

## 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

#### Subpart A—General

- Sec.
- 701.1 Administration.
  - 701.2 Definitions.
  - 701.3–701.12 [Reserved]
  - 701.13 Submitting requests.
  - 701.14 Onsite inspections.
  - 701.15 Starting practices before cost-share request is submitted; non-entitlement to payment; payment subject to the availability of funds.
  - 701.16 Practice approval.
  - 701.17–701.20 [Reserved]
  - 701.21 Filing payment application.
  - 701.22 Eligibility to file for cost-share assistance.
  - 701.23 Eligible costs.
  - 701.24 Dividing cost-share among more than one participant.
  - 701.25 Practices carried out with aid from ineligible persons or ineligible legal entities.
  - 701.26–701.30 [Reserved]
  - 701.31 Maintenance and proper use of practices.
  - 701.32 Failure to comply with program provisions.
  - 701.33 Death, incompetency, or disappearance.
  - 701.34 Appeals.
  - 701.35 Compliance with regulatory measures.
  - 701.36 Schemes and devices and claims avoidances.
  - 701.37 Loss of control of property during the practice life span.
  - 701.38–701.40 [Reserved]
  - 701.41 Cost-share assistance not subject to claims.
  - 701.42 Assignments.
  - 701.43 Information collection requirements.
  - 701.44–701.45 [Reserved]

#### Subpart B—Emergency Conservation Program

- 701.100–701.102 [Reserved]
- 701.103 Eligible losses, objective, and payments.
- 701.104 Producer eligibility.

- 701.105 Land eligibility.
- 701.106 Government-owned land.
- 701.107–701.109 [Reserved]
- 701.110 Qualifying minimum cost of restoration.
- 701.111 Prohibition on duplicate payments.
- 701.112 Eligible ECP practices.
- 701.113–701.116 [Reserved]
- 701.117 Average adjusted gross income limitation.
- 701.118–701.125 [Reserved]
- 701.126 Maximum cost-share percentage.
- 701.127 Maximum ECP payments per person or legal entity.
- 701.128 Advance payment.
- 701.129–701.157 [Reserved]

#### Subpart C—Emergency Forest Restoration Program

- 701.200–701.202 [Reserved]
- 701.203 Eligible measures, objectives, and assistance.
- 701.204 Participant eligibility.
- 701.205 Land eligibility.
- 701.206–701.209 [Reserved]
- 701.210 Qualifying minimum cost of restoration.
- 701.211 Prohibition on duplicate payments.
- 701.212 Eligible EFRP practices.
- 701.213–701.225 [Reserved]
- 701.226 Maximum financial assistance.

AUTHORITY: 16 U.S.C. 2201–2206; Sec. 101, Pub. L. 109–148, 119 Stat. 2747; and Pub. L. 111–212, 124 Stat. 2302

SOURCE: 69 FR 10302, Mar. 4, 2004, unless otherwise noted.

#### 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 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

## § 701.2

## 7 CFR Ch. VII (1–1–24 Edition)

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:

*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

## Farm Service Agency, USDA

## § 701.15

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.

*Forestland* means land that is at least 120 feet wide and 1 acre in size and at least 10 percent covered by live trees of any size.

*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.

*Nonindustrial private forest land* means rural 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.

*Owners of nonindustrial private forest* means, for purposes of the EFRP, an individual, group, association, corporation, Indian Tribe, or other legal private entity owning nonindustrial private forest land or who receives concurrence from the landowner for making the claim in lieu of the owner; and, for practice implementation, the one

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.

*Socially disadvantaged farmer or rancher* means a farmer or rancher who is a member of a socially disadvantaged group. A socially disadvantaged group is a group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities.

[69 FR 10302, Mar. 4, 2004, as amended at 75 FR 70087, Nov. 17, 2010; 84 FR 32841, July 10, 2019; 88 FR 1882, Jan. 11, 2023]

### §§ 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

## § 701.16

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.

(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]

## 7 CFR Ch. VII (1-1-24 Edition)

### §§ 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 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

## Farm Service Agency, USDA

## § 701.32

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]

### § 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

### **§ 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, 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

## 7 CFR Ch. VII (1-1-24 Edition)

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 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

## Farm Service Agency, USDA

## § 701.104

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.

#### § 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.

### §§ 701.44–701.45 [Reserved]

## Subpart B—Emergency Conservation Program

### §§ 701.100–701.102 [Reserved]

#### § 701.103 Eligible losses, objective, and payments.

(a) FSA will provide cost-share assistance to farmers and ranchers to rehabilitate farmland damaged by wind erosion, floods, hurricanes, wildfire, 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 disas-

ters, 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, wildfire, 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; 84 FR 32841, July 10, 2019]

#### § 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.

(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**

**7 CFR Ch. VII (1–1–24 Edition)**

**§ 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) 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;

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

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

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

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

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

(7) 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;

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

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

(10) 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

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

(d) Additional provisions making Government-owned land eligible is specified in § 701.106.

[69 FR 10302, Mar. 4, 2004. Redesignated at 75 FR 70088, Nov. 17, 2010, as amended at 88 FR 1883, Jan. 11, 2023]



**§ 701.106 Government-owned land.**

(a) *State-owned land.* When land is owned by a State, whether it is eligible for cost share is as specified in this paragraph (a) in addition to the requirements in § 701.105.

