

factors within the proposed RCWP project area and identify the strategy and parameters to be used to identify the changes in water quality attributable to the installation of BMPs. Wherever possible, identify and quantify changes in land use, land use patterns and farming practices that will affect the quantity, quality or timing of nonpoint source pollutants reaching an aquatic system and detail information as to number and location of sampling stations and the frequency of sample collection.

(3) *Socioeconomic Impacts.* Identify the positive and negative impacts on the landowners in the project area and estimate the community or off-site benefits expected of the project if completed as planned.

(4) *Institutional Aspects.* Identify and clearly define the role and responsibility for each participating agency including, where appropriate fiscal and manpower commitments.

(5) *Educational Aspects.* Clearly define the approach(es) to be used to inform and educate individual landowners. Include procedures for periodic evaluation of this effort so the mid-course corrections can be made if needed.

(6) *Quality Assurance.* To insure that the data collected is usable to make National projections, a quality assurance program must be included that is consistent with that of the EPA Region within which the project is located.

(7) *Data Storage.* The data collected on comprehensive monitoring projects must be available to USDA and EPA RCWP user groups.

(e) *Reporting.* Reports for these projects are to be made at least annually to the NCC based on guidance sent to the SCC by the Administrator, FSA.

(f) *Funding.* Funding for the comprehensive monitoring will be provided from RCWP funds and other authorizations.

§ 700.42 Program evaluation.

(a) The RCWP will be evaluated annually by the USDA. The evaluation will be based on the reports provided in these regulations and on special studies undertaken by USDA or EPA as part of the RCWP program.

(b) The USDA Deputy Under Secretary for International Affairs and

Commodity Program will have the responsibility for coordinating the program evaluation and preparing an annual report for transmittal to the Secretary of Agriculture and the Administrator of EPA. The Deputy Assistant Secretary for Natural Resources and the Director of Economics, Policy Analysis and Budget, USDA, and the Assistant Administrator for Water and Waste Management, EPA will assist in this effort.

§ 700.43 Public benefits when installing BMP's.

All BPM's implemented under this program shall be in compliance with regulations promulgated under part 799 on environmental quality and related environmental concerns or similar regulations issued by a technical agency. Persons responsible for any aspect of performing BMPs shall carry out their responsibilities in such a way as to promote public benefits:

(a) By improving or preserving environmental quality and ecological balance.

(b) By preventing or abating pollution and other environmental degradation.

(c) Benefiting the community by means such as preserving open space or enhancing the appearance of the area.

(d) Benefiting wildlife and other desirable life forms.

(e) Preserving historic, archaeological, or scenic sites, wetlands, ecologically critical areas and prime farmland.

(f) Avoiding the creation of hazards to persons or animals.

(g) Avoiding actions that may adversely affect an endangered or threatened species and flood plains.

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

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AUTHORITY: Pub. L. 95–334, 92 Stat. 420, 16 U.S.C. 2201 *et seq.*

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

§ 701.1 Administration.

(a) Subject to the availability of funds, this part provides the terms, conditions and requirements of the Emergency Conservation Program (ECP) administered by the Farm Service Agency (FSA).

(b) ECP is 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 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 USDA agency for such assistance as is determined by FSA to be necessary to implement the ECP. FSA is responsible for the technical aspects of ECP but may enter into a Memorandum of

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Agreement with another party to provide technical assistance. If this limitation results in significant hardship to producers in a county the State committee may request in writing that the Deputy Administrator waive this requirement for that county.

(j) The provisions in this part shall not create an entitlement in any person to any ECP 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.

§ 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 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 who has submitted to FSA a request to participate in the ECP.

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.

Program year means the applicable Federal fiscal year.

§ 701.3 Scope.

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

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

(c) Payments may also be made under this part 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.

§ 701.4 Producer eligibility.

(a) To be eligible to participate in the ECP the Deputy Administrator must determine that a person is an agricultural producer with an interest in the land affected by the natural disaster, and that person 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