

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Part 701

RIN 0560-AH89

### Emergency Forest Restoration Program and Emergency Conservation Program

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

**ACTION:** Interim rule.

**SUMMARY:** The Farm Service Agency (FSA) is amending regulations as required by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) to implement the new Emergency Forest Restoration Program (EFRP). EFRP will provide financial assistance to owners of nonindustrial private forest land to restore land that was damaged by a natural disaster on or after January 1, 2010. This interim rule also reorganizes existing Emergency Conservation Program (ECP) regulations to incorporate EFRP and makes minor technical amendments to the existing regulations for ECP including general regulations that will now apply to both ECP and EFRP.

**DATES:** *Effective Date:* November 17, 2010. *Comment Date:* We will consider comments that we receive by January 18, 2011.

**ADDRESSES:** We invite you to submit comments on this interim rule. In your comment, include the Regulation Identifier Number (RIN) and the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

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

- **Mail:** Katina Hanson, ECP Program Manager, Conservation and Environmental Program Division, FSA,

United States Department of Agriculture (USDA), Mail STOP 0513, 1400 Independence Avenue, SW., Washington, DC 20250-0513.

- **Hand Delivery or Courier:** Deliver comments to the above address.

All written comments will be available for public inspection at the above address during business hours from 8 a.m. to 5 p.m., Monday through Friday, except holidays. A copy of this interim rule is available through the FSA home page at <http://www.fsa.usda.gov/>.

#### FOR FURTHER INFORMATION CONTACT:

Katina Hanson, *phone:* (202) 720-0062; or *e-mail:* [ecpreports@wdc.usda.gov](mailto:ecpreports@wdc.usda.gov).

#### SUPPLEMENTARY INFORMATION:

#### Background

This interim rule implements Section 8203 of the 2008 Farm Bill (Pub. L. 110-246), which amends Title IV of the Agricultural Credit Act of 1978, as amended, (16 U.S.C. 2201-2206) by adding the new EFRP. Title IV of the Agricultural Credit Act of 1978 authorizes ECP, and generally authorizes payments 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. Section 8203 of the 2008 Farm Bill adds EFRP, which will make payments available to an owner of nonindustrial private forest land who is approved for program participation and carries out emergency measures to restore land that is damaged by a natural disaster. The fiscal year (FY) 2010 Supplemental Appropriations Act (Pub. L. 111-212) provides \$18 million for EFRP to remain available until expended for expenses resulting from natural disasters that occurred on or after January 1, 2010, and for other purposes.

This rule also makes minor technical changes to the existing ECP regulations to be consistent with the 2008 Farm Bill and with other FSA and Commodity Credit Corporation (CCC) regulations. Specifically, this rule replaces the term “person” with “person or legal entity” for consistency with applicable payment limitation regulations in 7 CFR part 1400, and revises a provision dealing with the payment limit that applies to ECP. This rule also reorganizes 7 CFR part 701 to set up three subparts: A

subpart of general provisions that previously applied only to ECP and now apply to both ECP and EFRP; a subpart on ECP and miscellaneous ECP-related ad hoc disaster programs; and a subpart on EFRP. The general provisions section also contains the sections that describe programs that were previously administered under 7 CFR part 701.

#### Subpart A—General

Most of the general provisions that apply to ECP in the current 7 CFR part 701 are also needed to implement EFRP. The new Subpart A includes those general administrative and eligibility requirements that apply to both ECP and EFRP. This rule makes minor technical amendments to the general provisions, such as changing provisions that apply to ECP to refer to both ECP and EFRP. Also included in Subpart A are provisions required for continued administration of still-existing contracts for two other programs that have been administered under part 701, those being the Agricultural Conservation Program (ACP) contracts and Forestry Incentive Program (FIP) contracts.

This rule makes the following additional technical changes to the general provisions in the new Subpart A:

The “Administration” section is amended to clarify, consistent with current practice, that FSA may obtain assistance from Federal agencies, State agencies, or other providers of technical assistance when necessary for program implementation.