(1) If an eligible person or legal entity has a lease for the State-owned land that allows cost share, and files a cost share request for the State-owned land, the land is eligible for cost share if, as determined by FSA, the:

(i) Eligible person or legal entity will directly benefit from the practice; or

(ii) The land will remain in agricultural production throughout the established practice life span.

(2) If an eligible person or legal entity files a cost-share request for State-owned land, the land is ineligible for cost share if, as determined by FSA, the:

(i) Practice is for the primary benefit of the State or State agencies; or

(ii) Eligible person or legal entity is prohibited by the lease from accepting cost-share.

(b) *Federally-owned farmland.* When land is federally owned, whether it is eligible for cost-share is as specified in this paragraph (a), in addition to the requirements in § 701.105.

(1) If an eligible person or legal entity files a cost-share request on federally owned farmland, the land is eligible if all of the following apply:

(i) An eligible private person or legal entity is farming or ranching the farmland;

(ii) An eligible person or legal entity has a lease that does not prohibit cost-share;

(iii) The practice will primarily benefit nearby or adjacent privately owned farmland of the eligible person or legal entity performing the practice;

(iv) A person or legal entity performing the practice has authorization from a Federal agency to install and maintain the practice;

(v) The Federal land is the most practical location for the eligible practice; and

(vi) During a drought, the practice will primarily benefit the livestock owned or managed by the eligible person or legal entity performing the practice.

(2) If an eligible person or legal entity files a cost share request on federally-owned land, the land is ineligible if the practices performed on these lands are for the benefit of land owned by a Federal agency.

(c) *Federal or State agency.* For the purposes of this subpart, private persons or legal entities exclude Federal and State agencies.

[88 FR 1883, Jan. 11, 2023]

**§§ 701.107–701.109 [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 ECP on the same piece of land for which the participant has or will receive funding under any other Federal 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.

(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

## § 701.112

CFR part 624, for the same or similar expenses; or

(4) Any other Federal 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 benefits 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, as amended at 88 FR 1883, Jan. 11, 2023; 88 FR 39768, June 20, 2023]

### § 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 Ad-

## 7 CFR Ch. VII (1–1–24 Edition)

justed 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 75 percent of the total allowable costs, as determined by this part, to perform the practice.

(b) However, notwithstanding paragraph (a) of this section, a producer who is a limited resource, socially disadvantaged, or beginning farmer or rancher that participates in ECP may receive up to 90 percent of the total allowable costs expended to perform the practice as determined under this part.

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

(d) The Secretary may waive the maximum limitations described in paragraphs (a) through (c) of this section to the maximum extent allowed by law.

[69 FR 10302, Mar. 4, 2004. Redesignated and amended at 75 FR 70088, Nov. 17, 2010; 84 FR 32841, July 10, 2019; 88 FR 1883, Jan. 11, 2023]

### § 701.127 Maximum ECP payments per person or legal entity.

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

(b) The Secretary may waive the maximum limitations described in paragraph (a) of this section to the maximum extent allowed by law.

[75 FR 7088, Nov. 17, 2010, as amended at 84 FR 32841, July 10, 2019; 88 FR 1883, Jan. 11, 2023]

### § 701.128 Advance payment.

(a) With respect to a payment to an agricultural producer for any eligible ECP practice, the agricultural producer has the option of receiving up to 25 percent of the projected payment,

## Farm Service Agency, USDA

## § 701.211

determined based on the applicable percentage of the fair market value of the cost of the practice, as determined by FSA, before the agricultural producer carries out the restoration.

(b) If the funds provided under paragraph (a) of this section are not spent by the agricultural producer within 60 calendar days of the date on which the agricultural producer receives those funds, the funds must be returned to FSA by a date determined by FSA.

(c) Payments made under this section are subject to the availability of funds.

[84 FR 32841, July 10, 2019, as amended at 88 FR 1883, Jan. 11, 2023]

### §§ 701.129–701.157 [Reserved]

### Subpart C—Emergency Forest Restoration Program

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

### §§ 701.200–701.202 [Reserved]

#### § 701.203 Eligible measures, objectives, and assistance.

(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 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.

[75 FR 70889, Nov. 17, 2010, as amended at 84 FR 32841, July 10, 2019]

#### § 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 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.

[75 FR 70889, Nov. 17, 2010, as amended at 84 FR 32841, July 10, 2019]

### §§ 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

## § 701.212

on which FSA determines that the participant has or will receive federal 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 Federal 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 Federal 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 Federal programs does not exceed an amount otherwise allowed in this part.

[75 FR 70889, Nov. 17, 2010, as amended at 88 FR 39768, June 20, 2023]

### § 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

## 7 CFR Ch. VII (1–1–24 Edition)

allowable costs, as determined by this subpart, to perform the practice.

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

(c) The Secretary may waive the maximum limitations described in paragraphs (a) and (b) of this section to the maximum extent allowed by law.

[75 FR 70889, Nov. 17, 2010, as amended at 84 FR 32841, July 10, 2019; 88 FR 1883, Jan. 11, 2023]

## 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 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