# Rules and Regulations

Federal Register
Vol. 65, No. 235
Wednesday, December 6, 2000

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## DEPARTMENT OF AGRICULTURE

## Farm Service Agency

## 7 CFR Parts 773 and 774

**RIN 0560–AG23**

## Implementation of the Special Apple Loan Program and Emergency Loan for Seed Producers Program

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** This action is being taken to implement provisions of the Agricultural Risk Protection Act of 2000 (Act). The intended effect is to assist producers of apples suffering economic loss as a result of low prices and by making low cost loans available to seed producers adversely affected by the bankruptcy filing of AgriBiotech.

**DATES:** Effective December 6, 2000.

**FOR FURTHER INFORMATION CONTACT:** Pat Elzinga, Senior Loan Officer, USDA/FSA/DAFLP/STOP 0522, 1400 Independence Avenue, SW., Washington, DC 20250–0522; telephone (202) 720–3889; facsimile (202) 690–1117; electronic mail: *pelzinga@wdc.usda.gov;* and Orlando C. Kilcrease, Senior Loan Officer, USDA/FSA/DAFLP/STOP 0522, Independence Avenue, SW., Washington, DC 20250–0522; telephone (202) 720–1472; facsimile: 202–720–6797; electronic mail: *Orlando Kilcrease@wdc.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

### Notice and Comment

Section 263 of the Agricultural Risk Protection Act requires that these regulations be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804) related to notices of proposed rulemaking and public participation in the rulemaking process. This rule is thus issued as final and is effective immediately.

### Executive Order 12866

This rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

### Regulatory Flexibility Act

The Farm Service Agency (Agency) certifies that this rule will not have a significant economic effect on a substantial number of small entities and, therefore, is not required to perform a Regulatory Flexibility Analysis as required by the Regulatory Flexibility Act, as amended (5 U.S.C. 601). This rule does not impact the small entities to a greater extent than the large entities.

### Environmental Evaluation

### National Environmental Policy Act

The Agency has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, (42 U.S.C. 4321 et seq.) neither an Environmental Impact Statement nor an environmental assessment is required.

### Environmental Justice, Executive Order 12898

This rule is subject to the requirements of Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. Implementation of these requirements will occur at the time of actions performed hereunder.

### Executive Order 12988

The rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. The provisions of this rule are not retroactive and preempt State laws to the extent such laws are inconsistent with the provisions of this rule. In accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994, before any judicial action may be brought concerning the provisions of this rule, administrative review under 7 CFR part 11 must be exhausted.

### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

### Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit assessment, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, under the regulatory provisions of title II of the UMRA, for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

### Paperwork Reduction Act

Section 263 of the Act provides that this rule will be promulgated without regard to the Paperwork Reduction Act contained in chapter 35 of title 44, United States Code. This means that the information to be collected from the public to implement these programs and the burden, in time and money, the collection of the information would have on the public does not have to be approved by the Office of Management and Budget or be subject to the normal requirement for a 60-day public comment period.

### Background

This rule will implement sections § 203(f) and 253 of the Act (Pub. L. 106–224) enacted June 20, 2000, related to the Special Apple Loan Program and

Emergency Loan for Seed Producers Program, respectively.

*1. 7 CFR Part 773—Special Apple Loan Program*

Apple prices in the 1998–1999 growing season fell to their lowest levels in nearly 10 years. The average U.S. 1998–1999 farm price for fresh market apples was estimated to be down more than 20 percent from the previous growing season, resulting in a 16 percent drop in total farm revenue. Even with a possible improvement in the coming growing seasons, the serious economic impact of the earlier economic losses will result in ongoing financial difficulties for apple producers.

