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## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Part 701

RIN 0560-AH43

### Emergency Conservation Program

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

**ACTION:** Interim final rule.

**SUMMARY:** This interim final rule amends the regulations for the Emergency Conservation Program (ECP) to implement provisions of the Department of Defense, Emergency Supplemental Appropriation to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Pub. L. 109-149) (2006 Act) providing assistance to nursery, oyster, and poultry producers and non-industrial private forest landowners to rehabilitate public or private oyster reefs or farmland damaged by hurricanes during calendar year 2005.

**DATES:** This interim final rule is effective May 26, 2006. Written comments via letter, facsimile, or Internet must be received on or before June 26, 2006 in order to be assured consideration.

**ADDRESSES:** The Farm Service Agency (FSA) invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- E-Mail: Send comments to [Clayton.Furukawa@wdc.usda.gov](mailto:Clayton.Furukawa@wdc.usda.gov).
- Fax: Submit comments by facsimile transmission to: (202) 720-4619.
- Mail: Send comments to: Clayton Furukawa, ECP Program Manager, Conservation and Environmental Programs Division, Farm Service Agency, United States Department of Agriculture, STOP 0513, 1400 Independence Avenue, SW., Washington, DC 20250-0513.

• Hand Delivery or Courier: Deliver comments to: Clayton Furukawa, ECP Program Manager, Conservation and Environmental Programs Division, Farm Service Agency, United States Department of Agriculture, Rm. 4977-S., 1400 Independence Avenue, SW., Washington, DC 20250-0513

• Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

#### FOR FURTHER INFORMATION CONTACT:

Clayton Furukawa, ECP Program Manager, Conservation and Environmental Programs Division, USDA/FSA/CEPD/STOP 0513, 1400 Independence Avenue, SW., Washington, DC 20250-0513, telephone 202-690-0571. E-mail: [Clayton.Furukawa@wdc.usda.gov](mailto:Clayton.Furukawa@wdc.usda.gov).

#### Discussion of Proposed Rule

The ECP is an on-going program that provides cost-share assistance to farmers and ranchers to rehabilitate farmland damaged by wind erosion, floods, hurricanes, or other natural disasters, and for carrying out emergency water conservation measures during periods of severe drought.

The 2006 Act provides emergency supplemental appropriations to address calendar year 2005 hurricane-related damage. Section 101 of the 2006 Act provided \$199,800,000 for the ECP, to remain available until expended, to address damage from hurricanes that occurred during calendar year 2005. In addition to funding the standard benefits available under the ECP to rehabilitate certain land, the 2006 Act also authorizes certain additional assistance to certain oyster, nursery, and poultry producers and to private non-industrial forest landowners.

#### Allocating Funds

Compared to the broader ECP program, the funding provided by the 2006 Act covered both new and existing authorities. Therefore, FSA has segregated the funds made available by the 2006 Act from the broader ECP program. Requests for ECP funding for damages from hurricanes during calendar year 2005 are expected to be greater than the funds made available by the 2006 Act.

As a general rule, FSA at the national level allocates ECP funds to State FSA offices, and the local FSA county

committees obligate the funds on a "first-come, first-served" basis. Further, as previously indicated, the 2006 Act also provided funds to address damage to certain oyster, nursery, and poultry producers and to private non-industrial forest landowners. These new authorities are in addition to FSA's existing authority under ECP.

Because FSA desired to make funds available as quickly as possible, FSA allocated certain funding for debris removal while reserving the remaining funds for the new 2006 Act authorities. The funds made available for debris removal were pro-rated based on estimates of need provided by local FSA offices. FSA did this because existing regulations address and funds for this purpose could be immediately allocated. It should be noted that the new legislation caps assistance for poultry growers who suffered uninsured losses to poultry houses to \$20 million.

#### General Provisions

The 2006 Act authorizes assistance for 2005 hurricane-related damage, including claims for oyster bed refurbishing; for cleaning up structures such as barns; for removing debris such as nursery structures, shade houses, and aboveground irrigation facilities; and for removing poultry house debris, including carcasses. Also, money is authorized for certain forestry claims.

The 2006 Act authorizes the funding as a result of hurricanes that occurred during the 2005 calendar year. This regulation adds special provisions for losses due to 2005 hurricanes. FSA intends to focus ECP's limited disaster recovery assistance dollars to areas that were heavily impacted by the 2005 hurricanes. At a minimum, FSA has determined that only counties that are Presidential or Secretarial declared disaster counties due to hurricane damage suffered during calendar year 2005, as well as oyster reefs that suffered damage from 2005 hurricanes, will be eligible to receive ECP assistance provided under the authorities defined by sections 701.50 through 701.57 of this rule. In order to ensure that ECP helps the most affected counties, the Deputy Administrator may further prioritize ECP hurricane assistance based upon FSA's assessment of needed recovery aid.

