

**UNITED STATES DEPARTMENT OF AGRICULTURE**

Farm Service Agency  
Washington, DC 20250

<b>Direct Loan Making 3-FLP</b>	<b>Amendment 7</b>
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**Approved by:** Deputy Administrator, Farm Loan Programs



**Amendment Transmittal**

**A Reasons for Amendment**

Subparagraph 162 B has been amended to add nursery stock under the physical loss to normal income security category.

Subparagraph 163 R has been amended to provide that only crops located in disaster designated counties, or contiguous counties, shall be included in EM loss loan calculations.

Subparagraph 165 B has been amended to provide alternatives for obtaining APH.

Subparagraph 168 F has been amended to provide when assignments will be taken.

Exhibit 7 has been amended to provide that EM loss loan funds can be used to repair or replace damaged structures and dwellings that house nursery stock, bedding plants, and other types of plants.

<b>Page Control Chart</b>		
<b>TC</b>	<b>Text</b>	<b>Exhibit</b>
	9-3, 9-4	1, pages 1, 2
	9-21, 9-22	7, pages 3, 4
	9-25, 9-26	
	9-31, 9-32	
	9-37, 9-38	



162 Loan Purposes (Continued)

**A Physical Loss Real Estate (Continued)**

**(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.**

**Note:** Soil and water conservation, land and water resource replacement, and land and water development noted in items (iii), (v), and (vii) may be performed when existing measures were damaged or destroyed during the disaster or if needed as part of a conservation plan resulting from the purchase of land. Using FSA ECP funding, when available, will be considered in conjunction with loan funds.

## 162 Loan Purposes (Continued)

**B Physical Loss Chattels**

Chattel physical losses are divided into 2 categories. The categories, which determine the purposes the loan funds may be used for, include:

- **physical loss to basic security**, which consists of equipment, perennial crops, fruit and nut bearing trees, and foundation livestock, including replacements
- **physical loss to normal income security**, which includes livestock, livestock products, \*-nursery stock, and harvested and stored crops that would be sold or fed during the-\* normal operating cycle.

**Note:** Loan funds from the loss of harvested and stored crops held for sale may be used for any loan purpose in this paragraph including annual operating expenses. Loan funds that result from the loss of harvested and stored crops that were intended for feed may be used only to replace those feed crops.

**[7 CFR 764.3(a)(2)] Emergency loans may be used to address the needs of the farming operation associated with physical losses of essential chattels 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;**

Only loan funds from the loss of normal income security may be used to purchase 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;**

The amount loaned for this purpose is subject to the limitations in subparagraph 165 C.

## 163 Eligibility Requirements (Continued)

**N Borrower Training**

**[7 CFR 764.4(a)(13)] The applicant must agree to meet the borrower training requirements in accordance with § 1924.74 of this title.**

**O Prior Drug Convictions**

**[7 CFR 764.4(a)(14)] The applicant cannot have been convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance, as defined in 21 CFR part 1308, during the current crop year or the previous 4 crop years.** If the applicant is an entity, this requirement applies to all members of the entity.

The applicant also self-certifies on the application form that he or she as an individual, or any member of an entity applicant, is not ineligible for Federal benefits based on a conviction for the distribution of controlled substances or any offense involving the possession of a controlled substance under 21 U.S.C. 862.

A decision to reject an applicant for either of these reasons is not appealable.

**P Recovery of Duplicative Benefits**

**[7 CFR 764.4(a)(15)] The applicant must agree to repay any duplicative Federal assistance to the agency providing such assistance. A person receiving Federal assistance for a major disaster or emergency is liable to the United States to the extent that the assistance duplicates benefits available to the person for the same purpose from another source.**

\*--If additional disaster benefits are expected from existing programs, but the amount is not known at loan approval, the applicant must assign the benefits to FSA.

Programs enacted by congress after loan approval will not affect EM loan calculations and are not considered duplicative benefits under FLP. FLP will not require an assignment on benefits from programs enacted **after** loan approval. In these cases, the rules for the new programs will govern treatment of the payments. A voluntary assignment of payments may be accepted if the rules for the new program permit.--\*

## 163 Eligibility Requirements (Continued)

**Q Timely Loan Application**

**[7 CFR 764.4(b)(1)] A loan application must be received by the Agency not later than 8 months after the date the disaster is declared or designated in the county of the applicant's farming operation.**

Loan approval officials shall verify that receipt of the loan application was within timeframes established in the State supplement to FmHA Instruction 1945-A.