Section 203(f) of the Act directed the Secretary to make loans to producers of apples that are suffering economic loss as a result of low prices for apples. To ensure that the borrowers under this program are those that most likely are suffering economic loss, the Agency restricted applicants to those that produced apples, on not less than 10 acres, for sale in 1999 or 2000. This restriction excludes hobby apple producers. Funds allocated will most effectively assist those most directly affected by the economic crisis in the apple industry since those eligible will have been dependent on apple production for a primary source of income. In addition, this program is intended to assist producers recover from economic losses and enable them to continue their farming operations. Therefore, loan funds must be used for specified purposes related to the production and marketing of apples. Distribution of funds has been determined to be on a per acre basis to provide the most equitable access to assistance for all affected producers, and to best meet the intent of the authorizing statute.

Congress allocated a limited amount of funds for this program so certain limits are necessary to help ensure that loan funds are distributed equitably to all interested producers. In addition, this program is intended to assist producers through a period of low apple prices, not replace the producers' established sources of credit. For these reasons, the regulation limits loan size to a maximum of $300.00 per acre of apples in production and a maximum indebtedness of $500,000 per producer. To expedite funding of eligible requests, the Agency will waive the application requirements of historical production and financial information, and cash flow projections, for applicants requesting $30,000 or less. The Agency, however, will require these applicants to provide cash flow projections later to show repayment if their balance sheet shows a net worth of less than three times the loan amount. This additional documentation is needed to minimize the credit risk to the Government. For loans for more than $30,000, repayment will always be based on the applicant's projected cash flow budget.

To minimize the credit risk to the Government, the Agency requires that the applicants have an acceptable credit history and demonstrate an ability to repay the proposed loan. The Agency cannot make a loan to an applicant who is delinquent on a non-tax Federal debt (31 U.S.C. 3720B), or has an outstanding non-tax Federal judgment (28 U.S.C. 3201(e)). The restrictions will not apply if the Federal delinquency and judgment are cured on or before the loan closing date. Applicants who have provided the Agency false or misleading information are also not eligible for this program.

The Agency has established rates, terms, and collateral requirements for Special Apple Loans to allow for maximum flexibility. The Act allows the Agency to require collateral in an amount adequate to protect the Government's interest and to minimize potential loss. The Agency therefore, will take a lien on available assets as necessary to adequately secure the loan. The level of documentation of collateral value will depend on the risk of loss, as determined by a review of the applicant's financial condition, and the size of the loan. For loans over $30,000, applicants with net worth of at least three times the loan amount have demonstrated an ability to successfully manage the finances of their operation and have accumulated assets to protect against adverse conditions. Applicants with those characteristics generally represent significantly less potential loss, so Agency will place less emphasis on collateral when evaluating the soundness of the loan request. Therefore, these applicants will be allowed to provide documentation of collateral value in the form of assessments or depreciation schedules. For loans over $30,000, applicants with net worth of less than three times the loan amount will be required to provide current appraisals, at the applicant's expense, to document collateral values. All appraisals must be completed by a knowledgeable appraiser, acceptable to the Agency. Real estate appraisals must be prepared by a state certified general appraiser in compliance with the Uniform Standards of Professional Appraisal Practices (USPAP). For loans of $30,000 or less, collateral value will be based on the best available, verifiable information. In addition, debtors will be subject to the collection authorities of 31 U.S.C. chapter 37.

All persons approved for such loan assistance must execute loan instruments and legal documents to secure the loan and reduce the risk to the Government. For entity applicants, the loan instruments and legal documents must be executed in the name of the entity and by each individual member. This requirement is necessary to minimize the credit risk.

The Agency will service Special Apple Loans like nonprogram loans under 7 CFR part 1951, subpart J. These borrowers have not been required at loan origination to meet the more stringent eligibility requirements of Agency loans under the Consolidated Farm and Rural Development Act (CONACT), and the Act does not provide CONACT servicing benefits to Special Apple Loan program borrowers.

*2. 7 CFR Part 774—Emergency Loans for Seed Producers Program*

Seed producers have suffered economic hardships as a result of the bankruptcy filing of AgriBiotech. AgriBiotech, one of the largest single turf, forage, and alfalfa seed companies in the country, filed for protection under chapter 11 of the bankruptcy code affecting over 1,200 farmer growers in 39 States. The growers are the largest segment of creditors in the bankruptcy proceedings. AgriBiotech cannot pay these growers for their 1999 produced crop as a result of the bankruptcy filing. The courts have estimated the total value of seed growers' claims to be approximately $50 million.