This rule also revises 7 CFR 701.11(a)(3) to clarify that ECP assistance may be provided on land

which received assistance under the Emergency Watershed Protection Program authorized by the regulations at 7 CFR part 624 only if that assistance is not for the same expenses as the ECP so as to ensure there are no duplicate payments. The regulations at 7 CFR 701.11(a)(4) prohibit duplicate payments from other programs, including the Emergency Forestry Conservation Reserve Program (EFCRP). The EFCRP was also authorized by the 2006 Act and provides funding for the rehabilitation and reforestation of certain lands damaged by the 2005 hurricanes.

### Oysters

Existing ECP rules provide generally that land owned by State and Federal agencies is not eligible for ECP assistance. It is common for oyster beds to be publicly, as well as privately, held, and the 2006 Act provides authority to refurbish oyster beds for public and private oyster reefs. Therefore, this rule provides that publicly-held oyster beds are eligible for assistance, subject to otherwise applicable rules, including the \$200,000 per "person" ECP payment limitation.

As provided in the existing regulations at 7 CFR 701.1(i) and to assist with the refurbishing of public oyster beds, the Agency may enter into contracts with State agencies to perform technical assistance related to the refurbishment of public or private oyster beds. Cost-share for this relief is statutorily limited to 90 percent of the eligible costs.

Oyster bed refurbishing consists of removing mud and debris from public and private oyster beds, staking out the leased areas, re-establishing the oyster beds using crushed limestone, recycled oyster shells, or other available approved cultch materials, and reseeding the oyster beds.

### Nursery

The 2006 Act provides for assistance to nursery producers to remove debris such as nursery structures, shade houses, and above-ground irrigation facilities for participants within designated disaster counties. The statute provides that payments shall be no more than 90 percent of the lesser of the participant's actual cost or of the total allowable cost.

### Poultry

The 2006 Act provides up to \$20 million for assistance to poultry growers who suffered uninsured losses to poultry houses to reconstruct or repair their poultry houses in counties affected

by hurricane during the 2005 calendar year.

The 2006 Act limits assistance for poultry houses to the lesser of 50 percent of the total costs associated with the reconstruction or repair of a poultry house or \$50,000 per poultry house. Poultry house assistance is further limited by the statute so that the sum of this ECP assistance 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.

Poultry growers will be required to certify to any insurance payments received for poultry houses damaged by hurricane during calendar year 2005 to be eligible for ECP assistance.

### Private Non-Industrial Forest Land

The 2006 Act authorizes assistance to non-industrial private forest landowners who suffered a loss of, or damage to, at least 35 percent of forest acres on commercial forest land. Further, the producer has 5 years from the date of the loss to: (1) Reforest the lost forest acres in accordance with a plan approved by FSA that is appropriate for the forest type; (2) use best management practices in accordance with FSA's best management practices; and (3) exercise stewardship on the forest land while maintaining the land in a forested state. FSA intends to use State Forester best management practices. By statute, the cost-share may not exceed 75 percent or be more than \$150 per acre.

The 2006 Act authorized ECP assistance to reforest and rehabilitate damaged forest land. Reforest means replanting seedlings where applicable and rehabilitate means to bring the land back into a condition to be able to reforest which may mean removing debris or site preparation, where applicable.

Based on appropriate suitability, FSA will prioritize offers for forestry assistance by the type of forest in the following, descending order: Longleaf pine/Atlantic white cedar or bottomland, upland hardwood, loblolly/slash pine, mixed stand.

### Summary of Cost-Benefit Analysis

The additions to the Emergency Conservation Program have a total funding of \$199,800,000, which will remain available until expended. Given the number of affected producers, it is likely the entire amount will be expended.

Technical assistance will require about 10% of total program funds, with the Forest Service likely to receive the largest share via a cooperative

agreement for forestry program function. For oyster bed rehabilitation, the National Marine Fisheries Service has offered to provide technical assistance, as well as volunteer interpreters, at no cost to the Agency.

Payments from the ECP directly impact the net revenue for landowners and lease holders. However, cost-share and other limitations mean that the program will not make producers whole. Nevertheless, in the aggregate, ECP payment will reduce the impact of the disaster on producers. This may reduce the likelihood of producers permanently exiting associated sectors.

### SUPPLEMENTARY INFORMATION:

#### Executive Order 12866

This rule has been determined to be economically significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget. A Cost-Benefit Analysis (CBA) was completed and is available from the contact person cited above.

#### Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Emergency Conservation Program (ECP)—10.054.

#### Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act since the Farm Service Agency is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for this rule.

