more than 50 years of age. They include, but are not limited to, archaeological sites, structures, buildings, shipwrecks, cemeteries, mines, battlefields, rural landscapes, and places that a community associates with their values, traditions, or beliefs. Some cultural resources are significant, others are not. Cultural resources that are significant are called historic properties under 54 U.S.C. 306108 (commonly known as Section 106 of the National Historic Preservation Act). NHPA, Section 106, requires all Federal agencies to take into account the effect of their undertakings; that is activities that are Federally permitted, Federally funded, or carried out on Federal lands, on historic properties.

Historic properties are cultural resources listed in or eligible for inclusion in National Register of Historic Places (NRHP). A historic property should possess integrity of location, design, setting, materials, workmanship, feeling, and association. In other words, a building with numerous modern additions and little of its original materials would be determined, in most cases, to no longer possess integrity. In addition to integrity, NPS requires that a historic property meet 1 of the following 4 criteria:

- association with events that have made a significant contribution to the broad patterns of our history
- association with the lives of persons significant in our past
- have distinctive characteristics of a type, period, or method of construction, represent the work of a master, possess high artistic values, or represent a significant and distinguishable entity whose components may lack individual distinction
- have yielded or may be likely to yield, information important in prehistory or history.

**43 Cultural Resource (Continued)****A Resource (Continued)**

The most commonly identified types of cultural resources are as follows:

- archeological resources may be visible on the ground surface or buried and include, but not be limited to:
  - battlegrounds
  - historic mission sites
  - old mines
  - remains of abandoned farmsteads
  - remains of prehistoric cultures
  - ruins of private and military forts
  - stage stops
- structures/buildings generally over 50 years of age; architectural resources include, but are not limited to:
  - barns
  - bridges
  - cabins
  - farmsteads
  - houses
  - silos
  - other structures
- traditional cultural properties; traditional cultural properties associated with the beliefs or cultural traditions of an existing community are eligible for NRHP; such beliefs or traditions are part of the history of the community and are important in holding the community together; they include, but are not limited to:
  - traditional locations to gather food or materials, such as reeds for baskets or clay for pottery
  - locations to host traditional dances
  - mountain tops where ceremonies are performed
  - an ethnic enclave within a larger urban setting.

**43 Cultural Resource (Continued)**

**B Lead Agency for Resource**

Advisory Council on Historic Preservation (ACHP) oversees 54 U.S.C. 306108 (commonly known as Section 106 of the National Historic Preservation Act) and its implementing regulations (36 CFR Part 800). State Historic Preservation Officers (SHPO) are responsible for protecting the historic properties within their state and Tribal Historic Preservation Officers (THPO) are responsible for historic properties within their reservation. Most consultation is conducted with the appropriate SHPO or THPO.

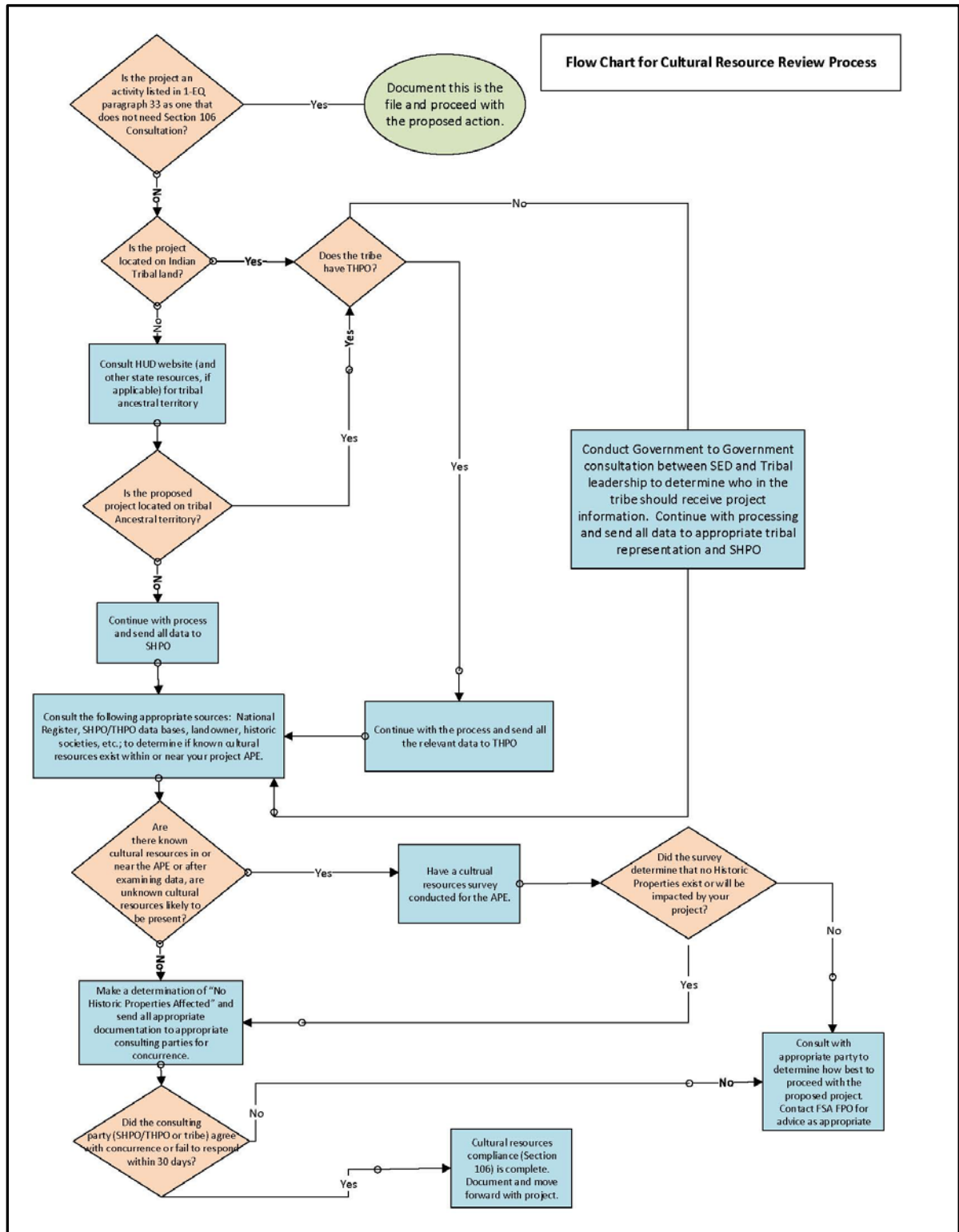
**C FSA Policy and Objectives**

FSA will not approve actions or activities that could significantly affect historic properties without proper mitigation.

43 Cultural Resource (Continued)

D Review Process

The following provides an overview of the cultural resource review process.



**43 Cultural Resource (Continued)****D Review Process (Continued)**

Not all FSA activities (undertakings) require compliance with NHPA. Activities potentially affecting the qualities that make a cultural resource eligible for NRHP are “undertakings with the potential to cause effects” under the Section 106 implementing regulations (36 CFR 800), and will require compliance with NHPA. Examine the list of FSA activities in Part 3 to determine if Section 106 consultation is required. If it is not, then no further review is required under Section 106.

For activities that are undertakings with the potential to cause effects, NHPA, Section 106 review process consists of a series of steps, laid out in the flowchart and following table provided in this subparagraph, carried out during the environmental review. As shown in the flowchart, the process is complete when users move to the far right of the flowchart. One or more types of historic properties may be present in the activity’s APE, but NHPA, Section 106 steps are identical regardless of the type of historic property that may be present. If your state has an agreement with your SHPO that spells out the steps FSA takes when reviewing proposed projects, then follow these steps instead of the steps described in this subparagraph. A discussion of agreements and template can be found later in this subparagraph I and in Exhibit 11.

At times, SEC and SHPO/THPO may disagree during the Section 106 review process. If the issues cannot be resolved, SEC will send all information to FSA’s National Office FPO for advice. If FSA’s National Office FPO concurs with the local office findings, FSA’s National Office FPO may elect to submit the documentation to ACHP for comment.

43 Cultural Resource (Continued)

D Review Process (Continued)

This table provides the steps FSA will follow for the cultural resources review process.

Step	Action	
1	Determine if the proposed action is exempt from Section 106 review by using lists in Part 3. If the proposed action is determined to be exempt from Section 106, then document this in the file and proceed with the project planning.	
2	If the activity is not exempt from Section 106 review, then identify consulting parties. These may include SHPO, THPO, tribes, landowner, and other interested parties. Details of Section 106 consultation and consulting parties can be found in Subparagraph H. For ease of this table SHPO/THPO will be used to stand for “consulting parties” for the remainder of the table.	
3	FSA County Office: If your state has an agreement with the SHPO/THPO, then follow the steps outlined in the agreement. If your state does not have an agreement, then follow the remaining steps outlined below. Examples of agreements and their uses can be found in subparagraph I	
4	Consult informational sources; such as National Register of Historic Places (NRHP), the landowner, SHPO/THPO database(s), if available, and other local information, such as museums, libraries, etc., to determine if known cultural resources exist within or near the activity’s Area of Potential Effect (APE) . Use this information to help in completing cultural resources section of the ESW.	
5	Examine the information gathered in Step 4 and make a determination as to the effect the proposed action may have on any historic properties that may be present and document this (usually using the ESW FSA-850). Send this determination along with all project data and information from Step 4 to SHPO/THPO for their review and comment (a letter outlining all information that should be sent to SHPO/THPO can be found in Appendix 6). The SHPO/THPO has 30 days to respond to your determination.	
6	The majority of the time FSA will make a determination of “No historic properties affected”, then the SHPO/THPO will respond with one of the following results.	
	<b>IF...</b>	<b>THEN...</b>
	SHPO/THPO agree with FSA or fail to respond within 30 days	Section 106 is concluded, place any SHPO/THPO correspondence in file and proceed with proposed action
SHPO/THPO responds that more information is needed (this may include the request for a cultural resources identification survey)	FSA will consult with SHPO/THPO to determine what type of information is needed. If FSA agrees with SHPO/THPO request, then FSA will supply needed information (30 day clock starts again after additional information is submitted). If FSA does not agree with SHPO/THPO request, then contact SEC and/or FPO for further guidance.	

43 Cultural Resource (Continued)

D Review Process (Continued)

Step	Action	
7	During any step of this process it may be discovered that a cultural resource(s) exist within or near the APE and may be affected by the proposed activity. The next steps describe what is required in this circumstance.	
8	FSA will move or redesign the project to totally avoid impacts to the resource(s), if feasible. If this can be done, then FSA will resubmit the proposed action with new design/location to the SHPO/THPO with a new determination of “No historic properties affected”, for their review and comment. This will start a new 30 day comment period.	
9	If FSA cannot avoid the resource, then it may choose to conduct further analysis and in consultation with SHPO/THPO determine if the resource is eligible for inclusion in the NRHP and thus, be considered a historic property. This will result in one of the following outcomes.	
	<b>IF...</b> the resource(s) is determined to not be eligible for the NRHP	<b>THEN...</b> FSA will document this and Section 106 is concluded and the proposed action may proceed.
	the resource(s) is determined to be eligible for the NRHP	FSA may elect to withdraw project assistance or in consultation with SHPO/THPO conduct further analysis to determine appropriate mitigation measures with the completion of SLA.
	disagreement arises between FSA and SHPO/THPO as to resource(s) eligibility to the NHRP	FSA will consult the ACHP and the National Park Service to determine official NRHP eligibility.

43 Cultural Resource (Continued)

E Possible Data Sources

This table provides web data sources for cultural resources.

Data	Web Location
<p>Historic Properties</p>	<p><b>http://www.nps.gov/nr/research/</b></p> <p><b>Note:</b> The list can be searched by State and county. Agency officials and applicants should be aware the list does not contain historic properties that have been determined eligible for listing, but have not been officially listed, and that many known cultural resources have never been officially evaluated for eligibility for NRHP.</p> <p>State SHPO website: <b>http://www.nps.gov/nr/shpoinventories.htm.</b></p> <p>Often SHPO’s maintain information on identified cultural resources in their State that have not been evaluated for eligibility. Local museums, libraries, and historic organizations also have information on cultural resources. Consulting parties may also have additional information.</p> <p><b>Note:</b> Some SHPO’s may normally not allow access to files by non-cultural resources professionals. This is something that can be discussed in SHPO agreements.</p>
<p>Tribal Consultation</p>	<p><b>http://egis.hud.gov/tDat/Tribal.aspx</b></p> <p><b>Note:</b> This HUD website can be searched by State and county for tribes that may need to be consulted when planning activities.</p> <p><b>http://www.achp.gov/nap.html</b></p> <p><b>Note:</b> This opens up to ACHP web page that deals with guidance for consulting with American Indian and Native Hawaiians.</p>



## 43 Cultural Resource (Continued)

### F Emergency Situations

A Federal agency's responsibility under, Section 106 for emergency situations is found in 36 CFR 800.12.

Undertakings that are immediate responses for rescue and salvage operations conducted to preserve life or property are exempt from NHPA, Section 106 and 36 CFR 800.12. The regulations encourage Federal agencies to develop guidance on dealing with emergency situations through agreements with SHPO/THPO and ACHP. This can and should be done as part of SHPO/THPO agreements discussed above and in Exhibit 11. If no agreement exists, FSA must notify the appropriate SHPO/THPO, ACHP, and appropriate Indian tribes of the undertaking and afford SHPO/THPO, ACHP, and appropriate Indian tribes 7 calendar days to respond. If FSA determines that 7 calendar days is too long, SHPO/THPO should be notified as to the needed timeframe.

**Note:** The 7-calendar day time period is only applicable to undertakings implemented within 30 calendar days after the disaster or emergency has been officially declared. FSA may request an extension if SHPO/THPO and ACHP is notified before the 30 calendar days expire.

### G Associated Permits

Permits for cultural resource investigations are not required under NHPA. However, permits for cultural resource investigations are required for activities in some States, particularly on State-owned land; in a few States, permits are required on privately owned land, for instance, Washington State. ARPA permits are required for archeological investigations on Federally owned land. Inquiry can be made with SHPO to determine if ARPA permits will be needed.

### H Consultation

Consultation is an important part of completing NHPA, Section 106 process. [36 CFR 800.16] Consultation means the process of seeking, discussing, and considering the views of other participants and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. For example, if user concludes that properties are present, but they are not eligible for NRHP, do the other consulting parties agree? NHPA, Section 106 and ACHP's implementing regulations specify with whom FSA will consult. They are as follows:

- appropriate SHPO/THPO
- if on tribal land, the tribe does not have THPO, the tribe must be consulted
- Indian tribe and Native Hawaiian organizations that attach religious and cultural significance to historic properties in the region (use the HUD website mentioned in subparagraph E)

43 Cultural Resource (Continued)

H Consultation (Continued)

- local governments with jurisdiction over the area
- applicants
- individuals and organizations with a legal or economic interest in the activity or with a concern for the historic properties.

If a Traditional Cultural Property is present, FSA will add the community that the Traditional Cultural Historic Property serves as a consulting party. The implementing regulations for NHPA, Section 106 specify that comments from any consulting party, including SHPO/THPO or ACHP, be submitted to FSA in most cases within 30 calendar days of receipt of the information from FSA. If a negotiated agreement exists, those timeframes may be different. As the activity moves forward, the consulting parties should be informed, in writing, of decisions made by FSA and SHPO/THPO with the consulting parties comments requested. Any comments from consulting parties should be considered by FSA. If a consulting party, including SHPO/THPO, fails to comment within 30 calendar days, FSA may assume that the party concurs with FSA’s findings and proceed.

During activity planning, FSA will identify the consulting parties, including the appropriate SHPO/THPO. Location of the activity determines whether FSA will consult with SHPO and/or THPO.

For Section 106 consultations, this table shows SHPO versus THPO.

Land Status	Consult With
private land or land owned by State, county, or city	SHPO and THPO’s and/or Indian tribes and Native Hawaiian organizations that attach religious and cultural significance to historic properties in the county (Identify tribes by using HUD website in subparagraph E).
tribal land	THPO, if the tribe has a THPO. If the tribe does not have a THPO, then consult with SHPO and tribal government.
tribal land, but property is owned by a nontribal party	THPO, if the tribe has THPO, but the owner may request SHPO’s participation. If the tribe does not have THPO, consult with SHPO and the tribal government.

Consultation with Indian Tribes that have THPO should be between FSA and the THPO unless the THPO notifies FSA that a more formal government-to-government consultation is required. For tribes that do not have THPOs, initial Section 106 consultation with tribes should be carried out in a government-to-government manner. This means that initial contact should be by the SED to the tribal leadership requesting consultation.

It is recommended by the National Office that states develop agreements with tribes after initial contact. These agreements can be informal or formal written agreements depending on what the particular tribe requests.

**43 Cultural Resource (Continued)****I Section 106 Agreements**

The FSA National Office highly encourages States to develop agreements with SHPOs, THPOs, and tribal governments. There are numerous uses for these agreements:

- establish protocol for who and how FSA consults with either SHPO, THPO or tribal governments
- FSA access to SHPO, THPO or State archaeological site files
- establish time frames for Section 106 process
- establish process for emergency situations
- establish when tribes want to be notified concerning FSA proposed actions in areas that a tribe may attach religious and cultural significance to historic properties
- notify the SHPO, THPO, and Tribes on which undertakings FSA considers those that have the potential to cause effects to historic properties (this should mirror the list found in Part 3)

Exhibit 11 contains a template for a possible agreement with a SHPO. Since tribal governments are so different from one another, there is not a template protocol agreement with tribes. However, the SHPO template agreement may be used as a starting point.

**J Acceptable Types of Documentation**

The results of the consultation and identification of historic properties, any adverse effects to the historic properties, and mitigation measures can be summarized in EWS, EA, SLA or EIS. Copies of letters with consulting parties are usually attached to the environmental document. If professional cultural resource work has been performed, the Secretary of Interior's Standards require a separate formal report of the work performed. Information about Traditional Cultural Historic Property is sometimes considered confidential by the community that they serve. If this is the case, the information in the environmental document should respect that confidentiality. Location information for archaeological sites is often restricted by State laws and should not be published in the environmental document.

**44 Coastal Barriers****A Resource**

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. CBRA was amended by the Coastal Barrier Improvement Act of 1990 and restricts Federal expenditures and financial assistance that may encourage development of coastal barriers. Areas within CBRS, established by CBRA that may support development, are ineligible for Federal assistance unless they conform to designated purposes for protection of the area.

CBRS currently includes almost 1.3 million acres from Maine to Florida on the Atlantic Coast; from Florida to Texas along the Gulf Coast; in Puerto Rico and the Virgin Islands; and in Michigan, Minnesota, Ohio, and Wisconsin, on the Great Lakes.

**B Lead Agency for Resource**

The Department of the Interior is the lead agency for coastal barriers. Activities conducted within CBRS require consultation with USFWS.

44 Coastal Barriers (Continued)

C FSA Policy and Objectives

Actions or Activities Prohibited Using Federal Funds	Actions or Activities Allowed Using Federal Funds
Construction or purchase of any road, airport, boat landing facility, or other facility on, or bridge causeway to, any CBRS unit.	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 system or network.
Construction or purchase of any structure, appurtenance, facility, or related infrastructure.	Certain facilities necessary for the exploration, extraction, and transportation of energy resources. Military activities essential to national security. Construction, operation, maintenance, rehabilitation, and access to Coast Guard facilities.
Any activity to prevent the erosion of, or to otherwise stabilize, any inlet, shoreline, or inshore area, except that such assistance and expenditures may be made available on units in cases where an emergency threatens life, land, and property immediately adjacent to that unit.	Activities provided they are consistent with the purposes of the Coastal Barrier Improvement Act. Maintenance or construction of improvements of existing Federal navigation channels and related structures, including the disposal of dredge materials.
Flood control activities, Federal flood insurance for new or substantially improved structures, disaster relief funding, or community block grants.	Activities provided they are consistent with the purposes of the Coastal Barrier Improvement Act.

D Review Process

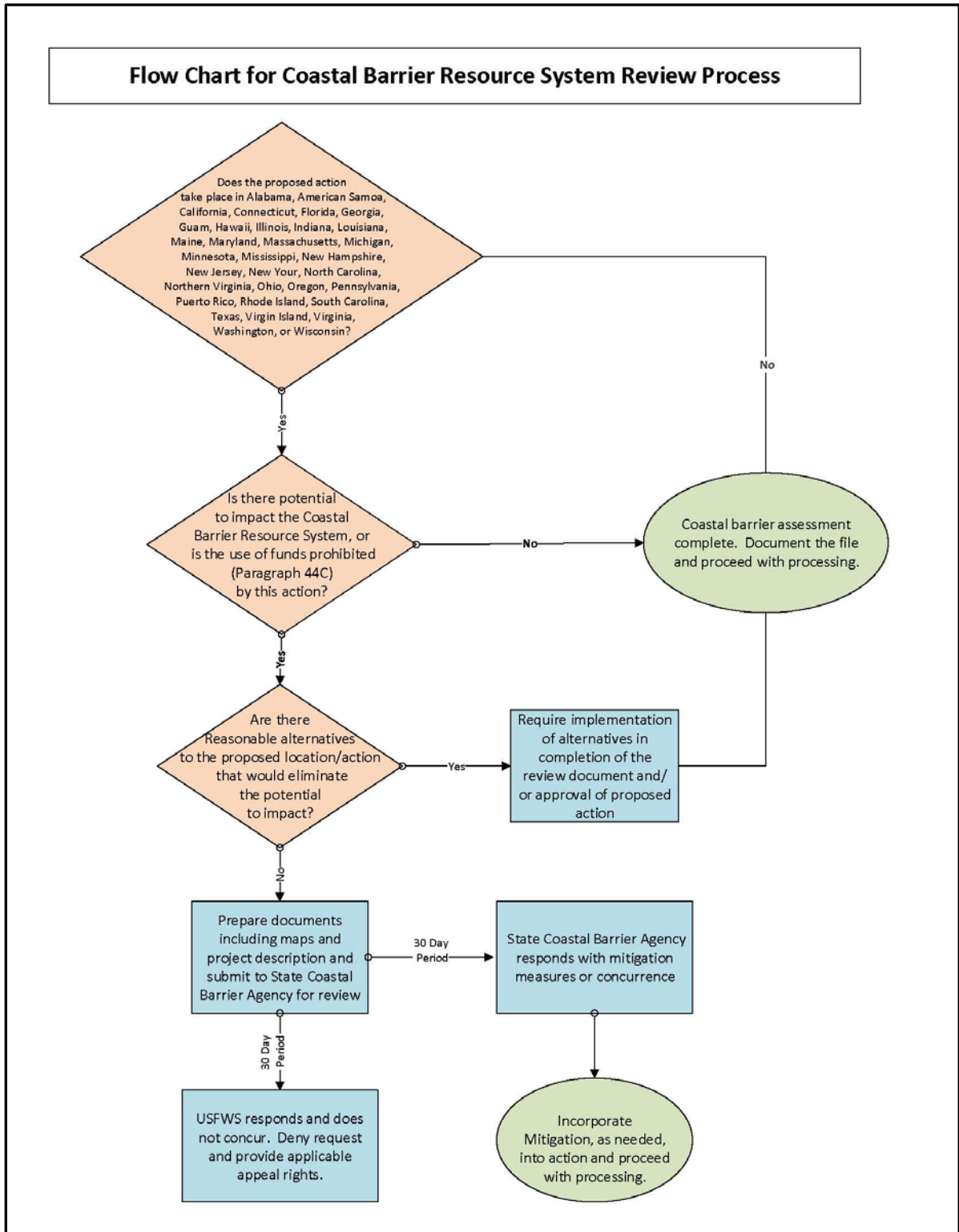
All of the following must be reviewed to determine if the activity is located within the CBRS:

- applications for financial assistance or program payments, not benefits
- proposed direct FSA fund expenditures for construction or maintenance purposes
- proposed disposal of real estate, including inventory property, that includes any form of FSA financial assistance or subsidy to the purchaser.

44 Coastal Barriers (Continued)

D Review Process (Continued)

The following provides an overview of the coastal barrier resource system review process.



## 44 Coastal Barriers (Continued)

**E Possible Data Sources**

This table provides web data sources.

<b>Data</b>	<b>Web Location</b>
List of All CBRS Communities by State	Go to <a href="http://www.fema.gov">www.fema.gov</a> . Using the search tool, input “CBRA” in the box and CLICK search “Barrier Resource System”, and click applicable State.
List of CBRS Map Units by State	Go to <a href="http://www.USFWS.gov">www.USFWS.gov</a> . Using the search tool input “ <b>Coastal Barriers Resource System</b> ”. Click on the “ <b>John H. Chaffe Coastal Barrier Resource System (CBRS)</b> ” link in the middle of the first paragraph. A new window will open. Scroll down to “ <b>Type of CBRS Units</b> ”. Click on “ <b>Coastal Barriers System Map Units</b> ”. A new window will open with a spreadsheet that can be sorted by state & county.”
CBRS Maps Available for Download	Go to <a href="http://www.FWS.gov">www.FWS.gov</a> . Using the search tool input “ <b>Coastal Barriers Resource System</b> ”. Click on the “ <b>CBRA MAPPER</b> ” link at the top of the page.
Forms for Purchasing Paper Copies of CBRS Map Units From USGS	Go to <a href="http://www.usgs.gov">www.usgs.gov</a> and CLICK “ <b>Maps, Imagery, and Publications</b> ”.  <b>Note:</b> USFWS field office can provide assistance in determining if the proposed activity is located within CBRS and will have paper maps on hand for review.

**F Associated Permits**

There are no permits specific for coastal barriers.

**G Consultation**

If a proposed activity is located within CBRS, consultation with USFWS **must** occur **before** implementing the activity. The consultation will determine if the activity is eligible for Federal funding.

**H Acceptable Types of Documentation**

A completed FSA-850 or EA serves as documentation for a coastal barrier assessment. If the proposed activity will occur within CBRS, a formal letter of consultation from USFWS must accompany the environmental review document. A map depicting the location of the proposed activity would serve as documentation that coastal barriers would not be affected.

**45 CZMA Areas****A Resource**

CZMA:

- encourages States and territories to preserve, protect, develop, and, where possible, restore or enhance valuable natural coastal resources, such as wetlands, floodplains, estuaries, beaches, dunes, barrier islands, and coral reefs, as well as the fish and wildlife supported by those habitats
- provides a procedure for States to review Federal actions for consistency with their own approved coastal zone management program.

Although Federal lands and actions are exempt from State law jurisdiction, CZMA requires Federal activities that are reasonably likely to affect using lands, waters, or natural resources of the coastal zone to be consistent to the maximum extent practicable with the enforceable policies of the States coastal zone management plan. All Federal activities inside the coastal zone are automatically subject to consistency review and require consultation for a consistency determination.

**B Lead Agency for Resource**

NOAA, Office of Ocean and Coastal Resource Management provides national leadership, strategic direction, and guidance to State and territory coastal programs and estuarine research reserves. The State's coastal zone management program office would review FSA actions for consistency with the State's enforceable policies. State coastal zone management programs are usually held in the natural resources or EQ departments (see subparagraph E).

**C FSA Policy and Objectives**

FSA must be consistent with Federal and State coastal zone management programs. The key to effective and efficient consistency actions is early coordination and regular consultation between State coastal zone management agencies, Federal agencies, and applicants.

CZMA sets out the following 4 basic objectives:

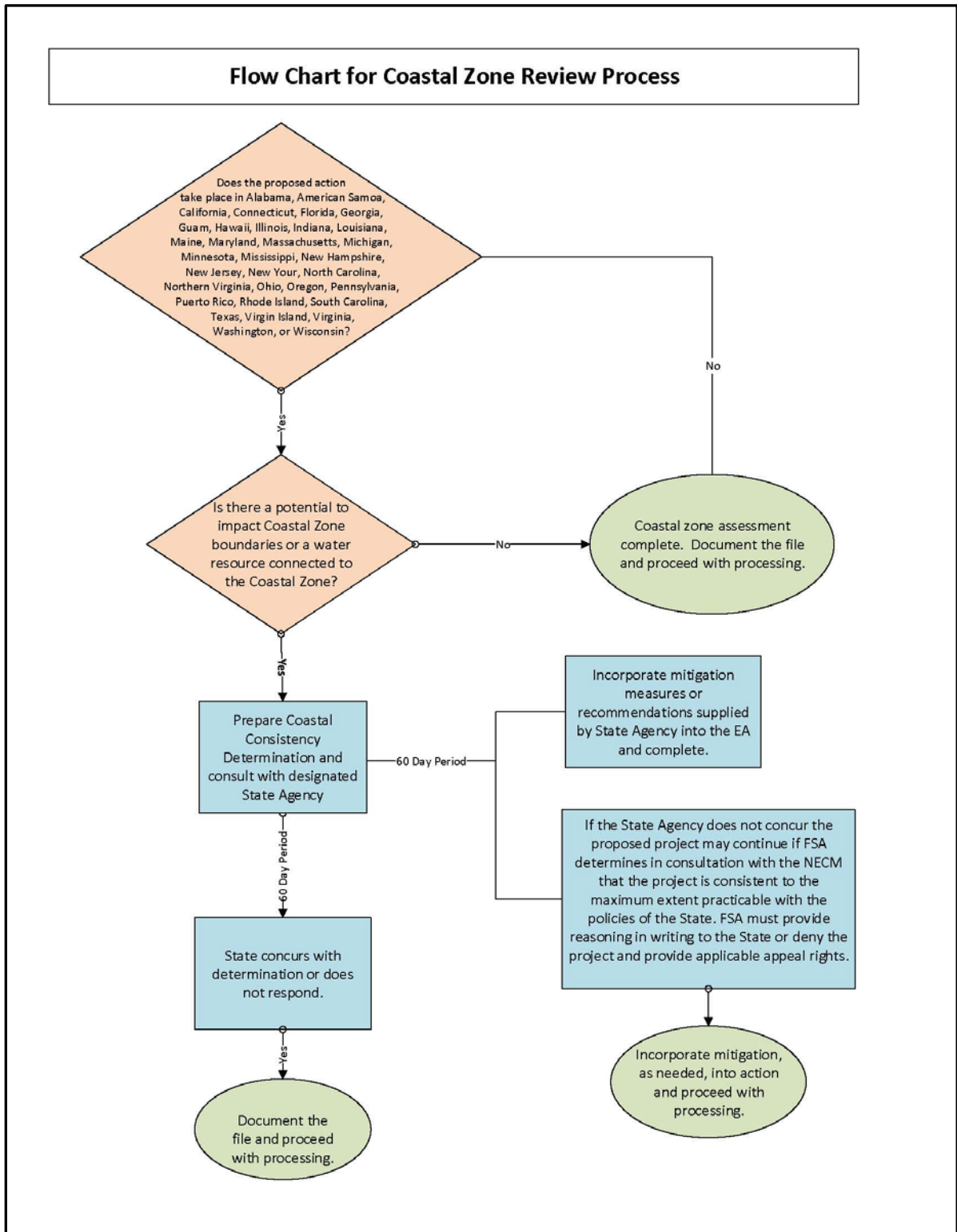
- preserve, protect, develop, and where possible, restore or enhance the resources of the nation's coastal zone
- encourage and assist the States and territories to develop and implement coastal zone management programs meeting specified national standards
- provide for increased specificity in protecting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



45 CZMA Areas (Continued)

D Review Process

The following provides an overview of the coastal zone review process.



45 CZMA Areas (Continued)

**D Review Process (Continued)**

Proposed Federal activities within the following States and territories may be subject to a coastal consistency review.

<b>States and Territories</b>		
Alabama	Louisiana	Ohio
Alaska	Maine	Oregon
American Samoa	Maryland	Pennsylvania
California	Massachusetts	Puerto Rico
Connecticut	Michigan	Rhode Island
Delaware	Minnesota	South Carolina
Florida	Mississippi	Texas
Georgia	New Hampshire	Virgin Islands
Guam	New Jersey	Virginia
Hawaii	New York	Washington
Illinois	North Carolina	Wisconsin
Indiana	Northern Marianas	

NOAA’s web site provides the coastal zone boundary for each State, see subparagraph E. If the proposed project is located within the coastal zone boundary or could potentially affect a water resource connected to the coastal zone, a consistency determination must be prepared and submitted to the lead agency. A consistency determination must include:

- a detailed activity description of the proposed project
- the expected coastal effects
- an evaluation of the proposed action in light of the enforceable policies in the State’s coastal management plan.

The State has 60 calendar days to concur with or object to the consistency determination. State concurrence is presumed if the State does not meet the timeframes. Note: Federal consistency reviews/certifications are valid for the life of the project as long as the footprint or activity does not change.

<b>IF the State...</b>	<b>THEN...</b>
agrees with the consistency determination	the activity may proceed.
objects to the consistency determination	FSA should obtain mitigation measures or recommendations for changing the activity in order to proceed. FSA may proceed with the activity, regardless of the State’s objection, if it provides legal authority as to why it must proceed or clearly describes, in writing to the State, how the activity is consistent to the maximum extent practicable with the enforceable policies.

45 CZMA Areas (Continued)

**E Possible Data Sources**

This table provides web data sources.

<b>Data</b>	<b>Web Location</b>
General Information on the National Coastal Program and Guidance on Federal Consistency	Go to <b>coastalmanagement.noaa.gov</b> , and from links on left, CLICK “Federal Consistency”.
State Coastal Zone Boundaries  <b>Note:</b> There are 35 State and territory coastal zone management programs, including the Great Lakes States.	Go to <b>coastalmanagement.noaa.gov</b> , and from links on left, CLICK “Federal Consistency”. On right, CLICK “State Coastal Zone Boundaries”.
Coastal Program Office and Federal Consistency Points Of Contact For Each State With a Coastal Program	Go to <b>coastalmanagement.noaa.gov</b> , and from links on left, CLICK “Federal Consistency”. On right, CLICK “State Federal Consistency Contacts”.

**F Associated Permits**

There are no permits specific for CZMA.

**G Consultation**

The Federal consistency process is considered consultation for the coastal zone.

**H Acceptable Types of Documentation**

Completed FSA 850 or EA is adequate; however if a potential impact exists, an official letter or form from the State’s coastal zone management program office accepting the coastal consistency determination must be attached.

**46 Wilderness Areas****A Resource**

The Wilderness Act established the National Wilderness Preservation System. Wilderness, as defined by The Wilderness Act, is the following:

- lands designated for preservation and protection in their natural condition
- an area where the earth and its community of life are untrammelled by man
- an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvement or human habitation
- generally appears to have been effected primarily by the forces of nature, with the imprint of man's work substantially unnoticed
- has outstanding opportunities for solitude or a primitive and unconfined type of recreation
- shall be devoted to the public purposes of recreation, scenic, scientific, educational, conservation, and historic use.

**B Lead Agency for Resource**

There is no single lead agency for wilderness areas. Wilderness areas are managed by four different agencies:

- National Park Service
- Bureau of Land Management
- US Fish and Wildlife Services
- US Forest Service.

**C FSA Policy and Objectives**

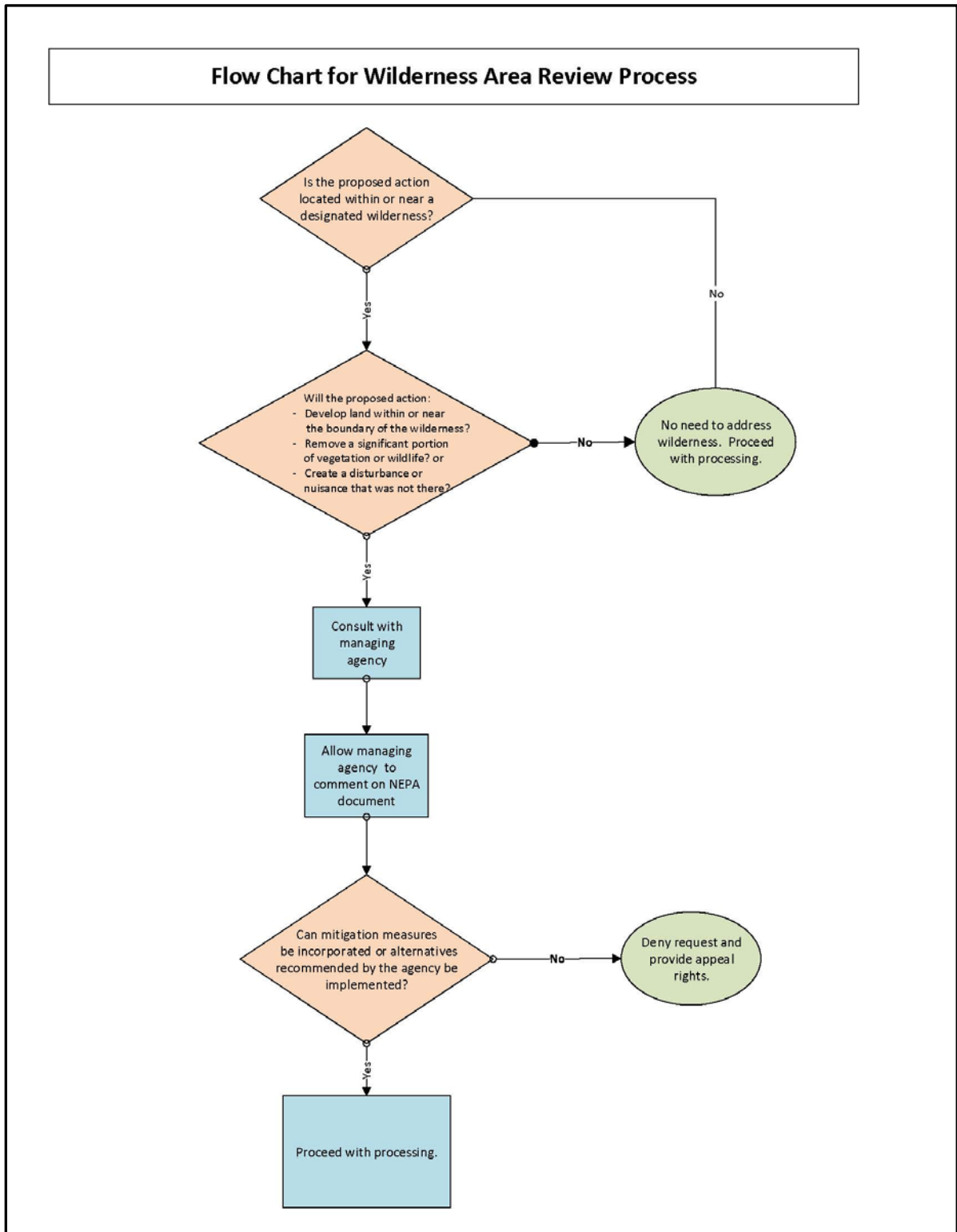
FSA shall consider the impact of proposed actions on any designated wilderness or wilderness study areas to do the following:

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

46 Wilderness Areas (Continued)

D Review Process

The following provides an overview of the wilderness area review process.



46 Wilderness Areas (Continued)

**D Review Process (Continued)**

Potential impacts to a wilderness area would only occur if the action is within or very near to the wilderness area. Potential impacts could include impacts that would alter the characteristics of the wilderness defined by The Wilderness Act, such as:

- developing the land within or very close to the boundaries of the wilderness
- removing significant portions of vegetation or wildlife
- creating a disturbance or nuisance that was not there before, such as noise, odor, aesthetics, or unsightly facilities and manmade structures.

**E Possible Data Sources**

This table provides web data sources.

Data	Web Location
Interactive Map of U.S. Wilderness Areas	Go to <b><a href="http://www.wilderness.net/map">http://www.wilderness.net/map</a></b> . Enter site address then zoom out to find proximity of proposed site to the nearest wilderness area
State, Regional, or other wilderness information	Go to <b><a href="http://www.wilderness.net">www.wilderness.net</a></b> .

**F Associated Permits**

There are no permits specific for wilderness areas.

**G Consultation**

The agency that manages a designated wilderness area within a mile of a proposed action is to be consulted and allowed the opportunity to comment on NEPA document. Any mitigation measures or alternatives recommended should be included in NEPA document as well as any correspondence from the wilderness area managing agency.

**H Acceptable Types of Documentation**

A completed FSA-850 or EA serves as documentation for addressing impacts to wilderness areas. When the proposed activity will take place within one mile of a wilderness area, a formal letter of consultation and related response should be attached along with a map depicting the location of the proposed activity on order to document that wilderness areas would **not** be effected by the proposed project.

**47 Wild and Scenic Rivers/Nationwide Rivers Inventory****A Resource**

The Wild and Scenic Rivers Act:

- provides for the protection of the free-flowing, scenic, and natural values of rivers designated as components or potential components of the National Wild and Scenic Rivers System from the effects of construction of any water resources project
- establishes a National Wild and Scenic Rivers System comprised of rivers designated as wild, scenic, or recreational by the legislatures of the States through which they flow
- designates rivers, including tributaries, creeks, and small lakes, with adjacent land that possess outstanding scenic, recreational, and wildlife values to be preserved in free-flowing condition.

Nationwide Rivers Inventory (NRI)

- In accordance with a 1979 executive directive, all agencies must “take care to avoid or mitigate adverse effects” to rivers identified in the Nationwide Rivers Inventory.

**B Lead Agency for Resource**

The Wild and Scenic Rivers Act (WSRA) charges administration of rivers in the National Wild and Scenic Rivers System (National System) to four federal management agencies:

- National Park Service (NPS)
- Bureau of Land Management (BLM)
- U.S. Fish and Wildlife Service (USFWS)
- U.S. Forest Service (USFS).

These agencies along with U.S. Army Corps of Engineers (USACE) maintain the compiled list for the other Federal and State agencies.

Nationwide Rivers Inventory is managed by The National Park Service (NPS) and made available to assist other federal agencies in carrying out reviews; however, it is the role of the federal permitting agency (not the National Park Service) to ensure that effects to rivers listed in the NRI are avoided or mitigated.

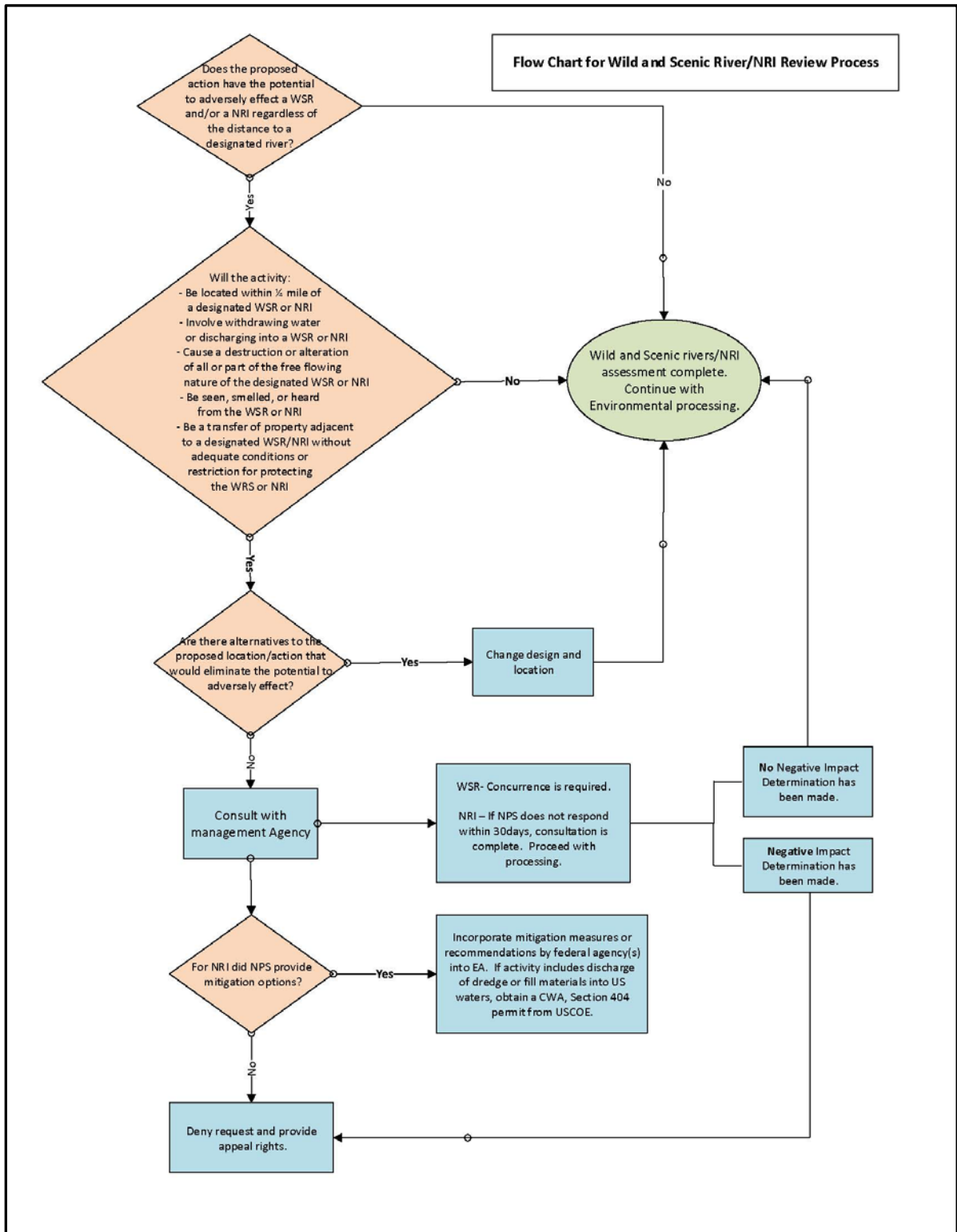
**C FSA Policy and Objectives**

FSA will not approve actions or activities that would have a significant adverse effect on Wild and Scenic Rivers or rivers listed in the Nationwide Rivers Inventory. FSA will protect the free-flowing condition and nature of congressionally designated and authorized said rivers.

47 Wild and Scenic Rivers/Nationwide Rivers Inventory (Continued)

D Review Process

The following provides an overview of the wild and scenic rivers/NRI review process.





47 Wild and Scenic Rivers/Nationwide Rivers Inventory (Continued)

**D Review Process (Continued)**

Review the proposed action for proximity to a river corridor included in the:

- National Wild and Scenic Rivers System (NWSRS), and
- rivers listed in the NRI. Rivers that are under study for potential addition to NWSRS are included in the NRI.

36 CFR 297 defines a “river corridor” as a river and the adjacent area within the boundaries of a designated river, or a river and the adjacent area within one-quarter mile of the banks of a congressionally authorized study river (one-half mile for designated/study rivers authorized under the Alaska National Interest Lands Conservation Act).

**E Possible Data Sources**

This table provides a web data source.

Data	Web Location
Designated Wild and Scenic Rivers	<a href="http://www.rivers.gov">www.rivers.gov</a>
Nationwide Rivers Inventory	<a href="http://www.nps.gov/ncrc/programs/rtca/nri/index.html">http://www.nps.gov/ncrc/programs/rtca/nri/index.html</a>

**F Associated Permits**

There are no permits specific to wild and scenic rivers or rivers listed in the NRI; however, discharge of dredge or fill materials into U.S. waters would require a CWA, Section 404 permit.

**G Consultation**

Consultation with the management agency should occur if any of the following statements apply to the proposed action. The proposed action may cause an adverse effect to designated WSR or NRI because it does any of the following:

- is located within 1/4 mile from the banks of the WSR or NRI, or 1/2 mile for Alaska
- involves withdrawing water from or discharging water into the designated river
- is visible from the WSR or NRI
- produces noxious odor noticeable from the WSR or NRI
- produces objectionable noise which can be heard on the WSR or NRI

## 47 Wild and Scenic Rivers/Nationwide Rivers Inventory (Continued)

**G Consultation (Continued)**

- alters the free flowing nature of the WSR or NRI
- it involves a transfer of property adjacent to a WRS or NRI and the deed does not have adequate conditions or restriction for protecting the designated river.

If the project is within a river corridor of a designated WSR or NRI, and has the potential to adversely effect the WSR or NRI, the FSA official will initiate consultation with the management agency. See Exhibit 9 for an example consultation letter.

For WSR the management agency may be the:

- National Park Service (NPS)
- Bureau of Land Management (BLM)
- U.S. Fish and Wildlife Service (USFWS)
- U.S. Forest Service (FS).

Where a state agency is the management agency, NPS serves as the liaison therefore the consultation will be sent to the regional NPS.

The management agency will be identified on the website listed above. Print this out and attached it to the FSA-850 or EA.

A response to the consultation is required from the management agency for WSRs. If you do not receive a response within 30 days of the delivery of the consultation letter, **do not** assume the management agency is in agreement with the FSA determination. Follow-up with the agency until a response of concurrence or non- concurrence has been received.

For NRI the management agency is the NPS. Send the consultation to the regional NPS office. The contact information for the designated NRI will be identified on the website listed above. Print this out and attached it to the FSA-850 or EA.

- If you do not hear from NPS within 30 days, FSA may assume NPS is in agreement and has no further interest in this matter.
- Recommended mitigation measures or changes to the proposed action should be included in the proposed action before implementation.

**H Acceptable Types of Documentation**

Attach a printout from the WSR and NRI websites listed above to the completed FSA-850 or EA, this serves as documentation for wild and scenic rivers and NRI assessment.

**48 National Natural Landmarks**

**A Resource**

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 one 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. There are fewer than 600 sites within the U.S. Some States have protected natural landmarks not listed on the national natural landmarks list. The sites should also be considered in environmental review.

**B Lead Agency for Resource**

NPS is responsible for managing and protecting national natural landmarks.

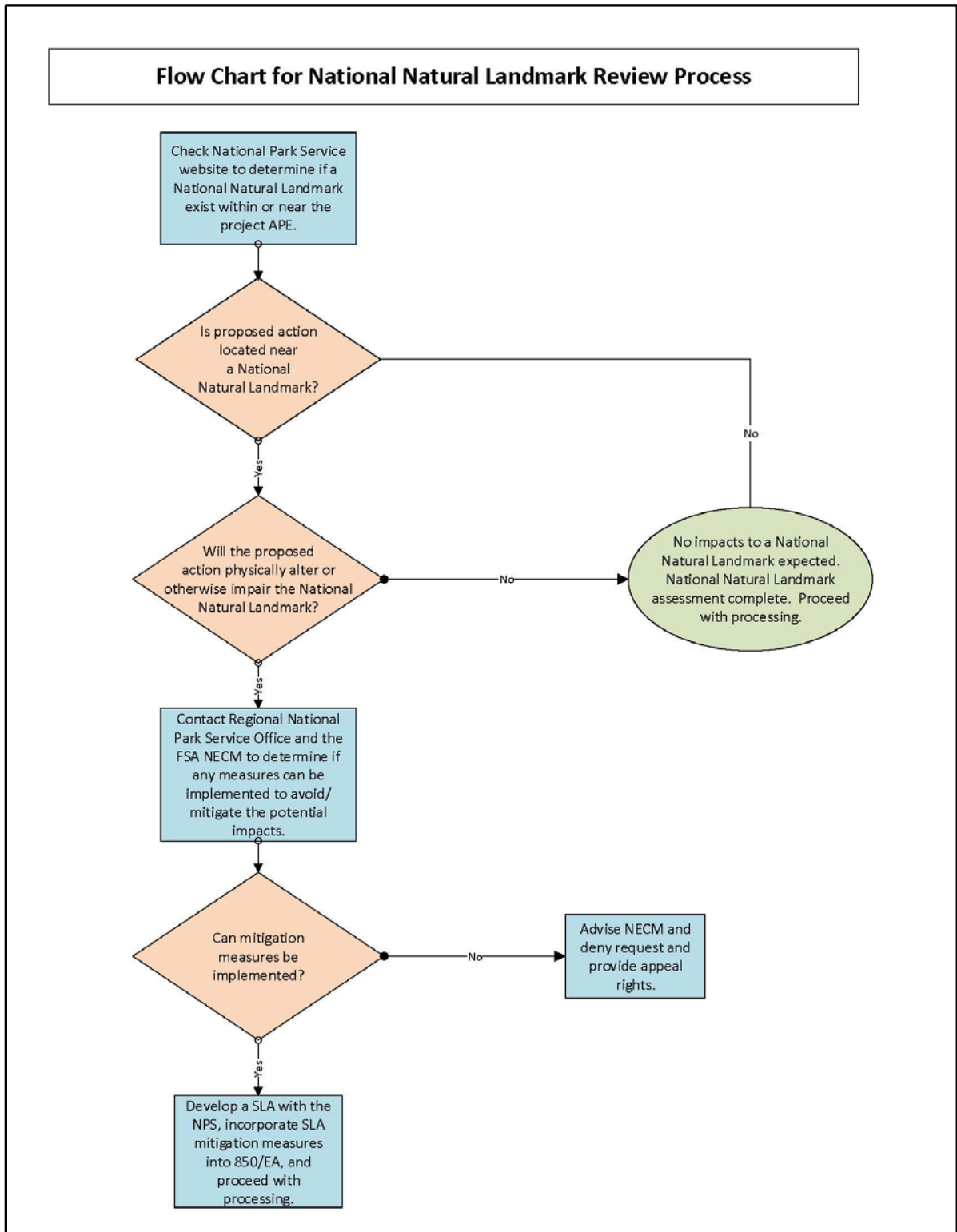
**C FSA Policy and Objectives**

FSA strives to ensure that national natural landmarks are not negatively impacted by agency activities.

48 National Natural Landmarks (Continued)

D Review Process

The following provides an overview of the national natural landmark review process.



**48 National Natural Landmarks (Continued)**

**D Review Process (Continued)**

RAO should verify if a national natural landmark is located in the vicinity of the proposed action. If a national natural landmark is nearby and can potentially be impacted by the proposed action, consultation with NPS should occur to determine if implementation of the proposed action would adversely effect the protected resource. Potential effects would include physical destruction or alteration of the property as well as impairing overall public enjoyment of the site; that is, reduced visibility, permanently increasing noise or odors, or restricting access.

**E Possible Data Sources**

This table provides a web data source.

<b>Data</b>	<b>Web Location</b>
List of All Designated National Natural Landmarks by State	Go to <a href="http://www.nature.nps.gov/nnl/nation.cfm">http://www.nature.nps.gov/nnl/nation.cfm</a> . Scroll down, select a State and click “go”, Landmarks Guide (by state)”, and click the applicable State.

**F Associated Permits**

There are no permits specific for national natural landmarks.

**G Consultation**

If a proposed action has the potential to effect a national natural landmark, consultation with the regional NPS office must occur and SEC should contact FSA’s NECM for assistance.

**H Acceptable Types of Documentation**

Completed FSA-850 or EA with a map of national natural landmarks in the state attached serves as documentation for addressing potential impacts to national natural landmarks.

**49 Sole Source Aquifers**

**A Resource**

The Safe Drinking Water Act is the main Federal law that ensures the quality of drinking water. EPA designates as “sole source” or principal aquifers as any aquifer that supplies at least 50 percent of the drinking water consumed in an area overlying the aquifer. These areas may have no alternative drinking water supply source(s) that could physically, legally and economically supply all those who depend on the aquifer for drinking water. Under the Safe Drinking Water Act, EPA sets standards for drinking water quality and oversees the States, localities, and water suppliers who implement those standards.

**B Lead Agency for Resource**

EPA is the lead agency for ensuring the water quality and protection of sole source aquifers.

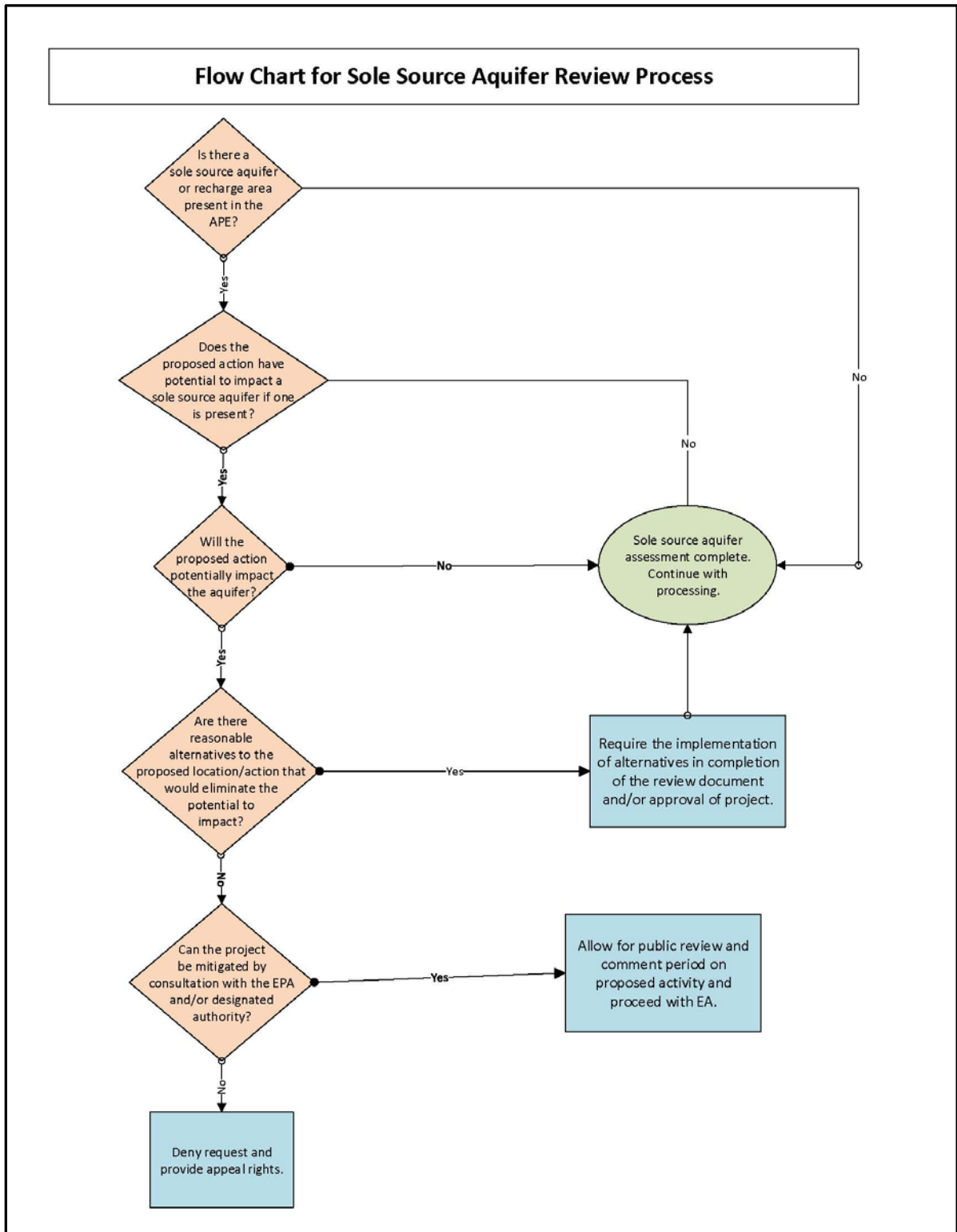
**C FSA Policy and Objectives**

FSA will not approve actions or activities that could significantly affect sole source aquifers.

49 Sole Source Aquifers (Continued)

D Review Process

The following provides an overview of the sole source aquifer review process.



**49 Sole Source Aquifers (Continued)****D Review Process (Continued)**

All proposed actions should be reviewed for the potential to contaminate sole source aquifers or other drinking water sources. Aquifer recharge areas are those surface expressions where the bulk of precipitation or surface water replenishes the aquifer and occurs by the following:

- precipitation on the land
- seepage from streams
- subsurface flow from the till and bedrock along the sides and bottoms of the valleys.

Contamination of sole source aquifers can occur through storm water runoff and leaching of animal waste, pesticides, and fertilizers. Other sources of contamination may include spills from storage or transportation of agricultural chemicals and onsite septic systems.

Activity implementation should include BMP's for protecting the aquifer to include but is not limited to proper:

- operation, maintenance, and storage of equipment
- chemical use, handling, and storage
- waste storage and handling
- protection of ground water runoff from contamination sources.

The NEPA document should identify any sole source aquifer present in the activity area and determine whether it may be affected by the proposed activity. If a proposed action may affect a sole source aquifer, the regional EPA office should be allowed the opportunity to review the activity. When possible, practicable alternatives to the proposed action should be developed. Possible mitigation measures to offset the contamination of a sole source aquifer would vary depending on the proposed action, but could include constructing functional wetlands or vegetated buffer strips along shorelines to act as a natural filter.



**49 Sole Source Aquifers (Continued)**

**E Possible Data Sources**

This table provides a web data source.

<b>Data</b>	<b>Web Location</b>
EPA’s List of Sole Source Aquifers by Region	Go to <a href="http://www.epa.gov">www.epa.gov</a> and using the search tool search for “Sole Source Aquifer Protection Program by Region.”

**F Associated Permits**

There are no permits associated with sole source aquifers.

**G Consultation**

EPA must review NEPA documentation related to proposed actions that may affect a sole source aquifer.

**H Acceptable Types of Documentation**

A completed FSA-850 letters of finding from EPA or EA serves as documentation for review of sole source aquifers.

**50 Floodplains****A Resource**

Floodplains are low lying and relatively flat areas adjoining inland and coastal waters subject to inundation by flood waters.

The 100-year flood consists of areas having a 1 percent chance of a flood occurring in any given year. Executive Order 11988 of May 24, 1977, requires Federal agencies to evaluate the potential effects of actions in a floodplain, consider alternatives, and develop plans to reduce flood hazards related to the 100 year flood plain.

Executive Order 13690 of January 30, 2015 is part of a new national policy to improve climate resiliency. It requires federal agencies update flood-risk reduction strategies and expand flood elevation and hazard areas used for deciding where and how new development, redevelopment, and construction should occur.

FSA will continue to use practices established for implementation of EO 11998 to identify and protect flood plains. At this time, EO 13690 will not be implemented by FSA for the following reasons:

- need for consistency with the implementation plans of other Agencies with whom FSA and producers have relationships
- because of the limited scope and scale of FSA investments and low loss rates
- there are existing FSA safeguards and provision for emergency and disaster assistance
- the inherent need for agricultural operations and their requisite infrastructure to be co-located within fertile soils of flood plains where production takes place
- Ag structures experience a high and rapid rate of functional obsolescence
- corresponding de minimus impacts associated with risk of flood losses for FSA funded projects.

**50 Floodplains (Continued)**

**B Lead Agency for Resource**

Under FEMA guidance, local governments participating in National Flood Insurance Program are required to review proposed development activities if they are in identified floodplains.

FEMA can also provide guidance related to building or construction practices for flood proofing and flood risk mitigation.

**C FSA Policy and Objectives**

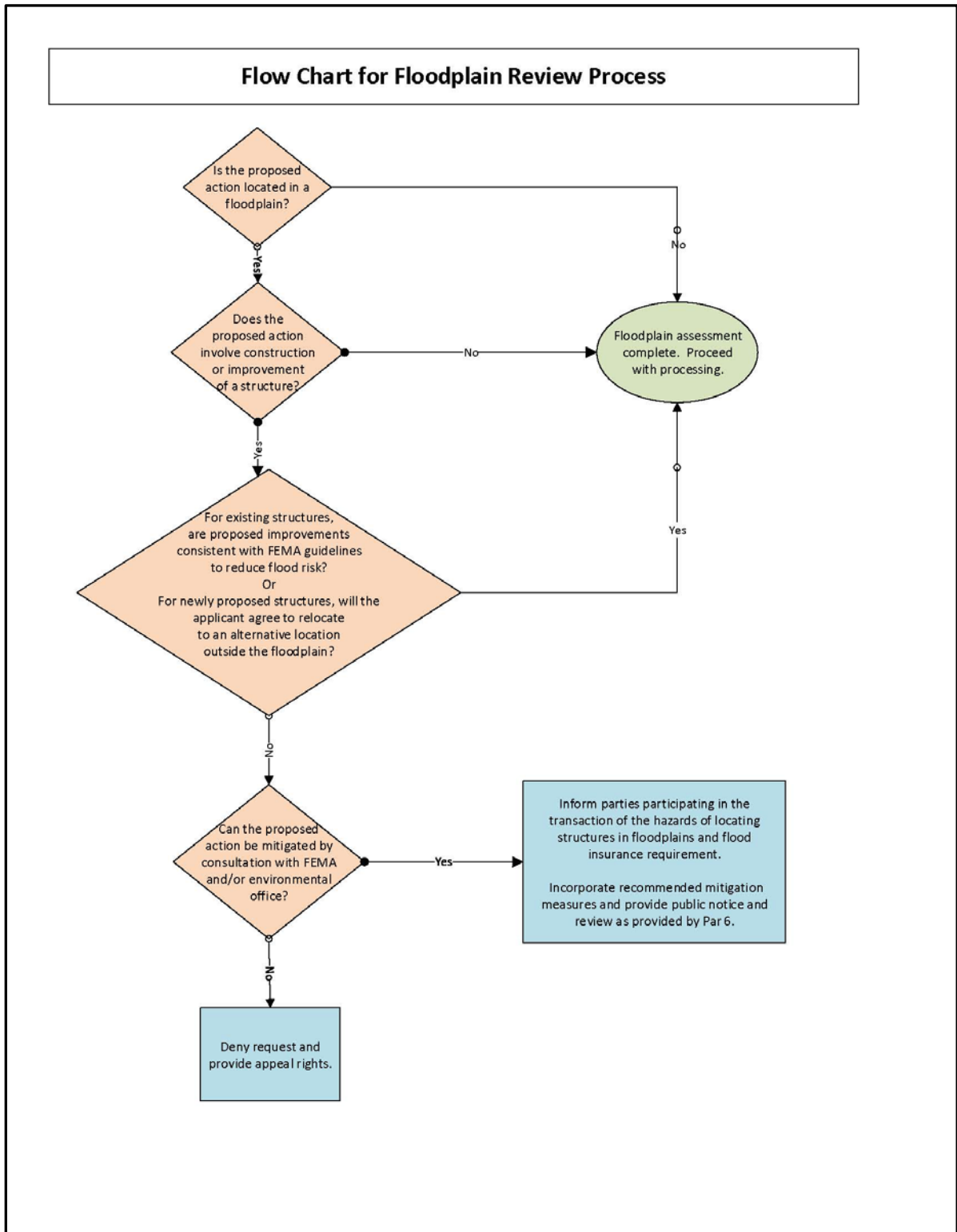
FSA will not approve actions or activities that could significantly affect floodplains, and when practical will encourage development outside of flood prone areas and the use of flood resiliency design features.

As provided by [7 CFR 764.108(b)] Real estate security located in flood or mudslide prone areas must be covered by flood or mudslide insurance. The Agency must be listed as a beneficiary of the mortgagee loss payable clause. Note: The contents of a building must be insured separately from the building itself.

50 Floodplains (Continued)

D Review Process

The following provides an overview of the floodplain review process.



## 50 Floodplains (Continued)

**D Review Process (Continued)**

Effects of an action on a floodplain would likely include the flood risk and loss from building structures, such as dams, dikes, or bridges, on the floodplain. Construction in a floodplain could result in:

- increasing the size and frequency of floods
- decrease ability of floodplain to disperse stream energy during floods
- decrease aquifer recharge
- reduce vegetative cover and habitat.

An indirect effect might be created if a structure is built adjacent to a floodplain and the need for further development is generated as a result of that structure. In addition, FSA must evaluate the risk potential for any activity in a 500-year floodplain in which even a slight chance of flooding would occur (critical action).

To review potential effects to a floodplain, the following process should be followed:

- consult FEMA's current flood insurance rate map
  - Note:** If the current flood insurance rate map for the area does not exist, or if more specific information is needed, contact the FEMA regional office or the appropriate State agency established for flood prevention purposes.
- if proposed action is determined to be in a floodplain, review proposed activity for alternative locations and/or design, such as elevating structures above the base flood level
- **if there are adverse effects to floodplains that cannot be avoided, special public notice provisions apply as provided by subparagraph 6 F**
- if the activity requires development in a floodplain, a floodplain development permit is required
- if the activity requires development in a floodplain, FSA will inform any private parties participating in the transaction of the hazards of locating structures in floodplains.

**50 Floodplains (Continued)****E Possible Data Sources**

This table provides web data sources.

<b>Data</b>	<b>Web Location</b>
FEMA Floodplain Maps	Go to <a href="http://msc.fema.gov/portal">http://msc.fema.gov/portal</a> . Enter address and CLICK "Search".
Understanding Flood Maps and Flood Risks	Go to <a href="https://www.floodsmart.gov/floodsmart/pages/flooding_flood_risks/understanding_flood_maps.jsp">https://www.floodsmart.gov/floodsmart/pages/flooding_flood_risks/understanding_flood_maps.jsp</a>
FEMA Tutorials	Go to <a href="https://www.fema.gov/online-tutorials">https://www.fema.gov/online-tutorials</a>
FEMA Specific Requirements for	Go to <a href="https://www.fema.gov/national-environmental-policy-act-environmental-review-process">https://www.fema.gov/national-environmental-policy-act-environmental-review-process</a>
FEMA Flood Hazard Mapping	Go to <a href="http://www.fema.gov/flood-hazard-mapping-frequently-asked-questions">http://www.fema.gov/flood-hazard-mapping-frequently-asked-questions</a>
Permit Information for Development Within a Floodplain	Go to <a href="http://www.fema.gov/permit-floodplain-development">http://www.fema.gov/permit-floodplain-development</a>

**F Associated Permits**

A floodplain development permit through the local floodplain management or environmental office is required for construction in a floodplain.

**G Consultation**

The review of the proposed activity by the local environmental permitting office serves as consultation for floodplain resources.

**H Acceptable Types of Documentation**

A completed FSA-850 or EA serves as documentation for floodplain impact resource discussion. Documentation should reference any existing or required permits and correspondence with other agencies.

## 51 Wetlands

### A Resource

Wetlands are areas that are inundated or 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. The Clean Water Act (CWA) established procedures for protecting wetlands, compensation for unavoidable impacts and for the regulation of the discharge of dredged or fill material into wetlands.

Executive Order 11990 for the protection of wetlands, requires FSA provide leadership and take action to minimize the destruction, loss, or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands.

The Food and Security Act of 1985 contains provisions to discourage the conversion of wetlands into cropland. Producers who convert or modify wetlands to make possible the production of an agricultural commodity by the annual tilling of the soil, including one-trip planters or sugarcane are not eligible for FP benefits and are limited in their use of FLP loan funds.

