

§ 764.3

Nonfarm enterprise means any non-farm business enterprise, including recreation, that is closely associated with the farm operation and located on or adjacent to the farm and provides income to supplement farm income. This may include, but is not limited to, such enterprises as raising earthworms, exotic birds, tropical fish, dogs, and horses for nonfarm purposes, welding shops, roadside stands, boarding horses and riding stables.

Normal production yield means:

(1) The per-acre actual production history of the crops produced by the farming operation used to determine Federal crop insurance payments or payment under the Non-Insured Assistance Program for the production year during which the disaster occurred;

(2) When the actual production history is not available, the applicant's own production records for the previous three years will be used. If the applicant's production records are not available, the records of production on which FSA farm program payments are made that are contained in the applicant's farm program file, for the previous three years will be used;

(3) When the production records outlined in paragraphs (a) and (b) of this definition are not available, the county average production yield will be used.

Owner means those persons with an interest in the entity as a stockholder, partner, member, or joint operator.

Physical loss means verifiable damage or destruction with respect to real estate or chattel, excluding annual growing crops.

Production loss means verifiable damage or destruction with respect to annual growing crops.

Security value means the Agency-established market value of property (less the value of any prior liens) used as security for a loan under this part as of the date of the closing of the loan.

United States means each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Working capital means cash available to conduct normal daily farming or ranching operations including, but not limited to, feed, seed, fertilizer, pes-

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ticides, farm or ranch supplies, cooperative stock, and cash rent.

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§ 764.3 Emergency loan funds uses.

(a) *Physical losses*—(1) *Real estate losses*. Emergency loans may be used to address the needs of the farming operation associated with physical losses of essential real estate that were the result of a disaster to:

(i) Acquire or enlarge the farm, as specified in §1943.16(a) of this title, as long such acquisition or enlargement does not cause the farm to exceed the requirements for a family farm;

(ii) Replace or repair buildings or other structures which are essential to the ongoing viability of the operation. The Agency will finance such replacement or repair only to the extent that the structures conform to industry standards and meet the needs of the operation and intended purposes of the structure.

(iii) Pay for activities to promote soil and water conservation and protection on the family farm as specified in §1943.16(c) of this title;

(iv) Pay loan closing costs related to acquiring, enlarging, or improving the family farm as specified in §1943.16(d) of this title, that an applicant cannot pay from other sources;

(v) Replace land or water resources on the family farm which resources cannot be restored;

(vi) Pay costs associated with land and water development for conservation or use purposes;

(vii) Establish a new site for farm dwelling and service buildings outside of a flood or mudslide area; and

(viii) Replace land from the family farm that was sold or conveyed as a direct result of the disaster, if such land is necessary for the farming operation to be effective.

(2) *Chattel losses*. Emergency loans may be used to address the needs of the farming operation associated with the physical losses of essential chattel that were the result of a disaster to:

(i) Purchase livestock and farm equipment, including but not limited to quotas, and cooperative stock for credit, production, processing, or marketing purposes;

(ii) Pay customary costs associated with obtaining, planning, and closing a loan that an applicant cannot pay from other sources (*e.g.* fees for legal, architectural, and other technical services, but not fees for agricultural management consultation and preparation of Agency forms);

(iii) Repair or replace *essential* household contents damaged in the disaster;

(iv) Pay the costs to restore perennials that produce an agricultural commodity, to the stage of development the damaged perennials had obtained prior to the disaster;

(v) In the case of a farming operation that has suffered livestock losses not from breeding stock, pay essential farm operating and family household expenses; and

(vi) Refinance debt (in the case of Farm Loan Program loan debt, as long as the applicant has not refinanced the loan more than 4 times).

(b) *Production losses.* Emergency loans may be used to address the losses of the farming operation associated with production of agricultural commodities (except the losses associated with the loss of livestock) of the farming operation that were the result of a disaster to:

(1) Pay costs associated with reorganizing the family farm to improve its profitability except that such costs shall not include the payment of bankruptcy expenses;

(2) Pay annual operating expenses, which include, but are not limited to, feed, seed, fertilizer, pesticides, farm or ranch supplies, cooperative stock, and cash rent;

(3) Pay costs associated with Federal or State-approved standards under the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 667) if the applicant can show that compliance or non-compliance with the standards will cause substantial economic injury;

(4) Pay training costs required or recommended by the Agency;

(5) Pay essential family household expenses;

(6) Refinance debt (in the case of Farm Loan Program loan debt, as long as the applicant has not refinanced the loan more than 4 times); and

(7) Replace lost working capital.

§ 764.4 Eligibility requirements.

(a) *General borrower eligibility requirements.* An applicant for an Emergency loan must meet the following requirements:

(1) *Legal capacity.* The applicant must have the legal capacity to incur the obligation of the loan.

(2) *Citizenship*—(i) *Applicant who is an individual.* The individual applicant must be a citizen of the United States or an alien lawfully admitted to the United States for permanent residence as determined by the U.S. Immigration and Naturalization Service.

(ii) *Applicant that is an entity.* If the applicant is an entity, the majority interest of the applicant must be held by individuals who are citizens of the United States or aliens lawfully admitted to the United States for permanent residence, as determined by the U.S. Immigration and Naturalization Service.

(3) *Family farm and nonfarm enterprise.* The applicant's farming operation must qualify as a family farm and must not be a nonfarm enterprise.

(4) *Established farmer.* An applicant must be an established farmer.

(5) *Owner and operator requirements.*

(i) *Loans for physical losses to real estate.* In the case of a loan for a purpose specified in § 764.3(a)(1), an applicant must be:

(A) The owner and operator of the farming operation; or

(B) An operator of the farming operation whose lease on the affected real estate would exceed the term of the loan and give the Agency prior notification of the termination of the lease during the term of the loan, and whose lessor would provide the Agency a mortgage on the real estate as security for the loan.

(ii) *Loans for physical losses to chattel.* In the case of a loan for a purpose specified in § 764.3(a)(2), an applicant must be the operator of the farming operation.

(iii) *Loans for production losses.* In the case of a loan for a purpose specified in § 764.3(b), an applicant must be the operator of the farming operation.

(6) *Entity applicants.* For entity applicants: