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Part III

Department of Agriculture

**Record of Decision for the Programmatic
Environmental Impact Statement on the
Emergency Conservation Program; Notice**

DEPARTMENT OF AGRICULTURE

Record of Decision for the Programmatic Environmental Impact Statement on the Emergency Conservation Program

AGENCY: Farm Service Agency, USDA.

ACTION: Record of Decision.

SUMMARY: This notice presents the Record of Decision (ROD) regarding the changes made by the Farm Service Agency (FSA) to improve and expand the Emergency Conservation Program (ECP) to make the program easier to administer, reduce the potential for abuse, and make the program's cost-share rates consistent with other USDA programs. FSA prepared a Final Programmatic Environmental Impact Statement (PEIS) for ECP and published it in the **Federal Register** on March 7, 2003, along with a Notice of Availability (NOA). This notice summarizes the long-term environmental, social, and economic impacts of ECP identified in the PEIS that were considered in this decision, and why FSA selected the Proposed Action Alternative that it did in revising ECP.

FOR FURTHER INFORMATION CONTACT: Don Steck, USDA/FSA/CEPD/Stop 0513, 1400 Independence Ave., SW., Washington, DC 20250-0153, (202) 690-0224, or email at: don_steck@wdc.usda.gov. The Final ECP PEIS including appendices and this ROD are available on the FSA Environmental Compliance Web site at: <http://www.fsa.usda.gov/dafp/cepd/epb/impact.htm>.

More detailed information on this program may also be obtained from the FSA Web site at: <http://www.fsa.usda.gov/pas/publications/facts/html/ecp00.htm>.

Record of Decision

I. The Decision**A. PEIS Proposed Action Alternative as the Basis for Implementing and Expanding ECP**

Based on a thorough evaluation of the resource areas affected by ECP, a detailed analysis of three program alternatives, and a review of public comments on the Draft PEIS, the Proposed Action Alternative was selected as a means to improve and expand ECP in accordance with the provisions of the Agricultural Credit Act of 1978 (16 U.S.C. 2201 *et seq.*), with regulations set forth at 7 CFR part 701.

B. Overview

ECP provides emergency cost-share assistance to farmers and ranchers to

restore agricultural lands damaged by severe wind erosion, floods, hurricanes, or other natural disasters and for carrying out emergency water conservation measures during periods of severe drought. It is administered by FSA state committees (STC) and FSA county committees (COC) and is currently authorized by the Agricultural Credit Act of 1978. This program does not require a major disaster determination by the President or Secretary of Agriculture to provide local assistance. Except for drought, the COC may implement the program with the concurrence of the STC. During periods of severe drought, the determination to implement the program is made by the FSA's Deputy Administrator for Farm Programs or his or her designee.

Funding for ECP is appropriated by Congress, usually through supplemental appropriations in response to disasters, and is held in reserve at the national level. Funds are allocated after a determination has been made authorizing ECP designation. Funds are allocated to States based on the estimate of funds needed to begin implementing ECP.

Participants are not allowed to receive funding under the ECP for land on which the landowner or producer has or will receive funding from: the Wetland Reserve Program (WRP), the Emergency Wetland Reserve Program (EWRP), the Conservation Reserve Program (CRP), the Emergency Watershed Protection Program (EWP), or any other FSA, Commodity Credit Corporation, or other government program that covers similar expenses that duplicate ECP payments.

C. Programmatic Changes to ECP

ECP is authorized by the Agricultural Credit Act of 1978 (16 U.S.C. 2201 *et seq.*), with regulations set forth at 7 CFR part 701. On August 1, 2002, FSA published a proposed rule to amend part 701 (67 FR 49879). The proposed rule removed references to the Agricultural Conservation Program (ACP) and the Forestry Incentives Program (FIP). ACP was repealed by the Federal Agriculture Improvement and Reform Act of 1996 and FIP was reassigned from FSA to the Natural Resources Conservation Service (NRCS) by the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-94). The rule proposed to clarify and expand provisions of the ECP to reflect current policy and to make the program more efficient and easier to administer. The proposed rule 60-day comment period ended on September 30, 2002.

