

## § 765.253

years, or 5 years if the borrower and the lessee are related by blood or marriage. The term of surface leases for farm property no longer in use, such as old barns, or for nonfarm purposes, such as wind turbines, communication towers, or similar installations can be for any term;

(3) The lease does not contain an option to purchase; and

(4) The lease does not hinder the future operation or success of the farm, or, if the borrower has ceased to operate the farm, the requirements specified in § 765.253 are met; and

(5) The lease and any contracts or agreements in connection with the lease must be reviewed and approved by the Government.

(b) *Mineral leases.* The borrower must request Agency consent to lease any mineral rights used as security for FLP loans.

(1) For FO loans made from December 23, 1985, to February 7, 2014, and loans other than FO loans secured by real estate and made from December 23, 1985, to November 1, 2013, the value of the mineral rights must have been included in the original appraisal in order for the Agency to obtain a security interest in any oil, gas, and other mineral associated with the real estate security.

(2) For all other loans not covered by paragraph (b)(1) of this section, the Agency will obtain a security interest in any oil, gas, and other mineral on or under the real estate pledged as collateral in accordance with the applicable security agreement, regardless of whether such minerals were included in the original appraisal.

(3) The Agency may consent to a mineral lease if the proposed use of the leased rights will not adversely affect either:

(i) The Agency's security interest; or  
(ii) Compliance with any applicable environmental requirements of part 799 of this chapter.

(4) The term of the mineral lease is not limited.

(c) *Lease of chattel security.* Lease of chattel security is not authorized.

(d) *Lease proceeds.* Lease proceeds are considered normal income security and may be used in accordance with § 765.303.

## 7 CFR Ch. VII (1–1–19 Edition)

(e) *Lease of allotments.* (1) The Agency will not approve any crop allotment lease that will adversely affect its security interest in the allotment.

(2) The borrower must assign all rental proceeds from an allotment lease to the Agency.

[72 FR 63309, Nov. 8, 2007, as amended at 78 FR 65531, Nov. 1, 2013; 79 FR 78694, Dec. 31, 2014; 81 FR 51284, Aug. 3, 2016]

### § 765.253 Ceasing to operate security.

If the borrower requests Agency consent to cease operating the security or if the Agency discovers that the borrower is failing to operate the security, the Agency will give consent if:

(a) Such action is in the Agency's best interests;

(b) The borrower is unable to graduate on any program except for CL;

(c) The borrower is not ineligible as a result of disqualification for Federal crop insurance violation according to 7 CFR part 718;

(d) Any one of the following conditions is met:

(1) The borrower is involved in the day-to-day operational activities, management decisions, costs and returns of the farming operation, and will continue to reside in the immediate farming community for reasonable management and operation involvement;

(2) The borrower's failure to operate the security is due to age or poor health, and the borrower continues to reside in the immediate farming community for reasonable management and operation involvement; or

(3) The borrower's failure to operate the security is beyond the borrower's control, and the borrower will resume the farming operation within 3 years.

[72 FR 63309, Nov. 8, 2007, as amended at 75 FR 54016, Sept. 3, 2010; 78 FR 65531, Nov. 1, 2013]

### §§ 765.254–765.300 [Reserved]

## Subpart G—Disposal of Chattel Security

### § 765.301 General.

(a) The borrower must account for all chattel security, and maintain records of dispositions of chattel security and

the actual use of proceeds. The borrower must make these records available to the Agency upon request.

(b) The borrower may not dispose of chattel security for an amount less than its market value. All proceeds, including any amount in excess of the market value, must be distributed to lienholders for application to the borrower's account in the order of lien priority.

(1) The Agency considers the market value of normal income security to be the prevailing market price of the commodity in the area in which the farm is located.

(2) The market value for basic security is determined by an appraisal obtained in accordance with § 761.7 of this chapter.

(c) When the borrower sells chattel security, the property and proceeds remain subject to the Agency lien until the lien is released by the Agency.

(d) The Agency and all other lienholders must provide written consent before a borrower may use proceeds for a purpose other than payment of lienholders in the order of lien priority.

(e) The transaction must not interfere with the borrower's farming operation or jeopardize the borrower's ability to repay the FLP loan.

(f) The disposition must enhance the program objectives of the FLP loan.

(g) When the borrower exchanges security property for other property or purchases new property with sale proceeds, the acquisition must be essential to the farming operation as well as meet the program objectives, purposes, and limitations for the type of loan.

(h) All checks, drafts, or money orders which the borrower receives from the sale of Agency security must be payable to the borrower and the Agency. If all FLP loan installments and any past due installments, for the period of the agreement for the use of proceeds have been paid, however, these payments from the sale of normal income security may be payable solely to the borrower.

[72 FR 63309, Nov. 8, 2007, as amended at 78 FR 65531, Nov. 1, 2013]

**§ 765.302 Use and maintenance of the agreement for the use of proceeds.**

(a) The borrower and the Agency will execute an agreement for the use of proceeds.

(b) The borrower must report any disposition of basic or normal income security to the Agency as specified in the agreement for the use of proceeds.

(c) If a borrower wants to dispose of normal income security in a way different than provided by the agreement for the use of proceeds, the borrower must obtain the Agency's consent before the disposition unless all FLP payments planned on the agreement have been paid.

(d) If the borrower sells normal income security to a purchaser not listed in the agreement for the use of proceeds, the borrower must immediately notify the Agency of what property has been sold and of the name and business address of the purchaser.

(e) The borrower must provide the Agency with the necessary information to update the agreement for the use of proceeds.

(f) Changes to the agreement on the use of proceeds will be recorded, dated and initialed by the borrower and the Agency.

[72 FR 63309, Nov. 8, 2007, as amended at 78 FR 65531, Nov. 1, 2013]

**§ 765.303 Use of proceeds from chattel security.**

(a) *General.* (1) Proceeds from the sale of basic security and normal income security must be remitted to lienholders in order of lien priority.

(2) Proceeds remitted to the Agency may be used as follows:

(i) Applied to the FLP loan;

(ii) Pay customary costs appropriate to the transaction.

(3) With the concurrence of all lienholders, proceeds may be used to preserve the security because of a natural disaster or other severe catastrophe, when funds cannot be obtained by other means in time to prevent the borrower and the Agency from suffering a substantial loss.

(4) Security may be consumed as follows:

(i) Livestock may be used by the borrower's family for subsistence;