Consolidated Farm and Rural Development Act (CONACT), Section 363, prohibits FSA from approving actions contributing to draining, dredging, filling, leveling, or otherwise manipulating a wetland or an activity that results in impairing or reducing the flow, circulation, or reach of water, **except** in the case of activities for the maintenance of previously converted wetlands, or in the case when such activity was commenced before November 28, 1990.

**Note:** In general, manipulation constitutes an action that causes degradation of wetland characteristics and a related net loss or elimination of functional wetland values for the purpose of making possible the production of an agricultural commodity by annual tilling of the soil.

### B Lead Agency for Resource

The EPA is the lead agency and sets the standards for water pollution abatement for all U.S. waters under the programs contained in CWA. EPA issue policies and guidelines related to wetlands which are implemented with the assistance of:

USACE issues permits for approved wetland activities and makes related wetland delineation determinations for wetlands which have a direct or indirect nexus to the “Waters of the United States.”

Qualified States further regulate wetlands and have related permitting and enforcement authority.

**51 Wetlands (Continued)****B Lead Agency for Resource (Continued)**

NRCS has wetland jurisdictional authority for activities limited to the production of an agricultural commodity defined by the Food and Security Act as any crop planted and produced by annual-tilling of the soil, including tilling by one trip planters, or sugarcane and provided by the CONACT for related drainage maintenance.

NRCS is responsible for enforcement; therefore, absent evidence of NRCS having cited a violation, crop land for which NRCS has jurisdiction **and** which has historically been in production will be assumed not to be adversely impacted by annual operating loans for crop production and to be in compliance.

**C FSA Policy and Objectives**

FSA will not approve actions or activities for the conversion or degradation of wetlands or which serve to reduce the flow, circulation, or reach of water or violate the CWA, Executive Order 11990, CONACT Section 363(7 U.S.C. 2006(e)) or Food and Security Act of 1995.

The Food Security Act of 1985 contains provisions to discourage the conversion of wetlands into cropland. Producers who convert or modify wetlands to make possible the production of an agricultural commodity by the annual tilling of the soil, including one-trip planters or sugarcane are not eligible for FP benefits and are limited in their use of FLP loan funds.

Consolidated Farm and Rural Development Act (CONACT), Section 363, prohibits FSA from approving actions contributing to draining, dredging, filling, leveling, or otherwise manipulating a wetland or an activity that results in impairing or reducing the flow, circulation, or reach of water, **except** in the case of activities for the maintenance of previously converted wetlands, or in the case when such activity was commenced before November 28, 1990.

**Note:** In general, manipulation constitutes an action that causes significant degradation of wetland characteristics and a related net loss or elimination of functional wetland values.



## 51 Wetlands (Continued)

## C FSA Policy and Objectives (Continued)

FSA must ensure that a reasonable range of alternatives and sufficient analysis of potential activities which have the potential to adversely affect wetlands include but are impacts to wetlands is contained in the environmental review. In general not limited to following:

- soil disturbance, leveling, grading, soil disposal, filling, side casting
- construction activities or disposal of related materials
- excavation, clearing of vegetation, trees or stumps
- changing, diverting, restricting flow of water
- modifying amount or quality of water flow because of adjacent landscape modifications
- placement of structures, such as culverts, storm drain outfalls, bridges, and buildings
- point and nonpoint discharges from livestock or storm water
- some irrigation systems and related installation.

## D Review Process

The review for wetland presence begins with collection and review of available data. FSA Common Land Unit Map is effective for identifying the APE and which tracts have been evaluated by NRCS. It is important to recognize that related labels found on the Producer Data Record Map have been recorded according to conventions in 6-CP, Part 4 to provide data at the tract level for purposes having a direct impact upon producer eligibility for Farm Programs and related benefits; however the most complete source of information will be in the Farm Records paper files which house the actual NRCS-CPA-026 for each field within the various tracts.

When the APE is found to contain a **converted wetland** do the following.

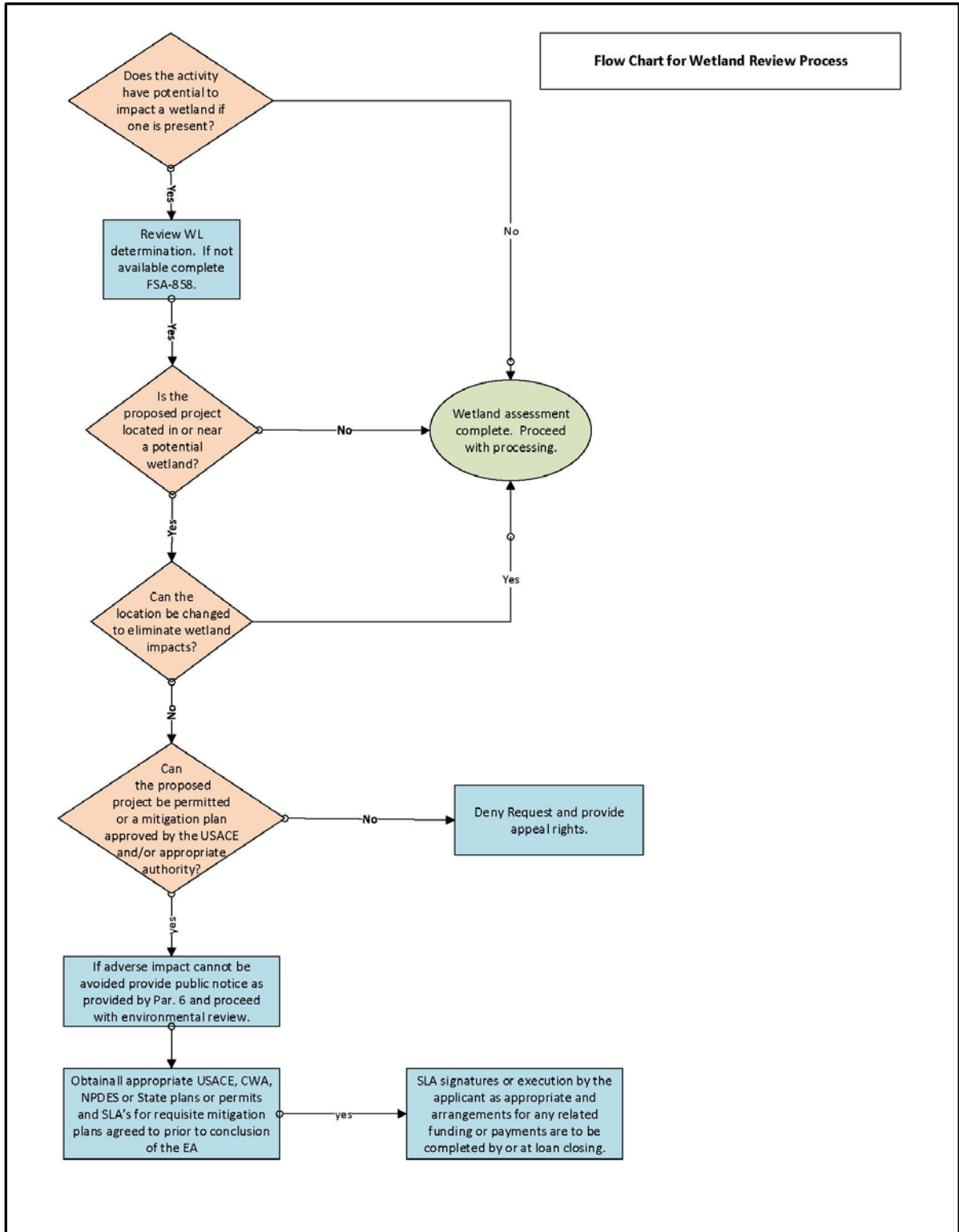
- Consult NRCS, the applicant (and lender, in the case of a guaranteed loan) to determine if the converted wetland qualifies for an exemption provided by 6-CP, paragraph 212. If so, the exemption should be documented and no further action is necessary.
- If the converted wetland does not qualify for an exemption, review the date the wetland was converted and the proposed use of loan proceeds to determine if any portion of loan proceeds will be used for a prohibited activity as referenced in subparagraph 8 A.
- If so the applicant (and lender, in the case of a guaranteed loan) will be advised of the need to consider modifications of the loan request. For example, not growing an agricultural commodity on the converted wetland would be an appropriate remedy but substitution of non-FSA funds to grow an agricultural commodity on the converted wetland would not. If loan proceeds will be used for a prohibited activity, the applicant (and lender, in the case of a guaranteed loan) will be notified the request must be denied as an unauthorized use of loan funds.

If there are adverse effects to a wetland that cannot be avoided special public notice provisions apply as provided by subparagraph 6 E.

51 Wetlands (Continued)

D Review Process (Continued)

When it is not clear if the APE contains a wetland, the following provides an overview of the wetland review process.



## 51 Wetlands (Continued)

**D Review Process (Continued)**

NEPA documents should include the number and type of wetland acres in an activity area as provided in the wetland determination with a description of the effects of the proposed activity on wetland resources. FSA must ensure that a reasonable range of alternatives and sufficient analysis of potential impacts to wetlands is contained in the environmental review. Mitigation to reduce or eliminate impact may be required.

The area of potential effect to be evaluated is the specific geographical areas within which an FSA funded activity actually takes place and/or specific geographical areas where an environmental resource is influenced as a result of the proposed project, that is, causes changes in use or character. The area to be evaluated does **not** include all farm or related tracts that may be owned or operated by the applicant.

**Examples:** Project is to build 2 poultry houses on the northwest corner of a 20 acre tract. The project area is limited to the 5 acres that will be disturbed for construction, installation, and related infrastructure.

Project is to fund purchase of cows and post-style fencing on 50 acres of pasture where they will be maintained. Applicant crops 200 contiguous acres, grows nursery stock on another 30 acre tract that is part of the same farm and has obtained upgraded animal waste and nutrient management plans for the expanded operation. The project area is limited to the 50 acres where the cows will be fenced and maintained.

Normal, routine, and continuous agricultural activities, such as the following, are exempt from CWA permitting requirements according to BMP's:

- drainage ditch maintenance
- farm roads
- farm or stock ponds
- irrigation ditch construction and maintenance
- plowing, cultivating, and harvesting crops.

Activities with potential to adversely affect wetlands include but are not limited to:

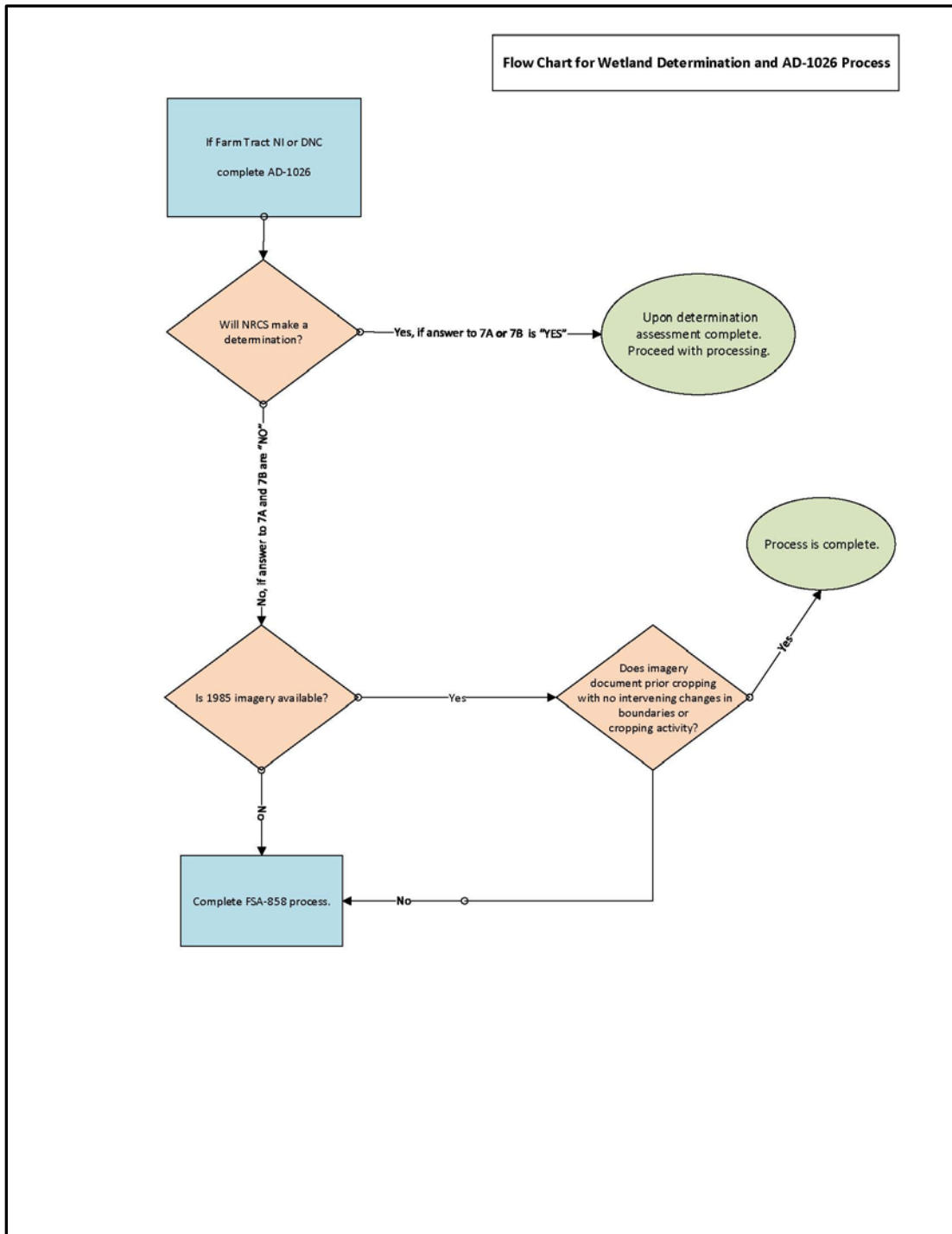
- soil disturbance, leveling, grading, filling, side casting
- construction
- clearing of vegetation
- changing, diverting, restricting flow of water
- discharges from livestock and storm water
- some irrigation systems and installations.

When an action has the potential to adversely affect a wetland, and a wetland determination from NRCS or other permitting authority has not completed, follow the process in the chart below to determine if NRCS has jurisdictional responsibility or if FSA-858 must be completed by the authorized agency official.

51 Wetlands (Continued)

D Review Process (Continued)

The following flowchart provides the availability of NRCS wetlands and AD-1026.



**Note:** 1985 or earlier imagery can be used to support an assumption of prior conversion provided it documents agricultural crop production and tract has not reverted during the intervening years. If imagery is not available proceed with completing FSA-858.

## 51 Wetlands (Continued)

**D Review Process (Continued)**

When a proposed project has the potential to impact a wetland and it has been determined that a wetland determination is **not available** from NRCS or other permitting authority, the authorized official will follow the Wetland Screening Flow Chart at the end of this section and complete FSA-858 to screen the project site for the presence of wetland indicators and document the related findings. If it appears the proposed APE may include a wetland, advise the applicant, using Exhibit 26, that FSA has determined the site to be unsuitable based on available information. Alternatively, the applicant may relocate the project.

The applicant may subsequently opt to employ the services of a professional wetland scientist or NRCS-approved technical service provider to scientifically assess the potential presence of a wetland and prepare related supporting documentation.

**Note:** USACE has jurisdiction over areas considered to be “Waters of the United States”, and contiguous or adjacent conveyance drainage and ditches. For proposed projects with the potential to impact a jurisdictional wetland, the applicant **must** provide related documentation from USACE in support of a specific exemption or related permit.

FSA will reconsider unsuitable location decisions based on the presence of wetland indicators according to 1-APP. The applicant bears the burden of providing documentation from USACE or other qualified expert that a wetland is not present or that the proposed project is legally permissible.

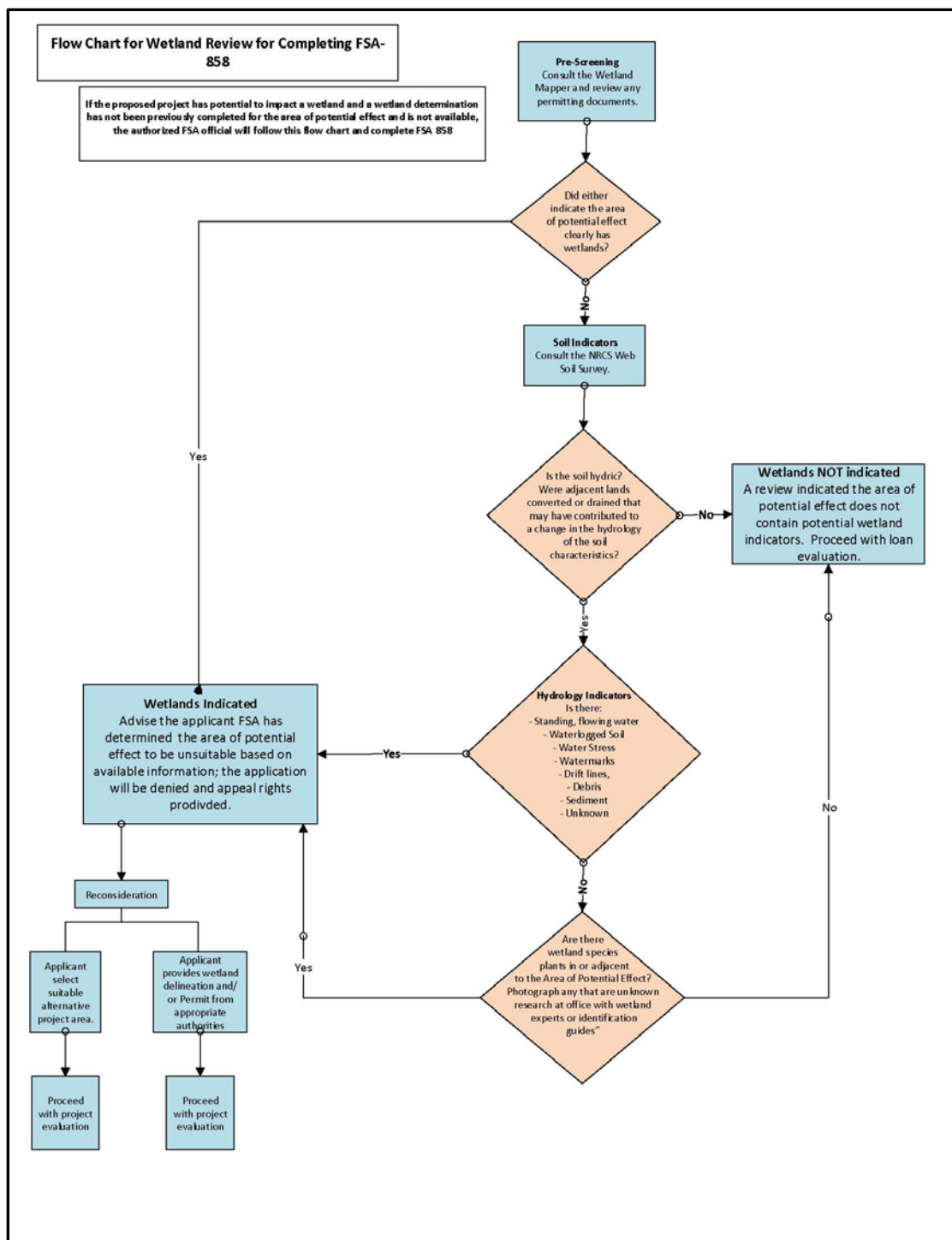
Appeals of USACE or NRCS decisions are separate issues. Wetland compliance decisions or determinations made by NRCS are handled according to 6-CP, paragraphs 811 and 812; 1-APP; and NRCS Title 440 Programs Manual, Part 510, “Appeals and Mediation”.

An NRCS noncompliance determination causes applicants to be ineligible for farm program benefits. Such applicants may be eligible for FLP assistance; however, their use of loan funds is limited by 7 CFR 799.

51 Wetlands (Continued)

D Review Process (Continued)

If the proposed project has potential to impact a wetland and a wetland determination has **not** been previously completed for the area of potential effect and is **not** available, the authorized FSA official will follow this flow chart and complete FSA-858.



## 51 Wetlands (Continued)

**E Possible Data Sources**

This table provides web data sources.

<b>Data</b>	<b>Web Location</b>
USFWS National Wetlands Inventory Database	Go to <a href="http://www.fws.gov/wetlands/">http://www.fws.gov/wetlands/</a> and CLICK “How to Find and Use...Wetland Mapper”.
USACE Permitting Division Offices	Go to <a href="http://www.usace.army.mil">www.usace.army.mil</a> and CLICK “Locations” to find a local Corps Office.
Wetland Scientist By Location	Go to <a href="http://www.wetlandcert.org/overview.html">www.wetlandcert.org/overview.html</a> and, CLICK “Search For A Scientist”.
Agricultural Activities Exempt From 404 Permitting Requirements	Go to <a href="http://www.epa.gov">www.epa.gov</a> and under “Index” CLICK “W.” Scroll down to CLICK “Wetland” and then CLICK “Wetland Fact Sheets”. Click “Regulatory Information Clean Water Act Section 404,” CLICK “Exemptions to Section 404 Permit Requirements” to Section 404 Permit Requirements”.

**F Associated Permits**

**CWA, Section 401:** Before issuing a license or permit, including 404 permits, for proposed Federal actions that may result in discharge to U.S. waters, agencies must obtain a certification from the State that the proposed action is consistent with CWA, including compliance with State ambient water quality standards. Applications for CWA, Section 401 certification vary by State. Contact the State water quality department for an application and assistance.

**CWA, Section 404:** Activities that affect wetlands can be authorized by USACE through a standard individual permit, letter-of-permission, nationwide permit, or regional permit. USACE will determine the type of permit needed. Questions on the permitting process or applying for CWA, Section 404 permits should be directed to local or regional USACE offices.

**Joint Permits:** Joint CWA, Section 401/404 permits may be available to streamline required Federal and State water quality permit acquisition. Contact the State water quality department or local USACE office to determine if joint permit applications are available.

**51 Wetlands (Continued)**

**G Consultation**

Obtaining the appropriate permits for the proposed activity is considered consultation for wetlands. The applicant is responsible for obtaining all requisite permits and related costs.

**H Acceptable Types of Documentation**

A completed FSA-850 or EA serves as documentation for wetland impact decisions. If a potential impact exists, mitigation measures, including reference to required permits, management plans, and compliance monitoring, should accompany the environmental review.



**52 Soils****A Resource**

The Food Security Act of 1985 includes provisions that contribute to soil protection, referred to as the sodbuster provisions. With limited exceptions, the Food Security Act of 1985 provides that persons who produce agricultural commodities on HEL are ineligible for certain Federal payments typically available to farmers **and limits the use of loan funds.**

Agricultural commodity for this purpose is limited by 7 CFR Section 12.2 to “any crop planted and produced by annual tilling of the soil, including tilling by one-trip planters, or sugarcane.” Cropland with erodibility index values greater than 8 is considered to be HEL.

**Note:** See paragraph 50 for soil considerations in screening for potential wetland presence.

**B Lead Agency for Resource**

NRCS oversees HEL programs that subject cropland to the provisions of the Food and Security Act.

**C FSA Policy and Objectives**

All persons that produce agriculture commodities must protect cropland classified as being HEL from excessive erosion.

**Note:** These limitations do not apply to property not subject to NRCS’s jurisdiction.

For applicants requesting Federal assistance it must be determined if highly erodible soils are present on cropland within the proposed action area. FSA has determined excessive erosion of HEL results or would result whenever a field that is on predominantly HEL is or would be used to produce an agricultural commodity by annual tilling of the soil without conforming to a conservation system approved by NRCS.

**Note:** A field that is on predominantly HEL is not exempt from soils provisions.

## 52 Soils (Continued)

**C FSA Policy and Objectives (Continued)**

If an applicant intends to produce an agricultural commodity on a nonexempt field on which HEL is predominant, the applicant must do the following:

- develop a conservation system approved by NRCS
- demonstrate that it is or will be in compliance with a conservation system approved by NRCS at the time the field is to be used
- provide NRCS's concurrence with this position
- provide an AD-1026 to document the presence of highly erodible soils.

If the applicant does not intend to produce an agricultural commodity on a nonexempt field on which HEL is predominant, that is land sown in pasture or woodland, the field is considered exempt.

**D Review Process**

All applicants **must** have a current AD-1026 on file, regardless of the type of operation or planned project. NRCS is tasked with completing any HEL determinations necessary for cropland subject to the provisions of the Food and Security Act.

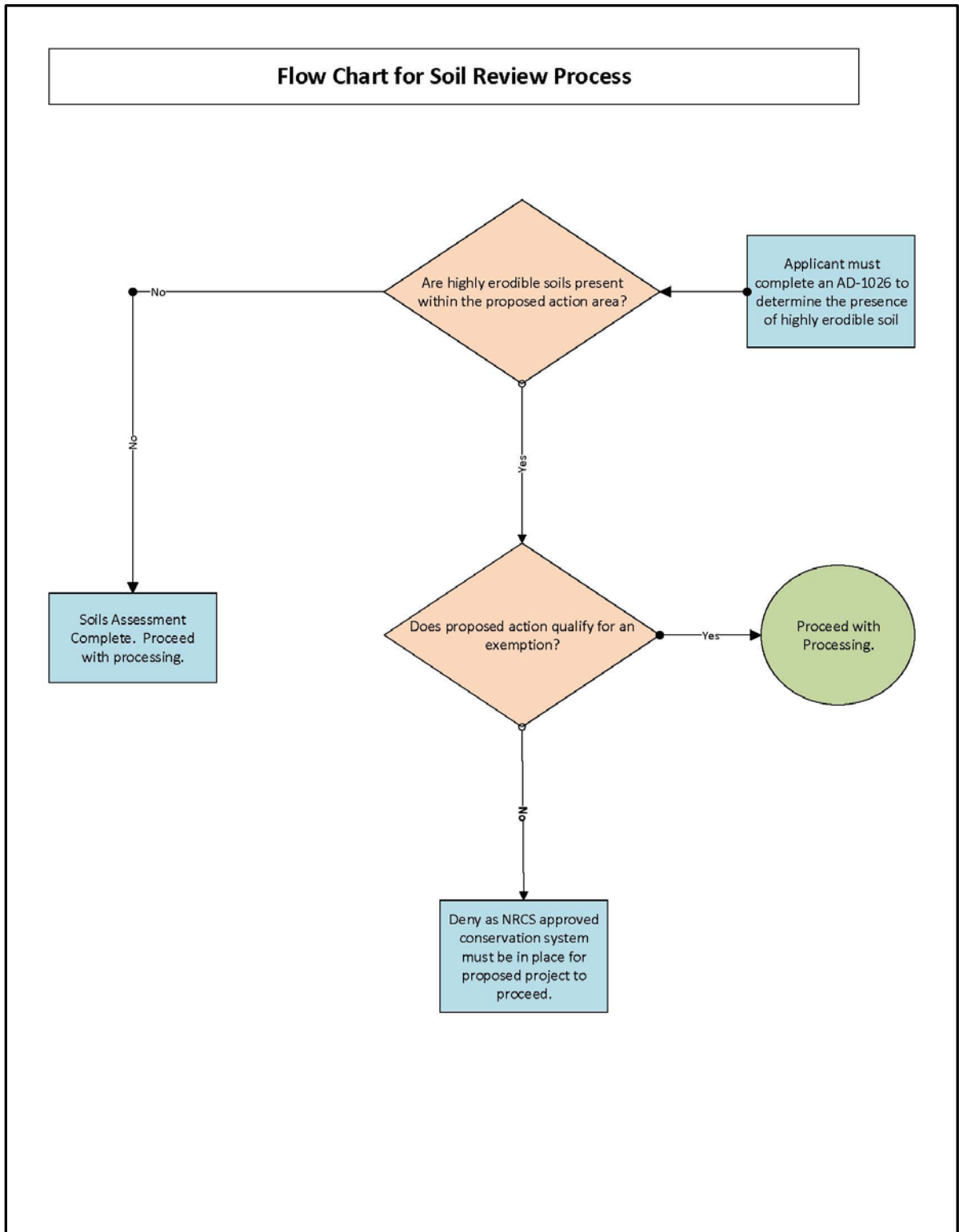
When HEL is found to be present, consult NRCS, the applicant (and lender, in the case of a guaranteed loan) to determine if an exemption or relief as provided by 6-CP Paragraph 200 C is applicable, and if not, if there is an NRCS approved conservation plan in place (or that one can be formulated). If so, document the file and no further action is necessary.

Alternatively, when HEL is present, review the use of loan proceeds to determine if any portion of the loan proceeds will be used for a prohibited activity as referenced in 1-EQ Paragraph 8A. If so, the applicant (and lender, in the case of a guaranteed loan) will be advised of the need to consider modifications of the loan request, including but not limited, to a financially feasible eligible loan purpose that could be helpful in implementing a conservation plan or installing a conservation system. Substitution of non-FSA monies to accomplish the prohibited activity would not resolve the issue, but actual elimination of the activity from the applicant's plan of operation would. If modification cannot resolve the issues and loan proceeds will be used for a prohibited activity, the applicant (and lender, in the case of a guaranteed loan) will be notified the request must be denied as an unauthorized use of loan funds.

52 Soils (Continued)

D Review Process (Continued)

The following provides an overview of the soil review process.



**52 Soils (Continued)**

**E Possible Data Sources**

This table provides a web data source.

<b>Data</b>	<b>Web Location</b>
List of Published Soil Surveys	Go to <b>soils.usda.gov</b> , CLICK “List of Published Soil Surveys” by State and possibly county.

**F Associated Permits**

There are no permits specific for soils.

**G Consultation**

There are no consultations specific for soils.

**H Acceptable Types of Documentation**

A completed FSA-850 or EA serves as documentation for a soil assessment. If highly erodible soils are present, a completed conservation plan must be on file with FSA or NRCS.

**53 Water Quality****A Resource**

As water from precipitation and other sources, flows across or permeates thru the surface of the ground it may collect and/or carry with it materials which can effect water quality. Surface waters, as defined by EPA and the U.S. Army Corps of Engineers, are U.S. waters, including streams, lakes, rivers, estuaries, coastal waters, and wetlands. The principal law governing pollution of the nation's surface water resources is CWA.

Congress passed the Clean Water Act to eliminate the discharge of pollutants into U.S. waters and protect water quality. Initially, the EPA concentrated on industrial point source and sewage treatment as sources of pollutants. In 1998 the focus expanded to include cleanup of surface water quality and nonpoint sources of pollution typically coming from run off from activities associated with lawn care, agriculture, forestry, and construction. These nonpoint sources include both crop production operations as well as livestock operations.

CWA uses water quality standards, permitting requirements, effluent limitations, and monitoring to protect water quality.

**B Lead Agency for Resource**

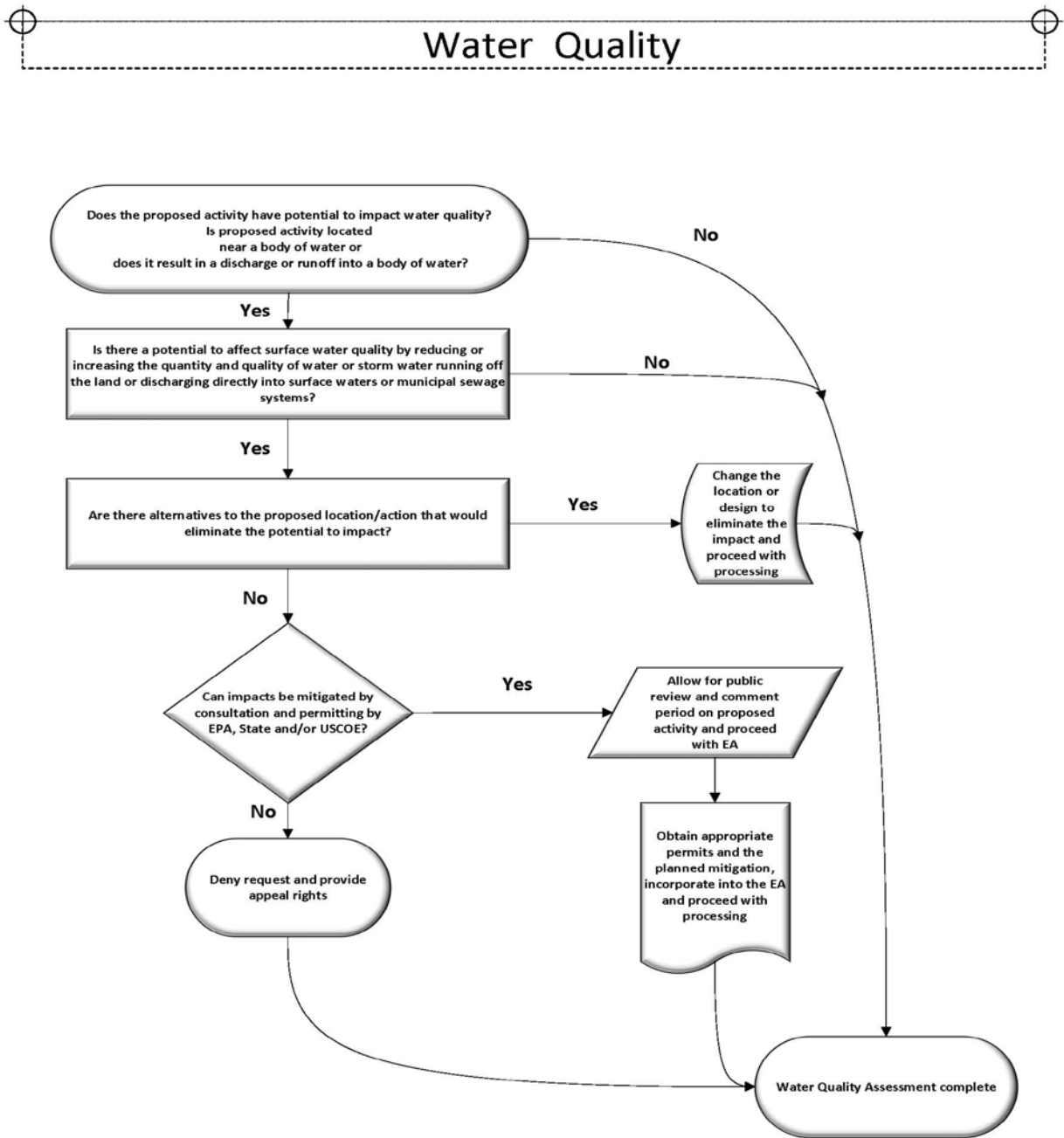
In most cases, EPA has delegated enforcement authority related to point sources of pollution to the States. Point sources of pollution are primarily defined as direct discharges into surface waters from pipes, ditches, and channels, but also include CAFO's and construction sites. States regulate nonpoint sources of pollution and issue certifications to ensure Federal activities that may result in discharge to U.S. waters are consistent with CWA, including compliance with State ambient water quality standards. Nonpoint sources of pollution including but not limited to storm water are defined by exclusion as resulting from runoff of precipitation and not considered a point source of pollution according to CWA.

**C FSA Policy and Objectives**

FSA will not approve actions or activities that could significantly affect water quality.

**D Review Process**

The following provides an overview of the surface water quality review process.



