FSA
HANDBOOK

Environmental Risk Management

For State and County Offices

SHORT REFERENCE

2-EQ

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

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Environmental Risk Management 2-EQ	Amendment 1

Approved by: Acting Deputy Administrator, Farm Programs

Amendment Transmittal

A Reason for Issuance

This handbook has been issued to provide:

- policy and procedure for LBP and environmental risk management issues
- environmental risk management associated with hazardous substances and hazardous waste.

Notes: This information was previously in 1-EQ.

As a result of consulting with OGC, there have been a number of program and policy changes to aid in limiting FSA environmental liabilities.

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Part 1 General Information

1 Purpose, Sources of Authority, and Related Handbooks

A Handbook Purpose

This handbook:

- will assist FSA, contractors, and others to conduct appropriate due diligence and environmental risk management to aid in limiting FSA's environmental liabilities while at the same time protecting the environment and health and safety of the public

- contains procedures and guidelines for completing the appropriate level of due diligence and environmental risk management to enable FSA to maintain it's lender liability exemption and comply with applicable environmental laws, regulations, and Executive Orders.

B Sources of Authority

The sources of authority for this handbook include:

- 24 CFR Part 35; HUD Lead Based Paint
- 40 CFR Part 312; EPA All Appropriate Inquiries Rule
- 42 U.S.C. 9601 et seq.; CERCLA
- 42 U.S.C 6901 et seq.; RCRA
- 15 U.S.C. 2601 et seq.; TSCA
- 40 CFR Parts 280, 281, and 282.50-282.105; UST Regulations.

Other regulations, laws, and statutes that may be referenced throughout this handbook.

C Related Handbooks

The following FSA handbooks concern environmental risk management.

IF the area of concern is about…	THEN see…
environmental requirements	1-EQ.
guaranteed loanmaking and loan servicing	2-FLP.
direct loanmaking	3-FLP.
direct loan regular or routine servicing	4-FLP.
direct loan special servicing and inventory property management	5-FLP.
the Emergency Loan Seed Producers Program, Horse Breeder Loan Program, ITLAP, SALP, and servicing of minor loan programs	6-FLP.

Note: RD Instruction 1940-G must be used along with 1-EQ and 2-EQ.

2-10 (Reserved)

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11 Statutory and Regulatory Requirement

A CERCLA/RCRA Lender Liability Exemptions

The Omnibus Consolidated Appropriations Act of 1997, Subtitle E, the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996 (the 1996 Act), Pub. L. 104-208, amended CERCLA, **[42 U.S.C. 9601 et seq]** to protect lenders from liability provided the lender did **not** participate in managing a property before foreclosures and who, after foreclosure, seek to divest the property at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements. The determination of whether FSA has maintained CERCLA and RCRA lender liability exemptions is made on a case-by-case basis, depending on the facts about the particular property.

In administering loan programs, FSA must ensure adequate security is obtained and risks associated with environmental contamination are greatly minimized. FSA must comply with applicable Federal, State, and local laws about managing and disposing of hazardous substances, hazardous waste, and petroleum products.

The 1996 Act, Section 2502 made several amendments to CERCLA, Section 101(20). The most significant change effected by the 1996 Act was revising the definition of owner or operator to exclude lenders not participating in facility management before foreclosure and those seeking to sell, lease, or otherwise dispose of the facility at the earliest practicable, commercially reasonable time on commercially-reasonable terms, taking into account market conditions and legal and regulatory requirements. After foreclosure, a lender who did not participate in management before foreclosure, may generally:

- maintain business activities
- wind up operations
- undertake a CERCLA response action, not inconsistent with NCP **[40 CFR Part 300]**
- take actions to preserve, protect, or prepare the property for sale
- sell, lease, or otherwise dispose of the property.

11 Statutory and Regulatory Requirement (Continued)

A CERCLA/RCRA Lender Liability Exemptions (Continued)

A lender that did not participate in management before foreclosure, to remain exempt after foreclosure, must seek to sell or otherwise divest itself of the property at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements. The statutory and regulatory requirements of FSA lending programs, e.g., the beginning or socially disadvantaged farmer or rancher priority periods for inventory properties, may extend the reasonable time allowed according to CERCLA lender liability provisions.

The CERCLA lender liability exemption excludes or exempts such lenders, as previously described, from the definition of an "owner" under CERCLA. When the exemption applies, FSA is **not** required by CERCLA, Section 120(h) **[42 U.S.C. 9620(h)]** to clean up hazardous substance contamination before transferring an inventory property or to provide CERCLA, Section 120(h) covenants. While it may be reasonable and prudent to conduct an environmental cleanup to divest FSA of an inventory property, the lender liability exemption may still be available and FSA would **not** have to provide CERCLA, Section 120(h) covenants.

Note: CERCLA specifically excludes petroleum products from the definition of hazardous substances and, therefore, FSA is never required to give CERCLA covenants about petroleum contamination.

The 1996 Act also amended RCRA, UST Title **[42 U.S.C. 6901 et seq]** to protect lenders who do not participate in managing UST's on the property. The 1996 Act, Section 2503 amended RCRA, Section 9003(h) by adding the following.

> "The terms "owner" and "operator" do not include a person that, without participating in the management of a UST and otherwise not engaged in petroleum production, refining, or marketing, holds indicia of ownership primarily to protect the person's security interest." **[42 U.S.C. 6991b(h)(9)]**

11 Statutory and Regulatory Requirement (Continued)

A CERCLA/RCRA Lender Liability Exemptions (Continued)

In 2005, Congress enacted USTCA, which made significant changes to the RCRA, UST Title. USTCA significantly strengthened the inspection and enforcement authorities of EPA and States. In addition to new inspection, training, and reporting requirements, USTCA greatly expanded the waiver of sovereign immunity of the United States with respect to Federal, State, and local UST requirements. The RCRA lender liability exemption excludes lenders that do not participate in managing UST from being considered an "owner" or "operator" and, therefore, the lender will not be subject to the UST requirements. The purchaser of the inventory property with a UST will, however, be required to meet the UST requirements.

Note: Tanks that do not fall within RCRA's definition of UST, e.g., heating oil tanks and small tanks below the RCRA threshold volume of 1,100 gallons used for motor fuel for noncommercial purposes, are not regulated according to RCRA and, therefore, are already exempted from RCRA liability. FSA should address non-RCRA regulated tanks just as it would any other environmental condition, i.e., disclose known conditions to prospective purchasers and seek an indemnification from the purchaser, when appropriate; take discretionary corrective actions when appropriate to protect public health and the environment; protect FSA's security interest in the property; or otherwise facilitate the resale of the inventory property.

B Other CERCLA Liability Exemptions

In 2002, Congress passed the Small Business Liability Relief and Brownfields Revitalization Act (Brownfields Amendments), which created and clarified new landowner liability exemptions for "innocent landowners," "bona fide prospective purchasers," and "contiguous property owners". It is not necessary to comply with EPA's AAI Rule **[40 CFR Part 312]** for the lender to maintain the lender liability exemptions. However, conducting environmental due diligence is important for FSA to determine the best course of action to maintain the lender liability exemptions. In addition, potential purchasers of inventory properties likely will want to comply with EPA's AAI Rule to qualify for the liability exemptions. Therefore, conducting due diligence likely will enhance the marketability of FSA inventory property.

The EPA's Lender Liability factsheet can be found at **http://www.epa.gov/oecaerth/resources/publications/cleanup/superfund/factsheet/lender-liab-07-fs.pdf**.

EPA's All Appropriate Inquiries Regulation:

- general information is available at **http://www.epa.gov/brownfields/regneg.htm**
- factsheet is available at **http://www.epa.gov/brownfields/aai/aai_final_factsheet.pdf**.

11 Statutory and Regulatory Requirement (Continued)

C Purpose

This section establishes and incorporates an environmental risk management policy for FSA lending practices in addition to land management practices for inventory properties. A major component of this risk management policy will be the performance of due diligence. 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. Due diligence will:

- minimize adverse impacts to FSA's security interests in real property caused by potential contamination from hazardous substances, hazardous waste, and petroleum products

- establish a process that minimizes FSA's liability according to the laws regulating management of hazardous substances, hazardous waste, and petroleum products

- include FSA's policies and procedures for managing hazardous substances, hazardous waste, and petroleum products and implement requirements of the following environmental laws:

  - CERCLA **[42 U.S.C. 9601 et seq]**
  - RCRA **[42 U.S.C. 6901 et seq]**
  - TSCA **[15 U.S.C. 2601 et seq]**

- help to reduce future losses from a reduction in market value and ensure compliance with applicable Federal, State, and local laws about the management of hazardous substances, hazardous waste, and petroleum products

- guide response or corrective actions when hazardous substances, hazardous waste, or petroleum products are present according to the changes to CERCLA and RCRA.

  Note: Even though this section provides guidance on certain exceptions allowed according to CERCLA and RCRA to undertaking response or corrective actions on properties FSA disposes of, the full requirements of CERCLA and RCRA may be triggered if FSA does not act within the boundaries of the secured creditor/lender liability exemption.

12 Responsibilities

A FSA Loan Approval Officials

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

B Appraisers

Appraisers are responsible for the following:

- notifying the appropriate FSA official of environmental concerns noted during the property inspection

- disclosing environmental concerns within the appraisal report as required by the Uniform Standards of Professional Appraisal Practice.

Concerns may include potential contamination from hazardous substances, hazardous waste, and petroleum products, disclosed by interested parties, through normal observations, or research conducted during an appraisal assignment. When an environmental professional is employed to assist the appraiser in determining the security value of real estate, the appraiser must disclose the assistance within the report and the consideration given the impact in the estimate of the property's "as is" market value, if the appropriate supporting documentation is available from an environmental professional.

C SEC's

SEC's are responsible for the oversight of all technical and regulatory interactions with CEPD in the National Office, other FSA staff, and the appropriate environmental regulatory authorities.

D Loan Applicants

Applicants are responsible for identifying and complying with all laws regulating management of hazardous substances, hazardous waste, and petroleum products affecting their financial operation or business interest. Recipients of FSA direct loans and FSFL's involving real estate security are expected to maintain their operations in an environmentally sound manner and not place FSA's security interests at risk.

12 Responsibilities (Continued)

E Environmental Professionals

A qualified environmental professional shall:

- perform all Phase I and/or II ESA's as defined in the AAI rule found in 40 CFR Part 312

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

- be responsible, in the context of due diligence, for evaluating remedial options and providing a cost estimate for response actions on a subject property

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

- be responsible for obtaining and analyzing environmental samples according to proper health and safety procedures required by 29 CFR Part 1910.120 and the most current sampling and laboratory protocols promulgated by the appropriate environmental regulatory authority.