Section 253 of the Act directed the Secretary to make no-interest loans to producers of the 1999 crop of grass, forage, vegetable, or sorghum seed that have not received payments for the seed as a result of bankruptcy proceedings involving AgriBiotech. The funds allocated for the program are believed to be adequate for all eligible producers. If demand does exceed the allocation, funds will be paid in order of application approval. For the producer to be eligible, the seed producer must have a valid claim in the bankruptcy proceeding arising from a contract to grow seeds in the United States.

The Agency has established terms and collateral requirements for Emergency Loans for Seed Producers to allow for maximum flexibility. The Agency will take as security an assignment on the bankruptcy claim, and any seed still held in the applicant's possession, as provided by the Act to secure loans made to producers under this program. The Agency will obtain a balance sheet

and any other financial information needed to determine if there are liens impacting the collateral. In addition, debtors will be subject to the debt collection authorities of 31 U.S.C. chapter 37. For example, in cases of default, the Agency may seek to attach additional assets by filing judgments or refer the debt to the Department of Treasury for offset and cross-servicing. In light of the Government's limited exposure on these small loans and desire for simple administration, the Agency believes that no further security requirements are needed.

The Agency cannot make a loan to an applicant who is delinquent on a non-tax Federal debt (31 U.S.C. 3720B) or has an outstanding non-tax Federal judgment (28 U.S.C. 3201(e)). These restrictions will not apply if the Federal delinquency and judgment are cured on or before the loan closing date. Applicants who have provided false or misleading information also are not eligible for this program. The above restrictions are needed to minimize credit risk and comply with statutory requirements.

All persons approved for such loan assistance must execute the Agency's loan instruments and legal documents. For entity applicants, the loan instruments and legal documents must be executed in the name of the entity and by each individual member. This requirement is necessary to minimize risk and protect the Government's interest should default occur.

In accordance with § 253 of the Act, the loan interest rate for Emergency Loans for Seed Producers will be zero initially. Upon completion and disbursal of the estate in bankruptcy or 18 months after the date of the note, whichever comes first, the note will convert any outstanding balance to the then current Farm Operating loan-direct interest rate over an additional 7 years. Interest rates are specified in exhibit B of Agency Instruction 440.1 (available in any Agency office) by loan type. If the loan is not paid in full during this term and default occurs, servicing will proceed in accordance with existing Agency regulations (7 CFR part 1951, subpart J, Management and Collection of Nonprogram Loans, specifically § 1951.468). The loan will be serviced as a nonprogram loan because the program is not authorized by the CONACT and, therefore, does not receive the benefits of CONACT program loans. The borrowers also have not been required to meet the more stringent CONACT requirements.

Section 263 of the Act directed the Secretary to implement this program as soon as practicable and without regard to the notice and comment provisions of section 553 of title 5, United States Code and the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, relating to notices of proposed rulemaking and public participation in rulemaking. Publication of this rule for immediate effect without prior notice and comment as a final rule, therefore, is warranted.

**List of Subjects**

*7 CFR Part 773*

Fruits, Loan programs-agriculture.

*7 CFR Part 774*

Seeds, Loan programs-agriculture.

For reasons set out in the preamble, 7 CFR chapter VII is amended as set forth below.

1. Part 773 is added to read as follows:

## PART 773—SPECIAL APPLE LOAN PROGRAM

Sec.

773.1 Introduction.
773.2 Definitions.
773.3 Appeals.
773.4–773.5 [Reserved]
773.6 Eligibility requirements.
773.7 Loan uses.
773.8 Limitations.
773.9 Environmental compliance.
773.10 Other Federal, State, and local requirements.
773.11–773.17 [Reserved]
773.18 Loan application.
773.19 Interest rate, terms, security requirements, and repayment.
773.20 Funding applications.
773.21 Loan decision, closing and fees.
773.22 Loan servicing.
773.23 Exception.

