FSA
HANDBOOK

Environmental Risk Management

For State and County Offices

SHORT REFERENCE

2-EQ
(Revision 1)

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

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

Environmental Risk Management **2-EQ (Rev. 1)**	**Amendment 1**

Approved by: Administrator

Zach Ducheneaux

Amendment Transmittal

A Reasons for Revision

This handbook has been revised to:

- provide a more complete list of recognized environmental conditions and other environmental conditions commonly found on farms
- clarify when to elevate a concern to a Phase I or Phase II Environmental Site Assessment
- clarify the FSA due diligence process
- streamline special considerations
- address the new OGC review process
- clarify roles and responsibilities.

B Obsolete Handbook

2-EQ is obsolete.

Table of Contents

Table of Contents

Part 1 General Information

1 Purpose

A Handbook Purpose

Environmental risk screening is part of FSA's due diligence process and should be completed before taking a security interest in real estate, taking real estate security into inventory (foreclosure, voluntary conveyance, or conservation contract), or leasing or selling inventory property.

This handbook:

- provides a due diligence screening process to reduce future losses from a reduction in market value, for FSA loan officials, guaranteed lenders, contractors, and others
- provides instructions for investigating real estate offered or serving as security for an FSA direct, guaranteed, or FSFL
- outlines strategies to identify and mitigate potential environmental liabilities associated with real estate transactions
- provides guidance to enable staff to recognize environmental conditions related to a real estate transaction that warrant an elevated level of review
- provides guidance for determining the suitability of real estate to serve as security for FSA direct loans, guaranteed loans, or FSFL
- provides instructions about environmental responsibilities when disposing of inventory property.

B Applicability

These provisions pertain to evaluating loan security and potential impacts on value and liability. They are not related to environmental reviews which must be completed for proposed actions for compliance with NEPA as provided by 40 CFR 1500-1508. FSA's implementing regulation for NEPA is found in 7 CFR 799 and is further described in 1-EQ.

2 Relevant Statutes and Regulations

A Sources of Authority

Environmental laws referenced in this handbook include:

- 42 U.S.C. 9601 et seq.; Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or the "Superfund" Act)
- 42 U.S.C 6901 et seq.; Resource Conservation and Recovery Act
- 40 CFR Part 312; EPA All Appropriate Inquiries Rule
- 15 U.S.C. 2601 et seq.; Toxic Substances Control Act
- 24 CFR Part 35; HUD Lead Based Paint
- 40 CFR Parts 280, 281, and 282.50-282.105; UST Regulations
- Safe Drinking Water Act
- Clean Water Act
- Federal Insecticide, Fungicide, and Rodenticide Act.

B CERCLA and RCRA

CERCLA and RCRA serve two distinct purposes. CERCLA addresses lingering problems with former disposal sites and imposes liability for the cost of those cleanups. RCRA addresses the active management of hazardous and solid wastes from the point of generation to ultimate disposal (cradle to grave). The Hazardous and Solid Waste Amendments of 1984 added a new federal program for regulating UST's. These amendments enhanced the importance of RCRA to FSA as a lender.

2 Relevant Statutes and Regulations (Continued)

C CERCLA Lender Liability Exemption

In 1980, Congress enacted CERCLA, which gave the EPA the authority to respond to human health and environmental hazards posed by hazardous substances at sites. As a result, EPA could choose "enforcement first" requiring that liable parties conduct the cleanup or EPA could conduct the cleanup and seek cleanup costs from liable parties. Under CERCLA Section 107, liable parties are:

- the current owner and operator
- any owner or operator at the time of disposal of any hazardous substances
- any person who arranged for the disposal or treatment of hazardous substances; or arranged for the transportation of hazardous substances for disposal or treatment
- any person who accepts hazardous substances for transport to the site and selects the site.

Liability under CERCLA is strict, "joint and several, and retroactive." Under strict liability, parties can be held liable because they fall within one of the statutory classes (owner or operator) without regard to fault. For joint and several liability, any PRP can be held accountable for the payment of all cleanup costs. Liability may be established retroactively for hazardous substance releases occurring prior to CERCLA's enactment in 1980. However, CERCLA Section 101(20)(A) contains a secured creditor exemption from the definition of an "owner or operator" as any "person, who, without participating in the management of a . . . facility, holds indicia of ownership primarily to protect his security interest in the . . . facility." FSA provides credit but does not manage a borrower's operation. The producer makes the day-to-day management decisions independent of FSA. Therefore, FSA is typically covered by the CERCLA secured creditor exemption (as are most commercial lenders) provided FSA officials comply with its requirements, as discussed below.

2 Relevant Statutes and Regulations (Continued)

C CERCLA Lender Liability Exemption (Continued)

The purpose of the CERCLA secured creditor exemption is to create a safe harbor provision to protect lenders from liability and related risk of financial loss when foreclosing on and liquidating inventory properties provided the lenders do not participate in managing a property before foreclosure and who, after foreclosure, seek to divest themselves of the inventory property at the earliest practicable, commercially reasonable time, on commercially reasonable terms, considering market conditions and legal and regulatory requirements. This handbook uses the term secured creditor liability exemption and lender liability exemption interchangeably.

In administering loan programs, FSA must initially ensure adequate security is obtained at the time of loan making by evaluating the risks associated with environmental contamination or pollution as provided in Part 2. Identified risks must be removed or appropriately mitigated by the applicant prior to loan approval to ensure the value of the underlying collateral.

After foreclosure, a lender who did not participate in management before foreclosure, may generally do any of the following:

- maintain business activities
- wind up operations
- undertake a response action under CERCLA Section 107(d)(1) or under the direction of an on-scene coordinator
- sell, re-lease, or liquidate the facility
- take actions to preserve, protect, or prepare the property for sale.

To maintain compliance with CERCLA lender liability safe harbor provisions for inventory properties, lenders must promptly act to dispose of the property and comply with applicable federal, State, and local laws about managing and disposing of hazardous substances, hazardous waste, and petroleum products. Prior to foreclosure, FSA investigates the environmental condition of the property and reasonable likelihood and range of environmental liabilities that would be associated with assuming ownership of the property. Guaranteed lenders should conduct a similar investigation prior to foreclosure for guaranteed loans. The assessment should be done according to paragraph 13.

2 Relevant Statutes and Regulations (Continued)

C CERCLA Lender Liability Exemption (Continued)

Although the secured creditor exemption potentially removes lenders, including FSA, from the definition of "owner" or "operator" under CERCLA, there could still be liability. Other federal and State environmental laws have different liability standards and may be relevant to secured creditors. Conducting pre-foreclosure due diligence is key to understanding the environmental condition of the property and the reasonable likelihood and range of environmental issues and liabilities associated with the real estate transaction. A lender liability fact sheet can be found at https://www.epa.gov/sites/default/files/documents/lender-liab-07-fs.pdf.

D RCRA Lender Liability Exemption

RCRA is the public law creating the framework for management of hazardous and solid waste, including UST's. Subtitle I of RCRA contains a *security interest exemption* that provides secured creditors an explicit statutory exemption from corrective action liability (cleanup) with respect to releases from petroleum UST's.

RCRA protects lenders who do not participate in managing UST's on the property, similar to CERCLA. The RCRA lender liability exemption excludes lenders that do not participate in managing the UST from being considered an "owner" or "operator" and therefore, the lender will not be subject to the UST regulatory requirements. However, the RCRA UST safe harbor provisions require the lender to empty UST(s) within 60 calendar days after foreclosure, and to either temporarily or permanently close the UST(s) to remain within the exemption unless there is a current operator who can be held responsible for the UST requirements.

Note: Tanks that do **not** fall within RCRA's definition of UST are **not** regulated and **not** subject to RCRA requirements. Exemptions according to 40 CFR Part 280.12 include:

- farm and residential tanks of 1,100 gallons or less capacity for storing motor fuel for noncommercial purposes
- UST's of any size used for storing heating oil for consumptive use on the premises where stored
- other types of tank systems listed in 40 CFR Part 280.12, such as septic tanks; pipeline facilities; and surface impoundment, pit, pond, lagoons, or storm water retention facilities
- liquid trap or associated gathering lines directly related to oil or gas production and gathering operations
- storage tanks situated in an underground area (e.g., basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

2 Relevant Statutes and Regulations (Continued)

D RCRA Lender Liability Exemption (Continued)

According to Part 3 and in consultation with SEC, FSA employees should address unregulated UST's during lender due diligence and take appropriate action following foreclosure, including:

- take discretionary closure actions, when appropriate, to protect FSA's security interest in the property; and

- for the sale of inventory properties, disclose known environmental conditions, seek an indemnification from the purchaser, and otherwise act to facilitate resale of the inventory property.

3 FSA Forms/Exhibits

A Form References

FSA-851 is used to determine whether a review should be escalated to a Phase I or Phase II ESA.

- The FSA-851 is a transaction screening process —like the ASTM International practice E1528 where a person or entity seeks to determine if a particular parcel of real property is subject to potential environmental concerns.

- The FSA-851 should be completed prior to FSA taking a security interest in real estate, taking real estate security into inventory (foreclosure or voluntary conveyance), or before leasing or selling inventory property. Inventory property includes both foreclosure and conveyance properties. The form may also be used by guaranteed lenders for the same purposes. Depending on the findings of this screening process, additional review of potential environmental concerns may be required, as discussed in Part 3.

B Forms/Exhibits

Forms by title and/or form number are as follows.

Form/Exhibit	Title
FSA-851	Environmental Risk Survey Form
Phase I ESA	Process for conducting an ESA of a parcel of commercial real estate with respect to the range of contaminants within the scope of the CERCLA (42 U.S.C. §9601) and petroleum products.
Phase II ESA	Process to detect the presence or the likely presence of substances, including but not limited to those within the scope of the CERCLA (e.g., hazardous substances), pollutants, contaminants, petroleum and petroleum products, and controlled substances and constituents thereof.
5-FLP Exhibit 37	Worksheet for accepting a voluntary conveyance of farm loan program security property into inventory
5-FLP Exhibit 60	Worksheet for determining farm loan programs maximum bid on real estate property
Exhibit 6	Sample Lessor's Lead Disclosure Information English
Exhibit 5	Sample Seller's Disclosure of Information English

4 Introduction to Environmental Risk Management

A Due Diligence Required

FSA will conduct a due diligence review to assess risk for real estate offered or serving as basic or additional security for:

- FSFL's
- initial or subsequent direct loans
- acquisitions of real property
- Emergency Loans, including Emergency Loans not requiring an appraisal
- servicing actions that require the debt be further secured
- substitution of security
- subordinations where real estate subject to an FSA lien will be acquired, for example, as provided by 4-FLP, subparagraph 117 A (1)
- acquired by virtue of transfer and assumptions
- debt for nature
- accounts scheduled for foreclosure
- accounts offered for voluntary conveyance
- leasing or sale of inventory property.

Notes: If any new or additional security is found to be significantly contaminated or contain an UST, it will be handled according to Part 5.

FSA does not conduct due diligence reviews for guaranteed loans. Instead, guaranteed lenders are responsible for conducting a due diligence review for guaranteed loans. See paragraph 62 for additional details.

4 Introduction to Environmental Risk Management (Continued)

B Evaluation Process

FSA uses three levels of due diligence to evaluate the environmental risk for real estate offered or serving as security.

- FSA-851 is the starting point for most FSA due diligence reviews for real estate transactions. This form is a screening tool used by FSA or a guaranteed lender to conduct limited environmental due diligence and identify environmental conditions that require further review. Completing this form, while providing useful information to FSA, does not qualify FSA for any protections from liability under CERCLA or any other cleanup law. If no recognized environmental concerns are identified, the review is complete.

- A Phase I ESA is needed when the FSA-851 indicates possible contamination or REC's (for example, hazardous, petroleum, or other contaminants**)**. Phase I ESA's involve a review of records, a site inspection, and interviews with owners, occupants, neighbors, and local government officials to determine if there may be contamination present due to activities that took place on the site or at a nearby property. A Phase I ESA should be consistent with the requirements of EPA's AAI rule, and typically is based on the ASTM E1527 standard. Sampling and laboratory analysis are not usually conducted at this stage. Further review will be concluded based upon the recommendation of the environmental professional (as defined in EPA's AAI rule) completing the Phase I ESA report. It is the applicant's responsibility to provide this documentation.

- A Phase II ESA, typically based on the ASTM E1903 standard, is needed when either FSA-851 or a Phase I ESA indicates the likely presence of substances including but not limited to those within the scope of the CERCLA (e.g., hazardous substances, pollutants, contaminants, petroleum and petroleum products, and controlled substances and constituents thereof). Phase II ESA's include sampling and laboratory analysis to confirm the presence of hazardous materials such as:

  - soil and water samples
  - subsurface borings
  - sampling of dry wells, floor drains, and catch basins
  - geophysical testing for buried tanks and drums
  - testing of UST's
  - test wells and monitoring.

  The applicant is responsible for providing this documentation.

4 Introduction to Environmental Risk Management (Continued)

B Evaluation Process (Continued)

It is only necessary to complete the level of review needed to learn and document whether environmental and economic risks associated with the subject property are present. Phase I may be omitted in situations where there is known or a high probability of contamination which Phase II testing can confirm.

C Recognized Environmental Conditions

As used in this guidance, REC means the presence, or likely presence, of hazardous substances or petroleum products in, on, or at a property:

- due to a release to the environment
- under conditions indicative of a release to the environment
- under conditions that pose a threat of a future release to the environment.

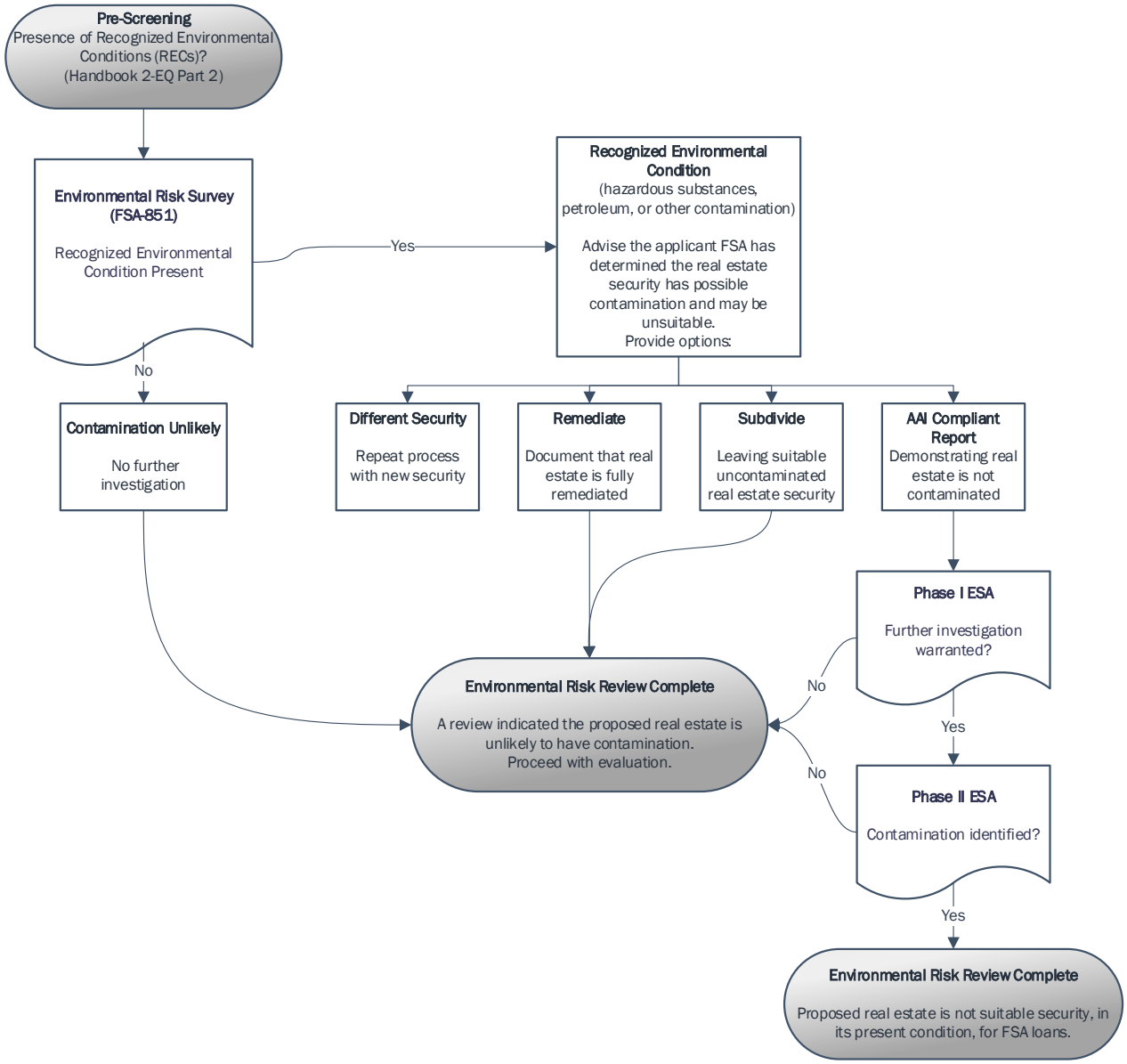
Based on a completed FSA-851, FSA determines if the property being offered as security for a direct loan or FSFL contains possible REC's (for example, hazardous substances, petroleum, or other contamination). If an REC is identified, FSA will notify the applicant that processing the loan approval cannot continue because FSA has determined the proposed security has possible contamination and may be unsuitable based on its current condition. Alternatively, the applicant can:

- offer different suitable property as security for the loan, if available
- provide documentation that the contaminated property being offered as security has been fully remediated according to a plan approved by the appropriate regulatory agency
- subdivide the contaminated property leaving a suitable uncontaminated property to offer as security if the contamination will not pose a material threat to the property
- provide an AAI compliant ESA completed by an environmental professional showing the property offered for security is **not** contaminated.

Any contamination found by FSA should be reported, in writing, to the applicant with instructions that the applicant may have a reporting requirement depending on applicable Federal or state regulatory requirements.

4 Introduction to Environmental Risk Management (Continued)

D Flow Chart for Due Diligence Review



4 Introduction to Environmental Risk Management (Continued)

E Examples

Example #1 Landfill (Phase I ESA)

Applicant proposes financing 160 acres of pastureland for a cow calf operation. The real estate served previously as a landfill. This is a trigger to elevate the review to a Phase I ESA. If the Phase I ESA finds no further investigation is warranted, then the review is concluded with the Phase I ESA.

However, if the Phase I ESA found that the landfill was unmonitored, and the public had unrestricted access (meaning they could dump whatever they wanted) the environmental professional would likely recommend a Phase II ESA coupled with appropriate testing to ensure the real estate was suitable. The Phase II ESA findings will either clear the real estate to serve as security or recommend a Phase III ESA for a clean-up action. If cleared, you may proceed with the evaluation. Otherwise, the real estate is not suitable security.

Example #2 Aerial Spraying (Phase II ESA)

An applicant proposes to purchase 320 acres of additional pasture. The previous owner operated an aerial spraying operation for many years on the site so there is likely contamination from possible leaks, spills, or mishandling of substances. In this situation, a Phase I is not needed and a Phase II with soil testing etc. will be completed. This example is different from example #1 in that the operator would not have reported any potential contamination, and as a result, it would not be mentioned in a site closure report from the State.

Example #3 Gas Station (Phase II ESA)

An applicant proposes real estate that historically served as a gas and service station and closure records are not available or complete. This is a trigger to elevate the review to a Phase II ESA. Spending resources on a Phase I to confirm REC's is not required since the likely presence and historical use of petroleum products are already identified. If contamination is identified in the proposed security, FSA may consider subdividing the proposed security predicated upon a Phase II report indicating that contamination is not present or will not impact the portion proposed as security.

Example #4 Underground Storage Tank - Regulated (FSA-851)

An applicant proposes real estate that has a regulated UST. This REC does not necessarily elevate the review to a Phase I ESA or Phase II ESA. However, the property is determined to be potentially unsuitable to serve as security for FSA loans (guaranteed, direct, or FSFL). To be further considered, the applicant will provide evidence that the UST complies with all applicable environmental laws and regulations including, but not limited to, registration with the appropriate State regulatory agency, including tank installation data showing the type of tank installed and measures to prevent or contain leakage. Evidence may also consist of test results from an environmental professional. This documentation and test results are attached to FSA-851.

5 Related References

A Related FSA Handbooks

The following FSA handbooks address environmental risk management.

IF the area of concern is about…	THEN see…
environmental requirements	1-EQ.
FLP general program administration	1-FLP
guaranteed loan making and servicing	2-FLP.
direct loan making	3-FLP.
regular direct loan servicing	4-FLP.
direct loan servicing-special and inventory property management	5-FLP.
FLP special programs	6-FLP.
farm storage facility loans	1-FSFL.

States may have requirements that are more stringent or broader in scope, and all applicable State requirements should be reviewed. Any State-specific guidance will be provided in a supplement to this handbook.

B State Supplements

See Exhibit 4 for State supplements required by this handbook. SED's are authorized to issue State supplements to this handbook in addition to State supplements listed in Exhibit 4.

Note: Additional State supplements may:

- **not** be issued to simply state verbatim, policies already established in the national handbook
- be issued:
  - when the national handbook does not provide complete guidance
  - to provide additional guidance for employees with limited experience
  - when State law requirements are not specifically addressed in the national handbook.

SED's will issue supplements, according to 1-AS, paragraph 216 and obtain prior approval of State supplements through ENV.

6 Roles and Responsibilities

A FSA Authorized Agency Official

The FSA loan approval official is responsible for ensuring compliance with the requirements of this paragraph and coordinating activities with SEC's, as needed. FSA personnel, including appraisers, will not be authorized to complete FSA-851 until adequate training has been provided by SEC. At a minimum, this training will include safe work practice and hazard recognition. SEC's will document and maintain a record of this training.

B Guaranteed Lenders

Guaranteed lenders are required to perform due diligence for loan guarantee requests involving real estate as security. The presence of contamination from hazardous substances or petroleum products and their impact on the market value of the property may be a concern. If real estate will be taken as primary security, the lender must conduct a site visit and complete the most current version of the ASTM Standard E1528, Transaction Screen Questionnaire, FSA-851, or similar questionnaires or screening tools meeting the requirements outlined by their respective regulator (FDIC, OCC, FCA, etc.).

Note: The lender must indicate on the Application for Guarantee whether the questionnaire indicates an environmental concern may exist. If the questionnaire indicates that a problem may exist, the lender should attach a copy of the questionnaire. However, submission of the questionnaire is not required if it appears that there are no potential problems, but it must be maintained in the lender's loan file.

See paragraph 62 for additional details about guaranteed loans.

6 Roles and Responsibilities (Continued)

C Appraisers

Historically, appraisers had a role in FSA's due diligence process; however, the use of contracted appraisals has limited this role. Appraisers:

- are not environmental professionals
- are expected to disclose environmental concerns within the appraisal report as required by USPAP
- may assist with completing lender due diligence on behalf of a lender; in this case, the guaranteed lender would be expected to notify the authorized agency official of environmental concerns noted during the property inspection.

Concerns may include potential contamination from hazardous substances, hazardous waste, petroleum products, and other contaminants disclosed by interested parties through observations or research conducted for an appraisal. An environmental professional may be hired to assist the appraiser to determine the presence or absence of contamination, and the nature and extent of contamination and the potential impact on the security value of real estate. The appraiser must disclose all findings in the appraisal report including the impact on the estimate of the property's "as is" market value.

D State Environmental Coordinators

SEC's are responsible for the oversight of all technical and regulatory interactions with the National Office, field staff, and appropriate environmental regulatory authorities, including training on due diligence (FSA-851).

E Loan Applicants

Applicants are responsible for identifying and complying with all laws regulating management of hazardous substances, hazardous waste, petroleum products, and other contaminants affecting their financial operation or business interest. Recipients of FSA direct loans and FSFL's involving real estate security must maintain their operations in compliance with environmental laws and not place FSA's security interests at risk. If the agency determines a Phase I or Phase II ESA is necessary, FSA will not cover the cost.

6 Roles and Responsibilities (Continued)

F Environmental Professionals

An environmental professional is defined in EPA's "AAI rule as a person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding conditions indicative of releases or threatened releases on, at, or to a property."

FSA requires that environmental professionals performing Phase I and Phase II ESA's be:

- licensed or certified by the Federal government, State, Tribe, U.S. territory, or the Commonwealth of Puerto Rico to perform environmental inquiries as defined by the EPA AAI Rule (Section 312.21) and have the equivalent of three years of full-time relevant experience

- have a baccalaureate or higher degree from an accredited institution of higher education in a discipline of engineering or science and the equivalent of five years of full-time relevant experience

- have the equivalent of ten years of full-time relevant experience.

An environmental professional will:

- perform all Phase I and Phase II ESA's as required by the EPA AAI rule at 40 CFR Part 312 or the EPA-approved ASTM ESA standards (E1527 and E1903)

- perform all analytical procedures, including sampling and testing activities, response actions, and environmental audits

- be responsible for evaluating remedial options and providing a cost estimate for response actions on a subject property

  Note: These cost estimates will be considered by appraisers and FSA officials in security value determinations and risk analyses for loan processing and servicing decisions.

- be responsible for obtaining and analyzing environmental samples according to health and safety procedures and the most current sampling and laboratory protocols developed by the appropriate environmental regulatory authority.

7-10 (Reserved)

Part 2 Environmental Transaction Screening

11 Screening – (FSA-851 Part C - Site Data)

A Obtain Pertinent Details about the Real Estate

FSA personnel, as a first step in the due diligence process, will screen real property for the presence of REC's which pose potential environmental hazards. The physical setting must be clarified to determine the potential impact of one property on another or to project the possibility for existing soil contaminants to migrate from the surface to potable groundwater, or otherwise contaminate the property.

Establish the location for FSA projects. Applicants may provide general location descriptions, legal descriptions, coordinates, landmarks, or cross street information. To clarify the location, obtain the 911 address if one is available, or the global position system location if the 911 address is not available. Accurate location information is needed when starting a review of State and Federal records required to complete FSA-851.

Consider past use of the property and adjacent properties when completing the environmental risk survey. If the property was previously used for farmland or ranchland and had no exposure to hazardous substances or petroleum products, elevating the review to a Phase I or Phase II ESA is probably not needed.

Items that may indicate a need for an elevated review include, but are not limited to the following:

- CAFO's
- fertilizer production
- gas stations
- pesticide storage or spraying services
- industrial production such as a machine shop
- junkyard
- landfill
- other commercial uses
- zoning indicating previous uses.

During the site visit determine:

- the number and size of buildings on the property
- age of buildings
- presence of UST's
- presence of AST's
- construction materials.

Most of this information can be found online through the taxing authority or state-maintained databases.

11 Screening – (FSA-851 Part C - Site Data) (Continued)

B Records Search /Databases

A records search should be completed before visiting a proposed site to identify any concerns to look for in the field. Concerns should be discussed with the property owner and applicant. Federal, State, tribal, and local regulatory agencies maintain online databases with information on use and misuse of hazardous materials.

EPA maintains **NEPAssist** (https://www.epa.gov/nepa/nepassist) with information on hazardous waste regulated under RCRA, Superfund- NPL, and TSCA. NEPAssist may aid in completing the records search portion of the FSA-851.

EPA's Superfund Enterprise Management System (SEMS) database (https://www.epa.gov/enviro/sems-search) is used to retrieve Superfund data in Envirofacts and can be searched for any combination of facility name and geographic location.

Another EPA Web page, **Envirofacts** (https://enviro.epa.gov/), provides access to several databases providing information about environmental activities that may affect air, water, and land in the United States, and can be used to generate maps of environmental information.

EPA's UST Finder: National Underground Storage Tanks And Releases Web Map (https://epa.maps.arcgis.com/apps/webappviewer/index.html?id=b03763d3f2754461adf86f121345d7bc) contains a comprehensive, state-sourced national map of UST and LUST data. It provides the attributes and locations of active and closed UST's, UST facilities, and LUST sites in States and in tribal lands and U.S. territories. The UST Finder contains information about proximity of UST facilities and LUST sites based upon the identified location.

Searching State department of environmental quality (or responsible agency) web pages can provide information for:

- CERCLA cleanup sites
- sites equivalent, eligible, or on NPL
- non-NPL sites
- LUST's
- landfills.

