

SUBCHAPTER A—AGRICULTURAL CONSERVATION PROGRAM

PART 700 [RESERVED]

PART 701—EMERGENCY CONSERVATION PROGRAM, EMERGENCY FOREST RESTORATION PROGRAM, AND CERTAIN RELATED PROGRAMS PREVIOUSLY ADMINISTERED UNDER THIS PART

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Subpart A—General

§ 701.1 Administration.

(a) Subject to the availability of funds, this part provides the terms, conditions and requirements of the Emergency Conservation Program (ECP) and the Emergency Forest Restoration Program (EFRP) administered by the Farm Service Agency (FSA). Neither program is an entitlement program and payments will only be made

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to the extent that the Deputy Administrator announces the eligibility of benefits for certain natural disasters, the areas in which such benefits will be available, the time period in which the disaster and the rehabilitation must occur, and only so long as all the conditions for eligibility specified in this part and elsewhere in law are met. However, the Deputy Administrator will not apply any non-statutory limitation on payments provided for in this part in such a way that it would necessarily result in the non-expenditure of program funds required to otherwise be made by law.

(b) ECP and EFRP are administered by the Administrator, FSA through the Deputy Administrator, FSA, and shall be carried out in the field by State and county FSA committees (State and county committees), subject to the availability of funds. Except as otherwise provided in this rule, discretionary determinations to be made under this rule will be made by the Deputy Administrator. Matters committed to the discretion of the Deputy Administrator shall be considered in all cases to be permissive powers and no person or legal entity shall, under any circumstances, be considered to be entitled to an exercise of such power in their favor.

(c) State and county committees, and representatives and employees, do not have authority to modify or waive any regulations in this part.

(d) The State committee may take any action authorized or required of the county committee by this part, but which the county committee has not taken, such as:

(1) Correct or require a county committee to correct any action taken by such county committee that is not in accordance with this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(e) No provision or delegation herein to a State or county committee shall preclude the Administrator, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(f) The Deputy Administrator may authorize State and county committees to waive or modify deadlines and other requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the program.

(g) The Deputy Administrator may limit the authority of state and county committees to approve cost share in excess of specified amounts.

(h) Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, the failure to provide data could result in program benefits being withheld or denied.

(i) FSA may consult with any other Federal agency, State agency, or other provider of technical assistance for such assistance as is determined by FSA to be necessary to implement ECP or EFRP. FSA is responsible for the technical aspects of ECP and EFRP but may enter into a Memorandum of Agreement with another party to provide technical assistance. If the requirement for technical assistance results in undue delay or significant hardship to producers in a county, the State committee may request in writing that FSA waive this requirement for that county. However, nothing in this paragraph or in this part creates a right of appeal or action for an applicant with respect to provisions relating to internal procedures of FSA.

(j) The provisions in this part shall not create an entitlement in any person or legal entity to any ECP or EFRP cost share or claim or any particular notice or form or procedure.

(k) Additional terms and conditions may be set forth in the application or the forms participants will be required to sign for participation in the ECP or EFRP.

[69 FR 10302, Mar. 4, 2004, as amended at 75 FR 70087, Nov. 17, 2010]

§ 701.2 Definitions.

(a) The terms defined in part 718 of this chapter shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions shall apply to this part:

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Agricultural producer means an owner, operator, or tenant of a farm or ranch used to produce for food or fiber, crops (including but not limited to, grain or row crops; seed crops; vegetables or fruits; hay forage or pasture; orchards or vineyards; flowers or bulbs; or field grown ornamentals) or livestock (including but not limited to, dairy or beef cattle; poultry; swine; sheep or goats; fish or other animals raised by aquaculture; other livestock or fowl) for commercial production. Producers of animals raised for recreational uses only are not considered agricultural producers.

Annual agricultural production means production of crops for food or fiber in a commercial operation that occurs on an annual basis under normal conditions.

Applicant means a person or legal entity who has submitted to FSA a request to participate in the ECP or EFRP.

Cost-share payment means the payment made by FSA to assist a program participant under this part to establish practices required to address qualifying damage suffered in connection with a qualifying disaster.

Deputy Administrator means the Deputy Administrator for Farm Programs, FSA, the ECP Program Manager, or designee.

Farmland means land devoted to agricultural production, including land used for aquaculture, or other land as may be determined by the Deputy Administrator.

Natural disaster means wildfires, hurricanes or excessive winds, drought, ice storms or blizzards, floods, or other naturally-occurring resource impacting events as determined by FSA. For EFRP, a natural disaster also includes insect or disease infestations as determined by FSA in consultation with other Federal and State agencies as appropriate.

[69 FR 10302, Mar. 4, 2004, as amended at 75 FR 70087, Nov. 17, 2010]

§§ 701.3-701.12 [Reserved]

§ 701.13 Submitting requests.

(a) Subject to the availability of funds, the Deputy Administrator shall provide for an enrollment period for

submitting ECP or EFRP cost-share requests.

(b) Requests may be accepted after the announced enrollment period, if such acceptance is approved by the Deputy Administrator and is in accordance with the purposes of the program.

[69 FR 10302, Mar. 4, 2004, as amended at 75 FR 70088, Nov. 17, 2010]

§ 701.14 Onsite inspections.

(a) An onsite inspection must be made before approval of any request for ECP or EFRP assistance.

(b) Notwithstanding paragraph (a) of this section, onsite inspections may be waived by FSA, in its discretion only, where damage is so severe that an onsite inspection is unnecessary, as determined by FSA.

[69 FR 10302, Mar. 4, 2004, as amended at 75 FR 70088, Nov. 17, 2010]

§ 701.15 Starting practices before cost-share request is submitted; non-entitlement to payment; payment subject to the availability of funds.

(a) Subject to paragraphs (b) and (c) of this section, costs will not be shared for practices or components of practices that are started before a request for cost share under this part is submitted with the applicable county FSA office.

(b) Costs may be shared for drought and non-drought practices or components of practices that are started before a request is submitted with the county FSA office, only if:

(1) Considered and approved on a case-by-case basis in accordance with instructions of the Deputy Administrator;

(2) The disaster that is the basis of a claim for cost-share assistance created a situation that required the producer to take immediate action to prevent further losses;

(3) The Deputy Administrator determines that the request for assistance was filed within a reasonable amount of time after the start of the enrollment period; and

(4) The practice was started no more than 60 days before the ECP or EFRP designation was approved for the applicable county office.

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(c) Any action taken prior to approval of a claim is taken at the producer's own risk.

(d) An application for relief may be denied for any reason.

(e) All payments under this part are subject to the availability of funds.

[69 FR 10302, Mar. 4, 2004, as amended at 75 FR 70088, Nov. 17, 2010]

§ 701.16 Practice approval.

(a) Requests shall be prioritized before approval based on factors deemed appropriate by FSA, which include, but are not limited to:

- (1) Type and degree of damage;
- (2) Type of practices needed to address the problem;
- (3) Availability of funds;
- (4) Availability of technical assistance;
- (5) Environmental concerns;
- (6) Safety factors; or
- (7) In the case of ECP, welfare of eligible livestock.

(b) Requests for cost-share assistance may be approved if:

- (1) Funds are available; and
- (2) The requested practice is determined eligible.

[69 FR 10302, Mar. 4, 2004, and amended at 75 FR 70088, Nov. 17, 2010]

§§ 701.17–701.20 [Reserved]

§ 701.21 Filing payment application.

Cost-share assistance is conditioned upon the availability of funds and the performance of the practice in compliance with all applicable specifications and program regulations.

(a) *Completion of practice.* After completion of the approved practice, the participant must certify completion and request payment by the payment request deadline. FSA will provide the participant with a form or another manner to be used to request payment.

(b) *Proof of completion.* Participants shall submit to FSA, at the local county office, the information needed to establish the extent of the performance of approved practices and compliance with applicable program provisions.

(c) *Payment request deadline.* The time limits for submission of information shall be determined by the Deputy Administrator. The payment request deadline for each ECP practice will be

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provided in the agreement after the application is approved. Time limits may be extended where failure to submit required information within the applicable time limits is due to reasons beyond the control of the participant.

§ 701.22 Eligibility to file for cost-share assistance.

Any eligible participant, as defined in this part, who paid part of the cost of an approved practice may file an application for cost-share payment.

§ 701.23 Eligible costs.

(a) Cost-share assistance may be authorized for all reasonable costs incurred in the completion of the practice, up to the maximums provided in §§ 701.126, 701.127, and 701.226.

(b) Eligible costs shall be limited as follows:

(1) Costs for use of personal equipment shall be limited to those incurred beyond the normal operation of the eligible land.

(2) Costs for personal labor shall be limited to personal labor not normally required in the operation of the eligible land.

(3) Costs for the use of personal equipment and labor must be less than that charged for such equipment and labor by commercial contractors regularly employed in such areas.

(4) Costs shall not exceed those needed to achieve the minimum performance necessary to resolve the problem being corrected by the practice. Any costs above those levels shall not be considered to be eligible costs for purposes of calculations made under this part.

(c) Costs shall not exceed the practice specifications in § 701.112(d) or § 701.212(d) for cost-share calculations.

(d) The gross amount on which the cost-share eligibility may be computed will not include any costs that were reimbursed by a third party including, but not limited to, an insurance indemnity payment.

(e) Total cost-share payments from all sources shall not exceed the total of eligible costs of the practice to the applicant.

[69 FR 10302, Mar. 4, 2004, and amended at 75 FR 70088, Nov. 17, 2010]

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§ 701.24 Dividing cost-share among more than one participant.

(a) For qualifying cost-share assistance under this part, the cost shall be credited to the participant who personally performed the practice or who paid to have it performed by a third party. If a payment or credit was made by one participant to another potential participant, paragraph (c) of this section shall apply.

(b) If more than one participant contributed to the performance of the practice, the cost-share assistance for the practice shall be divided among those eligible participants in the proportion they contributed to the performance of the practice. FSA may determine what proportion was contributed by each participant by considering the value of the labor, equipment, or material contributed by each participant and any other factors deemed relevant toward performance.

(c) Allowance by a participant of a credit to another participant through adjustment in rent, cash or other consideration, may be considered as a cost of a practice to the paying party only if FSA determines that such credit is directly related to the practice. An applicant who was fully reimbursed shall be considered as not having contributed to the practice performance.

§ 701.25 Practices carried out with aid from ineligible persons or ineligible legal entities.

Any assistance provided by someone other than the eligible participant, including assistance from a State or Federal agency, shall be deducted from the participant's total costs incurred for the practice for the purpose of computing ECP or EFRP cost shares. If unusual conditions exist, the Deputy Administrator may waive deduction of such contributions upon a request from the State committee and demonstration of the need for such a waiver.

[69 FR 10302, Mar. 4, 2004, as amended at 75 FR 70088, Nov. 17, 2010]

§§ 701.26-701.30 [Reserved]

§ 701.31 Maintenance and proper use of practices.

(a) Each participant receiving cost-share assistance is responsible for the

required maintenance and proper use of the practice. Some practices have an established life span or minimum period of time during which they are expected to function as a conservation practice with proper maintenance. Cost-share assistance shall not be authorized for normal upkeep or maintenance of any practice.

(b) If a practice is not properly maintained for the established life span, the participant may be required to refund all or part of cost-share assistance received. The Deputy Administrator will determine what constitutes failure to maintain a practice and the amount that must be refunded.

§ 701.32 Failure to comply with program provisions.

Costs may be shared for performance actually rendered even though the minimum requirements otherwise established for a practice have not been satisfied if a reasonable effort was made to satisfy the minimum requirements and if the practice, as performed, will adequately address the need for the practice.

§ 701.33 Death, incompetency, or disappearance.

In case of death, incompetency, or disappearance of any participant, any cost-share payment due shall be paid to the successor, as determined in accordance with part 707 of this chapter.