**Authority:** Pub. L. 106–224.

### § 773.1 Introduction.

This part contains the terms and conditions for loans made under the Special Apple Loan Program. These 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.

### § 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 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.

(2) If the real estate offered as collateral contains significant environmental risks, the Agency will provide the applicant with the option of properly correcting or removing the risk, or offering other non-contaminated property as collateral.

**§ 773.10 Other Federal, State, and local requirements.**

Borrowers are required to comply with all applicable:

(a) Federal, State, or local laws;

(b) Regulatory commission rules; and

(c) Regulations which are presently in existence, or which may be later adopted including, but not limited to, those governing the following:

(1) Borrowing money, pledging security, and raising revenues for repayment of debt;

(2) Accounting and financial reporting; and

(3) Protection of the environment.

**§§ 773.11–773.17 [Reserved]**

**§ 773.18 Loan application.**

(a) A complete application will consist of the following:

(1) A completed Agency application form;

(2) If the applicant is a business entity, any legal documents evidencing the organization and any State recognition of the entity;

(3) Documentation of compliance with the Agency's environmental regulations contained in 7 CFR part 1940, subpart G;

(4) A balance sheet on the applicant;

(5) The farm's operating plan, including the projected cash flow budget reflecting production, income, expenses, and loan repayment plan;

(6) The last 3 years of production and income and expense information;

(7) Payment to the Agency for ordering a credit report; and

(8) Any additional information required by the Agency to determine the eligibility of the applicant, the feasibility of the operation, or the adequacy and availability of security.

(b) Except as required in § 773.19(e), the Agency will waive requirements for a complete application, listed in paragraphs (a)(5) and (a)(6) of this section, for requests of $30,000 or less.

**§ 773.19 Interest rate, terms, security requirements, and repayment.**

(a) *Interest rate.* The interest rate will be fixed for the term of the loan. The

rate will be established by the Agency and available in each Agency Office, based upon the cost of Government borrowing for loans of similar maturities.

(b) *Terms.* The loan term will be for up to 3 years, based upon the useful life of the security offered.

(c) *Security requirements.* The Agency will take a lien on the following security, if available, as necessary to adequately secure the loan:

(1) Real estate;

(2) Chattels;

(3) Crops;

(4) Other assets owned by the applicant; and

(5) Assets owned and pledged by a third party.

(d) *Documentation of security value.*

(1) For loans that are for $30,000 or less, collateral value will be based on the best available, verifiable information.

(2) For loans of greater than $30,000 where the applicant's balance sheet shows a net worth of three times the loan amount or greater, collateral value will be based on tax assessment of real estate and depreciation schedules of chattels, as applicable, less any existing liens.

(3) For loans of greater than $30,000 where the applicant's balance sheet shows a net worth of less than three times the loan amount, collateral value will be based on an appraisal. Such appraisals must be obtained by the applicant, at the applicant's expense and acceptable to the Agency. Appraisals of real estate must be completed in accordance with USPAP.

(e) *Repayment.* (1) All loan applicants must demonstrate that the loan can be repaid.

(2) For loans that are for $30,000 or less where the applicant's balance sheet shows a net worth of three times the loan amount or greater, repayment ability will be considered adequate without further documentation.

(3) For loans that are for $30,000 or less where the applicant's balance sheet shows a net worth of less than three times the loan amount, repayment ability must be demonstrated using the farm's operating plan, including a projected cash flow budget based on historical performance. Such operating plan is required notwithstanding § 773.18 of this part.

(4) For loans that are for more than $30,000, repayment ability must be demonstrated using the farm's operating plan, including a projected cash flow budget based on historical performance.

(f) *Creditworthiness.* All loan applicants must have an 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 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.

### § 773.20 Funding applications.

Loan requests will be funded based on the date the Agency approves the application. Loan approval is subject to the availability of funds.