11 Screening – (FSA-851 Part C - Site Data) (Continued)

C Records Search /Databases

The ENV SharePoint (https://usdagcc.sharepoint.com/sites/FBC-EnvAct/) maintains an up-to-date list of links for records and database searches.

D Minimum Search Distances

For EPA and State data, plot search limits on the map. The minimum distances to search are listed in Table 1 below. If sites are found outside the minimum distance, consider any extraordinary circumstances that may impact the real estate during the term of the loan.

For example, a landfill is identified 0.6 miles from the property being considered as real estate. Although this is outside the minimum search limits, it is discovered that a nearby landfill containment failed, and a contaminated groundwater plume is migrating toward the proposed real estate security. As the plume reaches groundwater wells, they can no longer be used for drinking or livestock, so the county provides water through pipes. In this case, a landfill would become a REC and the review would be elevated to a Phase I.

Type of Listing	Radius from Site (mi)
CERCLA	
Federal NPL	1.0
State and Tribal-equivalent NPL	1.0
Federal delisted NPL sites	0.5
Non-NPL	0.5
RCRA (list)	
Leaking Underground Storage Tanks	0.5
Solid Waste Disposal Sites (landfill)	0.5
Military Installation	1.0
Wastewater Discharge	1.0
Mines	0.5

12 Preparing to Complete FSA-851

A Site Visit

A site visit is a thorough investigation of the real estate and all associated development. The property owner must consent to the site visit and should be present, if possible. All activities performed in and around development on the property or other uses may impact its suitability to serve as security for FSA loans (direct, guaranteed, and FSFL's). Ideally, the FSA-851 should be completed with input from the owner, operator, and neighbors.

Before going to the field, review information collected during the planning. Consider the different environmental reports (such as landfills, CERCLA sites, LUST's, etc.).

Every square foot of the property should be considered during a site visit; however, it is not always feasible to walk the entire property. Also ensure that all rooms of structures are evaluated for environmental concerns.

When it is not feasible to see every square foot of a property, at minimum the following should be considered:

- historical maps (e.g. Google Earth Pro)
- owner/operator/neighbor input on potential REC's
- perimeter of the site
- structures
- surface water routes, including dry creek beds
- roads, paved and unpaved
- all accessible areas.

Do not assume, for example, that a forested area will not contain anything of concern. What may appear to be raw land may harbor a hidden liability, such as unauthorized dumping in the past and may now be covered by woody overgrowth.

12 Preparing to Complete FSA-851 (Continued)

B Equipment

Before going to the field, consider the equipment needed such as:

- global positioning system
- camera
- map(s)
- pen/pencil
- heavy boots
- long-sleeved shirt
- first aid kit/water
- bug spray
- sunscreen
- small shovel
- diagram/map of the area.

Also, fully charge electrical devices and complete a check of the automobile including tires and gas.

C Site Visit Safety Guidelines

FSA is committed to providing a safe environment for employees who perform duties connected with completing the FSA-851.

Hazardous substances, common contaminants found on farms include asbestos, lead, and biological contamination that can leach into the soil from contaminated water. At the first sign of any suspected hazardous contamination, caution should be taken to avoid contact with the suspected hazardous contamination and the concern should be elevated to SEC.

12 Preparing to Complete FSA-851 (Continued)

C Site Visit Safety Guidelines (Continue)

Observe the following guidelines when performing the site visit portion of the FSA-851 process.

- Do not climb stairs or ladders unless it is necessary to visually locate security.
- Use the proper safety equipment for the environment.
- When walking, be attentive and aware what's under foot and pay attention that your head is not bumping against a beam or piping.
- Do not attempt to locate serial numbers or verify information that is inaccessible or not in a safe location.
- Never enter a manure pit, grain bin, or silo without following confined space entry procedures. The gases and materials in these structures kill farmers every year.
- Never enter an area that appears to be unsafe.

Document the unsafe conditions on the FSA-851 and schedule a subsequent review when the conditions allow for a safe site visit.

13 Phase I and Phase II ESA

A Phase I ESA

A Phase I ESA identifies RECs on a property. This process includes reviewing site records, visiting the site, interviewing individuals with knowledge of the site, and providing conclusions on additional investigation needs. Note that a Phase I ESA does not typically involve collection and laboratory analysis of environmental samples.

Existing information is used to understand the property conditions by examining current and historical uses of the site and potential threats to human health or the environment. ESA's must be completed or overseen by an environmental professional, which may include a licensed geologist, engineer, or site professional.

They will:

- review records – examine past and current land uses through property photographs, maps, and historical records
- review government databases - examine ownership and environmental records related to managing or disposing of hazardous substances and petroleum
- visually inspect the site - visit the site and nearby properties to observe current conditions
- interview the owner(s), neighbors and past workers - find out what they know about site operations involving wastes and chemicals.

A Phase I ESA also helps determine who is potentially liable for environmental contamination found on a property. When a potential property owner conducts AAI (in compliance with the regulations at 40 CFR 312), they may be able to defend against liability if contamination is discovered later. FSA or the guaranteed lender should be listed as an intended user of the Phase I or Phase II ESA. A Phase I ESA must be conducted or updated within 180 calendar days before the date of a property acquisition for the purchaser to obtain protection from potential environmental liability.

If little to no evidence of potential contamination is found at the property, the report will have a recommendation of "no further investigation". FSA or the guaranteed lender will follow the guidance of the Phase I report.

If evidence of known or potential contamination is found at the property, a Phase II ESA is needed.

13 Phase I and Phase II ESA (Continued)

B Phase II ESA

The Phase II ESA is needed if the Phase I ESA results reveal known or potential contamination found on the property (that is, REC's). An environmental professional develops a sampling plan for a Phase II to evaluate the potential presence of contamination from hazardous substances or petroleum on the property and determines the source(s) and level(s) of exposure. In the sampling plan, the environmental professional will:

- **identify chemical(s) of concern** - determine contaminants likely to be present in soils, groundwater, or vacant structures based on property history
- **sample and test soil, groundwater, and other media** – develop a sampling plan for the property; collect and analyze samples to determine type and distribution of contaminants
- **further investigate areas of concern** – review results and target sampling to find localized hot spots (high-risk areas) and extent of contamination
- **develop cleanup plans** – if needed, develop plans for cleanup or reuse that prevents and minimizes exposures. This plan considers layout of structures, open areas, slope of the property, and contaminants.

The environmental professional provides conclusions and recommendations for any additional investigation needed. If there is little to no evidence of potential contamination found at the property, the report will note a recommendation of "no further investigation" and FSA or the guaranteed lender will follow the guidance in the Phase II report. If no further investigation is recommended, the report will serve as the AAI compliant report.

If contamination is confirmed through testing, the Phase II report may recommend a Phase III ESA, which typically includes further site evaluation and a proposed cleanup plan. Property recommended for a Phase III ESA is not suitable security for FSA loans. Property being evaluated for foreclosure or voluntary conveyance purposes will need to fully consider the clean-up expense documented in the Phase III ESA, considering the residual value documented on 5-FLP, Exhibit 60 for direct loans.

14-18 (Reserved)

Part 3 Environmental Transaction Screening (Scope)

19 ESA Scope Items

A Explanation

A scope item for ESA's refers to the items included in the standard scope of a Phase I ESA. These include records review, site reconnaissance, interviews, and the Phase I ESA report. These items are explicitly detailed with very specific language in the ASTM standard. This part covers the scope items that are most frequently encountered on proposed FSA farming security.

20 Above Ground Storage Tanks

A Overview

AST's or other bulk storage containers are found above ground, partially buried, bunkered, or in a subterranean vault. Most storage tanks contain petroleum products (for example, motor fuels, petroleum solvents, heating oil, lubricants, used oil). AST's are typically found adjacent to farm buildings (for example, machine sheds, barns, and service areas).

Discharges of chemicals, petroleum, or non-petroleum oils from storage tanks can contaminate soils, surface water, and groundwater and may accumulate in soils or be transported in stormwater runoff.

An oil spill over a reportable limit can pose a serious threat to human health and the environment, require remediation that extends beyond the facility's boundary, and can result in substantial cleanup costs. A spill of only one gallon of oil can contaminate a million gallons of water. It may take years for an ecosystem to recover from the damage caused by an oil spill. Some of the causes for storage tank releases are tank corrosion, failure of piping systems, inadequate containment, spills and overfills, as well as equipment failure and human operational error.

20 Above Ground Storage Tanks (Continued)

B Regulatory Requirements

EPA regulates AST's and the bulk storage container program (40 CFR Part 112). AST's on farms fall under the SPCC rules. The SPCC's goal is to prevent oil spills into WOTUS and adjoining shorelines and requires farmers to have an oil spill prevention plan.

Check with local and State regulatory authorities about additional requirements for AST's.

An SPCC plan applies to a farm that:

- stores, transfers, uses, or consumes oil or oil products, such as diesel fuel, gasoline, lube oil, hydraulic oil, adjuvant oil, crop oil, vegetable oil, or animal fat
- aggregates AST capacity of 2,500 U.S. gallons to 6,000 U.S. gallons with no reportable discharge history or aggregate AST capacity above 6,000 U.S. gallons regardless of discharge history
- could reasonably be expected to discharge oil to WOTUS or adjoining shorelines, such as interstate waters, intrastate lakes, rivers, and streams.

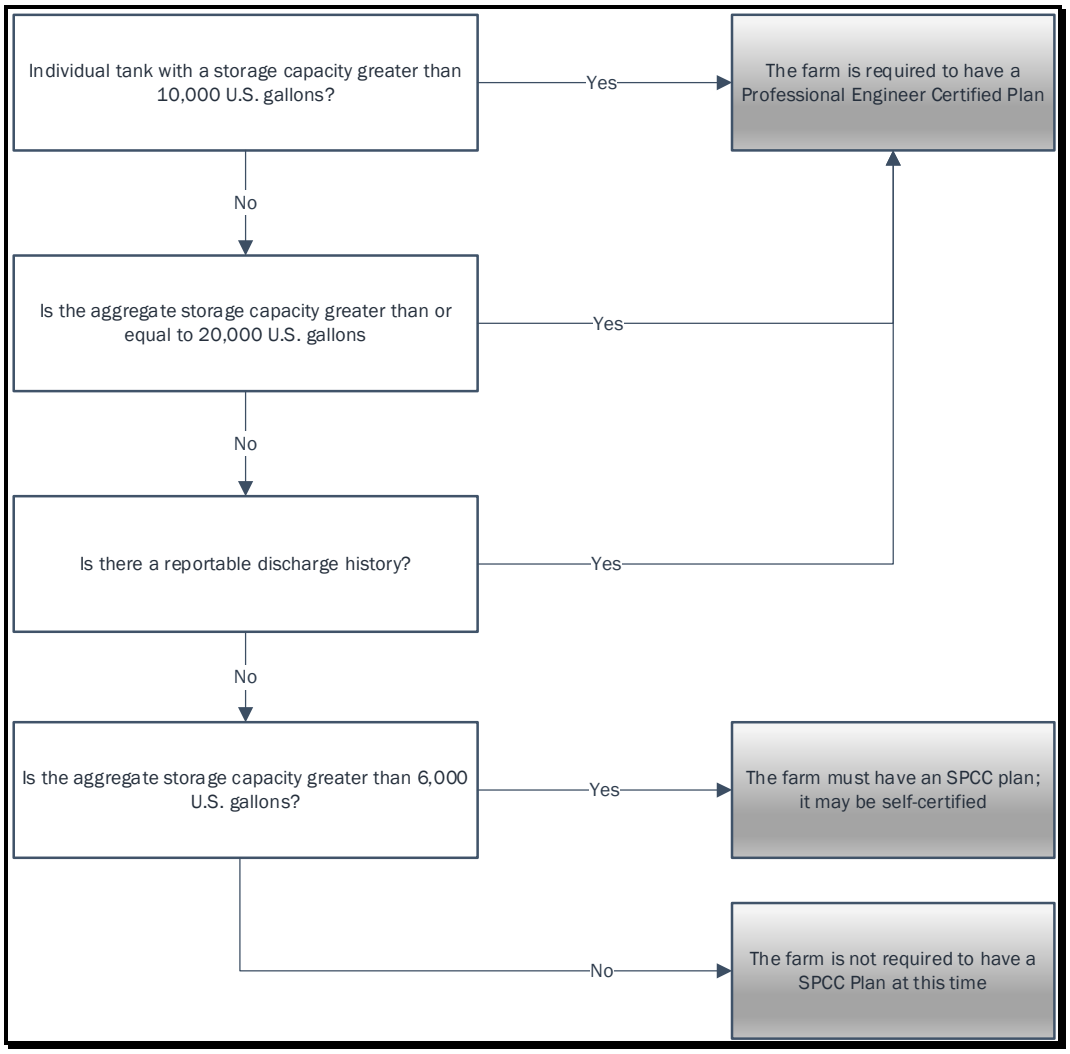
To calculate aggregate aboveground oil storage capacity, do not count:

- containers on separate parcels that have a capacity that is 1,000 gallons or less
- containers storing heating oil used solely at a single-family residence (for example, personal residence as the farm owner or operator)
- pesticide application equipment or related mix containers (with adjuvant oil)
- any milk and milk product container and associated piping and appurtenance
- completely buried oil tanks (UST's) and associated piping and equipment that are subject to all the technical requirements under EPA's UST regulations at 40 CFR part 280 or 281
- containers holding animal feed ingredients approved for use in livestock feed by the FDA Commissioner.

20 Above Ground Storage Tanks (Continued)

B Regulatory Requirements (Continued)

The following flowchart outlines the certification(s) needed for an SPCC Plan.



Notes: If a farm is eligible for self-certification provisions, include details of the plan, these are very simple such as safety measures, containment, and spill response tools. Include basic details in the comment section of the FSA-851.

A discharge must be reported to the EPA Regional Administrator when there is a discharge of more than:

- 1,000 U.S. gallons of oil in a single discharge to navigable waters of adjoining shorelines
- 42 U.S. gallons of oil in each of two discharges to navigable waters or adjoining shorelines occurring within any 12-month period.

20 Above Ground Storage Tanks (Continued)

B Regulatory Requirements (Continued)

Additional information can be found at https://www.epa.gov/sites/default/files/2016-02/documents/wrrda_farm_study_2015-06-30.pdf.

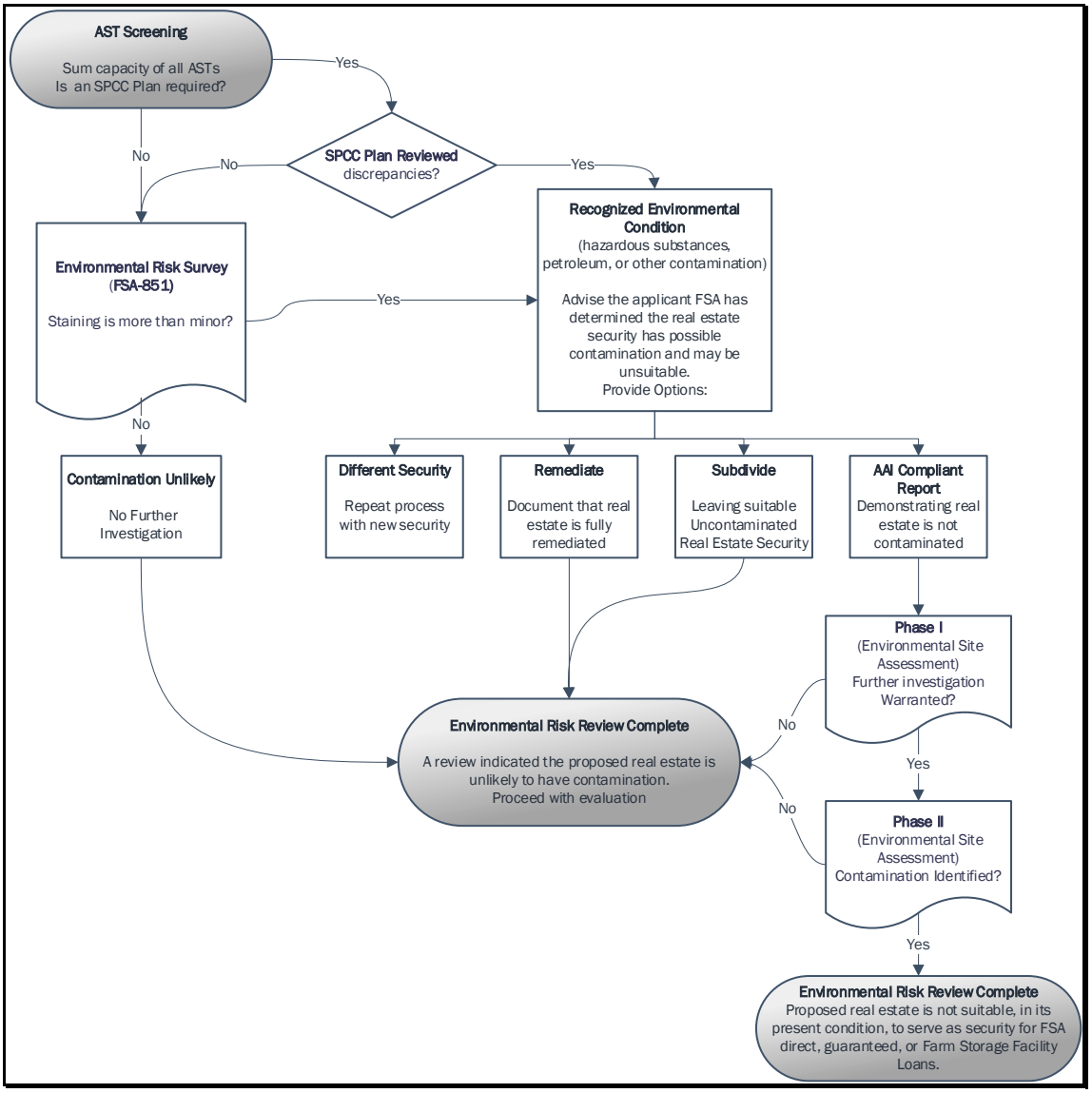
C Environmental Screening Process

During the site visit, the presence of all AST's should be noted and marked on the site map of the FSA-851. Add the capacity of all tanks and compare the sum to the above chart to determine if an SPCC plan is required. It is uncommon for family farms to have an aggregate capacity requiring an SPCC plan. If a plan is required, each tank should be assessed to ensure the safety measures are implemented and discrepancies are noted. SPCC plans can be provided by a technical support provider or a professional engineer. SPCC plan discrepancies are **not** acceptable and **must** be reconciled prior to approval (direct, guaranteed, or FSFL).

When inspecting the condition of AST's (both those required to have an SPCC plan and those that do not), note any staining on concrete or soil below. It is common to find staining both on concrete and soil where equipment is stored, serviced, or filled. Staining on concrete is minor if the spill is in small quantities and did not migrate to the underlying soils. Staining on soil is considered minor if it hasn't migrated past the upper few inches of the soil profile and clean soil can be found directly beneath the stain. However, if the tank has been leaking over time or in large quantity, substances may have reached deeper soils or groundwater, requiring a Phase II ESA so samples can be taken to determine if pollutants, contaminants, petroleum products, or constituents have been released into the environment beyond a reportable quantity.

20 Above Ground Storage Tanks (Continued)

D Flow Chart for Above Ground Storage Tanks



20 Above Ground Storage Tanks (Continued)

E Examples

Example #1 1,000-Gallon Elevated AST – Soil Staining

While completing a site visit, a 4-foot diameter stain is found under a 1,000-gallon elevated AST used to fuel farm equipment. The owner explains that this was due to leakage that occurred when they changed the filter. It appears minor. A shovel is used to evaluate and clean soil is found just inches under the stain. This is determined to be a minor stain and no further investigation is necessary.

Example #2 Water Pump Concrete Staining

A 5,000-gallon tank used to supply diesel to an irrigation motor on a remote portion of the farm is observed during a site visit. The tank sits on a concrete pad and generally appears well maintained; however, a steady drip coming from a connection on the back side of the tank is found. The owner comment noted that the leak is only a small drip. Upon inspection using a shovel no clean soil is found beneath the stain. This is not a minor spill and will elevate the review to a Phase II ESA requiring samples to determine if the soil, surface, or groundwater may be polluted.

21 Chemical Storage Containers/Drums/Barrels

A Overview

There are various types of chemical storage containers, drums, and barrels found on farms. The 55-gallon steel drum is a common container. Drums may contain residues of solvents, pesticides, and other hazardous substances and may be repurposed for other uses such as feed storage to protect from pests. Fifty-five-gallon steel drums are also commonly used to store old oil from farming equipment prior to disposal. Three-hundred-gallon plastic totes are commonly used for water storage and pesticide mixes. These storage containers require a thorough review to ensure they are properly disposed of or removed prior to the real estate serving as FSA security.

Life expectancy of the container itself should be considered during the review. Steel drums have a life expectancy of approximately 50 years while drums buried or exposed to the elements may deteriorate more rapidly resulting in release of their contents to the environment.

21 Chemical Storage Containers/Drums/Barrels (Continued)

B Regulatory Requirements

All shipped chemical storage containers must be labeled with the trade name, manufacturer, and specific hazards associated with the chemical. The label also includes information on the Material Safety Data Sheets with chemical hazards and safe handling information.

Repurposing some storage containers or drums is not allowed. For example, pesticide containers, including 55-gallon drums, have specific instructions for the proper disposal of the containers after use. Moreover, the storage of waste materials which meet the definition of hazardous waste is strictly regulated by RCRA's hazardous waste management regulations, which address requirements such as waste identification, maximum allowed storage periods, and container labeling. Failure to ensure compliance with these requirements can lead to fines and compromise the integrity of the loan security.

C Environmental Screening Process

Prior to the site visit, access historical aerial photos using programs such as Google Earth Pro to note large concentration of containers or drums that may have been moved, hidden, or disposed of on a property.

During the site visit:

- locate and check the integrity of all chemical tanks, drums, and barrels
- note the presence of storage containers and drums on the map and identify the contents of all containers and drums
- take photographs of the labels, even if there appears to be no associated problem with the containers.

The disposition of any identified containers, drums, barrels, or dumpsites should be noted on the FSA-851.

The contents of containers and drums will generally be noted on the outside of the container, along with warning labels. Unmarked drums that cannot be identified should be handled with extreme caution. This may be a situation where a review is elevated to a Phase II ESA because there are unknown chemicals in storage containers or drums. Questions about these reviews can be referred to SEC.

21 Chemical Storage Containers/Drums/Barrels (Continued)

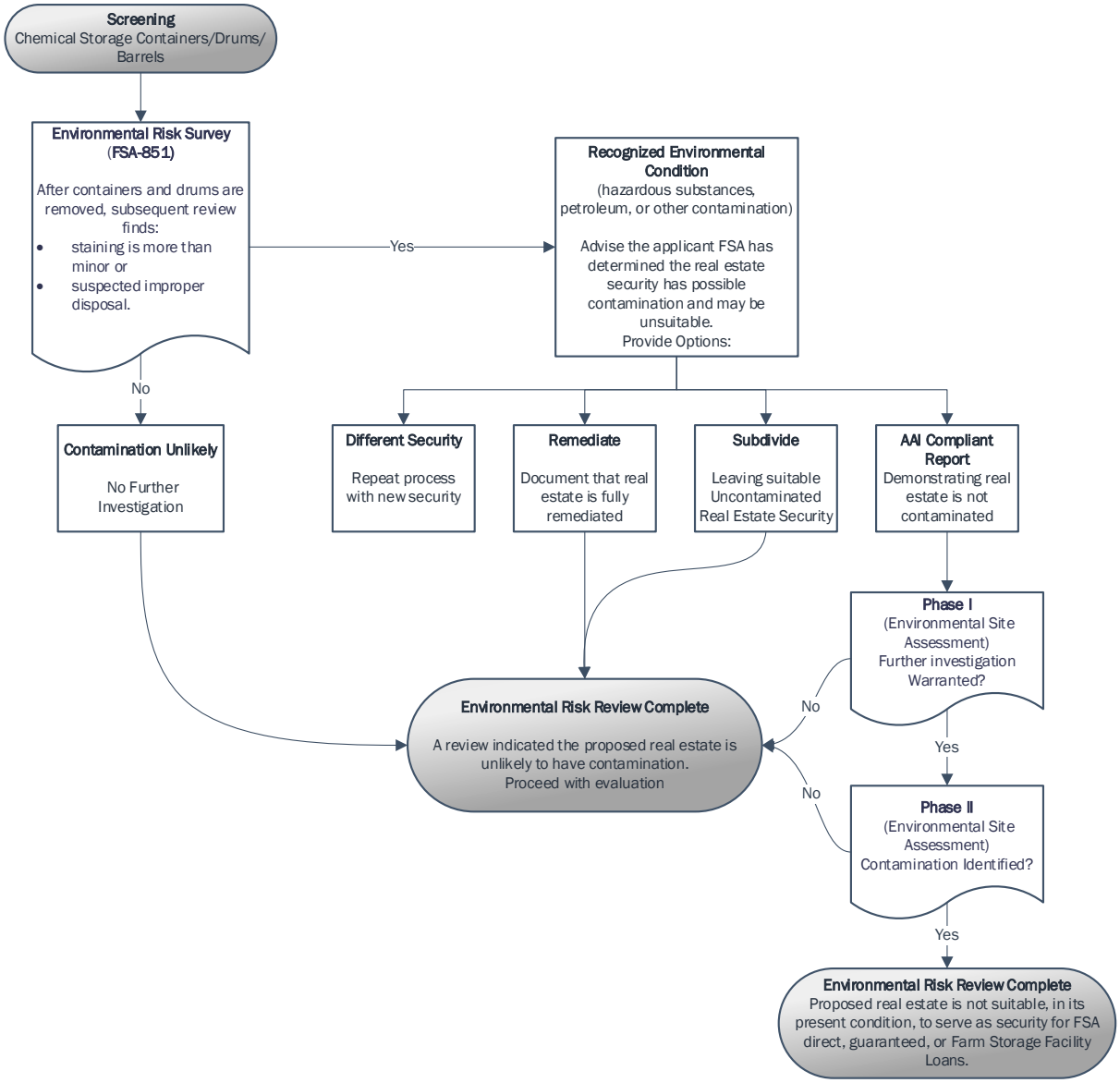
C Environmental Screening Process (Continued)

Any containers or drums located on the proposed property should have their contents identified and the intended disposition of hazardous contents noted. For non-leaking containers and drums intended to be recycled or disposed of, a subsequent review will be required to verify the hazardous substances, petroleum products, or contaminants were properly disposed and removed. If no evidence of contamination is found after the containers or drums are removed, the review is complete. Tanks, drums, and barrels may be repurposed and used on farms if the contents were non-hazardous, and the container did not require disposal.

If containers or drums are leaking or if more than minor staining is observed, as described in paragraph 48, a Phase II ESA is required. Phase II sampling will determine if pollutants, contaminants, petroleum products, or constituents were released into the environment.

21 Chemical Storage Containers/Drums/Barrels (Continued)

D Flow Chart for Chemical Storage Containers/Drums/Barrels



21 Chemical Storage Containers/Drums/Barrels (Continued)

E Examples

Example #1 Steel Drum used for Horse Feed Storage

While completing a site visit on a property proposed as security for an FSA direct loan, 55-gallon steel drums are found. The drums do not have leaks and are filled with animal feed. Eight of the drums have labels that indicate they were originally used to store orange oil solvent or D-limonene. The remaining drum was storage for an insecticide based on information from the property owner.

Further research shows that the D-limonene is an extract of orange peels that is food grade and there are no disposal requirements for the drums after use. The insecticide container had the chemical name on it and upon review the label had specific container handling instructions that indicated that it cannot be reused, and it must be triple rinsed recycled, reconditioned, or disposed of in a sanitary landfill.

A subsequent review is needed to ensure the insecticide drum was properly disposed, but an elevated review is not required.

Example #2 Steel Drums Storage Area

Historical photos show an area with several dozen drums. The landowner stated the drums were recently removed. After further review, it's discovered that the drums contained wastewater from a machine shop that operated on an adjacent property. The area in question was used as a staging site until the drums could be transported and disposed of in a landfill authorized to accept them as waste. Several areas of soil staining were noticed in the vicinity of the drum staging area.

The possibility that the contents are hazardous (that is, toxic or flammable) is moderate. The soil is noticeably contaminated. A Phase II ESA is required to confirm the contents of the drums and sample soil in the affected area.