The “Definitions” section is amended to add a definition of “Natural Disaster” consistent with § 8203(a) of the 2008 Farm Bill and the current ECP definition, which includes wildfires, hurricanes or excessive winds, drought, ice storms or blizzards, floods, or other naturally-occurring resource impacting events. For EFRP, a natural disaster may also include insect or disease infestations, as determined by FSA in consultation with other Federal and State agencies as appropriate. The definition of “program year” is being removed as the term is not used in the regulation.

The “Onsite Inspections” section is amended to permit waivers of the onsite inspection requirement for both ECP and EFRP when conditions warrant. After some disasters, damage is so extensive and the need to address damage so severe that the time delay

associated with completing onsite inspections for every participant in areas with limited access hinders efficient implementation of the program. These circumstances were common following Hurricanes Andrew and Iniki in 1993 and Hurricanes Katrina and Rita in 2005 where the extent and magnitude of damage made onsite inspections unnecessary and difficult. The new provision will allow FSA to waive the requirement for inspections when those inspections could put people and property at risk and needlessly delay emergency assistance.

The "Eligible Costs" section is amended to replace the phrase "farm or ranch" with "eligible land" to clarify that nonindustrial private forest land may be considered eligible land.

The "Appeals" section is amended to specify that the appeal regulations of the Natural Resources and Conservation Service (7 CFR part 614) apply to 7 CFR part 701 for those particular situations where NRCS has performed technical assistance.

Many of the eligibility and application requirements that apply to ECP also apply to EFRP under the regulations implemented for EFRP in this interim rule. These include, for example, requirements for onsite inspections so that FSA can verify damage, and requirements for proving that the "practice" (emergency forest restoration measure) has been completed. Provisions concerning appeals, change of ownership of the land, assignment of payments, etc., also apply to both ECP and EFRP. Both ECP and EFRP have a "qualifying minimum cost" provision, meaning that the cost of the restoration must meet a minimum threshold to be eligible. This provision is intended to eliminate de minimis losses where the cost of the administration may exceed the amount of the benefit; however, the regulations do allow for some exceptions where the circumstances warrant. The minimum for ECP is \$1,000 in most States and for EFRP, FSA will establish the minimum qualifying cost of restoration, which will be available in the FSA county office. With respect to the filing of applications for enrollment in the program, the information that will be required for EFRP will be the same as the information required for ECP and other FSA conservation financial assistance programs. There will be no different information collection requirements for EFRP.

#### **Subpart B—Emergency Conservation Program**

The provisions that apply specifically to ECP are moved to a new Subpart B.

As illustrated in the table at the end of this preamble summarizing changes made by this interim rule, many sections have been redesignated (assigned a new number). In addition, this rule makes minor technical changes needed for this restructuring, such as replacing the word "part" with "subpart" where appropriate, and to correct internal references. This rule also removes § 701.54 concerning ECP assistance for oyster reefs damaged by 2005 hurricanes. The section is no longer needed because the funding and authority for that type of assistance was transferred to the National Oceanic and Atmospheric Administration.

#### **Subpart C—Emergency Forest Restoration Program**

This rule adds a new Subpart C for provisions specific to the new EFRP. All of the provisions are new, because this is a new program. Under EFRP, FSA will provide financial assistance to owners of nonindustrial private forest land who carry out emergency measures to restore the land that was damaged by a natural disaster that occurred on or after January 1, 2010. To be eligible, the land must have had tree cover immediately before the natural disaster. EFRP is a financial assistance program; the financial assistance will pay up to 75 percent of the cost of the emergency forest restoration measures to approved owners of private nonindustrial forest land.

Similar to ECP, as specified in 7 CFR 701.13, FSA will announce an enrollment period for the submission of requests for EFRP financial assistance. To request EFRP financial assistance, eligible owners will apply on forms specified by FSA. FSA will review the applications, determine the applicant's and the land's eligibility, and approve applications. As specified in 7 CFR 701.16, requests will be prioritized as determined appropriate or needed before approval by FSA based on factors including, but not limited to:

- Type and degree of damage;
- Type of practices needed to address the problem;
- Availability of funds;
- Availability of technical assistance;
- Environmental concerns; and
- Safety factors.