June 9, 2016

53 Water Quality (Continued)

**D Review Process (Continued)**

EPA sets the standards for water pollution abatement and storm water management all U.S. waters under the programs contained in CWA, but in most cases gives qualified States the authority to issue and enforce permits. Normal, routine, and continuous agricultural activities, such as the following, are exempt from CWA permitting requirements according to BMP's:

- drainage ditch maintenance
- farm roads
- farm or stock ponds
- irrigation ditch construction and maintenance
- plowing, cultivating, and harvesting crops.

Surface water quality can be impacted by direct discharge into waters and construction. Land conversion and clearing may indirectly impact surface waters by runoff. The NEPA document should identify surface waters that may be directly or indirectly impacted and should contain a plan for implementing the State's BMP at a level necessary to comply with the State's water quality standards for point and non-point discharges.

<b>IF the proposed action...</b>	<b>THEN...</b>
involves any of the following: <ul style="list-style-type: none"> <li>• AFO or CAFO construction or alteration</li> <li>• construction affecting greater than 1 acre unless the state has more stringent requirements</li> <li>• construction of a facility that would discharge effluent including storm water into surface water or a municipal sewage system</li> </ul>	NPDES permit is required for operations having animal numbers as specified by the EPA (or state if more stringent) to ensure that the facility would not affect surface water quality. See Exhibit 16.  NMP or CNMP as appropriate is required for AFO's and CAFO's to address measures for protection of water quality.  Storm Water Pollution Prevention Plans (SWPPP) and permit is necessary to address storm water runoff concerns.
would result in a change to farming practices that would increase the quantity or quality of runoff into adjacent surface waters	State regulations and guidelines related to the control of nonpoint source pollution, primarily implementing BMP's would be implemented to ensure that the action would not affect surface water quality.

## 53 Water Quality (Continued)

**D Review Process (Continued)**

Determine if the proposed activity will affect surface waters, as follows:

- Is the proposed activity located adjacent to designated U.S. waters; that is, rivers, lakes, estuaries, coastal waters, wetlands or those regulated by the USACE?

**Note:** If possible, change the location or design of the activity to avoid such locations and eliminate the possibility of impacts to surface water quality.

- Is there a potential to positively or negatively affect surface water quality by reducing or increasing the quantity and quality of waters running off the land or discharging directly into surface waters or municipal sewage systems?

**Note:** Wetlands are often associated with water bodies. See paragraph 43 for determining the presence of wetlands and the potential impacts.

By definition the following activities are considered to contribute to point source pollution, as defined by EPA, and require National Pollution Discharge Elimination System (NPDES) permits (CWA, Section 402), and in some cases the development of supporting plans to ensure that no impacts to water quality result from the proposed activities:

- construction affecting greater than 1 acre or (some States have more stringent limits)
- construction of a facility that would discharge effluent, including storm water, into surface water or a municipal sewage system
- construction, expansion by of capacity by 30 percent or greater or modification of a large CAFO
- other activities may be sources of nonpoint source pollution by runoff of chemicals, nutrients, sediments, etc. over the land. States regulate nonpoint source pollution and should be contacted to determine whether permits, plans, or using BMP's are required to ensure that there is no impact to surface water quality.



## 53 Water Quality (Continued)

**D Review Process (Continued)**

Storm Water Pollution Prevention Plans (SWPPP's) are necessary to obtain NPDES permits required for the regulation of storm water discharges for projects involving construction, clearing, grading, and excavating activities that **disturb one acre or more, including smaller sites in a larger common plan of development.** The SWPPP addresses all pollutants and their sources, including sediment associated with construction, site erosion, and runoff and provides for control through the implementation of best management practices.

- Agricultural projects are no longer exempt from NPDES permitting.
- Many states and counties require storm water management plans and permits for areas of disturbance less than one acre. Consult the SEG for State-specific requirements and requisite permitting processes.

Animal waste plans are required for livestock operations to protect surface water quality and control leaching and nutrient run off. EPA identifies which livestock operations are animal feeding operations (AFO) that do not have to be regulated or permitted vs specific different size/type of concentrated animal feeding operations (CAFO) that have the potential to discharge and require regulation in the form of state general or individual permit. CAFO's \*--need an animal waste plan, as required by their respective and/or applicable State regulatory and permitting agencies, in the form of NMP or CNMP to document how water quality--\* will be protected.

- Nutrient Management Plans (NMP) are a method for producers to demonstrate improved efficiency of operations in a fashion that minimizing the environmental impacts. I.e. they are site specific conservations plans designed to manage the amount, source, placement, form and timing of the application of nutrients and amendments to soil so as to prevent the discharge of pollution or excess nutrients.
- Comprehensive Nutrient Management Plans (CNMP's) are conservation plans unique to livestock operations. These plans document practices and strategies adopted by livestock operations to address natural resource concerns related to soil erosion, livestock manure and disposal of organic by-products.

**53 Water Quality (Continued)****D Review Process (Continued)**

NMP and CNMP's are site specific and are to address six components including best management practices. The first four items below must be addressed. The need for plans to address the last two components will depend on the individual operation:

- proper storage of manure and maintenance of the storage structure
- proper land application of the manure
- appropriate site management that looks at the risks on a particular field, such as sinkholes, streams running through the field, shallow groundwater, or erosion that needs to be controlled
- record keeping that documents land practices, so that if anyone has questions, there is proof of what is being done and why
- feed management to improve feed efficiency so that nutrient content of manure is reduced
- alternative uses for the manure.

**Note:** This component is needed by producers whose operations generate more manure than they can apply.

Contact SEC who will advise on steps for contacting the State's water quality department for specific permitting requirements.

**E Possible Data Sources**

For information on surface water quality, including required permits (NPDES, SWPP, etc.), plans, etc., refer to the U.S. Environmental Protection Agency (EPA) website: [www.epa.gov](http://www.epa.gov) and your State Environmental Guide for state-specific requirements.

**F Associated Permits**

The following is information regarding Clean Water Act requirements. Be aware that specific state requirements may be more stringent and must be followed.

CWA, Section 319: Other activities undertaken near U.S. waters may be sources of nonpoint source pollution by runoff over the land. Under CWA, Section 319 authority, States regulate nonpoint source pollution and should be contacted to determine whether permits, plans, or using BMP's are required.

## 53 Water Quality (Continued)

**F Associated Permits (Continued)**

**CWA, Section 401:** Before issuing a license or permit, including NPDES permit, for proposed Federal actions that may result in discharge to U.S. waters, agencies must obtain a certification from the State that the proposed action is consistent with CWA, including compliance with State ambient water quality standards. Applications for CWA, Section 401 certification vary by State. Contact applicable State's water quality department for an application and assistance.

**CWA, Section 402:** Most CAFO's, construction affecting greater than 1 acre, and construction of a facility that would discharge effluent, including storm water, into surface water or a municipal sewage system, require NPDES permits. EPA gives most States the authority to determine the permit based on size and type of facility and environmental risk \*-CNMP, as required by their respective and/or applicable State regulatory and permitting agencies, must accompany permit applications for CAFO's. Contact the State's EQ-\* department or regional EPA for permitting information.

**Joint Permits:** Joint Section 401/402 permits may be available to streamline the acquisition of required Federal and State water quality permits. Contact applicable State's water quality department to determine if joint permit applications are available.

**G Consultation**

Obtaining the appropriate permits and plans for the proposed activity is considered consultation for surface water quality. If permits and/or plans are required for the activity to be implemented, they must be obtained prior to completing and incorporated into the environmental review process. These should be maintained as part of the environmental review file and available for public inspection, if requested.

**H Acceptable Types of Documentation**

A completed FSA-850 serves as documentation for surface water quality impact discussion. If a potential impact exists, mitigation measures, including reference to required permits, management plans, and compliance monitoring, should accompany the environmental review.

\*-CAFO's meeting the definition of medium, or large CAFO's must have CNMP, as required by State regulatory and permitting agencies. CAFO's not meeting the definition of CAFO-\* (Exhibit 16) are encouraged, but not required to have CNMP but at a minimum need a NMP \*-to address how waste is handled, as required by their respective and/or applicable State regulatory and permitting agencies. If potential impact exists for AFO not meeting the-\* definition of CAFO, it is the owner's responsibility to provide information on how potential risks will be mitigated. See Part 3 for the level of analysis required for a establishing or expanding a livestock holding facility, activity, or feedlot.

**54 Air Quality****A Resource**

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.

Main sources of air pollution include stationary, mobile, and agricultural sources. A stationary source is an emission source that does not move, such as manufacturing facilities, utilities, etc. A mobile source is a source that is capable of moving under its own power, such as planes, cars, farm and construction equipment, etc. Agricultural sources are agricultural operations that raise animals and grow crops can generate emissions of gases, particulate matter, chemical compounds, and odor.

**B Lead Agency for Resource**

EPA is responsible for the national air quality. Each State's EQ or similar department is responsible for maintaining the national standards within their State. In general, States ban open air burning and / or operation of an incinerator without a permit. States also widely regulate generators or "power units" driven by nonelectric fuel sources, and the use of lower sulphur content fuel is typically required.

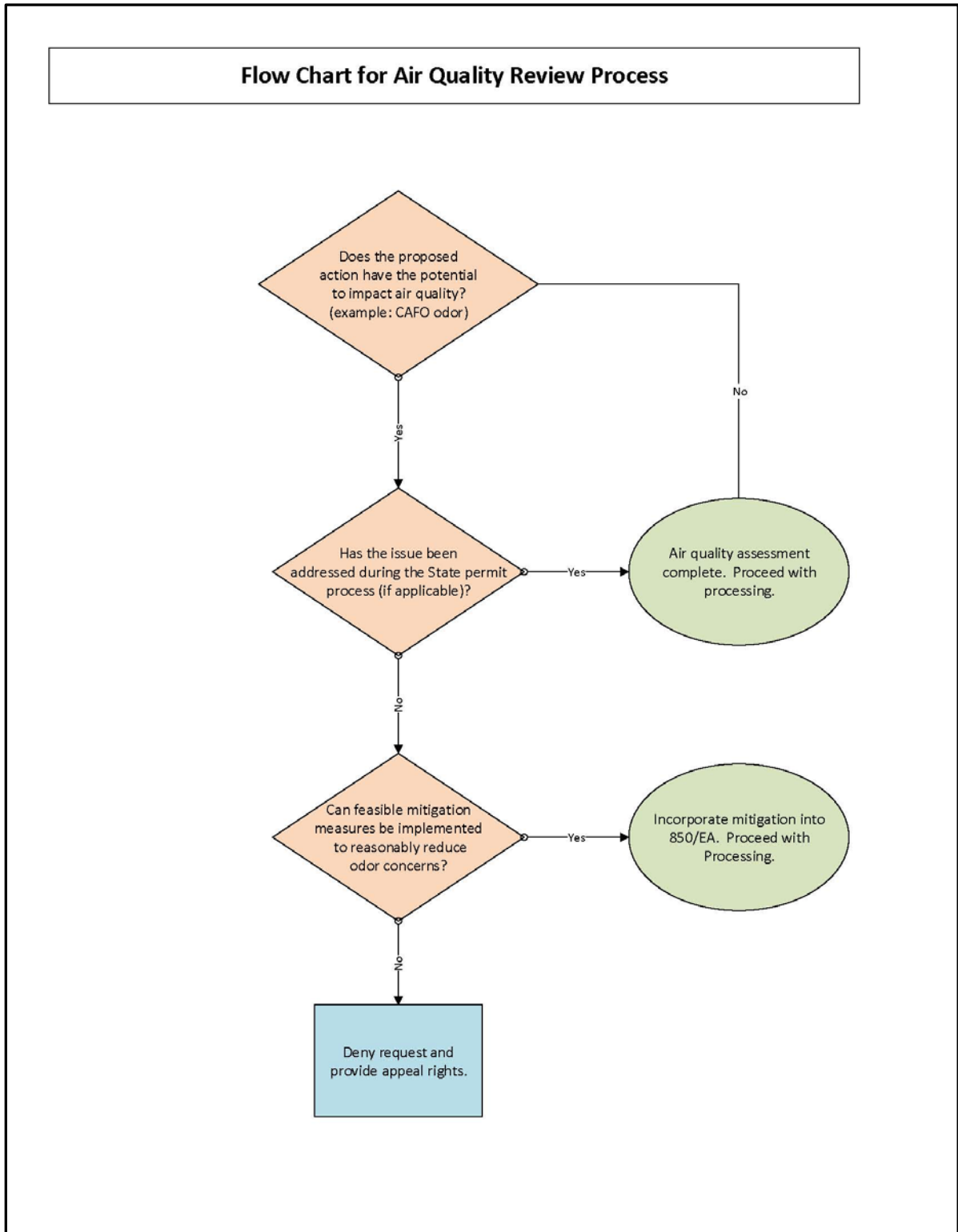
**C FSA Policy and Objectives**

FSA will not approve actions or activities that could cause significant air pollution.

54 Air Quality (Continued)

D Review Process

The following provides an overview of the air quality review process.



**54 Air Quality (Continued)****D Review Process (Continued)**

Always remember that under the Clean Air Act and associated State Implementation Plans, there may be State restrictions, plans, or permits required for agricultural or agriculturally-related actions. Be sure to investigate if any such requirements apply and that they are included in the State Environmental Guide.

Loans that affect AFO's, are the most likely FSA actions that may impact air quality due to odor. Main sources of odor from livestock confinement operations include manure storage facilities, animal housing, and land application of manure. It is important to note that odor is subjective and the public may perceive there to be adverse impacts to adjoining property values; however, some States and local governments impose site setback requirements for siting facilities or application of manure and agricultural odors are the attendant conditions which occur in or near rural areas with zoning which permits agricultural activities. There are State modeling devices and statutes that assist in determining air quality impacts including but not limited to state Right to Farm Statutes that provide protection from nuisance complaints related to agricultural odors

Large CAFO's are typically required to obtain an air permit and odors resulting from CAFO's can be a controversial issue. Some States require an Odor Management Plan under special conditions. The important principle of odor control is avoiding anaerobic conditions by keeping the following:

- manure and other organic materials as dry as possible
- manure storages and surfaces exposed to oxygen
- feedlot surfaces hard, smooth, and free of uncompacted manure.

Mitigation measures to help reduce or eliminate odor and dust emissions should be implemented with proposed actions. The primary concern with odor is the effect on the local community, specifically close neighbors and people sensitive to odors. Mitigation measures include, but are not limited to the following:

- installing bio filters on buildings
- erecting windbreak walls downwind from animal facilities, lagoons, manure storage areas, etc.
- installing shelterbelts; that is rows of trees and other vegetation.

## 54 Air Quality (Continued)

**E Possible Data Sources**

This table provides web data sources.

<b>Data</b>	<b>Web Location</b>
NRCS Information on Air Quality Issues Pertaining to Agricultural Production	Go to <a href="http://www.airquality.nrcs.usda.gov">www.airquality.nrcs.usda.gov</a> and under “Quick Access”, CLICK “Agricultural Air Quality Task Force”.  <a href="http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/air/">http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/air/</a>
EPA Information on Agriculture and Air Quality	Go to <a href="https://www.epa.gov/agriculture/agriculture-agriculture-and-air-quality">https://www.epa.gov/agriculture/agriculture-agriculture-and-air-quality</a> .
State Environmental Agencies	Go to <a href="http://www.epa.gov/home/health-and-environmental-agencies-us-states-and-territories">http://www.epa.gov/home/health-and-environmental-agencies-us-states-and-territories</a> and select and CLICK on “states”.

**F Associated Permits**

Check state permitting requirements for air quality.

**G Consultation**

If the environmental review determines that a proposed activity would affect the attainment status of the county, FSA should coordinate with the State and/or EPA to develop mitigation measures.

**H Acceptable Types of Documentation**

A completed FSA-850 or EA serves as documentation for air quality impact discussion. NEPA documentation should reference any existing or required permits and include the attachment of copies of those documents.

**55 Noise****A Resource**

Noise is defined as any sound that is undesirable because it interferes with communication, is intense enough to damage hearing, or is otherwise annoying. Human response to noise varies according to the type and characteristics of the noise source, the distance between source and receiver, receiver sensitivity, and time of day.

The Noise Control Act of 1972 directs all Federal agencies to comply with Federal, State, interstate, and local requirements respecting control and abatement of environmental noise.

**B Lead Agency for Resource**

Noise abatement and control is the responsibility of State and local governments.

**C FSA Policy and Objectives**

FSA will review each activity 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.

**D Review Process**

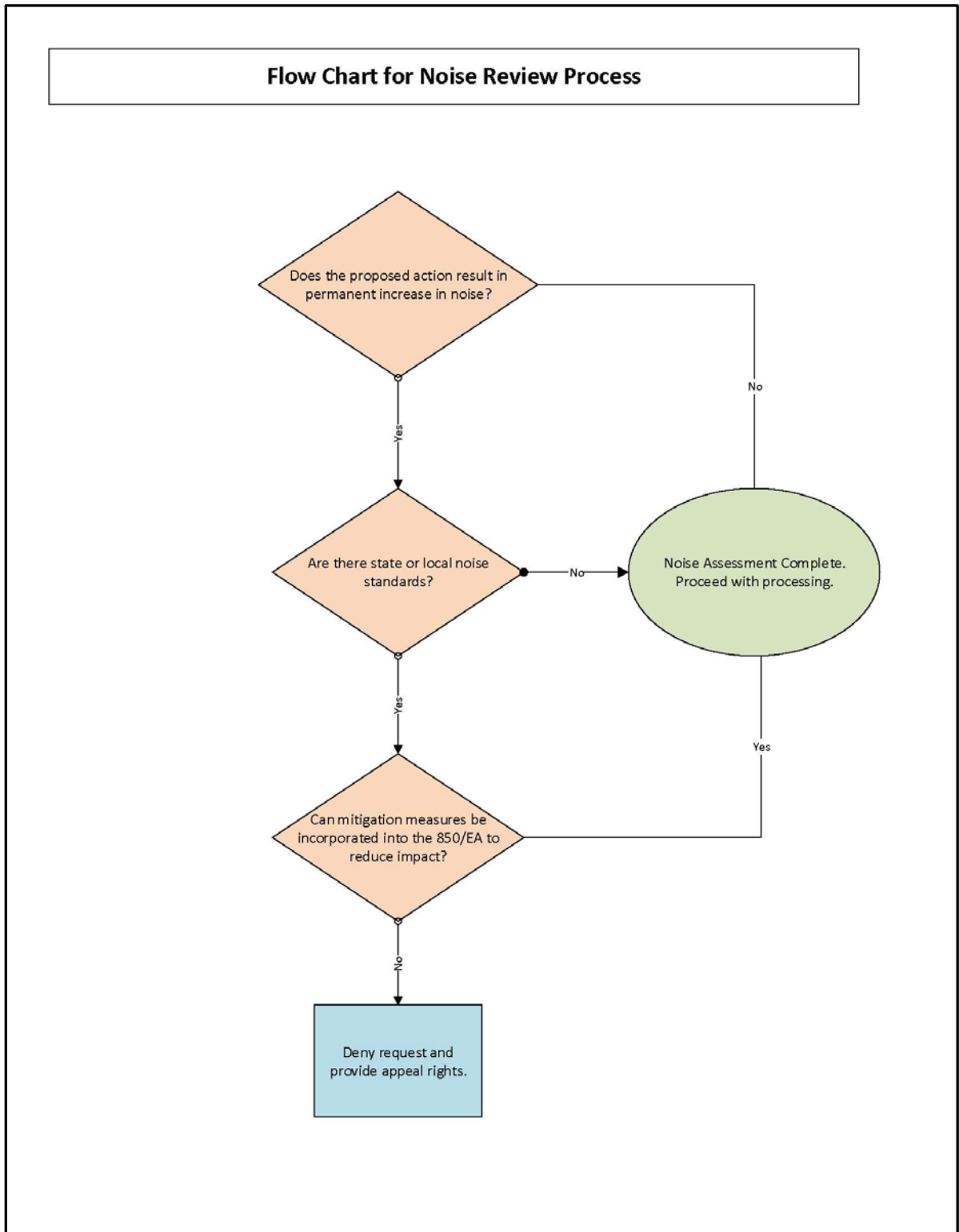
No impacts are expected to result from individual farm participation as agricultural noises are the attendant conditions that occur in, or near rural areas, with zoning which permits agricultural activities. If there is a question about whether impacts would result from program participation, consult State noise ordinances including Right to Farm statutes and contact the National Office for guidance.



55 Noise (Continued)

D Review Process (Continued)

The following provides an overview of the noise review process.



**55 Noise (Continued)****E Possible Data Sources**

There are no data sources specific for noise.

**F Associated Permits**

There are no permits specific for noise.

**G Consultation**

FSA does not implement activities that have the potential to greatly increase permanent noise levels of an area. However, if a unique activity or circumstance arises it should be coordinated with State and county governments to determine appropriate mitigation measures to reduce the noise levels to an acceptable level.

**H Acceptable Types of Documentation**

A completed FSA-850 or EA serves as documentation for a discussion of noise impacts, if applicable.

**56 Important Land Resources****A Resource**

Important land resources include prime farmland, unique farmland, prime forestland, and prime rangeland. Continued reduction in the nation's farmland base may threaten the ability of the U.S. to produce food and fiber to sustain domestic needs. The purpose of the Farmland Protection Policy Act (FPPA), 7 CFR 658, is to minimize the effect of Federal programs on the unnecessary and irreversible conversion of farmland to nonagricultural use. The FPPA defines farmland (7 CFR 658.2) as "...prime or unique farmland, or farmland of statewide or local importance." Projects are subject to FPPA requirements if they may irreversibly convert farmland (directly or indirectly) to nonagricultural use and are completed by a Federal agency or with assistance from a Federal agency. Conversion of farmland to nonagricultural uses does not include the construction of on-farm structures necessary for farm operations. Federal agencies can obtain assistance from the NRCS field office serving the area.

**56 Important Land Resources (Continued)**

Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, and without intolerable soil erosion, as determined by the Secretary of Agriculture.

Unique farmland is land other than prime farmland that is used for production of specific high-value food and fiber crops, as determined by the Secretary of Agriculture. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods.

Prime forestland is land used for the production of wood. It is divided into 4 categories based on yield and use, as follows:

- prime timberland grows at least 85 cubic feet/year in natural stands
- unique timberland grows less than 85 cubic feet/ year in sustained yields of high-value species
- timberlands of statewide importance are additional forest stands of State importance
- timberlands of local importance are additional forest stands of local importance.

Prime rangeland is land that has the highest quality or value for grazing animals, and the (potential) natural vegetation is palatable, nutritious, and available to the area's common herbivores.

**B Lead Agency for Resource**

NRCS oversees farmland protection.

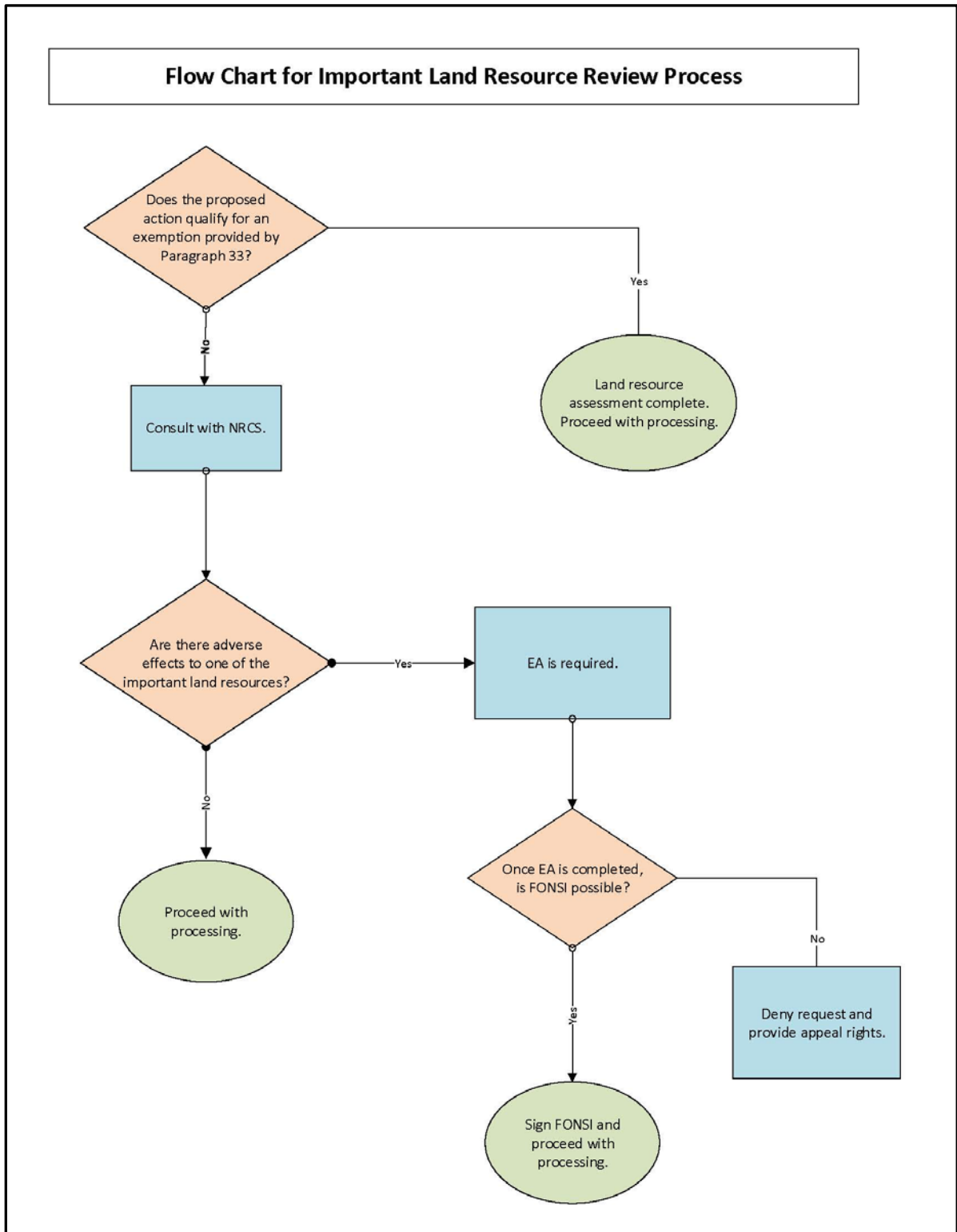
**C FSA Policy and Objectives**

FSA will not approve actions or activities that could significantly affect farmlands, prime forestland, or prime rangeland.

56 Important Land Resources (Continued)

D Review Process

The following provides an overview of the important land resource review process.



**56 Important Land Resources (Continued)****D Review Process (Continued)**

The following actions are exemptions and do not require consultation with NRCS:

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

If no exemption exists, then FSA will consult with NRCS on the following:

- for farmland, NRCS will determine if an important farmland (prime farmland or unique farmland) is present in the action area. Land Evaluation and Site Assessment will be used, and requires using AD-1006 and NRCS-CPA-106 or their successor forms
- for prime forestlands or prime rangelands, if there is a potential impact, FSA will consult with NRCS; DR 9500-3 will be used as a guide for prime forestlands; no established procedure exists for evaluating prime rangelands.

If it is determined that there is an adverse effect to the important land resource and activity must occur on that site, EA is required. If FONSI is not possible the activity will not be approved.

56 Important Land Resources (Continued)

**E Possible Data Sources**

Data	Web Location
Map With Acres of Prime Farmland	Go to <a href="http://www.nrcs.usda.gov">www.nrcs.usda.gov</a> and do the following: <ul style="list-style-type: none"> <li>• on menu bar, CLICK “Technical Resources”</li> <li>• at the bottom of page under “Quick Access”, CLICK “National Resources Inventory”</li> <li>• under “NRI Results”, CLICK “Map Room”</li> <li>• on NRI Map Room Screen, CLICK “Prime Farmland”</li> <li>• scroll down and under Tables click appropriate link.</li> </ul>

**F Associated Permits**

There are no permits specific for important land resources.

**G Consultation**

If important land resource could be affected, consultation with NRCS is required to determine appropriate mitigation measures or alternatives to the proposed action.

**H Acceptable Types of Documentation**

Completed FSA-850 or EA serves as documentation if no important land resource exists. If an important land resource exists and will be converted, AD-1006 and NRCS-CPA-106, or their successor forms, must attached to the NEPA documents.

**57 Socioeconomic Impacts and Environmental Justice****A Resource**

NEPA requires that Federal agencies address how a proposed action may affect economic variables, such as population, housing, income, and employment of the activity area. For FSA activities, the socioeconomic analysis should focus on farm and nonfarm employment and income, farm production expenses and returns, and agricultural land use production.

Executive Order 12898 of February 11, 1994, requires a Federal agency to “make achieving environmental justice part of its mission by identifying and addressing, as appropriate and prohibits activities that result in disproportionate impacts to low income and minority populations.

**B Lead Agency for Resource**

There is no lead agency for coordination or consultation on socioeconomic impacts or environmental justice.

**C FSA Policy and Objectives**

It is FSA’s policy to fully evaluate the socioeconomic impacts of FSA programs and loans and their effect on minority and low income populations before approval to ensure that there is not an adverse social or economic affect.

**D Review Process**

The socioeconomic impacts of FSA actions will be evaluated on the programmatic level by the National Office.

After careful review of Executive Order 12898 and other related policies and guidance documents, it has been determined that FSA actions do not involve activities with potential to disproportionately or adversely affect or displace low income or minority groups.

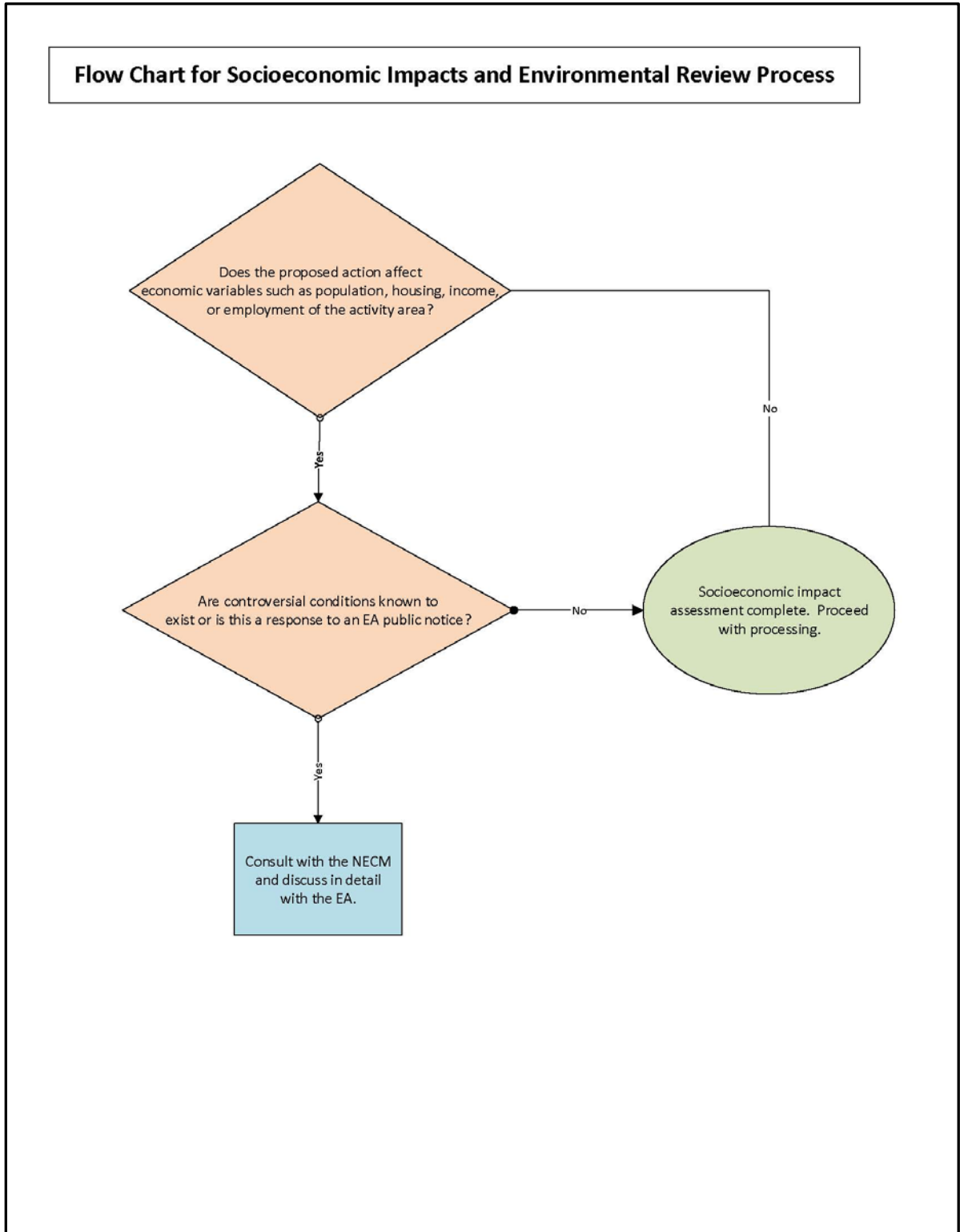
No impacts are expected to result from individual farm participation. If there is a question about whether impacts to socioeconomic resources would result from program participation, contact the National Office for guidance.

As with all EA’s, if controversial conditions are known to exist, or in response to an EA public notice, an environmental justice issue or concern is raised, then it must be discussed in detail in the EA.

57 Socioeconomic Impacts and Environmental Justice (Continued)

D Review Process (Continued)

The following provides an overview of the socioeconomic impacts and environmental justice review process.





## 57 Socioeconomic Impacts and Environmental Justice (Continued)

**E Possible Data Sources**

This table provides web data sources.

<b>Data</b>	<b>Web Location</b>
Population, Housing, and Income by State, County, ZIP Code, and Census Tract	Go to <a href="http://www.census.gov">www.census.gov</a> and on left, CLICK “Data Tools”.
NASS Census	Go to <a href="http://www.nass.usda.gov">www.nass.usda.gov</a> and select required data.
Wages, Earnings, Productivity, and Demographics on the National, Regional, State, and Metropolitan Level	Go to <a href="http://www.bls.gov">www.bls.gov</a> and select required data.
Enviro-Mapper Including Demographics From Census Data Producing Maps Showing Population and Poverty Statistics	Go to <a href="http://www.epa.gov/compliance/wherelive/ejtool.html">www.epa.gov/compliance/wherelive/ejtool.html</a> .

**F Associated Permits**

There are no permits specific for socioeconomic impacts or environmental justice.

**G Consultation**

There are no consultations specific for socioeconomic impacts and environmental justice.

**H Acceptable Types of Documentation**

A completed FSA-850 or EA serves as documentation for socioeconomic impacts and environmental justice.



**Reports, Forms, Abbreviations, and Delegations of Authority**

**Reports**

None

**Forms**

This table lists all forms referenced in this handbook.

<b>Number</b>	<b>Title</b>	<b>Display Reference</b>	<b>Reference</b>
AD-1006	Farmland Conversion Impact Rating		51, 52, 56
AD-1026	Highly Erodible Land Conservation and Wetland Conservation Certificate		4, 8, 9, 51, 52
FSA-850	Environmental Evaluation	Ex. 18	Text and Exhibits
FSA-851	Environmental Risk Assessment		8
FSA-855	State Environmental Coordinator Nomination		4
FSA-858	Determining If a Wetland May Be Present		51
NRCS-CPA-026	Highly Erodible Land and Wetland Conservation Determination		51
NRCS-CPA-106	Farmland Conversion Impact Rating for Corridor Type Projects		56
NRCS-CPA-052	Environmental Assessment and Resource Inventory Checklist		42

## Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)

## Abbreviations Not Listed in 1-CM

The following abbreviations are not listed in 1-CM.

<b>Approved Abbreviation</b>	<b>Term</b>	<b>Reference</b>
AHP	The Advisory Council on Historic Preservation	50, Ex. 9
AFO	animal feeding operation	4, 34, 52, Ex. 2
APE	area of potential effect	2, 33, 50, 56, Ex. 9
ARPA	Archaeological Resources Protection Act of 1979	50
BMP	best management practices	42, 45
CAAP	Concentrated Aquatic Animal Production	34, Ex. 2
CAFO	concentrated animal feeding operation	4, 42, 52, Ex. 2
CATEX	categorical exclusion	3-6, 22, 32-34, 49
CBRA	Coastal Barrier Resources Act of 1982	48
CBRS	Coastal Barrier Resources System	48
CEQ	Council on Environmental Quality	1-3, 23, 24, 34, 41
CNMP	Comprehensive Nutrient Management Plan	4, 42
CONACT	Consolidated Farm And Rural Development Act	43
CWA	Clean Water Act	5, 42, 43, 46, Ex. 2, 11
CZMA	Coastal Zone Management Act of 1972	5, 33, 41, 47, Ex. 10
EA	environmental assessment	Text, Ex. 12, 21-24
EE	environmental evaluation	Text
EIS	Environmental Impact Statement	3, 6, 23, 24, 34, 50, Ex. 2
EPA	Environmental Protection Agency	5, 42, 43, 45, 52, Ex. 2
EQ	environmental quality	42, 47, 52
ESA	Endangered Species Act of 1973	5, 49, Ex. 8
FONSI	Finding of No Significant Impact	3, 5, 6, 24, 34, 55, Ex. 23, 24
FP	farm programs	Text, Ex. 2
FPO	federal preservation officer	4, 50, Ex. 9

## Reports, Forms, Abbreviations, and Redelegations of Authority (Continued)

## Abbreviations Not Listed in 1-CM (Continued)

<b>Approved Abbreviation</b>	<b>Term</b>	<b>Reference</b>
MOA	Memorandum of Agreement	5, 50, Ex. 8, 10, 11
NECM	national environmental compliance manager	4, 6, 23, 24, 34, 49, 54, 58
NEPA	National Environmental Policy Act of 1969	Text, Ex. 2, 21
NHPA	National Historic Preservation Act	4-6, 22, 50, Ex. 2, 9
NOA	Notice of Availability	6, 34, Ex. 12, 24
NOAA	National Oceanic and Atmospheric Administration	47, 49
NOI	notice of intent	43, 44, Ex. 2
NPDES	National Pollutant Discharge Elimination System	42, 52
NPS	National Park Service	46, 50, 54, 56
NRHP	National Registry of Historic Places	33, 50, Ex. 9
NRI	National River Inventory	5, 47, 56
RAO	responsible agency official	54, 58, Ex. 2, 12
SEC	State environmental coordinator	4-6, 34, 41, 42, 49, 50, 52, 54, 58, Ex. 2, 9
SEG	State environmental guide	4, 7, 53
SHPO	State historic preservation officer	4, 5, 50, Ex. 2, 6, 9, 21
SLA	State Level Agreement	5, 50, Ex. 9
SWPPP	Storm Water Pollution Prevention Plan	9, 53
THPO	tribal historic preservation officer	4, 5, 50, Ex. 2, 6, 9
USACE	United States Army Corps of Engineers	5, 43, 46, Ex. 11

## Redelegations of Authority

None



## Definitions of Terms Used in This Handbook

### Application

The formal process of seeking FSA assistance.

### Animal Feeding Operation (AFO)

**[40 CFR 122.23 (b)(1)] AFO means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:**

**(i) Animals (other than aquatic 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**

**(ii) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.**

### Ancestral Land

Ancestral land refers to lands, territories and resources of indigenous peoples.

### Area of Potential Effect

The area of potential effect is the specific geographic area(s) within which a proposed project will actually take place and/or those where an environmental resource is influenced **as a result of the project**. That is causes changes in use or character. **It does not necessarily include all farm or related tracts owned or operated** by the applicant.

### Coastal Barrier Resource System

Coastal barrier resource system consists of protected coastal areas that includes ocean-front land, the Great Lakes and other protected areas (OPA's).

### Commodity

Commodity is defined by the Food and Security Act, an agricultural crop planted and produced by annual-tilling of the soil, including tilling by one-trip planters, or sugarcane.

### Concentrated Aquatic Animal Production (CAAP)

Concentrated aquatic animal production facility means a hatchery, fish farm, or other facility which meets the criteria in 40 CFR 122.24 Appendix C

## Definitions of Terms Used in This Handbook (Continued)

### Concentrated Animal Feeding Operation (CAFO)

CAFO's, as defined by EPA, are AFO's having a minimum threshold for numbers of animals by size, category, and type, and meet 1 of the following criteria:

- potential to discharge to or contact with surface waters
- are designated by the permitting authority.

There are 3 categories of CAFO's delineated by EPA, ordered in terms of capacity: large, medium and small which impacts whether a facility is subject to regulation under the Clean Water Act. The animal number quantities for each category varies depending on species. See Exhibits 16 and 17.

### Construction

Construction means activities including building, rehabilitation, modification, renovation, repair and demolition of facilities, as well as related site work and ground disturbance including earth moving, leveling and grading actions.

### Consultation

**[36 CFR 800.16] Consultation means the process of seeking, discussing, and considering the views of other participants and, where feasible, seeking agreement with them regarding matters arising in the section 106 process.**

### Controversial

Controversial circumstances exist when the degree or extent of possible impacts and effects is uncertain, the potential is high that effects may occur or the risks are uncertain.

### Cumulative Impact

Cumulative impacts result from incremental impacts of an action when added to other actions past, present, and reasonably foreseeable future actions regardless of the agency or person who undertakes such other actions. (40 CFR 1508.7 and subparagraph 25 E)

### Direct Effects

Direct effects are those caused by an action and occur at the same time and place as the action.

### Emergency

Emergencies are circumstances, when in consultation with CEQ, it is necessary for Federal agencies to take actions with significant environmental impacts without observing the provisions of NEPA. Actions are limited to arrangements necessary to control immediate impacts.



## Definitions of Terms Used in This Handbook (Continued)

### Emergency Conservation Program

Emergency Conservation Program (ECP) helps farmers and ranchers to repair farmlands because of damage caused by natural disasters and to help put in place methods for water conservation during severe drought.

### Environmental Screening Worksheet

The environmental screening worksheet is part of the FSA screening procedure used to evaluate if a proposed project that can be categorically excluded involves extraordinary circumstances that could produce potential environmental impacts, and to evaluate the appropriate level and extent of review and analysis in an EA or EIS when a CATEX is not appropriate.

### Federal Action

Federal actions are actions that 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 activities, such as construction or management activities located in a defined geographic area; activities include actions approved by permit or other regulatory decision as well as Federal and Federally-assisted activities.

**Note:** Federal actions include new and continuing activities, including activities 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.

### 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.

## 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. There are two types of floodplains, as follows:

- 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).

**Note:** The term floodplain will be taken to mean the base floodplain, unless the action involves a critical action. If a critical action is involved, then the critical action floodplain is the minimum floodplain of concern.

### Free-Flowing

Free flowing means existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway.

### Historic Property

**[36 CFR 800.16] 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 such 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.**

### Human Environment

Human environment means the natural and physical environment and the relationship of people with that environment. Human environment includes resources covered by 36 CFR Part 800.

**Note:** As described in NEPA regulations at 40 CFR 1508.14, economic or social effects are not intended by themselves to require preparing EIS.

### Indirect effects

Indirect effects are those caused by an action later in time or farther removed in distance but which are still reasonably foreseeable.

## Definitions of Terms Used in This Handbook (Continued)

### Major Amendment

A major amendment is a substantive change to an approved use. Relative to CAFO expansions, “major” is defined herein as an increase in animal capacity by 30 percent or greater.

### Major Federal Action

**[40 CFR 1508.18] Major Federal action includes 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 (Section 1508.27) for NEPA evaluation purposes.**

In regard to expansion of existing large CAFO facilities, “major” refers to an increase in capacity of 30 percent or greater which warrants an EA that includes, but is not limited to, consideration of cumulative effects

### Manipulation

Manipulation in general is defined as referenced in Section 363 of the CONACT as an action which causes significant degradation of WL characteristics and a related net loss or elimination of functional WL values for the purpose of making possible the production of an agricultural commodity by annual tilling of the soil. (A functional assessment is a scientific analysis of the degree of change in hydrological, biological or chemical performance of wetland features.) More specifically, the National Food & Security Act Manual, Subpart A 514.2, defines manipulation as “the alteration of the hydrology or the removal of woody vegetation, including stumps, on a wetland. Hydrologic alterations that are considered manipulation may result from dams, dikes, ditches, diversions, subsurface drains, pumps, terraces, or dredge and fill and may alter hydrology even if installed offsite from the effected wetlands.”

### Memorandum of Agreement (MOA)

**[36 CFR 800.16] MOA means the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.**

### Minor Amendment

Minor amendment is an insignificant change to an approved use that does not change the scope of project or impacts, that is repair or improvement that does not involve ground disturbance, historic or environmentally sensitive properties, and is primarily operational in nature.

**Definitions of Terms Used in This Handbook (Continued)****Mitigation**

Mitigation means the following:

- 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.

**Noise**

Noise is defined as any sound that is undesirable because it interferes with communication, is intense enough to damage hearing, or is otherwise annoying.

**Nonpoint Sources of Pollution**

Nonpoint sources of pollution are defined by exclusion as resulting from runoff of precipitation and **not** considered a point source of pollution according to CWA.

**Notice of Intent (NOI)**

**[40 CFR 1508.22] NOI means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:**

- (a) Describe the proposed action and possible alternatives.**
- (b) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.**
- (c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.**

## Definitions of Terms Used in This Handbook (Continued)

### Personally Identifiable Information (PII)

PII is any data about an individual maintained by an agency that when connected to an individual's name (1) can be used to distinguish or trace an individual's identity and (2) any other identifying information that can be linked or is linkable to a specific individual. PII, if improperly accessed, used, or disclosed, could present the greatest risk with respect to being socially, physically, or financially damaging (such as being misused for the purpose of identity theft). In regard to NEPA, PII such as full name when connected to a social security number, date of birth, place of birth, mother's maiden name, home address and financial information shall be redacted.

### Plow Zone

Plow zone is defined by 7 CFR 799.4(b) as the depth to which a site has been previously disturbed by plows during agricultural tillage or other legal actions.

### Point Sources of Pollution

Point sources of pollution are defined primarily as direct discharges into surface waters from pipes, ditches, and channels, but also including CAFO's and construction sites.

### Practicable Alternative

**[7 CFR 1940.302] 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 three categories of alternatives:**

- (1) Alternative project sites or designs,**
- (2) Alternative projects with similar benefits as the proposed actions, and**
- (3) The no-action alternative.**

### Previous Disturbance

Previous disturbance refers to soils that are not likely to possess intact and distinct soil horizons and have the reduced likelihood of possessing historic properties with their original depositional contexts or endangered species in the area disturbed by previous tillage or the depth to be excavated.

**Definitions of Terms Used in This Handbook (Continued)****Programmatic Environmental Assessment**

Programmatic environmental assessments are broad high level reviews (completed by National Office) for establishing policies, plans, programs or suites of related projects where several Agency actions will have similar effects on the same environmental resources with broad mitigation and conservation measures that can be applied to subsequent tiered reviews.

**Programmatic Environmental Impact Statement (PEIS)**

PEIS is an analysis of the potential impacts that could be associated with various components of a program or action that may not yet be clearly defined or even known to determine if the program or its various components have the potential to significantly affect the quality of the human environment.

**Program Participant**

A program participant is any person, agency, or other entity that applies for or receives FSA program benefits or assistance.

**Definitions of Terms Used in This Handbook (Continued)****Protected Resources**

Protected resources are sensitive resources that are protected by other statutes, regulations, or Executive Orders for which FSA's activities may pose highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks. The following resources are protected under NEPA:

- listed or proposed listed wildlife species or critical habitat for a threatened or endangered species
- property and cultural resources that are listed on or may be eligible for listing on the National Register of Historic Places
- coastal barrier or a portion of a barrier with the Coastal Barrier Resources System
- areas within an approved State coastal zone management program
- Federally designated wilderness area
- river or a portion of the river included in, or designated for potential addition to, the Wild and Scenic Rivers System
- national natural landmark
- sole source aquifer recharge area
- floodplains
- wetlands
- soils
- State water quality standard
- important farmlands or prime forestlands or rangelands.

**Responsible Agency Officials (RAO's)**

RAO's 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's, SEC's, State FP and FLP specialists, DD's, farm loan managers, farm loan officers, and CED's.

## Definitions of Terms Used in This Handbook (Continued)

### River-administering Agency

A river-administering agency is one of the four federal agencies that may be charged with administration of a component of the National Rivers System. These agencies are the Bureau of Land Management (BLM), National Park Service (NPS), U.S. Fish and Wildlife Service (USFWS), and U.S. Forest Service (USFS).

### River Corridor

River corridor is a river and the adjacent area within the boundaries of a designated river, or a river and the adjacent area below the highest line of the normal flow of the river, as opposed to the flood water level, and within one-quarter mile of the banks of a congressionally authorized study river (one-half mile for designated/study rivers authorized under the Alaska National Interest Lands Conservation Act), as it pertains to rivers in the state of Alaska.

### Scope

Scope is a range of actions, alternatives, and impacts to be considered in EIS. The scope of an individual statement may depend on its relationship to other statements.

### Scoping

Scoping is the early and open process for both the following:

- determining the scope of issues to be addressed
- identifying the significant issues related to a proposed action.

### Significantly

**[40 CFR 1508.27 and subparagraph 25 C] 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; impacts may be both beneficial and adverse. Responsible officials must bear in mind that more than 1 agency may make decisions about partial aspects of an action. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.**



**Definitions of Terms Used in This Handbook (Continued)****State Historic Preservation Officer (SHPO)**

**[36 CFR 800.16] SHPO means the official appointed or designated pursuant to section 101(b)(1) of the act to administer the State historic preservation program or a representative designated to act for the State historic preservation officer.**

**Surface Waters**

Surface waters, as defined by EPA, are U.S. waters, primarily lakes, rivers, estuaries, coastal waters, and wetlands.

**Threatened Species**

**[50 CFR 17.3] Threatened species means a species of wildlife listed in 17.11 or plant listed in 17.12 and designated as threatened.**

**Tribal Ceded Land**

Tribal ceded land is comprised of real estate in which all tribal rights, title and interest in lands occupied by the Tribe were ceded or relinquished and conveyed by a Tribe to the U.S. as part of a treaty signing or establishment of a reservation. Ceded land references are more specifically identified by the legal definition of original tribal occupancy issued in 1978 by the U.S. Court of Claims.

**Tribal Historic Preservation Officer (THPO)**

**[36 CFR 800.16] THPO means 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 the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act.**

**Undertaking**

**[36 CFR 800.16] Undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval.**

**Definitions of Terms Used in This Handbook (Continued)****Waters of the State**

Waters of the State include ditches, intermittent streams, lakes, streams, and wetlands, as identified on USGS topographical maps, and for purposes of the CWA, includes all waters currently or previously used in interstate or foreign commerce and those determined to have a nexus to them, including but not limited to: waters subject to ebb and flow of the tide; all interstate and interstate wetlands; territorial seas; impoundments of waters otherwise identified, all tributaries, all waters adjacent to “waters” including wetlands, ponds, lakes, oxbows, impoundments, and similar waters.

**Wetlands**

**[33 CFR 328.3] Wetlands means those areas that are inundated or 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.**

**Wilderness**

Wilderness, as defined by The Wilderness Act, is the following:

- lands designated for preservation and protection in their natural condition
- an area where the earth and its community of life are untrammelled by man
- an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvement or human habitation
- generally appears to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticed
- has outstanding opportunities for solitude or a primitive and unconfined type of recreation
- shall be devoted to the public purposes of recreation, scenic, scientific, educational, conservation, and historic use.

**Sources of Authority**

Following are sources of authority for FSA's environmental compliance program.

- 7 CFR Parts 1b and 1c
- 7 CFR Part 658
- 7 CFR Part 799
- 7 CFR Part 3100
- 36 CFR 60, National Register of Historic Places (NRHP)
- 36 CFR 63 (elig)
- 36 CFR Part 800
- 40 CFR Parts 1500-1508
- 87 CFR Part 12
- 54 U.S.C. 306108 (commonly known as Section 106 of the National Historic Preservation Act)
- American Indian Religious Freedom Act, 42 U.S.C. 1996
- Archaeological and Historic Preservation Act, 16 U.S.C. 469-469c
- Archaeological Resources Protection Act, 16 U.S.C. 470aa-470mm [**43 CFR Part 7**]
- Clean Air Act, 42 U.S.C. 7401-7671q [**40 CFR Parts 50-53, 60, 61, 67, 81, and 82**]
- Clean Water Act, 33 U.S.C. 1251 et seq [**32 CFR Parts 200-230; 40 CFR Part 320**]
- Coastal Barrier Resources Act, Pub. L. 97-348
- Coastal Zone Management Act, 16 U.S.C. 1451 et seq
- Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9620 [**40 CFR Parts 300, 302, 355, 370, and 373**]
- DR 9500-3, Land Use Policy
- DR 9500-4, Fish and Wildlife Policy.

**Sources of Authority (Continued)**

- Endangered Species Act, 16 U.S.C. 1531 [**50 CFR Parts 17 and 23**]
- 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
- Farmland Protection Policy Act, subtitle I, Pub. L. 97-98 [**7 CFR Parts 657 and 658**]
- Migratory Bird Treaty Act, 16 U.S.C. 703-711
- National Environmental Policy Act [**42 U.S.C. 4321**]
- National Historic Preservation Act, 54 U.S.C. 300101 et seq.
- Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001-3013 [**40 CFR Part 10**]
- Presidential directive dated August 2, 1979, about federal actions that could adversely affect a river in the nationwide inventory
- Resource Conservation and Recovery Act, 42 U.S.C. 6962 [**40 CFR Parts 240-280**]
- Safe Drinking Water Act Section 1424(e) [**42 U.S.C. 300h**]
- Wild and Scenic Rivers Act, 16 U.S.C. 1271 [**36 CFR Part 797 Subpart A**]
- The Wilderness Act, 16 U.S.C. 1121; 1131-1136

Example Consultation Letter to USFWS Requesting Information

**TO:** *[Point of Contact, if known  
Name and address of Field Office]*

**FROM:** *[Point of Contact Name]*

**SUBJECT:** Request for Concurrence

The USDA, Farm Service Agency (FSA) is completing an environmental review of [insert a brief overview of the proposed activity and location].

Pursuant to 7(a)(1) of the Endangered Species Act (ESA) implementing regulations to carry out programs for the conservation of threatened and endangered species, this letter and attachments are being transmitted to initiate consultation, to assist FSA in fulfilling its duty to ensure federal actions do not jeopardize the continued existence of a species or destroy or adversely modify critical habitat.

A site visit has been made and the following attachments reviewed:

- species list from Ipac website and habitat requirements of listed species
- location map
- aerial view of property for its current use
- FEMA flood map
- GIS topo map
- soils map
- drawings of project location or footprint and related design plans, as appropriate
- photos from our field visit
- (include any additional material that may be available).

Based on the above there is no indication of the presence, or the probability of adverse impacts. Accordingly, pursuant to 7(a)(1) of the Endangered Species Act (ESA), USDA-FSA has determined the described project **“may affect, but is not likely to adversely affect.”** Your concurrence with this determination is requested within thirty (30) days of the email delivery receipt or delivery of this letter based on standard United States Post Office delivery schedules not to exceed 5 days from the related post mark. If we do not hear from you within the specified time frame, it will be assumed you are in agreement and have no further interest in this matter.

*If you are unable to respond in 30 days or have any questions or need further information please contact me at [telephone number or e-mail address].*

Correspondence may be sent to:

Sincerely,

[Name and Signature]

**Note:** Use appropriate and approved letterhead.



**Example Consultation Letter to SHPO/THPO**

**TO:** *[Point of Contact, if known  
Name and address of SHPO/THPO & Other Consulting Parties]*

**FROM:** *[Point of Contact Name]*

**SUBJECT:** Request for Concurrence

The USDA, Farm Service Agency (FSA) is completing an environmental review of *[insert a brief overview of the proposed activity and location]*.

In considering FSA's responsibilities pursuant to Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations in 36 CFR Part 800, "Protection of Historic Properties (Section 106), we are requesting your assistance in identifying historic properties and/or other cultural resources that might be affected by this undertaking.

FSA has reviewed the National Register of Historic Places list and our State Environmental Guide. (As appropriate add other actions that may have been completed, including but not limited to specific reference to having completed a site visit, consulted with the State Environmental Coordinator, local historical society, etc.)

To the best of our knowledge there is no indication of the presence, or the probability of an historic property or cultural resource at the site. Attached for reference are:

- Location map
- Aerial view of property for its current use
- FEMA flood map
- GIS topo map
- Soils map
- Drawings of project location or footprint and related design plans as appropriate
- Photos from our field visit
- (include any additional material that may be available.)

[If historic properties or those eligible for listing in the National Register of Historic Places are present describe and insert a summary of the mitigation measures proposed to avoid or lessen the effect and any related Memorandum of Agreement for the proposed activity.]

FSA has made a finding that no effect by this proposed project. Your concurrence with this determination is requested within thirty (30) days of the email delivery receipt or delivery of this letter based on standard United States Post Office delivery schedules not to exceed 5 days from the related post mark. If we do not hear from you within the specified time frame it will be assumed that you are in agreement and have no further interest in this matter.

Please feel free to contact me at [telephone number or e-mail address] should you have any questions or need further information. Correspondence may be sent to:

Sincerely,

*[Name and signature]*

Attachments

**Note:** Use appropriate and approved letterhead.





**Example Consultation Letter for Coastal Zone Management Consistency Request**

**TO:** *[State Point of Contact  
Address]*

**FROM:** *[Activity Title]*

**SUBJECT:** Request for Concurrence

The USDA, Farm Service Agency (FSA) is completing an environmental review of *[insert a brief overview of the proposed activity and location]* and requests a consistency review of the proposed actions associated with the above referenced project pursuant to Section 307 of the Coastal Zone Management Act.

Enclosed are the following:

- Location map
- Aerial view of property for its current use
- FEMA flood map
- GIS topo map
- Soils map
- Drawings of project location or footprint and related design plans as appropriate
- Photos from our field visit
- (include any additional material that may be available.)

The proposed action would include such activities as *[add summary of proposed action details and any alternatives. Discussion should include specific actions and mitigation measures for natural resources that would be of concern to the State]*.

FSA is providing notification it anticipates the proposed Federal action would [not] affect coastal uses or resources of the State of [list activity State], and that [mitigation measures or best management practices] would be implemented to ensure compliance with all regulatory environmental requirements. Your concurrence with this determination is requested within thirty (30) days of the email delivery receipt or delivery of this letter based on standard United States Post Office delivery schedules not to exceed 5 days from the related post mark. If we do not hear from you within the specified time frame it will be assumed that you are in agreement and have no further interest in this matter.

Please feel free to contact me at *[telephone number or e-mail address]* should you have any questions or need further information. Correspondence may be sent to:

*[Name  
Address]*

Sincerely,

*[Name and Signature]*

Enclosures: Include a map of activity area.

**Note:** Use appropriate and approved letterhead.



**Example Consultation Letter to EPA**

TO: [Name and address of Regional EPA Sole Source Aquifer Coordinator]

FROM: [Point of Contact Name]

SUBJECT: Request for Concurrence

The USDA, Farm Service Agency (FSA) is completing an environmental review of [insert a brief overview of the proposed activity and location].

In considering FSA's responsibilities pursuant to the Safe Drinking Water Act and its implementing regulations, we are requesting your assistance in identifying potential adverse impacts to sole source aquifers which may be affected by this project.

FSA has reviewed the list of sole source aquifers and our State Environmental Guide, and to the best of our knowledge there is no indication of probable adverse impacts. Attached for reference are:

- Location map
- Aerial view of property for its current use
- FEMA Flood Map
- GIS Topo Map
- Soils Map
- Drawings of project location or footprint and related design plans as appropriate
- Printout of sole source aquifers listed in the region of the proposed action
- (include any additional material that may be available).

[Describe and insert a summary of any mitigation measures proposed to avoid or lessen the effect, or any other important information regarding the proposed action].

FSA has made a finding of no effect for this proposed project. Your concurrence with this determination is requested within thirty (30) days of the email delivery receipt or delivery of this letter based on standard United States Post Office delivery schedules not to exceed 5 days from the related post mark. If we do not hear from you within the specified time frame it will be assumed that you are in agreement and have no further interest in this matter.

Please feel free to contact me at [telephone number or e-mail address] should you have any questions or need further information. Correspondence may be sent to:

Sincerely,

[Name and signature]

Attachments

**Note:** Use appropriate and approved letterhead.



**Example Consultation Letter for Wild and Scenic Rivers/Nationwide Rivers Inventory**

TO: [WSR - Name and address of management agency  
NRI - Name and address of NPS Regional Rivers Coordinator]

FROM: [Point of Contact Name]

SUBJECT: Request for Concurrence

The USDA, Farm Service Agency (FSA) is completing an environmental review of [insert a brief overview of the proposed activity and location].

In considering FSA's responsibilities pursuant to the Wild and Scenic Rivers Act, 16 U.S.C. 1271-1288 [36 CFR Part 297 Subpart A and/or Presidential Directive dated August 2, 1979] regarding federal actions which could adversely affect a river in the Nationwide Inventory, we are sending this letter and attachments to initiate consultation. The Farm Service Agency is requesting your assistance in fulfilling responsibilities to ensure Federal actions do not adversely affect rivers designated in the Wild and Scenic Rivers System (WSR) and/or the Nationwide Rivers Inventory (NRI).

FSA has reviewed the designated Wild and Scenic Rivers list and Nationwide Rivers Inventory, and to the best of our knowledge found there is no indication of the presence, of a WSR and/or NRI within ¼ mile (1/2 mile for Alaska), of the proposed project AND the proposed project does not have the potential to affect a listed river. Attached for reference are:

- Location map
- Aerial view of property for its current use
- Printout of rivers listed in the state of the proposed action from the USA National Wild and Scenic Rivers System Website (if applicable)
- Printout of NRI's listed on the NPS Website
- Drawings of project location or footprint and related design plans (if appropriate).

[If designated rivers are present describe and insert a summary of the mitigation measures proposed to avoid or lessen the effect, or any other information you feel important for the proposed action].

FSA has made a finding of no effect for this proposed project. Your concurrence with this determination is requested within thirty (30) days of the email delivery receipt or delivery of this letter based on standard United States Post Office delivery schedules not to exceed 5 days from the related post mark. *[For Wild and Scenic Rivers choose this paragraph – **Your concurrence to this finding is REQUIRED** prior to FSA approval of this action. Please respond within the 30-day timeframe].*

Please feel free to contact me at [telephone number or e-mail address] should you have any questions or need further information. Correspondence may be sent to:

Sincerely,

[Name and signature]

Attachments



## **Example SLA With USFWS**

SLA's developed between FSA and USFWS would streamline the ESA, Section 7 consultation process by identifying and resolving conflicts **before** they occur. Establishing an interagency agreement would initiate early coordination with the regulatory agency, which is the best way to avoid costly delays in activity timelines. Developing SLA's could require substantial upfront FSA staff involvement, but timeline benefits for activities may be significant. An example SLA between FSA and USFWS is provided in this exhibit. SLA objectives are to:

- determine the scope of the proposed action or group of actions covered under SLA
- establish the appropriate level of signature authority for both agencies
- determine the scale of the analysis necessary to complete consultation
- designate staff and responsibilities for both agencies
- establish timelines for completion of consultation
- develop a dispute resolution process
- incorporate conservation or mitigation measures into activity design to avoid adverse effects to listed species.

Situations where SLA's would be beneficial include:

- repetitive actions with similar effects to protected species
- variety of actions affecting a particular geographic area or group of species
- group of actions occurring over a particular period of time
- large, controversial activity where impacts to listed species are likely.

If a State Office feels SLA would be beneficial, contact the State USFWS Ecological Services office delegated responsibility for ESA, Section 7. USFWS will designate the appropriate representative to work with FSA in developing SLA. The template provided in this exhibit would be used to draft SLA and could be refined to meet FSA's specific needs. Involving USFWS early in the process will eliminate conflicts later in the consultation process. Developing SLA's saves both agencies time and frustration during the consultation process.

**Note:** All State developed SLA's **must** be sent to the National Office for review and approval **before** signing.

Example SLA With USFWS (Continued)

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**Consultation Agreement between**

**USDA Farm Service Agency  
and  
U.S. Fish and Wildlife Service  
on  
[Activity Or Program Name]**

**[date]**

**A. Purpose and Need**

This agreement is formulated to establish an effective and cooperative process upon which Endangered Species Act (ESA) Section 7 consultation may be conducted by the USDA Farm Service Agency (FSA) and the [State or Regional] Office of the U.S. Fish and Wildlife Service (USFWS). This agreement addresses consultations and conferencing on all species [or a specific list of species] determined to be threatened, endangered, or proposed for listing, and designated or proposed critical habitat occurring on [activity location].

This agreement will serve to define the process, products, actions, timeframe and expectations of the FSA and USFWS while working together to complete Section 7 consultations, and will serve as a guiding document for both agencies throughout the consultation process. Specifically, this consultation will focus on [activity or program title].

The Federal agencies will convene an interagency team composed of their employees to conduct this consultation.

**B. Consultation Background**

[Brief overview of the history leading to this agreement.]

**C. Consultation Action**

[This section will provide the basis for the agreement. You should provide details of the proposed action, activity, or program components that will be covered under this agreement.]



Example SLA With USFWS (Continued)

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**D. Operations**

- a. The USDA FSA Agrees to:
  - Provide a person or persons [*provide names*] for contacts
  - Provide the following information/documents
    - [*list information or documents specific to this agreement*]
  - Agree to hold meetings, conference calls, etc. to discuss and review [*activity or program*] issues
  - Identify time commitments
  
- b. The USFWS Agrees to:
  - Provide a person or persons [*provide names*] for contacts
  - Agree to participate in meetings, conference calls, etc. related to [*activity or program*] issues
  - Agree on time commitment
  
- c. The USDA FSA and USFWS mutually Agree to:
  - [*Any activity specific operational items in common.*]
  - Cooperate as partners in completing the commitments each agency has made to the process and timeframes as outlined.
  - Agree on required information or documentation and format in order to initiate or streamline consultation process.
  - Develop conflict resolution process
    1. “Elevation” contact person
    2. Method for resolving conflicts

**E. General Provisions**

- a. This consultation agreement can be amended by mutual agreement of both parties.
- b. Meeting the timelines outlined under this Agreement is contingent upon the availability of adequate funding for both agencies.
- c. This agreement is intended only to improve the internal management of the USDA FSA and USFWS and is not intended to and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.
- d. That nothing in this agreement shall be construed as obligating either party to the expenditure of funds, or for the future payment of money, in excess of appropriations authorized by law.

**Example SLA With USFWS (Continued)**

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**F. Timeline**

*[Develop activity/program specific consultation timeline.]*

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USDA FSA Authorized Official

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Date

---

USFWS Authorized Official

---

Date

**Example SLA With SHPO and THPO**

The following is a template for SHPO and THPO SLA.

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**STATE LEVEL AGREEMENT**

**AMONG**

**UNITED STATES DEPARTMENT OF AGRICULTURE, FARM SERVICE AGENCY,**

**ADVISORY COUNCIL ON HISTORIC PRESERVATION,**

**AND**

**STATE OF <STATE>,**

**STATE HISTORIC PRESERVATION OFFICER**

**Purpose:** The United States Department of Agriculture, Farm Service Agency (FSA), (State Historic Preservation Officer (<STATE> SHPO)) and the Advisory Council on Historic Preservation (ACHP) agree that execution of this agreement allows for the implementation of policies and procedures developed by FSA to more effectively ensure that effects of FSA Farm Programs and Farm Loan Programs, and their related activities, on historic properties are adequately considered, and provisions for protection of such properties and resources are provided for.

WHEREAS, the FSA, in consultation with the <STATE> SHPO and the ACHP, has determined that certain of their Farm Program and Farm Loan Program activities may affect properties listed in or eligible for listing in the National Register of Historic Places, and that these activities are therefore subject to review under Sections 106 and 1109(a)(2)(E), (f), (k), and (l) of the National Historic Preservation Act of 1966 (NHPA (16 U.S.C. 470f, as amended) and the ACHP's implementing regulations Protection of Historic Properties: (36 CFR Part 800) and FSA is to follow policies and procedures issued in 7 CFR 799, 7 CFR 1940-G, 7 CFR 1955, 7 CFR 3100 and 1-EQ Environmental Handbook; and

WHEREAS, the <STATE> SHPO is the responsible state entity for recognition and protection of historic properties and for overseeing cultural resources management and protection programs in the state; and

WHEREAS, the FSA Federal Preservation Officer encourages each state office and its counterpart SHPO to develop State Level Agreements (SLA) as alternate procedures as authorized under 36 CFR 800.14, in order to further expedite the Section 106 of the NHPA compliance process, speed delivery of Farm Programs and Farm Loan Programs, and protect historic properties; and

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**Example SLA With SHPO and THPO (Continued)**

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WHEREAS, the FSA State Environmental Coordinator (SEC) or delegated state staff person consulted with the <STATE> SHPO pursuant to this encouragement; and

WHEREAS, the FSA intends to work with individual Tribal Historic Preservation Officers (THPO's) and Tribes to develop consultation protocol agreements similar to this SLA; and

WHEREAS, all definitions in 36 CFR 800.16 are applicable throughout this agreement unless otherwise noted;

NOW, THEREFORE, in view of the above considerations, the <STATE> SHPO, ACHP, and FSA agree to the following stipulations and will ensure they are implemented:

**STIPULATIONS**

**1. Communication**

FSA county office personnel who have completed the training as outlined in Stipulation 5, shall complete the <STATE> FSA Cultural Resources Review Worksheet (Appendix: 1) for all activities designated as undertakings with the Potential to Affect historic properties as outlined in Stipulation 3. These completed worksheets will be sent to the State Environmental Coordinator (SEC) or FSA designee or a qualified Cultural Resources Specialist (CRS) meeting the Secretary of Interior's standards.

After the CRS reviews the activity, they send the activity with their findings to the FSA SEC or designee who will then send activities along with a determination, as appropriate, to the <STATE> SHPO for review and comment as per Stipulation 3.

**2. Responsibilities**

**FSA**

**Federal Preservation Officer (FPO)**

The FSA FPO will assist the SEC with any cultural resources protection issues that may arise and will also help in the procurement of any needed cultural resources identification surveys or any mitigation measures that may be needed.