§ 701.34 Appeals.

Part 11 of this title and parts 614 and 780 of this chapter apply to determinations made under this part.

[69 FR 10302, Mar. 4, 2004, as amended at 75 FR 70088, Nov. 17, 2010]

§ 701.35 Compliance with regulatory measures.

Participants who perform practices shall be responsible for obtaining the authorities, permits, rights, easements, or other approvals necessary to the performance and maintenance of the practices according to applicable laws and regulations. The ECP or EFRP participant shall be wholly responsible for any actions taken with respect to the project and shall, in addition, be responsible for returning and refunding any ECP or EFRP cost shares made,

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where the purpose of the project cannot be accomplished because of the applicants' lack of clearances or other problems.

[69 FR 10302, Mar. 4, 2004, as amended at 75 FR 70088, Nov. 17, 2010]

§ 701.36 Schemes and devices and claims avoidances.

(a) If FSA determines that a participant has taken any action designed to defeat, or has the effect of defeating, the purposes of this program, the participant shall be required to refund all or part of any of the program payments otherwise due or paid that participant or related person or legal entity for that particular disaster. These actions include, but are not limited to, failure to properly maintain or deliberately destroying a practice and providing false or misleading information related to practices, costs, or arrangements between entities or individuals that would have an effect on any eligibility determination, including, but not limited to, a payment limit eligibility.

(b) All or any part of cost-share assistance that otherwise would be due any participant may be withheld, or required to be refunded, if the participant has adopted, or participated in, any scheme or device designed to evade the maximum cost-share limitation that applies to the program or to evade any other requirement or provision of the program or this part.

(c) If FSA determines that a participant has employed any scheme or device to deprive any other person or legal entity of cost-share assistance, or engaged in any actions to receive payments under this part that also were designed to avoid claims of the United States or its instrumentalities or agents against that party, related parties, or third parties, the participant shall refund all or part of any of those program payments paid to that participant for the project.

(d) For purposes of this section, a scheme or device can include, but is not limited to, instances of coercion, fraud, or misrepresentation regarding the claim for ECP or EFRP assistance and the facts and circumstances surrounding such claim.

(e) A participant who has knowingly supplied false information or filed a

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false claim shall be ineligible for cost-share assistance related to the disaster for which the false information was filed, or for any period of time FSA deems appropriate. False information or a false claim includes, but is not limited to, a request for payment for a practice not carried out, a false billing, or a billing for practices that do not meet required specifications.

[69 FR 10302, Mar. 4, 2004, and amended at 75 FR 70088, Nov. 17, 2010]

§ 701.37 Loss of control of the property during the practice life span.

In the event of voluntary or involuntary loss of control of the land by the ECP or EFRP cost-share recipient during the practice life-span, if the person or legal entity acquiring control elects not to become a successor to the ECP or EFRP agreement and the practice is not maintained, each participant who received cost-share assistance for the practice may be jointly and severally liable for refunding any ECP or EFRP cost-share assistance related to that practice. The practice life span, for purposes of this section, includes any maintenance period that is essential to its success.

[69 FR 10302, Mar. 4, 2004, as amended at 75 FR 70088, Nov. 17, 2010]

§§ 701.38-701.40 [Reserved]

§ 701.41 Cost-share assistance not subject to claims.

Any cost-share assistance or portion thereof due any participant under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against any crop or property, or proceeds thereof, except liens and other claims of the United States or its instrumentalities. The regulations governing offsets and withholdings at parts 792 and 1403 of this title shall be applicable to this program and the provisions most favorable to a collection of the debt shall control.

§ 701.42 Assignments.

Participants may assign ECP cost-share assistance payments, in whole or in part, according to part 1404 of this title.

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§ 701.43 Information collection requirements.

Information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions at 44 U.S.C. Chapter 35 and have been assigned OMB Number 0560-0082.

§ 701.44 Agricultural Conservation Program (ACP) contracts.

Contracts for ACP that are, or were, administered under this part or similar contracts executed in connection with the Interim Environmental Quality Incentives Program, shall, unless the Deputy Administrator determines otherwise, be administered under, and be subject to, the regulations for ACP contracts and the ACP program that were contained in the 7 CFR parts 700 to 899, edition revised as of January 1, 1998, and under the terms of the agreements that were entered into with participants.

[69 FR 10302, Mar. 4, 2004, as amended at 75 FR 70088, Nov. 17, 2010]

§ 701.45 Forestry Incentives Program (FIP) contracts.

The regulations governing the FIP as of July 31, 2002, and contained in the 7 CFR parts 700 to 899, edition revised as of January 1, 2002, shall continue to apply to FIP contracts in effect as of that date, except as provided in accord with a delegation of the administration of that program and such delegation and actions taken thereunder shall apply to any other FIP matters as may be at issue or in dispute.

[69 FR 10302, Mar. 4, 2004, as amended at 75 FR 70088, Nov. 17, 2010]

Subpart B—Emergency Conservation Program

§§ 701.100–701.102 [Reserved]

§ 701.103 Scope.

(a) FSA will provide cost-share assistance to farmers and ranchers to rehabilitate farmland damaged by wind erosion, floods, hurricanes, or other natural disasters as determined by the Deputy Administrator, and to carry out emergency water conservation measures during periods of severe

drought, subject to the availability of funds and only for areas, natural disasters, and time periods approved by the Deputy Administrator.

(b) The objective of the ECP is to make cost-share assistance available to eligible participants on eligible land for certain practices, to rehabilitate farmland damaged by floods, hurricanes, wind erosion, or other natural disasters, and for the installation of water conservation measures during periods of severe drought.

(c) Payments may also be made under this subpart for:

(1) Emergency water conservation or water enhancement measures (including measures to assist confined livestock) during periods of severe drought; and

(2) Floodplain easements for runoff and other emergency measures that the Deputy Administrator determines is necessary to safeguard life and property from floods, drought, and the products of erosion on any watershed whenever fire, flood, or other natural occurrence is causing or has caused, a sudden impairment of the watershed.