22 Debris/Illegal Dumping

A Overview

Many rural properties have become subject to dumping household trash, junk, motor oil, tires, paints, construction materials, medical waste, roofing material (possibly containing asbestos), and batteries. As the cost of disposal increases, the frequency of illegal dumping increases. It is not feasible to test every inch of soil nor to predict every possibility (for example, illegal dumping, hazardous materials migrating from a neighbor's property).

B Regulatory Requirements

There are EPA and State laws and criminal penalties for knowingly polluting the environment. Property owners and operators are responsible for cleanup expenses. A property owner may become the responsible party even when someone else is at fault.

Municipal, Non-hazardous, Hazardous, and Medical Waste:

- MSW, more commonly known as trash, includes:
    - packaging
    - food
    - grass clippings
    - furniture
    - computers
    - junk
    - tires
    - refrigerators, etc.

In many States it is legal and common practice for rural homesteads to dispose of MSW onsite in pits or burn piles. Disposal or burning of MSW alone does not automatically require an elevated review. However, if other types of waste are intermingled it may require elevation.

22 Debris/Illegal Dumping (Continued)

B Regulatory Requirements

- Non-hazardous waste includes:
    - municipal wastewater treatment sludges
    - construction and demolition debris
        - steel
        - wood products
        - drywall and plaster
        - brick and clay tile
        - asphalt shingles
        - concrete and asphalt from roads.

These materials are used in buildings, roads, and bridges. A Phase I ESA is needed for the disposal or suspected disposal of hazardous or medical waste.

- Hazardous waste has properties making it dangerous or capable of having a harmful effect on human health or the environment. Hazardous waste is generated from many sources, ranging from industrial manufacturing process wastes to batteries and may come in many forms, including liquids, solids gases, and sludges. A waste is determined to be a hazardous if it is listed or has hazardous characteristics (40 CFR section 261). On agricultural properties, it is uncommon to find hazardous waste other than pesticides. Pesticides become classified as hazardous waste when they are no longer used for their intended purpose and are ready for disposal. In cases where hazardous waste is suspected or needs to be disposed of, a Phase II ESA is necessary.

- Medical waste is primarily regulated by state environmental and health departments. EPA has not had authority to regulate medical waste since the Medical Waste Tracking Act of 1988 expired in 1991. FSA employees should avoid all contact with medical waste. A Phase II ESA is needed for the disposal or suspected disposal of medical waste.

22 Debris/Illegal Dumping (Continued)

C Environmental Screening Process

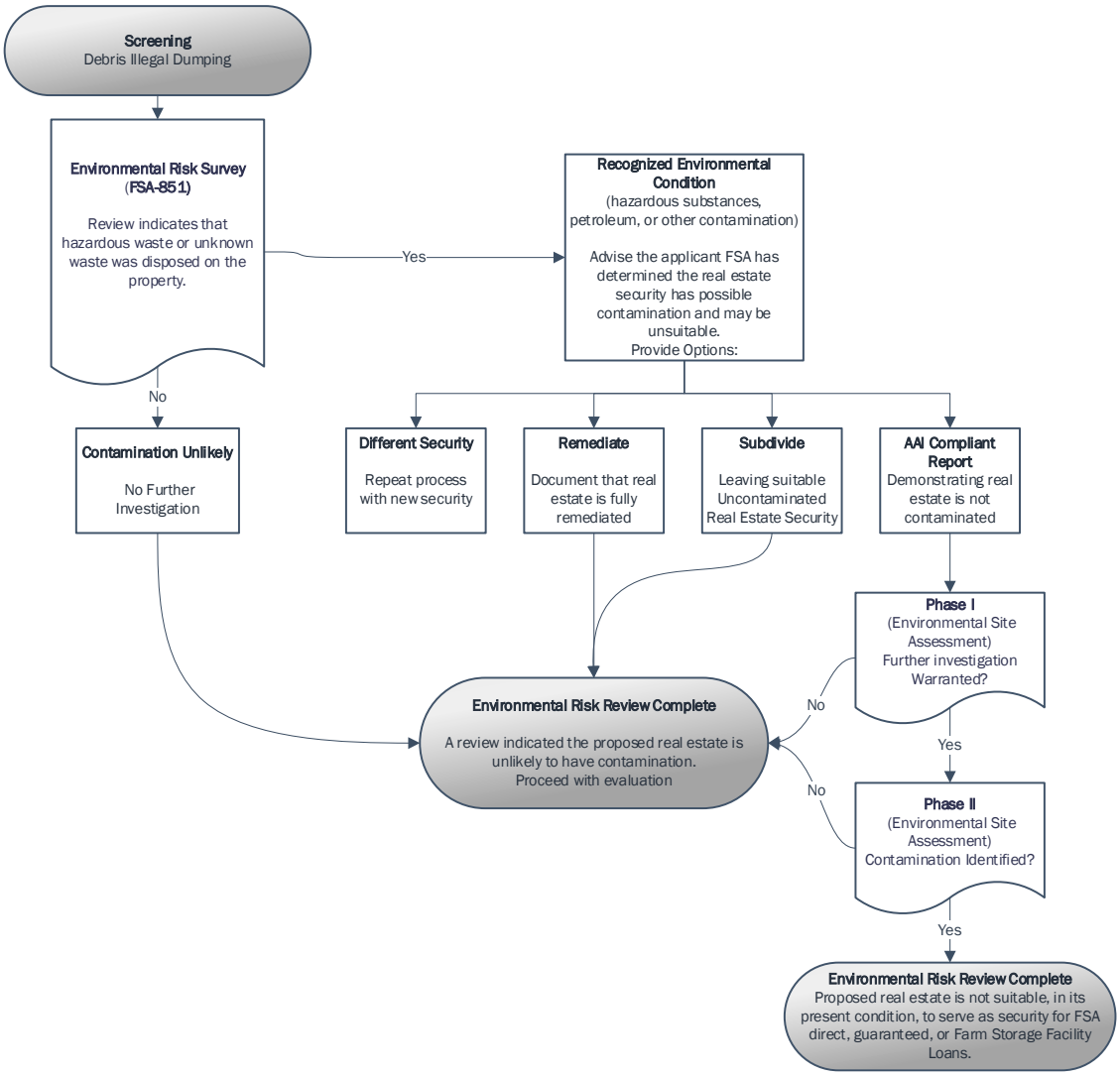
Household trash discovered in a burn pit or on farm landfill should be noted on FSA-851. Scattered household trash will likely create a nuisance or a traffic hazard and be prohibited by local rule or ordinance, requiring subsequent review and remediation prior to approval. General untidiness is not cause for elevated reviews. However, if the contents of a landfill or burn pit located on proposed security is unknown, it will be necessary to elevate the review to a Phase II ESA.

The presence of non-hazardous construction and demolition debris such as steel, wood, drywall and plaster, brick and clay tile, asphalt shingles, concrete, and asphalt concrete does not indicate the need for an elevated review. Construction materials may be repurposed on farms, concrete removed from roads may be used to create erosion control, old tires may be used to hold plastic on feed bunks, and bricks may be used to supplement other building materials. A Phase II ESA will be required only if the material may be hazardous.

A Phase II review is required when hazardous materials such as old leaking batteries and dumped petroleum products are found on properties. Bridges are often used for illegal dumping so the surface water may show signs of contaminants. If the water surface or edges have oil deposits, show imbedded debris including batteries or containers of used motor oil, an elevated review to a Phase II to include testing is necessary.

22 Debris/Illegal Dumping (Continued)

D Flow Chart for Debris/Illegal Dumping



22 Debris/Illegal Dumping (Continued)

E Examples

Example #1 Storage Shed Full of Trash

While completing a site visit and FSA-851 prior to foreclosure, the reviewer finds a small shed filled with household trash and mistakenly reports it to be hazardous waste, recommending a Phase II ESA.

Upon review, it was found that the shed was filled top to bottom with the contents of a repossessed trailer house. The repossession crew put all contents of the house (e.g., boots, contents of refrigerator, makeup, clothing, lamps, pet food, etc.) in large black trash bags and placed them in the shed and braced the door shut. After a month or two in the summer heat a terrible smell came from the shed, but it did not represent hazardous waste, so Phase II ESA was not required. The property could be sold "as is."

Example #2 Demolition Debris

While completing the site visit for a proposed 100-acre farm, the reviewer identifies a large pile of construction debris including bricks and concrete. The owner reported that they received the construction material from a home a sibling demolished and intended to use it to build a new well house; however, the material would convey with the purchase. Upon review, the debris was not suspected of containing a hazardous material, so it was marked on the FSA-851 map and no further review was warranted.

Example #3 Pesticide Storage

During a site visit, the reviewer found an old pesticide storage area containing Methyl Bromide. This chemical is a restricted use pesticide in the United States and has been phased out. The farm owner reported that his father used these chemicals for fumigation 20 years ago. Since this chemical will not be used for its original intended purpose, it is considered an REC and falls under the jurisdiction of RCRA. A Phase II ESA will be conducted, and the chemical must be disposed of in accordance with RCRA regulations. Once the ESA is completed successfully, the property may be deemed suitable as security for an FSA loan.

23 Mining/Quarrying

A Overview

Hazards associated with mining and quarrying are related to the type of material being mined or quarried and the operation. Common sources of environmental contamination from mining or quarrying include drainage, surface storage of materials, dewatering activities, well head contamination, and tailings (i.e., solid wastes derived from on-site processing of materials). Groundwater contamination may also be associated with these activities.

Land mined for hard rock, coal, uranium, or other minerals may have been reclaimed leaving the previous mining use undetectable during a site visit. A records review (including mining and NPDES permitting), communication with state regulators, landowners, neighbors, or others with knowledge are key to recognizing hazardous material left from mining. abandoned mine lands may also be encountered that were active prior to reclamation laws. State reclamation agencies, soil surveys, and real estate records are good resources for locating abandoned mine lands sites.

The FSA-851 does not specifically address mining; however, Part C addresses commercial activities including stored chemicals that may have been used to in extracting minerals.

B Regulatory Requirements

The following are Federal laws relevant to mining:

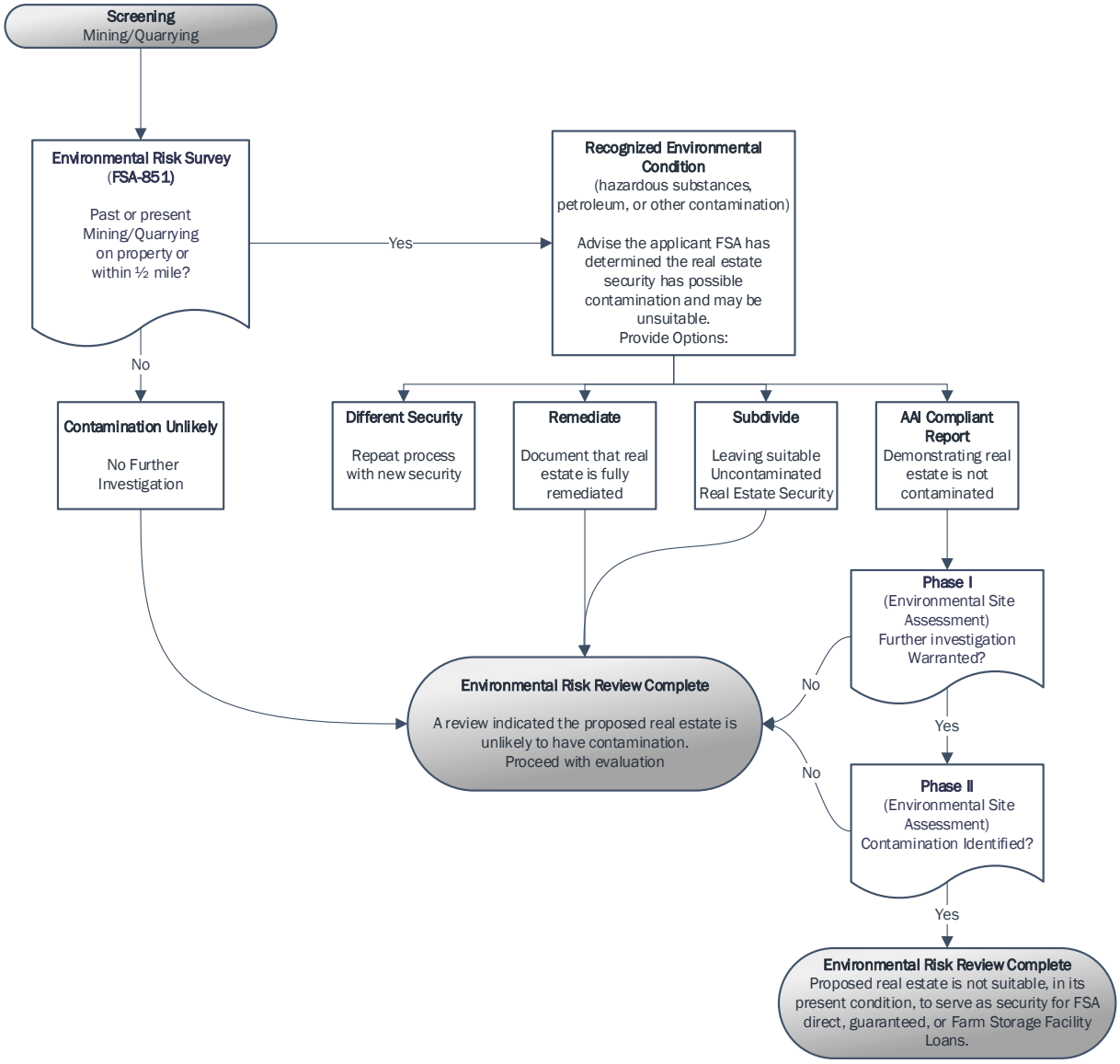
- National Environmental Policy Act
- Clean Air Act
- Resource Conservation and Recovery Act
- Clean Water Act
- Toxic Substances Control Act
- Comprehensive Environmental Response, Compensation, and Liability Act
- Surface Mining Control and Reclamation Act.

C Environmental Screening Process

When completing the site visit and interviewing the landowner and others, the reviewer should determine if mining operations have affected the site. If it is determined that mining, took place on the farm or that mining took place within 0.5 miles of the farm then the security may have possible contamination and be unsuitable. The applicant may select different security, provide documentation from a regulatory agency showing the site to be fully remediated, subdivide the property leaving suitable uncontaminated property, or provide an AAI compliant report (Phase I or Phase II ESA) that finds no further investigation is warranted.

23 Mining/Quarrying (Continued)

D Flow Chart for Mining/Quarrying



23 Mining/Quarrying (Continued)

E Examples

Example #1 Coal Mining Operation

When completing the FSA-851 during a site visit for a property proposed as security for a direct loan, the owner reports that the property was previously the site of a commercial coal mining operation. When the mining operation closed, remediation restored the land with topsoil and planted coastal Bermuda hay currently used for grazing. A Phase I ESA is required in this instance because the site may contain residual contamination.

Example #2 Gold Mine

When completing the FSA-851 during a site visit, the applicant mentions the adjacent property (less than ½ mile) has a gold mine. Gold mines use many chemicals to extract gold from tailings that can contaminate surface and groundwater. This is a trigger to elevate the review to a Phase I ESA.

24 Oil and Gas Wells

A Overview

Wells can be a source of direct groundwater contamination and require a thorough investigation of their location, surroundings, and condition. Improperly closed wells are potential disposal areas for human waste and chemicals.

Oil and gas wells have greater risks than water wells because of the nature of the material being pumped, and the methods used to extract. When oil and gas wells are drilled, there is heavy use of special muds and chemicals. Overflow during rainy seasons can result in moving contamination. Later in the life of a well, drillers may utilize fracking pressurizing techniques to produce additional quantities.

The evaluations of oil and gas production on agricultural lands is difficult. In many areas of the country, the mineral including the oil and gas have been severed from the fee simple title of agricultural lands. This means agricultural producers may lack the authority to keep production off their lands or limit methods used to extract. Lease holders have specific rights to take and utilize portions of land for production needs including the development of wells, pits, ponds, pipelines, tank batteries, and other facilities necessary to produce petroleum.

24 Oil and Gas Wells (Continued)

B Regulatory Requirements

Oil and gas production are regulated by states and EPA. Wastes generated from crude oil and natural gas are regulated under RCRA Subtitle D and State regulations, and many State governments have specific regulations and guidance for exploration and producing wastes. Proper waste management is important for all exploration and production wastes, including those that are associated with hydraulic fracturing activities.

While many exploration and production wastes are exempt from regulation as hazardous waste under RCRA Subtitle C, these wastes are generally subject to non-hazardous waste regulation under Subtitle D and State regulations. State regulations and guidance for the exploration, production, and transportation of oil and natural gas are typically implemented through permitting and reporting requirements.

C Environmental Screening Process

Use State-maintained databases, landowners, and neighbors to determine the location of wells on the property. Wells should be inspected during the site visit. The presence of a well on or near the property must be noted on the FSA-851. The reviewer will request information about the location, condition, and use from the property owner and neighbors. Improperly abandoned wells, such as uncapped wells, are considered REC's. If wells are found on the property, no longer in use or abandoned, consult the state regulatory agency to ensure the wells were properly closed.

Monitoring, remediation, extraction, and injection wells located on the proposed property are also considered REC's and are not acceptable to serve as FSA security for farm loans (direct, guaranteed, or FSFL's). The applicant may select different security, provide documentation from a regulatory agency showing the site to be fully remediated, subdivide the property leaving suitable uncontaminated property, or provide an AAI compliant report (Phase I or Phase II ESA) that finds no further investigation is warranted.

The site should be inspected if oil and gas extraction is ongoing. Inspection from the access road should be close enough to determine if the site appears to be kept in an acceptable manner. Any spillage or staining outside the project area is an indication of unacceptable practices.

24 Oil and Gas Wells (Continued)

C Environmental Screening Process (Continued)

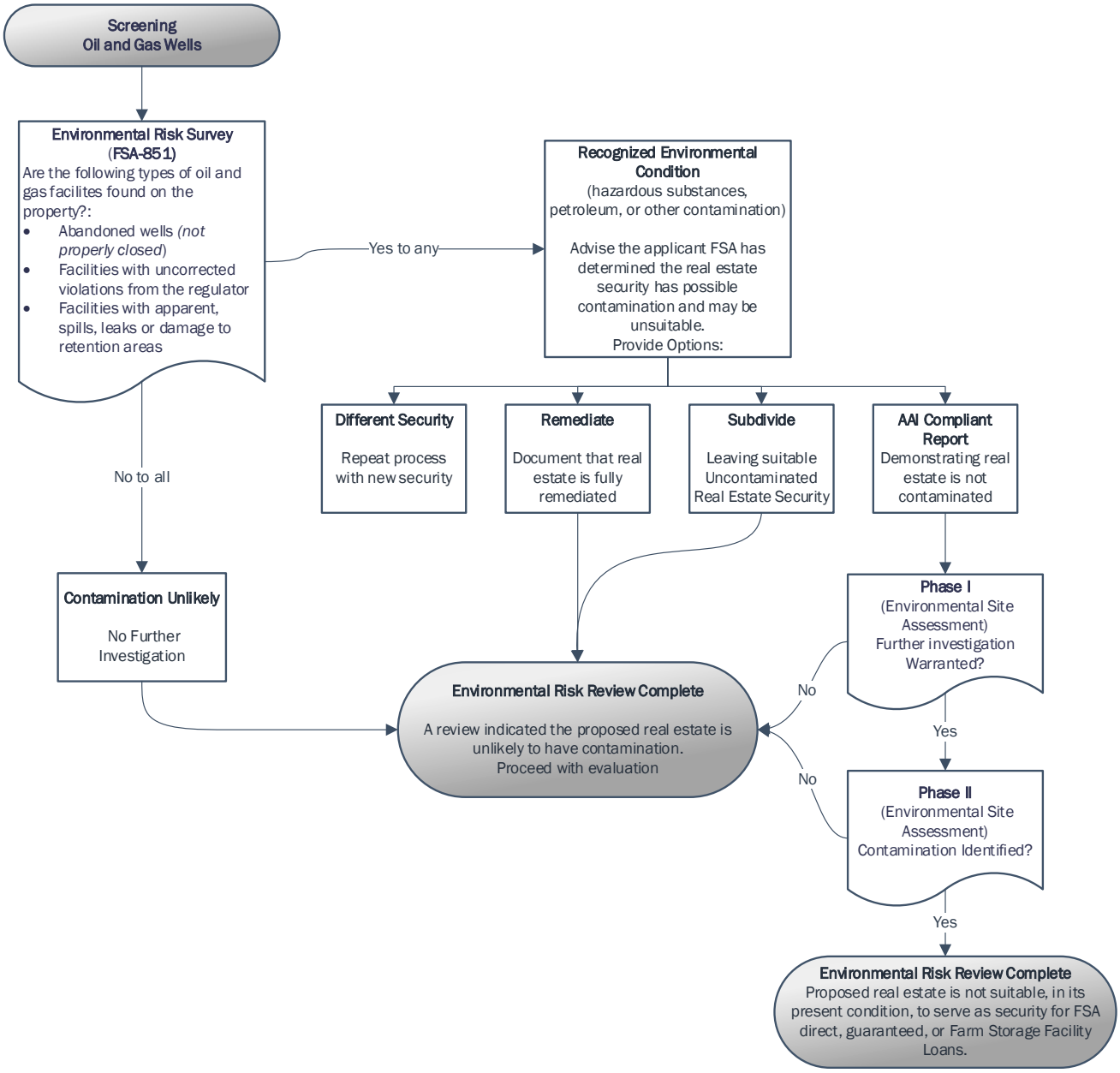
In some cases, operators use surface storage tanks and pits to temporarily store hydraulic fracturing fluids for re-use or until arrangements are made for disposal. In addition, other wastes are generated during the well drilling, stimulation, and production stages. States, Tribes, and some local governments have primary responsibility for adopting and implementing programs to ensure proper management of these wastes. The State regulator should be contacted to confirm there are no uncorrected violations at the site. If the site appears to be leaking or allowing petroleum to escape, the contamination should be reported to the state agency.

Proposed security for FSA loans (direct, guaranteed or FSFL) is unacceptable if there is an abandoned well not properly closed in accordance with state and regulatory guidelines. Security is also not acceptable if there are uncorrected regulatory violations. If there are no violations, then oil and gas production areas that appear to have spills, leaks, or damage to retention walls will require an elevated review such as a Phase I ESA or a Phase II ESA. The applicant may select different security, supply documentation from a regulatory agency showing the site to be fully remediated, subdivide the property leaving suitable uncontaminated property, or provide an AAI compliant report (Phase I or Phase II ESA) that finds no further investigation is warranted.

Check for State supplements for State regulatory agency and documentation requirements.

24 Oil and Gas Wells (Continued)

D Flow Chart for Oil and Gas Wells



24 Oil and Gas Wells (Continued)

E Example - Oil and Gas Well- Leaks, Spills, and Staining

While completing the FSA-851, the reviewer notes a pumping station and storage battery. The landowner holds the fee simple title. The mineral was severed by a previous owner, who leased the mineral.

From the access road, the reviewer notes a retention berm around the battery, a pump jack, and a circular drive providing access to delivery trucks. Oil is leaking over the side of the battery but is contained. The loading area has staining from leaking oil that is tracked to the county road. The reviewer reports the incident to the state regulatory authority. The State regulator evaluates the conditions at the site and cites compliance issues.

After the area is adequately cleaned and brought into compliance with state regulations, a Phase 1 review is not necessary. The FSA-851 should show compliance with state regulations and the compliance report should be attached to the record.

25 Per- and Polyfluoroalkyl Substances

A Overview

PFAS are a class of synthetic chemical compounds shown to have toxic effects on human health and the environment. PFAS are highly resistant to degradation and easily bioaccumulate in the environment. They are currently and historically used in a wide range of industrial applications and consumer products ranging from food packaging, non-stick cookware, water-proofing sealants, and fire-fighting foams used at public and military airfields. There are thousands of chemical compounds in the PFAS family, but PFOA and PFOS have been the most widely used and studied to date.

Agricultural operations are generally not producers of PFAS but receive PFAS chemicals from outside sources. PFAS can affect agricultural systems when PFAS-contaminated water, soil amendments, or air enter the farm. Common ways farms are exposed to PFAS include the application of contaminated biosolids or industrial residuals that are land applied for fertilizer or when contaminated groundwater is used for irrigation, livestock watering, or other farming operations. Once the air, soil, or water at a farm becomes contaminated, PFAS can migrate to crops, livestock, and other food or feed. Farms that are close to industrial sources or military installations (where firefighting foams were used) could be at higher risk for PFAS contamination.

25 Per- and Polyfluoroalkyl Substances (Continued)

B Regulatory Requirements

A national regulatory framework for PFAS has been established by EPA. EPA has listed PFOA and PFOS chemicals as hazardous substances under CERCLA. EPA has also finalized a PFAS National Primary Drinking Water Regulation under SDWA, including enforceable maximum contaminant levels for six PFAS chemicals. Other PFAS chemicals are also subject to on-going research and may be regulated under CERCLA, the SDWA, or through state regulations in the future. The following table outlines the regulatory framework for PFAS and the statutory authorities.

Regulatory Action	Statutory Authority
National Primary Drinking Water Regulation for PFAS	SDWA
Designation PFOA and PFOS as CERCLA Hazardous Substances	CERCLA
State-specific acceptable PFAS limits in environmental media	Applicable State law or regulation

C Environmental Screening Process

FSA reviews all properties offered as security to ensure PFAS are not a potential environmental concern. The applicant will be notified that no further processing of the loan application can take place if any of the following conditions are present.

- Agricultural Marketed Products: Agricultural marketed products from the farm have tested positive for PFAS contamination.

- EPA/State PFAS Notification or Database Search: Subject property or properties adjoining the farm are contaminated with PFAS.

- Biosolids: Recurring application of biosolids or sludge is verified on the subject property or adjoining property.

- Irrigation Water: Irrigation water has tested positive for PFAS or local groundwater wells within 0.5 mile of the farm have tested positive.

- Proximity to Military Installation or Commercial Airfield: Farm is located within one mile downgradient of a military installation or commercial airfield with a known or suspected PFAS release or a notification of PFAS contamination from DoD has been received.

- Proximity to Industrial Source or State or Federal Cleanup Site: Farm is located within one mile downgradient of a manufacturing or industrial site or a cleanup site with a known or suspected PFAS release.

20 Per- and Polyfluoroalkyl Substances (Continued)

C Environmental Screening Process (Continued)

- Proximity to Solid Waste Disposal Site or Landfill: Farm is located within 0.5 mile downgradient of a state permitted landfill.

- Proximity to a Wastewater Treatment Facility: Farm is located within 0.5 mile downgradient of a wastewater plant that PFAS has been confirmed in effluent discharge.