A final rule, with no substantive policy changes from the proposed rule,

is published concurrently in this issue of the **Federal Register**. The changes to ECP regulations will result in no significant additional costs while making the ECP cost-share rates consistent with other USDA programs. The provisions added to reduce the potential for abuse and improve program delivery will ensure that ECP is carried out in an economically, environmentally, socially, and technically sound manner. FSA will also increase ECP funding for limited resource producers to deal with disaster recovery work it has not addressed previously.

The Proposed Action is comprised of four main elements:

- Eliminate tiered level cost sharing and allow for a more consistent cost-share rate;
- Tentatively provide measures dealing with confined livestock;
- Provide more cost-share assistance for limited resource producers; and
- Require completion of an environmental evaluation checklist prior to approving cost-share assistance.

The final rule changes little with regard to land eligibility or existing ECP conservation practices in the current program. One change that is made is that, in certain instances, such as to supply water during a severe drought, measures dealing with confined livestock are eligible for ECP, although it may not be used to replace or repair buildings. Provisions were added to strengthen the fiscal integrity of the program, including the prohibition of schemes and devices, and debt avoidance. Further, the new ECP provides special consideration for limited resource producers so that ECP funds may be targeted to those with the most need.

Also, the final rule changes how the maximum ECP cost-share level is computed. Under the current regulations, the maximum rate of cost-share is calculated according to a sliding scale, with a higher cost-share percentage being allowed for the first part of the costs of the practice up to a certain limit, and a lower percentage being allowed for additional costs. To eliminate confusion, the new rule provides, instead, for a standard maximum percentage to be used for all costs associated with the practice for which the cost-share is to be received. Program costs will not rise because payments will still be limited by other criteria and by limiting reimbursement to \$200,000 per "person" per disaster. The FSA county committee may permit reimbursements of up to 75 percent for all reimbursable costs, subject to current per "person" limitations, and a 90

percent rate for limited resource producers. The 75 percent rate, like the current sliding rate, is used to determine the maximum amount to be paid to all participants involved with all practices applied for the applicable disaster. However, the \$200,000 limit per "person" will remain.

In addition, an environmental evaluation checklist will be completed by appropriately trained FSA personnel prior to approval of any ECP cost share assistance. The completion of this checklist will provide a mechanism for reviewing each action's impacts, documenting a finding of no significant impact, and compliance with applicable environmental laws, regulations, and policies. This checklist will discuss the need for any environmental assessment and provide a format for assessing potential impacts and reviewing alternatives and mitigation measures when potential impacts to any of the protected resources listed on the checklist are identified. These protected resources include: wetlands, floodplains, sole source aquifer recharge areas, critical habitat for threatened and endangered species, wilderness, coastal barrier in coastal barrier resources system or approved coastal zone management areas, natural landmarks, and historical and archaeological sites.

II. Description of the Current Emergency Conservation Program

To be eligible for ECP assistance, the applicant must be an agricultural producer and the land receiving the assistance must be physically located in the county in which the ECP has been implemented.

Immediately following a natural disaster event, the county committee will make an overall assessment of the damage to ensure that the damage meets the minimum ECP requirements. The county committee then consults with the state committee to obtain concurrence for all ECP disasters, except drought, before approving the disaster damage for cost-share assistance. The state committee administers ECP within the state according to national policy. Additional eligibility for the program is established after the county committee determines whether:

- The natural disaster has created new conservation problems which, if not treated, would impair or endanger the land;
- Materially affect the productivity of the land;
- The damage represents unusual damage in that it does not occur frequently; or
- The damage would be so costly to repair that Federal assistance is required

to return the land to productive agricultural use.

The County committee establishes cost-share levels up to 64 percent, according to a sliding scale: 64 percent for the first \$62,500 in reimbursable costs, 40 percent for the next \$62,500 in reimbursable costs, and 20 percent for the remaining eligible costs. Cost-sharing involves payments made to producers to cover a specified portion of the cost of installing, implementing, or maintaining conservation practices. Individual or cumulative requests for cost sharing of \$20,000 or less per person per disaster may be approved by the county committee, and requests of \$20,001 to \$62,500 by the state committees. The Deputy Administrator for Farm Programs must approve requests for over \$62,500. The payment limit for the program is \$200,000 per person per disaster. The Natural Resource Conservation Service (NRCS) may provide technical assistance to resource managers and landowners participating in the ECP.