These requests may be approved if funds are available and the requested practice is determined eligible.

As specified in 7 CFR 701.21, prior to applying for payment, the approved practice must be completed and proof of completion must be submitted to the FSA county office. In addition, as specified in § 701.15(b)(4), the practice must have been started no more than 60

days before the EFRP designation is approved for the applicable county office, but it is understood that no payments will be made unless approved, and then only when consistent with the provisions of the regulations—thus, there may be a risk inherent in incurring expenses prior to approval. However, USDA will endeavor to provide notice of the availability or impending availability of these programs when the need for these programs is present and there is funding available as well. EFRP designation information is made available by FSA county offices through outreach and information campaigns to ensure that nonindustrial private forest land owners and underserved populations are aware of the availability of EFRP financial assistance.

For EFRP, "nonindustrial private forest land" is defined in the 2008 Farm Bill as:

rural land, as determined by the Secretary, that—(A) has existing tree cover (or had tree cover immediately before the natural disaster and is suitable for growing trees); and (B) is owned by any nonindustrial private individual, group, association, corporation, or other private legal entity, that has definitive decision-making authority over the land.

EFRP is somewhat similar in scope to previous ECP-related ad hoc disaster programs (most recently the 2005 hurricane disaster assistance portions of ECP that provided assistance to owners of private nonindustrial forest land). That assistance was limited to certain non-industrial private forest landowners who suffered a loss of, or damage to, at least 35 percent of forest acres on forest land due to the 2005 hurricanes. The producer had 5 years from the date of the loss to:

- (1) Reforest the lost or damaged forest acres in accordance with a plan approved by FSA that was 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 condition.

As authorized by the 2008 Farm Bill, the new EFRP does not have these limitations in geographic scope, type of qualifying natural disaster, or timeframe to implement restoration. Unlike some previous ECP-related ad hoc disaster assistance programs, EFRP will be available nationwide.

Some provisions are different for ECP and EFRP. For example, ECP regulations, though not required by the program statute itself, have traditionally had a limit of \$200,000 per participant

per disaster, and this will continue under the program regulations implemented in this interim rule. Similarly, the Farm Bill does not require a limit for EFRP, but these regulations will set a limit of \$500,000 per person or legal entity, per disaster. The higher limit was selected because while damage to ECP land may damage only one season's crops, a damaged forest may take 15 years to recover. ECP has a limit of 75 percent of the participant's actual costs, with up to 90 percent for limited resource participants; in no case can the financial assistance exceed 50 percent of the value of the land. EFRP has a statutory limit of 75 percent of actual costs for all producers, and no provision capping financial assistance based on the agricultural value of the land.

Both ECP and EFRP are subject to the availability of appropriated funding. There was no funding for EFRP in 2008 or 2009. The FY 2010 Supplemental Appropriation provides \$18 million for EFRP.

Most of the provisions in this rule for EFRP are required by the 2008 Farm

Bill. FSA has added a few discretionary provisions to ensure program integrity, including requiring that the forest restoration practice specifications represent the minimum level of performance needed to restore the land to the applicable FSA, NRCS, Forest Service, or State forestry standard. The 2008 Farm Bill provides that owners of nonindustrial private forest land damaged by a natural disaster are eligible for EFRP if certain conditions are met.

Nothing in this rule creates an entitlement of any kind, and payments will be made only to the extent that funds are available and only to the extent that, in addition to other eligibility requirements, the FSA Deputy Administrator for Farm Programs has approved the availability of benefits for a particular disaster in a particular area for a particular time period.

#### **Summary of Interim Rule Reorganization of 7 CFR Part 701**

This interim rule reorganizes 7 CFR part 701 into three new subparts. Subpart A will include general

provisions that apply to both ECP and EFRP; the sections will be numbered §§ 701.1 through 701.99. Subpart B will include provisions specific to ECP and to the miscellaneous 2005 hurricane relief programs; the sections will be numbered §§ 701.100 through 701.199. Subpart C will include provisions specific to EFRP, and the sections will be numbered §§ 701.200 through 701.299. The following table provides a summary comparison of where sections in the current regulation in 7 CFR part 701 have been placed in this interim rule, and the substantive changes. The table lists the sections in the order in which they appear in the current CFR. Sections with no substantive change listed may have minor technical changes, such as adding references to EFRP or updating internal references. Current 7 CFR part 701 provisions will be in subparts A or B; subpart C is an entirely new subpart for EFRP.

Current CFR	Section title	This rule
§ 701.1 .....	Administration .....	§ 701.1 (revises provision to clarify technical assistance sources).
§ 701.2 .....	Definitions .....	§ 701.2 (adds definition of natural disaster).
§ 701.3 .....	Scope .....	Redesignated as § 701.103 for ECP; § 701.203 for EFRP.
§ 701.4 .....	Producer eligibility .....	Redesignated as § 701.104 for ECP; § 701.204 for EFRP.
§ 701.5 .....	Land eligibility .....	Redesignated as § 701.105 for ECP; § 701.205 for EFRP.
§§ 701.6 through 701.9 .....	[Reserved] .....	No change.
§ 701.10 .....	Qualifying minimum cost of restoration .....	Redesignated as § 701.110 for ECP; § 701.210 for EFRP.
§ 701.11 .....	Prohibition on duplicate payments .....	Redesignated as § 701.111 for ECP; § 701.211 for EFRP.
§ 701.12 .....	Eligible practices .....	Redesignated as § 701.112 for ECP; § 701.212 for EFRP.
§ 701.13 .....	Submitting requests .....	§ 701.13.
§ 701.14 .....	Onsite inspections .....	§ 701.14 (adds waiver of inspections provisions).
§ 701.15 .....	Starting practices before financial assistance request is submitted; non-entitlement to payment; payment subject to the availability of funds.	§ 701.15.
§ 701.16 .....	Practice approval .....	§ 701.16.
§ 701.17 .....	Average adjusted gross income limitation .....	Redesignated as § 701.117 for ECP.
§§ 701.18 through 701.220 .....	[Reserved] .....	No change.
§ 701.21 .....	Filing payment application .....	§ 701.21.
§ 701.201.22..		
§ 701.23 .....	Eligible costs .....	§ 701.23.
§ 701.24 .....	Dividing cost-share among more than one participant.	§ 701.24.
§ 701.25 .....	Practices carried out with aid from ineligible persons.	§ 701.25.
§ 701.26 .....	Maximum cost-share percentage .....	Redesignated as § 701.126 for ECP; § 701.226 for EFRP.
§ 701.27 .....	Maximum ECP payments per person .....	Redesignated as § 701.127 for ECP.
§§ 701.28 through 701.30 .....	[Reserved] .....	No change.
§ 701.31 .....	Maintenance and proper use of practices .....	§ 701.31.
§ 701.32 .....	Failure to comply with program provisions .....	§ 701.32.
§ 701.33 .....	Death, incompetency, or disappearance .....	§ 701.33.

Current CFR	Section title	This rule
§ 701.34 .....	Appeals .....	§ 701.34 (adds a provision for NRCS appeals).
§ 701.35 .....	Compliance with regulatory measures .....	§ 701.35.
§ 701.36 .....	Schemes and devices and claims avoidances .....	§ 701.36.
§ 701.37 .....	Loss of control of the property during the practice life span.	§ 701.37.
§§ 701.38 through 701.40 .....	[Reserved] .....	No change.
§ 701.41 .....	Cost-share assistance not subject to claims .....	§ 701.41.
§ 701.42 .....	Assignments .....	§ 701.42.
§ 701.43 .....	Information collection requirements .....	§ 701.43.
§ 701.44 .....	Agricultural Conservation Program (ACP) contracts.	§ 701.44.
§ 701.45 .....	Forestry Incentives Program (FIP) contracts .....	§ 701.45.
§ 701.50 .....	2005 hurricanes .....	Redesignated as § 701.150 for ECP.
§ 701.51 .....	Definitions .....	Redesignated as § 701.151 for ECP.
§ 701.52 .....	Availability of funding .....	Redesignated as § 701.152 for ECP.
§ 701.53 .....	Debris removal and water for livestock .....	Redesignated as § 701.153 for ECP.
§ 701.54 .....	Oysters .....	Section removed, because the assistance is now provided by NOAA; section number reserved.
§ 701.55 .....	Nursery .....	Redesignated as § 701.155 for ECP.
§ 701.56 .....	Poultry .....	Redesignated as § 701.156 for ECP.
§ 701.57 .....	Private nonindustrial forest land .....	Redesignated as § 701.157 for ECP.

## Notice and Comment

FSA is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule. FSA is authorized by the FY 2010 Supplemental Appropriations Act (Pub. L. 111–212) to issue an interim rule effective on publication with an opportunity for comment.

## Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. The cost benefit analysis is summarized below and is available from the contact information listed above.

## Cost Benefit Analysis Summary

Title IV of the Agricultural Credit Act of 1978 authorizes ECP and generally authorizes payments 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 2008 Farm Bill broadens the scope of Title IV by adding EFRP to provide financial assistance to owners of nonindustrial private forest land who carry out emergency measures to restore the land that was damaged by a natural disaster. EFRP is a financial assistance program; the financial assistance will pay up to 75 percent of the cost of the emergency forest restoration measures to approved owners of private nonindustrial forest land.

The impact of the program amounts to a transfer to private forest landowners, which is equivalent to total program outlays. EFRP is expected to be funded through irregular ad hoc appropriations in a manner similar to the way the ECP is funded. It is assumed that no additional funding beyond the \$18 million appropriated for FY 2010 will be provided during the current Farm Bill cycle, and that program outlays will therefore be \$18 million.

## Regulatory Flexibility Act

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. FSA is authorized by the FY 2010 Supplemental Appropriations Act (Pub. L. 111–212) to issue an interim rule effective on publication with an opportunity for comment.

## 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). The FY 2010 Supplemental Appropriations Act (Pub. L. 111–212) provides that EFRP will be considered to have met the requirements of the NEPA for activities similar in nature and quantity to those of ECP established under Title IV of the Agricultural Credit Act of 1978 (16 U.S.C. 2201–2206). FSA has determined that the activities

allowed by the EFRP provisions are similar in nature and quantity to those of ECP and thus the exception applies. Further, it is the determination of FSA that the impacts associated with amending regulations as required by the 2008 Farm Bill to implement the new EFRP would be the same as those discussed in the Final Supplemental Environmental Impact Statement (FSEIS) on the ECP, which can be found at: <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecrc&topic=nep-cd>.

For these reasons, separately and together, FSA has determined that no additional environmental assessment or environmental impact statement will be prepared.

## Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

## Executive Order 12988

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule does not preempt State and or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought concerning the provisions of this rule, appeal provisions of 7 CFR parts 11 and 780 must be exhausted. As specified in the 2008 Farm Bill, this interim rule does not preempt a State or tribal government law, including any State or tribal government liability law.

**Executive Order 13132**

The policies contained in this rule would not have any substantial direct effect on States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Nor does this interim rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

**Executive Order 13175**

The policies contained in this rule do not have tribal implications that preempt tribal law. USDA will undertake, within 6 months after this rule becomes effective, Tribal consultation to gain input by Tribal officials concerning the impact of this rule on Tribal governments, communities, and individuals. The consultation will establish a baseline of consultation for future actions, should any become necessary, regarding this rule. Reports from the consultation will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country.

**Unfunded Mandates**

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104-4). In addition, CCC is not required to publish a notice of proposed rulemaking for this rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

**Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121, SBREFA). Therefore, FSA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review and this rule is effective on the date of publication in the **Federal Register**.

**Federal Assistance Programs**

The titles and numbers of the Federal assistance programs in the Catalog of Federal Domestic Assistance to which this rule applies are:

Emergency Conservation Program (ECP)—10.054;  
Agricultural Conservation Program (ACP)—10.063;  
Forestry Incentives Program (FIP)—10.064; and  
Emergency Forest Restoration Program (EFRP)—10.095.

**Paperwork Reduction Act**

The EFRP regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in the FY 2010 Supplemental Appropriations Act (Pub. L. 111-212), which provides that these regulations be promulgated and the programs administered without regard to the Paperwork Reduction Act.

The amendments in this rule to the existing ECP require no revisions to the information collection requirements that are approved for ECP by OMB under control number 0560-0082.

**E-Government Act Compliance**

FSA is 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, Reporting and recordkeeping requirements, Rural areas, Soil conservation, Water resources, Wildlife.

■ For the reasons discussed in the preamble, this rule 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 is revised 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

■ 2. The heading for part 701 is revised as set out above.

**Subpart A—General**

■ 3. Designate §§ 701.1 through 701.45 as subpart A under the heading set forth above.

■ 4. Amend § 701.1 as follows:

■ a. Revise paragraph (a) to read as set forth below;

■ b. In paragraph (b), first sentence, remove the words “ECP is” and add, in

their place, the words “ECP and EFRP are”, and in the third sentence, add the words “or legal entity” immediately following the word “person”;

■ c. Revise paragraph (i) to read as set forth below;

■ d. In paragraph (j), add the words “or legal entity” immediately following the words “in any person”, and add the words “or EFRP” immediately following the word “ECP”; and

■ e. In paragraph (k), add the words “or EFRP” immediately following the word “ECP”.

The revision reads as follows:

**§ 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 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.

\* \* \* \* \*

(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.

\* \* \* \* \*

■ 5. Amend § 701.2, paragraph (b), as follows:

■ a. In the definition of “Applicant,” add the words “or legal entity” immediately following the word “person” and add the

words “or EFRP” immediately following the word “ECP”;

- b. Add, in alphabetical order, a new definition for “Natural disaster”; and
- c. Remove the definition “Program year”.

The addition reads as follows:

#### **§ 701.2 Definitions.**

\* \* \* \* \*

(b) \* \* \*

*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.

\* \* \* \* \*

#### **§§ 701.3 through 701.5 [Redesignated as §§ 701.103 through 701.105]**

- 6. Redesignate §§ 701.3 through 701.5 as §§ 701.103 through 701.105, and reserve §§ 701.3 through 701.5.

#### **§§ 701.10 through 701.12 [Redesignated as §§ 701.110 through 701.112]**

- 7. Redesignate §§ 701.10 through 701.12 as §§ 701.110 through 701.112 and reserve §§ 701.10 through 701.12.

#### **§ 701.13 [Amended]**

- 8. Amend § 701.13, paragraph (a), by adding the words “or EFRP” immediately following the word “ECP”.
- 9. Amend § 701.14 as follows:
  - a. Redesignate the undesignated text as a new paragraph (a),
  - b. In newly redesignated paragraph (a), add the words “or EFRP” immediately following the word “ECP”, and
  - c. Add paragraph (b) to read as set forth below.

#### **§ 701.14 Onsite inspections.**

\* \* \* \* \*

(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.

#### **§ 701.15 [Amended]**

- 10. Amend § 701.15 as follows:
  - a. In paragraph (b), introductory text, remove the word “ECP”, and
  - b. In paragraph (b)(4), add the words “or EFRP” immediately following the word “ECP”.

#### **§ 701.16 [Amended]**

- 11. Amend § 701.16, paragraph (a)(7), by removing the word “Welfare” and

adding, in its place, the words “In the case of ECP, welfare”.

#### **§ 701.17 [Redesignated as § 701.117]**

- 12. Redesignate § 701.17 as § 701.117 and reserve § 701.17.

#### **§ 701.23 [Amended]**

- 13. Amend § 701.23 as follows:
  - a. In paragraph (a), remove the words “§§ 701.26 and 701.27” and add, in their place, the words “§§ 701.126, 701.127, and 701.226”, and
  - b. In paragraphs (b)(1) and (b)(2), remove the words “farm or ranch” and add, in their place, the words “eligible land”, and
  - c. In paragraph (c), remove the words “§ 701.12(d)” and add, in their place, “§§ 701.112(d) or 701.212(d)”.
- 14. Amend § 701.25 as follows:
  - a. Revise the section heading to read as set forth below, and
  - b. In the first sentence of the section, add the words “or EFRP” immediately following the word “ECP”.