(d) Payments under this part are subject to the availability of appropriated funds and any limitations that may otherwise be provided for by Congress.

[69 FR 10302, Mar. 4, 2004. Redesignated and amended at 75 FR 70088, Nov. 17, 2010]

§ 701.104 Producer eligibility.

(a) To be eligible to participate in the ECP the Deputy Administrator must determine that a person or legal entity is an agricultural producer with an interest in the land affected by the natural disaster, and that person or legal entity must be liable for or have paid the expense that is the subject of the cost share. The applicant must be a landowner or user in the area where the qualifying event has occurred, and must be a party who will incur the expense that is the subject of the cost share.

(b) Federal agencies and States, including all agencies and political subdivisions of a State, are ineligible to participate in the ECP.

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(c) All producer eligibility is subject to the availability of funds and an application may be denied for any reason.

[69 FR 10302, Mar. 4, 2004. Redesignated and amended at 75 FR 70088, Nov. 17, 2010]

§ 701.105 Land eligibility.

(a) For land to be eligible, the Deputy Administrator must determine that land that is the subject of the cost share:

(1) Will have new conservation problems caused as a result of a natural disaster that, if not treated, would:

(i) Impair or endanger the land;

(ii) Materially affect the productive capacity of the land;

(iii) Represent unusual damage that, except for wind erosion, is not of the type likely to recur frequently in the same area; and

(iv) Be so costly to repair that Federal assistance is or will be required to return the land to productive agricultural use. Conservation problems existing prior to the disaster are not eligible for cost-share assistance.

(2) Be physically located in a county in which the ECP has been implemented; and

(3) Be one of the following:

(i) Land expected to have annual agricultural production,

(ii) A field windbreak or a farmstead shelterbelt on which the ECP practice to be implemented involves removing debris that interferes with normal farming operations on the farm and correcting damage caused by the disaster; or

(iii) A farm access road on which debris interfering with the normal farming operation needs to be removed.

(b) Land is ineligible for cost share if the Deputy Administrator determines that it is, as applicable:

(1) Owned or controlled by the United States;

(2) Owned or controlled by States, including State agencies or other political subdivisions of a State;

(3) Protected by a levee or dike that was not effectively and properly functioning prior to the disaster, or is protected, or intended to be protected, by a levee or dike not built to U.S. Army Corps of Engineers, NRCS, or comparable standards;

(4) Adjacent to water impoundment reservoirs that are subject to inundation when the reservoir is filled to capacity;

(5) Land on which levees or dikes are located;

(6) Subject to frequent damage or susceptible to severe damage according to paragraph (c) of this section;

(7) Subject to flowage or flood easements and inundation when water is released in normal operations;

(8) Between any levee or dike and a stream, river, or body of water, including land between two or more levees or dikes;

(9) Located in an old or new channel of a stream, creek, river or other similar body of water, except that land located within or on the banks of an irrigation canal may be eligible if the Deputy Administrator determines that the canal is not a channel subject to flooding;

(10) In greenhouses or other confined areas, including but not limited to, land in corrals, milking parlors, barn lots, or feeding areas;

(11) Land on which poor farming practices, such as failure to farm on the contour, have materially contributed to damaging the land;

(12) Unless otherwise provided for, not considered to be in annual agricultural production, such as land devoted to stream banks, channels, levees, dikes, native woodland areas, roads, and recreational uses; or

(13) Devoted to trees including, but not limited to, timber production.

(c) To determine the likely frequency of damage and of the susceptibility of the land to severe damage under paragraph (b)(6) of this section, FSA will consider all relevant factors, including, but not limited to, the location of the land, the history of damage to the land, and whether the land was or could have been protected by a functioning levee or dike built to U. S. Army Corps of Engineers, NRCS, or comparable standards. Further, in making such determinations, information may be obtained and used from the Federal Emergency Management Agency or any other Federal, State (including State agencies or political subdivisions), or other entity or individual providing information regarding, for

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example, flood susceptibility for the land, soil surveys, aerial photographs, or flood plain data or other relevant information.

[69 FR 10302, Mar. 4, 2004. Redesignated at 75 FR 70088, Nov. 17, 2010]

§§ 701.106–701.109 [Reserved]

§ 701.110 Qualifying minimum cost of restoration.

(a) To qualify for assistance under § 701.103(a), the eligible damage must be so costly that Federal assistance is or will be required to return the land to productive agricultural use or to provide emergency water for livestock.

(b) The Deputy Administrator shall establish the minimum qualifying cost of restoration. Each affected State may be allowed to establish a higher minimum qualifying cost of restoration.

(c) A producer may request a waiver of the qualifying minimum cost of restoration. The waiver request shall document how failure to grant the waiver will result in environmental damage or hardship to the producer and how the waiver will accomplish the goals of the program.

[69 FR 10302, Mar. 4, 2004; 69 FR 22377, Apr. 26, 2004. Redesignated and amended at 75 FR 70088, Nov. 17, 2010]

§ 701.111 Prohibition on duplicate payments.

(a) *Duplicate payments.* Participants are not eligible to receive funding under the ECP for land on which the participant has or will receive funding under:

(1) The Wetland Reserve Program (WRP) provided for in 7 CFR part 1467;

(2) The Emergency Wetland Reserve Program (EWRP) provided for in 7 CFR part 623;

(3) The Emergency Watershed Protection Program (EWP), provided for in 7 CFR part 624, for the same or similar expenses.

(4) Any other program that covers the same or similar expenses so as to create duplicate payments, or, in effect, a higher rate of cost share than is allowed under this part.

(b) *Refund.* Participants who receive any duplicate funds, payments, or ben-

efits shall refund any ECP payments received.

[69 FR 10302, Mar. 4, 2004, as amended at 71 FR 30265, May 26, 2006. Redesignated at 75 FR 70088, Nov. 17, 2010]

§ 701.112 Eligible ECP practices.

