

Materials Prepared for

**Federation of Southern Cooperatives**  
Epes, Alabama  
September 11, 2009

## **Emergency Conservation Program**

by Karen R. Krub



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CAUTION: These materials are for training purposes only. To learn the details about any certain point, refer to the applicable statute, regulations, handbooks, and policy notices.

## **Emergency Conservation Program**

The Emergency Conservation Program (ECP) is designed to help producers in two ways. First, ECP can be used to restore farmland damaged by wind and water erosion, floods, hurricanes, or other natural disasters. Second, ECP can be used to provide water conservation and water enhancement measures during periods of severe drought.

ECP is a cost-share program, which means that producers are reimbursed for part of the approved costs of installing or adopting an eligible conservation practice after a disaster.

ECP is only available when Congress specifically designates funds to be used for the program. Once funding is made available, ECP is offered through individual Farm Service Agency (FSA) county offices.

Local FSA offices administer ECP using a program handbook containing detailed policies and procedures. The current handbook for ECP is "Emergency Conservation Program," 1-ECP (Revision 3). Producers can request a copy of this handbook from their local FSA office. It is also available on the Internet at [www.fsa.usda.gov/Internet/FSA\\_File/1-ecp.pdf](http://www.fsa.usda.gov/Internet/FSA_File/1-ecp.pdf).

### **I. Conservation Problems That Qualify for ECP**

An FSA county office can implement ECP:<sup>1</sup>

- a. when a disaster creates new farmland conservation problems, or
- b. when severe drought requires emergency water conservation and enhancement measures.

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<sup>1</sup> 7 C.F.R. §§ 701.3(a)-(b), 701.5(a)(1).

### **A. New Conservation Problems Created by Disaster or Erosion— Requirements**

The FSA county committee may implement ECP where a natural disaster or wind erosion has created new conservation problems on farmland. In order for ECP funds to be available, the new conservation problem must have all of the following characteristics.<sup>2</sup>

1. The conservation problem did not exist prior to the disaster.
2. The conservation problem, if not treated, will impair or endanger the land.
3. The conservation problem materially affects the productive capacity of the land.
4. The conservation problem is unusual in character and, except for wind erosion, would not occur frequently in the same area.
5. The damage must be so costly to repair that federal assistance will be needed to return the land to productive agricultural use.

### **B. Water Measures During Drought**

FSA's national office may authorize the use of ECP to carry out emergency water conservation and water enhancement measures during periods of severe drought.<sup>3</sup> "Severe drought" exists when "available livestock water and irrigation water for orchards and vineyards have been reduced below normal and survival is unlikely without additional water."<sup>4</sup>

### **C. "Qualifying Minimum Cost" Requirement**

ECP is only available when restoring the land or water resources would cost at least \$1,000.<sup>5</sup> This is the national "qualifying minimum cost." Each state may set a higher minimum qualifying cost.

Producers may request a waiver of the minimum cost requirement.<sup>6</sup> The waiver request must show how failure to grant the waiver will cause environmental

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<sup>2</sup> 7 C.F.R. § 701.5(a)(1).

<sup>3</sup> ECP Handbook, page 1-60, para. 35.H (Mar. 30, 2004).

<sup>4</sup> ECP Handbook, Exhibit 2, page 4, "Severe drought" (Mar. 30, 2004).

<sup>5</sup> ECP Handbook, page 2-6, para. 135.A (Feb. 8, 2007).

<sup>6</sup> 7 C.F.R. § 701.10(c).

damage or hardship to the producer. The request must also show how a waiver would accomplish the goals of ECP.

## II. Conservation Practices That May Be Funded with ECP

ECP regulations and policies limit the scope and, to a certain extent, type of conservation practice that may be authorized.

### A. Only the Minimum Needed to Address the ECP Need

The conservation practice specifications must represent the minimum levels of performance needed to address the ECP-qualifying need.<sup>7</sup> ECP cost-share funds may be used to replace or restore farmland, fences, or conservation structures only to a condition similar to that existing before the natural disaster.

### B. Authorized Emergency Conservation Practices

The ECP Handbook sets out a rather detailed discussion of eligible conservation practices, including authorized and unauthorized examples of each practice discussed.<sup>8</sup> The Handbook list is not exclusive. ECP funds may be used for other emergency conservation measures when approved by the FSA national office.

Approved conservation practices vary somewhat with the type of disaster.

1. ECP funds may be used to **remove debris** from farmland, farmstead property, windbreaks, shelterbelts, and access roadways. Cost-sharing assistance will not be authorized if the debris would not interfere with normal farming operations.
2. ECP funds may be used to **grade, shape, or level land** damaged by a natural disaster in order to return the land to agricultural use.
3. ECP funds may be used to **restore permanent fences**.

The term “permanent fence” is not defined, but examples of authorized practices include cross fences, boundary fences, and cattle gates.<sup>9</sup> Corrals

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<sup>7</sup> 7 C.F.R. § 701.12(d).

<sup>8</sup> ECP Handbook, Exhibit 8 (Mar. 30, 2004).