The FPO will also function as the agency point of contact for any activities that may have ACHP involvement and will supply the ACHP with yearly progress reports for activities conducted in <State>.

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**Example SLA With SHPO and THPO (Continued)**

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**State Environmental Coordinator (SEC)**

The SEC or his designee will function as the <State> FSA point of contact for all cultural resources issues. The SEC or designee will complete Section 106 (of the NHPA) training within 12 months after the signing of this agreement and also complete USDA/Natural Resources Conservation Service (NRCS) six module online cultural resources training accessed through the AgLearn website.

The SEC or designee will review all activities after conducting a literature review and forward the activities along with a findings determination to the SHPO as appropriate as outlined in Stipulation 3.

**Cultural Resources Specialist (CRS)**

The CRS will be an individual who meets the Secretary of the Interior's Standards to perform cultural resources management surveys within the state of <State>. FSA can obtain the services of this individual through direct hire, agreements with other Federal agencies, or through contracting out these services with private individuals or companies. This person(s) will be responsible for conducting individual activity background research and identification surveys. This person(s) will also be responsible for supplying FSA with the results of their research including recommendations for further action.

**SHPO**

The SHPO agrees to respond to FSA determinations or findings within a 30 day time frame, as per 36 CFR 800.3(c)(4).

**ACHP**

The ACHP or designee will participate in the review process of an activity if either the SHPO or the FSA asks the ACHP to participate. The ACHP will have 30 days to comment when asked to be a participant in the review process.

**3. Compliance Procedures**

When administering activities under either the CCC Farm Programs or the Farm Loan Programs the FSA county field office staff will first determine whether the activity will be on Tribal lands. If it will be on Tribal lands, then FSA will follow the process outlined in a Tribal Consultation Protocol Agreement, if one exists. If there is no agreement, then FSA will follow the regulations outlined in 36 CFR 800.2(c)(2). If the activity is on land that a tribe claims as ceded/ancestral land then FSA will forward the same information it sends to the SHPO to the appropriate Tribe(s) for comment. Tribal protocol agreements may change this process.

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**Example SLA With SHPO and THPO (Continued)**

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If it is not on Tribal lands, then FSA will use Appendix 2 of this agreement to determine if the activity is an undertaking that has the potential to affect historic properties. If it is not, this should be documented in the producer's case file. FSA will continue with the planning of the activity and FSA's Section 106 requirements are fulfilled.

If the activity is one that has the potential to effect, then information needs to be gathered to determine if it will affect an historic property and if so, if it will have an adverse effect. This information is contained on the <State> FSA Cultural Resources Review Worksheet (Appendix 1). Once FSA gathers the required information then the following steps will be carried out:

1. FSA trained county personnel will send the FSA Cultural Resources Review Worksheet to the SEC. County office personnel will complete Section 1 of the review worksheet in as much detail as possible before sending it to the SEC.
  2. The SEC will conduct a literature search of the activity area using the <STATE> SHPO site file data base. This literature search will result in one of two outcomes:
    - i. The SEC finds no cultural resources within the activities Area of Potential Effect (APE) and finds the potential for any unknown resources to be present to be low (no sites within 1/2 mile of the APE on the same type of landform and soil type). In this instance, the SEC will send the information back to FSA county office with Section 2 of the review worksheet checked and FSA will file the worksheet in the producers file and its Section 106 obligations are complete for that activity; or
    - ii. The SEC either finds sites within the APE or determines the potential is high (sites present within 1/2 mile on similar landform and soil type) for cultural resources to be present within the APE and will recommend an identification survey of the APE be conducted. In this instance, proceed to step 3.
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**Example SLA With SHPO and THPO (Continued)**

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3. FSA will make a findings determination after an identification survey is completed. There are two ways in which this survey will be conducted:
    - i. If it is Farm Loan Programs, then FSA will contact the producer and request the producer hire a qualified contractor (as determined by FSA) to conduct an identification survey to determine if there is a cultural resource within the APE and whether the resources will be impacted by the activity. FSA will forward the review worksheet to the contractor to complete the short report format section of the review worksheet if the survey is negative findings. If the survey is not a negative findings then the contractor will send a complete report as outlined in stipulation 4 with recommended actions to FSA. FSA will proceed to step 4.
    - ii. If it is a CCC Farm Program, then FSA will hire a qualified contractor (CRS) to conduct an identification survey to determine if there is a cultural resource within the APE and whether the resources will be impacted by the activity. FSA will forward the review sheet to the CRS to complete the short report format section of the review sheet if the survey is negative findings. If the survey is not a negative findings then the CRS will send a complete report with recommendations to FSA. FSA will proceed to step 4.
  4. FSA SEC will make a finding and record it in Section 3 of the review sheet once they receive fully completed cultural resources review sheet and a cultural resources identification survey report, if appropriate. There are three possible findings FSA will make:
    - i. No Historic Properties Affected-proceed to step 5.
    - ii. No Adverse Effects-proceed to step 5.
    - iii. Historic Properties Affected-proceed to step 6.
  5. FSA will send the No Historic Properties Affected or No Adverse Effects finding along with all appropriate information (completed review worksheet, identification reports) to the SHPO for a 30 day review and comment period. If the SHPO agrees with finding or if the SHPO does not respond within 30 days, then FSA will move forward with the planning and installation of the activity. Section 106 compliance is complete. If SHPO does not agree with finding then proceed to step 6.
  6. If the SHPO does not concur with FSA finding or if the finding is Historic Properties Affected then FSA will consult with the SHPO to determine the next course of action. If SHPO and FSA can not reach an agreement on how to proceed, then FSA will forward all activity information and findings to the ACHP for comment. FSA will take into account the ACHP's comments before making a final decision on the activity.
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**Example SLA With SHPO and THPO (Continued)**

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**4. Reports**

Identification survey in which cultural resources are identified shall have reports written that contain enough information to permit FSA to make an informed decision and/or finding and be presented in such a manner that an outside party can understand the basis for that decision or finding. This report shall contain at minimum the following information which should include any appropriate pictures, maps and drawings:

1. Historic context (e.g. types of sites likely to be found), includes information gathered from any archival and other background research conducted
2. Area researched or surveyed (i.e., activity APE)
3. Research design (how and why the methods used were chosen)
4. Methods used (which methods were chosen and how were they carried out; e.g. reconnaissance survey)
5. Results
  - a. Outcome of survey (Cultural resources identified)
  - b. Analysis of any artifacts, features, structures
  - c. Recommendations

**Backup Data**

All field notes, pictures, and drawings not contained in the above report are the property of FSA and shall be returned to FSA as soon as possible after appropriate analysis is completed and final report accepted.

**Curation**

All artifacts found during the identification survey are the property of the landowner and shall be returned to the landowner as soon as possible after appropriate analysis is completed and final report is accepted by FSA. FSA will encourage the landowner to donate any artifacts to a local or state curation facility.

**5. Training**

FSA will ensure that all county field personnel involved in the planning of undertakings or farm loans have training in the process specified in stipulation 3 of this agreement. These training sessions will be conducted on an as needed basis when FSA implements new policy, procedures or when new regulations or Executive Orders deem it appropriate.

The SHPO is encouraged to be an active participant in this training.

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**Example SLA With SHPO and THPO (Continued)**

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**6. Emergencies**

The following situations and procedures will ensure that the need to protect life and property in an emergency is accomplished while still considering cultural resources:

When there is an urgent need to save lives and/or property FSA will notify the SHPO of the threatening situation and the remediation work planned. The SHPO will have up to 7 days to respond with any concerns. In the absence of a response, concurrence will be assumed after the 7 days. FSA will document and avoid adverse impacts to cultural resources encountered during the planned work to the fullest extent practicable. In major natural disasters FSA may waive its historic property responsibilities as allowed under 36 CFR 78. For emergency work of a less threatening nature allowing for more time to plan remediation will report planned undertakings in the manner described under Stipulation 3.

**7. Human Remains**

If human remains are discovered during the planning or installation/construction of an undertaking all activities which could damage the remains shall immediately cease. The following actions will be taken:

- A. The <State> State Police and the SEC will be contacted by the FSA field staff immediately to determine whether the remains are part of an ongoing investigation;
- B. If the remains are not part of an ongoing police investigation the SEC will notify the SHPO and any appropriate Tribes;
- C. The SHPO and/or Tribe will help FSA in the determination of ethnicity of the remains;
- D. If the remains are of American Indian extraction and located on Federal or Tribal Lands, FSA will follow the procedures outlined in Section 3 of the Native American Graves Protection and Repatriation Act (NAGPRA); If the remains are other than above, FSA will follow <State> statute: <appropriate state law(s)> ;
- E. FSA will follow the policy statement titled “Regarding Treatment of Burial Sites, Human Remains and Funerary Objects” as adopted by the Council on February, 23, 2007; for all such burial sites, human remains and funerary objects that are found within the boundaries of an Historic Property during the Section 106 compliance process

Threatening construction activities shall not resume until the remains are properly treated.

**8. Unanticipated Discoveries**

FSA agrees to cease all technical assistance and implementation of any practices upon the discovery of a cultural resources or material. FSA county field staff shall notify the SEC within 24 hours of the discovery who in turn shall notify the SHPO office to make arrangements for an on site evaluation of the resource.

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**Example SLA With SHPO and THPO (Continued)**

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**9. Consultation**

Public

FSA will consult with the public as is appropriate for the size and nature of the undertaking. At a minimum, this will consist of the landowner, any FSA partner involved (such as the local conservation district) and any other individual or public entity showing interest.

Tribal

FSA will consult with any Indian Tribes on a government to government basis. This consultation may result in formal consultation protocol agreements which will include procedures FSA will follow on Tribal land and on land in which a Tribe holds as ancestral lands. The SHPO will be part of these consultation and subsequent agreements with all Tribes who do not have Tribal Historic Preservation Officer (THPO) responsibilities and; if invited by the Tribes, those tribes who do have THPO responsibilities.

**10. Dispute Resolution**

Should any party to this agreement object within 30 days to any actions proposed or plans or documents issued for review under the terms of this agreement, the two parties shall consult to resolve the objection. If any of the parties determine that the objection cannot be resolved in a timely manner, then the FSA shall provide all relevant information regarding the dispute, including FSA's proposed resolution to the ACHP for comment. Within 30 days of receipt of all relevant documentation, the Council will either:

- A. Provide FSA with recommendations which FSA shall take into account in reaching a final decision regarding the matter; or
- B. Notify FSA that it will comment pursuant to 36 CFR Section 800.7(c), and proceed to comment within 45 days of notification to FSA.
- C. Any recommendations or comments provided by the Council shall be taken into account by the FSA in accordance with 36 CFR Section 800.7(b)(4) with reference to the subject of the dispute. Any recommendations or comments provided by the ACHP will be understood to pertain to the subject of the dispute only; the FSA's responsibilities to carry out all actions that are not the subjects of the dispute will remain unchanged.

**11. Amendments**

Any party to this agreement may propose that it be amended or modified, whereupon the parties will consult in accordance with 36 CFR Section 800.14 to consider such amendment. Any resulting amendment shall be executed in the same manner as the original agreement.

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**Example SLA With SHPO and THPO (Continued)**

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**12. Termination**

Any party to this agreement may terminate it by providing 60 calendar days written notice to the other party to this agreement with specific reasons for such termination, provided the parties consult during this period prior to termination to seek agreement on amendments or other actions that would avoid termination.

**13. Funding**

All financial commitments of the USDA/FSA and <STATE> SHPO are subject to the availability of funds. In the event either party is subject to a funding limitation or cannot otherwise secure the necessary funding for this Agreement, it will notify the other party within 30 days and any necessary modifications, including possible termination per Stipulation 12 will be made to this Agreement

**14. Expiration**

This agreement will remain in effect for five years from the date of execution, provided that the parties to this agreement may consult to determine whether to extend its terms, whereupon the parties may extend this agreement for a period of time mutually agreeable. Within 30 days of the receipt of the FSA yearly report by SHPO the parties agree to meet to discuss the year end report and to add any new practices or change undertaking categories as described in Appendix 2 and to discuss any other issues concerning any actions carried out under this agreement.

The parties agree that all matters not discussed in this agreement will be handled in accordance with Section 106 of the NHPA and Council regulations. Execution of this State Level Agreement and implementation of its terms evidences that the FSA has taken into account the effects of its Farm Program and Farm Loan Programs assistance provided on public and private lands on historic properties and this fulfills FSA's obligations under the National Historic Preservation Act and other legislation and regulations.

Signatories:

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Example SLA With SHPO and THPO (Continued)

Appendix 1: <State> FSA Cultural Resources Review Worksheet

**<State> FSA Cultural Resources Review Worksheet**

**Section 1: Activity Information**

Cooperators Name \_\_\_\_\_ FSA contact \_\_\_\_\_

Check One: Farm Loan Program \_\_\_\_\_ Farm Program \_\_\_\_\_

UTM Coordinates of practice: Zone: \_\_\_\_\_ N: \_\_\_\_\_ E: \_\_\_\_\_

Is the activity located on Tribal ceded/ancestral lands?  
Yes \_\_\_\_\_ (If applicable, follow process of Tribal Agreement)  
No \_\_\_\_\_

Proposed activity:

Describe, in detail; proposed activity and disturbance (Area of Potential Effect, APE).  
Include length, width, depth of disturbance, and height of practice, if appropriate:

FSA contact will include topographic map with practice clearly marked and photos of the APE.  
FSA office will forward this sheet and attachments to FSA state office SEC.

Example SLA With SHPO and THPO (Continued)

Appendix 1: <State> FSA Cultural Resources Review Worksheet (Continued)

**Section 2: Literature Search**-to be completed by SEC

Did Literature search indicate a site within APE or indicate a High probability for a site to be present?

Yes \_\_\_ (SEC will return worksheet to FSA County Office, with recommendation for an Identification survey).

No \_\_\_ (Return worksheet to FSA County office, with a recommendation of no Identification survey).

**Section 3: FSA Findings**-to be completed by FSA State Office

\_\_\_ FSA agrees with the contractor's recommendation that no further surveys are needed and makes a finding of No Historic Properties Affected. Short report format is attached.

\_\_\_ FSA agrees with the contractor's recommendation that no further surveys are needed and makes a finding of No Historic Properties Affected. Cultural resources were discovered and a full cultural resources report is attached.

\_\_\_ FSA agrees with the contractor's recommendation that no further surveys are needed and makes a finding of No Adverse Effect. Cultural resources were discovered and a full cultural resources report is attached.

\_\_\_ FSA makes a finding of Historic Properties Affected and is initiating further consultation to resolve further course of action.

Signature of FSA State office \_\_\_\_\_

**Section 4: SHPO, THPO or Tribal Concurrence**-FSA will send this worksheet and any and all attachments to the SHPO, if not on Tribal lands or Tribal ceded/ancestral lands; appropriate THPO or Tribes if on Tribal lands; and to the SHPO and THPO or Tribes if on Tribal ceded/ancestral lands for all activities for which FSA makes a Finding.

SHPO concurs with FSA Finding: Yes \_\_\_ No \_\_\_

If No, Please supply reason and return to FSA state office for further consultation:

SHPO or staff signature \_\_\_\_\_

**Example SLA With SHPO and THPO (Continued)**

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**Appendix 1: <State> FSA Cultural Resources Review Worksheet (Continued)**

THPO concurs with FSA Finding: Yes\_\_\_\_ No\_\_\_\_

If No, Please supply reason and return to FSA state office for further consultation:

THPO or staff signature\_\_\_\_\_

Tribe concurs with FSA Finding: Yes\_\_\_\_ No\_\_\_\_

If No, Please supply reason and return to FSA state office for further consultation:

Tribal Representative's signature\_\_\_\_\_

Example SLA With SHPO and THPO (Continued)

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Appendix 1: <State> FSA Cultural Resources Review Worksheet (Continued)

**Cultural Resources Identification Survey Short Report Format**

This format will be used when a field visit or Identification survey is conducted and no cultural resources were encountered. Included with this short report will be the FSA Cultural Resources Worksheet and all appropriate attachments. Also include any maps and photos to help illustrate how the survey was conducted.

**Background:** This section will include results of literature search and short environmental and historic context of APE

Example SLA With SHPO and THPO (Continued)

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Appendix 1: <State> FSA Cultural Resources Review Worksheet (Continued)

**Methodology and Recommendation:** This section will include complete field methodology, results and recommendations



Example SLA With SHPO and THPO (Continued)

Appendix 2: Activities FSA Administers for the State of <State>

**Activities FSA Administers for the State of <State>**

This appendix lists all activities FSA administers in the state of <State>. They have been separated into ones that have the potential to effect historic properties, thus requiring compliance documentation, and ones that do not. If new activities or programs are developed they will be considered as undertakings that have the potential to effect until FSA consults with the SHPO and the ACHP and changes their status. The status of the programs and activities can be changed at any time if the consulting parties agree to the change.

**Undertakings that do not have the potential to effect**

The following undertakings or programs, FSA, in consultation with <STATE> SHPO and the ACHP, have determined do not have the potential to affect historic properties.

Animal control damage devices  
Annual Food Plots  
Annual Operating costs (seed, livestock, equipment, insurance, etc.) with no construction/demolition in plan including 7-year equipment loan  
Annual operating costs, including construction  
Breaking tiles  
Closing Costs  
Conservation easement/contract with no construction  
Conservation Easements  
Debris Removal, no new ground disturbance  
Debt Set aside  
Deferral  
Eligible and Suitable plantings  
Enlarge existing farm  
Family Subsistence/living expense  
Farmland Purchase, no new construction planned  
Fence, repair  
Fence, replace  
Forb planting  
Grafting or similar practice  
Grass Planting  
Herbicide purchase/application

Example SLA With SHPO and THPO (Continued)

Appendix 2: Activities FSA Administers for the State of <State> (Continued)

Income Producing Activities  
Insecticide purchase/application  
Interest assistance for guaranteed loans  
Inventory property disposal with easement/covenants  
Irrigation system/sprinkler  
Irrigation system/trickle (drip)  
Labor  
Legume planting  
Living snow fence  
Loan Consolidation  
Mineral purchase/application  
Mulching  
Netting for hardwoods  
Non-Insured crop disaster Assistance program  
Nutrient Management  
Other vegetation for habitat, food or cover planting  
Partial Release  
Pasture and Hayland planting  
Permanent water source for wildlife, if above ground  
Pipeline, if temporary above ground  
Plastic Mulch  
Plastic tubes for hardwoods  
Pond Sealing and lining  
Production costs with no construction or demolition  
Production costs, including construction or demolition  
Reamortization  
Refinance Debt  
Reorganize farm operations  
Rescheduling Debt  
Restructuring  
Seedbed preparation, if area previously cultivated  
Seeding  
Seeding firebreaks, fuelbreaks, firelanes  
Seeding, approved shrubs and trees  
Shrub planting seedlings  
Storage Facility, added capacity, buildings less than 50 years old  
Subordination, no new ground disturbance planned or no new construction planned  
Supplemental drip irrigation  
Surface Roughening, if previously cultivated

Example SLA With SHPO and THPO (Continued)

Appendix 2: Activities FSA Administers for the State of <State> (Continued)

Temporary cover  
Temporary food plots  
Trade adjustment Assistance Program  
Transfer/assumption  
Tree Planting bare roots  
Tree tubes, shelters  
Trough or tank, if above ground  
Writing down debt

**Undertakings that do not have the potential to effect, if installed in previously tilled soil and will not exceed 12" in depth**

Clean tilling firebreaks  
Contour Grass Strips  
Critical Area Planting  
Establish/maintain wildlife food plot  
Filterstrips  
Grassed or Sod waterway

**Undertakings that do have the potential to effect**

The following list of undertakings are undertakings that FSA, in consultation with the <State> SHPO and the ACHP, has determined have the potential to effect and as such will require compliance review as per Stipulation 3 of this agreement.

Animal trails  
Bridges  
Chutes  
Conservation easement/contract with construction  
Construction of structures  
Construction, addition to existing structure, if older then 50 years  
Crossing facilities and walkways  
Debris removal, new ground disturbance  
Developing farmland, new ground disturbance  
Dikes  
Ditches  
Diversions  
Drainage systems  
Drop spillways  
Earthmoving for dam, levee, dugout, dike  
Excavation

Example SLA With SHPO and THPO (Continued)

Appendix 2: Activities FSA Administers for the State of <State> (Continued)

Farmland purchases, new ground disturbance planned  
Fences, Install (if literature result is no known sites then proceed)  
Grade stabilization structure  
Grading, leveling, shaping, filling, not previously disturbed area  
Grading, leveling, shaping, filling, previously disturbed area  
Hillside ditches  
Improve/repair, structures 50 years old or older  
Inventory property disposal without protective easements/covenants  
Irrigation water conveyance/ditch and canal lining  
Irrigation water conveyance/pipeline  
Land smoothing  
Livestock crossing facility  
Outlets  
Obstruction removal  
Permanent water source for wildlife, if below ground  
Pipe drops  
Pipelines, water facility  
Plowing deep  
Ponds  
Pumped well drain  
Replace buildings  
Restore/replace property  
Riparian buffers  
Roads  
Rock barrier  
Rock filled infiltration trenches  
Site preparation  
Slope chiseling  
Sod waterway  
Spring development  
Storage facility, undisturbed area  
Structures, water control  
Structures, pipe, flashboard risers, gates, chutes, outlets  
Subordination, new ground disturbance planned, or new construction planned  
Temporary supplemental irrigation  
Terraces  
Trees (large root balls), perennial planting  
Troughs or tanks, if below ground  
Water gaps  
Water Storage facility  
Wells  
Wetland restoration

### **Example SLA for CZMA Consistency Determination**

SLA's developed between FSA and State agencies responsible for ensuring Federal consistency with the enforceable policies of the State's CZMA plan streamline the consistency determination review process. The objectives of an agreement are to:

- define what actions are covered under SLA
- designate staff and responsibilities for both agencies
- establish timelines for completion of the review
- develop a dispute resolution process
- incorporate conservation or mitigation measures into activity design to avoid adverse effects to the coastal zone.

Situations where SLA would be beneficial include the following:

- repetitive actions with similar effects to the coastal zone and its natural resources
- variety of actions affecting a particular geographic area
- group of actions occurring over a particular period of time.

If a State Office feels SLA would be beneficial, contact with the State agency for coastal zone management should be made as soon as possible. Each State has a designated representative for Federal consistency that will work with FSA to develop MOA for conducting coastal consistency determinations. The template provided in this exhibit will be used to draft SLA and may be refined to meet FSA's specific needs.

Example SLA for CZMA Consistency Determination (Continued)

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**Consultation Agreement between**  
**USDA Farm Service Agency**  
**and**  
**[Lead State Agency for Consistency Reviews]**  
**on**  
**[Activity or Program Name]**  
  
**[date]**

**Purpose and Need**

This agreement is formulated to establish an effective and cooperative process upon which the State of [insert State] shall review coastal consistency determinations associated with [activity title/geographic location/group of activities/group of regularly occurring activities] pursuant to Section 307 of the Coastal Zone Management Act.

This agreement will serve to define the process, products, actions, timeframe and expectations of the FSA and [insert State and lead agency for coastal zone management] while working together to complete coastal consistency determination reviews, and will serve as a guiding document for both agencies throughout the process.

**Background**

[Brief overview of the history leading to this agreement.]

**Coastal Zone Management Consistency Reviews**

[This section will provide the basis for the agreement. You should provide details of the proposed action, activity, or program components that will be covered under this agreement. A list of the State's enforceable policies developed under the Coastal Zone Management Act should be listed. This agreement should demonstrate how activities, etc. covered under this agreement are consistent with those policies and develop a process by which actions covered under this agreement will be reviewed.]

Example SLA for CZMA Consistency Determination (Continued)

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**Operations**

- a. The USDA FSA Agrees to:
  - Provide a person or persons [*provide names*] for contacts
  - Agree to hold meetings, conference calls, etc. to discuss and review [*activity or program*] issues
  - Identify time commitments
  
- b. [*Insert State*] Agrees to:
  - Provide a person or persons [*provide names*] for contacts
  - Agree to participate in meetings, conference calls, etc. related to [*activity or program*] issues
  - Agree on time commitment
  
- c. The USDA FSA and [*insert State*] mutually Agree to:
  - [*Any activity specific operational items in common.*]
  - Cooperate as partners in completing the commitments each agency has made to the process and timeframes as outlined.
  - Agree on required information or documentation and format in order to initiate or streamline consistency review process.
  - Develop conflict resolution process
    1. “Elevation” contact person
    2. Method for resolving conflicts

**G. General Provisions**

- a. This agreement can be amended by mutual agreement of both parties.
- b. Meeting the timelines outlined under this Agreement is contingent upon the availability of adequate funding for both agencies.
- c. This agreement is intended only to improve the internal management of the USDA FSA and [*lead State agency*] and is not intended to and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.
- d. That nothing in this agreement shall be construed as obligating either party to the expenditure of funds, or for the future payment of money, in excess of appropriations authorized by law.

**Example SLA for CZMA Consistency Determination (Continued)**

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**Timeline**

*[Develop activity/program specific consistency review timeline.]*

\_\_\_\_\_  
USDA FSA Authorized Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
*[lead State agency]* Authorized Official

\_\_\_\_\_  
Date



## **Example SLA With USACE**

An agreement developed between FSA and USACE will establish policies and procedures to implement CWA, Section 404 to minimize delays in issuing permits for routine agricultural practices. SLA's promote consistency between CWA and FSA by providing predictability and simplification for USDA programs. The guidance provided by USACE will incorporate the goals of the wetlands program while minimizing duplication, needless paperwork, and delays in issuing permits. The objectives of SLA's are to establish, to the extent possible:

- communication and full consideration of the views of FSA and USACE about proposed activities
- consistent time frames within an informal process for the timely resolution of issues at the field level
- cooperation in acquiring and conveying site-specific information needed by either FSA and USACE to fulfill its responsibilities
- specific actions that are covered under SLA
- specific procedures for conducting actions
- the appropriate level of signature authority for both FSA and USACE
- designated staff and responsibilities for both FSA and USACE
- conservation or mitigation measures into activity design to avoid adverse effects to U.S. waters.

SLA's are beneficial when:

- actions are repetitive and have similar effects to wetlands and surface waters
- groups of actions occur over a particular period of time
- new farming practices are established.

If a State Office feels SLA would be beneficial, contact with the regional USACE should be made as soon as possible. The template provided in this exhibit will be used to draft SLA and could be refined to meet FSA's specific needs.

Example SLA With USACE (Continued)

**State Level Agreement  
Between the  
United States Department of Agriculture, Farm Service Agency  
and  
The United States Department of the Army,  
The Army Corps of Engineers**

[*date*]

**I. INTRODUCTION**

The purpose of this State Level Agreement (SLA) among the US Army Corps of Engineers (USACE) and United States Department of Agriculture (USDA) under the Farm Service Agency (FSA) is to establish an effective and cooperative process for permitting [*activity title/geographic location/group of activities/group of regularly occurring activities*] pursuant to Section 404 of the Clean Water Act (CWA).

This agreement will serve to define the process, products, actions, timeframe and expectations of the FSA and the USACE while working together to facilitate the goals of the CWA while minimizing duplication and delays in the issuance of permits. The document will serve as guidance for both agencies throughout the process.

**II. SCOPE AND APPLICABILITY**

[*Brief overview of Section 404 and regulatory process.*]

**III. PROCEDURES AND ALLOCATION OF RESPONSIBILITIES**

[*This section will provide the basis for the agreement. You should provide details of the proposed action, activity, or program components that will be covered under this agreement as well as the procedures for implementation. This document should demonstrate how activities are consistent with policies of the USACE and how actions are reviewed.*]

**IV. DISPUTE RESOLUTION**

The agencies will make every reasonable effort to resolve any concerns or disputes related to these procedures at the local or regional level. Issues that cannot be resolved at the local or regional level, however, should be elevated to the FSA National Office or the USACE District office.

Example SLA With USACE (Continued)

**V. GENERAL**

A. The policy and procedures contained within this SLA do not create any rights, either substantive or procedural, enforceable by any party regarding an enforcement action brought by the United States. Deviation or variance from the administrative procedures included in this SLA will not constitute a defense for violators or others concerned with any Section 404 enforcement action.

B. Nothing in this SLA is intended to diminish, modify, or otherwise affect statutory or regulatory authorities of any of the signatory agencies. All formal guidance interpreting this SLA and background materials upon which this SLA is based will be issued jointly by the agencies.

C. Nothing in this SLA will be construed as indicating a financial commitment by FSA or USACE for the expenditure of funds except as authorized in specific appropriations.

D. This SLA will take effect on the date of the last signature below and will continue in effect until modified or revoked by agreement of all signatory agencies, or revoked by any of the signatory agencies alone upon a 60-calendar-day written notice. Modifications to this MOA may be made by mutual agreement and Headquarters level approval by all the signatory agencies. Such modifications will take effect upon signature of the modified document by all the signatory agencies.

\_\_\_\_\_  
USDA FSA Authorized Official

\_\_\_\_\_  
Date

\_\_\_\_\_  
USACE Authorized Official

\_\_\_\_\_  
Date



**NOA Template**

**USDA-Farm Service Agency**  
**Notice of Availability**  
***[Insert Activity Name and State]***  
***[Insert Draft or Final]* Environmental Assessment**

U.S. Department of Agriculture, Farm Service Agency (FSA) announces they will be completing an Environmental Assessment for the *[proposed activity title]* located at *[provide address and/or tax map ID]*. The primary objective of the activity is *[insert a 1 to 2 sentence description]*.

FSA is accepting comments on the potential effects of the proposed project on protected resources and the human environment through *[30 calendar days from the date of first publication]*. Information regarding this project can be reviewed either online at *[provide web address where document is available]* or in person at the *[FSA office or library]*. Comments should be submitted to *[insert RAO's name]* at *[provide mailing address]* or by email to *[insert e-mail address]*.



**Environmental Review Development Action Plan (Checklist for Kick-off Meeting)**

**APPLICANT:** \_\_\_\_\_ **PROJECT** \_\_\_\_\_

**LOCATION:** \_\_\_\_\_

**PROJECT DESCRIPTION** \_\_\_\_\_

**CAUTION:** Applicants must not take any actions with respect to their proposed actions during the period of review and processing that could have a potential adverse impact on the environment or limit the range of alternatives. Examples include site work requiring excavation, clearing, or hauling of fill dirt on or to the activity site. 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.

Ck	Description	FSA	Applicant	Lender	Other	Due	F/up	Rec'd	Comments
	Activity Design Specs or Plans		X						
	Maps								
	Location								
	Flood								
	Topographical								
	Soils								
	Aerial								
	County Tax								
	Activity Lay Out / Site Position		X						
	Impact Area								
	Wetlands								
	Other								
	AD-1026		X						
	FSA 850								
	Legal Description or Survey								
	Photographs – Location /site								
	Buildings								

**Environmental Review Development Action Plan (Checklist for Kick-off Meeting) (Continued)**

<b>Ck</b>	<b>Description</b>	<b>FSA</b>	<b>Applicant</b>	<b>Lender</b>	<b>Other</b>	<b>Due</b>	<b>F/up</b>	<b>Rec'd</b>	<b>Comments</b>
	<b>Consultations</b>	X							
	SHPO	X							
	Cultural Resource Survey								
	THPO	X							
	Cultural Resource Survey								
	Coastal Zone	X							
	USFWS/NMFS	X							
	Biological Assessment	X							
	NRCS								
	WL or HEL Determination								
	USACE								
	Other								
	<b>Plans</b>								
	Building								
	Engineering								
	Animal Waste								
	Nutrient Management								
	CNMP								
	CAFO								
	Storm water								
	Other								
	<b>Prepare Draft NOA</b>	X							
	Publish NOA as directed		X						
	Address Concerns	X							
	Schedule Public Meetings	X							



**Environmental Review Development Action Plan (Checklist for Kick-off Meeting) (Continued)**

Ck	Description	FSA	Applicant	Lender	Other	Due	F/up	Rec'd	Comments
	<b>Permits</b>								
	Building / Construction Appl.								
	Permit								
	Storm Water Application								
	Permit								
	NPDES/NOI Application								
	Permit								
	Operational Application								
	Permit								
	USACE Application								
	Permit								
	Other State or Local Appl.								
	Permit								
	<b>Other items</b>								
	<b>Prepare Final EA</b>	X							
	SEC Review Concurrence	X							
	Publish FONSI as directed								
	EIS								
	<b>Proceed with Loan Making Decision</b>								

**FSA Employee:** \_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Signature Date

**Applicant:** \_\_\_\_\_  
Name

\_\_\_\_\_  
Signature Date

**Lender:** \_\_\_\_\_  
(if at meeting) Name and Title Name of Financial Institution

\_\_\_\_\_  
Signature Date



**EPA Regulatory Definitions of Large CAFO’s, Medium CAFO’s, and Small CAFO’s**

**Note:** Use the most current version of this chart from the EPA website at [www.epa.gov](http://www.epa.gov).

A **large CAFO** confines at least the number of animals described in the table below.

A **medium CAFO** falls within the size range in the table below and **either**:

- has a manmade ditch or pipe that carries manure or wastewater to surface water
- **the animals come into contact with surface with surface water that passes through the area where they’re confined.**

If an operation is found to be a significant contributor of pollutants, the permitting authority may designate a medium-sized facility as a CAFO.

A **small CAFO** confines fewer than the number of animals listed in the table **and** has been designated as a CAFO by the permitting authority as a significant contributor of pollutants.

Animal Sector	Size Thresholds (number of animals)		
	Large CAFO’s	Medium CAFO’s <sup>1</sup>	Small CAFO’s <sup>2</sup>
cattle or cow/calf pairs	1,000 or more	300 - 999	less than 300
mature dairy cattle	700 or more	200 - 699	less than 200
veal calves	1,000 or more	300 - 999	less than 300
swine (weighing over 55 pounds)	2,500 or more	750 - 2,499	less than 750
swine (weighing less than 55 pounds)	10,000 or more	3,000 - 9,999	less than 3,000
horses	500 or more	150 - 499	less than 150
sheep or lambs	10,000 or more	3,000 - 9,999	less than 3,000
turkeys	55,000 or more	16,500 - 54,999	less than 16,500
laying hens or broilers (liquid manure handling systems)	30,000 or more	9,000 - 29,999	less than 9,000
chickens other than laying hens (other than a liquid manure handling systems)	125,000 or more	37,500 - 124,999	less than 37,500
laying hens (other than a liquid manure handling systems)	82,000 or more	25,000 - 81,999	less than 25,000
ducks (other than a liquid manure handling systems)	30,000 or more	10,000 - 29,999	less than 10,000
ducks (liquid manure handling systems)	5,000 or more	1,500 - 4,999	less than 1,500

<sup>1</sup> Must also meet one of two “method of discharge” criteria to be defined as a CAFO or may be designated.

<sup>2</sup> Never a CAFO by regulatory definition, but may be designated as a CAFO on a case-by-case basis.

**EPA Regulatory Definitions of Large CAFO's, Medium CAFO's, and Small CAFO's (Continued)****Combined Livestock Type Calculations**

Technically a large CAFO is an AFO with 1000 animal “units” of waste generating potential. An animal unit is defined as an animal equivalent of 1000 pounds live weight and equates to 1000 head of beef cattle, 700 dairy cows, 2500 swine weighing more than 55 pounds, 125 thousand broiler chickens, or 82 thousand laying hens or pullets.

States often have a spreadsheet or calculator for this purpose available for use of planners and TSPs in the state which has formulas and rounding conventions built in. **SECs should check to see if there is one available for use in the state and include it for use in the State Environmental Guide.**

Alternatively, when there are mixed animal types it is necessary to do the math related to the additional nutrient load that will be generated (and must be planned for and considered.) Start with the largest animal type number or foundation herd, and then do the math to figure out how much more equivalent waste needs to be considered for other animals that may be present using the process outlined in the example and the “factor” found in the chart below.

**Example:** If there are 650 mature dairy cows and 150 heifers, calculate the amount of waste to be considered by the 650 mature dairy cows **plus** the amount of additional waste generated by 150 heifers and then consult the EPA Animal Number Chart for NPDES Permitting for the primary livestock type of mature dairy cows.

The number of heifers x “factor” (see chart below) = number of additional/equivalent units of mature dairy cows that need to be added to the foundation herd of mature dairy cows.

For 650 dairy cows and 150 heifers the math for waste to be considered would be:

$$650 + (150 \times 0.6)$$
$$650 + 90 = 740 \text{ mature dairy cows.}$$

**EPA Regulatory Definitions of Large CAFO's, Medium CAFO's, and Small CAFO's (Continued)**

**Combined Livestock Type Calculations (Continued)**

**Animal unit definition** – "Animal unit" means a unit of measurement for any animal feeding operation calculated by the "factor" as follows:

- brood cows and slaughter and feeder cattle multiplied by 1.0
- milking dairy cows multiplied by 1.4
- young dairy stock multiplied by 0.6
- swine weighing over 55 pounds multiplied by 0.4
- swine weighing under 55 pounds multiplied by 0.03
- sheep, lambs, or goats multiplied by 0.1
- horses multiplied by 2.0
- turkeys multiplied by 0.02
- laying hens or broilers multiplied by 0.01 (if the facility has continuous overflow watering)
- laying hens or broilers multiplied by 0.03 (if the facility has a liquid manure handling system)
- ducks multiplied by 0.02.



## Summary Categorical Exclusion Catalog

The following alpha numeric codes are to be used to identify specific Categorical Exclusions (CatExs) that may be applicable when completing environmental review documents.

The recently updated 7 CFR 799 includes three new types of CatExs: Listed CatExs (“L”), Supported CatExs with No Ground Disturbance (S), and Supported CatExs with Ground Disturbance (SG).

Why are knowing these important? To fully evaluate each federal action means the Agency official needs to understand where all the project’s pieces fit in the list below. In working through the items to see which the project includes, there will often be more than one that applies – this is expected and is why it is helpful to have the full list of possible CatExs available for consideration, so that the highest level of review required can be identified. To identify the required level of review, you look to the CatEx with the highest level of review required – this is what establishes the minimum standard of review to be completed using the Environmental Screening Worksheet (ESW/FSA-850) and other documents. On the ESW/FSA-850, note the broad types of CatEx (L, S, or SG).

### Listed Categorical Exclusions

**Listed CatEx’s** are actions with **no new ground disturbance below the existing plow zone or disturbance area** and, as provided by 7 CFR 799.31, fit within specific categories that may be categorically excluded **if there are no extraordinary circumstances** as specified in 7 CFR § 799.33 without the need to complete further review. These categories are referenced in subparagraph 33 B and listed below for reference for **recording** the related decision on the ESW/FSA-850 and other documents.

Unless otherwise noted, these actions also do not have the potential to cause effects to historic properties, and will, therefore, not be reviewed for compliance with section 106 of NHPA (16 U.S.C. 470f) or its implementing regulations, 36 CFR part 800. The same is true for consultations under ESA.

1. Loan Actions
  - a) Commodity loans;
  - b) Youth loans;
  - c) Loans for closing costs;
  - d) Loans for annual operating expenses, (except large CAFOs);
  - e) Loans for equipment;
  - f) Loans for family living expenses;
  - g) Loans for labor costs;
  - h) Loans for refinancing of debt (except medium or large CAFO or debt incurred as part of a project that ground disturbance or change in use) ;
  - i) Loan (debt) transfers and assumptions with no new ground disturbance;
  - j) Loan subordination , without ground disturbance below the plow line or change in operations, including but not limited to an increase in animal numbers that would **not** constitute a medium or large CAFO as designated by the EPA (i.e. small CAFOs are not required to have permits or plans as potential impacts are not individually significant due to their small/limited animal numbers);

**Summary Categorical Exclusion Catalog (Continued)**

**Listed Categorical Exclusions (Continued)**

- k) Partial or complete release of loan collateral severing the lending relationship;
  - l) Debt set asides;
  - m) Restructuring of loans:
    - (i) Consolidation,
    - (ii) Re-amortization,
    - (iii) Rescheduling,
    - (iv) Deferral,
    - (v) Writedown.
2. Repair, improvement or minor modifications
- a) Existing fence repair;
  - b) Improvement or repair of farm-related structures under 50 years of age;
  - c) Minor amendments or revisions to previously approved projects, provided such actions do not substantively alter the purpose, operation, location, impacts, or design of the project as originally approved.
3. Administrative Actions
- a) Issuing technical corrections to regulations, handbooks, and internal guidance and amendments;
  - b) Personnel actions, reduction-in-force, or employee transfers;
  - c) Procurement actions for goods and services conducted in accordance with Executive Orders.
4. Planting actions on land that has been tilled in the past and will not exceed the depth of previous tillage
- a) Planting and seeding:
    - (i) Bare land planting or planting without site preparation;
    - (ii) Cover crop and green manure crop planting;
    - (iii) Grass, forbs, or legume planting;
    - (iv) Critical area planting;
    - (v) Pasture, range, and hayland planting;
    - (vi) Wildlife food plot planting;
    - (vii) Seed planting of shrubs;
    - (viii) Seedling shrub planting
  - b) Establishment of (without ground disturbance below level of previous tillage)
    - (i) Bedding site for wildlife;
    - (ii) Contour grass strips;
    - (iii) Field borders or field strips and their maintenance;
    - (iv) Windbreaks and shelterbelts;
    - (v) Firebreak installation;
    - (vi) Heavy use protection areas (example: vegetative buffers or filter beds).



**Summary Categorical Exclusion Catalog (Continued)**

**Listed Categorical Exclusions (Continued)**

- c) Tillage
  - (i) Chiseling and subsoiling;
  - (ii) Contour farming;
  - (iii) Planting site preparation;
  - (iv) Strip cropping;
  - (v) Conservation crop rotation;
  - (vi) Clean tilling firebreaks.
  
- 5. Management actions occurring on land that has been tilled in the past and will not exceed the depth of previous tillage
  - a) Forage harvest management;
  - b) Thinning and pruning of plants;
  - c) Plant grafting;
  - d) Integrated crop management;
  - e) Mulching, including plastic mulch;
  - f) Netting for hard woods;
  - g) Obstruction removal; (without ground disturbance);
  - h) Pest management (consistent with all labelling and use requirements);
  - i) Residue management including seasonal management;
  - j) Roof runoff management;
  - k) Toxic salt reduction;
  - l) Plugging artesian wells;
  - m) Water spreading.
  
- 6. Other FSA actions
  - a) Conservation easement purchases with no construction planned;
  - b) Emergency program actions (including Emergency Conservation Program and Emergency Forest Restoration Program) that have a total cost share of less than \$5,000;
  - c) Financial assistance to supplement income, manage the supply of agricultural commodities, influence the cost and supply of such commodities or programs of a similar nature or intent (i.e., price support programs);
  - d) Individual farm participation in FSA programs where no ground disturbance or change in land use occurs as a result of the action or participation; (for example, purchase of farm real estate with FSA financial assistance when there is no change in use or operations or the purchase of stock, replacement stock or additions when there is no associated change in use or operations, and the total capacity of the operations does NOT constitute a medium or large CAFO i.e. animal numbers are less than that required to be considered a medium CAFO and no plans or permits are required);
  - e) Inventory property disposal or lease with protective easements or covenants;
  - f) Safety net programs administered by FSA;
  - g) Site characterization, environmental testing, and monitoring where no significant alteration of existing ambient conditions would occur, including air, surface water, groundwater, wind, soil, or rock core sampling; installation of monitoring wells; installation of small scale air, water, or weather monitoring equipment;
  - h) Stand analysis for forest management planning;
  - i) Tree protection including plastic tubes;
  - j) Actions involving another agency that are fully covered by one or more of that agency's categorical exclusions (on the ESW, the other agency will be named and specific categorical exclusion(s) that applies provided).

## Summary Categorical Exclusion Catalog (Continued)

### Supported Categorical Exclusions

**Supported CatEx's** are actions defined in 7 CFR § 799.32 as those that fit within specific categories that are eligible for a categorical exclusion **after** completion of a **review** with an environmental screening worksheet with attachment of appropriate documentation **provided there are no extraordinary circumstances** as specified in § 799.33. Supported CatEx's consist of both actions without ground disturbance or construction as well as those with some disturbance, but which the **review** finds does not rise to the level of "significance". These categories are referenced in subparagraph 33 C and listed below for reference in documenting the ESW/FSA-850 and other documents. Documentation required may include, but is not limited to: permits, plans, and consultations under NHPA, ESA, and other relevant environmental mandates to document that no extraordinary circumstances exist.

**Supported CatEx's with No Ground Disturbance (S)** are applicable for the following actions when supported by attachment of the appropriate consultation(s) and/or documentation provided that ground disturbance is limited to areas which have been previously disturbed (that is, no new ground disturbance or change in use).

#### 7. Loan actions

- a) Farm storage and drying facility loans for added capacity;
- b) Loans for livestock purchases and/or facilities when facility capacity or animal numbers present (the larger of two is used) will not constitute a new\* or major expansion to an existing large CAFO as designated by the EPA (i.e., loans for livestock, livestock facilities, livestock operations, expansions, repairs, retrofits, refinancing or subordination of such an operation). For existing medium and large CAFOs, the documentation to be attached will consist of current right-sized permit and plan required by the State for the proposed project. An EA is required for \*--the construction or expansion of a medium CAFO or the refinancing of a newly constructed medium CAFO that has been in operation for 24 months or less. An EA is also required for a new large CAFO or expansion of large CAFO by 30% or more.--\*

- c) Release of loan security for forestry purposes;
- d) Reorganizing farm operations;
- e) Replacement building loans (same footprint);

\* In this context, "new ground disturbance" means construction that is causing disturbance below the existing plow zone/level of disturbance.

#### 8. Minor management, construction, or repair actions in areas of previous ground disturbance that *will not impact soil below the previous level of disturbance*

- a) Minor construction, such as a small addition to an existing structure or restoring and replacing property.
- b) Soil and water development
  - (i) Drain tile replacement;
  - (ii) Erosion control measures;
  - (iii) Minor grading, leveling, shaping, and filling;
  - (iv) Grassed waterway establishment;
  - (v) Hill side ditches;
  - (vi) Permanent establishment of a water source for wildlife (not livestock);
  - (vii) Spring development;
  - (viii) Trough or tank installation;
  - (ix) Water harvesting catchment.
- c) Land-clearing operations of no more than 15 acres, provided any amount of land involved in tree harvesting (without stump removal) is to be conducted on a sustainable basis and according to a Federal, State, Tribal, or other governmental unit as part of an *approved forestry management plan*.
- d) Nutrient management (planning and application practices).

## Summary Categorical Exclusion Catalog (Continued)

### Supported Categorical Exclusions (Continued)

9. Other FSA actions
  - a) Fence installation and replacement;
  - b) Fish stream improvement;
  - c) Grazing land mechanical treatment;
  - d) Inventory property disposal or lease without protective easements or covenants (this action, in particular, has the potential to cause effects to historic properties and, therefore, requires analysis under section 106 of NHPA (16 U.S.C. 470f), as well as under the ESA and wetland protection requirements);

**Supported CatEx's with ground disturbance or construction (SG)** are applicable for the following actions when upon **review** they can be supported by appropriate consultations (s) and/or other documentation:

10. Loan actions
  - a) Loans and loan subordinations with construction, demolition, or ground disturbance and based on documentation and consultation as appropriate found to have no significant impacts. \* \* \*
11. Construction activities
  - a) Construction of a new farm storage facility;
  - b) Dugouts;
  - c) Excavation;
  - d) Grade stabilization structures;
  - e) Grading, leveling, shaping and filling in areas or to depths not previously disturbed;
  - f) Chiseling and subsoiling in areas not previously tilled;
  - g) Excavation;
  - h) Grade stabilization structures;
  - i) Land smoothing;
  - j) Pesticide containment facility;
  - k) Precision land farming with ground disturbance;
  - l) Roads, including access roads;
  - m) Rock barriers;
  - n) Site preparation for planting or seeding in areas not previously tilled;
  - o) Soil and conservation structures;
  - p) Surface roughening;
  - q) Terracing.

**Summary Categorical Exclusion Catalog (Continued)**

**Supported Categorical Exclusions (Continued)**

12. Construction activities involving water resources
  - a) Bridges (includes culverts and irrigation equipment crossings);
  - b) Dams, dikes and levees;
  - c) Diversions;
  - d) Drop spillways;
  - e) Installation of structures designed to regulate water flow such as pipes, flashboard risers, gates, chutes, and outlets;
  - f) Irrigation systems;
  - g) Lining waterways or outlets;
  - h) Lining;
  - i) Livestock crossing facilities;
  - j) Pipe drop;
  - k) Pipeline for watering facility;
  - l) Ponds, including sealing and lining;
  - m) Riparian buffer establishment;
  - n) Rock filled infiltration trenches;
  - o) Sediment basin;
  - p) Sediment structures;
  - q) Water conservation structures;
  - r) Stream bank and shoreline protection;
  - s) Structures for water control;
  - t) Subsurface drains;
  - u) Underground outlets;
  - v) Watering tank or trough installation, if in areas not previously disturbed;
  - w) Wells;
  - x) Wetland restoration.
  
13. Management and planting actions found to have no significant impacts
  - a) Establishing or maintaining wildlife plots in areas not previously tilled or disturbed;
  - b) Prescribed burning;
  - c) Tree planting when trees have root balls of one gallon container size or larger;
  - d) Wildlife upland habitat management.

**Summary Categorical Exclusion Catalog (Continued)**

**Supported Categorical Exclusions (Continued)**

**Extraordinary Circumstances, Controversy or Uncertainty**

When the review and consultation or attachment of a specific plan, permit or other appropriate documentation is unable to definitively rule out concerns for a protected resource for any action evaluated with an FSA-850, an EA will be required. These include but are not limited to:

- projects that are precedent setting
- when there is scientific controversy over impacts
- if the degree or extent of possible impacts and effects is not clear
- the potential is high that effects may occur or the risks are uncertain
- highly controversial or contentious issues associated with water quality, oil, gas and mineral exploration or removal, hydraulic fracking, cell towers, wind and geo thermal or alternative energy sources that have not been resolved by permits or regulatory action
- large CAFO establishment or expansion of capacity by 30 percent or more.

**Possible Example CatExs for CAFOs**

\*--As depicted in the chart below, it is helpful to remember that refinancing (after 24 months in--\* operation), retrofitting, and/or purchasing existing CAFO's where total livestock capacity is above the EPA threshold for a medium/large CAFO is considered a supported CatEx and cannot be considered a listed CatEx because current right-sized permits and plans need to be attached to document current compliance.

\*--

	<b>Construction</b> (new* or additional ground disturbance or expansion)	<b>Purchase Existing</b> (unrelated arms-length sale)	<b>Repairs, Retrofits, Upgrades</b> (no ground disturbance)	<b>Refinancing</b> (new* disturbance and after <u>24 mo.</u> of operation)	<b>Refinancing</b> (no new* ground disturbance & after <u>24 mo.</u> of ops.)	<b>Refinancing</b> (no ground disturbance & after <u>24 mo.</u> of ops.)
<b>Medium CAFO</b>	EA	S-7b	S-7b	SG-10a	S-7b	S-7b
<b>Large CAFO</b>	EA	S-7b	S-7b	<b>Minor</b> expansion and after <u>24 mo.</u> of operation = SG-10a and pick from 11-13 <b>Major</b> expansion (≥30%) = EA	<b>Minor</b> expansion and after <u>24 months</u> = S-7b <b>Major</b> expansion (≥30%) = EA	<u>After 24 months</u> = S-7b

--\*



**Example of FSA-850**

Following is an example of FSA-850.

<p><b>This form is available electronically.</b></p>									
<p><b>FSA-850</b>      U.S. DEPARTMENT OF AGRICULTURE (10-17-16)      Farm Service Agency</p> <p style="text-align: center;"><b>ENVIRONMENTAL SCREENING WORKSHEET</b></p>	<p><b>1. GENERAL INFORMATION</b></p> <p>1A. Producer or Applicant Name</p> <hr/> <p>1B. State &amp; County Code</p>								
<p>1C. Location of Proposed Action</p>									
<p><b>2A. BACKGROUND</b></p> <p>(1) FSA's proposed action is: <i>(Describe Action Below)</i></p>  <p>(2) Describe the site and its present use:</p>  <p>(3) Describe the surrounding land uses; indicate the directions and approximate distances involved. The extent of the surrounding land to be considered depends on the extent of the potential impacts of the project and its related activities:</p>  <p>(4) Will the action involve ground disturbance below the previous level of disturbance or change in land use?</p>  <p>(5) Has another Federal Agency already completed an environmental evaluation for this specific action?</p>									
<p><b>2B. LISTED CATEX's</b></p> <p>(1) Do any of the "L" CATEX's fully cover the proposed action?</p> <p style="margin-left: 40px;">If "YES", record the assigned code for the applicable "L" Categorical Exclusion:</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 50%;">YES</th> <th style="width: 50%;">NO</th> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td colspan="2" style="height: 40px;"></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>	YES	NO	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>
YES	NO								
<input type="checkbox"/>	<input type="checkbox"/>								
<input type="checkbox"/>	<input type="checkbox"/>								
<p><b>IF ITEM 2B1 IS ANSWERED 'YES', AND ITEM 2B2 IS ANSWERED 'NO', PROCEED TO ITEM 16.</b></p>									
<p><b>2C. SUPPORTED CATEX's</b></p> <p>Do any of the "S" CATEX's fully cover the proposed action? <i>(If operation is a medium or large CAFOs see Instructions)</i></p> <p style="margin-left: 40px;">If "YES", record the assigned code for the applicable "S" Categorical Exclusion:</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 50%;">YES</th> <th style="width: 50%;">NO</th> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td colspan="2" style="height: 40px;"></td> </tr> </table>	YES	NO	<input type="checkbox"/>	<input type="checkbox"/>				
YES	NO								
<input type="checkbox"/>	<input type="checkbox"/>								

**Example of FSA-850 (Continued)**

<b>FSA-850</b> (10-17-16)	Page 2 of 5	
<b>3. REQUIRED REVIEW</b>		
3A. Date of Site Visit:		
<p>For the below listed land uses or environmental resources, check the box as appropriate in Column (1) to the right to indicate the resources that are present on the site(s) of the proposed action or within the action's area of environmental impact, such as the areas adjacent to the proposed site(s). Check the box as appropriate in Column (2) to the right to indicate land uses and environmental resources which may potentially be adversely impacted.</p>	(1) Check if the resource is located within the area of potential effect	(2) Is there potential to adversely impact the resource?
<p>3B. Listed Endangered and Threatened Species or critical habitat.</p> <p><b>Attach IPaC map to this form.</b></p> <p>If any box is checked, then consult with the U.S. Fish and Wildlife and/or National Marine Fisheries Service, as applicable, to ensure that the proposed action is not likely to adversely affect a listed species or destroy or modify its "critical habitat" in accordance with the Endangered Species Act.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>3C. Cultural Resources (Section 106 Compliance) Is the action one that may impact a Cultural Resource per 1-EQ Subparagraph 43 A?</p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p>If "YES", complete the check boxes in Column (1) &amp; (2) to the right and attach the following:</p> <p>(1) Consultation with known cultural resources (check National Register, State archaeological site files, and owner discussions)</p> <p>(2) Consultation with SHPO, THPO and/or Indian Tribes, as appropriate, to determine if further consultation required (needed identification surveys)</p>	<input type="checkbox"/>	<input type="checkbox"/>
3D. Coastal Barrier in Coastal Barrier Resources System	<input type="checkbox"/>	<input type="checkbox"/>
3E. Approved Coastal Zone Management Area	<input type="checkbox"/>	<input type="checkbox"/>
3F. Wilderness	<input type="checkbox"/>	<input type="checkbox"/>
3G. Wild and Scenic River, or listed on the National Rivers Inventory	<input type="checkbox"/>	<input type="checkbox"/>
3H. National Natural Landmark	<input type="checkbox"/>	<input type="checkbox"/>
3I. Sole Source Aquifer Recharge Area (Designated by Environmental Protection Agency)	<input type="checkbox"/>	<input type="checkbox"/>
<p>3J. Floodplains – Flood Map Panel # _____</p> <p>For actions with disturbances or activities to occur within a floodplain, attach applicable floodplain development permit, elevation surveys, and maps, if available.</p>	<input type="checkbox"/>	<input type="checkbox"/>
3K. Wetlands	<b>YES      NO</b>	
	(1) Does the proposed action involve ground disturbance, livestock or nutrient waste, or have other potential to adversely impact a wetland?	(2) Is there a NRCS CPA-026e, United States Army Corps of Engineers, and/or State wetland determination on file or available based on the current AD-1026?
<p>If "YES", proceed to Item 3K(2) below. If "NO" proceed to Item 3L.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>If "YES", attach determination (including any USACE or State permits).</p> <p>If "NO", and a determination is not available, attach completed FSA-858.</p>	<input type="checkbox"/>	<input type="checkbox"/>



**Example of FSA-850 (Continued)**

<b>FSA-850</b> (10-17-16)	Page 3 of 5	
<b>3. REQUIRED REVIEW CONT.</b>	<b>YES</b>	<b>NO</b>
3L. SOILS (& HEL)		
(1) Is there Highly Erodible Land present on the farm property? If "YES", attach Producer Farm Data Report, Producer Subsidiary Screen print and/or NRCS CPA-026e.	<input type="checkbox"/>	<input type="checkbox"/>
(2) Is there potential to adversely impact previously undisturbed soil? [Ground disturbance below the "plow zone" or previously disturbed area(s)] If "YES", see Items required under Item 4A and 4B.	<input type="checkbox"/>	<input type="checkbox"/>
<b>4. WATER QUALITY</b>		
A. Does the action have the potential to adversely affect surface or ground water quality? If "YES", attach as Exhibit 4 a discussion of impacts on water quality and include copies of: <ul style="list-style-type: none"> <li>• Storm Water Pollution Prevention Plan and/or permit required for construction projects</li> <li>• National Pollutant Discharge Elimination System permits and/or nutrient or animal waste plans required for livestock operations</li> <li>• Clean Water Act, USACE, or State water quality permits required</li> <li>• State or County well or water use permits</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
B. Will the proposed action impact the quality of surface or ground water? If "YES", attach a discussion of any impacts to surface or ground water and supporting documentation.	<input type="checkbox"/>	<input type="checkbox"/>
<b>5. AIR QUALITY</b>		
Will the proposed action produce air emissions or odors that are regulated by any Federal, State, or local laws or standards? If "YES", attach a discussion of any impacts to air quality and copies of any permits required.	<input type="checkbox"/>	<input type="checkbox"/>
<b>6. NOISE</b>		
Will the proposed action result in permanent increases in noise? If "YES", attach a discussion of any noise impacts.	<input type="checkbox"/>	<input type="checkbox"/>
<b>7. IMPORTANT LAND RESOURCES</b>		
A. Will the proposed action result in the conversion of prime and or unique farmland, prime forest land, or prime rangeland to a nonagricultural use?	<input type="checkbox"/>	<input type="checkbox"/>
B. Is the action consistent with local and state zoning requirements? If "YES", list the zoning:	<input type="checkbox"/>	<input type="checkbox"/>
<b>8. SOCIOECONOMIC IMPACTS AND ENVIRONMENTAL JUSTICE</b>		
A. Will the proposed action cause any adverse human health or environmental effects to minority or low income communities as defined in the Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations"?	<input type="checkbox"/>	<input type="checkbox"/>
B. Will the proposed action have any negative impacts on the local social and economic conditions? If "YES", attach a discussion of any adverse effects.	<input type="checkbox"/>	<input type="checkbox"/>
<b>9. STATE ENVIRONMENTAL POLICY ACT</b>		
Is the proposed action subject to a State SEPA? If "YES", attach a discussion of the results of compliance with these requirements.	<input type="checkbox"/>	<input type="checkbox"/>



**Example of FSA-850 (Continued)**

<b>FSA-850</b> (10-17-16)			Page 5 of 5		
<b>14. CHECKLIST</b>					
<b>A. Permits &amp; Consultations</b>			<b>B. Forms and Notices</b>		
	Required	Not Required		Required	Not Required
Army Corps of Engineers Sec. 404 and/ or 10 Wetland Permit	<input type="checkbox"/>	<input type="checkbox"/>	Form FSA-851, Environmental Risk Survey (only complete for real estate security)	<input type="checkbox"/>	<input type="checkbox"/>
National Pollutant Discharge Elimination System (NPDES) Permit	<input type="checkbox"/>	<input type="checkbox"/>	Form NRCS CPA-026e, HEL and WC Determination	<input type="checkbox"/>	<input type="checkbox"/>
Floodplain Development Permit	<input type="checkbox"/>	<input type="checkbox"/>	Form FSA-858, Determining If A Wetland May Be Present	<input type="checkbox"/>	<input type="checkbox"/>
Concentrated Animal Feeding Operation (CAFO) Permit	<input type="checkbox"/>	<input type="checkbox"/>	Public Notice for Floodplains as required by section 2(a)(4) of EO 11988	<input type="checkbox"/>	<input type="checkbox"/>
Storm Water Pollution Prevention Plan (SWPPP) Permit	<input type="checkbox"/>	<input type="checkbox"/>	Public Notice for Wetlands as required by EO 11990	<input type="checkbox"/>	<input type="checkbox"/>
USFWS and/or NMFS consultation for Endangered and Threatened, Species or critical habitats	<input type="checkbox"/>	<input type="checkbox"/>	<b>C. Maps, Photos and Surveys</b>		
			Location and Aerial Maps	<input type="checkbox"/>	<input type="checkbox"/>
			Topo Maps	<input type="checkbox"/>	<input type="checkbox"/>
State Historic Preservation Officer consultation	<input type="checkbox"/>	<input type="checkbox"/>	Site Photos	<input type="checkbox"/>	<input type="checkbox"/>
			Soil Survey	<input type="checkbox"/>	<input type="checkbox"/>
Tribal Historic Preservation Officer(s) consultation	<input type="checkbox"/>	<input type="checkbox"/>	Applicable Protected Resources Maps	<input type="checkbox"/>	<input type="checkbox"/>
<b>NOTE:</b> Other permits, forms, maps, surveys and letters may be required and should be attached, as applicable. All permits, forms, maps, surveys and letters should be attached as exhibits corresponding to their appropriate section of this form.					
<b>15. FINDING</b>					
<p>I have reviewed and considered the types and degrees of adverse environmental impacts identified by this evaluation. I have also analyzed the proposal for its consistency with FSA environmental policies implementing the requirements of the National Environmental Policy Act and have considered the potential benefits of the proposal. Based upon this consideration and balancing of these factors, I recommend one of the following:</p> <p><input type="checkbox"/> A. This proposed action triggers no extraordinary circumstances. There will be no adverse impacts to the human environment as a result of this proposed action or any adverse effects, either individually or cumulatively. The action can be considered as categorically excluded per 7 CFR Part 799.30. Neither an Environmental Assessment or Environmental Impact Statement will be required. The project is recommended for approval.</p> <p><input type="checkbox"/> B. An Environmental Assessment should be completed to provide further and more complete analysis of any adverse impacts and approval of the action must be delayed pending the outcome of the assessment.</p> <p><input type="checkbox"/> C. An Environmental Impact Statement should be completed to provide further and more complete analysis of any adverse impacts and approval of the action must be delayed pending the outcome of the assessment.</p>					
<b>16. REQUIRED SIGNATURES:</b>					
<b>A. NAME OF PREPARER</b>			<b>B. TITLE OF PREPARER</b>		
<b>C. SIGNATURE OF PREPARER</b>			<b>D. DATE DOCUMENT WAS PREPARED (MM-DD-YYYY)</b>		
<b>E. NAME OF APPROVAL OFFICIAL</b>			<b>F. TITLE OF APPROVAL OFFICIAL</b>		
<b>G. SIGNATURE OF APPROVAL OFFICIAL</b>			<b>H. DATE OF APPROVAL SIGNATURE (MM-DD-YYYY)</b>		
<small>In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.</small>					
<small>Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.</small>					
<small>To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <a href="http://www.ascr.usda.gov/complaint_filing_cust.html">http://www.ascr.usda.gov/complaint_filing_cust.html</a> and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, SW Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: <a href="mailto:program.intake@usda.gov">program.intake@usda.gov</a>. USDA is an equal opportunity provider, employer, and lender.</small>					



## **Preparing an EA**

### **A INSTRUCTION SHEET FOR PREPARING AN ENVIRONMENTAL ASSESSMENT (EA)**

In addition to the information in the following template (in B below), the following is a detailed set of instructions, by document section, for possible options for updating the EA template for a specific proposed action.

#### TITLE PAGE

- 1) The EA is considered a “Draft” until comments are considered and the FONSI is issued.
- 2) Update the name of the project/customer and the project location with the appropriate county and state.
- 3) Update the name of the FSA Official who prepared the EA document. The date will be the date the EA was completed

#### COVER SHEET

- 1) Proposed Action: Insert the type of proposed action that is being considered for approval along with its location.
- 2) Cooperating Agencies: Insert names of cooperating State of Federal agencies
- 3) Contact Information: Insert name, address and phone number of the FSA Official who prepared the EA
- 4) Comments: Insert the date that comments need to be received want where to send them.

#### TABLE OF CONTENTS

This Table of Contents is automatically generated from the EA text. It must be updated once you have completed your EA. To update: right click with cursor anywhere in Table of Contents and click, update table (appears as tab at top of TOC)

#### APPENDICES

- 1) The list of appendices may be longer than necessary for your analysis. Include only what is needed to support your analysis and adjust accordingly. Make reference to the appendices throughout your EA document as it appropriately ties to the corresponding documentation.
  - Project Area Maps - Include project location on aerial photograph, topographic map, and/or plat
  - Site Photos - Include brief description of what is shown in each including location and direction
  - Required Permits and Plans - may include the following, add new appendices as needed
  - Threatened and Endangered Species Documentation
    - IPaC Map- [if applicable]
    - Agency Correspondence - all correspondence including letters to and from and personal communication records of telephone conversation with USFWS and/or NMFS
  - Cultural Resources Supporting Documentation - all correspondence including letters to and from and personal communication records of telephone conversations with SHPO and/or THPO
  - Soils Supporting Documentation
    - NRCS CPA-026e, Highly Erodible Land and Wetland Conservation Determination -if included under wetlands above, do not duplicate
    - Web Soil Survey Map
  - Coastal Barrier Supporting Documentation - if applicable, include all correspondence including letters to and from and personal communication records of telephone conversations with relevant state agency
  - Coastal Zone Supporting Documentation - if applicable, include all correspondence including letters to and from and personal communication records of telephone conversations with relevant state agency
  - Wilderness Areas Supporting Documentation - if applicable, include all correspondence including letters to and from and personal communication records of telephone conversations with relevant agency
  - Wild and Scenic Rivers/Nationwide Rivers Inventory Supporting Documentation - if applicable, include all correspondence including letters to and from and personal communication records of telephone conversations with relevant agency
  - National Natural Landmark Supporting Documentation - if applicable, include all correspondence including letters to and from and personal communication records of telephone conversations with relevant agency

## **Preparing an EA (Continued)**

### **A INSTRUCTION SHEET FOR PREPARING AN ENVIRONMENTAL ASSESSMENT (EA) (Continued)**

#### 1.0 INTRODUCTION

##### 1.2 Purpose and Need for the Proposed Action

- 1) The purpose and need section in an EA lays out why the proposed action, with its inherent costs and environmental impacts, is being pursued. It is not a justification for the proposed action. If properly described, it limits the range of alternatives, which are considered reasonable, prudent, and practicable in compliance with the Council on Environmental Quality's regulations. Further, it demonstrates the problems that will result if the project is not implemented. In summary, it provides the reader with an objective understanding as to why management actions are needed.
- 2) Update section 1.2 to identify the name, project number, location, and specific elements of the project along with their sizes, and, when applicable, their design capacities. Indicate the purpose of the project, FSA's position about the need for it, and the extent or area of land to be considered as the project site. This is where you would define the area of potential effect.
- 3) For wetland consultations, you would choose either NRCS or USACE. If a wetland determination from NRCS or USACE is unattainable a pedestrian survey will be used and section 1.4.2 will need to reflect the appropriate method used in the assessment.

#### 2.0 ALTERNATIVES

Insert a description of the Proposed Action Alternative, No Action Alternative, and any other alternatives that are "reasonable" (meaning that they meet the identified Purpose and Need).

#### 3.0 AFFECTED ENVIRONMENT AND IMPACTS

Insert detailed analysis for appropriate resources and update the table of content to match

3.1.13 Air Quality - If construction is involved and only temporary effects are anticipated

3.2 Resources Considered With Detailed Analysis

This section is for examining the impacts of your project in detail on protected resources.

#### 5.0 LIST OF PREPARERS AND PERSONS AND AGENCIES CONTACTED

Only include relevant parties who were actually consulted during the environmental assessment.

