

## § 773.2

regulations are applicable to applicants, borrowers, and other parties involved in making, servicing, and liquidating these loans. The program objective is to assist producers of apples suffering from economic loss as a result of low apple prices.

### § 773.2 Definitions.

As used in this part, the following definitions apply:

*Agency* is the Farm Service Agency, its employees, and any successor agency.

*Apple producer* is a farmer in the United States or its territories that produced apples, on not less than 10 acres, for sale in 1999 or 2000.

*Applicant* is the individual or business entity applying for the loan.

*Business entity* is a corporation, partnership, joint operation, trust, limited liability company, or cooperative.

*Cash flow budget* is a projection listing all anticipated cash inflows (including all farm income, nonfarm income and all loan advances) and all cash outflows (including all farm and nonfarm debt service and other expenses) to be incurred by the borrower during the period of the budget. A cash flow budget may be completed either for a 12 month period, a typical production cycle or the life of the loan, as appropriate.

*Domestically owned enterprise* is an entity organized in the United States under the law of the state or states in which the entity operates and a majority of the entity is owned by members meeting the citizenship test.

*False information* is information provided by an applicant, borrower, or other source to the Agency which information is known by the provider to be incorrect, and was given to the Agency in order to obtain benefits for which the applicant or borrower would not otherwise have been eligible.

*Feasible plan* is a plan that demonstrates that the loan will be repaid as agreed, as determined by the Agency.

*Security* is real or personal property pledged as collateral to assure repayment of a loan in the event there is a default on the loan.

*USPAP* is Uniform Standards of Professional Appraisal Practice.

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### § 773.3 Appeals.

A loan applicant or borrower may request an appeal or review of an adverse decision made by the Agency in accordance with 7 CFR part 11.

### §§ 773.4-773.5 [Reserved]

### § 773.6 Eligibility requirements.

Loan applicants must meet all of the following requirements to be eligible for a Special Apple Program Loan:

(a) The loan applicant must be an apple producer;

(b) The loan applicant must be a citizen of the United States or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationalization Act. For a business entity applicant, the majority of the business entity must be owned by members meeting the citizenship test or, other entities that are domestically owned. Aliens must provide the appropriate Immigration and Naturalization Service forms to document their permanent residency;

(c) The loan applicant and anyone who will execute the promissory note must possess the legal capacity to enter into contracts, including debt instruments;

(d) At loan closing the loan applicant and anyone who will execute the promissory note must not be delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1986;

(e) At loan closing the loan applicant and anyone who will execute the promissory note must not have any outstanding unpaid judgments obtained by the United States in any court. Such judgments do not include those filed as a result of action in the United States Tax Courts;

(f) The loan applicant, in past or present dealings with the Agency, must not have provided the Agency with false information; and

(g) The individual or business entity loan applicant and all entity members must have acceptable credit history demonstrated by debt repayment. A history of failure to repay past debts as they came due (including debts to the Internal Revenue Service) when the ability to repay was within their control will demonstrate unacceptable

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credit history. Unacceptable credit history will not include isolated instances of late payments which do not represent a pattern and were clearly beyond the applicant's control or lack of credit history.

### § 773.7 Loan uses.

Loan funds may be used for any of the following purposes related to the production or marketing of apples:

- (a) Payment of costs associated with reorganizing a farm to improve its profitability;
- (b) Payment of annual farm operating expenses;
- (c) Purchase of farm equipment or fixtures;
- (d) Acquiring, enlarging, or leasing a farm;
- (e) Making capital improvements to a farm;
- (f) Refinancing indebtedness;
- (g) Purchase of cooperative stock for credit, production, processing or marketing purposes; or
- (h) Payment of loan closing costs.

### § 773.8 Limitations.

- (a) The maximum loan amount any individual or business entity may receive under the Special Apple Loan Program is limited to \$500,000.
- (b) The maximum loan is further limited to \$300 per acre of apple trees in production in 1999 or 2000, whichever is greater.
- (c) Loan funds may not be used to pay expenses incurred for lobbying or related activities.
- (d) Loans may not be made for any purpose which contributes to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

### § 773.9 Environmental compliance.

- (a) Except as otherwise specified in this section, prior to approval of any loan, an environmental evaluation will be completed by the Agency to determine if the proposed action will have any adverse impacts on the human environment and cultural resources. Loan applicants will provide all information necessary for the Agency to make its evaluation.
- (b) The following loan actions were reviewed for the purpose of compliance

with the National Environmental Policy Act (NEPA), 40 CFR parts 1500 through 1508, and determined not to have a significant impact on the quality of the human environment, either individually or cumulatively. Therefore the following loan actions are categorically excluded from the requirements of an environmental evaluation:

- (1) Payment of legal costs associated with reorganizing a farm to improve its profitability as long as there will be no changes in the land's use or character;
  - (2) Purchase of farm equipment which will not be affixed to a permanent mount or position;
  - (3) Acquiring or leasing a farm;
  - (4) Refinancing an indebtedness not greater than \$30,000;
  - (5) Purchase of stock in a credit association or in a cooperative which deals with the production, processing or marketing of apples; and
  - (6) Payment of loan closing costs.
- (c) The loan actions listed in paragraph (b) of this section were also reviewed in accordance with section 106 of the National Historic Preservation Act (NHPA). It was determined that these loan actions are non-undertakings with no potential to affect or alter historic properties and therefore, will not require consultation with the State Historic Preservation Officer, Tribal Historic Preservation Officer, or other interested parties.

(d) If adverse environmental impacts, either direct or indirect, are identified, the Agency will complete an environmental assessment in accordance with the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA to the extent required by law.

(e) In order to minimize the financial risk associated with contamination of real property from hazardous waste and other environmental concerns, the Agency will complete an environmental risk evaluation of the environmental risks to the real estate collateral posed by the presence of hazardous substances and other environmental concerns.

- (1) The Agency will not accept real estate as collateral which has significant environmental risks.