### § 773.21 Loan decision, closing, and fees.

(a) *Loan decision.* (1) The Agency will approve a loan if it determines that:

(i) The loan can be repaid;

(ii) The proposed use of loan funds is authorized;

(iii) The applicant has been determined eligible;

(iv) All security requirements have been, or will be met at closing;

(vi) All other pertinent requirements have been, or will be met at closing.

(2) The Agency will place conditions upon loan approval as necessary to protect its interest.

(b) *Loan closing.* (1) The applicant must meet all conditions specified by the loan approval official in the notification of loan approval prior to loan closing;

(2) There must have been no significant changes in the plan of operation or the applicant's financial condition since the loan was approved; and

(2) The applicant will execute all loan instruments and legal documents required by the Agency to evidence the debt, perfect the required security interest in property securing the loan, and protect the Government's interests, in accordance with applicable State and Federal laws. In the case of an entity applicant, all officers or partners and any board members also will be required to execute the promissory notes as individuals.

(c) *Fees.* The applicant will pay all loan closing fees including credit report fees, fees for appraisals, fees for recording any legal instruments determined to be necessary, and all notary, lien search, and similar fees incident to loan transactions. No fees will be assessed for work performed by Agency employees.

### § 773.22 Loan servicing.

Loans will be serviced in accordance with subpart J of part 1951, or its successor regulation, during the term of the loan. If the loan is not paid in full during this term, servicing will proceed in accordance with § 1951.468 of that part.

### § 773.23 Exception.

The Agency may grant an exception to the security requirements of this section, if the proposed change is in the best financial interest of the Government and not inconsistent with the authorizing statute or other applicable law.

2. Part 774 is added to read as follows:

## PART 774—Emergency Loan for Seed Producers Program

Sec.

774.1 Introduction.
774.2 Definitions.
774.3 Appeals.
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774.6 Eligibility requirements.
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774.17 Loan application.
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774.20 Funding applications.
774.21 [Reserved]
774.22 Loan closing.
774.23 Loan servicing.
774.24 Exception.

**Authority:** Pub. L. 106–224

### § 774.1 Introduction.

The regulations of this part contain the terms and conditions under which loans are made under the Emergency Loan for Seed Producers Program. These regulations are applicable to applicants, borrowers, and other parties involved in making, servicing, and liquidating these loans. The program objective is to assist certain seed producers adversely affected by the bankruptcy filing of AgriBiotech.

### § 774.2 Definitions.

As used in this part, the following definitions apply:

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

*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.

*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 that the borrower knows to be incorrect, and that the borrower or other source provided in order to obtain benefits for which the borrower would not otherwise have been eligible.

*Seed producer* is a farmer that produced a 1999 crop of grass, forage, vegetable, or sorghum seed for sale to AgriBiotech under contract.

**§ 774.3 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.

**§§ 774.4–774.5 [Reserved]**

**§ 774.6 Eligibility requirements.**

Loan applicants must meet all of the following requirements to be eligible under the Emergency Loan for Seed Producers Program;

(a) The loan applicant must be a seed producer;

(b) The individual or entity loan applicant must have a timely filed proof of claim in the Chapter XI bankruptcy proceedings involving AgriBiotech and the claim must have arisen from acontract to grow seeds in the United States;

(c) 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;

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

(e) At loan closing, the 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;

(f) At loan closing, the 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;

(g) The loan applicant, in past and current dealings with the Agency, must not have provided the Agency with false information.

**§ 774.7 [Reserved]**

**§ 774.8 Limitations.**

(a) The maximum loan amount any individual or business entity may receive will be 65% of the value of the timely filed proof of claim against AgriBiotech in the bankruptcy proceeding as determined by the Agency.

(b) Loan funds may not be used to pay expenses incurred for lobbying or related activities.

(c) 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.

**§ 774.9 Environmental requirements.**

The loan actions in this part 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. These loan actions are categorically excluded from the requirements of an environmental evaluation due to the fact that the loan funds would be utilized to replace operating capital the applicant would have had if AgriBiotech had not filed bankruptcy.