13 Due Diligence Process

A Overview

FSA must conduct due diligence on real property being offered as basic or additional security for initial or subsequent direct loans including FSFL's, to determine the presence of hazardous substances and to accurately determine market or security values.
[7 CFR Part 1436.17; 764.51(b)(7); 766.112(b)(2); 771.6]

FSA will also conduct due diligence for the following:

- EM's including those not requiring an appraisal
- acquisition of real property
- certain servicing actions, including subordinations according to subparagraphs F and G, will also require due diligence.

FSA's due diligence process for direct loans consists of the following 2 steps:

- FSA-851's (Exhibit 5)
- Phase I and/or II ESA's.

Note: It may not be necessary to complete both steps in performing due diligence. It is necessary only to complete the level of review required to ascertain and document environmental and economic risk posed by potential contamination.

If market value is being determined, due diligence should be completed before the appraisal or simultaneous with the appraisal in those cases where the appraiser completes the site assessment.

The following explains the 2 step due-diligence process:

- FSA-851 is defined as the initial level of inquiry evaluating the environmental condition of potential security and concludes with a determination of whether additional evaluation is necessary

  Note: Properly and thoroughly completing FSA-851 will assist FSA in screening properties for potential environmental problems and, if necessary, referring those to the appropriate environmental professional for a Phase I and/or II ESA. Because site screening alone will not satisfy EPA's AAI Rule **[40 CFR Part 312]**, care should be taken to properly conduct the screening to identify properties that should be subject to a Phase I and/or II ESA.

- if the results of FSA-851 are inconclusive and professional review and judgment are needed, then the next level of review, Phase I and/or II ESA, shall be completed to clarify the issues raised by FSA-851.

13 Due Diligence Process (Continued)

A Overview (Continued)

Phase I ESA **[ASTM Standard E-1527-05]** is a detailed investigation and evaluation of a property's environmental condition and involves reviewing all pertinent records, a site inspection of the property, and preparing a brief narrative report communicating the findings and conclusions about the environmental condition of the property. If the property is considered contaminated based on a properly conducted Phase I ESA, a Phase II ESA may be performed, including sampling of contaminated media, e.g., soil, groundwater, air, and/or building materials. If FSA is aware of existing contamination, a Phase II ESA can be implemented without first conducting a Phase I ESA. To be eligible for CERCLA landowner liability protections (innocent landowner, contiguous property owner, and bona fide prospective purchaser), Phase I and/or II ESA's must be conducted by an environmental professional as defined in EPA's AAI Rule. **[40 C.F.R. Part 312]**

Note: In most cases, the environmental professional will be requested to provide cost estimates for remediation of the environmental hazards to an acceptable level according to Federal, State, and local laws and regulations. This level of review for FSA direct loans will be coordinated by SEC.

B Direct Loanmaking – CERCLA Issues

The release or presence of a hazardous substance, hazardous waste, or LUST on a property could affect the value of the property offered as basic or additional security for a loan. Furthermore, an applicant or borrower with substantial CERCLA or RCRA UST liability may have a severely diminished ability to repay. Therefore, due diligence will be:

- performed for all initial and subsequent loans including FSFL's involving real estate which serves as basic or additional security for the loan

- conducted for all real property being offered as security for subsequent loans.

It is not necessary to perform due diligence on real property where FSA has a review on file that is less than 1 year old and there is no reason to suspect that any changes in the property's condition has taken place. For real property with a due diligence review on file that is 1 year old or older, it is only necessary to update the existing review to reflect current information.

13 Due Diligence Process (Continued)

B Direct Loanmaking – CERCLA Issues (Continued)

If FSA determines that the property being offered as security contains possible hazardous substances or petroleum contamination based on FSA-851, FSA will notify the applicant that no further processing of the loan application can take place until 1 of the following occurs:

- applicant provides an AAI compliant environmental site assessment completed by a qualified environmental professional showing the property offered for security is not contaminated

- if available, different suitable property is offered as security for the loan

- contaminated property being offered as security has been fully remediated by the applicant according to a plan approved by the appropriate regulatory agency

- contaminated property can be subdivided, leaving a noncontaminated property to offer as security.

  Note: Proof **must** be provided that the potential contamination will not impact the adjoining property that is being used as security. This can be accomplished by the AAI compliant environmental site assessment provided by the applicant.

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

13 Due Diligence Process (Continued)

C Direct Loanmaking - UST's

If FSA determines that the property being offered as security contains UST's, the applicant will be notified that no further processing of the loan application can take place until the following requirements have been met:

- **regulated** UST, **greater than 1100 gallons**, the applicant shall provide evidence that it is complying with all applicable environmental laws and regulations including, but not limited to, the following:

  - UST is registered with the appropriate State regulatory agency along with tank installation data to show what type of tank was installed and measures employed to prevent or contain leakage

    Note: Evidence may also consist of test results from a qualified environmental professional.

  - evidence the tank has been removed according to State regulations and no contamination exists

    Note: Removal and testing must be completed by a firm authorized by the State to perform such removals.

- **nonregulated** UST, **1100 gallons or less**, the applicant shall either:

  - remove or permanently close UST according to State and local laws and regulations and provide evidence that no contamination exists

    Note: Excavated UST's may not be left on the security property.

  - provide evidence that the tank is **not** leaking and will **not** leak during the term of the loan.

    Note: Evidence may consist of:

    - tank installation data to show what type of tank was installed and measures employed to prevent leakage

    - test results from a qualified environmental professional.

13 Due Diligence Process (Continued)

C Direct Loanmaking - UST's (Continued)

Leaking tanks that effect water resources may be subject to the other Federal and State regulatory requirements, i.e. SDWA and CWA.

Example: A single pint of oil released into the water can cover 1 acre of water surface area and can seriously damage an aquatic habitat. A spill of only 1 gallon of oil can contaminate a million gallons of water. In these types of situations the applicant should be required to remove or permanently close the tank according to State and local laws and regulations and provide evidence that no contamination exists.

States have the primary authority to implement the UST program within their boundaries. State regulations can be more, but no less stringent than the Federal UST Regulations. For the latest information on the status of the UST programs in the States, click on the applicable State at **http://www.epa.gov/OUST/wheruliv.htm**. If a State does not have primary authority, then the Federal UST Regulations apply and can be found at **http://www.epa.gov/OUST/fedlaws/cfr.htm**.

D Direct Loanmaking - AST's

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

Note: Although most AST's and heating oil tanks, that are considered farm use, are generally exempt from Federal regulations, there are fire codes and environmental regulatory requirements that vary from State to State. When assessing potential liabilities from these types of tanks use common sense and check State and local regulatory requirements.

If these types of tanks are leaking and are not following State and local BMP's, extra care should be taken to assess potential liability.

At the Federal level, EPA requires nontransportation-related facilities with a total above-ground oil storage capacity of greater than 1,320 gallons to meet SPCC requirements. Both petroleum and nonpetroleum oils, e.g. vegetable oil, are regulated according to SPCC. SPCC and other Federal requirements about spill response and spill reporting can be found at **http://www.epa.gov/oilspill/spcc.htm**.

Any contamination found by FSA will be reported to the applicant, in writing, with instructions that reporting requirements may be necessary depending upon State regulatory requirements.

The AST factsheet is available at **http://www.epa.gov/OUST/cmplastc/asts.htm**. The heating oil tank factsheet is available at **http://www.epa.gov/OUST/faqs/heatoil.htm**.

13 Due Diligence Process (Continued)

E Guaranteed Loans

Guaranteed lenders are required to perform due diligence in conjunction with a request for a loan guarantee involving real estate as security. For loan guarantee requests, FSA will accept 1 of the following processes as documentation that due diligence has been completed:

- ASTM transaction screen questionnaire available from 100 Barr Harbor Drive, West Conshohocken, PA, 19428-2959

- similar environmental risk checklist that has been certified by the lender as AAI compliant or approved for use by FSA and supplemented, as necessary, by the ASTM Phase I environmental site assessment form.

After 1 of these has been completed, the potential environmental risks are noted by the lender, FSA may assist the lender in determining the best methods of ensuring that appropriate actions are taken so that adequate security is obtained for the loan request.

When processing loss claims for loan guarantees involving real estate security potentially affected by environmental risks, FSA will take into account the timing and quality of the due diligence completed by the lender in determining whether to pay a loss claim.

13 Due Diligence Process (Continued)

F Direct Loan Servicing

For transfers and assumptions, FSA-851 will be completed to document the condition of the property at the time of the transfer or assumption approval. If the security property is found to be contaminated, the transferor must fully remediate the property according to a plan approved by the appropriate regulatory agency before FSA will approve the transfer and assumption.

For debt restructuring involving new or additional security being offered, FSA will complete FSA-851. If any new or additional security is found to be significantly contaminated or contains UST, it will be handled according to subparagraphs B and C.

For a "Debt for Nature" contract, FSA will complete FSA-851 for all property being placed under the contract. As a member of the contract-review team, FSA will be responsible for completing FSA-851 at the time of the field visit. If required, corrective action must be taken by the borrower before FSA will approve the conservation contract.

G Foreclosure and Voluntary Conveyance

Due diligence will be completed on all properties being considered for foreclosure or voluntary conveyance by first completing FSA-851. If necessary, further evaluation in the form of a Phase I and/or II ESA will be completed.

To determine the foreclosure bid amount to take property into inventory or accept a voluntary conveyance offer, deductions for the potential cleanup of hazardous substances, hazardous waste, or UST's, as determined by a Phase II ESA prepared by an environmental professional will be included in 5-FLP, Exhibits 37 and 60. These estimates will include only those items that it is reasonable to assume FSA will be responsible to pay. This adjustment can only be authorized by SEC. Estimates other than those derived by completing a Phase II ESA will only be allowed on 5-FLP, Exhibits 37 and 60 when the estimated cost to complete the Phase II ESA, as documented by SEC, exceeds the equity recovery value of the security.

13 Due Diligence Process (Continued)

H Managing and Disposing of Inventory Property

To take advantage of the secured creditor exemption, FSA must seek to sell or otherwise divest itself of acquired property at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements. FSA's statutory and regulatory requirements, e.g., targeting sale of inventory property to beginning or socially disadvantaged farmers or ranchers priority periods for inventory properties, may extend the reasonable time allowed according to the CERCLA lender liability provisions. The determination of whether the secured creditor exemption is available must be based on a review of the facts involved in each case. Consult SEC in cases where there is a question as to whether the lender liability exemption continues to apply. The OGC Pollution Control Team, through CEPD, should be consulted before making any covenants, excluding LBP covenants, in a deed for the transfer of inventory property.