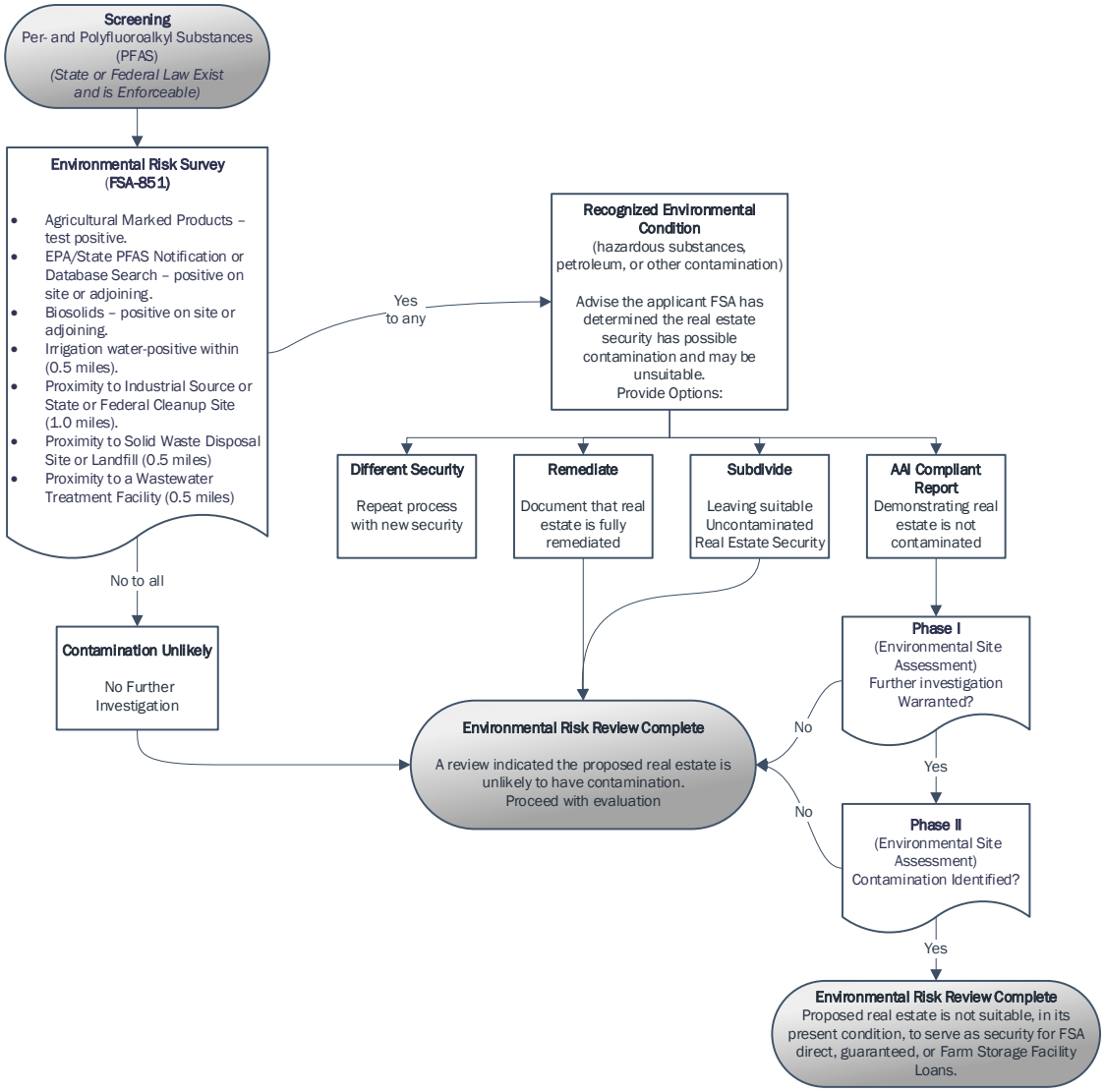
Sources or facilities with PFAS releases can be queried using the PFAS Analytical Tools in EPA's Enforcement and Compliance History Online https://echo.epa.gov/trends/pfas-tools.

State natural resource agencies and databases can be used to search for hazardous waste remediation sites and solid waste disposal sites.

The applicant may select different security, provide documentation from a regulatory agency showing the site to be fully remediated, subdivide the property leaving suitable uncontaminated property, or provide an AAI compliant report (Phase I or Phase II ESA) that finds no further investigation is warranted.

25 Per- and Polyfluoroalkyl Substances (Continued)

D Flow Chart for Per-and Polyfluoroalkyl Substances



25 Per- and Polyfluoroalkyl Substances (Continued)

E Example - Biosolids Applied for Soil Amendment

When completing the FSA-851 during a site visit for a property proposed as security for an FSA loan, biosolids are reported to have been used on this farm and others in the local area to supplement nutrient needs due to rising fertilizer costs. This review will be elevated as PFAS may be an REC at the subject property. The applicant elected to have an AAI compliant Phase II ESA report completed on the site and the conclusion found no contamination and no further investigation warranted. Based upon the report, the property may be suitable security for an FSA loan.

26 Pits, Ponds, and Lagoons

A Overview

Pits, ponds, and lagoons may hold liquids or sludge containing hazardous substances or petroleum products. Structures used to control runoff of precipitation, manure, feed, and other waste on farms can be sources of soil and groundwater contamination if improperly installed or maintained. These structures may, for example, serve to protect water quality by processing and storing nutrients until they can be safely applied to crops or disposed. Others may be designed to hold waste materials. There can be many different types of containment and storage (anaerobic lagoon, storage ponds, under floor pits, concrete pits, etc.) at properties proposed for FSA security.

B Regulatory Requirements

Pits, ponds, and lagoons may be used for a variety of purposes and may be subject to multiple Federal and state environmental laws. For example, waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA, are required for certain CAFO that store waste prior to applying on fields as nutrients. Many of these operations are required to have an NPDES permit. This permit and the associated NMP detail the measures required to achieve compliance with the CWA. The NMP also specifies land application of manure, litter, and process wastewater at application rates that minimize phosphorus and nitrogen transport from the field to WOTUS) in compliance with the technical standards for nutrient management (40 CFR part 412.4(c)(2)).

26 Pits, Ponds, and Lagoons (Continued)

C Environmental Screening Process

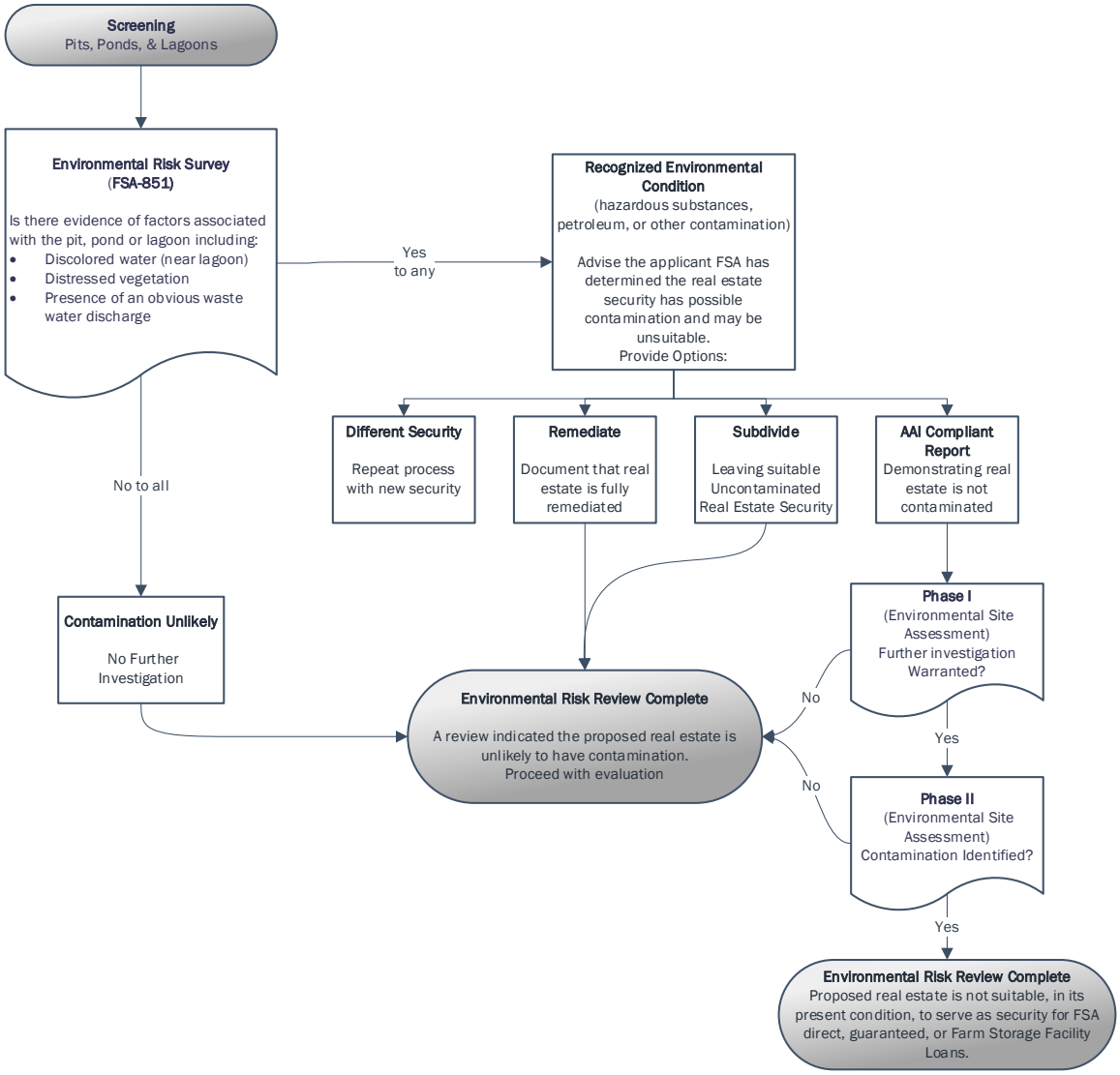
Begin with a review of any NMP requirements for the facility followed by a visual inspection of any waste treatment systems. Identify spills, ruptured piping, and evidence of unexpected discharges that may have migrated to other water sources such as streams or lakes. Note these conditions on the FSA-851.

If an NMP identifies disposal pits to address animal mortality, a thorough review of the plan or inspection of the facility is needed to ensure that no groundwater or surface water contamination is taking place. Verify the State and local regulation requirements where the operation is located. Determine whether there are any areas with high risk to groundwater and confirm disposal pits are not in those areas. The site is not appropriate for security if pits are in areas of a high-water table as indicated by standing water in the pits or if they are adjacent to riparian areas.

Determine risk factors associated with the pit, pond, or lagoon. Indicators that the pit, pond, or lagoon represent an unacceptable hazard to surroundings may include, but are not limited to, discolored water, distressed vegetation, or the presence of an obvious wastewater discharge. If such risk factors are identified, the applicant may select different security, provide documentation from a regulatory agency showing the site to be fully remediated, subdivide the property leaving suitable uncontaminated property, or provide an AAI compliant report (Phase I or Phase II ESA) that finds no further investigation is warranted.

26 Pits, Ponds, and Lagoons (Continued)

D Flow Chart for Pits, Ponds, and Lagoons



26 Pits, Ponds, and Lagoons (Continued)

E Examples

Example #1 Lagoon (serious)

When completing the FSA-851 site visit for a dairy, the reviewer finds the lagoon to be in poor condition. Review of the NMP showed that the lagoon was properly constructed; however, the concrete containment was damaged and leaking improperly treated effluent to the adjacent field. This needs to be addressed before the property can serve as security for an FSA loan. The application of uncontrolled and untreated waste could lead to CWA or other regulatory violations. This is a case where it may be proper to require direct sampling under a Phase II ESA. The operation will need to make the required repairs and return to compliance with the NPDES permit prior to serving as security for an FSA loan.

Example #2 Lagoon (minor)

When completing the FSA-851 site visit for a dairy, the reviewer finds the lagoon in poor condition. The NMP demonstrated that the lagoon was properly constructed; however, the concrete containment was cracked and needs repairs. The liner was keeping the effluent in place with no leaks and the owner noted that repairs were planned to brace and patch the damage. This situation could be addressed with a subsequent visit noted on the FSA-851 to verify appropriate repairs were complete or the repair could be funded by the loan.

27 Electrical Transformers/Polychlorinated Biphenyls

A Overview

PCB’s belong to a broad family of man-made organic chemicals known as chlorinated hydrocarbons. PCB’s insulation oils were domestically manufactured from 1929 until 1979 when production was banned. Due to their nonflammability, chemical stability, high boiling point, and electrical insulating properties, PCB’s were used in hundreds of industrial and commercial applications. On farms, they are mostly found in electrical transformers.

Although most have been removed, at this point. FSA continues to screen for PCB containing transformers on properties offered as security due to the serious threat to human health and the environment, complex remediation requirements, and substantial cleanup costs.

27 Electrical Transformers/Polychlorinated Biphenyls (Continued)

B Regulatory Requirements

PCB's are regulated by the Toxic Substances Control Act (15 U.S.C. §2601 et seq.). The provisions of CERCLA and other cleanup laws may apply if there is a release of PCB's on proposed security.

C Environmental Screening Process

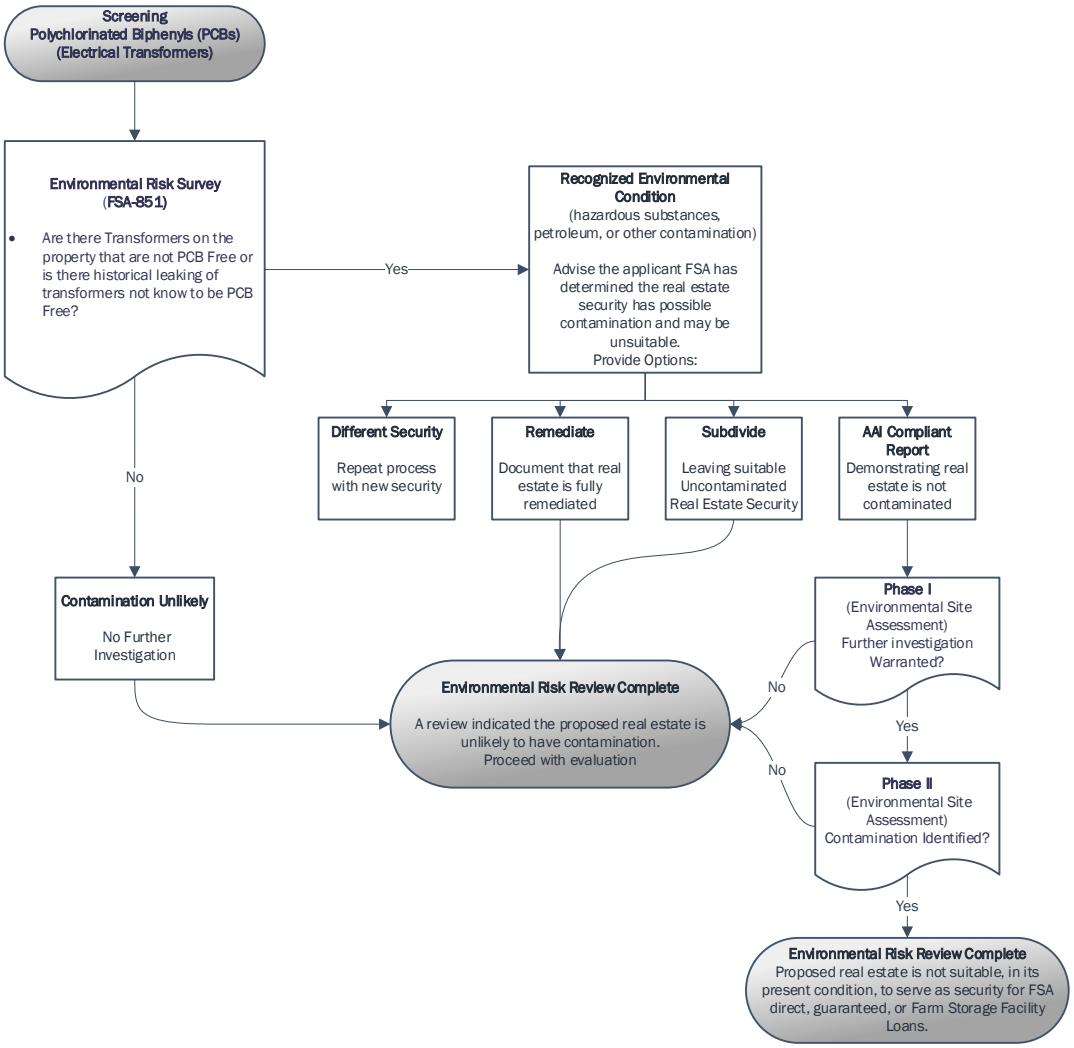
When screening for PCB containing transformers on farms, it is important to remember that most transformers will be mounted on poles that are 30 feet to 60 feet off the ground. There should be wording that reads "PCB Free" on the side of transformers. Binoculars may be needed to read the writing on the side of the transformers. If it cannot be determined whether the transformers are "PCB Free", contact the local electric company to confirm that all transformers in their lines have been converted to "PCB Free".

If PCB containing transformers are found on the property, they will need to be removed prior to the property serving as security for an FSA loan (direct, guaranteed, or FSFL). The review will need to address whether there has been insulating oil leaks and, if so, was it PCB Free or appropriately remediated.

If the review is elevated because transformers are found that are not PCB free, there is historical leaking of PCB oil, or it is not known to be PCB free, the property is not suitable security. The applicant may select different security, provide documentation from a regulatory agency showing the site to be fully remediated, subdivide the property leaving suitable uncontaminated property, or provide an AAI compliant report (Phase I or Phase II ESA) that finds no further investigation is warranted. However, PCB's are a non-scope item, and the requestor of the report will have to specifically request an evaluation of PCB's.

27 Electrical Transformers/Polychlorinated Biphenyls (Continued)

D Flow Chart for Electrical Transformers/Polychlorinated Biphenyls



E Examples - Derelict Electric Line

When completing the FSA-851 site visit, on a large cotton farm, a line of electric poles leading to an abandoned farmstead is found. “PCB Free” is not seen written on the side of the transformers. The landowner reported this line led to an old farmhouse not used in 40 years and no leaks have occurred. Follow-up with the local electric cooperative provides confirmation that a complete removal of all PCB transformers was completed 25 years ago. However, upon review, these poles were found to have been severed from the cooperative lines, prior to the cooperative’s removal, meaning they contain PCB’s. Therefore, the cooperative removes the transformers and properly disposes them. In this case, the FSA-851 review of PCB’s does not require elevation and can be concluded with a subsequent review confirming the removal of the transformers.

28 Landfills

A Overview

Landfills (also called solid waste disposal sites, garbage dump, trash dump, or similar term) are designed to receive specific kinds of waste including MSW, construction and demolition debris, and hazardous waste. Landfill facilities must be designed to protect the environment from contaminants that may be present.

Historically, landfills were not created with the geology and hydrology of the area considered and were not properly lined and closed with sufficient cover. Chemicals and waste that were improperly deposited in the landfill may have negative impacts on adjacent landowners as contaminated groundwater plumes have developed and are flowing underground downgradient. Properties located in the path of these plumes are at risk of losing the use of wells, productivity of their agricultural lands, and real estate value. FSA must consider the risk associated with landfills when properties are offered as security for FSA loans (direct, guaranteed, and FSFL).

B Regulatory Requirements

The EPA regulates solid and hazardous waste from households, industries, and manufacturing under RCRA. The goals of RCRA are to protect humans from the hazards of waste disposal, conserve energy and natural resources through recycling and recovery, reduce or eliminate waste, and clean up waste that has been spilled, leaked, or improperly disposed of. The EPA also requires cleanups under CERCLA at landfills where hazardous substances have been released. States also regulate landfills and require cleanups as needed under state cleanup laws.

28 Landfills (Continued)

C Environmental Screening Process

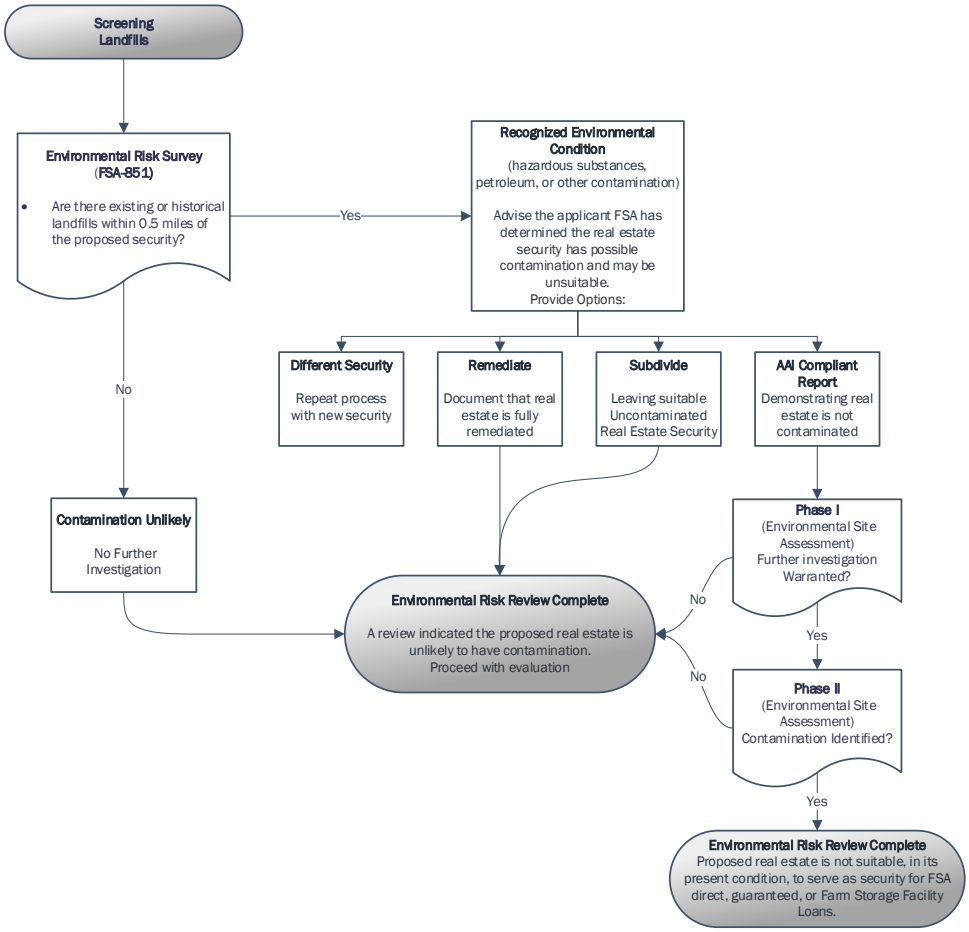
When a property is offered as security for an FSA loan (direct, guaranteed, or FSFL), proximity to the nearest landfill should be considered on the FSA 851.

In some cases, the security itself may have served as a landfill. This will not eliminate a property as possible security. However, the review will be elevated. The applicant may select different security, provide documentation from a regulatory agency showing the site to be fully remediated, subdivide the property leaving suitable uncontaminated property, or provide an AAI compliant report (Phase I or Phase II ESA) that finds no further investigation is warranted.

In other cases, the landfill may be near the proposed security requiring FSA to conduct a search of landfills in the area using a state-maintained database. The appropriate search radius is 0.5 miles from the proposed security. It is appropriate to consider landfills beyond 0.5 miles that may have a toxic plume based upon information from the landowner, neighbors, and others. In cases where the plume is moving in the direction of the proposed security, the review will be elevated if it appears the plume may impact the security during the life of the loan. The applicant may select different security, provide documentation from a regulatory agency showing the site to be fully remediated, subdivide the property leaving suitable uncontaminated property, or provide an AAI compliant report (Phase I or Phase II ESA) that finds no further investigation is warranted.

28 Landfills (Continued)

D Flow Chart for Landfills



E Example - Closed Landfill

When completing the FSA-851 site visit the reviewer discovers that the proposed security was a closed landfill. The prior use as a landfill requires an elevated review. The applicant orders a Phase I ESA that shows the landfill accepted only construction and demolition waste and was closed by the state agency according to required policy and guidelines. However, the Phase I ESA also shows that the landfill was not monitored for 10 years so dumping occurred without oversight. Therefore, the Phase I ESA recommends a Phase II ESA with soil and water testing to ensure there were no issues. In this example, the Phase II ESA showed no contamination, and the review was concluded.

29 Pesticides

A Overview

Pesticide applicators must follow the label instructions for use, handling, disposal, and cleaning of containers. It is illegal to use a pesticide in a manner not described on the label.

While conducting due diligence, reviewers may find pesticides being improperly stored and disposed. Pesticides being improperly stored or disposed of may create the need for further review. For example, pesticides stored in well houses create risk of contamination to the aquifer below. All pesticide labels prohibit storage in well houses.

Safely storing pesticides is important to protect people, pets, and the environment. EPA provides the following guidance for safe storage of pesticides.

- Store pesticides out of reach of children and pets. If possible, keep pesticides in a locked cabinet in a well-ventilated utility area or garden shed.
- Never store pesticides in cabinets with or near food, animal feed, or medical supplies.
- Store flammable liquids outside your living area and far away from an ignition source such as a furnace, car, grill, or lawn mower.
- Do not store pesticides in places where flooding is possible or where they might spill or leak into wells, drains, ground water, or surface water.

B Regulatory Requirements

The FIFRA regulates the sale, distribution, and use of pesticides in the United States. Pesticides are regulated under FIFRA until they are disposed of, after which they are regulated under RCRA and comparable State laws, which ensures responsible management of hazardous waste and non-hazardous solid waste.

Pesticide users generally cannot dispose of pesticides in household hazardous waste programs. However, many states run pesticide disposal programs specifically for farmers and commercial pesticide users, which are often referred to as “Clean Sweep” programs.

EPA regulates pesticide storage through specific storage instructions on pesticide labels. Some states regulate the storage of pesticides in small portable containers. Storing pesticides properly protects human and animal health, safeguards wells and surface waters, and prevents unauthorized access to hazardous chemicals. Proper pesticide storage and inventory practices also prolong their shelf-life and assist with tracking usage to help plan future purchases.

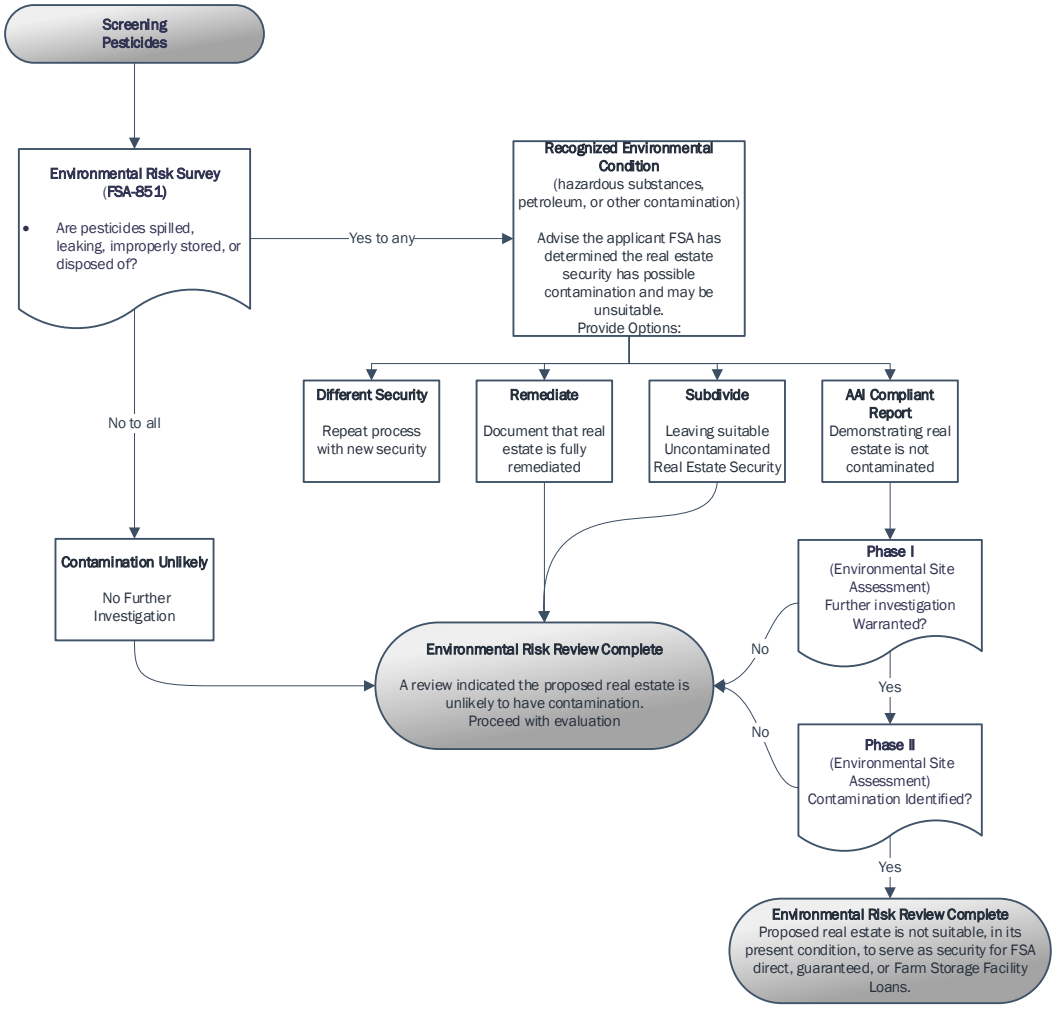
29 Pesticides (Continued)

C Environmental Screening Process

During the site visit, ensure pesticides are stored away from wells to avoid contaminating water. Also, determine the disposal methods used for empty pesticide containers. Labels typically require triple rinsing and the container rendered unusable for repurposing. If pesticide use or disposal has resulted in contamination, cleanup may be required under CERCLA, RCRA, or comparable State cleanup laws.

If there are concerns with pesticide storage or disposal, the owner of the property should be notified of the issues and a subsequent review scheduled to verify all concerns have been corrected. For significant issues (spillage or improper disposal where leakage may have reached the soil), the applicant will be notified that the proposed security has possible contamination and is unsuitable. The applicant may select different security, provide documentation from a regulatory agency showing the site to be fully remediated, subdivide the property leaving suitable uncontaminated property, or provide an AAI compliant report (Phase I or Phase II ESA) that finds no further investigation is warranted.

D Flow Chart for Pesticides



29 Pesticides (Continued)

E Examples

Example #1 Improper Storage of Pesticide

When completing the FSA-851, improperly stored pesticides found next to a wellhead are noted. A subsequent review to ensure the pesticides were removed from the area and properly stored is required. An elevated review is not necessary if there were no signs of leaks or contamination.

Example #2 Improper Disposal of Pesticide Containers

When completing the FSA-851, improper disposal, of pesticide containers (i.e., large pile collected over several years), is observed. No other issues are noted during the site visit. A subsequent visit should be scheduled to ensure the pesticide containers are properly disposed of and no leaking occurred. The subsequent inspection finds that the improperly disposed of containers had leaked and there was evidence of dying vegetation. The proposed security in this case is unacceptable and the review must be elevated. The proposed security may be acceptable after a Phase II ESA with appropriate testing.

30 Soil Staining

A Overview

Soil staining on farms may trigger the need for further investigation to address potential concerns. Soil staining could be minor in nature, requiring no follow-up, or could be an indication of improper disposal of hazardous materials. Interviewing the landowner and others could assist with determining what a stain may be.

B Regulatory Requirements

There are no laws regarding soil stains themselves. However, the waste may be regulated under CERCLA or other environmental laws.

30 Soil Staining (Continued)

C Environmental Screening Process

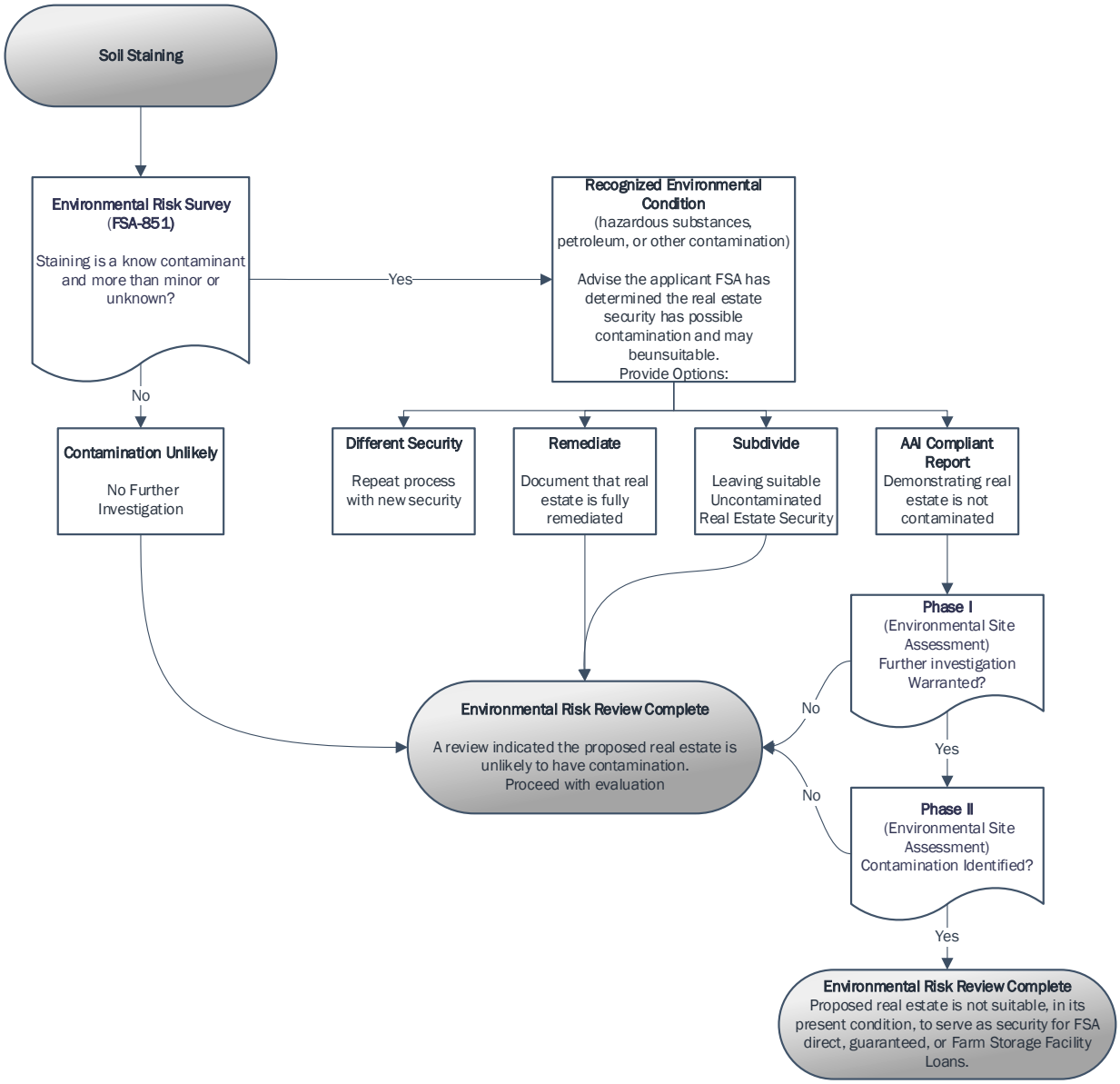
When soil staining is found on proposed security, verify with the landowner the reason for its presence, if known. This may help identify if the stain may be a concern or simply a dye used for marking pesticide application. The owner may be able to explain source but if there is no rationale for its presence, further investigation is needed.

When inspecting, note any staining on concrete or the soil below. It is common to find staining both on concrete and soil where equipment is stored, serviced, or filled. Staining on concrete is minor if the spill is in small quantities and did not migrate to the underlying soils. Staining on soil is considered minor if it hasn't migrated past the upper few inches of the soil profile and clean soil can be found directly beneath the stain.

If staining is more than minor and is a known contaminant or unknown, the real estate may not be acceptable security. The applicant may select different security, provide documentation from a regulatory agency showing the site to be fully remediated, subdivide the property leaving suitable uncontaminated property, or provide an AAI compliant report (Phase I or Phase II ESA) that finds no further investigation is warranted.

30 Soil Staining (Continued)

D Flow Chart for Soil Staining



30 Soil Staining (Continued)

E Examples

Example #1 1,000-Gallon Elevated AST – Soil Staining

While completing a site visit, a four-foot diameter stain is found under a 1,000-gallon elevated AST used to fuel farm equipment. The owner explains that this was due to leakage that occurred when they changed the filter. It appears minor. A shovel is used to evaluate and clean soil is found within a few inches under the stain. This is determined to be a minor stain and no further investigation is necessary.

Example #2 Dye

A purple linear soil stain is found leading from field to the barn during a site visit. The owner commented that the leak was from a crop marking dye used for pesticide application that had ruptured prior to mixing. Upon review of the label, it is noted to be non-toxic and will biodegrade over time in the environment. There are no requirements to clean this stain. No further review is warranted. Make note of the finding on the FSA-851 and continue the review.

31 Underground Storage Tanks

A Overview

UST's and pipes found on farms may store petroleum products like diesel, gasoline, and heating oil. Depending on prior operations, UST's may store a wide range of products that can contaminate soil and water when released. Leaks in these tanks can go undetected for long periods of time. EPA estimates there are more than 553,000 USTs nationwide storing petroleum and other hazardous substances. Leaking can lead to serious environmental and health risks, including the contamination of groundwater, the source of drinking water for nearly half of all Americans. LUST's are the costliest REC that FSA encounters each year.

A typical LUST involves the release of a fuel product from an UST that can contaminate surrounding soil, groundwater, surface water, or indoor air spaces. RCRA was enacted to regulate the management of hazardous substances. Subtitle I of the Act required the EPA to develop regulations to protect human health and the environment from LUSTs.

Household septic tanks used to process sewage and UST's containing petroleum products are both considered UST's; however, the risk differs. For example, a pint of petroleum (oil) spilled may span one acre of water and seriously damage an aquatic habitat. Improperly processed household sewage reaching a drinking water supply or other water body may contaminate and damage ecosystems; however, contamination effects from improperly processed sewage typically occur at a higher threshold. Septic systems are not sealed and are designed to return processed waste to the environment either through leaching from underground lateral lines or above ground sprinklers. Treatment systems are designed to kill pathogens and process the sewage to a level that it is safe for the environment.

B Regulatory Requirements

Tanks containing the following are **regulated** in accordance with 40 CFR Part 280.12 under RCRA:

- Petroleum, including crude oil. The term regulated substance includes, but not limited to, petroleum and petroleum-based substances such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils; and

- Any substance defined in section 101(14) of CERCLA of 1980 (but not including any substance regulated as a hazardous waste under subtitle C).

31 Underground Storage Tanks (Continued)

B Regulatory Requirements (Continued)

Some UST's are **unregulated** under the RCRA including:

- farm and residential tanks holding 1,100 gallons or less of motor fuel, used for noncommercial purposes
- tanks storing heating oil used on the premises where it is stored
- tanks on or above the floor of underground areas (such as basements and tunnels)
- septic tanks and systems for collecting storm water and wastewater
- flow-through process tanks
- tanks holding 110 gallons or less
- emergency spill and overfill tanks.

States typically impose additional requirements on LUST's to protect human health and the environment. For example, in some States, tank owners must have a system for detecting leaks from any part of the tank, piping, pumps, and dispensers. Different States have different requirements, and State Offices should include these requirements in their State supplement.

Septic systems are a type of non-regulated tanks under RCRA. However, many county health departments are implementing local inspection and registration requirements for these UST's. If local regulations require inspection and registration, the review should include those reports.

31 Underground Storage Tanks (Continued)

C Environmental Screening Process

FSA screens properties offered or serving as security prior to approval or taking on inventory, to ensure USTs are not a potential recognized environmental concern. The following review will be conducted during completion of the FSA-851 or similar process developed by guaranteed lenders.

The review for both regulated and unregulated tanks requires a site visit to identify UST's and a search of available databases to identify LUST within 0.5 miles of the site. If signs of UST's are noted during the site visit, record the information in FSA-851 Part C and note the location in Part F. Identification of UST on the site or LUST within 0.5 miles will require an elevated level of review.

For septic systems, if both inspection and registration are satisfactory, meaning no unresolved violations, then the septic system will not be considered an REC and the security may be acceptable regarding the septic system.

Where there is an absence of local inspection and registration requirements for septic tanks (such as older tanks), the reviewer will complete a visual inspection of the septic system and drain field during the site visit. The presence of foul odors, slow drainage, thick vegetation, or a soggy yard in the absence of rain is an indication the system is not functioning in accordance with its installation and the presence of a REC. If an REC is indicated the review will be elevated as shown below.

If FSA determines that the property being offered as security contains regulated or unregulated UST's, the applicant will be notified that processing toward loan approval cannot continue because the proposed security is unsuitable in its current condition.

UST's located on security property are acceptable if the applicant provides:

- acceptable leak test completed by an environmental professional

  Note: Septic tanks are designed to leak (drain) and are exempt from this requirement.

- tank installation data for regulated and nonregulated UST's, showing what type of tank was installed and measures employed to prevent or contain leakage

- proof of registration for regulated tanks with appropriate regulatory agency and compliance with all applicable environmental laws and regulations

- evidence that any closed or removed tanks demonstrated no contamination in accordance with state regulations and testing completed by a state authorized organization.

Note: UST's not intended for use must be removed in accordance with State guidelines, tested, and not allowed to remain on the secured property.

31 Underground Storage Tanks (Continued)

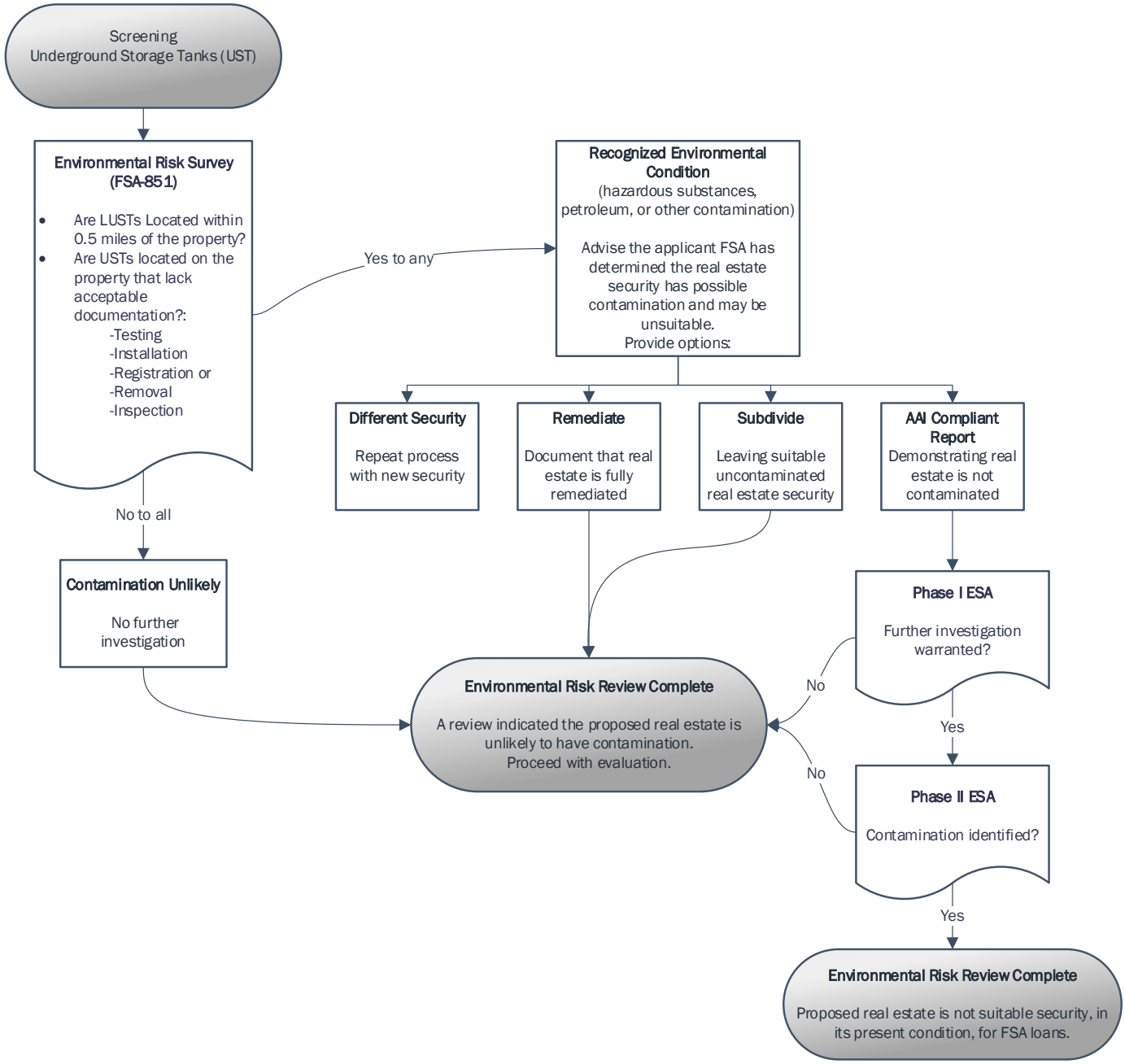
C Environmental Screening Process (Continued)

The property remains unsuitable based upon its current condition until the above information is provided. The applicant may select different security, provide documentation from a regulatory agency showing the site to be fully remediated, subdivide the property leaving suitable uncontaminated property, or provide an AAI compliant report (Phase I or Phase II ESA) that finds no further investigation is warranted.

If FSA determines that a LUST is within 0.5 miles of the proposed security, the applicant is notified that processing toward loan approval cannot continue because FSA has determined the proposed security to be unsuitable based on its current condition. The applicant may select different security, provide documentation from a regulatory agency showing the site to be fully remediated, subdivide the property leaving suitable uncontaminated property, or provide an AAI compliant report (Phase I or Phase II ESA) that finds no further investigation is warranted.

31 Underground Storage Tanks (Continued)

D Flow Chart for Underground Storage Tanks



31 Underground Storage Tanks (Continued)

E Examples

Example #1 Home Heating Oil Tank

When completing the FSA-851, a 1,000-gallon home heating oil UST is noted. This tank is properly identified as nonregulated, so the reviewer requests a copy of the installation and safety data from the seller. The applicant is contacted and informed that a satisfactory leak test is required from a State qualified environmental professional. The seller and purchaser negotiated the cost of the leak test, and it was completed by an environmental professional resulting in no elevated review.

Example #2 Regulated UST

When completing the FSA-851, a 3,000-gallon UST used to store farm diesel for use in remote pumping stations is noted. This tank was properly identified as regulated. The owner did not have any of the installation information but contacted the contractor and got the model and safety specifications. The EPA's UST Finder website https://www.epa.gov/ust/ust-finder located the registration and review history. The seller contracted the leak test and submitted it to FSA, so the review remained at the FSA-851 level.

Example #3 Leaking UST

When completing the FSA-851, a LUST ¼ mile from the proposed security property is noted. The site information is acquired using the EPA's UST Finder and identified an active plume. FSA provided options, as provided in the above flow chart above, to the applicant who decided to order a Phase I ESA to be provided to FSA. The plume was found to be moving downgradient away from the proposed security, so the Phase I ESA was concluded with no further review recommended.

32 Water Wells

A Overview

Wells can be a source of direct groundwater contamination and require a thorough investigation of their location, surroundings, and condition. Improperly closed wells are potential disposal areas for human waste and chemicals.

A water well can directly connect the surface to the aquifer below. Any contaminants on the surface can flow directly into the groundwater without natural filtration from the soil. This puts the well, and other nearby wells, at risk of contamination. If a concentrated chemical or contaminated runoff were to enter the aquifer through an abandoned well, the health of those who use water from the aquifer could be at risk. As discussed above, farms may store chemicals near the wellhead leading to chemicals flowing directly to the aquifers below. Wells placed in floodplains can be overwhelmed by floodwaters and pick up animal waste transported to open wells. Improper application of fertilizer and animal waste can also transport contamination directly to aquifers below.

Types of Wells	Environmental Considerations
Public Supply Well	Water typically provided by a government entity such as a municipal utility district. These wells are closely monitored and regulated and are not considered a risk for FSA security purposes.
Onsite Private Supply Well	Draws water from on or below the subject property. Can be vulnerable to contamination.
Monitoring Well	Used to sample groundwater elevations, flow direction, and contamination. This type of well is a sign of contamination and need for an elevated review.
Remediation or Extraction Well	Used to pump and treat previously contaminated groundwater or vapors or supply dewatering for control of groundwater flow or elevation. This type of well is a sign of contamination and need for elevated review.
Dry Well	Constructed with permeable gravel or rocks to provide drainage, control spills or storm water runoff, or dispose of wastes. Can be a conduit to contaminating groundwater.
Injection Wells	Dry wells for storm water infiltration or injection wells of industrial wastes, sequestration of greenhouse gas emissions, or re-injection of remediated water. Injection wells are a sign of possible contamination and need for an elevated review.

32 Water Wells (Continued)

B Regulatory Requirements

More than 13 million households rely on private wells for drinking water in the United States (US Census American Housing Survey 2017). However, EPA does not regulate private wells and does not provide criteria or standards for individual wells. EPA provides information on the importance of testing private wells and guidance on technology to treat or remove contaminants. Private well owners are responsible for the safety of their water.

C Environmental Screening Process

Use State-maintained databases, landowners, and neighbors to determine the location of wells on the property. The presence of a well on or near the property must be noted on the FSA-851 and request information about the location, condition, and use from the property owner. Wells should be inspected during the site visit. For wells to be used as security that are no longer in use or abandoned:

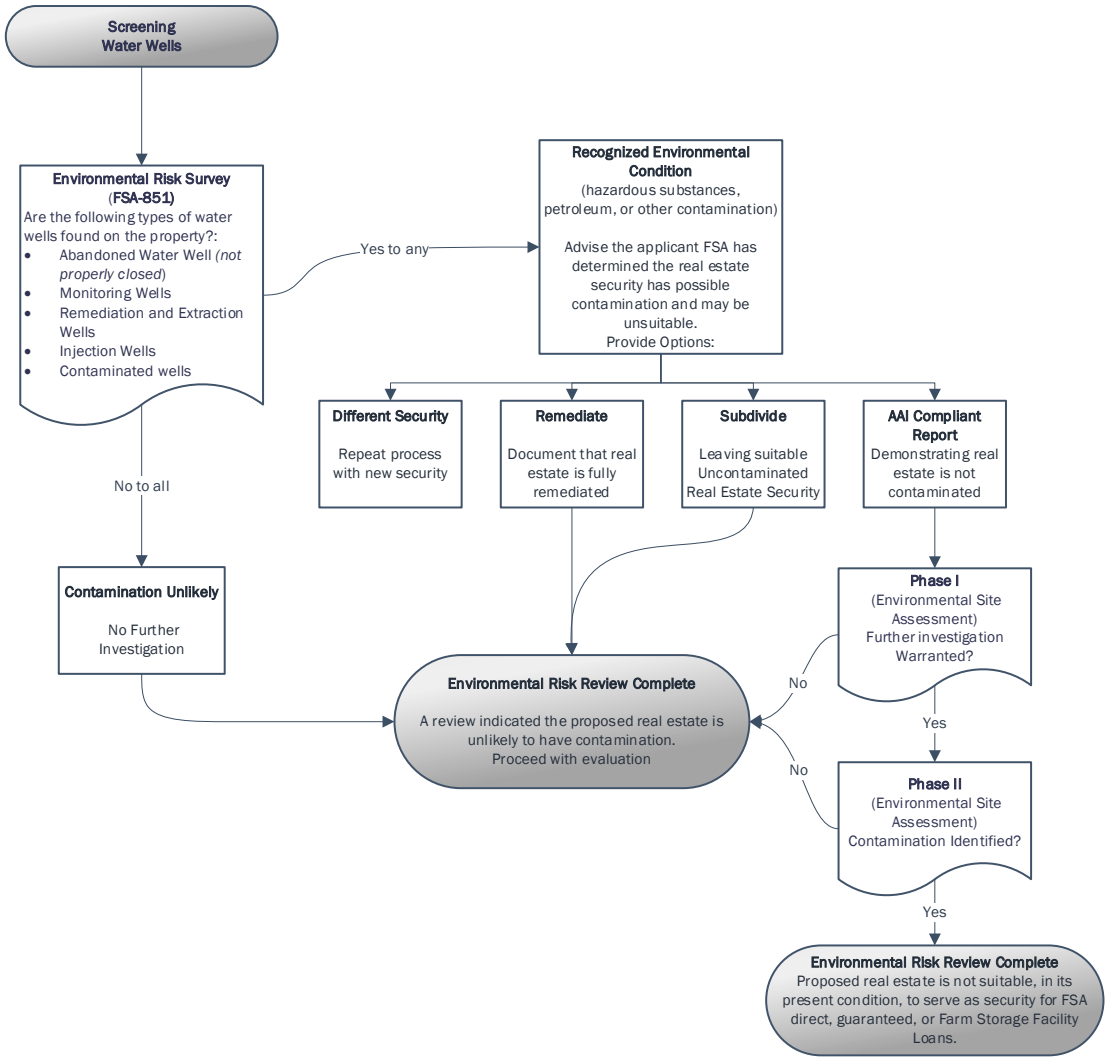
- make the well operable by ensuring the casing, pump, and pump column are functioning
- cap the well to keep surface water or contaminants out
- plug the well from the bottom up with bentonite chips, bentonite grout, or cement
- fill large-diameter wells with clay-based soils, compacted clay, or caliche soil.

For abandoned water supply wells, the reason for non-use should be noted. Improperly abandoned wells are considered REC's.

Proposed security for FSA loans (direct, guaranteed, or FSFL) is unacceptable if there is an abandoned well not properly closed in accordance with State and regulatory guidelines. The applicant may select different security, supply documentation from a regulatory agency showing the site to be fully remediated, subdivide the property leaving suitable uncontaminated property, or provide an AAI compliant report (Phase I or Phase II ESA) that finds no further investigation is warranted.

32 Water Wells (Continued)

C Flow Chart for Water Wells



D Example - Abandoned Water Well

When completing the FSA-851, the reviewer notes a wellhead (rusty pipe jutting out of the ground with a concrete casing). The landowner explains that it is an old water well that was abandoned several years ago when community water became available. Further inspection shows the well was not capped and is an REC that could be a conduit to contaminate the aquifer below; therefore, this property is not suitable security unless the REC is corrected. If the well is subsequently verified to be capped resulting in the REC being corrected, an elevated review is not necessary.

33-39 (Reserved)

Part 4 Other Environmental Concerns (non-Scope)

40 Non-Scope Items

A Explanation

A non-scope item for ESA refers to anything beyond the standard scope of a Phase I ESA. These may include inspections and testing for mold, lead, or asbestos, sampling and testing of soil or water, radon sampling and testing, wetlands delineations and inspections, land use or zoning issues, and environmental regulatory compliance. This section discusses the non-scope items that the FSA commonly requires Phase I or Phase II ESA's.

41 Asbestos

A Overview

Asbestos consists of microscopic bundles of fibers that may become airborne when disturbed. Once released into the air, these fibers can be inhaled into the lungs, where they may cause significant health problems. Asbestos-containing insulation was banned from new building construction in 1974; therefore, it is unlikely a building constructed after 1974 has friable asbestos-containing surfacing material.

ACM in buildings do not always pose a hazard to occupants and workers if left undisturbed. Hazards typically occur when fibers from ACM are released into the air through construction or demolition activities. Physical damage and deterioration over time can also contribute to release of the fibers. EPA defines ACM as material that contains more than one percent asbestos.

Friable describes asbestos that can be reduced to dust by hand pressure. Nonfriable is asbestos that is too hard to be reduced to dust by hand pressure. Nonfriable materials, like transite (asbestos mixed with cement) siding and floor tiles, are not regulated provided they do not become friable. Machine grinding, sanding, and dry buffing are examples of causing nonfriable materials to become friable.

Note: Employees should not be handling ACM. When possible, ACM is identified and it appears to be deteriorated, environmental professionals will be used to determine if the ACM is REC. Detailed information about ACM can be found on the EPA website at www.epa.gov/asbestos.

41 Asbestos (Continued)

B Regulatory Requirements

Federal laws do not require the seller to disclose to the buyer that their home contains asbestos or vermiculite. State or local regulations may require disclosure. Contact the State or local regulatory agency about requirements. Generally, CERCLA does not apply to nonfriable ACM because it does not constitute the release of a hazardous substance into the environment. However, following the demolition of a building, ACM buried in the soil may be released. Removal of ACM is typically regulated by EPA under section 112 of the National Emissions Standards for Hazardous Air Pollutants.

FSA should fully disclose the potential presence of ACM to purchasers or lessee's of inventory properties. FSA should require that purchasers indemnify the Federal government from any liability arising out of ACM on the property.

C Environmental Screening Process

During the site visit, note the presence of all visible ACM's. If the ACM is non-friable (intact without damage), no further review is necessary.

FSA-851, Part C, Table 1 indicates if any structures appear to contain ACM's. The following construction materials found on farm properties may contain ACM's:

- asphalt floor tile
- cement pipes
- cement siding
- cement wallboard
- construction mastics
- fireproofing materials
- HVAC duct insulation
- roofing felt
- roofing shingles
- spray-applied insulation
- vermiculite wall and attic insulation
- vinyl floor tile and sheet flooring
- wallboard.

To learn more about identification of asbestos visit https://www.epa.gov/asbestos.