**§ 774.10 Other Federal, State, and local requirements.**

Borrowers are required to comply with all applicable:

(a) Federal, State, or local laws;

(b) Regulatory commission rules; and

(c) Regulations which are presently in existence, or which may be later adopted including, but not limited to, those governing the following:

(1) Borrowing money, pledging security, and raising revenues for repayment of debt;

(2) Accounting and financial reporting; and

(3) Protection of the environment.

**§ 774.11–774.16 [Reserved]**

**§ 774.17 Loan application.**

A complete application will consist of the following:

(a) A completed Agency application form;

(b) Proof of a bankruptcy claim in the AgriBiotech bankruptcy proceedings;

(c) If the applicant is a business entity, any legal documents evidencing the organization and any State recognition of the entity;

(d) Documentation of compliance with the Agency's environmental regulations contained in 7 CFR part 1940, subpart G;

(e) A balance sheet on the applicant; and

(f) Any other additional information the Agency needs to determine the eligibility of the applicant and the application of any Federal, State or local laws.

**§ 774.18 Interest rate, terms and security requirements.**

(a) *Interest rate.* (1) The interest rate on the loan will be zero percent for 18 months or until the date of settlement of, completion of, or final distribution of assets in the bankruptcy proceeding involving AgriBiotech, whichever comes first.

(2) Thereafter interest will begin to accrue at the regular rate for an Agency Farm operating-direct loan (available in any Agency office).

(b) *Terms.* (1) Loans shall be due and payable upon the earlier of the settlement of the bankruptcy claim or 18 months from the date of the note.

(2) However, any principal remaining thereafter will be amortized over a term of 7 years at the Farm operating-direct loan interest rate (available in any Agency office). If the loan is not paid in full during this term and default occurs, servicing will proceed in accordance with § 1951.468 of this title.

(c) *Security Requirements.* (1) The Agency will require a first position pledge and assignment of the applicant's monetary claim in the AgriBiotech bankruptcy estate to secure the loan.

(2) If the applicant has seed remaining in their possession that was produced under contract to AgriBiotech, the applicant also will provide the Agency with a first lien position on this seed. It is the responsibility of the applicant to negotiate with any existing lienholders to secure the Agency's first lien position.

**§ 774.19 Processing applications.**

Applications will be processed until such time that funds are exhausted, or all claims have been paid and the bankruptcy involving AgriBiotech has been discharged. When all loan funds have been exhausted or the bankruptcy is discharged, no further applications will be accepted and any pending applications will be considered withdrawn.

**§ 774.20 Funding applications.**

Loan requests will be funded based on the date the Agency approves an application. Loan approval is subject to the availability of funds.

**§ 774.21 [Reserved]**

**§ 774.22 Loan closing.**

(a) *Conditions.* The applicant must meet all conditions specified by the loan approval official in the notification of loan approval prior to closing.

(b) *Loan instruments and legal documents.* The applicant will execute all loan instruments and legal documents required by the Agency to evidence the debt, perfect the required security interest in the bankruptcy claim, and protect the Government's interest, in accordance with applicable State and Federal laws. In the case of an entity applicant, all officers or partners and any board members also will be required to execute the promissory notes as individuals.

(c) *Fees.* The applicant will pay all loan closing fees for recording any legal instruments determined to be necessary and all notary, lien search, and similar fees incident to loan transactions. No fees will be assessed for work performed by Agency employees.

**§ 774.23 Loan servicing.**

Loans will be serviced in accordance with subpart J of part 1951 of this title, or its successor regulation. If the loan is not repaid as agreed and default occurs, servicing will proceed in accordance with section 1951.468 of that part.

**§ 774.24 Exception.**

The Agency may grant an exception to any of the requirements of this section, if the proposed change is in the best financial interest of the Government and not inconsistent with the authorizing statute or other applicable law.

Signed at Washington, D.C., on November 29, 2000.