Under normal circumstances, where the secured creditor exemption is available, FSA will not conduct cleanups or remediation of hazardous waste, hazardous substances, or petroleum contamination on inventory properties before, or as a condition of, a sale except where:

- FSA actively participated in managing the property before its acquisition, i.e., the CERCLA and RCRA UST lender liability exemptions do **not** apply

- the property has been held in inventory and no diligent efforts have been made by FSA to dispose of the property at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements.

Notes: There is no set maximum time period and the determination of whether the reasonable time period has elapsed and, therefore, the lender liability exemption has been lost, will be made on a case-by-case basis.

Consult SEC in cases where there is a question as to whether the lender liability exemption continues to apply.

FSA will not consider the reasonable time period to begin until clear title is obtained to the property. Also, FSA will take no corrective or remedial action on property under lease with an option to purchase. The reasonable time period begins for a leased property when it becomes available for sale (lease expires or option to purchase was not exercised) and all appeals or litigations are concluded.

13 Due Diligence Process (Continued)

H Managing and Disposing of Inventory Property (Continued)

- contamination is of such an extent or nature that it is of immediate concern to the health and safety of neighboring property owners or to the potential purchasers of the property

  Note: The CERCLA lender liability exemption specifically provides that the lender does not lose the lender liability exemption when the lender conducts a response action that is not inconsistent with NCP **[40 CFR Part 300]**. Consult SEC to ensure that any cleanup conducted is not inconsistent with NCP.

- the property is being sold to a beginning or socially disadvantaged farmer or rancher and FSA is providing credit assistance through direct, participation, or guaranteed loan programs

  Notes: The sales price of the property shall reflect the value as if the property does not contain any contamination.

  Because contamination issues can adversely affect the ability of beginning or socially disadvantaged farmers and ranchers to be successful, severely contaminated inventory properties generally should **not** be considered for beginning or socially disadvantaged farmers and ranchers.

A Phase I and/or II ESA will be required if UST on the inventory property has not been upgraded or replaced to meet the requirements of 40 CFR Part 280.20 for new UST systems, 40 CFR Part 280.21 for upgraded systems, or if no external release detection method is in operation.

Under normal circumstances, FSA will **not** conduct removal or corrective actions for UST's unless 1 of the following occurs:

- FSA actively participated in managing the property before its acquisition

  Note: The CERCLA and RCRA UST lender liability exemptions do **not** apply.

13 Due Diligence Process (Continued)

H Managing and Disposing of Inventory Property (Continued)

- the property has been held in inventory and no diligent efforts have been made by FSA to dispose of the property at the earliest, practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements

  Notes: There is no set maximum time period and the determination of whether the reasonable time period has elapsed and, therefore, the lender liability exemption has been lost, will be made on a case-by-case basis.

  Consult SEC in cases where there is a question as to whether the lender liability exemption continues to apply.

  FSA will not consider the reasonable time period to begin until clear title is obtained to the property. Also, FSA will take no corrective/remedial action on property under lease with an option to purchase. The reasonable time period begins for these leased properties when they become available for sale and the lease expires or option was **not** exercised.

- any known leakage presents an immediate concern to the health and safety of neighboring property owners or to the potential purchasers of the property

  Example: LUST may be contaminating groundwater that is used for human consumption.

  Note: Conducting a corrective action for LUST does **not** mean that FSA will lose the lender liability exemption. It may be appropriate to address the immediate concern to human health by providing an alternative source of drinking water to the affected residences. FSA may then be able to find a willing purchaser who can deal with the potential cleanup of the groundwater contamination plume. Where possible, due diligence before foreclosure may be able to identify properties with serious contamination issues and FSA may be able to avoid foreclosing on such properties or portions thereof.

13 Due Diligence Process (Continued)

H Managing and Disposing of Inventory Property (Continued)

- the property is being sold to a beginning or socially disadvantaged farmer or rancher and FSA is providing credit assistance through direct, participation, or guaranteed loan program.

  Notes: The sales price of the property will be the as improved value determined by an appraisal.

  Because contamination issues can adversely affect the ability of beginning or socially disadvantaged farmers and ranchers to be successful, contaminated inventory properties generally should not be considered for beginning or socially disadvantaged farmers and ranchers. If FSA determines that it will conduct a corrective action at UST, FSA will take such corrective action by contracting with an environmental professional according to applicable Federal, State, and local laws and regulations.

EPA considers regulated UST's to be in use and in operation if petroleum is added to, dispensed from, or stored in 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 UST or UST system. Affirmative actions such as tank emptying, capping, and securing lines, permanent or temporary closure, and release reporting are not considered participation in management and will not incur RCRA UST liability **[40 CFR 280.210(b)(2)(B)]**. For property under a Homestead Protection lease, SEC should be consulted for guidance in how to deal with using UST's 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 as long as the tank is not leaking, was installed, and is functioning in compliance with all State and local regulations.

13 Due Diligence Process (Continued)

H Managing and Disposing of Inventory Property (Continued)

Performing due diligence is no guarantee that existing UST's will be found. The property acquired by FSA may contain UST's which are not detectable, difficult to identify, or not registered with the State. If a tank is not discovered until after the property is sold, FSA may still take appropriate corrective action, if necessary, according to this section.

Property may be acquired by FSA that has been or is used for the production of oil or gas. Generally, petroleum contamination from oil and gas production activities is not covered by CERCLA or RCRA and FSA will not be responsible for conducting corrective actions concerning such oil or gas production activities. However, environmental contamination from oil and gas activities can adversely affect the value and use of real property and should be looked at in the course of due diligence. Also, releasing hazardous substances or disposing of hazardous waste from oil and gas production activities may trigger CERCLA, RCRA, and State hazardous substance laws. Other environmental laws that require reporting and/or corrective actions may be activated by spills and releases from oil and gas activities.

SEC should consult with the OGC Pollution Control Team, through CEPD, 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 a PRP according to CERCLA, FSA will not undertake response or corrective actions. In addition, although 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 PRP. The deed should refer to FSA-851 and ESA's as providing the notice required by CERCLA, Section 120(h)(3)(A)(i). **This documentation will be retained in a permanent file by SEC in the State Office**.

AST's and heating oil tanks are not regulated according to RCRA, Subchapter IX, but may also be regulated by State laws and regulations.

The appropriate environmental regulatory authority should be consulted to determine whether corrective action is necessary or if the State has statutory or regulatory exclusions for lenders who make loans to borrowers who own or operate AST's or heating oil tanks.

14-20 (Reserved)

21 Leasing of Real Property

A Overview

FSA may lease inventory property under programs such as Homestead Protection or leases to beginning or socially disadvantaged farmers or ranchers while awaiting funding. If a leased property contains UST, it is especially important for FSA to take measures to prevent UST from causing harm to the environment and prevent other unwise uses of the leased property that could contribute to contamination.

B Responsibilities

When leasing property, appropriate restrictions should be placed in the lease agreement to avoid contamination of the inventory property. Restrictions may include:

- restricting any use of UST's
- restricting the filling of herbicide or pesticide spray equipment within close proximity to wells
- prohibiting the dumping of hazardous substances or petroleum products on the subject property
- 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 releasing hazardous substances or petroleum products on the property.

22-30 (Reserved)

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31 Reporting to Regulatory Authority

A Overview

Regardless of whether a response or corrective action is taken or not, FSA is responsible after foreclosure or voluntary conveyance, for reporting to the appropriate environmental regulatory authority any discovery of a release of regulated substances, 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 reporting will be documented in writing and filed with FSA-851.

32-40 (Reserved)

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41 Notifying and Advertising

A Overview

For property that is contaminated, based on appropriate documentation and analysis, FSA will provide notice in the sales advertisement that the property contains hazardous substances contamination or UST's and a copy of the environmental documentation may be reviewed at the local FSA office.

B Responsibilities

The advertisement of an inventory property contaminated with hazardous substances, hazardous waste, or LUST shall contain the following:

- brief statement acknowledging the property is contaminated with hazardous substances, hazardous waste, or LUST

- brief description of the contaminated area

- if:

  - FSA has conducted a response or corrective action on the property, and FSA is still covered by CERCLA and RCRA/UST lender liability exemptions as long as the cleanup was conducted not inconsistent with NCP and FSA is seeking to divest itself of the property in a reasonable time consistent with the lender liability provision

    Note: FSA should also provide a description of the response or corrective action taken, a description of any remaining environmental contamination, and a statement that FSA will not be cleaning up any remaining contamination and FSA will not be providing CERCLA Section 120(h) covenants.

  - an inventory property is not subject to a response or corrective action by the Government, include a brief statement acknowledging the property is contaminated with hazardous substances, hazardous waste, or LUST; but that no corrective action will be taken by FSA and that the purchaser will be responsible for compliance with applicable Federal, State, and local environmental laws.

    Note: For properties with UST's, leaking or otherwise to be covered by the RCRA UST lender liability exemption, FSA should exercise reasonable care of the conditions of the property that might cause environmental contamination. UST's should be inspected to make sure there is no free product remaining. Once empty, it is not likely that FSA would be responsible for any preexisting groundwater contamination. The notice of sale should include an express acknowledgment that there are empty UST's on the property. Potential buyers are expected to conduct due diligence for groundwater contamination or contaminated soils to protect their interests before bidding. If there are identifiable free products in UST's, a description of tank use should be included in the sale notice.

41 Notifying and Advertising (Continued)

B Responsibilities (Continued)

When a property, with UST will be sold "as is", add similar language to the sales offering package and to the real estate disclosures added to the purchase agreement.

> "The property is being sold "As Is." [Provide general description of the condition of the property] Two underground storage tanks (UST's), believed to have been previously used for the storage of **[material in UST]**, are located on this property. The UST's have been confirmed to be empty (if they have been inspected). Pursuant to Section 9003(h)(9) of RCRA, 42 U.S.C. 6991b(h)(9), the terms "owner" and "operator" for purposes of the UST provisions of RCRA do not include lenders that do not participate in the management of a UST and are not otherwise engaged in petroleum production, refining, or marketing. Under Section 9003(h)(9)(B) of RCRA, the lender liability exemption provisions of Section 101(20)(E) through (G) of CERCLA, 42 U.S.C. 9601(20)(E)-(G), apply in determining whether a lender participated in management of a UST. Because FSA meets the requirements of 42 U.S.C. 9601(20)(E)-(G), FSA is not an "owner" or "operator" of the UST(s) on this property. Purchaser acknowledges that the United States has not undertaken any inspection of possible soil or groundwater contamination associated with the two underground storage tanks located at the property, and makes no representation that the property is free from possible contamination. 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."

When a property with hazardous substances contamination will be sold "as is", add the following to the sales offering package and to the real estate disclosures added to the purchase agreement.

> "The property is being sold "As Is". **[Provide general description of the condition of the property and the hazardous substances]**. Pursuant to Section 101(20) E-G of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(20)(E)-(G), the United States is a lender that did not participate in the management of the property, and therefore, the United States is excluded from the definition of an "owner" or "operator" pursuant to CERCLA. Accordingly, the provisions of section 120(h) of CERCLA, regarding the cleanup/remediation of property "owned" by the United States prior to transfer to another party, do not apply to this sale. The United States has not undertaken remediation of the property and makes no representation that the property has been remediated so as to be protective of human health and/or the environment."

41 Notifying and Advertising (Continued)

B Responsibilities (Continued)

If FSA has conducted a response action to property with hazardous substances contamination being sold "as is", add the following to the sales offering package and to the real estate disclosures added to the purchase agreement.

> "The United States has conducted a response action, not inconsistent with the National Contingency Plan (40 CFR Part 300), with respect to **[describe response action conducted and any remaining contamination]**. Because FSA is protected by the lender liability exemption, it can conduct a limited response action to protect human health or the environment and/or to protect its security interest in the property and not become an "owner" or "operator"."

Add the following to the contract for sale.

> "Pursuant to Section 101(20) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(20)(E)-(G), the United States is a lender not participating in management of the property, and holds indicia of ownership and sells the property to protect a security interest. Therefore, the United States is excluded from "owner" or "operator" status pursuant to CERCLA. Accordingly, the provisions of section 120(h) of CERCLA, regarding the cleanup/remediation of property "owned" by the United States prior to transfer to another party, do not apply to this sale. The United States has not undertaken remediation of the property and makes no representation that the property has been remediated so as to be protective of human health and/or the environment."

If FSA has conducted a response action for a contract for sale, add the following.

> "The United States has conducted a response action, not inconsistent with the National Contingency Plan (40 CFR Part 300), with respect to **[describe response action conducted and any remaining contamination]** because FSA is protected by the lender liability exemption, it can conduct a limited response action to protect human health or the environment and/or to protect its security interest in the property and not become an "owner" or "operator".
>
> Purchaser acknowledges that the United States has not undertaken any response action with respect to the hazardous substances located on the property, and makes no representation that the property is free from possible contamination. Or, if FSA has conducted a limited response action to protect human health and/or environment and/or to protect its security interest, then: describe the response action taken and any contamination remaining, and assert that the United States retains its lender liability exemption and will not give the CERCLA Section 120(h) covenants. 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."

41 Notifying and Advertising (Continued)

D Loss of Lender Liability Exemption and CERCLA, Section 120(h)

If FSA loses its lender liability exemption according to CERCLA, then FSA will be required to comply with CERCLA, Section 120(h). In addition, if FSA loses the lender liability exemption, then FSA may be considered an "owner" of UST according to 42 U.S.C. 6991b(h)(9) and may be required to conduct an investigation and/or corrective action at UST on the property. If an FSA field office believes that protections of the lender liability exemption have been lost, consult with the respective SEC, who should consult with the OGC Pollution Control Team, through CEPD.

Because of the petroleum exclusion in CERCLA, FSA should never provide CERCLA, Section 120(h)(3)(A)(ii) covenants with respect to contamination from a UST.

According to CERCLA, Section 120(h)(3), there is some flexibility in terms of the level of cleanup that may be required to address hazardous substance contamination. If the reasonably foreseeable future use of a property is for nonresidential purposes, FSA may be able to clean the property to nonresidential standards and have the purchaser agree that the future use of the property will be for nonresidential purposes. CERCLA, Section 120(h)(3)(A)(ii) warrants that all necessary response action has been conducted on the property to meet nonresidential standards and the comeback covenant would be limited to any additional response action to meet nonresidential standards. In the event that the purchaser or their assigns were to change the use of the property to residential use and a further cleanup may be required, the purchaser/assigns would be responsible to pay for and/or perform that additional cleanup.

42-50 (Reserved)

51 LBP Background

A Overview

Regulations published by HUD implement the Residential Lead-Based Paint Hazard Reduction Act of 1992, Sections 1012 and 1013, Title X of the Housing and Community Development Act of 1992. Sections 1012 and 1013, Title X amended the Lead-Based Paint Lead-Based Paint Poisoning Prevention Act of 1971, the basic law covering LBP in Federally-associated housing. See:

- 24 CFR Part 35 for HUD regulations
- 40 CFR Part 745.227 for reference procedures in EPA regulations.

HUD, Title X LBP regulation:

- provides specific requirements for selling or leasing Federally-owned residential property and purchasing, repairing, or rehabilitating property receiving Federal assistance

- applies to FSA in disposing and managing inventory property on which there are residences, as well as to FSA's loanmaking activities involving residential properties.

For loan guarantees, the responsibility for ensuring compliance with the HUD LBP regulation and any applicable State regulations resides with the guaranteed lender. See **http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecrc&topic=eer-lb**.

B Purpose

This part provides guidance on LBP information disclosure and abatement requirements about selling or leasing certain residential property or FSA loanmaking activities involving certain residential property.

52 LBP Responsibilities

A Disclosure Requirements Applicable to the Sale or Lease of FSA-Owned Target Housing [24 CFR Part 35, Subpart A]

The following activities shall be completed before the purchaser or lessee is obligated under any sales contract or lease agreement to purchase or lease target housing unless the transaction is exempt from the requirements according to 24 CFR Part 35.82.

Note: 24 CFR Part 35.82 exemptions from Subpart A disclosure regulations include the following:

- selling target housing at foreclosure
- leasing target housing found to be free of LBP by an inspector certified according to the Federal certification program or a Federally accredited State or Tribal certification program
- short-term leasing of 100 days or less, where no lease renewal or extension may occur
- renewing existing leases in target housing when the lessor has previously made the necessary disclosure and no new information has come into the possession of the lessor.

Target housing is any housing constructed before 1978, except housing for the elderly or persons with disabilities, unless any child who is less than 6 years of age resides in or is expected to reside in such housing, or any zero-bedroom dwelling. **[24 CFR Part 35.86]**

A zero-bedroom dwelling is any residential dwelling in which the living area is not separated from the sleeping area, which includes the following **[24 CFR Part 35.86]**:

- efficiencies
- studio apartments
- dormitory housing
- military barracks
- rentals of individual rooms in residential dwellings.

52 LBP Responsibilities (Continued)

A Disclosure Requirements Applicable to the Sale or Lease of FSA-Owned Target Housing [24 CFR Part 35, Subpart A] (Continued)

According to 24 CFR Part 35.88, when selling or leasing target housing, FSA shall:

- provide the purchaser or lessee with EPA-approved lead hazard information pamphlet such as, "Protect Your Family From Lead in Your Home", available for download at **http://www.fsa.usda.gov/Internet/FSA_File/pfflinyhbrochure.pdf**,or an equivalent pamphlet that has been approved for use in the individual State by EPA **[24 CFR Part 35.88(a)(1)]**

- disclose to the purchaser or lessee and any agents the presence of any known LBP and/or LBP hazards in the target housing being sold or leased **[24 CFR Part 35.88(a)(2),(3)]**

  Note: FSA shall disclose any additional information available about the known LBP and/or LBP hazards, such as the basis for the determination that LBP and/or LBP hazards exist, the location of LBP and/or LBP hazards, and condition of the painted surfaces.

- provide the purchaser or lessee with any records or reports available to FSA about LBP and/or LBP hazards in the target housing being sold or leased.

  Note: This requirement includes records and reports about:

  - common areas

  - other residential dwellings in multi-family target housing, provided that the information is part of an evaluation or reduction of LBP and/or LBP hazards in the target housing as a whole.

If any of the disclosure activities identified in this subparagraph occur after an offer to purchase or lease the housing is made, FSA shall:

- complete the required disclosure activities before accepting the prospective purchaser's or lessee's offer

- allow the prospective purchaser an opportunity to review the information and possibly amend the offer.

52 LBP Responsibilities (Continued)

A Disclosure Requirements Applicable to the Sale or Lease of FSA-Owned Target Housing (24 CFR Part 35, Subpart A) (Continued)

Before a purchaser is obligated under any contract to purchase target housing, FSA shall permit the purchaser a 10 calendar day period, unless the parties mutually agree, in writing, to a different period of time, to conduct a risk assessment or inspection for the presence of LBP and/or LBP hazards. The purchaser may waive the opportunity to conduct a risk assessment or inspection by so indicating in writing. **[24 CFR Part 35.90]** Include language in Exhibit 10 as an addendum to the sales contract.

Note: A LBP inspection completed by a home buyer would be in addition to any LBP inspection that FSA may have completed.

According to 24 CFR Part 35.92(a), each sales contract to **sell** target housing shall include the following elements.

- A lead warning statement with the following language.

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

- A statement disclosing the presence of known LBP and/or LBP hazards in the target housing being sold or indicating no knowledge of the presence of LBP and/or LBP hazards.

  Note: FSA shall also provide any additional information available about the known LBP and/or LBP hazards, such as the basis for the determination that LBP and/or LBP hazards exist, the location of the LBP and/or LBP hazards, and the condition of the painted surfaces.

52 LBP Responsibilities (Continued)

A Disclosure Requirements Applicable to the Sale or Lease of FSA-Owned Target Housing (24 CFR Part 35, Subpart A) (Continued)

- A list of any records or reports available to FSA about LBP and/or LBP hazards in the housing that have been provided to the purchaser.

  Note: FSA shall so indicate if no such records or reports are available.

- A statement by the purchaser affirming receiving the LBP information and the lead hazard information pamphlet.

- A statement by the purchaser that the opportunity to conduct the risk assessment or inspection required by 24 CFR Part 35.90(a) was received or the opportunity was waived.

  Note: If agents are used to represent FSA in sales of target housing, there are disclosure requirements applicable to agents according to 24 CFR Part 35.94, and additional language about agents would be required to be included in the sales contract according to 24 CFR Part 35.92(a)(6).

- The signatures of the sellers, agents, and purchasers, certifying the accuracy of their statements to the best of their knowledge, along with the dates of their signatures.

According to 24 CFR Part 35.92(b), each **lease** agreement for property containing target housing shall include the following elements.

- A lead warning statement with the following language.

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

- A statement disclosing the presence of known LBP and/or LBP hazards in the target housing being leased or indicating no knowledge of the presence of LBP and/or LBP hazards.

  Note: FSA shall disclose any additional information available about the known LBP and/or LBP hazards, such as the basis for the determination that LBP and/or LBP hazards exist in the housing, the location of LBP and/or LBP hazards, and the condition of the painted surfaces.

52 LBP Responsibilities (Continued)

A Disclosure Requirements Applicable to the Sale or Lease of FSA-Owned Target Housing (24 CFR Part 35, Subpart A) (Continued)

- A list of any records or reports available to FSA about LBP and/or LBP hazards in the housing that have been provided to the lessee.

  Note: FSA shall so indicate if no such records or reports are available.