(a) Cost-share assistance may be offered for ECP practices to replace or restore farmland, fences, or conservation structures to a condition similar to that existing before the natural disaster. No relief under this subpart shall be allowed to address conservation problems existing before the disaster.

(b) The practice or practices made available when the ECP is implemented shall be only those practices authorized by FSA for which cost-share assistance is essential to permit accomplishment of the program goals.

(c) Cost-share assistance may be provided for permanent vegetative cover, including establishment of the cover where needed, only in conjunction with eligible structures or installations where cover is needed to prevent erosion and/or siltation or to accomplish some other ECP purpose.

(d) Practice specifications shall represent the minimum levels of performance needed to address the ECP need.

[69 FR 10302, Mar. 4, 2004. Redesignated and amended at 75 FR 70088, Nov. 17, 2010]

§§ 701.113–701.116 [Reserved]

§ 701.117 Average adjusted gross income limitation.

To be eligible for payments issued from the \$16 million provided under the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110–28, section 9003), each applicant must meet the provisions of the Adjusted Gross Income Limitations at 7 CFR part 1400 subpart G.

[72 FR 45880, Aug. 16, 2007. Redesignated at 75 FR 70088, Nov. 17, 2010]

§§ 701.118–701.125 [Reserved]

§ 701.126 Maximum cost-share percentage.

(a) In addition to other restrictions that may be applied by FSA, an ECP participant shall not receive more than

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75 percent of the lesser of the participant's total actual cost or of the total allowable costs, as determined by this part, to perform the practice.

(b) However, notwithstanding paragraph (a) of this section, a qualified limited resource producer that participates in the ECP may receive no more than 90 percent of the participant's actual cost to perform the practice or 90 percent of the total allowable costs for the practice as determined under this part.

(c) In addition to other limitations that apply, in no case shall the ECP payment exceed 50 percent of what the Deputy Administrator has determined is the agricultural value of the affected land.

[69 FR 10302, Mar. 4, 2004. Redesignated and amended at 75 FR 70088, Nov. 17, 2010]

§ 701.127 Maximum ECP payments per person or legal entity.

A person or legal entity, as defined in part 1400 of this title, is limited to a maximum ECP cost-share of \$200,000 per person or legal entity, per natural disaster.

[75 FR 7088, Nov. 17, 2010]

§§ 701.128–701.149 [Reserved]

§ 701.150 2005 hurricanes.

In addition benefits elsewhere allowed by this part, claims related to calendar year 2005 hurricane losses may be allowed to the extent provided for in §§ 701.150 through 701.157. Such claims under those sections will be limited to losses in counties that were declared disaster counties by the President or the Secretary because of 2005 hurricanes and to losses to oyster reefs. Claims under §§ 701.151 through 701.157 shall be subject to all normal ECP limitations and provisions except as explicitly provided in those sections.

[71 FR 30265, May 26, 2006. Redesignated and amended at 75 FR 70088, 70089, Nov. 17, 2010]

§ 701.151 Definitions.

The following definitions apply to §§ 701.152 through 701.157:

Above-ground irrigation facilities means irrigation pipes, sprinklers, pumps, emitters, and any other inte-

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gral part of the above ground irrigation system.

Barn means a structure used for the housing of animals or farm equipment.

Commercial forest land means forest land with trees intended to be harvested for commercial purposes that has a productivity potential greater than or equal to 20 cubic feet per year of merchantable timber.

Date of loss means the date the hurricane damage occurred in calendar year 2005.

Eligible county means any county that was declared a disaster county by the President or the Secretary because of a calendar year 2005 hurricane, that otherwise meets the eligibility requirements of this part.

Forest management plan means a plan of action and direction on forest lands to achieve a set of results usually specified as goals or objectives consistent with program policies prepared or approved by a natural resource professional, such as a State forestry agency representative.

Poultry house means a building used to house live poultry for the purpose of commercial food production.

Private non-industrial forest land means rural commercial forest lands with existing tree cover, or which are suitable for growing trees, that are owned by a private non-industrial forest landowner as defined in this section.

Private non-industrial forest landowner means, for purposes of the ECP for forestry, an individual, group, association, corporation, Indian tribe, or other legal private entity owning non-industrial private forest land or who receives concurrence from the landowner for making the claim in lieu of the owner, and for practice implementation and who holds a lease on the land for a minimum of 10 years. Owners or lessees principally engaged in the primary processing of raw wood products are excluded from this definition. Owners of land leased to lessees who would be excluded under the previous sentence are also excluded.

Shade house means a metal or wood structure covered by a material used for shade purposes.

[71 FR 30265, May 26, 2006. Redesignated and amended at 75 FR 70088, 70089, Nov. 17, 2010]

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§ 701.152 Availability of funding.

Payments under §§ 701.153 through 701.157 are subject to the availability of funds under Public Law 109-148.

[71 FR 30265, May 26, 2006. Redesignated and amended at 75 FR 70088, Nov. 17, 2010]

§ 701.153 Debris removal and water for livestock.

Subject to the other eligibility provisions of this part, an ECP participant addressing damage in an eligible county from hurricanes during calendar year 2005 may be allowed up to 90 percent of the participant's actual cost or of the total allowable cost for cleaning up structures such as barns, shade houses and above-ground irrigation facilities, for removing poultry house debris, including carcasses, and for providing water for livestock.

[71 FR 30265, May 26, 2006. Redesignated and amended at 75 FR 70088, 70089, Nov. 17, 2010]

§§ 701.154 [Reserved]

§ 701.155 Nursery.

(a) Subject to the other eligibility provisions of this part except as provided explicitly in this section, assistance may be made available in an eligible county under this section for the cost of removing nursery debris such as nursery structures, shade houses, and above ground irrigation facilities, where such debris was created in calendar year 2005 by a 2005 hurricane.

(b) Notwithstanding § 701.126, an otherwise eligible ECP participant may be allowed up to 90 percent of the participant's actual cost or of the total allowable cost for losses described in paragraph (a) of this section.

[71 FR 30265, May 26, 2006. Redesignated and amended at 75 FR 70088, 70089, Nov. 17, 2010]

§ 701.156 Poultry.

(a) Subject to the other eligibility provisions of this part except as provided explicitly in this section, assistance may be allowed under this section for uninsured losses in calendar year 2005 to a poultry house in an eligible county due to a 2005 hurricane.

(b) Claimants under this section may be allowed an amount up to the lesser of:

(1) The lesser of 50 percent of the participant's actual or the total allowable cost of the reconstruction or repair of a poultry house, or

(2) \$50,000 per poultry house.

(c) The total amount of assistance provided under this section and any indemnities for losses to a poultry house paid to a poultry grower, may not exceed 90 percent of the total costs associated with the reconstruction or repair of a poultry house.

(d) Poultry growers must provide information on insurance payments on their poultry houses. Copies of contracts between growers and poultry integrators may be required.

(e) Assistance under this section is limited to amounts necessary for reconstruction and/or repair of a poultry house to the same size as before the hurricane.

(f) Assistance is limited to poultry houses used to house poultry for commercial enterprises. A commercial poultry enterprise is one with a dedicated structure for poultry and a number of poultry that exceeds actual non-commercial uses of poultry and their products at all times, and from which poultry or related products are actually, and routinely, sold in commercial quantities for food, fiber, or eggs. Unless otherwise approved by FSA, a commercial quantity is a quantity per week that would normally exceed \$100 in sales.

(g) Poultry houses with respect to which claims are made under this section must be reconstructed or repaired to meet current building standards.

[71 FR 30265, May 26, 2006. Redesignated at 75 FR 70088, Nov. 17, 2010]

§ 701.157 Private non-industrial forest land.

(a) Subject to the other eligibility provisions of this part except as provided explicitly in this section, assistance made available under this section with respect to private, non-industrial forest land in an eligible county for costs related to reforestation, rehabilitation, and related measures undertaken because of losses in calendar year 2005 caused by a 2005 hurricane. To be eligible, a non-industrial private forest landowner must have suffered a

loss of, or damage to, at least 35 percent of forest acres on commercial forest land of the forest landowner in a designated disaster county due to a 2005 hurricane or related condition. The 35 percent loss shall be determined based on the value of the land before and after the hurricane event.

(b) During the 5-year period beginning on the date of the loss, the eligible private non-industrial forest landowner must:

(1) Reforest the eligible damaged forest acres in accordance with a forest management plan approved by FSA that is appropriate for the forest type where the forest management plan is developed by a person or legal entity with appropriate forestry credentials, as determined by the Deputy Administrator;

(2) Use the best management practices included in the forest management plan; and

(3) Exercise good stewardship on the forest land of the landowner while maintaining the land in a forested state.

(c) Notwithstanding §701.126, an ECP participant shall not receive under this section more than 75 percent of the participant's actual cost or of the total allowable cost of reforestation, rehabilitation, and related measures.

(d) Payments under this section shall not exceed a maximum of \$150 per acre for any acre.

(e) Requests will be prioritized based upon planting tree species best suited to the site as stated in the forest management plan.

[71 FR 30265, May 26, 2006. Redesignated and amended at 75 FR 70088, 70089, Nov. 17, 2010]

Subpart C—Emergency Forest Restoration Program

SOURCE: 75 FR 70889, Nov. 17, 2010, unless otherwise noted.

§§ 701.200—701.202 [Reserved]

§ 701.203 Scope.

(a) Subject to the availability of funds and only for areas, natural disasters, and time periods for the natural disaster and rehabilitation approved by the Deputy Administrator, FSA will provide financial assistance to owners

of nonindustrial private forest land who carry out emergency measures to restore land damaged by a natural disaster on or after January 1, 2010, as determined by FSA.

(b) The objective of EFRP is to make financial assistance available to eligible participants on eligible land for certain practices to restore nonindustrial private forest land that has been damaged by a natural disaster.

§ 701.204 Participant eligibility.

(a) To be eligible to participate in EFRP, a person or legal entity must be an owner of nonindustrial private forest land affected by a natural disaster, and must be liable for or have the expense that is the subject of the financial assistance. The owner must be a person or legal entity (including an Indian tribe) with full decision-making authority over the land, as determined by FSA, or with such waivers as may be needed from lenders or others as may be required, to undertake program commitments.

(b) Federal agencies and States, including all agencies and political subdivisions of a State, are ineligible for EFRP.

(c) An application may be denied for any reason.

§ 701.205 Land eligibility.

(a) For land to be eligible, it must be nonindustrial private forest land and must, as determined by FSA:

(1) Have existing tree cover or have had tree cover immediately before the natural disaster and be suitable for growing trees;

(2) Have damage to natural resources caused by a natural disaster, which occurred on or after January 1, 2010, that, if not treated, would impair or endanger the natural resources on the land and would materially affect future use of the land; and

(3) Be physically located in a county in which EFRP has been implemented.

(b) Land is ineligible for EFRP if FSA determines that the land is any of the following:

(1) Owned or controlled by the United States; or

(2) Owned or controlled by States, including State agencies or political subdivisions of a State.

§§ 701.206—701.209 [Reserved]

§ 701.210 Qualifying minimum cost of restoration.

(a) FSA will establish the minimum qualifying cost of restoration, which may vary by State or region.

(b) An applicant may request a waiver of the qualifying minimum cost of restoration. The waiver request must document how failure to grant the waiver will result in environmental damage or hardship to the person or legal entity, and how the waiver will accomplish the goals of the program.

§ 701.211 Prohibition on duplicate payments.

(a) Participants are not eligible to receive funding under EFRP for land on which FSA determines that the participant has or will receive funding for the same or similar expenses under:

(1) The Emergency Conservation Program provided for in subpart B of this part;

(2) The Wetland Reserve Program (WRP) provided for in part 1467 of this title;

(3) The Emergency Wetland Reserve Program (EWRP) provided for in part 623 of this chapter;

(4) The Emergency Watershed Protection Program (EWP), provided for in part 624 of this chapter; or

(5) Any other program that covers the same or similar expenses so as to create duplicate payments, or, have the effect of creating in total, otherwise, a higher rate of financial assistance than is allowed on its own under this part.

