

## General Questions

**1. Where is the “Responsibilities” chart which was shown during the training located?**

The chart which summarizes the responsibilities of the lender, the applicant, and FSA as it relates to both NEPA reviews and environmental due diligence reviews can be found in the slide presentation located on the guaranteed lender toolkit webpage. [Guaranteed Loans - Lender Toolkit \(usda.gov\)](#).

**2. Is FSA considering expanding details regarding environmental requirements in Handbook 2-FLP?**

Handbooks 1-EQ and 2-EQ are the primary source of information regarding NEPA compliance and Environmental Due Diligence respectively. However, the National Office will continue to review the environmental information within 2-FLP to ensure its accuracy as compared to 1-EQ and 2-EQ.

**3. Are there any training classes or materials available for new FSA State Environmental Coordinators?**

a. Yes, SEC required trainings consist of the following:

- i. Environmental Compliance Training Part 1: Introduction and Protected Resources
- ii. Environmental Compliance Training Part 2: Environmental Assessments
  - 1. FSA-858: Wetland Screening
  - 2. NEPA and Section 106
  - 3. ESA Consultation Basics

b. Trainings can be accessed on the national environmental SharePoint page: [FSA Environmental Compliance Training \(sharepoint.com\)](#)

## Environmental Due Diligence Questions

**4. Does the Lender or FSA complete the FSA-851 “Environmental Risk Survey Form” for a guaranteed loan?**

The lender should be conducting their own environmental due diligence review for their FSA guaranteed loans using either the FSA-851, or other similar form. FSA staff should NOT complete this review for the lender. The lender is ultimately responsible for taking whatever actions may be necessary to maintain the applicant’s liability exemptions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA) which includes completing an environmental due diligence review at the time of loan making. [FSA Handbook 2-FLP, Par. 208 C and FSA Handbook 2-EQ]

**5. Is the due diligence (FSA-851 or similar form) review required on all RE security for a guaranteed loan or only primary security?**

Environmental due diligence reviews are required to be completed for all FSA guaranteed loans with real estate serving as primary security. Although it’s not mandatory, lenders are also encouraged to complete an environmental due diligence review on real estate serving as additional security for guaranteed loans as well. [FSA Handbook 2-FLP, Par. 208 C]

**6. What does “All Appropriate Inquiries” mean as it relates to environmental due diligence? How long is an All Appropriate Inquiry good for?**

All Appropriate Inquiries (AAI) is the process of evaluating a property’s environmental conditions and assessing potential liability for contamination. It must be conducted to obtain certain protections from liability under the federal Superfund Law (CERCLA). AAI compliant reports are generally good for 180 days. [FSA Handbook 2-EQ]

**7. Is due diligence required for annual farm visits as well?**

### What if something appears AFTER application & closing that was not seen before?

No, due diligence for FSA is only required:

- prior to taking a security interest in real estate;
- prior to foreclosure; and
- prior to selling inventory property.

However, it is advisable to note, during the farm visit, any observed issues that would be in conflict with the lien instrument requirements to maintain in a workmanlike manner and avoid contamination or otherwise impact the value of the security. [FSA Handbook 2-EQ]

### 8. Are discarded tires considered an environmental hazard as it relates to environmental due diligence?

The answer to this question depends on the context. Several tires found in and around the farm are not a Recognized Environmental Condition (REC). Tires used on a dairy feed bunk used to hold protective covers in place is not an REC; however, tires found buried or an abundance of discarded tires are considered an REC. [FSA Handbook 2-EQ]

### 9. When will the revised version of the FSA Handbook which addresses environmental due diligence (Handbook 2-EQ) be available?

FSA- Handbook 2-EQ is in final clearance and is anticipated to be released soon.

### 10. Where are the flow charts located which outline the environmental due diligence process?

The flowcharts used to illustrate the FSA due diligence process are found in the PowerPoint presentation and will be found in the, soon to be published, FSA Handbook 2-EQ. They are a visual representation of the current due diligence process. A copy of the PowerPoint presentation can be found at: [Guaranteed Loans - Lender Toolkit \(usda.gov\)](https://www.usda.gov/loan-guarantee/loan-guarantee-toolkit)

## National Environmental Policy (NEPA) Questions

### 11. Who fills out the FSA-850 “Environmental Screening Worksheet”?

The FSA-850 “Environmental Screening Worksheet” is used by FSA to document the review of a proposed loan action for either a listed categorical exclusion or a supported categorical exclusion. Since this form pertains to NEPA, FSA is responsible for preparing this form. It should be prepared by whichever trained Agency official that is conducting the NEPA review. [FSA Handbook 1-EQ, Par. 31 B]

### 12. Do the NEPA and environmental due diligence requirements still apply if the proposed project does not have a new guarantee being requested, but rather a request to FSA for subordination of its 2nd lien position on the property where the project is proposed?