- A statement by the lessee affirming receiving the LBP information and the lead hazard information pamphlet.

  Note: If an agent was used on behalf of FSA, there are additional disclosure responsibilities of agents according to 24 CFR Part 35.94, and additional language about agents would be required to be included in the sales contract according to 24 CFR Part 35.92(b).

- The signatures of the lessors, agents, and lessees certifying the accuracy of their statements to the best of their knowledge, along with the date of their signatures.

Record Retention. According to 24 CFR Part 35.92(c), **FSA shall retain a copy of the sales contract or lease agreement**, amended according to this section, for no less than 3 years from the completion date of the sale or commencement of the leasing period. In the case of any parcel sold with LBP restriction on the deed, all data about this restriction and how it was determined including, but not limited to, tests, photos, etc., must be retained until such time as the restriction is removed from the quit claim deed.

52 LBP Responsibilities (Continued)

B Investigative and Abatement Requirements Applicable to the Sale of Target Housing Owned by the Agency (24 CFR Part 35, Subpart C)

The following summarizes the LBP-related obligations of FSA to the sale of agency-owned target housing. Requirements differ depending on when the property was constructed.

If the property 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 shall 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." • make available the results of the risk assessment and LBP inspection to prospective purchasers according to disclosure requirements of HUD Title X, Subpart A. **[24 CFR Part 35.88]**
in or after 1960 but before 1978	• have a risk assessment and a 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 according to disclosure requirements of HUD Title X, Subpart A. **[24 CFR Part 35.88]**

52 LBP Responsibilities (Continued)

B Investigative and Abatement Requirements Applicable to the Sale of Target Housing Owned by the Agency (24 CFR Part 35, Subpart C) (Continued)

Indemnification. Include the following indemnification provision in the sales contract and deed.

> "**[[GRANTEE]]** hereby agrees to indemnify, release, defend, and hold harmless the United States, its agencies, employees, agents, assigns, and successors from and against any liability, judgment, claim, penalty, fine, or other adverse action (whether legal or equitable in nature, and including without limitation, court costs and attorneys fees) brought against the United States after the date of this agreement by any person or entity under any Federal, State, or local law, including but not limited to environmental and tort laws, with respect to any lead-based paint associated with the property. This covenant to indemnify, release, defend, and hold harmless the United States shall survive the subsequent conveyance of all or any portion of the property to any person and shall be construed as running with the real property, and may be enforced by the United States in a court of competent jurisdiction."

C Renovating or Repairing Residential Property Owned by FSA [24 CFR Part 35, Subpart R]

LBP abatement activities may often be assumed by the purchaser of residential property. See subparagraph B. **[24 CFR Part 35.210(b)]**

52 LBP Responsibilities (Continued)

C Renovating or Repairing Residential Property Owned by FSA [24 CFR Pat 35, Subpart R] (Continued)

However, if FSA undertakes renovation or repair of residential property, LBP activities should be performed by certified individuals according to 24 CFR Part 35, Subpart R **[24 CFR Part 35.1300-1355]** which specifies requirements for LBP inspections, paint testing, risk assessments, lead hazard screens, occupant protection and worksite preparation; safe work practices, abatement, interim controls, clearance, maintenance, and reevaluation activities, and references the LBP activities work standards of 40 CFR Part 745.227.

Notes: As a general matter, FSA should not exercise decision-making control over environmental compliance matters when it holds indicia of ownership to protect a security interest and the borrower is still in possession of encumbered property, lest it risk being considered an "owner" or "operator" and losing the lender liability protection provided according to CERCLA. However, FSA generally can undertake LBP activities to prepare property for sale upon foreclosure if necessary without threat of being considered an "owner" or "operator" according to CERCLA, provided it seeks to sell the property within a reasonable period of time.

CERCLA, Section 101(20)(E) **[42 USC 9601(20(E)]** excludes from the definition of "owner" or "operator" lenders who are not participants in managing the facility at issue. Specifically according to CERCLA, Section 101(20)(E)(i) the term "owner" or "operator" does **not** include a person that is a lender that, without participating in managing a vessel or facility, holds indicia of ownership primarily to protect the security interest of the person in the vessel or facility.

[42 U.S.C. 9601(20)(E)(i)] Additionally, according to CERCLA, Section 101(20)(E)(ii) "owner" or "operator" does not include a person that is a lender that did not participate in managing a vessel or facility before foreclosure, notwithstanding that the person:

- forecloses on the facility
- after foreclosure, sells, re-leases, or liquidates the facility, maintains business activities, winds up operations, or undertakes a response action according to CERCLA, Section 107(d)(1)
- takes any other measure to preserve, protect, or prepare the facility before sale or disposition, as long as the person seeks to sell, re-lease, or otherwise divest the person of the facility at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements.

52 LBP Responsibilities (Continued)

D Provision of Project Based Assistance by FSA (24 CFR Part 35, Subpart D)

The following measures are required when FSA provides more than $5,000 annually per project in project-based assistance for a residential property that meets the definition of "target housing". **[24 CFR Part 35.82]** See subparagraph A.

- A notice of evaluation or hazard reductions must be provided to any occupants of the property according to 24 CFR 35.125.

- The owner of the property must provide the lead hazard information pamphlet to any occupants according to 24 CFR 35.130.

- The owner must complete a risk assessment according to 40 CFR 745.227(d), with a schedule established by FSA.

- The owner must conduct interim controls consistent with the findings of the risk assessment report, and must conduct hazard reduction according to 24 CFR Part 35, Subpart R.

- If a child less than 6 years of age, living in a Federally-assisted dwelling unit has an environmental intervention blood lead level, the owner shall immediately conduct a risk assessment according to 40 CFR 745.227(d). Interim controls of identified LBP hazards must be conducted according to 24 CFR 35.1330. Interim controls are complete when clearance is achieved according to 24 CFR 35.1340. FSA must establish a timetable for completing risk assessments and hazard reduction when an environmental intervention blood lead level child is identified.

Accordingly, provision of funds should ordinarily be made contingent upon receipt by FSA of:

- owner's signed statement that the requisite notice to occupants has been provided
- a copy of the risk assessment completed by the owner
- either:

  - documentation of completing interim controls and hazard reduction activities

  - in the case of child with an environmental intervention blood lead level residing in the property, a copy of the clearance report according to 24 CFR 35.1340 showing that clearance has been achieved.

52 LBP Responsibilities (Continued)

E Properties Exempt from Parts of the HUD Title X Regulation

The following types of property and actions are exempt from HUD Title X, **[24 CFR Part 35.115 Subparts B through R]**:

- housing built **after** December 31, 1977
- housing exclusively for the elderly or for people with disabilities, unless a child under age 6 is expected to reside there
- zero-bedroom dwellings, including efficiency apartments, single-room occupancy housing, dormitories, or military barracks found to have no LBP
- property where all LBP has been removed
- unoccupied property that will remain vacant until it is demolished and occupancy is restricted in the deed
- nonresidential property
- any rehabilitation or housing improvement that does not disturb a painted surface
- emergency repair actions needed to safeguard against imminent danger to human life, health, or safety, or to protect property from further structural damage
- residences sold or leased according to the Homestead Protection Program.

F Requesting Professional Services

Contact the appropriate Regional EPA to identify companies certified to perform LBP inspections, risk assessments, and abatement in specific States. A listing of lead service providers, lead inspectors, risk assessors, and abatement contractors, renovators trained in lead-safe practices (lead-trained renovators), EPA-recognized lead analysis laboratories, and lead training providers can be found by either of the following:

- Internet at http://www.leadlisting.org
- telephone at 888-LEADLIST.

53-65 (Reserved)

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66 Solid and Medical Waste

A Overview

Nonhazardous solid waste (garbage) and medical waste are not regulated by RCRA Subtitle C and such waste would not generally require a response action according to CERCLA. However, solid waste, e.g., refuse, garbage, debris, may contain substances that are regulated according to the provisions of RCRA and/or may require a response action according to CERCLA, as in the case of abandoned batteries or appliances containing hazardous substances. Also, FSA employees may find medical waste on FSA inventory properties that may pose hazards relating to infectious agents, e.g., blood and blood products or needles and other sharps, that must be handled and disposed of consistent with applicable State and local laws.

B Medical Waste

FSA employees may find medical waste that has been illegally dumped on an FSA inventory property or left on the property by the previous resident from home health care use. Medical wastes may include any of the following:

- cultures and stocks of infectious agents
- human blood and blood products
- human pathological wastes, including those from surgeries or autopsies
- contaminated animal carcasses from medical research
- waste from patients isolated with highly communicable diseases
- needles, scalpels, and other sharps.

Most States have statutes regulating the handling, packaging, labeling, transporting, and manifesting certain categories of medical waste that may pose a risk of disease transmission, also known as “regulated medical waste” or “infectious waste”. For medical waste to be infectious, it must contain pathogens with sufficient virulence and quantity so that exposure to the waste by a susceptible host could result in an infectious disease. Because there are no tests that allow infectious waste to be objectively identified, it is impractical for FSA employees to make such a determination when presented with waste that appears to be medical waste. Therefore, waste that appears to be medical waste should be treated as infectious and handled accordingly. For example, the OSHA Bloodborne Pathogen Rule recommends that persons dealing with medical waste take a universal precautions approach to infection control by treating all human blood, certain body fluids, and sharps as if known to be infectious for HIV, HBV and other bloodborne pathogens.
[29 CFR Part 1910.1030(b)]

66 Solid and Medical Waste (Continued)

B Medical Waste (Continued)

Many States and municipalities offer safe community disposal programs for disposing of sharps and other medical wastes. See CDC's web site at **http://www.cdc.gov/niosh/topics/bbp/ndl-law-1.html** for State-by-State information on sharps-related laws and regulations, safe community disposal programs, published guidance, and contact information. FSA employees who encounter medical waste should contact their respective SEC for information about proper handling and disposing of medical waste.

C Responsibilities

Unless required by State or local laws or regulations, nonhazardous solid waste may be cleaned up at the discretion of FSA, depending on the effect of the waste on the market value of the property.

FSA employees who encounter medical waste should contact their respective SEC for information about the proper handling and disposing of medical waste.

When the property is being sold to PRP or other person who may be responsible for the dumping of waste, FSA will not:

- undertake any response or corrective action
- be required to provide CERCLA, Section 120(h) covenants to PRP.

67-80 (Reserved)

81 Asbestos

A Overview

Asbestos is made up 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. Symptoms of these heath problems may take several years to develop.

ACM in buildings do not always pose a hazard to occupants and workers in those buildings. Hazards usually only occur when fibers from ACM's are released into the air. Physical damage and deterioration over time can contribute to release of the fibers.