If a county has been designated or named (either contiguous or primary) more than 1 time for the same disaster, applicants will have 8 months from the date of the most recent designation to submit an application.

**R Qualifying Losses**

**[7 CFR 764.4(b)(2)(i)] The applicant may seek an Emergency loan only with respect to a family farm that had production or physical losses as a result of a disaster in a disaster area.**

Refer to the State supplements to FmHA Instruction 1945-A, which provide a list of current \*--disaster designations, to determine if an applicant was operating in a disaster designated area.

Include **only** crops grown in disaster designated counties or contiguous counties in EM loan calculations.--\*

**[7 CFR 764.4(b)(2)(ii)] For production loss loans, the applicant must have a disaster yield that is at least 30 percent below the normal production yield of any single crop, as determined by the Agency, that comprises a basic part of an applicant's total farming operation.**

See Exhibit 2 for the definition of "Basic Part of an Applicant's Total Farming Operation."

Calculate production losses according to subparagraph 165 C.

**Note:** If an applicant cannot plant their usual crop or plants the crop and it is destroyed as a result of the disaster, then the applicant plants a substitute crop in its place, the applicant will not be eligible for a production loss on the original crop. However, if the substitute crop suffers a qualifying loss, a loan may be made for the loss on that crop.

**[7 CFR 764.4(b)(2)(iii)] For physical loss loans, the applicant must have suffered disaster-related damage to chattel or real estate essential to the farming operation, to household items that must be repaired or replaced, to harvested or stored crops, or to perennial crops.**

## 165 Calculating Losses

### A Forms for Reporting and Calculating Losses

FSA 1945-22 will be used by the applicant to report all yields and acreage information as well as physical losses to FSA.

FSA 1945-26 will be used by FSA to determine the applicant's actual production and/or physical losses.

### B Determining Normal Production Yield

**[7 CFR 764.2] Normal production yield means:**

**(a) 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;**

**Note:** For NAP insured crops, the NAP APH yield will be used the same as the RMA APH.

\*--NAP APH can be obtained from CCC-452 Manual in the producer's file. If APH is not available from RMA's website or APH's web site is not available, the production/worksheet prepared by the insurance company can be used. If the insurance company's production/worksheet is used, the running record or Farm Business Plan **must** be documented accordingly.--\*

When per-acre APH is not available, determine normal production yield according to the following:

**(b) 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;**

**Note:** The farm program payment yield is a proven yield based on the applicant's production and not the established yield set by COC.

165 Calculating Losses (Continued)

**B Determining Normal Production Yield (Continued)**

**(c) When the production records outlined in (a) and (b) above are not available, the county average production yield will be used.**

**Note:** If county averages are not available, State averages will be used.

\*--Calculate normal production yield according to the following table.

<b>If an applicant...</b>	<b>THEN...</b>
had crop insurance in the disaster year, or their crops are covered under NAP and the Risk Management Crop Insurance Report or their CCC-452 lists APH	that APH will be used as the normal year yield for the entire commodity, regardless of whether or not the entire crop is insured.
did not insure their crops or individual commodities were not insured	the applicant's actual reliable records for the 3 years immediately before the disaster year will be averaged to determine the normal year yield.
does not have APH and their own reliable records for any or all of the 3 years are not available	the yield reported to FSA for receiving farm program payments will be used in each or any of the years that these records are not available.
does not have APH, or reliable records or they have not reported yields to FSA for any or all 3 years	county or State averages will be used in any or all of the years these records are not available.