#### Environmental Review

The environmental impacts of this rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*; the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508); and FSA's regulations for compliance with NEPA at 7 CFR part 799. It was determined that this rule constitutes a major Federal action. The Agency has completed a final environmental impact statement assessment and record of decision which is on file and available to the public in the Administrative Record at the address specified in the **ADDRESSES** section. It is also available electronically at: <http://www.fsa.usda.gov/dafp/cepd/epb/nea.htm>.

#### Executive Order 12372

This program is not subject to Executive Order 12372, which requires 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).

#### Executive Order 12612

This rule does not have Federalism implications that warrant the preparation of a Federalism Assessment. This rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

#### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This interim rule is not retroactive and it does not preempt State law. Before any judicial action may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

#### Unfunded Mandates Reform Act of 1995

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

#### Immediate Effect

It has been determined that this rule should be made effective immediately because it would not be in the public interest to delay relief to persons affected by the hurricanes in order to provide for public notice and comment by issuing a proposed rule. However, by issuing these regulations via an interim final rule, FSA still invites comments and will consider them in the development of the final rule.

#### Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements of the ECP and assigned it OMB control number 0560-0082.

#### Government Paperwork Elimination Act

FSA is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and FSA in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The regulation is available at <http://www.fsa.usda.gov> under the heading

'Other Partners'. Applications may be submitted at the FSA county offices, by mail or by FAX.

#### List of Subjects in 7 CFR Part 701

Agriculture, Disaster assistance, Environmental protection, Natural resources.

■ Accordingly, 7 CFR part 701 is amended as follows:

#### PART 701—EMERGENCY CONSERVATION PROGRAM AND CERTAIN RELATED PROGRAMS PREVIOUSLY ADMINISTERED UNDER THIS PART

■ 1. The authority citation for part 701 is revised to read as follows:

**Authority:** Pub. L. 95-334, 92 Stat. 420, 16 U.S.C. 2201 et. seq.; Pub. L. 109-149, Division B, sec. 101.

■ 2. Section 701.11(a)(3) is revised to read as follows:

#### § 701.11 Prohibition on duplicate payments.

(a) \* \* \*

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

\* \* \* \* \*

■ 3. Add §§ 701.50 through 701.57, to read as follows:

#### § 701.50 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 §§ 701.50 through 701.57. 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 §§ 701.51 through 701.57 shall be subject to all normal ECP limitations and provisions except as explicitly provided in those sections.

#### § 701.51 Definitions.

The following definitions apply to §§ 701.52 through 701.57:

*Above-ground irrigation* facilities means irrigation pipes, sprinklers, pumps, emitters, and any other integral 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.

#### § 701.52 Availability of funding.

Payments under §§ 701.53 through 701.57 are subject to the availability of funds under Public Law 109-149.

#### § 701.53 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.

#### § 701.54 Oysters.

(a) Notwithstanding § 701.5(b), but otherwise subject to the other eligibility

provisions of this part except as provided explicitly in this section, assistance may be made available under this section for the eligible cost of refurbishing public or private oyster reefs damaged in calendar year 2005 by a 2005 hurricane. Oyster bed refurbishing consists of removing mud from public and private oyster beds, staking out the leased areas, reestablishing the oyster beds using crushed limestone, recycled oyster shells, or other available and suitable approved cultch materials, reseeding the oyster beds, and related actions approved by FSA.

(b) Notwithstanding § 701.26, an ECP participant shall not receive more than 90 percent of the participant's actual cost or of the total allowable cost described in paragraph (a) of this section.

(c) The provisions of § 701.26(c) limiting ECP payments to 50 percent of the agricultural value of the land do not apply to oyster bed rehabilitation and refurbishing.

#### **§ 701.55 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 § 701.26, 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.

#### **§ 701.56 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.

#### **§ 701.57 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 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 § 701.26, 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.

Signed at Washington, DC, on May 19, 2006.

**Glen L. Keppy,**

*Acting Administrator, Farm Service Agency.*

[FR Doc. E6-8100 Filed 5-25-06; 8:45 am]

**BILLING CODE 3410-05-P**

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 985**

[Docket No. FV06-985-2 IFR]

#### **Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 2006-2007 Marketing Year**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule revises the quantity of Class 3 (Native) spearmint oil that handlers may purchase from, or handle for, producers during the 2006-2007 marketing year. This rule increases the Native spearmint oil salable quantity from 1,007,886 pounds to 1,161,260 pounds, and the allotment percentage from 46 percent to 53 percent. The marketing order regulates the handling of spearmint oil produced in the Far West and is administered locally by the Spearmint Oil Administrative Committee (Committee). The Committee recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices and to help maintain stability in the Far West spearmint oil market.

**DATES:** Effective June 1, 2006, through May 31, 2007; comments received by July 25, 2006 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments