

§ 1965.17

service the loan to protect the Government's security interest.

§ 1965.17 Lease of security.

(a) *General provisions.* When the County Supervisor learns that a borrower is leasing or intends to lease all or a portion of the security, the County Supervisor will ask the borrower for a copy of the lease, if it is written. If the borrower leases or proposes to lease the real estate security for a term of more than 3 years or with an option to purchase, the County Supervisor will normally initiate liquidation action in accordance with §1965.26(b) of this subpart. However, if under unusual circumstances the County Supervisor believes FmHA or its successor agency under Public Law 103-354 should consent to such a lease arrangement, prior approval of the Assistant Administrator, Farmer Programs, or the Administrator, if a SFH loan is secured by the same security, is required. The State Director should forward such a request, along with a justification to the National Office. No action will be taken to disapprove or to approve a lease if the lease is for less than three years and contains no option to purchase; however, if under the lease of security, the borrower ceases to operate the farm, action will be taken in accordance with §1965.26(d) of this subpart.

(b) *Liquidation.* No action to initiate liquidation based on the lease will be taken unless the borrower:

(1) Enters into a lease for a term of more than 3 years; or

(2) Enters into a lease for any term containing an option to purchase.

(c) *Mineral leases.* When a borrower requests consent to lease the mineral rights to security, the County Supervisor may consent provided the proposed use of the leased rights will not result in the Government's security interest being adversely affected. If applicable, the requirements of Subpart G of Part 1940 of this chapter must be met. A borrower does not need FmHA or its successor agency under Public Law 103-354's consent to lease the mineral rights securing a Farmer Program loan approved after December 23, 1985, unless the oil, gas or other minerals were included on FmHA or its suc-

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cessor agency under Public Law 103-354's real estate appraisal. If FmHA or its successor agency under Public Law 103-354 consent is needed and consent is given, lease payments can be used for prospective payments on FmHA or its successor agency under Public Law 103-354 loans. Any payment or other compensation the borrower may receive for damages to the surface of the collateral real estate resulting from exploration for or recovery of minerals will be assigned to FmHA or its successor agency under Public Law 103-354 and will be used to repair the damage or used as authorized in §1965.13(f) of this Subpart. Form FmHA or its successor agency under Public Law 103-354 465-1 will be used to process requests under this section. The County Supervisor should carefully document the facts to support the determinations reached concerning the effects of a mineral lease on the Government security. Assignment of income will be taken by use of Form FmHA or its successor agency under Public Law 103-354 443-16, "Assignment of Income from Real Estate Security," or other form approved by OGC which is necessary to comply with State law.

[51 FR 4140, Feb. 3, 1986, as amended at 53 FR 35795, Sept. 14, 1988; 58 FR 52654, Oct. 12, 1993]

§ 1965.18 Transfer of upland cotton, peanut, or tobacco allotments.

(a) *General.* Agriculture Stabilization and Conservation Service (ASCS) regulations, pursuant to approved legislation, permit the transfer of upland cotton, peanut, or tobacco allotments by one or more of the following transactions: (1) Sale, (2) lease, or (3) transfer by the owner to another farm owned or controlled by the owner. These regulations require, among other things, that no allotment be transferred from a farm which is subject to a mortgage or other lien, unless the transfer is agreed to by the lienholders. It is FmHA or its successor agency under Public Law 103-354's policy to approve the transfer of any crop allotments permitted by the ASCS regulations if the conditions and requirements of this subpart can be met. FmHA or its successor agency under Public Law 103-354 personnel should familiarize themselves with the States

ASCS policies and requirements concerning the sale, lease, or transfer of allotments to assure compliance with established FmHA or its successor agency under Public Law 103-354 policies and servicing of security.

(b) *Authorization.* County Supervisors are authorized to approve a transfer of upland cotton, peanut, or tobacco allotment by execution of a completed Form FmHA or its successor agency under Public Law 103-354 465-1. County Supervisors are also authorized to execute the lienholder or mortgagee agreement on appropriate ASCS forms provided by ASCS for those cases in which a transfer is approved.

(c) *Transfer by sale.* Crop allotments enhance the value of a farm mortgaged to the FmHA or its successor agency under Public Law 103-354 and constitute security for the FmHA or its successor agency under Public Law 103-354 loan. Accordingly, when a borrower whose farm is mortgaged to the FmHA or its successor agency under Public Law 103-354 inquires about the sale of any of the allotted acres or requests the FmHA or its successor agency under Public Law 103-354 to sign the required lienholder or mortgagee agreement, the request will be treated the same as for a sale of a portion of the security and approval of the sale can be granted only in accordance with the applicable conditions and requirements of § 1965.13 of this subpart. The sale proceeds may be used as authorized in § 1965.13(f) of this subpart.

(d) *Transfer of allotment by lease.* The County Supervisor has the authority to approve a lease of all or a portion of an allotment for a 1 year period, provided the lease or its terms will not adversely affect the repayment of the loan; leasing is not an alternative to or means of delaying liquidation; and the lease and use of proceeds will further the objectives of the loan. If a 1 year lease is approved, the lease proceeds may be used as farm income as outlined in § 1962.17(b) of Subpart A of Part 1962 of this chapter. Leases for a period of more than 1 year will be granted only with the concurrence of the District Director. When a lease is for more than 1 year, an assignment of the rental proceeds should be obtained.

(e) *Transfer of allotment by owner to other land owned or controlled by the owner.* A transfer by an owner to other land owned or controlled by the owner is normally interpreted by the ASCS as a permanent transfer and can be avoided only by stipulating in the mortgage approval that the transfer is to be considered as a lease for the appropriate number of years. This type of transfer will be approved only as a lease under conditions in paragraph (d) of this section to assure that the crop allotment on the security is not adversely affected.

§ 1965.19 Severance agreement.

Form FmHA or its successor agency under Public Law 103-354 440-26, "Consent and Subordination Agreement," will be completed when a borrower requests FmHA or its successor agency under Public Law 103-354's consent to a severance agreement, or other instrument of similar effect, so that items to be acquired by the borrower through other credit and subject to a chattel lien will not become a part of the real estate securing the FmHA or its successor agency under Public Law 103-354 debt. Some examples of items which may be acquired subject to a chattel lien are silos, storage bins, bulk milk tanks, irrigation or income producing facilities, non-farm enterprise facilities, and recreational equipment. County Supervisors are authorized to give FmHA or its successor agency under Public Law 103-354 consent by executing Form FmHA or its successor agency under Public Law 103-354 440-26 and any necessary severance agreements, provided that the following determinations are made:

(a) The financing arrangements are in the best interest of the Government and the borrower.

(b) The transaction will not adversely affect FmHA or its successor agency under Public Law 103-354's security position and will be within the borrower's debt-paying ability, and

(c) The facility does not exceed the borrower's needs, is modest in cost and design; and is otherwise in line with FmHA or its successor agency under Public Law 103-354 financing policies. OGC will be requested to approve any severance agreement submitted by a