**Note:** If an applicant had crop insurance in past years but did not have crop insurance during the disaster year, APH for prior years will be ignored and have no bearing when calculating losses. Only the records listed above will be used.--\*

**165 Calculating Losses (Continued)**

**I Documentation**

**[7 CFR 764.5(e)(2)] In the case of physical losses associated with livestock, the applicant must have written documentation of the inventory of livestock and records of livestock product sales sufficient to allow the Agency to value such livestock or livestock products just prior to the loss.**

**166 Interest Rate**

**A Program Interest Rate**

**[7 CFR 764.6] The interest rate applicable for an Emergency loan will be the lower of the interest rate at the time of either loan approval or loan closing and in no event shall exceed 8 percent annually.**

**\*--This interest rate is published in 1-FLP, Exhibit 10.--\***

**167 Loan Terms**

**A Basis for Repayment**

**[7 CFR 764.7(a)] The Agency schedules repayment of Emergency loans based on the useful life of the loan security, the applicant's repayment ability, and the type of loss.**

The applicant's ability to repay the loan is a critical factor in determining the repayment term of the loan. See the requirements in subparagraphs D and E.

**167 Loan Terms (Continued)****B Minimum Repayment Requirement**

**[7 CFR 764.7(b)] The repayment schedule must include at least one payment every year.**

This payment must be at a minimum the amount of interest accrued on the principal balance at the time the installment is scheduled to be paid.

If unequal or interest only installments are scheduled, the applicant must be able to show that they will have the resources available to pay the loan in full by the final maturity date. FSA 431-2 or other farm plan used to project repayment ability must be completed according to FmHA Instruction 1924-B.

**C Repayment of Loans for Annual Operating Expenses**

**[7 CFR 764.7(c)] Emergency loans for annual operating expenses, except those expenses associated with establishing a perennial crop, must be repaid within 12 months. The Agency, however, may extend this term to not more than 18 months to accommodate the production cycle of the agricultural commodities of the farming operation.**

Annual operating loans must be scheduled for repayment at the time FSA 431-2 or other farm plan shows that income will be available to make the payment, but not later than 18 months from the date of the note.

**168 General Repayment and Security Requirements (Continued)****E Conditions for Taking Other Assets as Security**

**[7 CFR 764.8(g)(1)] In addition to the requirements for adequate and additional security, the Agency will take a security interest in other assets (other than assets listed under the exceptions in paragraph (h) of this section (subparagraph 168 G)), if available, when:**

- (i) an applicant has non-essential assets that are not being converted to cash to reduce the loan amount; or**
- (ii) the real estate security and chattel security do not provide adequate security for the loan.**

**[7 CFR 764.8(g)(2)] Other assets include:**

- (i) a pledge of real estate or chattel by a third party;**
- (ii) patents, copyrights, life insurance, stocks, other securities, and membership in cooperatives, owned by the applicant;**
- (iii) Assets owned by an applicant that cannot be converted to cash without jeopardizing the farm operation.**
- (iv) Non-essential assets owned by the applicant with an aggregate value in excess of \$5,000.**

## 168 General Repayment and Security Requirements (Continued)

**F Lack of Adequate Security**

**[7 CFR 764.8 (f)] When adequate security is not available because of the disaster, the loan application may be approved if the Agency determines, based on the plan required in paragraph (a)(1) of this section (subparagraph 168 A), that there is a reasonable assurance that the applicant has the ability to repay the loan (based on an on-going operational basis, excluding special one-time sources of income or expenses) provided:**

**(1) The applicant has pledged as collateral for the loan, all available personal and business collateral, except those items listed in paragraphs (h)(1) and (h)(2) of this section (subparagraph 168 G);**

If the applicant is an entity, all members, stockholders, partners, and joint operators must also pledge all assets, both personal and business, as collateral.

**(2) The feasible plan, approved by the Agency, indicates the loan will be repaid based upon the applicant's production and income history and addresses applicable pricing risks through the use of marketing contracts, hedging, options, revenue insurance or similar risk management practices;**

**(3) The applicant has had positive net cash farm income in at least 3 of the past 5 years; and**

This will be determined by an analysis of the applicant's tax records for the 5 years immediately preceding the disaster year. If the applicant has been farming less than 5 years, a positive net cash farm income must have been achieved in 50 percent or more of the years farmed.

Net farm income will be determined by subtracting all cash farm expenses from all farm income reported on Schedule F and other related schedules of the applicant's Federal income tax returns.

