

from obtaining operating credit from other sources.

(2) A lien will not be taken on property that could have significant environmental problems/costs (e.g., known or suspected underground storage tanks or hazardous wastes, contingent liabilities, wetlands, endangered species, historic properties). Guidance is provided in part II, item H of exhibit A of FmHA Instruction 1922-E (available in any FmHA or its successor agency under Public Law 103-354 office) as to the action to be taken when the appraiser indicates that the property is subject to any hazards, detriments or limiting conditions.

(3) A lien will not be taken on property that cannot be made subject to a valid lien.

(4) A lien will not be taken on the applicant's personal residence and appurtenances, when the residence is located on a separate parcel and the farm tract(s) being used for collateral, in addition to any crops or chattels, meet the security requirement of at least equal to 150 percent of the loan.

(5) A lien will not be taken on subsistence livestock; cash or special cash collateral accounts to be used for the farming operation or for necessary living expenses; all types of retirement accounts; personal vehicles necessary for family living or farm operating purposes; household goods; and small tools and small equipment, such as hand tools, power lawn mowers, and other similar items not needed for security purposes.

(6) When title to a livestock or crop enterprise is held by a contractor under a written contract or the enterprise is to be managed by the applicant under a share lease or share agreement, an assignment of all or part of the applicant's share of the income will be taken. A form approved by OGC will be used to obtain the assignment.

(7) A lien will not be taken on timber or the marginal land for a loan for planting softwood timber trees on marginal land in conjunction with a softwood timber (ST) loan.

(d) *Assignment on income in Uniform Commercial Code (UCC) States.* The County Supervisor will determine whether or not such an assignment will be taken. In UCC States, an assign-

ment of livestock or crop income constitutes a security agreement on income. The share lease, share agreement, or contract will be described specifically as "Contract Rights" or "Contract Rights in Livestock or Crops," (or as "Accounts" or "Accounts in Livestock or Crops," if required by a State supplement), and so forth, in paragraph 1(b) of the financing statement.

(e) *Insurance.* See §1941.88 of subpart B of this part for insurance requirements.

(f) *Special security requirements.* When OL loans are made to eligible entities that consist of members who are presently indebted for an OL loan(s) as individual(s), or when OL loans are made to eligible individuals who are members of an entity which is presently indebted for an OL loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to the Agency for any other farm credit programs direct or guaranteed loan(s).

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) The outstanding amount of loans made may not exceed the value of the collateral used.

[53 FR 35684, Sept. 14, 1988, as amended at 54 FR 47959, Nov. 20, 1989; 56 FR 67480, Dec. 31, 1991; 57 FR 18676, Apr. 30, 1992; 59 FR 22961, May 4, 1994; 59 FR 25799, May 18, 1994; 61 FR 35925, July 9, 1996]

§§ 1941.20–1941.22 [Reserved]

§ 1941.23 General provisions.

(a) *Compliance requirements.* The following will apply as appropriate:

(1) Environmental assessments and statements. Subpart G of part 1940 of this chapter should be referred to for these requirements. The State Environmental Coordinator should be consulted for assistance in preparing any required statements.

(2) Equal opportunity and non-discrimination requirements. In accordance with title V of Pub. Law 93-495, the Equal Credit Opportunity Act, FmHA or its successor agency under Public Law 103-354 will not discriminate against any applicant on the basis

of race, color, religion, sex, national origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract, with respect to any aspect of a credit transaction.

(3) National Historic Preservation Act of 1966. If a loan will affect any district, site, building, structure, or object that has been included in the National Register of Historic Places as maintained by the Department of Interior in accordance with the National Historic Preservation Act of 1966, or if the undertaking may affect properties having scientific, prehistorical, historical, or archaeological significance, the provisions of subpart F of part 1901 of this chapter will apply.

(b) *Other considerations.* (1) FmHA or its successor agency under Public Law 103-354 employees will not guarantee repayment of advances from other credit sources, either personally or on behalf of applicants, borrowers, or FmHA or its successor agency under Public Law 103-354.

(2) An applicant will be advised that compliance with all applicable special laws and regulations is required.

(3) An applicant must have acceptable tenure arrangements. Unless the loan approval official determines otherwise, each applicant will obtain a satisfactory written lease. A copy of the lease will be filed in the County Office case file.

[53 FR 35684, Sept. 14, 1988, as amended at 68 FR 62224, Nov. 3, 2003]

§ 1941.24 [Reserved]

§ 1941.25 Appraisals.

(a) Except as provided in paragraph (a)(5) of this section, real estate appraisals will be completed by an FmHA or its successor agency under Public Law 103-354 employee, or a contractor authorized to make farm appraisals. Chattel and real estate appraisals will be made on forms in accordance with § 761.7 of this title and, in the case of an appraisal of mineral rights' the appropriate Agency form (available in each Agency State Office) or other format that contains the same information, to determine market value and borrower equity in the following instances:

(1) When an initial loan is made, a chattel appraisal is required on all chattel property owned by the applicant, and on chattel property to be acquired when the item can be specifically identified.

(2) When a subsequent loan is made, a chattel appraisal is required when:

(i) Refinancing chattel debt.

(ii) The existing chattel appraisal is more than 2 years old.

(3) A real estate appraisal is not required when real estate is taken as additional security, as defined in § 1941.4 of this subpart. However, the County Supervisor will document in the running record the estimated market value of the additional security and the basis for the estimate.

(4) A real estate appraisal is required when real estate is taken as primary security, as defined in § 1941.4, and the amount of the loan to be secured by the real estate exceeds \$50,000.

(5) Other real estate appraisals completed by other State-certified general appraisers may be used providing such appraisals meet the ethics, competency, departure provisions, etc., and Sections I and II of the Uniform Standards of Professional Appraisal Practices, and contain a mineral rights appraisal as set out in paragraph (a) of this section. Prior to acceptance, the appraisal must have an acceptable desk review (technical) completed by an FmHA or its successor agency under Public Law 103-354 designated review appraiser.

(6) A new real estate appraisal is not required if the latest appraisal report available is not over 1 year old, unless the approval official requests a new appraisal, or unless significant changes in the market value of real estate have occurred in the area within the 1-year period.

(b) *Real estate appraiser qualifications.* The contractor, when he/she is not the appraiser, is responsible for substantiating the appraiser's qualifications. The contractor will obtain FmHA or its successor agency under Public Law 103-354's concurrence that the appraiser has the necessary qualifications and experience before the contractor will utilize the appraiser in any appraisal work. The contractor/appraiser