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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 701

RIN 0560-AI46

[Docket No. FSA-2019-0006]

Emergency Conservation Program

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Agriculture Improvement Act of 2018 (2018 Farm Bill) amended provisions of the Emergency Conservation Program (ECP). This rule implements those changes to ECP and makes additional minor technical amendments to the ECP regulations. The Farm Service Agency (FSA) is amending regulations to add wildfires as an eligible natural disaster, expand eligibility requirements, increase the maximum payment amount certain participants may receive, provide cost-share for fence repair and replacement, and provide certain cost-share payments more expeditiously than was previously authorized under ECP. In addition, this rule makes minor changes related to the Emergency Forest Restoration Program (EFRP).

DATES: Effective **[Insert date of publication in the FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Shanita Landon; telephone: (202) 690-1612; or email: shanita.landon@usda.gov. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

Through ECP, FSA provides payments to farmers and ranchers to rehabilitate farmland damaged by certain natural disasters and to implement emergency water conservation measures in periods of severe drought. ECP provides cost-share assistance to farmers or ranchers to rehabilitate farmland damaged by wind erosion, floods, hurricanes, or other natural disasters as determined by the Deputy Administrator. Section 2403 of the 2018 Farm Bill (Pub. L. 115-334) made changes to the ECP provisions. For ECP, the 2018 Farm Bill amended the Agricultural Credit Act of 1978 (16 U.S.C. 2201), by adding wildfires as an eligible natural disaster for which payments may be provided to eligible producers. The changes to the regulations include:

- Adding an additional category to natural disasters to be consistent with the changes to the ECP provisions;
- Making a portion of the cost-share payments for the repair or replacement of fencing available to eligible producers prior to the producer carrying out the repair or replacement;
- Increasing the maximum payment amount a producer can receive under ECP;
- Establishing a maximum payment percentage that a producer who is a socially disadvantaged or beginning farmer or rancher may receive; and
- Making minor technical changes to the existing ECP and EFRP regulations.

Definitions

FSA is relocating definitions applicable to EFRP into the general definitions section in § 701.2. The defined terms are “Commercial forest land,” “Nonindustrial private forest land,” and “Owners of nonindustrial private forest land.”

Maximum Cost Share Percentages

Prior to this rule, a qualified limited resource farmer or rancher that participated in ECP may have received reimbursement of up to 90 percent of the total allowable cost. The 2018 Farm Bill expands this maximum cost-share to include socially disadvantaged and beginning farmers and ranchers, while in all cases limiting total payment for a single event to an amount not to exceed 50 percent of the agricultural value of the land.

This rule continues the maximum cost-share payments that can be made to a farmer or rancher who is not a limited-resource, socially disadvantaged, or beginning farmer or rancher, to no more than 75 percent of the total allowable cost, not to exceed 50 percent of the agricultural value of the land.

Maximum ECP Payments per Person or Legal Entity

Prior to this rule, a person or legal entity was limited to a maximum ECP cost share of \$200,000 per person or legal entity, per disaster event. This rule will increase the maximum per person or legal entity payment limitation to \$500,000.

Advanced Payment Option for Fences

The 2018 Farm Bill authorizes a set aside of funds to provide that 25 percent of funding is to be used for the repair or replacement of fencing. The rule also adds § 701.128 for advance payments of up to 25 percent of the cost of repairing or replacement of fencing before the repair or replacement is carried out. In the event this cost share

assistance is not spent within 60 calendar days of being issued, the participant will be required to refund the cost-share payment.

EFRP Maximum Financial Assistance

The rule revises § 701.226 to clarify that an EFRP participant will not receive more than 75 percent of the total cost of the emergency measures carried out by the participant; and, that the \$500,000 maximum applies for a person or legal entity, per natural disaster. In addition, there is no provision for a waiver of the above-described EFRP limits for financial assistance.

Effective Date and Notice and Comment

The Administrative Procedure Act (APA; 5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to benefits. This rule relates to benefits and thus falls within that exemption.

This rule is not a major rule under Congressional Review Act. Therefore, FSA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review.

Therefore, this rule is effective on the date of publication the *Federal Register*.

Executive Orders 12866, 13563, 13771, and 13777

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant. Executive Order 13777, “Enforcing the Regulatory Reform Agenda,” established a federal policy to alleviate unnecessary regulatory burdens on the American people.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, “Regulatory Planning and Review,” and therefore, OMB has not reviewed this rule and an analysis of the costs and benefits is not required under either Executive Orders 12866 or 13563.