**Note:** If depreciation is shown on Schedule F, this is not a cash expense and must not be included as an expense.

**(4) The applicant has given the Agency an assignment on any USDA program payments to be received.**

\*--Assignments will only be taken on benefits from programs enacted by Congress as of the date of loan approval. FLP will **not** require assignments on benefits from programs enacted by Congress after loan approval.--\*

**Reports, Forms, Abbreviations, and Redelegations of Authority**

**Reports**

None

**Forms**

This table lists all forms referenced in this handbook.

<b>Number</b>	<b>Title</b>	<b>Display Reference</b>	<b>Reference</b>
CCC-452 Manual	NAP Actual Production History and Approved Yield Record		165
FmHA 1940-1	Request for Obligation of Funds		172, 175
FSA 431-2	Farm and Home Plan		167, 175, 176, Ex. 7
FSA-440-2	Eligibility Certification or Recommendation		175, 177
FSA 440-32	Verification of Debts and Assets		163
FSA 1940-38	Request for Lender's Verification of Loan Application		163
FSA 1945-22	Certification of Disaster Losses		165
FSA 1945-26	Calculation of Actual Losses		165

## Reports, Forms, Abbreviations, and Delegations of Authority (Continued)

## Abbreviations Not Listed in 1-CM

The following abbreviations are not listed in 1-CM.

<b>Approved Abbreviation</b>	<b>Term</b>	<b>Reference</b>
ADPS	Automated Discrepancy Processing System	163
APH	actual production history	165
BCIS	Bureau of Citizenship and Immigration Services	Ex. 8, 9
CAIVRS	Credit Alert Interactive Voice Response System	163
CONACT	Consolidated Farm and Rural Development Act	1
ECOA	Equal Credit Opportunity Act	2, 176
ECP	Emergency Conservation Funding	162
EM	emergency loans	1, 163, 164, 171, 175, Ex. 7
FLC	Farm Loan Chief	165, Ex. 7
INA	Immigration and Nationality Act	Ex. 8
INS	Immigration and Naturalization Service	163
LLC	Limited Liability Company	163
PRWORA	Personal Responsibility and Work Opportunity Reconciliation Act of 1996	Ex. 2, 8
SBA	supervised bank accounts	176

## Delegations of Authority

None

**Rehabilitation or Reestablishment of Fruit, Nut Bearing, and Income Producing Trees and Plants  
(Continued)**

**F Losses**

All losses to fruit, nut bearing, or income producing trees and plants which result in destruction of, or major damage to trees and plants will be calculated as physical losses. \* \* \*

**Note:** Advances for structures, real estate, and other chattels cannot be made under the provisions in this exhibit.

**G Loan Purposes**

Funds resulting from losses to basic security according to paragraph 162 may be used for:

- hired labor, not including the applicant's labor
  - removal of destroyed or damaged trees and related debris
  - preparation of land for replanting
  - purchase of replacement trees or plants
  - \*--repair or replacement of damaged structures and dwellings that house nursery stock, bedding plants, and other types of plants--\*
  - expenses necessary to complete the 5-year plan for rehabilitation and reestablishment
  - payment of costs associated with promoting soil and water conservation, replacement land or water resources, and costs for water and land development for conservation purposes
- \*--according to subparagraph 162 A.--\*

**Rehabilitation or Reestablishment of Fruit, Nut Bearing, and Income Producing Trees and Plants  
(Continued)**

**G Loan Purposes (Continued)**

Funds resulting from losses to normal income security may be used for:

- current due operating expenses
- hired labor, not including the applicant's labor
- actual costs for pruning and/or top grafting trees
- fertilizer, herbicides, and spray
- costs for preparing and cultivating the land
- equipment maintenance and repairs
- miscellaneous operating expenses including taxes, accrued interest, property insurance, etc.

**H Loan Limitations**

Loan funds will not be approved or advanced for:

- amounts in excess of the costs to rehabilitate or reestablish the grove, orchard, or woodlot, or which would cause the borrower's total outstanding principal EM indebtedness to exceed \$500,000
- construction of new buildings, repair of existing buildings, or repair, replacement, or improvement of chattels
- family living expenses
- operating or real estate expenses not directly related to the rehabilitation or reestablishment of damaged or destroyed trees and plants
- refinancing real estate or chattel debt.