Before requesting ECP funds, the county committee shall, to the extent possible, use other available program funds instead of ECP. Except in the case of severe drought, the county committee may implement ECP after receiving the state committee's concurrence. County offices maintain a permanent file on natural disasters that have severely damaged agricultural lands in the county, regardless of whether disasters were approved for ECP. This information is used as a basis for future program requests and designations.

Pre-existing conservation problems are not eligible for cost-sharing assistance through ECP. Other lands considered ineligible for cost-share assistance include those lands:

- Owned or controlled by the United States.
- Owned or controlled by a State or State agency.
- Protected by a levee or dike that was not effectively and properly functioning prior to the disaster or is protected or is intended to be protected by a levee or dike not built to U.S. Army Corps of Engineers, NRCS, or comparable standards.
- Located in areas frequently inundated by floods, or having significant possibility of being flooded.
- Damaged as a result of continuous use of poor farming practices.
- Utilized as greenhouses or other confined structures, such as land in corrals, milking parlors, barn lots, or feeding areas; and
- Devoted to trees for timber production and Christmas tree farms.

III. Alternatives Considered

FSA developed the ECP Proposed Action through internal scoping. FSA then conducted formal scoping for the ECP PEIS, meeting with and soliciting input from representatives of other Federal, State, and local agencies, and the general public. Public scoping meetings were held in six cities located around the country. The **Federal Register** and national newspapers published notices stating that FSA was preparing a PEIS and input was being sought through public scoping meetings, a toll-free phone line, regular mail, and email. The Proposed Action Alternative best reflects the ideas voiced and recommendations made during that scoping process. The following alternatives are presented in detail in the Final PEIS.

A. Alternative 1—No Program (Baseline)

The No Program alternative is used as an analytical device to establish a baseline upon which to evaluate the other alternatives. This alternative represents a true baseline rather than a "permanent legislation" alternative, since not enough information exists to define the latter. The analysis will establish a baseline by describing what would happen if ECP had never existed.

B. Alternative 2—No Action (Current Program)

Under the No-Action Alternative, FSA state and county committees would continue to administer the ECP under its current regulations. FSA would not make substantive changes in its administration, the mechanisms for review of projects before funding, or follow-up on the program's procedures after completion. FSA would continue to set cost-share levels up to 64 percent based on a sliding rate. FSA would not have a special cost-share level for limited-resource producers. This alternative simply continues the current program.

C. Alternative 3—Proposed Action (FSA's Preferred Alternative)

Under the Proposed Action, FSA would institute changes to facilitate the administration of the program without incurring significant additional costs while making the ECP cost-share rates consistent with other USDA programs. Also, it is meant to prevent abuse, such as when a large practice is subdivided into several smaller practices to avoid lower reimbursement rates applicable at the higher loss levels. It is also meant to improve program delivery and ensure the economic, environmental, and social defensibility and technical soundness of its decisions and practices. FSA would

also expand the ECP to provide funding to limited resource producers to deal with disaster recovery work it has not addressed previously.

IV. Impacts Under the Alternatives

This following section summarizes some of the effects that would be expected to occur to such resource areas as water resources, wetlands, soil and air quality, vegetation, wildlife and their habitat, and socio/economic resources under each of the three alternatives.

A. No Program Alternative

Disaster recovery efforts would likely be reduced or not undertaken in some floodplain locations with damaged marginal agricultural production areas being abandoned and could potentially revert to natural vegetative cover in the long term. This might reduce some of the impacts of farming on affected watersheds and wetlands. In areas where wildfires or drought have eliminated protective cover over upland areas the lack of restoration measures would leave these sites vulnerable to water and wind erosion that could adversely impact water resources, wetlands, air quality, and damage valuable topsoil.