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 siding and floor tiles, are not regulated provided it does not become friable. Machine grinding, sanding, and dry-buffing are ways of causing nonfriable materials to become friable.

B Responsibilities

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

- 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.

81 Asbestos (Continued)

B Responsibilities (Continued)

In making a determination if an environmental professional should be consulted for further evaluation of potential ACM, FSA-851 should state if products such as cement siding has sustained physical damage or is suffering from deterioration that could cause it to become friable. Corrective action is usually not necessary for nonfriable ACM on exterior surfaces of structures.

Generally, because nonfriable ACM does not constitute the storage, disposing of, or releasing a hazardous substance according to CERCLA, the presence of ACM in a building does not trigger CERCLA, Section 120(h) notice or covenant requirements. However, FSA should fully disclose to potential purchasers or leasee's of inventory properties the existence, or potential existence, based on the age of the buildings, of ACM within the buildings. FSA should require that the purchaser indemnify the United States from any liability arising out of ACM on the property. This same approach can be done with respect to LBP; however, the rules are more complex with respect to LBP in residential housing. See paragraphs 51 and 52.

Reports, Forms, Abbreviations, and Redelegations of Authority

Reports

None

Forms

This table lists all forms referenced in this handbook.

Number	Title	Display Reference	Reference
FSA-851	Environmental Risk Survey Form	Ex. 5	31, 81

Abbreviations

The following abbreviations are not listed in 1-CM.

Approved Abbreviation	Term	Reference
AAI	All Appropriate Inquiries	11, 13
ACM	asbestos-containing building material	81
AST	above ground storage tank	13, Ex. 2
ASTM	American Society for Testing and Materials	13
BMP	best management practice	13
CAA	Clean Air Act	Ex. 2, 5
CDC	Center for Disease Control	66
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act	Text, Ex. 5
CWA	Clean Water Act	13, Ex. 2, 5
ESA	Environmental Site Assessment	12, 13
HUD	Department of Housing and Urban Development	51, 52, Ex. 2
LBP	lead-based paint	Part 2, 81, Ex. 2, 10
LUST	leaking underground storage tank	13, 31, 41
NCP	National Contingency Plan	11, 13, 41
OSHA	U.S. Occupational Safety Health Administration	66
PRP	potentially responsible party	13, 66, Ex. 2
RCRA	Resource Conservation and Recovery Act	1, 11, 13, 41, 66, Ex. 2
SEC	State Environmental Coordinator	Text
SPCC	Spill Prevention, Control, and Countermeasure	13
SDWA	Safe Drinking Water Act	13
TSCA	Toxic Substances Control Act	1, 11, Ex. 2, 5
UST	underground storage tank	Text, Ex. 2, 5
USTCA	Underground Storage Tank Compliance Act	11

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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)

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.

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.

Definitions of Terms Used in This Handbook (Continued)

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.

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.

Definitions of Terms Used in This Handbook (Continued)

Interim Control

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

Indicia of Ownership

Indicia of ownership is evidence of a secured interest, evidence of an interest in a secured interest, or evidence of an interest in real or personal property security for a loan or other obligation, including any legal or equitable title or deed to real or personal property acquired through or incident to 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)

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 (LBP) 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 (LBP) 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 (NCP) (40CFR Sec.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.

Definitions of Terms Used in This Handbook (Continued)

Paint Testing

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

Participate in Management

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

Petroleum Products

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

Potentially Responsible Party (PRP)

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.

Definitions of Terms Used in This Handbook (Continued)

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]**

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]**

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.

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]**

Definitions of Terms Used in This Handbook (Continued)

Underground Storage Tank (UST)

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 (UST) System

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

Unregulated Underground Storage Tank (UST)

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.

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]**

Completing FSA-851

A General Information [1941.19(c)(2), 1943.19(d)(1), and 1436.17(d)(1)]

FSA-851 shall be used by FSA personnel as a first step in the due diligence process to screen real property for the presence of contaminants, hazardous materials, UST's, lagoons, pits, ponds, or other features which pose potential environmental hazards. Environmental contamination may have a significant adverse effect on the value of real estate offered as collateral for loans or on property being offered for sale.

Using FSA-851 will assist the preparer in complying with CERCLA, RCRA, CAA, CWA, and TSCA. Lenders participating in FSA guaranteed loan program may also use FSA-851.

Properly completing FSA-851 enables FSA to determine if a higher level of site assessment by an environmental professional is necessary to determine the exact level of threat to the environment. Generally completing FSA-851 will be sufficient, as the only level of review needed to document environmental risks associated with FSA's loanmaking and loan servicing actions, unless significant environmental risks are observed.

In conducting the site inspection, the preparer should only conduct a visual inspection and indicate hazardous conditions on FSA-851. Do **not** attempt to touch, sample, taste, or smell any hazardous substances or containers. An environmental professional must do sampling of any substances. Preparer should **not** attempt to open any containers or enter any unsafe areas like confined spaces or buildings, which may not be structurally sound. If a building cannot be safely entered, this information should be noted on FSA-851.

Completing FSA-851 (Continued)

B FSA-851 Instructions

Complete FSA-851 according to the following.

Item	Instructions
Types of Review	Check box:: • "A. Initial Review" if this is the first or initial review of the property • "B. Subsequent Review (Update 1)" if this is a subsequent review of the property • "C. Subsequent Update (Update 2)' if this is an update of the last 2 reviews. **Note:** Only 3 reviews of the property can be documented on each FSA-851. After 3 reviews, the preparer will need to use a new FSA-851.
Part A - Site Information The following items will be attached to the completed FSA-851 and labeled as follows: • Attachment A - Legal description • Attachment B - Plat map or aerial photo with the boundaries of the property outlined • Attachment C - Photographs.	
1	Enter name of the owner of the property. For FLP, if an inventory property, enter name of the property as shown in the official Agency file.
2	Enter address of the property. Do **not** use post office box numbers.
3	For loan applicants, enter the case number assigned to the application. For FLP inventory property, enter inventory property identification number assigned to the official Agency file.
4	Enter the township number (assigned in the rectangular survey system) where the property is physically located.
5	Enter the range number (assigned in the rectangular survey system) where the property is physically located.
6	Enter the section number (assigned in the rectangular survey system) where the property is physically located.
7	Enter driving directions to the property from the nearest town. Include names of roads and any landmarks that would assist in easily locating the property.
8	If the property is located close to an intersection that would assist in determining its location, Enter the name and location of the intersection.
9	Enter size of the property in acres.
10	Enter what the current use of the property is, such as a dairy farm, poultry farm, industrial site, or commercial business.

Completing FSA-851 (Continued)

B FSA-851 Instructions (Continued)

Item	Instructions
Part B - Site Ownership History and Background Every attempt should be made to search records and trace the use of the property back to 1940. Review FSA file to determine ownership history of the property. Make every attempt to interview the current property owner as well as adjoining property owners to determine the past uses of the property. If the property has been used solely for agricultural purposes, it will not require a large amount of detailed review. Pay close attention to the ownership history and background to determine if the property was ever used for an industrial use or the location of a facility such as a gas station.	
11A	Enter name of current owner of the property. For loans, this will generally be the name of the loan applicant. For FLP inventory property, show FSA as the owner and indicate that it is an inventory property.
11B	Enter name of current operator of the property. For loans, this will generally be the name of the loan applicant. For FLP inventory property, leave blank unless the property is being leased. If the property is being leased, enter name of the lessee.
12 A	Enter names of any previous owners of the property.
12 B	Enter dates that the property was owned by the owners listed in item 12 A.
13	Enter date of the first involvement by FSA with the property. This will usually be the date of the application for the applicant's first loan.
Part C - Site Data Completing this part requires a site inspection and a records search as a supplement. Make every attempt to interview either the owner or the occupant of the property.	
14	CHECK (✓) "Yes" or "No" to indicate if there are any buildings on the property. If "yes", complete Table 1, columns A-F.
Table 1 - Buildings or Other Structures	
Column A	Enter the type of structure, such as barn, dwelling, or silo.
Column B	Enter appropriate map symbol from Part F.
Column C	Enter the year the structure was built.
Column D	CHECK (✓) "Yes", "No", or "Unknown" to indicate if the structure was/is used for storing or mixing chemicals like pesticides.
Column E	CHECK (✓) "Yes", "No", or "Unknown" to indicate if the structure contains LBP. **Note:** A test by a certified specialist will be necessary to properly ascertain if the structure contains LBP.
Column F	CHECK (✓) "Yes", "No", or "Unknown" to indicate if the interior or exterior of the structure contains asbestos. **Note:** CHECK (✓) "Yes" if clear visible signs such as asbestos shingles are present. If clear visible evidence is **not** available, the assistance of a certified environmental specialist is needed.

Completing FSA-851 (Continued)

B FSA-851 Instructions (Continued)

Item	Instructions
15-25	These questions are self-explanatory. Answer these questions based on interviews, document searches, and visits to the property.
26	CHECK (✓) "Yes" or "No" to indicate if there are any chemical containers located on the property. If "yes": • smaller containers can be grouped together if they have same or similar contents • complete Table 2, columns A-F.
Table 2 - Containers or Drums	
Column A	Enter a brief description of where the container is physically located. **Example:** Shed #1 rear floor.
Column B	Enter appropriate map symbol from Part F.
Column C	If known, list contents of the container. Be specific if the container label is intact and readable. If a label is **not** available, ENTER "Unknown".
Column D	If available, provide EPA registration number from the container. If a label is **not** available, ENTER "Unknown".
Column E	Enter estimated quantity that is present in the containers listed.
Column F	CHECK (✓) "Yes", "No", or "Unknown" to indicate if the container is leaking. CHECK (✓) "Yes" if evidence such as stained soil around the container is easily observed. Do **not** attempt to move containers to make these determinations. Where evidence of leaking is not easily observed or is not present, CHECK (✓) "No" or "Unknown".
27	CHECK (✓) "Yes", "No", or "Unknown" to indicate if there are any batteries present on the property. If "yes", complete Table 3, columns A-D.
Table 3 - Batteries	
Column A	Enter a brief description of where the batteries are physically located. **Example:** Shed #1 rear floor.
Column B	Enter appropriate map symbol from Part F.
Column C	Enter number of batteries for each location.
Column D	Indicate if any of the batteries are leaking. CHECK (✓) "Yes" if evidence such as stained soil around the battery is easily observed or if there are visible cracks. Do **not** attempt to move batteries to make these determinations. Where evidence of leaking is not easily observed or is not present, CHECK (✓) "No" or "Unknown".