(b) Participants who receive any duplicate funds, payments, or benefits must refund any EFRP payments received, except the Deputy Administrator may reduce the refund amount to the amount determined appropriate by the Deputy Administrator to ensure that the total amount of assistance received by the owner of the land under all programs does not exceed an amount otherwise allowed in this part.

§ 701.212 Eligible EFRP practices.

(a) Financial assistance may be offered to eligible persons or legal entities for EFRP practices to restore forest health and forest-related resources on eligible land.

(b) Practice specifications must represent the minimum level of performance needed to restore the land to the applicable FSA, NRCS, Forest Service, or State forestry standard.

§§ 701.213—701.225 [Reserved]

§ 701.226 Maximum financial assistance.

(a) In addition to other restrictions that may be applied by FSA, an EFRP participant will not receive more than 75 percent of the lesser of the participant's total actual cost or of the total allowable costs, as determined by this subpart, to perform the practice.

(b) A person, as defined in part 1400 of this title, is limited to a maximum cost-share of \$500,000 per person or legal entity, per disaster.

(c) The Deputy Administrator may waive the provisions of this section on a case by case basis to address unusually large losses. Such relief is solely at the discretion of the Deputy Administrator, and the failure to provide such relief is not subject to administrative review or appeal under parts 11 or 780 of this title.

PART 707—PAYMENTS DUE PERSONS WHO HAVE DIED, DISAPPEARED, OR HAVE BEEN DECLARED INCOMPETENT

Sec.

707.1 Applicability.

707.2 Definitions.

707.3 Death.

707.4 Disappearance.

707.5 Incompetency.

707.6 Death, disappearance, or incompetency of one eligible to apply for payment pursuant to the regulations in this part.

707.7 Release application.

AUTHORITY: 7 U.S.C. 1385 and 8786.

SOURCE: 30 FR 6246, May 5, 1965, unless otherwise noted.

§ 707.1 Applicability.

This part applies to all programs in title 7 of the Code of Federal Regulations which are administered by the Farm Service Agency under which payments are made to eligible program participants. This part also applies to all other programs to which this part is

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applicable by the individual program regulations.

§ 707.2 Definitions.

“Person” when relating to one who dies, disappears, or becomes incompetent, prior to receiving payment, means a person who has earned a payment in whole or in part pursuant to any of the programs to which this part is applicable. “Children” shall include legally adopted children who shall be entitled to share in any payment in the same manner and to the same extent as legitimate children of natural parents. “Brother” or “sister”, when relating to one who, pursuant to the regulations in this part, is eligible to apply for the payment which is due a person who dies, disappears, or becomes incompetent prior to the receipt of such payment, shall include brothers and sisters of the half blood who shall be considered the same as brothers and sisters of the whole blood. “Payment” means a payment by draft, check or certificate pursuant to any of the Programs to which this part is applicable. Payments shall not be considered received for the purposes of this part until such draft, check or certificate has been negotiated or used.

§ 707.3 Death.

(a) Where any person who would otherwise be eligible to receive a payment dies before the payment is received, payment may be released in accordance with this section so long as, and only if, a timely program application has been filed by the deceased before the death or filed in a timely way before or after the death by a person legally authorized to act for the deceased. Timeliness will be determined under the relevant program regulations. All program conditions for payment under the relevant program regulations must have been met for the deceased to be considered otherwise eligible for the payment. However, the payment will not be made under this section unless, in addition, a separate release application is filed in accordance with § 707.7. If these conditions are met, payment may be released without regard to the claims of creditors other than the United States, in accordance with the following order of precedence:

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(1) To the administrator or executor of the deceased person’s estate.

(2) To the surviving spouse, if there is no administrator or executor and none is expected to be appointed, or if an administrator or executor was appointed but the administration of the estate is closed (i) prior to application by the administrator or executor for such payment or (ii) prior to the time when a check, draft, or certificate issued for such payment to the administrator or executor is negotiated or used.

(3) If there is no surviving spouse, to the sons and daughters in equal shares. Children of a deceased son or daughter of a deceased person shall be entitled to their parent’s share of the payment, share and share alike. If there are no surviving direct descendants of a deceased son or daughter of such deceased person, the share of the payment which otherwise would have been made to such son or daughter shall be divided equally among the surviving sons and daughters of such deceased person and the estates of any deceased sons or daughters where there are surviving direct descendants.

(4) If there is no surviving spouse and no direct descendant, payment shall be made to the father and mother of the deceased person in equal shares, or the whole thereof to the surviving father or mother.

(5) If there is no surviving spouse, no direct descendant, and no surviving parent, payment shall be made to the brothers and sisters of the deceased person in equal shares. Children of a deceased brother or sister shall be entitled to their parent’s share of the payment, share and share alike. If there are no surviving direct descendants of the deceased brother or sister of such deceased person, the share of the payment which otherwise would have been made to such brother or sister shall be divided equally among the surviving brothers and sisters of such deceased person and the estates of any deceased brothers or sisters where there are surviving direct descendants.

(6) If there is no surviving spouse, direct descendant, parent, or brothers or sisters or their descendants, the payment shall be made to the heirs-at-law in accordance with the law of the State of domicile of the deceased person.

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(b) If any person who is entitled to payment under the above order of precedence is a minor, payment of his share shall be made to his legal guardian, but if no legal guardian has been appointed payment shall be made to his natural guardian or custodian for his benefit, unless the minor's share of the payment exceeds \$1,000, in which event payment shall be made only to his legal guardian.

(c) Any payment which the deceased person could have received may be made jointly to the persons found to be entitled to such payment or shares thereof under this section or, pursuant to instructions issued by the Farm Service Agency, a separate payment may be issued to each person entitled to share in such payment.