**Preparing an EA (Continued)**

**B Example EA**

**U.S. DEPARTMENT OF AGRICULTURE  
Farm Service Agency**

***[DRAFT or FINAL]* ENVIRONMENTAL ASSESSMENT**

***[Name of Project/Customer]*  
*[County, State]***

**Prepared By  
*[Your Name and Title]***

***[Date Prepared]***

Preparing an EA (Continued)

B Example EA (Continued)

COVER SHEET

<b>Proposed Action:</b>	The Farm Service Agency of the United States Department of Agriculture proposes to [insert brief description of proposed action example: approve a farm ownership loan financing the construction of two (2) tunnel ventilated poultry barns in LOCATION.]
<b>Type of Document:</b>	This is a site-specific Environmental Assessment
<b>Lead Agency:</b>	United States Department of Agriculture, Farm Service Agency
<b>Cooperating Agencies:</b>	[Choose: None; or list state or federal agencies such as SBA, etc.]
<b>Further Information:</b>	[Provide name, Address, and Phone Number of FSA Official]
<b>Comments:</b>	<p>This Environmental Assessment (EA) was prepared in accordance with USDA FSA National Environmental Policy Act (NEPA) implementing procedures found in 7 CFR 799, as well as the NEPA of 1969 (40 CFR 1500-1508/42 US Code 4321-4347), as amended. A copy of the Draft EA [can be found (for Draft EA) or was made available (for Final EA)] at [location – generally FSA County Office and/or local library, include address]</p> <p>Written comments regarding this EA can be submitted to the address below until [insert date 30 calendar days from publication of the NOA]:</p> <p>[name of EA] Comments [Address]</p>



Preparing an EA (Continued)

B Example EA (Continued)

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B Example EA (Continued)

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Preparing an EA (Continued)

B Example EA (Continued)

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  - D-2 SHPO/THPO Consultation Letter
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  - D-4 National Marine Fisheries Service (NMFS)
  - D-5 Coastal Zone Management Area (CZMA)
- D Applicable MOAs
- E Required Permits
- F Wildlife and Habitat/ Supporting Documentation
  - F-1 IPaC Map
- G Cultural Resources Supporting Documentation
- H Coastal Barrier Supporting Documentation
- I Coastal Zone Supporting Documentation
- J Wilderness Areas Supporting Documentation
- K Wild and Scenic Rivers/ Nationwide Rivers Inventory Supporting Documentation
- L National Natural Landmark Supporting Documentation
- M Sole Source Aquifer Supporting Documentation
- N Floodplains Supporting Documentation
  - N-1 Floodplain Map
- O Wetlands Supporting Documentation
  - O-1 NRCS CPA-026e, Highly Erodible Land and Wetland Conservation Determination
  - O-2 USACE Wetland Determination
  - O-3 FSA-858 Wetland Screening Tool and supporting documents
- P Soils Supporting Documentation
  - P-1 NRCS CPA-026e, Highly Erodible Land and Wetland Conservation Determination (refer to N-1 above if applicable)
  - P-2 Web Soil Survey Map (refer to N-3 above if applicable)

**Preparing an EA (Continued)**

**B Example EA (Continued)**

- Q Water Quality Supporting Documentation
  - Q-1 Conservation Plan (WMP WQMP NMP)
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- R Air Quality Supporting Documentation
- S Noise Supporting Documentation
- T Important Land Resources Supporting Documentation
- U Socioeconomic Impacts and Environmental Justice Supporting Documentation
  - U-1 Census Bureau Data
  - U-2 Right to Farm law (state specific)
- V Other Supporting Documentation
- W Public Comment Advertisements



## Preparing an EA (Continued)

### B Example EA (Continued)

#### 1.0 INTRODUCTION

---

##### 1.1 Background

The United States Department of Agriculture (USDA) Farm Service Agency (FSA) proposes to

*[Describe the proposed action. For example, “approve a loan request to purchase property/build a storage facility/construct a chicken house.” MUST INCLUDE: name of project; project number; location – state, county, legal coordinates; and specific descriptive elements of the project including sizes, and, when applicable, their design capacities or any unique features.*

*[If applicable add statement about cooperating agencies and explain relationship briefly: For Example, “The Small Business Administration is a cooperating agency because it has received an application for a loan from the same applicant.”]*

##### 1.2 Purpose and Need for the Proposed Action

The purpose of the Proposed Action is to *[Indicate the purpose of the project. For example, if the Proposed Action is to make a loan, state what it would be used for - to construct a facility or to purchase land.]*

The need for the action is to fulfill FSA’s responsibility *[Identify what the Agency’s role is and what drives that role. For example: to consider applications for FSFL Program Loans]*

##### 1.3 Regulatory Compliance

This Environmental Assessment is prepared to satisfy the requirements of NEPA (Public Law 91-190, 42 United States Code 4321 et seq.); its implementing regulations (40 CFR 1500-1508); and FSA implementing regulations, *Environmental Quality and Related Environmental Concerns – Compliance with the National Environmental Policy Act* (7 CFR 799). The intent of NEPA is to protect, restore, and enhance the human environment through well informed Federal decisions. A variety of laws, regulations, and Executive Orders (EO) apply to actions undertaken by Federal agencies and form the basis of the analysis.

---

##### 1.3.1 Right to Farm

All fifty states have enacted right-to-farm laws that seek to protect qualifying farmers and ranchers from nuisance lawsuits filed by individuals who move into a rural area where normal farming operations exist, and who later use nuisance actions to attempt to stop those ongoing operations. The Right to Farm law for *[state]* include the following protections: *[list]*

*[Each state has its own right to farm law and the protections it provides may differ from other states. Consult the following website and provide a summary of the protection your state’s law provides farming: <http://nationalaglawcenter.org/state-compilations/right-to-farm/>]*

## Preparing an EA (Continued)

### B Example EA (Continued)

#### 1.4 Public Involvement and Consultation

---

##### 1.4.1 Public Involvement

This document is available for public review and comment from [date] to [date] at [location or by request]. A notice of the availability of the document was published in [newspaper(s)] on [date(s)]. Written comments may be submitted to [NAME OF EA comments, address] through [date – end of 30 calendar day comment period that begins with publication of newspaper notice].

A notice of the availability of the Draft EA for public review and comment was published in [list newspapers] on [dates]. The Draft EA was made available [at location or by request to FSA] for public review and comments were accepted for 30 calendar days from [date] to [date].

---

##### 1.4.2 Agency Consultation

USDA undertook the following efforts and research to aid in determining the potential impacts of the proposed action:

- Researched the U.S. Fish and Wildlife Service (USFWS) - Information, Planning, and Conservation System (IPaC) about the project's potential to affect federally listed species, and has completed a biological field review relative to the potential species presence as required by the Endangered Species Act of 1973
- Consulted with the State Historic Preservation Officer (SHPO) to ensure the requirements of 54 U.S.C. 306108 (Commonly known as Section 106 of the National Historic Preservation Act) were properly addressed.
- Consulted with the Tribal Historic Preservation Officer (THPO) to ensure the requirements with Native American Graves Protection and Repatriation Act (NAGPRA).
- [NRCS or USACE] completed a review, and performed determinations and delineations of areas meeting the three (3) mandatory criteria of wetlands in accordance with the procedures of the U.S. Army Corps of Engineers (USACE) 1987 Wetland Delineation Manual (Y-87-1) and supplements to determine the absence, presence, and extent of wetlands and waters of the United States relative to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

[OR]

Completed a pedestrian review to assess potential adverse wetland impacts. The USDA Wetland Screening Tool was utilized to eliminate the area from further review for failing to demonstrate the three (3) mandatory criteria of wetlands in accordance with Agency Policy.

## Preparing an EA (Continued)

### B Example EA (Continued)

## **2. DESCRIPTION OF PROPOSED ACTION AND ALTERNATIVES**

---

### **2.1 Proposed Action**

The Proposed action

- *[Location: town, county, state; legal coordinates; a description of what is on the site currently.*
- *Description of the facility that would be constructed/improved or land that would be purchased.*
- *Any other activities the proposal will make necessary. For example, the removal of waste (where will it go, under what terms), delivery of feed, road construction or upgrade, etc.*
- *Dimensions and size of existing/proposed facility.*
- *Description of the area that would be cleared, whether the land would need to be leveled.*
- *Timing of construction (time of day and time of year). This is particularly important for discussions of potential noise impacts, as well as possible impacts to migratory birds and ESA species.*
- *Any permits (for example NPDES permit) and plans (for example storm water pollution prevention plan, nutrient management plan) that are in place, the agency(s) that has issued those permits and approved those plans. This is important for your discussion of potential impacts to water and ESA species.*
- *Any other pertinent details that would support an understanding of potential impacts of the proposal.*
- *Any measures that will be taken or required by FSA to avoid or mitigate adverse impacts.]*

### **2.2 No Action Alternative**

*[This is required by NEPA and represents what would happen if the Agency does not approve the proposed action. Generally, that means the existing land use on the site would continue and the proposed action would not occur.*

*Example text:*

*The no action alternative means the proposed farm would not be built. This would result in the continuation of existing conditions on the proposed site and no changes to the existing environment would occur.]*

### **2.3 Alternative A (and possibly B, C...)**

*[Alternatives to the Proposed Action are other reasonable ways to accomplish what is being proposed. For example, moving the barn to another site on the parcel or considering different designs of facilities.*

*Often there are no reasonable, feasible alternatives. If there are not, then eliminate this section entirely.]*



## Preparing an EA (Continued)

### B Example EA (Continued)

### **3. AFFECTED ENVIRONMENT AND IMPACTS**

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#### **3.1 Resources Eliminated from Detailed Analysis**

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##### ***3.1.1 Wildlife and Habitat***

The USFWS IPaC system [or National Marine Fisheries as applicable] was utilized to obtain an official species list for the Area of Potential Effect (APE). No threatened or endangered species or their designated critical habitats occur at the site of the proposed action, therefore there would be no impact to threatened and endangered species.

---

##### ***3.1.2 Cultural Resources***

Effects to cultural resources were eliminated from detailed analysis because the project does not involve any ground disturbing activities or alternations to structures that are older than 50 years.

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##### ***3.1.3 Coastal Barrier***

Effects to coastal barriers were eliminated from detailed analysis because [County Name] does not have designated coastal barriers areas.

---

##### ***3.1.4 Coastal Zone***

Effects to coastal zone were eliminated from detailed analysis because [County Name] does not have designated coastal zone management area.

---

##### ***3.1.5 Wilderness Areas***

Effects to wilderness areas were eliminated from detailed analysis. The nearest wilderness area is [wilderness area name], it is located [number of miles] from the project location and will not be impacted. See Appendix [insert appendix reference].

---

##### ***3.1.6 Wild and Scenic Rivers/Nationwide Rivers Inventory (NRI)***

Effects to Wild and Scenic Rivers/National Rivers Inventory were eliminated from detailed analysis because the project area is located [number of miles] from [river name]. This is the nearest river found on the National Rivers Inventory or Wild and Scenic Rivers System and clearly will not be impacted by this project. See Appendix [insert appendix reference].

OR

Effects to Wild and Scenic Rivers /National Rivers Inventory were eliminated from detailed analysis because [insert State] does not have proposed or designated rivers within the Wild and Scenic Rivers System and the National Rivers Inventory.

## Preparing an EA (Continued)

### B Example EA (Continued)

---

#### **3.1.7 National Natural Landmarks**

Effects to national natural landmarks were eliminated from detailed analysis because the nearest national landmark is [Landmark Name] and is located [number of miles] from the project location. The landmark will not be impacted by this project. See Appendix [insert appendix reference].

OR

There are no national natural landmarks within [number] miles of the location of the proposed action.

---

#### **3.1.8 Sole Source Aquifers**

Effects to sole source aquifers were eliminated from detailed analysis because [County Name] does not have any sole source aquifers or sole source aquifer recharge areas located beneath the surface. See Appendix [insert appendix reference].

OR

Effects to sole source aquifers were eliminated from detailed analysis because the project does not involve activities with potential to contaminate groundwater.

---

#### **3.1.9 Floodplains**

Effects to floodplains were eliminated from detailed analysis because there are no floodplains located in the project area. See Appendix [insert appendix reference].

---

#### **3.1.10 Wetlands**

Effects to wetlands were eliminated from detailed analysis because no wetlands lay within the project area as determined by the [Natural Resource Conservation Services/ U.S. Army Corps of Engineers]. If applicant converted wetland prior to December 23, 1985 applicant is exempt due to the converted wetland provision. See Appendix [insert appendix reference].

OR

Effects to wetlands were eliminated from detailed analysis because no wetlands lay within the project area. A pedestrian review of the proposed project by trained USDA staff documented no areas meeting the criteria as wetlands and is documented using the FSA-858. If applicant converted wetland prior to December 23, 1985 applicant is exempt due to the converted wetland provision. See Appendix [insert appendix reference].

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#### **3.1.11 Soils**

Effects to soils were eliminated from detailed analysis because NRCS has determined that HEL soils are not present within the project area. See Appendix [insert appendix reference].

## Preparing an EA (Continued)

### B Example EA (Continued)

OR

HEL is present within the project area. Effects to soils were eliminated from detailed analysis because the applicant has an approved conservation plan with NRCS. Applicant has certified they will maintain compliance with the HEL conservation plan.

---

#### **3.1.12 Water Quality**

##### **Surface Water Quality**

Effects to surface water quality were eliminated from detailed analysis because the project is not located near a body of water or will not result in a discharge into a water body.

##### **Groundwater Quality**

Effects to groundwater quality were eliminated from detailed analysis because *[This section should include a discussion of the aquifers, water conservation districts, recharge zones, wells and anything that may affect groundwater quality.]*

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#### **3.1.13 Air Quality**

Effects to air quality were eliminated from detailed analysis because emissions or degradation to air quality are not permanent in nature and will be limited to the duration of the construction activity. Any potential impacts during construction can be minimized by the implementation of standard construction control measures.

*[[If project is not a CAFO or AFO]- This project will not contribute to air quality issues which may cause odors.]*

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#### **3.1.14 Noise**

Effects on noise were eliminated from detailed analysis because the project will not create noise that will interfere with communication, is intense enough to damage hearing, or is otherwise annoying.

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#### **3.1.15 Important Land Resources**

Effects on farmland, forest land and rangeland resources were eliminated from detailed analysis because the proposed action will not result in prime and/or important land being converted to a nonagricultural use.

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#### **3.1.16 Socioeconomic Impacts and Environmental Justice**

The proposed action will not cause any adverse human health or environmental effects as defined in Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations".

Preparing an EA (Continued)

B Example EA (Continued)

**3.2 Resources Considered with Detailed Analysis**

**3.3 [Name Resource A]**

---

**3.3.1 Existing Conditions**

*[Include a brief description of existing conditions on the site of the proposed action. This is not the place to discuss impacts, only how the resource exists on the sites.]*

*For example, if soils is a resource considered with detailed analysis, describe the type, location, extent of HEL on the site of the proposed action. If sole source aquifer is a resource considered, then name the aquifer, its size, extent, water quality, number of users, how the site of the proposed action overlaps the aquifer.]*

---

**3.3.2 Impacts of Proposed Action**

*[Include a description of how the Proposed Action would impact the resource.]*

---

**3.3.3 Impacts of No Action**

If the Proposed Action is not implemented, then the existing conditions for [resource] on the site would continue and no impacts would occur.

---

**3.4 [Name Resource B]**

---

**3.4.1 Existing Conditions**

---

**3.4.2 Impacts of Proposed Action**

---

**3.4.3 Impacts of No Action**

---

**Preparing an EA (Continued)**

**B Example EA (Continued)**

**3.5 [Name Resource C]**

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*3.5.1 Existing Conditions*

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*3.5.2 Impacts of Proposed Action*

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*3.5.3 Impacts of No Action*

**3.6 [Name Resource D]**

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*3.6.1 Existing Conditions*

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*3.6.2 Impacts of Proposed Action*

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*3.6.3 Impacts of No Action*

## Preparing an EA (Continued)

### B Example EA (Continued)

#### 4. CUMULATIVE IMPACTS

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The cumulative impacts analysis is important to understanding how multiple actions in a particular time and space (e.g., geographic area) impact the environment. The CEQ regulations define cumulative effects as "...the impact on the environment, which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such actions" (40 CFR § 1508.7). Whereas the individual impact of one project in a particular area or region may not be considered significant, the result of numerous projects in the same area or region may cumulatively result in significant impacts. Cumulative impact analysis is subject to interpretation in analyzing the magnitude of impacts to a particular area or region. For this EA, the analysis area for cumulative impacts is [county, watershed, or region].

*[Discussion points - You must establish the area and time period of your cumulative effects analysis. This should be based on the size of the Proposed Action and the area it could affect (watershed, county, region) and the potential duration of effects of the Proposed Action.]*

##### 4.1 Past, Present and Reasonably Foreseeable Actions

Federal, State, local, and private activities that are currently taking place, have occurred in the past, or may reasonably be assumed to take place in the future in the cumulative effects area include the following:

*[Insert a summary of the Past, Present and Reasonably Foreseeable Actions identified in the area including what is proposed, where, when, how long the activity will occur, who is proposing.]*

*Actions should include other agriculture, presence and development in communities, any managed land and activities that are taking place on that land, industry, etc.*

*This can be presented in paragraphs, bullets or a table. ]*

##### 4.2 Cumulative Analysis

*[You must discuss the potential cumulative impacts anticipated to result from implementing the Proposed Action Alternative for those resources included in section 3.2 (Resources Carried Forward for Detailed Analysis). Add resource names as headings and for each, add discussion.]*

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###### 4.2.1 Resource A

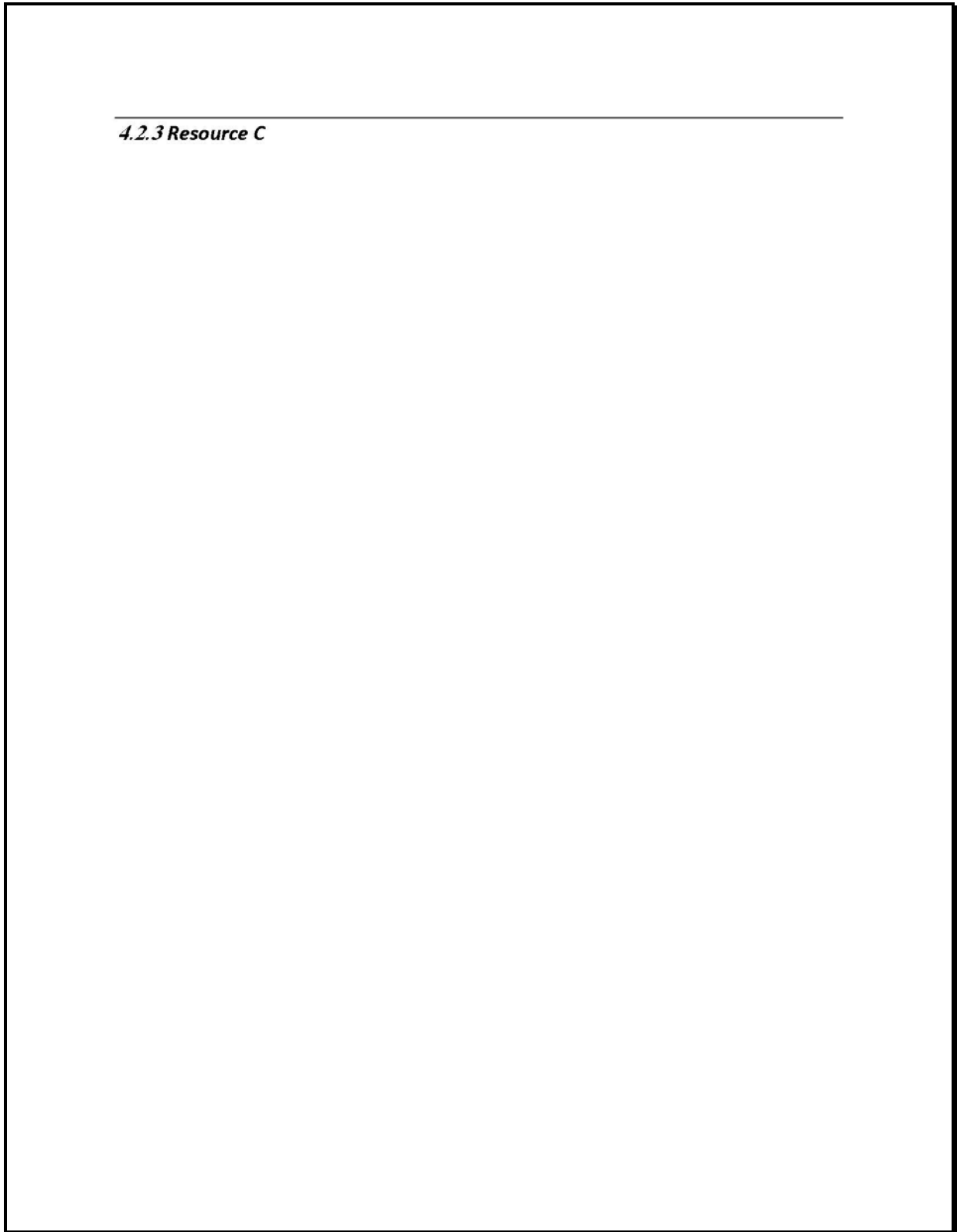
*[Insert text here that describes how the Past, Present, and Reasonably Foreseeable Actions listed in Section 4.1 could affect the resource and how the Proposed Action would contribute to effects.]*

---

###### 4.2.2 Resource B

**Preparing an EA (Continued)**

**B Example EA (Continued)**



Preparing an EA (Continued)

B Example EA (Continued)

**5. LIST OF PREPARERS AND PERSONS AND AGENCIES CONTACTED**

List of Preparers	
Name and Title	Education and Experience
[John Smith, Ship Captain]	[BS Agriculture, XXX State University Years of Experience: 6]

Persons and Agencies Contacted	
Name and Title	Affiliation
[A Jones]	[State X Department of Agriculture]
[B Johnson]	[State X Commission on Environmental Quality]
[C Williams]	[State X State Soil and Water Conservation Board]
[D Brown]	[Agricultural Research Service]



Preparing an EA (Continued)

B Example EA (Continued)

**6. REFERENCES**

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**[Examples of References:]**

USFWS 2015. IPaC-Information, Planning and Conservation System. Listed and Sensitive Species in Newton County, Arkansas. [Website] U.S. Fish and Wildlife Service Environmental Conservation Online System. Available online at: <http://ecos.fws.gov/ipac/project/TOMTNPJ3YBCSJOWIGCP3C5N4MQ/resources>. Accessed May 2015.

CEQ 1997. Council on Environmental Quality (CEQ). 1997. Environmental Justice Guidance Under the National Environmental Policy Act. December 10.

CEQ 1997. Council on Environmental Quality (CEQ). 1997. Considering Cumulative Effects Under the National Environmental Policy Act. January.

CEQ 2016. Council on Environmental Quality (CEQ). 2016. Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews. August 1.

TCEQ 2016. Texas Commission on Environmental Quality (TCEQ). 2016. Economic Values and Impacts of Poultry Production Activities in East Texas. <http://www.tceq.state.tx.us/> Accessed on September 19, 2016.

Smith. 1607. Personal communication with John Smith, Ship Captain. March 25, 1607.

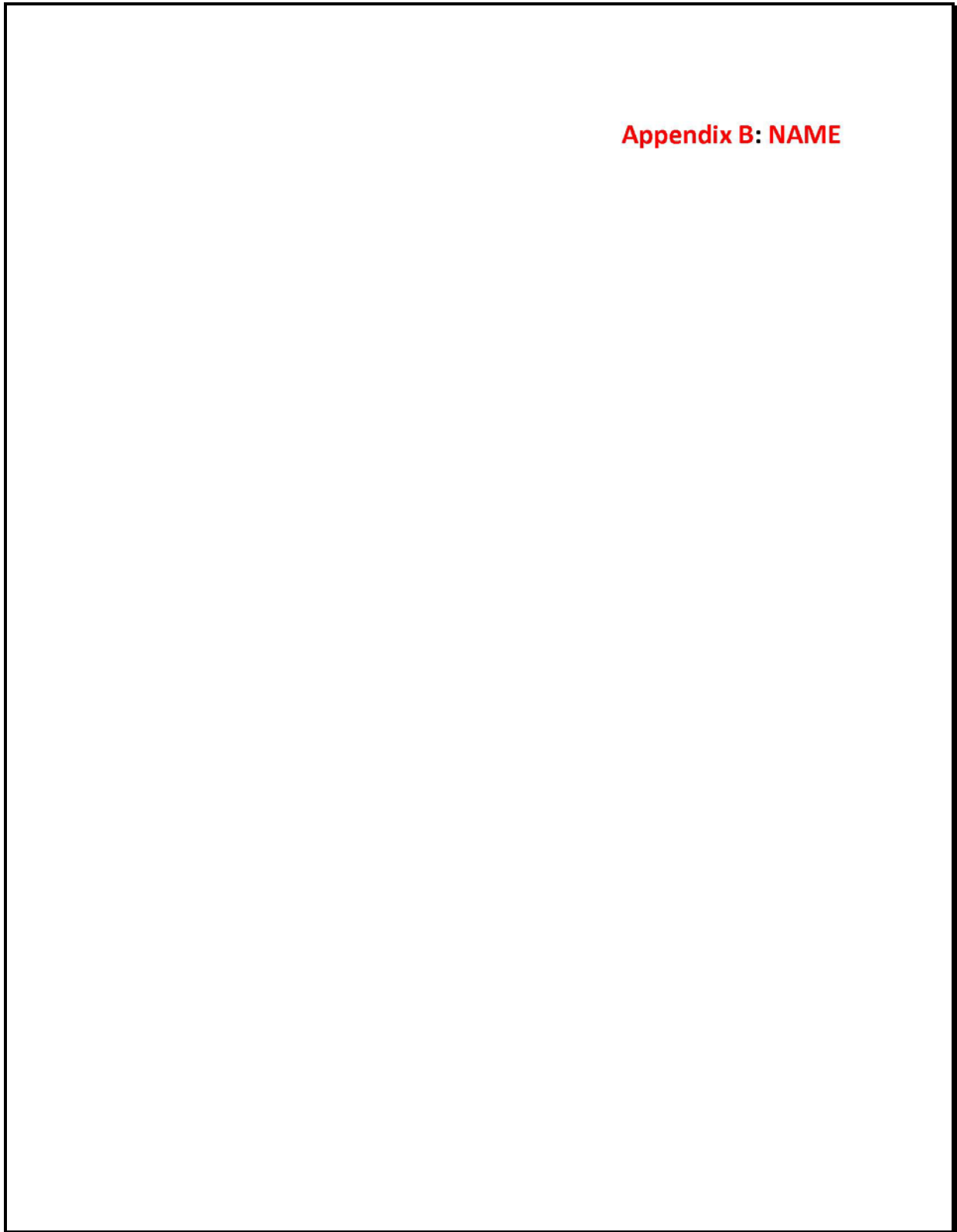
**Preparing an EA (Continued)**

**B Example EA (Continued)**



**Preparing an EA (Continued)**

**B Example EA (Continued)**



**Appendix B: NAME**

**Preparing an EA (Continued)**

**B Example EA (Continued)**



**Appendix C: NAME**

**Example Coordination Letter**

**TO:** [Agency Name  
Contact Person  
Mailing Address]

**FROM:** [Point of Contact Name]

**SUBJECT:** [Activity Title]

The United States Department of Agriculture, Farm Services Agency is preparing an environmental assessment (EA) to assess the impacts of [proposed action]. [Provide brief description of proposed action details. Be sure to address issues that would be of concern to the agency you are addressing.]

You may review the draft EA at:  
[provide web site or library where the document can be found or provide a copy with correspondence].

Please review the proposed activity and provide comments on any issues that would be of concern to your office.

We appreciate your review of this material and look forward to receiving your comments. Please provide your comments to [name of person collecting comments and method comments should be delivered] by [date comments are due].

Sincerely yours,

[Name and Signature]

**Note:** Use appropriate and approved letterhead.



FONSI Template

United States Department of Agriculture  
Farm Service Agency

FINDING OF NO SIGNIFICANT IMPACT (FONSI)  
for  
Implementation of *[Insert Activity Name and State]*

The United States Department of Agriculture, Farm Service Agency (FSA) has prepared a Final Environmental Assessment (EA) to evaluate the environmental consequences associated with implementing *[insert activity name and State]*.

The purpose of the *[insert activity name]* is to *[insert a short description of primary needs and goals]*.

**Proposed Action**

*[Identify the alternative title selected as the proposed action if different from "Proposed Action"]*. The Proposed Action would implement *[insert activity name]* that would *[provide summary description of the action, including quantifiable information and estimated cost]*.

**Alternatives**

Alternatives analyzed in this EA include *[add statement of different alternatives reviewed including the no action alternative]*. The proposed action was selected over the other alternatives because *[briefly describe reasons]*.

**Mitigation Measures**

Measures to mitigate and/or minimize adverse effects have been incorporated into the proposal. These measures include: *[List and/or briefly describe any mitigation measures that are included as part of the proposed action that would be utilized to reduce or eliminate potential impacts; examples include re-locating the project area, postponing actions to another season to avoid seasonal sensitivities, adjusting setbacks, etc. based on consultation feedback from FWS/NMFS, SHPO, and/or THPO.]*

**Environmental Impacts of the Proposed Action and Why Not Significant**

*[Briefly describe the anticipated environmental, social, and economic effects and why they are not significant; examples include obtaining permits, implementing NMP and/or other best management practices, following guidance from FWS/NMFS, SHPO, THPO, NRCS, and/or USACE]*

**Public Feedback and FSA Responses**

FSA contacted the following agencies and individuals for the draft EA. Public comments and FSA responses are summarized in Exhibit XX for the final EA. *[List agencies and individuals contacted during the preparation of the draft EA; examples include FWS/NMFS, SHPO, THPO, NRCS, USACE, and individuals that submitted comments.]*





**Notice of FONSI**

**United States Department of Agriculture  
Farm Service Agency**

**Notice of Availability  
[Insert Activity Name]**

**Finding Of No Significant Impact (FONSI)**

The United States Department of Agriculture, Farm Service Agency (FSA) issues FONSI for *[activity name and location]*. *[Brief description/summary of the activity – only enough to give the reader some idea of the general activity and what the proposed action was that triggered the environmental review process]*. FSA has completed an Environmental Assessment (EA) and has determined that *[activity name and location]* will not have a significant effect on the human environment; therefore, no environmental impact statement shall be prepared.

Information regarding this proposed project can be reviewed in person at the FSA office located at *[insert FSA office location where the FONSI can be viewed]*, between 8:00 a.m. and 4:30 p.m. Monday through Friday. For questions or directions to the FSA office, please contact *[insert name and phone number]*.



Sample Errata Sheet

Environmental Assessment Errata Sheet  
“ABC” Poultry Expansion

Comments and Considerations:

- Private citizen residing at ..... : “Traffic from additional trucks onto and out of the property would cause additional wear and tear on public roads in the area that are deteriorated and not well maintained.”
  - Subject property is an existing poultry farm with established truck routes in place for ongoing periodic delivery of supplies and removal of birds.
  - No new or changed traffic patterns or road access is involved.
  - Integrators consider adequacy of road conditions and do not execute new or renew grow out contracts when road conditions are not appropriate to accommodate their routine truck use. Factors considered include, but are not limited to: type of surface, bridge limits, height restrictions, navigation and maneuvering safety.
  - No difficulties with road conditions, truck access or turning ratios have been reported by integrator, truck driver or farm operator.
  - There are no posted restrictions or limits on use posted on roadways in questions
  - State Department of Planning’s State Clearing House (including Wicomico County) reviewed the proposal and on December 26, 2013 found the proposal to be “consistent” with no qualifying comments or concerns regarding truck road usage, condition, maintenance, turning ratios, access, etc.
  - The need for road maintenance and related decisions, issues and funding is the responsibility of State Highway Dept.
  - Funding public road improvements is not an authorized use of FSA loan funds.
  
- Private citizen residing .....: “Trees on the property near the poultry houses are deciduous leaving no odor or noise barrier from autumn when leaves fall until spring.”
  - Vegetative buffers are a voluntary management practice
  - Three basic goals of a vegetative buffer per University of Delaware research are to provide: 1) a visual esthetic screen to help improve public perception, 2) a windbreak and shade for energy conservation and 3) a natural filter to help catch dust or feathers and diffuse noise or odor.
  - Testing at University of Pennsylvania finds there are a variety of different types of effect vegetative buffers including deciduous trees.
  - A vegetative buffer of trees and varied undergrowth running the entire length of the subject poultry unit currently exists and will not be removed
  - Tunnel fans are vented to discharge at most distant point from neighbors
  - Vent fans run most frequently during summer months when there are leaves on the trees and heavier undergrowth
  - Misting systems inside poultry houses will also keep down dust and odor as will computerized monitoring of automated ventilation systems
  - Poultry litter is removed from the farm and only briefly retained on site for limited time frames in specially designed sheds
  - Existing poultry litter sheds are in place on the farm and positioned at distant points from neighbors.
  - Birds are contained within the poultry houses and accordingly cannot be heard from a distance of more than a few feet.
  - There is minimal operational noise emitted from the poultry houses and related equipment.
  - Exterior operations are infrequent and associated only with brief periods of flock movement and clean up.

Sample Errata Sheet (Continued)

**Conclusion:** An Environmental Impact Study is not necessary.

- Analysis finds the issues raised are those inherent with natural conditions when human population choose to reside in or near rural areas with agricultural zoning.
- Proposal meets all applicable federal, state and local health, environmental, zoning, permitting and operating requirements. More specifically in consideration of the above comments:
  - Use of public roads by the type of trucks involved is a legally permissible use.
  - XYZ County zoning requirements of Chapter 225-106 require specify a 100 foot setback from property lines for poultry houses
    - Proposed new poultry units meet this requirement
    - New poultry units will be approximately 1000 feet from neighboring residences.
    - Ventilation fans will be located as most distant position and pointed away from neighboring residences.
  - State Code 5-403 and XYZ County 186-1 provide for the “Right to Farm” in the agriculturally zoned subject area
    - Noise, dust and odor are specifically excluded considerations in agriculturally zoned areas.
    - Poultry production is an established and acceptable form of agricultural usage
    - Complaints such as those referenced in the comments are the “attendant conditions as the natural results of living in or near rural areas.”
    - As required by the statute the proposed poultry unit will operate using “generally accepted agricultural management practices...which are authorized by various governmental agencies...”
  - Said regulatory and permitting requirements are established by related governmental authorities (not FSA) to whom related concerns or questions regarding their official policies, practices and requirements should be directed.

Prepared by: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

SEC Review        \_\_\_\_\_ Concur  
                              \_\_\_\_\_ Does NOT Concur

Comments: \_\_\_\_\_

SEC Signature: \_\_\_\_\_ Date: \_\_\_\_\_

SEC Name: \_\_\_\_\_

**Language for Denial Letter for Potential Wetland Impact or Presence**

When processing may **not** continue because of a potential wetland impact or presence, the responsible agency official shall prepare a denial letter to notify the applicant, as specified in 1-APP, and insert the following language in the appropriate 1-APP denial letter. To access the following template, go to <http://intranet.fsa.usda.gov/dam/ffasforms/forms.html>, CLICK “**Find Current Forms Using Our Form Number Search**”, in the “Form Number” block, ENTER “**1-EQ, Exhibit 26**”, and CLICK “**Submit**”.

**1-EQ Exhibit 26**

**Denial Letter for Potential Wetland Impact or Presence**

This responds to your request for Farm Service Agency (FSA) loan assistance based on your application of \_\_\_\_\_, for a \$ \_\_\_\_\_ loan for \_\_\_\_\_. After careful consideration, we regret that your request can not be approved at this time. The specific reason for our decision is:

All applicants for FSA assistance are required to meet the environmental requirements found in 7 CFR Part 799, and as specified by 7 CFR 799.7 (a) (7) to “provide information necessary for FSA to evaluate a proposal's potential environmental impacts and alternatives.”

More specifically, 7 CFR 799.1 (a) (xxix) provides for compliance with Executive Order 11990 requiring the “Protection of Wetlands,” and 7 CFR 799.2 states it is FSA’s policy “not to approve or fund proposals that, as a result of their identifiable impacts, direct or indirect, would lead to or accommodate either the conversion of these land uses or encroachment upon them.”

Based on available information the proposed project and area you selected is likely to affect or include a wetland and must therefore be denied. FSA will reconsider this denial if during the reconsideration process as provided for below you 1) identify a suitable alternative site or 2) provide an applicable wetland delineation determination and /or permits from the United States Army Corp of Engineers or appropriate authority. Alternatively, you may reapply for assistance if and when such documentation can be provided.

If you believe that this decision is erroneous, you have the following options:

*Insert all standard appeal and ECOA language. See 1-APP.*