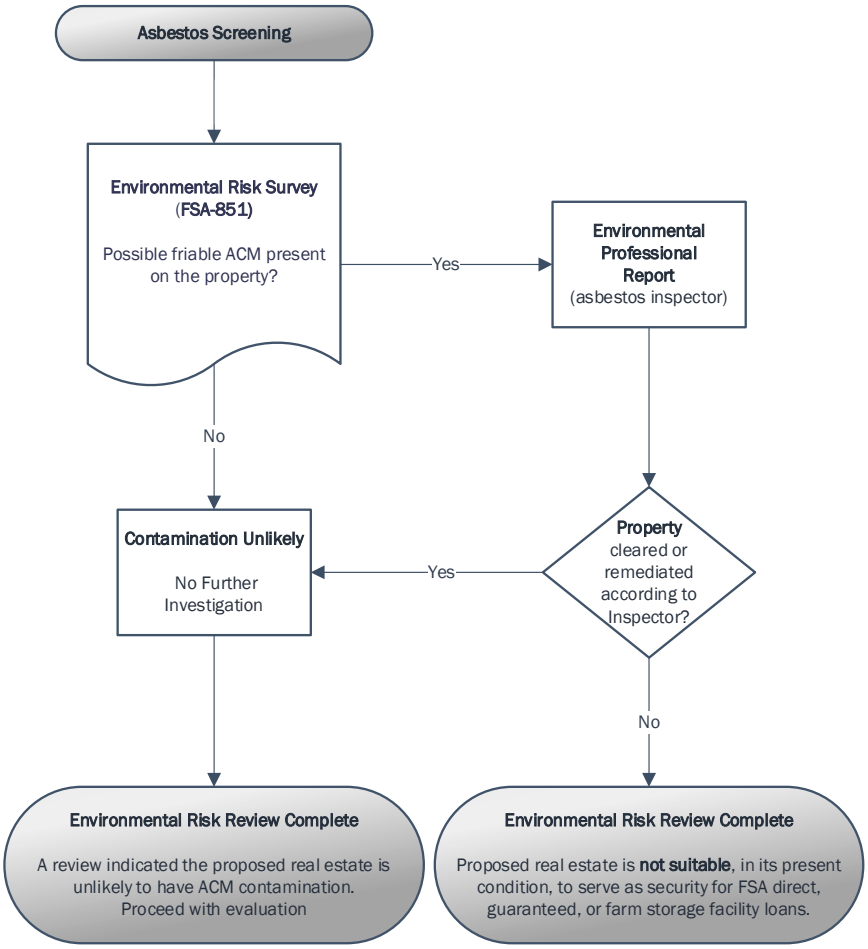
41 Asbestos (Continued)

C Environmental Screening Process (Continued)

If the site visit reveals potentially friable asbestos, have it tested by a qualified laboratory. EPA only recommends testing suspect materials if they are damaged (fraying, crumbling) or if a renovation that would disturb the suspect material is planned. Samples should be taken by a properly trained and accredited asbestos professional (inspector) who will detail precautions and abatement, as needed. This report should be provided by the seller or buyer. FSA may need to contract an asbestos investigator for inventory properties.

If friable ACM is detected, the proposed property is unsuitable security for an FSA farm loan (direct, guaranteed, or FSFL), until appropriate repairs are completed in accordance with the environmental professional's recommendation. FSA should fully consider the expense of remediation and use the estimates to establish maximum bid (5-FLP, Exhibit 60) for foreclosures.

D Flow Chart for Asbestos Screening



41 Asbestos (Continued)

E Examples

Example #1 Possible ACM Piping

Evaluation of a 50-year-old home proposed as security for a new Farm Ownership loan finds piping in the basement with insulation with no noticeable wear; however, there may be ACM. Since the potential ACM remains encapsulated, there is no REC. So, no further investigation is necessary.

Example #2 Possible ACM Piping

Same example as #1 except the piping in the basement has damaged the insulation and it appears friable. The seller or the buyer must supply a copy of an asbestos inspection report that will either clear the property of ACM or identify a hazard that needs to be mitigated. The abatement will need to be completed for ACM before the property can serve as FSA direct, guarantee, or FSFL security.

42 Cultural and Historic Resources

A Overview

Cultural resources are not evaluated on the Phase I ESA, or Phase II ESA process and are considered non-scope (not typically considered). The integrity of our natural and historic landscape is important to us all, and steps taken to strengthen or rebuild communities can have long-term environmental and cultural impacts. When FSA considers a property as security for a loan, it is important to consider the possibility that the previous owner could have taken actions that may have impacted graves or other culturally important sites that may frustrate the intended use as farmland and compromise the financial integrity of the proposed operation.

B Regulatory Requirements

To ensure proper stewardship of historic properties and the environment, there are more than 30 federal regulations, directives, and legal mandates. Additionally, there are state laws and codes in place to protect these resources. Common historic preservation laws and executive orders include environmental justice executive orders, the National Historic Preservation Act, and NEPA.

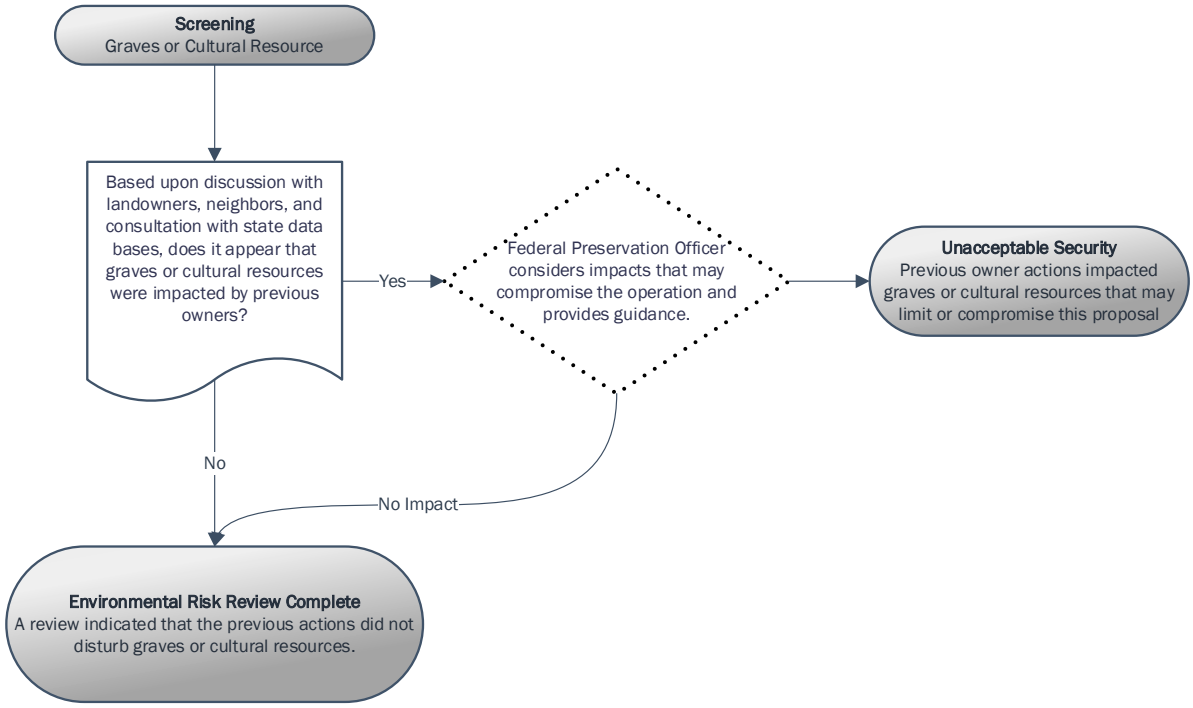
Since 1990, Federal law has provided for the repatriation and disposition of certain Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony. By enacting Native American Graves Protection and Repatriation Act (NAGPRA), Congress recognized that human remains of any ancestry "must at all times be treated with dignity and respect."

42 Cultural and Historic Resources (Continued)

C Environmental Screening Process

Reviewers should discuss the history of the land with the owner and any neighbors to consider the possibility that a previous owner would have taken action impacting graves or cultural sites that may limit the intended use of the property. Reviewers may search state-maintained databases containing the archaeological and historic structure site files, the listings of the National Register of Historic Places, previous research in the vicinity, local histories, and historic maps to determine if the potential of a tract to contain archaeological and historic sites as well as the potential of a property to contain National Register eligible sites. If it appears the site may contain disturbed graves or cultural sites, SEC will refer the circumstances to the Federal Preservation Officer for guidance.

D Flow Chart for Graves or Cultural Resource Screening



42 Cultural and Historic Resources (Continued)

E Examples

Example #1 Possible Graveyard Impacted

Upon completion of a site visit the reviewer finds head stones used to reduce erosion in a stream channel. Upon discussion with the current landowner, it is discovered that a previous landowner had purchased the land along with a derelict church and attached graveyard. The headstones were removed and used for erosion control the graveyard was farmed. This situation was forwarded to the Federal Preservation Officer who discovered a possible State law violation regarding graves. This real estate was determined not to be acceptable security for an FSA loan as the cost to comply with the State laws would reduce the value of the security as well as reduce the farmable land.

Example #2 Cemetery Located on Proposed Security

Upon completion of a site visit, the reviewer finds a small family cemetery located on land proposed as security for an FSA loan. The cemetery is overgrown but otherwise undisturbed. The applicant has no plans for the cemetery, and it is not necessary for the operation. The reviewer makes note of the cemetery and places comments regarding the undisturbed nature. The cemetery does not make the security unacceptable.

43 Floodplains

A Overview

Floodplains are not evaluated on the Phase I ESA, or Phase II ESA process and are considered non-scope (not typically considered). Flood hazard areas identified on the Flood Insurance Rate Map are called Special Flood Hazard Areas. These areas are defined as the 100-year floodplain or an area that will be inundated by a flood event having a one-percent chance of being equaled or exceeded in a year. Many agricultural operations are located or partly located in floodplains due to the rich soils normally found adjacent to waterways.

Properties located in a flood zone can have significant implications for property value, price appreciation, potential for damage, and higher insurance rates. Flood maps are not specifically listed as a requirement for completion of the FSA-851, Phase I, or Phase II ESAs. Environmental professionals may refer to FEMA flood maps in their Phase I reports (usually as a non-scope client request) for the purposes of assessing business risk (that is, impacts on insurance requirements, property hazards, or restrictions on use).

43 Floodplains (Continued)

A Overview (Continued)

Floods can translocate contamination to downstream. When development is placed in a floodplain, it increases the risk of contamination. For example, septic systems located in floodplains that are swamped can release untreated sewage that can find its way into wells providing a conduit to aquifers. Additionally, this effluent may contaminate homes and other buildings. Other storage containers located in floodplains may release their contents and by virtue of the magnitude of the flood cannot be contained, thus, allowing contamination to spread.

Floodplains alone are not considered by FSA in the due diligence process. However, when other risks that lie in the floodplain are considered, the magnitude of the combined risk increases by being in the floodplain. Many State and local regulatory agencies retain permitting and enforcement authority for flood control or development in floodways. Local governments can impose operating restrictions, mandates, zoning requirements, and licensing requirements. The costs to bring facilities into compliance with regulatory requirements can be significant.

B Regulatory Requirements

When local communities join the National Flood Insurance Program it reduces a community's risk of flooding and making a speedier, more sustained recovery should flooding occur. It also allows property owners within a participating community to purchase National Flood Insurance Program flood insurance and receive disaster assistance for flood-related damage. Participation is voluntary and more than 22,000 communities have agreed to adopt and enforce floodplain management ordinances that provide flood-loss reduction building standards for new and existing development.

Direct loan general insurance requirements are found in 7 CFR 764.108(b). Real estate security structures located in flood or mudslide prone areas must be covered by flood or mudslide insurance. FSA must be listed as a beneficiary of the mortgage loss payable clause.

Guaranteed loan limitations for floodplains are found in 7 CFR 762.122 (d). FSA cannot guarantee a loan to purchase, build, or expand buildings located in a 100-year floodplain as defined by FEMA special flood hazard area maps unless flood insurance is available and purchased (§ 762.123 (a) (3) Insurance and farm inspection requirements). Applicants must purchase flood insurance if buildings are or will be in a special flood hazard area as defined by FEMA flood hazard area maps and if flood insurance is available.

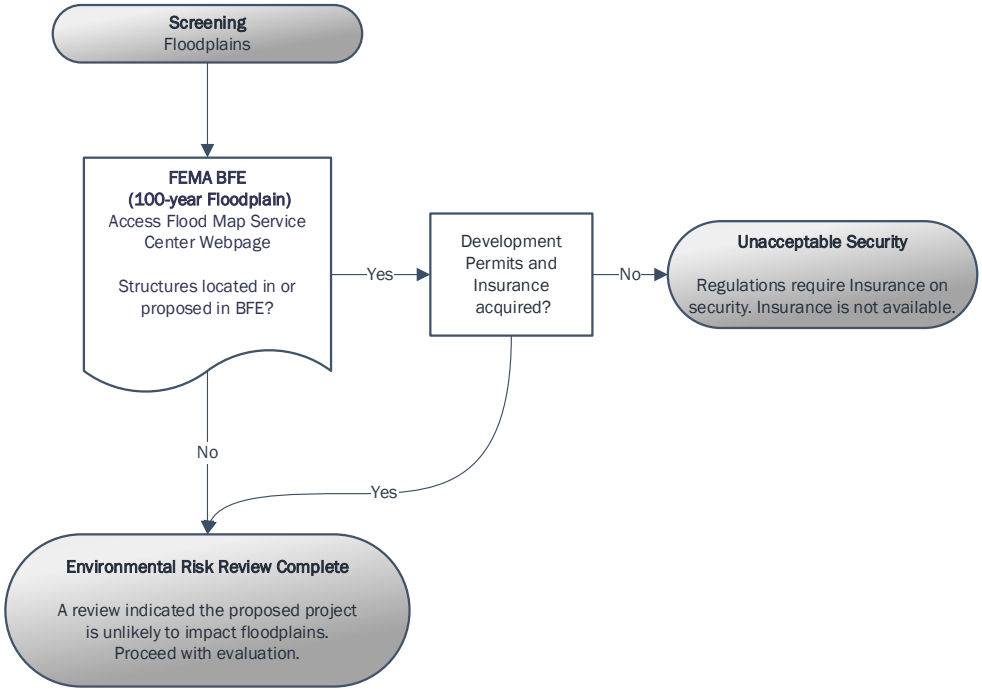
43 Floodplains (Continued)

C Environmental Screening Process

Many agricultural operations are in the 100-year floodplain due to the rich soils commonly found. When real estate is to be taken as security and structures are located on the property or proposed for development on the property, the reviewer will consult the FEMA Flood Map Service Center webpage at https://msc.fema.gov/portal/home.

If FEMA floodplain maps have been completed for the area and the proposed security property falls in the base flood elevation or 100-year floodplain, then insurance will be required on existing structures and proposed structures to reduce risk to the government. If insurance is not available, a loan (guarantee, direct, or FSFL) cannot be approved to construct structures on the floodplain or finance farm property if structures on the property are located on the floodplain.

D Flow Chart for Floodplain Screening



43 Floodplains (Continued)

E Examples - Guaranteed Implement Barn

A standard eligible lender proposes a guaranteed loan to finance real estate with a 40’ X 60’ barn. Upon review, the barn was found to be located within the FEMA identified base flood elevation. The barn was constructed with a floodplain permit from the local authority. Insurance is available, but the property owner does not carry it. The real estate is acceptable security; however, flood insurance will be required in the conditional commitment if the loan can otherwise be approved.

If a permit was not gained prior to construction the permit must be issued prior to the real estate being determined acceptable security for an FSA loan.

44 Lead Based Paint

A Overview

Lead-based paint is not evaluated on the Phase I ESA, or Phase II ESA process and are considered non-scope (not typically considered). Lead-based paint has health implications when found in homes and should be considered during a review. If the home was built before 1978, it is more likely to have lead-based paint. In 1978, the Federal government banned consumer uses of lead-based paint, but some states banned it even earlier. Lead paint is still present in millions of homes, sometimes under layers of newer paint. If the paint is in good shape, the lead paint is usually not a problem. Deteriorating lead-based paint (peeling, chipping, chalking, cracking, damaged, or damp) is a hazard and needs immediate attention.

Lead-based paint may also be a human health hazard when found on surfaces that can result in exposure such as:

- windows and windowsills
- doors and door frames
- stairs, railings, banisters, and porches.

Abatement of lead-based paint is expensive and may impact the value of the building.

44 Lead Based Paint (Continued)

B Regulatory Requirements

The Lead Safe Housing Rule applies to all target housing that is federally owned and target housing receiving Federal assistance. Target housing is defined in TSCA as any housing constructed before 1978, except housing for the elderly or persons with disabilities if any child under age six resides or is expected to reside in the housing or any zero-bedroom dwelling.

Property owners who sell target housing must:

- disclose all known lead-based paint and lead-based paint hazards in the housing
- give buyers the EPA pamphlet "Protect Your Family from Lead in Your Home"
- include certain warning language in the contract as well as signed statements from all parties verifying that all requirements were complete
- retain signed acknowledgments for three years, as proof of compliance
- give buyers a 10-day opportunity to test the housing for lead
- sample Seller’s Disclosure of Information in English (Exhibit 5).

Landlords must give prospective tenants of target housing, including most buildings built before 1978:

- an EPA-approved information pamphlet on identifying and controlling lead-based paint hazards, Protect Your Family From Lead In Your Home (PDF)
- any known information concerning lead-based paint or lead-based paint hazards pertaining to the building
- for multi-unit buildings, this requirement includes records and reports concerning common areas and other units when information was obtained as a result of a building-wide evaluation
- a lead disclosure attachment to the lease, or language inserted in the lease, that includes a "Lead Warning Statement" and confirms that you have complied with all notification requirements
- sample Lessor's Disclosure of Information in English (Exhibit 6).

44 Lead Based Paint (Continued)

B Regulatory Requirements (Continued)

These same requirements apply to FSA when selling or leasing inventory property. See paragraph 64.

There are also laws regulating the renovation and repair of residential properties owned by the government. See paragraph 66.

C Environmental Screening Process

When evaluating proposed real estate security with a home, for FSA loans (guarantee, direct, or FSFL), consider the following for possible lead-based paint:

- Was the home constructed prior to 1978?
- Are there areas where the paint is in poor condition?

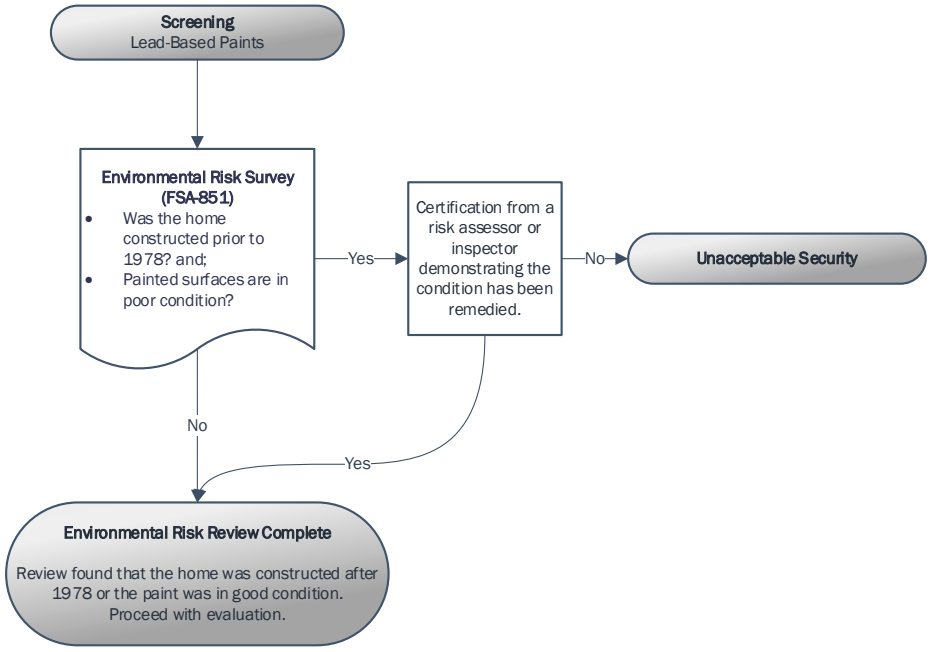
If the home being considered was constructed after 1978, no further consideration of lead-based paint is needed. However, if it was constructed prior to 1978 and there are areas of distressed paint, the property will need to be evaluated by a certified lead-based paint inspector or lead-based paint risk assessor. The cost of the inspection will not be paid by the agency at the time real estate is taken as security.

These licensed professionals conduct a surface-by surface investigation for lead-based paint. Any deficiencies will need to be corrected prior to the home serving as security for an FSA direct or guaranteed loan. The seller will furnish the purchaser with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the licensed professional determines there is LBP that requires remediation, this will be considered an REC, and the review will be elevated.

For a list of certified lead testing professionals in your area, go to http://cfpub.epa.gov/flpp or contact the National Lead Information Center at 1-800-424-LEAD (5323). The seller will provide this report.

44 Lead Based Paint (Continued)

D Flow Chart for Lead-Based Paint Screening



E Examples

Example #1 Lead-Based Paint on Barn

When completing the FSA-851, the owner of property proposed as security for a direct loan discloses that the barn was built by his grandfather in 1956. Although the barn likely has lead-based paint, laws regarding lead-based paint only apply to housing so an elevated review is not necessary.

Example #2 Lead-Based Paint in House

When completing the FSA-851 on proposed security for a direct loan, the reviewer finds a home dating to the 1930s. The paint found in the house is in good condition. The proposed loan is to purchase the land including the home. No renovations are proposed. The reviewer should make note of the possible lead-based paint and the implications. If the borrower later seeks financing to renovate the home, this will be addressed in Part 5.

Example #3 Lead-Based Paint in Home

When completing the FSA-851 on proposed security for a direct loan the reviewer finds a home dating to 1976. The paint found in the house is in poor condition (peeling, chipping, chalking, cracking, damaged, or damp). This is an REC that will require evaluation by a certified lead-based paint inspector or lead-based paint risk assessor. If lead-based paint is found, the seller will provide the purchaser with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. Without the certification, the security is unacceptable.

45 Mold

A Overview

Mold is not evaluated by the Phase I or Phase II ESA process and is considered non-scope (not typically considered). Mold is present virtually everywhere. However, mold is usually not an indoor problem unless the spores drop on places with excessive moisture. Molds produce tiny spores to reproduce. Mold spores are transported through the indoor and outdoor air continually. When mold spores land on a damp spot indoors, they may begin growing and digesting whatever they are growing on to survive. There are molds that can grow on wood, paper, carpet, and foods. When excessive moisture or water accumulates indoors, mold growth will often occur, particularly if the moisture problem remains undiscovered or unaddressed. There is no practical way to eliminate all mold and mold spores in the indoor environment; the way to control indoor mold growth is to control moisture.

B Regulatory Requirements

There are no Federal regulations or standards for airborne mold contaminants; however, EPA and some States or local jurisdictions have publications discussing mold issues. The EPA has a Guide to Mold, Moisture and your Home at https://www.epa.gov/mold/brief-guide-mold-moisture-and-your-home#tab-0.

C Environmental Screening Process

Sampling for mold is typically unnecessary unless it is widespread or documented as a health concern at a site. If widespread mold is observed or if mold exposure related health issues have been disclosed at a site, then mold should be documented as an REC on the FSA-851 and a Phase I or Phase II ESA is recommended.

D Example for Mold Noted

When completing the FSA-851 site visit, minor mold growing on a ceiling under the in attic air-condition duct is observed; however, the mold is not widespread nor have any health concerns occurred at the site from mold exposure. Further investigation under a Phase I or II ESA is not required.

46 Radon

A Overview

Radon is not evaluated by the Phase I or Phase II ESA process and is considered non-scope (not typically considered). Radon is a naturally occurring radioactive gas that can cause lung cancer or other cancer from ingesting it in drinking water. Radon in air is ubiquitous (existing or being everywhere at the same time) and found in outdoor and indoor air. Radon occurs naturally from the radioactive decay of radium or uranium atoms found in soil and rocks. Soil gas is considered the most important contributor of radon, with decreasing levels of contribution from outdoor air, potable water, and building materials.

B Regulatory Requirements

Currently, there are no Federal regulations to control indoor radon levels—only guidelines with recommendations and a national goal. EPA recommends abatement or remediation when indoor radon air concentrations equal or exceed 4 pCi/L. Information on the Federal Radon Action Plan (FRAP) can be found at https://www.epa.gov/radon/federal-radon-action-plan-frap.

CERCLA generally prohibits recovery for radon mitigation costs where the presence of radon gas in a building result from naturally occurring materials.

C Environmental Screening Process

Radon is not part of the FSA-851, Phase I or Phase II ESA.

47 Soil Mounds

A Overview

Soil mounds are not evaluated by the Phase I or Phase II ESA process and are considered non-scope (not typically considered). Soil mounds on farms may trigger the need for further investigation to address potential concerns. Soil mounds could be unused fill from a previous project or could be an indication of a disposal site of trash, waste, or hazardous waste. Mounds can also be cultural sites constructed by indigenous people. Interviewing the landowner and others could assist with determining what might be buried. Many rural areas do not have waste service so it is common to dispose of trash in a burn pit or landfill that could be the source of mounds on the property.

B Regulatory Requirements

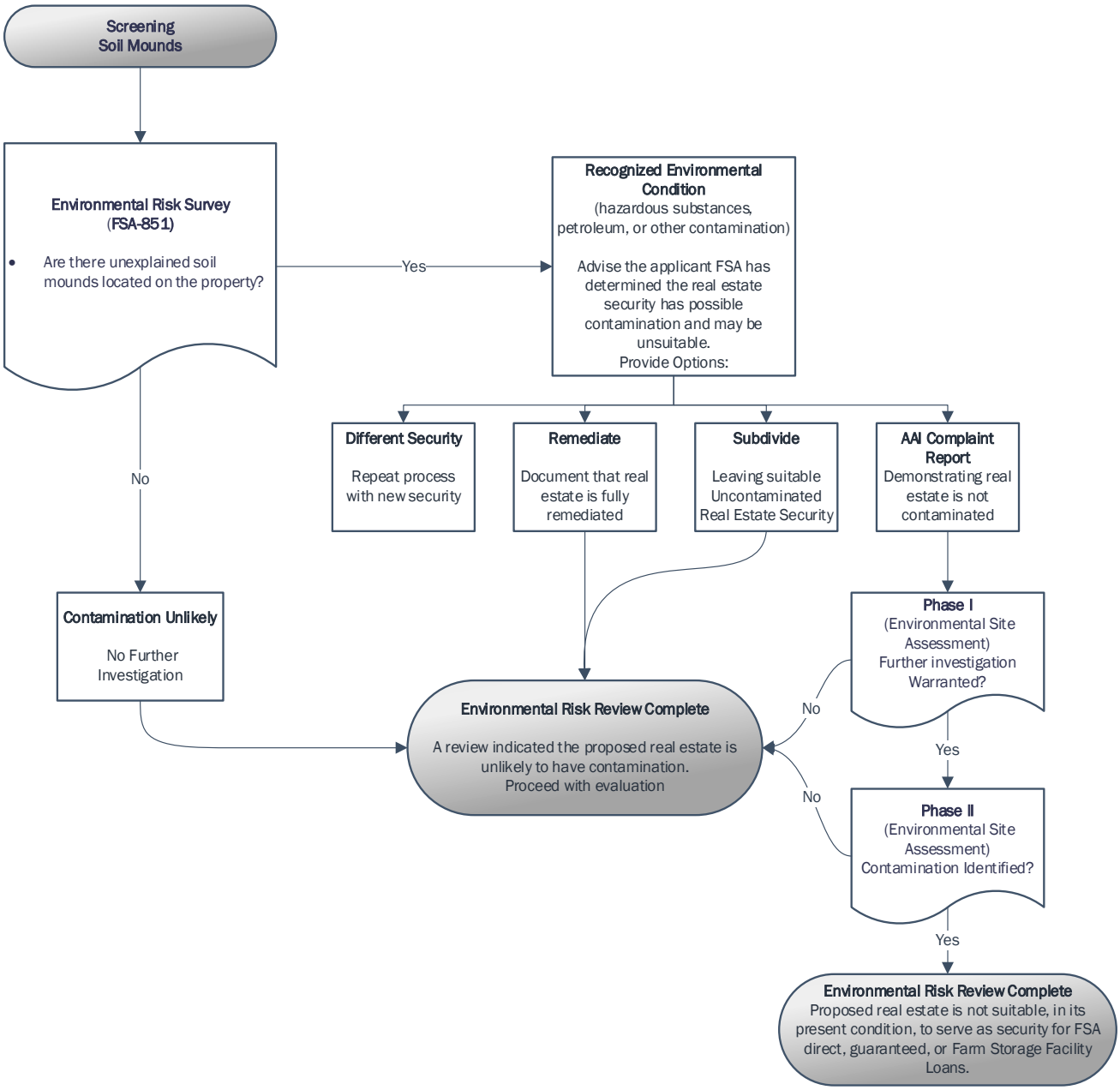
There are no laws regarding mounds themselves. However, possible waste buried within may be subject to CERCLA or other environmental laws.