[30 FR 6246, May 5, 1965, as amended at 75 FR 81835, Dec. 29, 2010]

§ 707.4 Disappearance.

(a) Where any person who would otherwise be eligible to receive a payment disappears before the payment is received, payment may be released in accordance with this section so long as, and only if, a timely program application has been filed by that person before the disappearance or filed timely before or after the disappearance by someone legally authorized to act for the person involved. Timeliness will be determined under the relevant program regulations. All program conditions for payment under the relevant program regulations must have been met for the person involved to be considered otherwise eligible for the payment. However, the payment will not be made unless, in addition, a separate release application is filed in accordance with § 707.7. If these conditions are met, payment may be released without regard to the claims of creditors other than the United States, in accordance with the following order of precedence:

(1) The conservator or liquidator of his estate, if one be duly appointed.

(2) The spouse.

(3) An adult son or daughter or grandchild for the benefit of his estate.

(4) The mother or father for the benefit of his estate.

(5) An adult brother or sister for the benefit of his estate.

(6) Such person as may be authorized under State law to receive payment for the benefit of his estate.

(b) A person shall be deemed to have disappeared if (1) he has been missing for a period of more than 3 months, (2) a diligent search has failed to reveal his whereabouts, and (3) such person has not communicated during such period with other persons who would be expected to have heard from him. Evidence of such disappearance must be presented to the county committee in the form of a statement executed by the person making the application for payment, setting forth the above facts, and must be substantiated by a statement from a disinterested person who was well acquainted with the person who has disappeared.

[30 FR 6246, May 5, 1965, as amended at 75 FR 81835, Dec. 29, 2010]

§ 707.5 Incompetency.

(a) Where any person who would otherwise be eligible to receive a payment is adjudged incompetent by a court of competent jurisdiction before the payment is received, payment may be released in accordance with this section so long as, and only if, a timely and binding program application has been filed by the person involved while capable or by someone legally authorized to file an application for the person involved. Timeliness is determined under the relevant program regulations. In all cases, the payment application must have been timely under the relevant program regulations and all program conditions for payment must have been met by or on behalf of the person involved. However, the payment will not be made unless, in addition, a separate release application is filed in accordance with § 707.7. If these conditions are met, payment may be released without regard to the claims of creditors other than the United States, to the guardian or committee legally appointed for the person involved. In case no guardian or committee had been appointed, payment, if for not more than \$1,000, may be released without regard to claims of creditors other than the United States, to one of the following in the following order for the benefit of the person who was the subject of the adjudication:

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- (1) The spouse.
- (2) An adult son, daughter, or grandchild.
- (3) The mother or father.
- (4) An adult brother or sister.
- (5) Such person as may be authorized under State law to receive payment for the person (see standard procedure prescribed for the respective region).

(b) In case payment is more than \$1,000, payment may be released only to such person as may be authorized under State law to receive payment for the incompetent, so long as all conditions for other payments specified in paragraph (a) of this section and elsewhere in the applicable regulations have been met. Those requirements include the filing of a proper and timely and legally authorized program application by or for the person adjudged incompetent. The release of funds under this paragraph will be made without regard to claims of creditors other than the United States unless the agency determines otherwise.

[75 FR 81836, Dec. 30, 2010]

§ 707.6 Death, disappearance, or incompetency of one eligible to apply for payment pursuant to the regulations in this part.

In case any person entitled to apply for a release of a payment pursuant to the provisions of § 707.3, § 707.4, § 707.5, or this section, dies, disappears, or is adjudged incompetent, as the case may be, after he has applied for such payment but before the payment is received, payment may be made upon proper application therefor, without regard to claims of creditors other than the United States, to the person next entitled thereto in accordance with the order of precedence set forth in § 707.3, § 707.4, or § 707.5, as the case may be.

[30 FR 6246, May 5, 1965, as amended at 75 FR 81836, Dec. 29, 2010]

§ 707.7 Release application.

No payment may be made under this part unless a proper program application was filed in accordance with the rules for the program that generated the payment. That application must have been timely and filed by someone legally authorized to act for the deceased, disappeared, or declared-incompetent person. The filer can be the

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party that earned the payment themselves—such as the case of a person who filed a program application before they died—or someone legally authorized to act for the party that earned the payment. All program conditions for payment must have been met before the death, disappearance, or incompetency except for the timely filing of the application for payment by the person legally authorized to act for the party earning the payment. But, further, for the payment to be released under the rules of this part, a second application must be filed. That second application is a release application filed under this section. In particular, as to the latter, where all other conditions have been met, persons desiring to claim payment for themselves or an estate in accordance with this part 707 must do so by filing a release application on Form FSA-325, “Application for Payment of Amounts Due Persons Who Have Died, Disappeared or Have Been Declared Incompetent. If the person who died, disappeared, or was declared incompetent did not apply for payment by filing the applicable program application for payment form, such program application for payment must also be filed in accordance with applicable regulations. If the payment is made under the Naval Stores Conservation Program, Part II of the Form FSA-325 shall be executed by the local District Supervisor of the U.S. Forest Service. In connection with applications for payment under all other programs itemized in § 707.1, Form FSA-325, and program applications for payments where required, shall be filed with the FSA county office where the person who earned the payment would have been required to file his application.

[30 FR 6246, May 5, 1965, as amended at 75 FR 81836, Dec. 29, 2010]

PART 708—RECORD RETENTION REQUIREMENTS—ALL PROGRAMS

AUTHORITY: Sec. 4, 49 Stat. 164, secs. 7–17, 49 Stat. 1148, as amended; 16 U.S.C. 590d, 590g–590q.

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§ 708.1 Record retention period.

For the purposes of the programs in this chapter, no receipt, invoice, or other record required to be retained by any agricultural producer as evidence tending to show performance of a prac-

tice under any such program needs to be retained by such producer more than two years following the close of the program year of the program.

[25 FR 105, Jan. 7, 1960. Redesignated at 26 FR 5738, June 29, 1961]