Plant associations such as bottomland hardwood forests might expand in the long term under this alternative with rare plant species potentially benefiting from these changes. However, when a natural disaster destroys the protective cover over upland areas including hillsides, lack of restoration measures would leave these sites vulnerable to wind and water erosion that could adversely affect any natural re-vegetation that might occur in the short term. This would also adversely affect any wildlife cover or food provided by the vegetation in the long term for those wildlife species dependent in part on farming to maintain earlier successional and transitional habitats. Wildlife requiring later successional and relatively undisturbed habitats may benefit where farming is reduced.

Farm owners and operators would experience a greater exposure to the risk and uncertainty associated with a natural disaster.

B. No Action Alternative

Minor short-term effects on water resources such as sedimentation from restoration practices would temporarily add to any adverse impacts that may be resulting from farming activities such as soil erosion or pesticide or fertilizer use. These effects may be important in watersheds already stressed by farming and other factors such as development

pressure or areas that are already sensitive to natural disasters.

Wetlands on agricultural lands would not be affected by continuing the current ECP program. FSA would ensure that any disaster recovery measures to be taken would not adversely affect wetlands although some minor impacts to wetlands downstream in the watershed may continue to occur to the extent that any deleterious farming practices resume after disaster recovery.

Short-term minor effects from restoration practices would continue to occur, and could add to any erosion and soil quality impacts that are currently a part of general agricultural production. FSA would ensure that highly erodible land soils are protected from wind or water erosion by making certain the producer is in compliance with highly erodible land requirements. The restoration of crop production, pasture, and shelterbelt sites would also maintain sites currently in managed use that would likely otherwise revert to natural vegetation.

Some wildlife species dependent in part on farming to maintain earlier successional and transitional habitats and to provide a portion of their food may benefit from restoration measures. Wildlife requiring later successional and relatively undisturbed habitats would not benefit where farming is restored.

The primary beneficial impact of the program is to provide repair funds and inject necessary capital into the local economy at a time when individual producers/operators and their surrounding communities are under stress as the result of the natural disaster event.

C. Proposed Action Alternative

The same short-term effects on water quality as under the No Action Alternative would occur and temporarily add to any agricultural degradation of water quality. Until specific practices are determined for confined livestock operations, no additional impacts are expected from any programmatic changes. Completion of the environmental evaluation checklist will ensure that any of these temporary adverse effects are considered and mitigated if necessary.

Wetlands would not be affected by instituting the proposed ECP program. FSA would not allow any disaster recovery measures to be taken that would adversely affect wetlands although some impacts to downstream wetlands may continue to occur to the extent that any deleterious farming practices resume after disaster recovery.

Short-term minor effects from restoration practices would continue to occur, and could add to any erosion and soil quality impacts that are currently a part of general agricultural production. FSA would ensure that highly erodible land soils are protected from wind or water erosion by making certain the producer is in compliance with highly erodible land requirements. The restoration of crop production, pasture, and shelterbelt sites would also maintain sites currently in managed use that would likely otherwise revert to natural vegetation.

Some wildlife species dependent in part on farming to maintain earlier successional and transitional habitats and to provide a portion of their food may benefit from restoration measures. Wildlife requiring later successional and relatively undisturbed habitats would not benefit where farming is restored.

The primary effect of ECP under this alternative would be similar to those outlined for the no action alternative with the beneficial aspect of repairing and restoring the affected area to its pre-disaster condition and use.

V. Rationale for Decision

The Proposed Action Alternative clarifies, expands, and changes provisions of the ECP to reflect current policy and to make the program more efficient and easier to administer. ECP would be administered without incurring significant additional costs while making the ECP cost-share rates consistent with other USDA programs. The prevention of potential programmatic abuse and improved program delivery would ensure the economic, environmental, and social defensibility and technical soundness of FSA decisions and practices with regard to ECP. FSA would also expand the ECP to provide extra funding to limited resource producers to deal with disaster recovery work it has not addressed previously.

VI. Implementation and Monitoring

FSA will implement ECP in a manner that provides the greatest amount of benefits to the environment while causing the least amount of adverse impacts. FSA will ensure that impacts are minimized through a process of completing site-specific environmental evaluations for each approved cost-share assistance to ensure compliance with all applicable Federal, State, and local laws.

Signed in Washington, DC on February 11,
2004.

James R. Little,

Administrator, Farm Service Agency.

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