C Environmental Screening Process

Look for mounds that seem out of place during a site visit such as a large mound of dirt with no obvious reason and document observations on the FSA-851. Verify with the landowner the reason for its presence and the contents, if known. The owner may be able to explain its purpose but if there is no rationale for its presence, further investigation is needed. Without knowing the reason for the soil mound(s), the security is unacceptable. The applicant may select different security, provide documentation from a regulatory agency showing the site to be fully remediated, subdivide the property leaving suitable uncontaminated property, or provide an AAI compliant report (Phase I or Phase II ESA) that finds no further investigation is warranted. However, if the mound is suspected to be a cultural resources site, the requestor of the report will need to specifically request an evaluation of cultural resources and comply with National Historic Preservation Act.

47 Soil Mounds (Continued)

D Flow Chart for Soil Mounds



47 Soil Mounds (Continued)

E Examples

Example #1 Mound

When completing the FSA-851 site visit, a reviewer finds a large soil mound that appears to have been on the farm for many years based upon the overgrowth. The current owner reports it was on the property when he purchased it and has no knowledge of its contents. Speaking with a neighbor the reviewer finds that the mound was the site of a Quonset hut used to house WWII prisoners at a formerly used defense site. After the war, all the facilities were pushed into a hole and covered. Based upon the historical use and possibility of hazardous chemicals also being buried along with the hut, a Phase I ESA is required with a request for historical and cultural resources survey due to the potential historical significance of the site.

Example #2 Mound

When completing the FSA-851 site visit, a reviewer finds a large soil mound that appears to have been on the farm for many years based upon the overgrowth. The current owner reports it appears to be a Caddo Indian burial mound like one identified on the neighbor's farm. Speaking with applicant there is no plan to disturb the mound and no changes in land use are contemplated. No further review is warranted.

48 Wetlands

A Overview

Wetlands are areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Wetlands are typically considered during the NEPA review where crop production is on land that may have been converted. Fines or mitigation may be required if the required Army Corps of Engineers permits are not in place. Willful violations of the Act are felonies; negligent violations are misdemeanors. Fines and possible mitigation activities could compromise the loan security.

48 Wetlands (Continued)

B Regulatory Requirements

The Federal government protects wetlands through regulation, by acquisition, or incentives and disincentives. CWA Section 404 is the primary Federal regulation of activities occurring in wetlands. Other programs, such as the "Swampbuster" program and the Coastal Zone Management and Coastal Barriers Resources Acts provide additional protection.

The Army Corps of Engineers administers and enforces Section 10 of the Rivers and Harbors Act of 1899 and CWA Section 404. Section 10 requires a permit for work or structures in, over, or under navigable WOTUS and for the discharge of dredge or fill.

Failure to obtain a permit for work conducted within WOTUS (including wetlands), or failure to comply with the terms and conditions of an Army Corps of Engineers permit, will result in an enforcement action by the Corps.

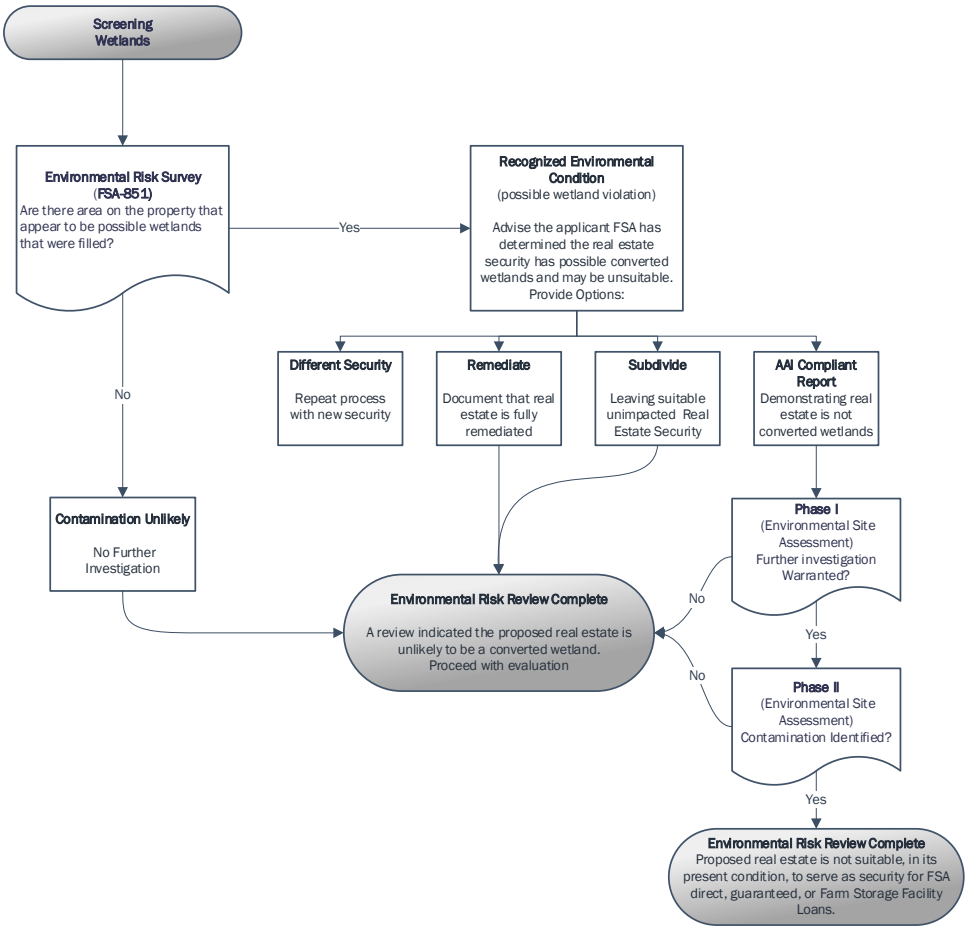
Resolution options include, but are not limited to, restoration of the destroyed wetland area, approval of an after-the-fact permit application, or in appropriate cases, referral to EPA or the U.S. Attorney for criminal or civil action.

C Environmental Screening Process

Wetlands are not evaluated on the FSA-851, Phase I ESA, or Phase II ESA process and are considered non-scope (not typically considered). If wetlands may have been filled, the review should be elevated to a Phase I. Manipulation of wetlands is an indication the property is unsuitable to serve as FSA security. The applicant may select different security, supply documentation from a regulatory agency showing the site to be fully permitted or mitigated, subdivide the property leaving suitable unimpacted property, or provide an AAI compliant report (Phase I or Phase II ESA) that considers the non-scope item “wetlands” and finds no further investigation is warranted.

48 Wetlands (Continued)

D Flow Chart for Wetlands



E Example - Wetland Unique Fill Material

When completing the FSA-851, the reviewer notes barns on the site that appear to be on a wet area. The landowner reports the back of the area was leveled where the barns were constructed because they previously sloped toward the river. There were no permits for this development so the property is not suitable security. If the applicant subsequently provides a Phase I ESA report with a non-scope item of “wetlands” that found no wetlands in the affected area, then no further review is needed.

49 Emerging Contaminants

A Overview

EPA publishes technical fact sheets for emerging contaminants, which provide brief summaries of contaminants of concern that present unique issues and challenges to the environmental community. Each fact sheet provides a summary of the contaminant, including physical and chemical properties, environmental and health impacts, existing Federal and State guidelines, and detection and treatment methods. These fact sheets are updated annually to include timely information.

B Regulatory Requirements

Emerging contaminants are identified but not formally regulated. Standard Practice E1527-21 (Phase I ESA) clarifies that environmental professionals are not required to consider emerging contaminants, such as PFAS, when conducting a Phase I ESA unless or until the emerging contaminant is regulated as a hazardous substance under CERCLA. Although inclusion prior to regulation is not mandatory, the new standard also provides that emerging contaminants may be included in the assessment as a "Non-Scope Consideration" at the request of the party seeking liability protection under the Phase I ESA. EPA is currently developing a proposed rule that would designate certain PFAS chemicals – specifically PFOA and PFOS – as hazardous substances under CERCLA. Therefore, a prospective purchaser seeking liability protection should specifically request inclusion of these emerging contaminants as a non-scope item within the Phase I ESA.

C Environmental Screening Process

If during the completion of the FSA-851, it is found that any of the unregulated contaminants identified by EPA are known or suspected to exist on the proposed security the review will be elevated, and additional documentation will be necessary for the real estate to be determined acceptable security. The key to this identification is to consider the industry that used the chemical. Most are associated with military, fire retardants, water-repellency, solvents and paints, or waste treatment.

The applicant may select different security, supply documentation from a regulatory agency showing the site to be fully permitted or mitigated, subdivide the property leaving suitable unimpacted property, or provide an AAI compliant report (Phase I or Phase II ESA) that considers the non-scope item and finds no further investigation is warranted.

49 Emerging Contaminants (Continued)

C Environmental Screening Process

The unregulated contaminates of concern are listed on EPA's website at Emerging Contaminants and Federal Facility Contaminants of Concern | US EPA.

Unregulated Contaminant	Use
1,2,3-Trichloropropane (TCP)	Formerly used as a paint and varnish remover, solvent, and degreasing agent.
1,4-Dioxane	Found at many federal facilities because of its widespread use as a stabilizer in certain chlorinated solvents, paint strippers, greases, and waxes.
2,4,6-Trinitrotoluene (TNT)	Used extensively in munitions manufacturing and accounts for a large part of the explosive's contamination at active and former U.S. military installations.
Dinitrotoluene (DNT)	Used in the production of ammunition, polyurethane polymers, dyes, plasticizers, and automobile airbags.
Hexahydro-1,3,5-trinitro-1,3,5-triazine (RDX)	Used extensively in the manufacture of munitions. Accounts for a large part of the explosive's contamination at active and former U.S. military installations.
Nanomaterials (NM)	Engineered NMs are used in a wide variety of applications, including environmental remediation, pollution sensors, photovoltaics, medical imaging, and drug delivery.
N-Nitroso-dimethylamine (NDMA)	Formerly used in the production of rocket fuel, antioxidants and softeners for copolymers. Currently used only for research purposes. Unintended byproduct of chlorination of wastewater at wastewater treatment plants that use chloramines for disinfection, raising significant concern as a drinking water contaminant.

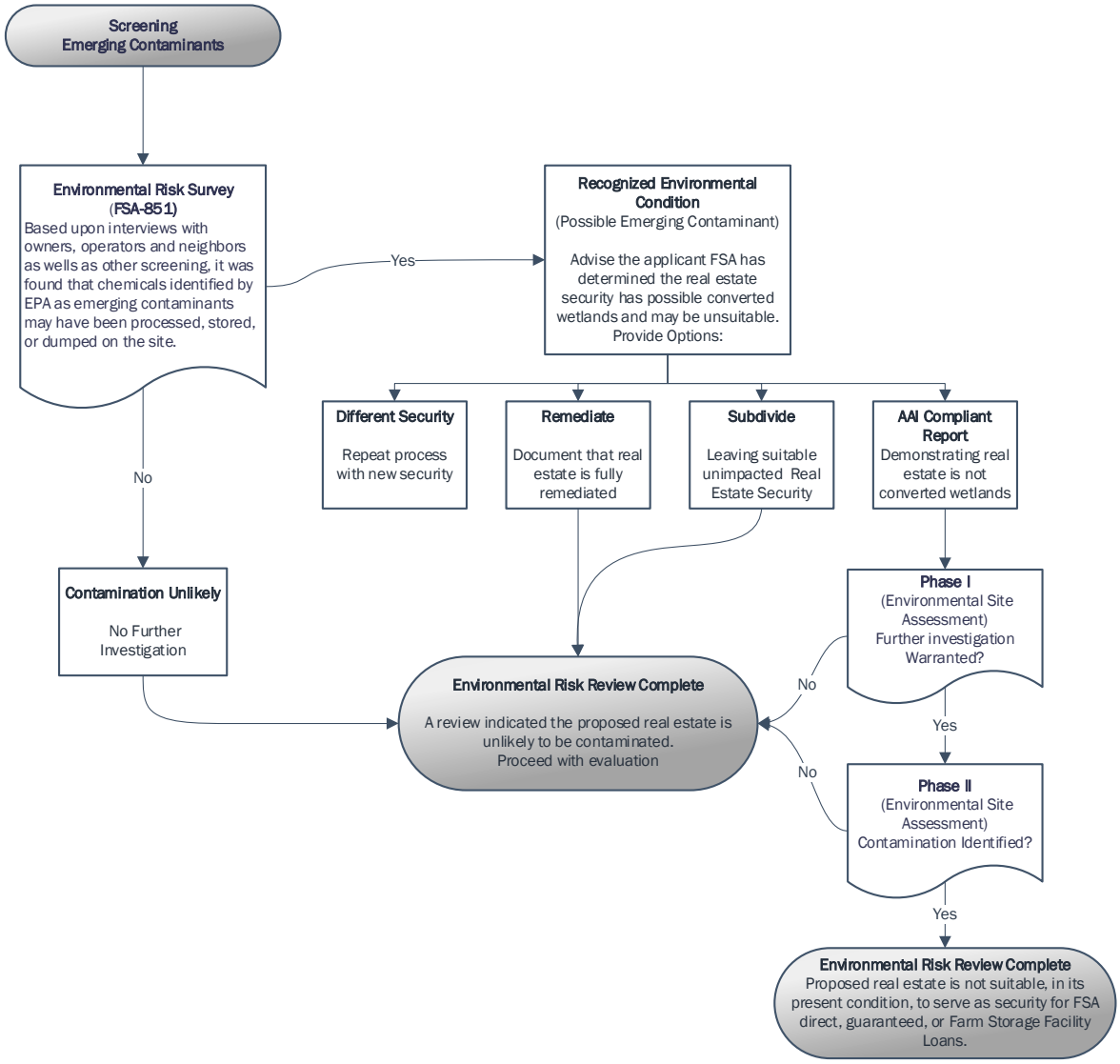
49 Emerging Contaminants (Continued)

C Environmental Screening Process (Continued)

Unregulated Contaminant	Use
Perchlorate	Contamination has been found at sites involved in the manufacture, maintenance, use, and disposal of ammunition and rocket fuel.
Perfluorooctane sulfonic acid, Perfluorooctanoic acid and other Per- and polyfluoroalkyl substances	These chemicals have proposed regulations and FSA is screening as an REC. PFAS chemicals can be present in our water, soil, air, and food as well as in materials found in our homes or workplaces, including soils and water at or near waste sites, military bases, manufacturing or chemical production facilities, stain, water-repellent use, and biosolids.
Polybrominated biphenyls (PBBs)	Class of brominated hydrocarbons that serve as flame retardants for electrical equipment, electronic devices, furniture, textiles, and other household products.
Polybrominated diphenyl ethers (PBDEs)	Classes of brominated hydrocarbons that serve as flame retardants for electrical equipment, electronic devices, furniture, textiles, and other household products.
Tungsten	Typically used in welding, oil drilling, electrical, and aerospace industries.

49 Emerging Contaminants (Continued)

D Flow Chart for Emerging Contaminants



49 Emerging Contaminants (Continued)

E Example - Emerging Contaminants

When completing the FSA-851, the reviewer notes an adjacent manufacturing plant that appears to be closed. The owner reports it was an ordinance manufacture until it went bankrupt, and this real estate was severed from that facility and sold during the bankruptcy. At this point, the review is elevated, and the applicant is provided the options shown above. The owner elects to provide a Phase I ESA. The Phase I ESA shows that emerging contaminants were utilized on the property and findings recommend a Phase II ESA. A Phase II ESA with testing identifies some elevated levels of contaminant; however, within acceptable limits and cleanup is not required or recommended. This report provides the documentation that FSA needs to proceed with the financing the real estate.

50-60 (Reserved)

Part 5 Special Considerations

61 Foreclosure and Voluntary Conveyance

A Overview

FSA may potentially complete due diligence using the FSA-851 twice. FSA completes the first due diligence process prior to proposed loan approval for real estate serving as security to ensure that a prior owner had not contaminated nor in any way created liability that may attach to the real estate, thereby devaluing it. The second due diligence review is completed when FSA is considering whether to acquire ownership through foreclosure or voluntary conveyance of real estate security.

It is important to consult FSA/USDA cleanup specialists and the OGC Pollution Control Team prior to making any decision to foreclose on contaminated property or accept voluntary conveyance of contaminated property, as well as prior to making any decisions to undertake cleanup work.

Note: Similar to the process outlined above, guaranteed lenders should complete a subsequent due diligence review prior to liquidation of real estate security. Failure to complete a pre-liquidation review could result in a reduced loss claim.

B Legal Liability Considerations

Under CERCLA Section 107, liable parties are: the current owner and operator; any owner or operator at the time of disposal of any hazardous substances; any person who arranged for the disposal or treatment of hazardous substances or arranged for the transportation of hazardous substances for disposal or treatment; and any person who accepts hazardous substances for transport to the site and selects the site.

CERCLA Section 101 contains a secured creditor exemption that eliminates owner/operator liability for lenders who hold indicia of ownership in a facility primarily to protect their security interest in that facility, provided they do not “participate in the management of the facility”. Although banks and lenders are afforded protection from CERCLA liability through the secured creditor exemption (provided they comply with its requirements), banks may choose to further protect themselves from loss (due to decreases in the value of the property or collateral) by requiring that borrowers qualify for other liability protections.

If a lender were to lose its lender liability exemption under CERCLA with respect to a loan that was secured by contaminated property, the lender could potentially be held liable for cleanup if EPA brought a CERCLA enforcement action to remediate the contamination at that property. At the time of the writing of this handbook, FSA has had two such properties in the process of being remediated at costs of several hundred thousand dollars. Moreover, state laws may come into play even if the lender is protected under CERCLA.

61 Foreclosure and Voluntary Conveyance (Continued)

C Process

FSA completes the FSA-851 and, if necessary, obtains further evaluation through a Phase I or Phase II ESA to determine both the following:

- foreclosure bid amount to take property into inventory
- acceptability of voluntary conveyance offer.

Note: FSA will contract the Phase I or Phase II ESA necessary for foreclosure.

Deductions from market value of the property for potential cleanup of REC's, including but not limited to hazardous substances, hazardous waste, petroleum products, or UST's are determined by a Phase II ESA prepared by an environmental professional and included as part of 5-FLP, Exhibits 37 and 60. With regard to clean up, inventory property will be managed and disposed of according to paragraph 64.

D Required Departmental Clearance Process

DM 5600-001, Environmental Pollution Prevention, Control, and Abatement Manual provides procedures for USDA staff to meet the requirements of DR 5600-005, Environmental Management. This DM provides guidance for implementing USDA policy for protecting human health and the environment through pollution prevention, control, and abatement measures. The DM also provides guidance on USDA's policy to minimize potential liability by ensuring environmental cleanup and compliance with applicable Federal, State, and local laws.

The Departmental guidance requires that:

- not more than 180 calendar days prior to foreclosure, the agency will perform a Phase I ESA or a complete a transaction screen

  Note: The transaction screen should conform with ASTM E1528, Standard Practice for Limited Environmental Due Diligence: Transaction Screen Process.

- if the Phase I ESA indicates that a REC is present, the acquiring agency will perform a Phase II ESA

- if the transaction screen indicates potential environmental concerns, the acquiring agency will perform a Phase I or Phase II ESA.

61 Foreclosure and Voluntary Conveyance (Continued)

D Required Departmental Clearance Process (Continued)

The FSA-851 does conform to the ASTM E1528 standard and is how the agency meets this Departmental review requirement.

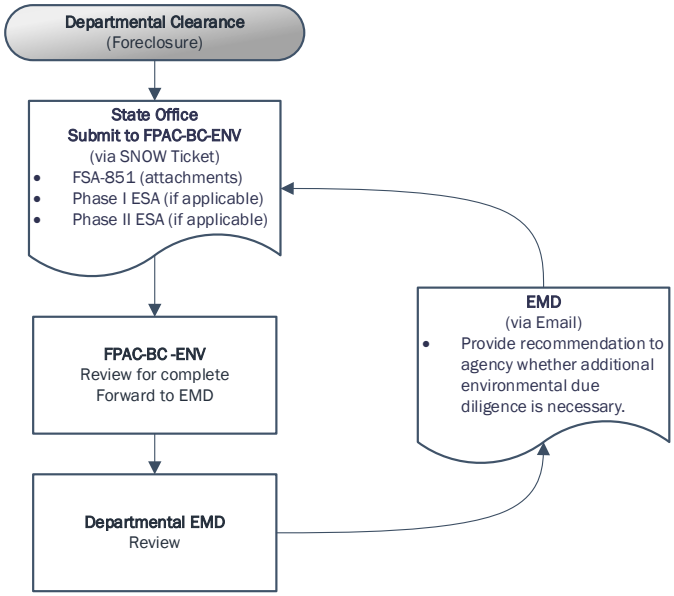
According to DM 5600-001 and DR 5600-005 prior to foreclosure of farms and other non-residential property. Agencies will submit all environmental documentation for USDA OGC and Environmental Management Division review.

EMD will review the environmental documentation including the FSA-851, Phase I, and Phase II if applicable and make a recommendation to the agency about whether additional environmental due diligence is necessary. OGC will be consulted prior to any decision to foreclose on a property with known or suspected contamination. The request for EMD clearance will be through ENV. Upon successful review, the State Office will be provided clearance directly from USDA Environmental Management Division.

To request clearance, submit a ticket through ServiceNow through the link on the ENV SharePoint (https://usdagcc.sharepoint.com/sites/FBC-EnvAct/).

61 Foreclosure and Voluntary Conveyance (Continued)

E Departmental Clearance Flow Chart



62 Guaranteed Loans

A Overview

Guaranteed lenders are required to perform due diligence for loan guarantee requests involving real estate as security. The presence of contamination from hazardous substances or petroleum products and their impact on the market value of the property may be a concern.

If real estate will be taken as primary security, the lender must conduct a site visit and complete the ASTM Standards E1528, Transaction Screen Questionnaire, FSA-851, or similar questionnaires or screening tools meeting the requirements outlined by their respective regulator FDIC, FCA, etc.)

Notes: If a lender's regulator does not outline environmental due diligence requirements, the lender should use the ASTM E1528, Transaction Screen Questionnaire, FSA-851 or should use those forms as a guide for their own questionnaire.

If similar questionnaires or screening tools used by a lender require that the applicants provide information for the review; the lender must also review the form and acknowledge they have certified its accuracy.

The lender must indicate on the Application for Guarantee whether the questionnaire indicates an environmental concern may exist. If the questionnaire indicates that a problem may exist, the lender should attach a copy of the questionnaire. Submission of the questionnaire is not required if it appears that there are no potential problems. The questionnaire must be maintained in the lender's loan file.

If the lender's due diligence review indicates potential problems, the lender should be advised that they must take all necessary actions to maintain their lender liability protections for processing of the application to continue.

When processing loss claims for loan guarantees involving real estate security potentially affected by environmental risks, FSA considers the accuracy of the due diligence completed by the lender in determining reduction or denial of a loss claim.

63 Leasing Inventory Property

A Overview

FSA leases inventory property under programs such as Homestead Protection or to beginning or socially disadvantaged farmers or ranchers while awaiting funding for a direct loan. If a leased property contains a UST, FSA must take measures to prevent it from causing harm to the environment.

B Responsibilities

When leasing property, appropriate terms and conditions should be included in the lease agreement in consultation with OGC to avoid contamination of the inventory property and/or protect the agency in the event of contamination. Such terms may include:

- limiting use of UST's
- prohibiting the filling of herbicide or pesticide spray equipment close to wells
- prohibiting the dumping of hazardous substances or petroleum products
- making the lessee solely responsible for compliance with all applicable Federal, State, and local environmental laws and indemnifying the United States from liability arising out of the release of hazardous substances or petroleum products on the property.

64 Managing and Disposing of Inventory Property

A Overview

The CERCLA secured creditor exemption requires FSA to sell or otherwise divest real property acquired through foreclosure at the earliest practicable time on commercially reasonable terms while accounting for market conditions and legal and regulatory requirements.

If the inventory property is deemed to be owned by the U.S. and not subject to the protections of the CERCLA secured creditor exemption, then the agency must comply with the requirements of CERCLA Section 120(h) when conveying the real property out of Federal ownership. CERCLA Section 120(h)(3)(A) requires, among other things, that a Federal agency transferring real property to a non-federal entity include a covenant in the deed of transfer warranting that all remedial action necessary to protect human health and the environment has been taken prior to the date of transfer with respect to any hazardous substances remaining on the property.

The determination of whether the property is subject to the secured creditor protections will also help determine the most appropriate terms and conditions to include in the contract and deed of conveyance.

FSA's statutory and regulatory requirements, such as targeting sale of inventory property to beginning or socially disadvantaged applicant farmers or ranchers, may extend the reasonable time allowed under the CERCLA secured creditor provisions. Actions taken to dispose of the property and any delays should be clearly documented in the file. The determination of whether the secured creditor exemption is available must be based on a review of the facts involved in each case. The SEC should be consulted on any question regarding FSA maintaining the secured creditor exemption. In addition, the OGC Pollution Control Team should be contacted before any covenant, excluding lead-based paint covenants, is included in the deed for transfer of inventory property. Consultation with OGC can be arranged by SEC.

B Hazardous Substance or Petroleum Contamination

FSA will typically not conduct cleanups or remediation of hazardous substances or petroleum contamination on inventory properties before, or as a condition of a sale except where the requirements of CERCLA Section 120(h) are determined to be applicable. Agency cleanup specialists and the OGC Pollution Control Team should be consulted prior to any decision to foreclose on (or accept voluntary conveyance of) contaminated property and prior to any decisions by FSA to undertake cleanup work.

64 Managing and Disposing of Inventory Property (Continued)

C Underground Storage Tanks

EPA considers regulated UST's to be in use and in operation if petroleum is added to, dispensed from or stored in a UST. Therefore, FSA should not continue to use, store, dispense, or fill petroleum in a UST or UST systems after obtaining marketable title and access to an UST or UST system. Affirmative action's such as tank emptying, capping, and securing lines, permanent or temporary closure, and release reporting are not considered participation in management and will not incur RCRA UST liability [40 CFR 280.210(b)(2)(B)]. For a property under a Homestead Protection lease, SEC should be consulted for guidance in how to deal with using USTs during the term of the lease.

Note: This would not apply to an unregulated UST that provides heating oil to the house in which the Homestead Protection tenant resides, provided the tank is not leaking, was installed, and is functioning in compliance with all State and local regulations.

FSA should **not** conduct removal or corrective actions for UST's without prior coordination with agency cleanup specialists and the OGC Pollution Control Team. To keep the secured creditor exemption and prevent possible liability, a secured creditor may need to do some actions when they foreclose on a property under RCRA regulations. These actions are especially necessary when the property is abandoned by the borrower.

Some of these actions are:

- notify the appropriate regulatory authority of the change in ownership or control of the property within 90 days of foreclosure.
- comply with any applicable RCRA permit conditions or orders that are in effect at the time of foreclosure
- take reasonable steps to stop any actual or threatened release of hazardous waste or constituents, prevent or limit human, environmental, or natural resource exposure to any such release, and maintain the effectiveness of any response action taken at the property
- provide access to the property to persons authorized to conduct response actions or corrective actions
- cooperate with any authorized person in connection with any response action or corrective action taken at the property
- not impede any response action or corrective action taken at the property.

These actions are intended to protect human health and the environment and do not constitute participation in management of the facility. However, if the secured creditor engages in any activities that go beyond these actions, such as operating or making operational decisions regarding the facility, then they may lose the secured creditor exemption and become liable as an owner or operator under RCRA. Therefore, it is important to coordinate with agency cleanup specialists and the OGC Pollution Control Team.