Completing FSA-851 (Continued)

B FSA-851 Instructions (Continued)

Item	Instructions
28	CHECK (✓) "Yes", "No", or "Unknown" to indicate if there are any junk or abandoned appliances, automobiles, tractors, farm machinery, tires, or related parts on the property. If "yes", complete Table 4, columns A-D.
Table 4 - Abandoned Machinery, Tires, or Other Equipment	
Column A	Enter a brief description of where the items are physically located. **Example:** Shed #2.
Column B	Enter the appropriate map symbol from Part F.
Column C	Enter the number of items in each location
Column D	Enter a brief description of the items, such as auto tires or tractor tires. **Note:** This is important, as there are large cost differences in disposing of different size items.
29	CHECK (✓) "Yes", "No", or "Unknown" to indicate if any fill dirt has been deposited on the property. Check for signs of fresh fill dirt or an area where it is apparent that fill dirt was dumped as evidenced by differences in the growth of vegetation. If "yes", provide a brief description of the site location along with the appropriate map symbol from Part F.
30	CHECK (✓) "Yes", "No", or "Unknown" to indicate if there are any areas of stained soil on the property. If "yes", provide a brief description of the site location along with the appropriate map symbol from Part F.
31	CHECK (✓) "Yes", "No", or "Unknown" to indicate if there are any stained areas within buildings like floors. If "yes", provide a brief description of the site location along with the appropriate map symbol from Part F. **Note:** It is important to indicate the type of flooring in buildings, such as dirt or concrete.
32	CHECK (✓) "Yes", "No", or "Unknown" to indicate if there are any electrical transformers located on the property that are not labeled as "PCB free". If "yes", provide information on if they are owned by the property owner or the local power company. Provide a brief description of the location along with the appropriate map symbol from Part F.
33	CHECK (✓) "Yes", "No", or "Unknown" to indicate if there are any UST's or AST's presently on the property. If "yes", complete Table 5, columns A - H.

Completing FSA-851 (Continued)

B FSA-851 Instructions (Continued)

Item	Instructions
Table 5 - Storage Tanks	
Column A	If "yes", provide a brief description of where the tank is physically located. **Example:** Left of shed #2.
Column B	If information is readily available, enter the approximate or exact size of the tank.
Column C	Enter the appropriate map symbol from Part F.
Column D	CHECK (✓) if the tank is "UST" or "AST".
Column E	CHECK (✓) "Yes", "No", or "Unknown" to indicate if the tank is UST and is registered. An interview with the owner or operator will be necessary.
Column F	CHECK (✓) "Yes", "No", or "Unknown" to indicate if the tank contains any substance or product. An interview with the owner or operator will be necessary.
Column G	If "yes" is check in Column F, enter the name of the substance if known.
Column H	CHECK (✓) "Yes", "No", or "Unknown" to indicate if the tank is leaking. CHECK (✓) "Yes" if evidence such as stained soil around the tank is easily observed. CHECK (✓) "No" if evidence of leaking is **not** easily observed or is not present. An interview with the owner or operator will be necessary.
Part D - Water and Waste Information Completing this part requires a site inspection with a records search as a supplement. Make every possible attempt to interview either the owner or the occupant of the property.	
34	CHECK (✓) "Yes", "No", or "Unknown" to indicate if there are any holding facilities such as ponds or lagoons that may contain hazardous waste or serve as treatment facilities for animal waste, thus creating a potential environmental risk. If "yes", complete Table 6 columns A - F.

Completing FSA-851 (Continued)

B FSA-851 Instructions (Continued)

Item	Instructions
Table 6 - Lagoons, Ponds, or Other Holding Facilities	
Column A	Enter brief description of where the lagoon, pond, or facility is physically located. **Example:** 25 feet southwest of the dairy barn.
Column B	Enter approximate size of the lagoon, pond, or facility. Size should be provided in perimeter measurements. Provide capacity measurements if known.
Column C	Enter the appropriate map symbol from Part F.
Column D	Enter brief description of what the lagoon, pond, or facility is used for. **Example:** Manure lagoon for dairy.
Column E	CHECK (✓) "Good", "Fair", or "Poor" for the condition of the lagoon, pond, or facility and. Assess the condition of any berms or containment structures.
Column F	CHECK (✓) "Yes", "No", or "Unknown" if the lagoon, pond, or facility is permitted or registered by local or State governmental officials.
35	CHECK (✓) "Yes", "No", or "Unknown" to indicate if there are any wells located on the property including wells used for domestic or irrigation purposes. If "yes", complete Table 7, columns A - F.
Table 7 - Wells	
Column A	Enter a brief description of where the well is physically located. **Example:** 25 feet southwest of the dwelling
Column B	Enter the appropriate map symbol from Part F.
Column C	CHECK (✓) "D", "I", "O", or "A" to indicate if the well is used for domestic, irrigation, or other water uses. If the well is abandoned, CHECK (✓) "A".
Column D	Enter the exact or approximate depth of the well, if known.
Column E	CHECK (✓) "Good", "Fair", or "Poor" for the condition of the well and its casing. An interview with the owner or operator will be necessary.
Column F	CHECK (✓) "Casing", "Drilled", or "Dug" to indicate if the well is drilled, dug, or has a casing.
36	CHECK (✓) "Yes", "No", or "Unknown" to indicate if areas immediately adjacent to wells are being used for chemical mixing operations that could possibly contaminant the water source.
37	If information is available, CHECK (✓) "Yes", "No", or "Unknown" to indicate if the well is contaminated with hazardous substances.
38	If the domestic water source on the property is not potable, enter where drinking water comes from.
39	If a residence is located on the property, inspect the presence of a septic or waste system and the type identified. Other information, like the condition of such systems should be described along with its location.

Completing FSA-851 (Continued)

B FSA-851 Instructions (Continued)

Item	Instructions
	Part E - Records Search
40-42	Questions 40-42 shall be answered using lists maintained by either Federal or State regulatory authorities. The Federally maintained lists can be obtained on the Environmental Protection Agency's web site at **www.epa.gov/superfund/sites** and **www.epa.gov/enviro/html/ej/** or on The Right-To-Know Network at **www.rtk.net**.
43, 44	Questions 43 and 44 shall be answered by checking State maintained lists that can be obtained either by: • accessing websites hosted by the appropriate State Regulatory Authority • calling their office and requesting a hard copy. Contact SEC for assistance in completing this part if data is difficult to obtain. If "yes" is checked on any question, provide further information in an attachment by describing the type of site, location, and distance from the property.

Part F - Visual Representation of Property

A sketch of the property is very important in locating any environmental risk factors such as UST's, stained soil, or leaking containers.

- Start with a rough outline of the property boundaries and include any roads, railways, water channels, buildings, or other landmarks.

- Draw in the appropriate map symbols provided in the legend.

Note: If additional map symbols are needed, add to the legend. Indicate the orientation of the map. List the map symbols on the back of applicable photographs.

Instead of a sketch, a good quality copy of an aerial photograph may be attached. If an aerial photograph is used, the map symbols should still be used. When there are numerous findings of similar objects or sites, add a number to the map symbol.

Example: There may be 2 UST's on the property. The first UST would be given a map symbol of U-1 and the second UST would be given a map symbol of U-2.

Completing FSA-851 (Continued)

B FSA-851 Instructions (Continued)

Item	Instructions
	Part G -Conclusion Include all applicable information as requested. Preparer should draw a conclusion to the best of their ability. If preparer has any doubt as to the significance of a potential threat, recommend further investigation by a trained environmental professional or seek further advice from SEC. FSA's conclusion on future action is based on the following 10 response choices.
1	This response should be chosen if signs of contamination were observed that could potentially have significant effects upon the value of the real property and the environment. Examples would include, but not be limited to: • large amounts of abandoned hazardous waste • large areas of stained soil • known or suspected leaking UST's. Preparer should evaluate each property differently as a small stained area of sandy soil on one property may be just as significant as a large stained area of clay soil on another property. Another example of when further evaluation would be warranted is if the property is adjacent to or in close proximity to a Superfund National Priorities List site. **Note:** Phase II ESA is a detailed investigation and evaluation of a property's environmental condition, including a review of all pertinent records, a site reconnaissance of the property, and taking soil, water, and air samples to determine contaminant content or verify that no contaminants are present or likely to be present.
2	This response should be chosen if the preparer is alerted to the fact through interview or research that the real property may be more significantly affected by environmental risks than is apparent through normal observation. **Examples:** The discovery that unknown objects or substances were buried on the real property. Research or interview indicates that the property once contained a facility such as a gas station which could cause significant environmental contamination.

Completing FSA-851 (Continued)

B FSA-851 Instructions (Continued)

Item	Instructions
3	This response should be chosen if small amounts of environmental contamination are noted on the property but are not present in sufficient quantities to pose a significant threat to the environment. Examples that meet the requirements for this response include, but are not limited to: • small shallow and insignificant soil stains • empty and rinsed pesticide containers • small quantities of tires • containers of hazardous substances stored in a protective structure.
4	This response should be chosen when the review of the property does not reveal any signs of potential contamination or other environmental concerns. Normal and safe storage of agricultural chemicals, tires, petroleum products, and batteries will **not** be considered as potential sources of contamination.
5	Preparer **must** sign the form in ink.
6	Preparer **must** enter the date that the form is signed.
7	Preparer **must** print or type their name.
8	Preparer **must** provide: • job title • name of the agency or lender for whom FSA-851 has been completed.
9	Preparer **must** provide the address of the agency or lender.
10	Preparer **must** provide telephone number where they can be reached should any questions arise.
Part H - Update Information Use this section when it is necessary to only update a previously completed FSA-851 as allowed by procedure. **FSA-851 may only be updated twice before a new FSA-851 will need to be completed**.	
1 A and 2 A	Person completing the update **must** provide the date of the update.
1 B and 2 B	Person completing the update **must** provide their name.
1 C and 2 C	Person completing the update **must** provide their job title.
1 D and 2 D	Person completing the update **must** provide the name of the appropriate agency or lender for whom the update has been completed.

Completing FSA-851 (Continued)

C Example of FSA-851

This form is available electronically.

FSA-851
(04-13-05)

U. S. DEPARTMENT OF AGRICULTURE
Farm Service Agency

ENVIRONMENTAL RISK SURVEY FORM

TYPES OF REVIEW:
- [ ] A. Initial Review
- [ ] B. Subsequent Review (Update 1)
- [ ] C. Subsequent Update (Update 2)

Note: Please read instructions for completing before preparing this form.

PART A - SITE INFORMATION

1. Site Name	2. Address *(Include City, State, Zip Code and County)*	3. Case Number

4. Township	5. Range	6. Section

7. Directions to property: *(From nearest town)*

8. Nearest intersection	9. Property Size	10. Describe the current use of the property

PART B - SITE OWNERSHIP HISTORY AND BACKGROUND

11A. Current Owner	11B. Current Operator	13. Date FSA became involved with the property *(Date of first loan or application)*

12. Previous owner(s):

A. Name:	B. Dates owned:

PART C - SITE DATA

14. Are there any buildings on the property? [ ] YES [ ] NO *If "YES", complete TABLE 1.*

TABLE 1 - Buildings or Other Structures. Insert the appropriate map symbol from Part F in column B

A. Type of Structure	B. Map Symbol	C. Year Built	D. Used for Chemical Storage and or Mixing			E. Contains Lead Based Paint			F. Contains Asbestos		
			YES	NO	Unknown	YES	NO	Unknown	YES	NO	Unknown

Questions 15 through 22 are used to establish the present use of the property as well as any historical use which may be a contributing factor in any present contamination concerns.

Question	A. Owner or Occupant			B. Observed During Visit		
	YES	NO	Unknown	YES	NO	Unknown
15. Has the property ever been used for industrial production such as a machine shop?						
16. Have any adjoining properties been used for industrial production such as a machine shop?						
17. Has the property ever been used for the production or exploration of petroleum?						
18. Has the property ever been used as a base location for an aerial crop spraying or dusting service?						

Completing FSA-851 (Continued)

C Example of FSA-851 (Continued)

FSA-851 (04-13-05) Page 2 of 6

	A. Owner or Occupant			B. Observed During Visit		
	YES	NO	Unknown	YES	NO	Unknown
19. Has a gasoline station or any other commercial activity that stored large amounts of solvents, pesticides or other chemicals ever operated on the property?						
20. Has a gasoline station or any other commercial activity that stored large amounts of solvents, pesticides or other chemicals ever operated on any adjoining properties?						
21. Has the property ever been used as a junkyard or landfill including a site where drums or other containers of chemicals were buried?						
22. Have any adjoining properties ever been used as a junkyard or landfill including a site where drums or other containers of chemicals were buried?						
23. Are there any USTs on the property which have been permanently closed?						
24. Are there any environmental liens or judgements filed against the property as a result of not complying with Federal or State environmental laws?						
25. Is the property involved in any lawsuits regarding environmental compliance issues?						

26. Are there any chemical containers including 55-gallon drums used for pesticides or other hazardous substances located on the property?
☐ YES ☐ NO ☐ Unknown *If "YES", complete TABLE 2.*

TABLE 2 - Containers or Drums. Insert the appropriate map symbol from Part F in column B.

A. Container Location	B. Map Symbol	C. Container Contents	D. EPA Reg. *(if available)*	E. Estimated Quantity	F. Is the Container Leaking?		
					YES	NO	Unknown

27. Are there any abandoned or discarded automotive, tractor, farm machinery, industrial, or other batteries present on the property?
☐ YES ☐ NO ☐ Unknown *If "YES", provide the estimated quantity and location in TABLE 3.*

TABLE 3 - Batteries. Insert the appropriate may symbol from Part F in column B.

A. Location of Batteries	B. Map Symbol	C. Estimated Quantity	D. Are Any of the Batteries Leaking?		
			YES	NO	Unknown

28. Are there any appliances, junk automobiles, tractors, farm machinery, abandoned tires, or other automobile or tractor related parts present on the property?
☐ YES ☐ NO ☐ Unknown *If "YES", provide the estimated quantity and location in TABLE 4.*

TABLE 4 - Abandoned Machinery, Tires or Other Equipment. Insert the appropriate map symbol from Part F in column B.

A. Location of Appliances, Machinery, Tires or Parts	B. Map Symbol	C. Estimated Quantity	D. Type of Tires or Parts

Completing FSA-851 (Continued)

C Example of FSA-851 (Continued)

FSA-851 (04-13-05) Page 3 of 6

	YES	NO	Unknown
29. Are there any signs of fill dirt present on the property which might indicate covering of contaminants? *If "YES", provide the location and map symbol:*			
30. Are there any areas of stained soil on the property? *If "YES", provide the location and map symbol, and appropriate size. Also attach photographs.*			
31. Are there any areas of the property such as floors in buildings which are stained? *If "YES", provide the location and map symbol for the affected buildings.*			
32. Are there any electrical transformers located on the property which are not labeled as "PCB Free"? *If "YES", provide the location and map symbol.*			
33. Does the property contain any USTs or above ground storage tanks (ASTs) currently in operation or which have been temporarily closed? *If "YES", complete TABLE 5.*			

TABLE 5 - Storage Tanks. Insert the appropriate map symbol from Part F in column C.

A. Tank Location	B. Size if known	C. Map Symbol	D. What Type		E. If "UST", is it Registered?			F. Does the Tank Contain Any Substance?			G. If "YES", What Substance	H. Is the Tank Known to be Leaking?		
			AST	UST	YES	NO	Unknown	YES	NO	Unknown		YES	NO	Unknown

PART D - WATER AND WASTE INFORMATION

34. Are there any lagoons, ponds or other liquid holding facilities present on the property?

☐ YES ☐ NO ☐ Unknown *If "YES", complete TABLE 6.*

TABLE 6 - Lagoons, Ponds or Other Holding Facilities. Insert the appropriate map symbol from Part F in column C.

A. Lagoon, Pond, or Other Location	B. Size	C. Map Symbol	D. Primary Use	E. Condition			F. Permitted or Registered		
				Good	Fair	Poor	YES	NO	Unknown

Completing FSA-851 (Continued)

C Example of FSA-851 (Continued)

FSA-851 (04-13-05) Page 4 of 6

35. Are there any wells located on the property?

☐ YES ☐ NO ☐ Unknown *If "YES", complete TABLE 7.*

TABLE 7 - Wells. Insert the appropriate map symbol from Part F in column B.

A. Location of Well	B. Map Symbol	C. Use 1/				D. Depth	E. Described Condition of Well and Casing			F. Construction		
		D	I	O	A		Good	Fair	Poor	Casing	Drilled	Dug
1.												
2.												
3.												
4.												
5.												
6.												

1/ "D" - Domestic "I" - Irrigation "O" - Other "A" - Abandoned

36. If applicable, is there evidence of well contamination such as signs of using an area immediately adjacent to the well(s) listed in TABLE 7 for the filling of spray tanks?

☐ YES ☐ NO ☐ Unknown *If "YES", provide the number of the well(s) from TABLE 7:*

37. Is there any evidence or do you have prior knowledge that contaminants have been identified in either a well or water system with levels that exceed regulatory acceptable levels?

☐ YES ☐ NO ☐ Unknown *If "YES", provide the number of the well(s) from TABLE 7:*

38. If drinking water is not obtained from a groundwater source on the property, where does the supply come from?

39. If a residence is located on the property, what type of waste or septic system is used? Describe condition of such system along with distance of system from any drinking water sources:

PART E - RECORDS SEARCH

	YES	NO
40. Are there any National Priority List (NPL) sites within 1 mile of the property?		
41. Are there any Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) sites located within .5 mile of the property?		
42. Are there any sites listed by the State within 1 mile of the property which are equivalent to NPL sites?		
43. Based on State maintained data, are there any Leaking Underground Storage Tanks (LUST) within 1 mile of the property?		
44. Based on State maintained data, are there any solid waste landfill sites located within 1 mile of the property?		

Completing FSA-851 (Continued)

C Example of FSA-851 (Continued)

FSA-851 (04-13-05) Page 5 of 6

PART F - VISUAL REPRESENTATION OF PROPERTY - In lieu of a sketch, the preparer may attach an aerial photograph with boundaries and areas of concern identified and/or multiple site photographs documenting/supporting form answers.

Legend and Map Symbols:

U	UST	++++	Railroad
A	AST	PL	Pond or lagoon
R	Residence	D	Dump or other possibly contaminated site
B	Building	GB	Grain bin or silo
ST	Septic Tank and System	WD	Well-Drinking Water
~~	Creek, stream, river	WI	Well-Irrigation
= = =	Public road	WO	Well-Other
CM	Cemetery	WA	Well-Abandoned
—	Private road or driveway	SS	Stained Soil
BT	Batteries	W	Wetland
T	Tires	‡	Transformer
X	Barrel or drum	C	Containers

Completing FSA-851 (Continued)

C Example of FSA-851 (Continued)

FSA-851 (04-13-05) Page 6 of 6

PART G - CONCLUSION

I have reviewed the documents in the case file and have made a site inspection. The result of this site inspection is:

- ☐ 1. Evidence of contamination was found or observed on the property and further evaluation through a Phase II ESA is recommended.
- ☐ 2. The preliminary environmental assessment results were found to be inconclusive and further evaluation through a Phase II ESA is recommended.
- ☐ 3. Evidence of contamination was found but was not noted to be significant to require further evaluation.
- ☐ 4. No evidence of contamination was found or observed and no further evaluation is needed.

To the best of my knowledge, the above statement and facts are true and correct, and to the best of my knowledge, no facts or information have been misrepresented or omitted:

5. Signature of Preparer _____ 6. Date _____

7. Printed Name of Preparer _____

8. Title of Preparer and Agency or Lender	9. Address *(Zip Code)*	10. Telephone Number *(Area Code)*

PART H - UPDATE INFORMATION

1. For Update 1:	**2. For Update 2:**
A. Date Updated	A. Date Updated
B. Updated by:	B. Updated by:
C. Title	C. Title
D. Agency/Lender	D. Agency/Lender

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Sales Contract Contingency Language for LBP

The following language shall be used in sales contracts to make the sale contingent upon an LBP inspection.

Contract Contingency Language for LBP Inspection

This contract is contingent upon a lead-based paint inspection or risk assessment of the property for the presence of lead-based paint and/or lead-based paint hazards at the Purchaser's expense until 9 p.m. on the 10th calendar day after ratification. (Intact lead-based paint that is in good condition is not necessarily a hazard. See the Environmental Protection Agency pamphlet "*Protecting Your Family From Lead in Your Hom*"*e* for more information.) This contingency will terminate on [*Insert date 10 days after contract ratification or a date mutually agreed upon*] unless the Purchaser (or the Purchaser's agent) delivers to the Seller (or the Seller's agent) a written contract addendum listing specific and previously undisclosed deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within 5 days after the Delivery of the addendum, elect in writing whether to correct the conditions prior to settlement. If the Seller will correct the conditions, the Seller shall furnish the Purchaser with certification from a risk assessor or inspector demonstrating that the conditions have been remedied before the date of settlement. If the Seller does not elect to make repairs, or if the Seller makes a counter offer, the Purchaser shall have 5 days to respond to the counter-offer or remove this contingency and take the property in "as is" condition or this contract shall become void.

The Purchaser may waive this opportunity to conduct a risk assessment or inspection and cancel the related contingency by initialing the appropriate line below.

[[GRANTEE]] hereby WAIVES _____DOES NOT WAIVE _____the 10 day period to conduct a lead-based paint risk assessment or inspection prior to becoming obligated under this contract to purchase the property.

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