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

\* \* \* \* \*

#### **§§ 701.26 through 701.27 [Redesignated as §§ 701.126 through 701.127]**

- 15. Redesignate §§ 701.26 through 701.27 as §§ 701.126 through 701.127 and reserve §§ 701.26 through 701.27.

#### **§ 701.34 [Amended]**

- 16. Amend § 701.34 by removing the word “part” and adding, in its place, the words “parts 614 and”.

#### **§ 701.35 [Amended]**

- 17. Amend § 701.35, second sentence of the section, by adding the words “or EFRP” immediately following the word “ECP” both times it appears.

#### **§ 701.36 [Amended]**

- 18. Amend § 701.36 as follows:
  - a. In paragraph (a), first sentence, add the words “or legal entity” immediately following the word “person”, and in the second sentence, remove the words ““person” determinations made under this part”, and add, in their place, the words “any eligibility determination, including, but not limited to, a payment limit eligibility”,
  - b. In paragraph (b), remove the word “ECP” and add, in its place, the word “program”,
  - c. In paragraph (c), add the words “or legal entity” immediately following the word “person”,
  - d. In paragraph (d), add the words “or EFRP” immediately following the word “ECP”.

#### **§ 701.37 [Amended]**

- 19. Amend § 701.37, in the first sentence of the section, by adding the words “or EFRP” immediately following the word “ECP” each time it appears, and add the words “or legal entity” immediately following the word “person”.

#### **§§ 701.44 and 701.45 [Amended]**

- 20. Amend §§ 701.44 and 701.45 by removing the comma between the words “CFR” and “parts”.

#### **§§ 701.50 through 701.53 [Redesignated as §§ 701.150 through 701.153]**

- 21. Redesignate §§ 701.50 through 701.53 as §§ 701.150 through 701.153.

#### **§ 701.54 [Removed]**

- 22. Remove § 701.54.

#### **§§ 701.55 through 701.57 [Redesignated as §§ 701.155 through 701.157]**

- 23. Redesignate §§ 701.55 through 701.57 as §§ 701.155 through 701.157.

#### **§ 701.103 [Amended]**

- 24. Amend newly redesignated § 701.103, as follows:
  - a. In paragraph (a), at the end, remove the period and add, in its place, the punctuation and words “, subject to the availability of funds and only for areas, natural disasters, and time periods approved by the Deputy Administrator.”
  - b. In paragraph (c) introductory text, remove the word “part” and add, in its place, the word “subpart”.

#### **§ 701.104 [Amended]**

- 25. Amend newly redesignated § 701.104, paragraph (a), by adding the words “or legal entity” immediately following the word “person” both times it appears.

#### **§ 701.110 [Amended]**

- 26. Amend newly redesignated § 701.110, paragraph (a), by removing the words “§ 701.3(a)” and adding, in their place, the words “§ 701.103(a)”.

#### **§ 701.112 [Amended]**

- 27. Amend newly redesignated § 701.112, paragraph (a), by removing the word “part” and adding, in its place, the word “subpart”.
- 28. Revise newly redesignated § 701.127 to read as follows:

#### **§ 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.

**§ 701.150 [Amended]**

■ 29. Amend newly redesignated § 701.150, first sentence, by removing the words “§§ 701.50 through 701.57” and adding, in their place, the words “§§ 701.150 through 701.157” and in the third sentence, by removing the words “§§ 701.51 through 701.57” and adding, in their place, the words “§§ 701.151 through 701.157”.

**§ 701.151 [Amended]**

■ 30. Amend newly redesignated § 701.151, introductory text, by removing the words “§§ 701.52 through 701.57” and adding, in their place, the words “§§ 701.152 through 701.157”.

**§ 701.152 [Amended]**

■ 31. Amend newly redesignated § 701.152 by removing the words “§§ 701.53 through 701.57” and adding, in their place, the words “§§ 701.153 through 701.157”, and by removing the words “109–149” and adding, in their place, the words “109–148”.