**August Schumacher, Jr.,**

*Under Secretary for Farm and Foreign Agricultural Services.*

[FR Doc. 00–30977 Filed 12–5–00; 8:45 am]

BILLING CODE 3410–05–P

## DEPARTMENT OF JUSTICE

## Immigration and Naturalization Service

## 8 CFR Part 208

**[INS Order No. 1865–97; AG Order No. 2340–2000]**

**RIN 1115–AE93**

## Asylum Procedures

**AGENCY:** Immigration and Naturalization Service, Justice; and Executive Office for Immigration Review, Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Department of Justice regulations implementing the provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), governing asylum claims. Additionally, this rule amends portions of the regulations governing cases in which an applicant has established past persecution or in which an applicant may be able to avoid persecution in a particular country by relocating to another area of that country. Finally, the rule identifies factors that may be considered in the exercise of discretion in asylum cases in which the alien has established past persecution but may not have a well-founded fear of future persecution. This final rule will ensure that asylum applications are processed in accordance with the Immigration and Nationality Act (Act), as amended by IIRIRA, as well as with international instruments.

**DATES:** This rule is effective January 5, 2001.

**FOR FURTHER INFORMATION CONTACT:** *For matters relating to the Immigration and Naturalization Service*—Joanna Ruppel, International Affairs, Department of Justice, Immigration and Naturalization Service, 425 I Street NW., ULLICO third floor, Washington, DC 20536, telephone (202) 305–2663. *For matters relating to the Executive Office for Immigration Review*—Charles Adkins-Blanch, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 305–0470.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*Regulations To Implement the Illegal Immigration Reform and Immigrant Responsibility Act of 1996*

On March 6, 1997, the Service and EOIR jointly published in the **Federal Register**, at 62 FR 10312, an interim rule to implement Public Law 104–208 (110 Stat. 3546) (IIRIRA). That legislation significantly amended several parts of the Immigration and Nationality Act (''Act'' or ''INA''), including part 208. The interim regulations implementing IIRIRA were preceded by a notice of proposed rulemaking, published in the **Federal Register** on January 3, 1997, at 62 FR 444, and providing a 30-day comment period. The interim rule provided a 120-day comment period. The Department of Justice (Department) received 39 comments on the interim rule in addition to the 124 comments already received as a result of the proposed rule. This final rule reflects further changes resulting from comments received in response to both the original proposed rule and the interim rule.

*Proposed Rule Regarding Past Persecution, Internal Relocation, and Discretion (Past Persecution Rule)*

On June 11, 1998, at 63 FR 31945, the Service and EOIR jointly published in the **Federal Register** a proposed rule to change portions of 8 CFR 208.13 and 208.16 in order to provide further guidance on adjudicating asylum cases and withholding of removal cases when an applicant has established past persecution and when the applicant may be able to avoid persecution in his or her home country by relocating to another area of that country. The rule proposed to establish new guidelines concerning the Attorney General's exercise of discretion in cases in which past persecution is established, and the types of evidence that may be considered in determining whether an applicant has a well-founded fear of future persecution. Additionally, the rule proposed to identify new factors that could be considered in the determination whether to grant asylum when an applicant has established past persecution but no longer has a well-founded fear of future persecution. The Department received 35 comments on the proposed past persecution rule.

The Department has elected to split part 208 from the rest of the IIRIRA interim regulations and to incorporate amendments to part 208 into this final rule based both on comments to the IIRIRA interim rule and on comments to the June 1998 proposed rule regarding past persecution. In the future, the Department will publish a proposed rule concerning the definition of ''persecution'' and the definition of ''particular social group.'' Those new proposals are based in part on certain of the provisions being made final in this rule.

### II. Comments

Most of the commenters on both the interim IIRIRA rule and proposed past persecution rule represented either attorney organizations or voluntary organizations predominantly involved with refugees and asylum claimants. The Department also received comments from individual attorneys and the regional representative of United Nations High Commissioner for Refugees (UNHCR). Since many of the comments were duplicative or endorsed the submissions of other commenters, the Department will address the comments by section and topic, rather than reference each comment and commenter. The following discussion