(6) Refinance farm-related debts other than real estate to improve farm profitability, if the applicant has refinanced direct or guaranteed loans four times or fewer and one of the following conditions is met:

(i) A designated or declared disaster caused the need for refinancing; or

(ii) The debts to be refinanced are owed to a creditor other than the USDA; and

(7) Replace lost working capital.

§ 764.352 Eligibility requirements.

The applicant:

(a) Must comply with the general eligibility requirements established at § 764.101;

(b) Must be an established farmer;

(c) Must be the owner-operator or tenant-operator as follows:

(1) For a loan made under § 764.351(a)(1), must have been:

(i) The owner-operator of the farm at the time of the disaster; or

(ii) The tenant-operator of the farm at the time of the disaster whose lease on the affected real estate exceeds the term of the loan. The operator will provide prior notification to the Agency if the lease is proposed to terminate during the term of the loan. The lessor will provide the Agency a mortgage on the real estate as security for the loan;

(2) For a loan made under § 764.351(a) (2) or (b), must have been the operator of the farm at the time of the disaster; and

(3) In the case of an entity, the entity must be:

(i) Engaged primarily and directly in farming in the United States;

(ii) Authorized to operate and own the farm, if the funds are used for farm ownership loan purposes, in the State in which the farm is located;

(d) Must demonstrate the intent to continue the farming operation after the designated or declared disaster;

(e) And all entity members must be unable to obtain sufficient credit elsewhere at reasonable rates and terms. To establish this, the applicant must obtain written declinations of credit, specifying the reasons for declination, from legally organized commercial lending institutions within reasonable proximity of the applicant as follows:

(1) In the case of a loan in excess of $300,000, two written declinations of credit are required;

(2) In the case of a loan of $300,000 or less, one written declination of credit is required; and

(3) In the case of a loan of $100,000 or less, the Agency may waive the requirement for obtaining a written declination of credit, if the Agency determines that it would pose an undue burden on the applicant, the applicant certifies that they cannot get credit elsewhere, and based on the applicant's circumstances credit is not likely to be available;

(4) Notwithstanding the applicant's submission of the required written declinations of credit, the Agency may contact other commercial lending institutions within reasonable proximity of the applicant and make an independent determination of the applicant's ability to obtain credit elsewhere;

(f) And all entity members in the case of an entity, must not have received debt forgiveness from the Agency on more than one occasion on or before April 4, 1996, or any time after April 4, 1996.

(g) Must submit an application to be received by the Agency no later than 8 months after the date the disaster is declared or designated in the county of the applicant's operation.

(h) For production loss loans, must have a disaster yield that is at least 30 percent below the normal production yield of the crop, as determined by the Agency, which comprises a basic part of an applicant's total farming operation.

(i) For physical loss loans, must have suffered disaster-related damage to chattel or real estate essential to the farming operation, or to household contents that must be repaired or replaced, to harvested or stored crops, or to perennial crops.

(j) Must meet all of the following requirements if the ownership structure of the family farm changes between the time of a qualifying loss and the time an EM loan is closed:

(1) The applicant, including all owners must meet all of the eligibility requirements;

(2) The individual applicant, or all owners of a entity applicant, must have had an ownership interest in the farming operation at the time of the disaster; and

(3) The amount of the loan will be based on the percentage of the former farming operation transferred to the applicant and in no event will the individual portions aggregated equal more than would have been authorized for the former farming operation.

(k) Must agree to repay any duplicative Federal assistance to the agency providing such assistance. An applicant 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 applicant for the same purpose from another source.

§ 764.353 Limitations.

(a) EM loans must comply with the general limitations established at § 764.102.

(b) EM loans may not exceed the lesser of:

(1) The amount of credit necessary to restore the farming operation to its pre-disaster condition;

(2) In the case of a physical loss loan, the total eligible physical losses caused by the disaster; or

(3) In the case of a production loss loan, 100 percent of the total actual production loss sustained by the applicant as calculated in paragraph (c) of this section.

(c) For production loss loans, the applicant's actual crop production loss will be calculated as follows:

(1) Subtract the disaster yield from the normal yield to determine the per acre production loss;

(2) Multiply the per acre production loss by the number of acres of the farming operation devoted to the crop to determine the volume of the production loss;

(3) Multiply the volume of the production loss by the market price for such crop as determined by the Agency to determine the dollar value for the production loss; and

(4) Subtract any other disaster related compensation or insurance indemnities received or to be received by the applicant for the production loss.

(d) For a physical loss loan, the applicant's total eligible physical losses will be calculated as follows:

(1) Add the allowable costs associated with replacing or repairing chattel covered by hazard insurance (excluding labor, machinery, equipment, or materials contributed by the applicant to repair or replace chattel);

(2) Add the allowable costs associated with repairing or replacing real estate, covered by hazard insurance;

(3) Add the value of replacement livestock and livestock products for which the applicant provided:

(i) Written documentation of inventory on hand immediately preceding the loss;

(ii) Records of livestock product sales sufficient to allow the Agency to establish a value;

(4) Add the allowable costs to restore perennials to the stage of development the damaged perennials had obtained prior to the disaster;

(5) Add, in the case of an individual applicant, the allowable costs associated with repairing or replacing household contents, not to exceed $20,000; and

(6) Subtract any other disaster related compensation or insurance indemnities received or to be received by the applicant for the loss or damage to the chattel or real estate.

(e) EM loan funds may not be used for physical loss purposes unless:

(1) The physical property was covered by general hazard insurance at the time that the damage caused by the natural disaster occurred. The level of the coverage in effect at the time of the disaster must have been the tax or cost depreciated value, whichever is less. Chattel property must have been covered at the tax or cost depreciated value, whichever is less, when such insurance was readily available and the benefit of the coverage was greater than the cost of the insurance; or

(2) The loan is to a poultry farmer to cover the loss of a chicken house for which the applicant did not have hazard insurance at the time of the loss and the applicant:

(i) Applied for, but was unable to obtain hazard insurance for the chicken house;