**§ 701.155 [Amended]**

■ 32. Amend newly redesignated § 701.155, paragraph (b), by removing the words “§ 701.26” and adding, in their place, the words “§ 701.126”.

**§ 701.157 [Amended]**

■ 33. Amend newly redesignated § 701.157 as follows:  
 ■ a. In paragraph (b)(1), add the words “or legal entity” immediately following the word “person”, and  
 ■ b. In paragraph (c), remove the words “§ 701.26” and add, in their place, the words “§ 701.126”.

**Subpart B—Emergency Conservation Program**

■ 34. Designate newly redesignated §§ 701.103–701.157 as subpart B under the heading set forth above.

**§§ 701.100 through 701.102, 701.106 through 701.109, 701.113 through 701.116, 701.118 through 701.125, 701.128 through 701.149, and 701.154 [Added and Reserved]**

■ 35. Add and reserve §§ 701.100 through 701.102, 701.106 through 701.109, 701.113 through 701.116, 701.118 through 701.125, 701.128 through 701.149, and 701.154.

■ 36. Add subpart C to read as follows:

**Subpart C—Emergency Forest Restoration Program**

Sec.

701.200–701.202 [Reserved]

701.203 Scope.

701.204 Participant eligibility.

701.205 Land eligibility.

701.206 through 701.209 [Reserved]

701.210 Qualifying minimum cost of restoration.

701.211 Prohibition on duplicate payments.

701.212 Eligible EFRP practices.

701.213 through 701.225 [Reserved]

701.226 Maximum financial assistance.

**Subpart C—Emergency Forest Restoration Program****§§ 701.200 through 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 through 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 through 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.

Signed in Washington, DC, November 9, 2010.

**Jonathan W. Coppess,**

*Administrator, Farm Service Agency.*

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BILLING CODE 3410-05-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. NM435; Special Conditions No. 25-413-SC]

#### Special Conditions: Bombardier Inc. Model CL-600-2E25 Airplane, Operation Without Normal Electrical Power

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Bombardier Inc. Model CL-600-2E25 airplane. This airplane will have a novel or unusual design feature associated with a command-by-wire (CBW) rudder-control system, which requires a source of continuous electrical power to operate the control system. The current 14 CFR part 25.1351(d), "Operation without normal electrical power," requires safe operation in VFR conditions for at least five minutes with inoperative normal electrical power. The applicable airworthiness regulations do not contain

adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is November 5, 2010. We must receive your comments by January 3, 2011.

**ADDRESSES:** You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM-113), Docket No. NM435, 1601 Lind Avenue, SW., Renton, Washington, 98057-3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM435 You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Steve Slotte, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington, 98057-3356; telephone (425) 227-2315; facsimile (425) 227-1149.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public-comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

#### Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and

4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on these special conditions, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

#### Background

On February 28, 2007, Bombardier Inc. applied for an amendment to Type Certificate No. A21EA, through Transport Canada, to include the new Model CL-600-2E25 airplane. The CL-600-2E25, which is a derivative of the CL-600-2D24 currently approved under Type Certificate No. A21EA, is to be certified for a maximum occupancy of 110 people, including 5 crewmembers. The CL-600-2E25 has increased gross weight, extended wing tip, and increased fuselage length to accommodate the additional passengers as compared to the CL-600-2D24.

The CL-600-2E25 will have a CBW rudder-control system that will affect the performance of the airplane. This system requires a continuous source of electrical power to maintain an operable control system.

#### Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101, Bombardier Inc. must show that the Model CL-600-2E25 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25-1 through 25-119, except for earlier amendments as agreed upon by the FAA. These regulations will be incorporated into Type Certificate No. A21EA after type-certification approval of the Model CL-600-2E25. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type-certification basis." The regulations incorporated by reference in Type Certificate No. A21EA are as follows:

The original type-certification basis for the Model CL-600-2D24 (CRJ 900), shown on TCDS A21EA, Revision 25, and reprinted below.

#### Model CL-600-2D15/CL-600-2D24

Part 25, including Amendments 25-1 through 25-86, Amendments 25-88 through Amendments 25-90, and