64 Managing and Disposing of Inventory Property (Continued)

D Above Ground and Heating Oil Tanks

Above ground and heating oil tanks are not regulated according to RCRA, Subchapter IX, but may be regulated by state laws and regulations. The appropriate local environmental regulatory authority should be consulted to determine whether corrective action is necessary or if the state has statutory or regulatory exclusions for lenders who make loans to borrowers who own or operate AST's or heating oil tanks.

E Oil and Gas Production

Property acquired by FSA currently or previously used for oil or gas production resulting in petroleum contamination may in certain circumstances subject FSA to liability for site cleanup. Moreover, environmental contamination from oil and gas activities can adversely affect the value and use of the property and should be considered as part of due diligence. Releasing hazardous substances or disposing of hazardous waste from oil and gas production may trigger potential liability under CERCLA, RCRA, and other Federal or state environmental laws. Other environmental laws may require reporting and/or corrective actions.

The SEC should consult with the OGC Pollution Control Team through ENV and the appropriate environmental regulatory authority to determine if Federal or State laws or regulations require corrective action. When the property is being sold back to the debtor who is PRP according to CERCLA, FSA will not implement corrective actions. CERCLA, Section 120(h)(3)(A)(i) requires that FSA provide notice of the hazardous substance contamination in the deed, CERCLA, Section 120(h)(3)(B) provides that FSA is not required to provide CERCLA, Section 120(h)(3)(A)(ii) "no further cleanup action required" and "comeback" covenants when transferring property to a PRP. The deed should refer to FSA-851 and ESA's for the CERCLA notice, Section 120(h)(3)(A)(i). This documentation is retained in a permanent file by SEC in the State Office.

F SDA and Beginning Farmer Precautions

Contamination issues can adversely affect the ability of beginning or SDA farmers and ranchers to be successful, contaminated inventory properties generally should not be considered for beginning or SDA farmers and ranchers. If FSA decides to conduct a corrective action for a UST or other contamination, the agency will coordinate with OGC and contract with an environmental professional according to applicable Federal, state, and local laws and regulations.

65 Notification and Advertising Requirements for Contaminated Inventory Property

A Overview

Inventory property that is contaminated, has UST's, or lead-based paint will require specific notices in the sales advertisement. These notices will state that the property contains hazardous substance contamination, UST's, or lead-based paint and a copy of the environmental documentation will be available for review at the local FSA office.

In addition to the clearance stipulated in Paragraph 61, prior to the sale of these properties, they will be referred to OGC for verification of the maintenance of the lender liability exemption and provision of the requisite language for the advertisement based on their determination. SEC will consult with the OGC Pollution Control Team for guidance on the specific language to be included in the advertisement.

B Property With Lender Liability Exemption Under CERCLA

OGC will provide language indicating that the purchaser assumes any and all cleanup obligations applicable to the property under Federal, State, and local law. Purchaser agrees to indemnify, release, and hold harmless the United States from and against any future liabilities related to the environmental condition of the property, including but not limited to liabilities arising in tort or under any environmental law.

C Property Without Lender Liability Exemption Under CERCLA

If FSA loses its lender liability exemption under CERCLA, then FSA will be required to comply with CERCLA Section 120(h). In addition, if FSA loses the lender liability exemption under RCRA, then FSA may be considered an UST "owner" according to 42 U.S.C. 6991b(h)(9) and may be required to conduct an investigation and/or corrective action at the UST on the property. If OGC determines that the lender liability exemption under CERCLA was lost, then alternative language for the advertisement will be provided.

66 Renovation or Repair of Residential Property Owned by FSA

A Process

The following summarizes the LBP-related policy of FSA relating to the sale of FSA owned (inventory) target housing. Requirements differ depending on when the dwelling was constructed. It is important to consult FSA/USDA cleanup specialists and the OGC Pollution Control Team prior to making any decisions to undertake cleanup work.

The OGC Pollution Control Team plays a crucial role in determining how properties contaminated with lead-based paint will be handled. This team will assess the situation and provide guidance with respect to cleanup measures to ensure that the property is safe for future use. Additionally, the OGC Pollution Control Team will advise as to any needed contract language to be included in the sales documents to ensure that all parties are aware of the contamination and the steps taken to address it.

The below guidance that will be implemented if the OGC Pollution Control Team determines that repairs and abatement are necessary.

If the dwelling was constructed...	**THEN FSA will...**
before 1960	• have a risk assessment and an LBP inspection of the property performed before the sale closing, and performed no more than 12 months before the beginning of the abatement [**24 CFR Part 35.210(a) and (b)**] • abate all LBP hazards identified in the risk assessment according to 40 CFR Part 745.227 **Note:** An abatement will not be considered complete until a clearance examination has been completed and the clearance levels in 40 CFR 745.227(e)(8) have been achieved **[24 CFR Part 35.210(b)]** • in the case where abatement is not completed before the closing of the sale, FSA will ensure, with the following purchase agreement and deed language, that abatement is carried out by the purchaser before occupancy of the property **[24 CFR Part 35.210(b)]**: "The Grantee is restricted from inhabiting or allowing the occupation of_____(include a brief description of the dwelling) until any LBP hazards of the said dwelling have been abated according to the requirements of 40 CFR 745.227 and a copy of the abatement report described at 40 CFR 745.227(e)(10) has been provided to the Grantor."
in or after 1960 but before 1978	• have a risk assessment and an LBP inspection of the property performed before the sale closing [**24 CFR Part 35.215]** • make available the results of the risk assessment and LBP inspection to prospective purchasers or lessee according to disclosure requirements of HUD (Exhibits 7, 8, and 9) Title X, Subpart A. **[24 CFR Part 35.88]**

66 Renovation or Repair of Residential Property Owned by FSA (Continued)

A Process (Continued)

According to 24 CFR Part 35.210(b), it is possible for the purchaser of residential property to assume responsibility for LBP abatement activities. However, the decision whether to abate or allow the purchaser to assume responsibility for the repairs must be made in consultation with the OGC Pollution Control Team. This team will assess the situation and determine the most appropriate course of action to ensure that the property is safe for future use and that all parties are aware of their responsibilities.

To request OGC Pollution Control Team guidance, submit a ServiceNow (SNOW) ticket through the ENV SharePoint (https://usdagcc.sharepoint.com/sites/FBC-EnvAct/).

67 Reporting to Regulatory Authority

A Overview

Whether a response or corrective action is taken or not, FSA is responsible after foreclosure or voluntary conveyance to report to the appropriate environmental regulatory authority about any discovery of a release of regulated substances, such as LUST, unregulated pesticide disposal, or illegal disposal of hazardous waste that has contaminated the air, soil, groundwater, or surface waters.

Reporting is necessary to ensure protection of human health and the environment.

B Responsibilities

SEC will contact the appropriate State regulatory authority when reporting the release of regulated substances becomes necessary. This report is documented in writing and filed with FSA-851.

Reports, Forms, Abbreviations, and Redelegations of Authority

Reports

None

Forms

This table lists all forms referenced in this handbook.

Number	Title	Display Reference	Reference
	HUD Disclosure Form for Target Housing Rentals and Leases	Ex. 8	66
	HUD Disclosure Form for Target Housing Sales	Ex. 9	66
FSA-851	Environmental Risk Survey Form		4, 6,12, 25, 6, 62,

Abbreviations

The following abbreviations are not listed in 1-CM.

Approved Abbreviation	Term	Reference
AAI	all appropriate inquiries	Text
ACM	asbestos-containing building material	41
AST	above ground storage tank	20, 30, Ex. 2
ASTM	ASTM International, formerly known as the American Society for Testing and Materials	3, 4, 6, 19, 61, 62
CAFO	Concentrated Animal Feeding Operations	11, 26
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act	Text, Ex. 2
CWA	Clean Water Act	26, 48, Ex. 2
ENV	Environmental Activities Division	61, 64, 66
ESA	environmental site assessment	Text
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act	29
HUD	Department of Housing and Urban Development	2, 66, Exhibits

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

Abbreviations (Continued)

Approved Abbreviation	Term	Reference
LBP	lead-based paint	44, 66
LUST	leaking underground storage tank	11, 12, 31, 67
MSW	municipal solid waste	22, 28
NPDES	National Pollutant Discharge Elimination System	23, 26
NEPA	National Environmental Policy Act	1, 11, 42, 48
NMP	nutrient management plan	26
NPL	Superfund – National Priority List	11
PCB	polychlorinated biphenyls	27
PFAS	per- and polyfluoroalkyl substances	25, 49
PFOA	perfluorooctanoic acid	25, 49
PFOS	perfluorooctane sulfonic acid	25, 49
PRP	potentially responsible party	2, 64, Ex. 2
REC	recognized environmental condition	Text
RCRA	Resource Conservation and Recovery Act	Text, Ex. 2
SEC	State Environmental Coordinator	42, 64, 65, 67
SPCC	Spill Prevention, Control, and Countermeasure	20
SDWA	Safe Drinking Water Act	25
TSCA	Toxic Substances Control Act	11, 44, Ex. 2
UST	underground storage tank	2, 4, 11, 20, 31, 64, 65, Ex. 2
WOTUS	waters of the United States	20, 26, 48

Redelegations of Authority

None.

Definitions of Terms Used in This Handbook

Abatement

Abatement is any set of measures designed to permanently eliminate LBP hazards and must be implemented by firms and individuals certified to do so. **[24 CFR Part 35.110]**

Applicable Surfaces

Applicable surfaces are all interior surfaces, whether accessible or not, and those exterior surfaces which are readily accessible to children under 7 years of age, such as stairs, decks, porches, railings, windows, and doors.

Above Ground Storage Containers

AST's are tanks or other containers that are above ground, partially buried, bunkered, or in a subterranean vault.

Clearance Examination

A clearance examination is an activity conducted following LBP hazard reduction activities to determine that the hazard reduction activities are complete and that no soil-lead hazards or settled dust-lead hazards exist in the dwelling unit or worksite. The process includes a visual inspection and collection and analysis of environmental samples. The clearance examination must be completed by a certified inspector or risk assessor who was not involved in performing the lead hazard control activities. **[24 CFR Part 35.110]**

Due Diligence

Due diligence is the process of evaluating real estate, in the context of a real estate transaction, for the presence of contamination from the release of hazardous waste, petroleum products, or other environmental hazards, and determining the effect, if any, the contamination has on the regulatory status or security value of the property.

Elderly Housing

Elderly housing is households composed of one or more persons 62 years of age or more at the time of initial occupancy.

Definitions of Terms Used in This Handbook (Continued)

Environmental Professional

An environmental professional is someone who possess sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions about conditions indicating releases or threatened release on, at, in, or to a property, sufficient to meet the objectives and performance factors of 40 CFR Part 312, and has any of the following:

- a State or tribal issued certification or license and 3 years of relevant full-time work experience
- a Baccalaureate degree or higher in science or engineering and 5 years of relevant full-time work experience
- 10 years of relevant full-time work experience.

Friable

Friable describes asbestos that can be reduced to dust by hand pressure.

Hazardous Substance

A hazardous substance, as identified by 42 U.S.C. 9601, is any:

- substance designated under CWA, Section 311 (b)(2)(A)
- element, compound, mixture, solution, or substance designated according to CERCLA, Section 102
- hazard waste having characteristics listed under RCRA, Section 3001
- toxic pollutant listed under CWA, Section 307(a)
- hazardous air pollutant listed under CAA, Section 112
- any imminently hazardous chemical substances or mixtures, with respect to which EPA has taken action according to TSCA, Section 7.

Definitions of Terms Used in This Handbook (Continued)

Hazardous Waste

Hazardous waste is a solid waste, combination of solid waste, wastewater, or liquid which because of its quality, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or pose a substantial present or potential hazard to human health. See 40 CFR Part 261.3 for the regulatory definition of a hazardous waste and 40 CFR Part 261.4 for waste material excluded from the definition of hazardous waste.

Housing or Buildings

Housing or buildings are any house, apartment, or structure intended for human habitation. This includes any institutional structure where persons reside, such as an orphanage, boarding school, dormitory, day care center or extended care facility, college housing, domestic or migratory labor housing, hospitals, group practice facilities, community facilities, and business or industrial facilities.

Indemnify

Indemnify is:

- security against hurt, loss, or damage
- exemption from incurred penalties or liabilities.

Inventory Property

Inventory property is real estate or chattel property and related rights that formerly secured an FLP loan and to which the federal government has acquired a title.

Joint and Several

Joint and several means any one PRP may be held liable for the entire cleanup of the site (when the harm caused by multiple parties cannot be separated).

Interim Control

Interim control is a set of measures designed to reduce temporarily human exposure or likely exposure to LBP hazards. These measures may include specialized cleaning, repairs, maintenance, temporary containment, ongoing monitoring of LBP hazards or potential hazards, and establishment and operation of management and resident education programs.
[24 CFR Part 35.110]

Definitions of Terms Used in This Handbook (Continued)

Indicia of Ownership

Indicia of ownership is evidence of a secured interest, evidence of an interest in a secured interest, or evidence of an interest in real or personal property security for a loan or other obligation, including any legal or equitable title or deed to real or personal property acquired through or incident to foreclose. Evidence of such interests include, but are not limited to mortgages, deeds of trusts, liens, surety bonds and guaranteed for obligations and legal or equitable title obtained according to foreclosure or voluntary conveyance.
[**40 CFR Part 280.200]**

Lead-Based Paint

LBP is paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight. **[24 CFR Part 35.110]**

Lead-Based Paint Hazard

LBP paint hazard is any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency. **[24 CFR Part 35.110]**

Lead-Based Paint Inspection

An LBP inspection is a surface-by surface investigation by a certified inspector or risk assessor to determine the presence of LBP and the provision of a report explaining the result.
[24 CFR Part 35.110]

National Contingency Plan (40 CFR Part 300)

NCP provides guidelines and procedures needed to respond to releases and threatened releases of hazardous substances, pollutants, or contaminants. CERCLA enabled the revision of NCP

Nonfriable

Nonfriable describes asbestos that is too hard to be reduced to dust by hand pressure.

Paint Testing

Paint testing is the process of determining, by a certified LBP inspector or assessor, the presence or absence of LBP on deteriorated paint surfaces or painted surfaces to be disturbed or removed.
[24 CFR Part 35.110]

Definitions of Terms Used in This Handbook (Continued)

Participate in Management

Participate in management is a term used to describe a lender who exercised decision making control over the environmental compliance concerning the facility or operation or exercised control at a level comparable to that of a manager of the facility or operation, undertaking responsibility for hazardous substance handling or disposal practices **[40 CFR Part 280.210]**, while the borrower was still in possession of the property.

Petroleum Products

Petroleum products (and their derivatives) are uncontaminated petroleum products that are not, by definition, a hazardous substance. Petroleum products include crude oil or any fraction thereof which is not specifically listed under the definition of "hazardous substances" found in 42 U.S.C. 9601(14).

Potentially Responsible Party

Under CERCLA, those who can be held liable for the costs of responding to a release or the threat of a release of hazardous substances are considered to be PRP's. [**42 U.S.C. 9607]** PRP's are:

- current owners or operators of the facility or vessel
- former owners or operators of the facility or vessel, if they owned the property at the time of disposal
- those who arrange for treatment or disposal of hazardous substances at a facility, in most cases, generators
- transporters of hazardous substances who selected the disposal site.

Note: CERCLA liability is retroactive, meaning that parties may be held liable for releases that occurred prior to the enactment of the statute in 1980.

Residential Property

Residential property means a dwelling unit, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences, and play equipment affixed to the land belonging to an owner and available for use by residents, but not including land used for agricultural, commercial, industrial, or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways. **[24 CFR Part 35.110]**

Definitions of Terms Used in This Handbook (Continued)

Recognized Environmental Condition

Recognized environmental condition means the presence or likely presence of any hazardous substances or petroleum products in, on, or at a property:

- due to any release to the environment
- under conditions indicative of a release to the environment
- under conditions that pose a material threat of a future release to the environment.

De minimis conditions are not recognized environmental conditions.

Response Action

Response action is all investigative and remedial activities concerning a resolution of an environmental threat or contamination caused by a release or disposal of hazardous substances, hazardous waste, or petroleum products. **[42 U.S.C. 9601]**

Retroactive

Retroactive means that parties may be held liable for acts that happened before Superfund's enactment in 1980.

Risk Assessment

Risk assessment is an onsite investigation performed by a certified LBP risk assessor to determine the existence, nature, severity, and location of LBP hazards and the provision of a report to the individual or firm having the risk assessment conducted explaining the results of the investigation and options for reducing LBP hazards. This act determines the risk to the borrower's financial feasibility or the FSA's collateral that is posed by the potential presence of contaminants affecting value. **[24 CFR Part 35.110]**

Safe Work Practices

Safe work practices, as described in 24 CFR Part 35.1350, are work practices that do not use prohibited paint removal methods and protect occupants, their belongings, and the environment from lead contamination. Renovators may receive HUD or EPA training on safe work practices, but there is currently no certification process or requirement. Safe work practices are not required when maintenance or hazard reduction activity does not disturb painted surfaces that total more than:

- 2 square meters (20 square feet) on exterior surfaces
- 0.2 square meters (2 square feet) on interior surfaces
- 10 percent of the total surface area on an interior or exterior type of component with small surface area.

Definitions of Terms Used in This Handbook (Continued)

Strict

Strict means that a PRP cannot simply say that it was not negligent or that it was operating according to industry standards. If a PRP sent some amount of the hazardous waste found at the site, that party is liable.

Target Housing

Target housing is any housing constructed before 1978, except for the elderly or persons with disabilities, unless any child who is less than 6 years old resides or is expected to reside in such housing, or any zero-bedroom dwelling. **[40 CFR Part 35.86]**

Underground Storage Tank

UST is any 1 or combination of tanks as defined in 40 CFR Part 280.12. UST is any 1 or combination of tanks, including underground piping connected thereto, that is used to contain an accumulation of regulated substances, and the volume of which, including the volume of underground pipes connected thereto is 10 percent or more beneath the surface of the ground. For the purposes of this handbook, regulated tanks are those subject to Federal regulation under RCRA. **[40 CFR Part 280.12]**

Underground Storage Tank System

A UST system is a UST, connected underground piping, underground ancillary equipment, and containment equipment, if any. **[40 CFR Part 280.12]**

Unregulated Underground Storage Tank

An unregulated UST is a tank not included in the definition of UST found in 40 CFR Part 280.12 and is not subject to the requirements of RCRA, Subtitle I, including:

- farm and residential tanks of 1,100 gallons or less capacity for storing motor fuel for noncommercial purposes
- UST's of any size used for storing heating oil for consumptive use on the premises where stored
- other types of tank systems listed in 40 CFR Part 280.12, such as septic tanks; pipeline facilities; surface impoundment, pit, pond, lagoons, or storm water retention facilities.

Definitions of Terms Used in This Handbook (Continued)

Zero-Bedroom Dwelling

A zero-bedroom dwelling is any residential dwelling in which the living area is not separated from the sleeping area, which includes the following:

- efficiencies
- studio apartments
- dormitory housing
- military barracks
- rentals of individual rooms in residential dwellings. **[24 CFR Part 35.86]**

State Supplements

The following table lists required State supplements.

Paragraph	Required State Supplement
18	Provide guidance for contacting regulatory agencies to obtain compliance information for wells located on and adjacent to proposed security.
19	Provide guidance about PFAS.
25	Provide guidance for testing requirements about water wells.

Note: SED's will:

- issue State supplements according to 1-AS, paragraph 216
- obtain prior approval of State supplements from ENV.

Sample Seller's Lead Disclosure Information

An electronic copy is available on the EPA website at https://www.epa.gov/lead/sellers-disclosure-information-lead-based-paint-andor-lead-based-paint-hazards.

Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Lead Warning Statement

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

Seller's Disclosure

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) _____ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

_____

(ii) _____ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the seller (check (i) or (ii) below):

(i) _____ Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

_____

(ii) _____ Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Purchaser's Acknowledgment (initial)

(c) _____ Purchaser has received copies of all information listed above.

(d) _____ Purchaser has received the pamphlet *Protect Your Family from Lead in Your Home.*

(e) Purchaser has (check (i) or (ii) below):

(i) _____ received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or

(ii) _____ waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

Agent's Acknowledgment (initial)

(f) _____ Agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Seller	Date	Seller	Date
Purchaser	Date	Purchaser	Date
Agent	Date	Agent	Date

Sample Lessor's Lead Disclosure of Information

An electronic copy is available on the EPA website at https://www.epa.gov/sites/default/files/documents/lesr_eng.pdf.

Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Lead Warning Statement

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

Lessor's Disclosure

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) _____ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

_____

_____

(ii) _____ Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the lessor (check (i) or (ii) below):

(i) _____ Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

_____

_____

(ii) _____ Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Lessee's Acknowledgment (initial)

(c) _____ Lessee has received copies of all information listed above.

(d) _____ Lessee has received the pamphlet *Protect Your Family from Lead in Your Home.*

Agent's Acknowledgment (initial)

(e) _____ Agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

Lessor	Date	Lessor	Date
Lessee	Date	Lessee	Date
Agent	Date	Agent	Date

Sales Contract Contingency Language for LBP Inspection

The following language will be used in sales contracts to make the sale contingent upon an LBP inspection. This language can be found on the HUD website at https://www.hud.gov/sites/documents/20264_OPTIONTOTEST.PDF.

Guidance on The Homebuyer's Option To Test For Lead-Based Paint and Lead-Based Paint Hazards

The HUD/EPA Disclosure Rule includes the following language on a homebuyer's right to conduct a lead hazard evaluation.

24 CFR Part 35, Subpart A:

35.1 Opportunity to conduct an evaluation

(a) Before a purchaser is obligated under any contract to purchase target housing, the seller shall permit the purchaser a 10-day period (unless the parties mutually agree in writing, upon a different period of time) to conduct a risk assessment or inspection for the presence of lead-based paint and /or lead-based paint hazards

(b) Notwithstanding paragraph (a) of this section, a purchaser may waive the opportunity to conduct the risk assessment or inspection by indicating so in writing.

What does this option mean for the homebuyer?

- After signing a contract, the buyer has 10 days to perform a risk assessment or paint inspection in the home. The buyer and seller may mutually agree to lengthen or shorten this 10-day time period.
- If the buyer exercises this right, the buyer is responsible for scheduling and paying for the risk assessment or the paint inspection.
- If the lead hazard evaluation indicates that lead-based paint and/or lead-based paint hazards are found, the buyer has the right to cancel the contract. However, this right does not exempt the buyer from any costs of cancellation if the right to cancel is not made clear in the contingency to the sales contract. HUD and EPA have suggested optional wording as provided in Exhibit A below.

What does this option mean for the seller?

- The sales contract must include language regarding the right to conduct a lead hazard evaluation. It must state:
  - The buyer's right to conduct an evaluation within 10 days (or other mutually agreed upon time period) and to cancel the contract if lead-based paint and/or lead hazards are identified.
  - Or , that the buyer has waived the right to conduct a lead hazard evaluation.
- The seller is not required to pay for the paint inspection or risk assessment.
- If the seller is dealing with two potential buyers, one of who waives the right to the lead hazard evaluation and one of whom does not, the seller can choose to sign a contract with the buyer who waives the right.

How does this rule affect a homebuyer program design?

- If a homebuyer is purchasing a home with Federal assistance, that homebuyer, like any other buyer has the right to request a risk assessment or a paint inspection.
- Participants in the program must be informed of this right.
- Program administrators face a design decision: Will the program pay for the evaluation if the homeowner requests it?

Sales Contract Contingency Language for LBP Inspection (Continued)

How does the rule affect homebuyer program procedures?

- If the evaluation reveals lead-based paint and/or hazards, there is no requirement to address the hazards, however, some action is prudent.
  - The Lead Safe housing rule requirements for acquisitions require only the stabilization of deteriorated paint and passing clearance.
  - If the evaluation reveals intact lead-based paint, there is no action to be taken.
  - If the evaluation reveals lead hazards, no action is required by Federal regulations but it would be prudent to address the hazards identified, either through abatement or interim controls.
- Four options for addressing lead hazards found due to such evaluations are:
  - Provide rehabilitation loans or refer buyers to a rehabilitation loan program
    - If rehabilitation hard costs or the federal assistance exceed $5,000, the requirements of Subpart J apply – all hazards would have to be addressed and clearance passed.
    - The buyer would have to qualify for the additional assistance
    - Sources of rehab funding include HOME, CDBG, 203(k), state/local rehab funds
  - Reject homes with lead hazards from the program and assist the buyer in finding another home.
    - This policy would have to be documented in the program requirements and communicated to the buyer in advance
    - This policy should also be communicated to sellers prior to signing a contract.
    - Ensure that the sales contract signed includes a contingency allowing the buyer to cancel the contract if lead-based paint or lead-based paint hazards are found.
  - Have the seller fix the hazard prior to purchase (especially if the hazards are small).
    - In this case, no federal funds can be used for the work.
    - It would be prudent to require that the seller use lead safe work practices and that the unit to pass clearance prior to closing.
  - Negotiate the price of the home down to provide funds for the buyer to fix the hazards. (This is not common but is permissible).
    - In such a case, if rehabilitation hard costs or federal assistance exceed $5000, the requirements of subpart J apply.

Exhibit A: Sample Contract Contingency Language

This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards at the Purchaser's expense until 9 p.m. on the tenth calendar day after ratification [insert date 10 days after contract ratification or a date mutually agreed upon]. (Intact lead-based paint that is in good condition is not necessarily a hazard. See the HUD/EPA/CPSC pamphlet *Protect Your Family From Lead-Based Paint In Your Home* for more information.) This contingency will terminate at the above predetermined deadline unless the Purchaser (or Purchaser's agent) delivers the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within ___ days after Delivery of the addendum, elect in writing whether to correct the conditions(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Purchaser with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the seller does not elect to make repairs, or if the Seller makes a counter-offer, the Purchaser shall have ___ days to respond to the counter-offer or remove this contingency and take the property in "as is" condition or this contract shall become void. The Purchaser may remove this contingency at any time without cause.

HUD Disclosure Form for Target Housing Sales

When selling FSA-owned, nonexempt target housing, the following, that is available at **http://portal.hud.gov/hudportal/documents/huddoc?id=20264_salesform.pdf**, shall be completed to document disclosure of lead-based paint and/or lead-based paint hazards, as provided in 24 CFR Part 35.88.

Disclosure Form for Target Housing Sales
Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Lead Warning Statement

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

Seller's Disclosure (initial)

_____(a) Presence of lead-based paint and/or lead-based paint hazards (check one below):

☐ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

_____

_____

☐ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing

_____(b) Records and reports available to the seller (check one below):

☐ Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

_____

_____

☐ Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Purchaser's Acknowledgment (initial)

_____ (c) Purchaser has received copies of all information listed above.
_____ (d) Purchaser has received the pamphlet *Protect Your Family From Lead in Your Home*.
_____ (e) Purchaser has (check one below):

☐ Received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or
☐ Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

Agent's Acknowledgment (initial)

_____(f) Agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information provided by the signatory is true and accurate.

_____ Seller	_____ Date	_____ Seller	_____ Date
_____ Purchaser	_____ Date	_____ Purchaser	_____ Date
_____ Agent	_____ Date	_____ Agent	_____ Date

HUD Disclosure Form for Target Housing Rentals and Leases

When leasing FSA-owned, nonexempt target housing, the following, that is available at **http://portal.hud.gov/hudportal/documents/huddoc?id=20264_rentalform.pdf**, shall be completed to document disclosure of lead-based paint and/or lead-based paint hazards, as provided in 24 CFR Part 35.88.

Disclosure Form for Target Housing Rentals and Leases
Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards

Lead Warning Statement

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

Lessor's Disclosure (initial)

_____(a) Presence of lead-based paint or lead-based paint hazards (check one below):

☐ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).
_____
_____

☐ Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

_____(b) Records and reports available to the lessor (check one below):

☐ Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).
_____
_____

☐ Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Lessee's Acknowledgment (initial)

_____(c) Lessee has received copies of all information listed above.
_____(d) Lessee has received the pamphlet *Protect Your Family From Lead in Your Home*.

Agent's Acknowledgment (initial)

_____(e) Agent has informed the lessor of the lessor's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information provided by the signatory is true and accurate.

_____ Lessor	_____ Date	_____ Lessor	_____ Date
_____ Lessee	_____ Date	_____ Lessee	_____ Date
_____ Agent	_____ Date	_____ Agent	_____ Date

--*