If a subordination of an existing FSA direct or guaranteed loan is required, FSA must complete the same level of NEPA review as if the Agency was actually financing the action which requires the subordination. Whether or not the property on which the lien position is being subordinated was primary or additional security does not influence the level of NEPA review required. This is the case because NEPA evaluates the potential environmental impact of the new loan (or subordination) action. [FSA Handbook 1-EQ, Par. 9B]

As it relates to environmental due diligence, the lender is required to complete an environmental due diligence review on whatever property that will be serving as primary security for a guaranteed loan. Although FSA doesn't require lenders to conduct environmental due diligence on a property serving only as additional security, the Agency does encourage lenders to do so as a best practice. [FSA Handbook 2-FLP, Par. 208 C and FSA Handbook 2-EQ]

### 13. If construction will be taking place on a parcel of land that will not be part of the collateral for a loan request, is a NEPA review of the non-collateral property necessary when it is known that guaranteed loan proceeds will be used for construction on this separate property?

Although it would be unusual for guaranteed loan funds used for construction on a property that is not serving as collateral, a NEPA review would still need to be completed on the property where the construction will take place. The focus of the NEPA review is the potential environmental impact of the action(s) being facilitated by the guaranteed loan. Therefore, a NEPA review of the proposed loan action would be required regardless of whether or not the subject property was serving as collateral for the loan. [FSA Handbook 1-EQ, Par. 3]

**14. Is Nutrient Management Plan always required for poultry?**

When FSA is considering a poultry AFO or CAFO consideration of litter utilization will be required in the NEPA review process. That consideration may be by virtue of a Nutrient Management Plan, a Water Quality Management Plan, a Manure Management Plan, or implementation of Best Management Practices to ensure the proposed operation does not pose a threat to adjacent waters. [FSA Handbook 1-EQ, Par. 4 D, 9 F, and 53]

**15. Regarding poultry facilities, what determines size of the CAFO's (or AFO)? Is it the # of animals per flocking (at one point in time) or the number what will be housed in the facility on an annual basis?**

The number to use when calculating Animal Units is the capacity of the facility at any given time, not the year cumulative total.

**Example:** 60' X 600' poultry barn with typical stocking rate of one bird per .75 square feet.

- The capacity of the facility would be  $(60 \times 600) / .75 = 48,000$  birds

[FSA Handbook 1-EQ, Exhibit 16]

**16. As it relates to the size of a CAFO, are there differences depending if the operation utilizes dry matter handling as opposed to liquid handling?**

Yes. FSA Handbook 1-EQ Exhibit 16 shows EPA's CAFO definitions and animal number/type table. This table does have differences on whether a dry matter or liquid manure system is used for poultry.

**17. If FSA has an existing Guarantee on a large CAFO (e.g., poultry farm) and the lender submits a new request to sell that farm to a new person, does FSA need a copy of the current Water Quality Management Plan (WQMP)? The existing WQMP FSA had from the original request is now several years old, and 2 owners prior.**

Yes. This would be a supported CatEx and a copy of the WQMP that the new owner will follow is required as part of the support documentation. [FSA Handbook 1-EQ Par. 53]

**18. Is it necessary to require confirmation from the lender that everything is in place to have the existing WQMP transferred before issuance of the guarantee? This is not necessarily a copy of the transferred WQMP, just confirmation that everything has been done to enable the WQMP to be transferred to the buyer.**

To complete the NEPA review we need the (NMP, CNMP, WQMP, MMP, etc.) to support the water quality determination portion of the NEPA review. The transfer is an administrative process that is required by state regulators but should be documented which is why confirmation should be obtained from the lender. [FSA Handbook 1-EQ, Par. 53]

**AD-1026 Questions****19. Who needs an AD-1026? Does this need to be filed with county office prior to application submission?**

The FSA applicant and all affiliated persons must have an AD-1026 on file with FSA. Affiliated persons include most co-applicants and first level entity members. A more detailed definition of "affiliated person" can be found on the AD-1026 appendix which is attached to the form.

The AD-1026 is required as part of a complete application, but it does not have to be on file with FSA before the guaranteed loan application can be submitted to the Agency.

See the AD-1026 Appendix for additional information regarding affiliated persons.

See 2-FLP, Paragraphs 65-70 regarding requirements for a complete application.

**20. AD-1026 - Does the Lender need to have a copy on record? Or is that the only real way for the Lender to know that it was completed?**

The lender may keep a copy of the AD-1026 in their own records if they choose, but it is not mandatory. It is only required that the AD-1026 be on file with FSA.

**21. There appears to be confusion regarding AD-1026 requirements between handbooks 6-CP and 1-EQ. Can you clarify the requirements between each of the handbooks?**

- **6-CP Paragraph 301** - AD-1026 certification is required for each producer who requests benefits under a program.
- **1-EQ Paragraph 4** - Applicants or producers seeking to participate in FSA programs must: [have] current AD-1026.

Both handbooks have requirements for an AD-1026.