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” requires that in order to manage the private costs required to comply with Federal regulations that for every new significant or economically significant regulation issued, the new costs must be offset by the elimination of at least two prior regulations. As this rule is designated not significant, it is not subject to Executive Order 13771. In a general response to the requirements of Executive Order 13777, USDA created a Regulatory Reform Task Force, and USDA agencies were directed to remove barriers, reduce burdens, and provide better customer service both as part of the regulatory reform of existing regulations and as an ongoing approach. FSA reviewed this regulation and made changes to improve any provision that was determined to be outdated, unnecessary, or ineffective.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory analysis of any rule whenever an agency is required by APA or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to the Regulatory Flexibility Act since FSA is not required to publish a notice of proposed rulemaking for this rule.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and FSA regulations for compliance with NEPA (7 CFR part 799). This rule includes changes mandated by the 2018 Farm Bill and discretionary technical amendments that are administrative in nature. Accordingly, the discretionary provisions of this action are covered by the Categorical Exclusion, found in 7 CFR 799.31(b)(2)(iii) for minor amendments or revisions to previously approved actions and § 799.31(b)(3)(i), for the issuance of minor technical corrections to regulations. No Extraordinary Circumstances (§ 799.33) exist. As such, the implementation of the discretionary technical amendments provided in this rule does not constitute a major Federal action that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this regulatory action and this rule serves as the

environmental screening documentation of the programmatic environmental compliance decision for this federal action.

Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance and direct Federal development. For reasons specified in the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities in this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule would not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 are to be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, “Federalism.” The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by

law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.”

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

FSA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that requires Tribal consultation under Executive Order 13175. If a Tribe requests consultation, FSA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by the 2018 Farm Bill.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, or the private sector. Agencies generally need to prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year

for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Programs

The title and number of the Federal Domestic Assistance Program in the Catalog of Federal Domestic Assistance, to which this rule applies is 10.054 - Emergency Conservation Program.

Paperwork Reduction Act

In the accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), this rule does not change the information collection approved by OMB under OMB control number 0560–0082.

E-Government Act Compliance

FSA are committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 701

Disaster assistance, Environmental protection, Forests and forest products, Grant programs-agriculture, Grant programs-natural resources, Reporting and recordkeeping requirements, Rural areas, Soil conservation, Water resources, Wildlife.

For the reasons discussed above, FSA amends 7 CFR part 701 as follows:

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

1. The authority citation for part 701 continues to read as follows:

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

Subpart B – Emergency Conservation Program

2. In § 701.2, add definitions for “Commercial forest land”, “Nonindustrial private forest land”, and “Owners of nonindustrial private forest land” in alphabetical order.

The additions read as follows:

§ 701.2 Definitions.

* * * * *

(b) * * *

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.

* * * * *

Nonindustrial private 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.

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.

3. Amend § 701.103 as follows:

a. Revise section heading;

b. In paragraph (a), remove “or other” and add “wildfire, or other” in its place;
and

c. In paragraph (b), remove “wind” and add “wildfire, wind” in its place.

The revision reads as follows:

§ 701.103 Eligible losses, objective, and payments.

* * * *

4. Amend § 701.126 as follows:

a. In paragraph (a), remove “lesser of the participant’s total actual cost or of the”;

b. Revise paragraph (b); and

c. In paragraph (c), remove “shall” and adding “will” in its place.

The revision reads as follow.

§ 701.126 Maximum cost-share percentage.

* * * * *

(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.

* * * * *

§ 701.127 [Amended]

5. Amend § 701.127 by removing “\$200,000” and adding “\$500,000” in its place.

6. Add § 701.128 to read as follows:

§ 718.128 Repair or replacement of fencing.

(a) With respect to a payment to an agricultural producer for the repair or replacement of fencing, the agricultural producer has the option of receiving up to 25 percent of the projected payment, determined based on the applicable percentage of the fair market value of the cost of the repair or replacement, as determined by FSA before the agricultural producer carries out the repair or replacement.

(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.

7. Amend § 701.203 as follows:

a. Revise the section heading; and

b. In paragraph (a), remove "on or after January 1, 2010,".

The revision reads as follow.

§ 701.203 Eligible measures, objectives, and assistance.

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§ 701.205 [Amended]

8. Amend § 701.205 paragraph (a)(2) by removing “, which occurred on or after January 01, 2010,”.

§ 701.226 [Amended]

9. Amend § 701.226 as follows:

a. In paragraph (b), remove “A person,” and add “A person, or legal entity,” in its place and remove “disaster” and add “natural disaster” in its place; and

b. Remove paragraph (c).

Steven Peterson,

Acting Administrator,

Farm Service Agency.

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