<sup>9</sup> ECP Handbook, Exhibit 8, page 9 (Mar. 30, 2004).

and feedlots, ornamental fences, holding pens, cattle guards, and any fences not used to enclose or exclude livestock are ineligible for ECP assistance.<sup>10</sup>

As more livestock producers use rotational grazing practices, a question may arise as to whether the restoration of mobile fencing qualifies under ECP. Arguably, these fences, although sometimes rotated within the same pasture, qualify as permanent fencing. This argument should be especially compelling since rotational grazing has conservation benefits as a production method.

4. ECP funds may be used to **restore “structures and other installations.”**

Examples of authorized practices in this category include:

- a. water impoundments for agricultural uses,
- b. sod waterways,
- c. installed drainage systems,
- d. diversions or spreader ditches,
- e. terrace systems,
- f. wells,
- g. springs,
- h. pipelines,
- i. buried mainlines,
- j. structures for the protection of outlets or water channels, and
- k. animal waste lagoons repaired or replaced in a 100-year floodplain or higher.

Examples of unauthorized practices include irrigation wells and movable systems, portable pumps and pipe, roadways, motors, and animal waste lagoons in less than 100-year floodplains.

In conjunction with eligible structures or installations, ECP assistance may be available to **establish permanent vegetative cover** when needed to prevent erosion or siltation or to achieve some other ECP purpose.<sup>11</sup>

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<sup>10</sup> ECP Handbook, Exhibit 8, page 9 (Mar. 30, 2004).

5. ECP funds may be used for **emergency wind erosion control** measures. Examples of authorized practices include chiseling (with a preference for contour or cross slope chiseling) and deep plowing or similar measures to bring subsoil clods to the surface.
6. ECP funds may be used for **drought emergency measures** when authorized by the FSA national office. According to the ECP Handbook, these measures are intended to permit livestock grazing of rangeland, pasture, or forage; supply emergency water for existing irrigation systems serving orchards and vineyards; and provide emergency water for confined livestock operations.

Examples of authorized practices in this category include:

- a. installing pipe to a new water source;
  - b. providing water storage facilities to meet the immediate needs of livestock;
  - c. constructing and deepening wells for livestock;
  - d. constructing recovery pits for orchard and vineyard irrigation systems;
  - e. developing springs or seeps for livestock water;
  - f. permanently installed submersible pumps;
  - g. solar panels to power water pumps;
  - h. wells (if no other source of emergency water is available); and
  - i. measures to provide emergency water for confined livestock on the farm at the time of the disaster.
7. ECP funds may also be used to **restore or replace field windbreaks** and farmstead shelterbelts to help stop erosion and provide energy conservation.

Authorized practices in this category include:

- a. buying tree seedlings or young shrubs,
- b. planting windbreaks or shelterbelts,

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<sup>11</sup> 7 C.F.R. § 701.12(c); ECP Handbook, page 2-5, para. 134.A and Exhibit 8, page 13 (Mar. 30, 2004).

- c. establishing vegetative cover where needed to prevent serious erosion until trees or shrubs are established, and
- d. limited weed control measures.

### III. ECP Eligibility

#### A. Producer Eligibility

To be eligible for ECP cost-share assistance, a producer must:

1. Be an owner, operator, or tenant of a farm or ranch used for commercial production of crops or livestock;
2. Have an interest in the land affected by the natural disaster;<sup>12</sup> and
3. Be liable for the expense to be reimbursed through ECP.<sup>13</sup>

In certain circumstances, ECP funds may be available to a group of producers. Under a "pooling arrangement," two or more eligible persons on two or more farms agree in writing to jointly solve shared conservation problem.<sup>14</sup> If the agreement is approved by the FSA county committee, the group will be eligible for ECP funds.

#### B. Land Eligibility

In general, most private land is eligible for ECP cost-share assistance, but there are some restrictions.<sup>15</sup>

1. The land must be physically located in a **county in which ECP has been authorized**.
2. The affected land must be **expected to have annual agricultural production**. The only exceptions are field windbreaks, farmstead shelterbelts, and farm access roads needing removal of disaster-related debris because the debris is interfering with normal farming operations.

Land uses expressly not eligible for ECP are: (a) stream banks, channels, levees, and dikes; (b) native woodland areas; (c) roads (other than debris removal); (d) land in recreational use; (e) land devoted to trees, including

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<sup>12</sup> 7 C.F.R. § 701.4(a).

<sup>13</sup> 7 C.F.R. § 701.4(a).

<sup>14</sup> ECP Handbook, Part 6, "P-A's" (Mar. 30, 2004).

<sup>15</sup> 7 C.F.R. § 701.5.



timber production; and (f) land used for greenhouses or other confined areas, including corrals, milking parlors, barn lots, or feeding areas.

3. The land must **not be subject to frequent damage** or susceptible to severe damage, as determined by FSA.

The ECP Handbook states that ECP funds will not be available for practices on land that has been severely damaged three or more times in the past 25 years, including the current disaster. Other specific land exclusions set out in the ECP regulations are: (a) land on which a levee or dike is located; (b) land protected by a levee or dike that was not properly functioning during the disaster or that was not built to Corps or NRCS standards; (c) land between any levee or dike and a stream, river, or other body of water; (d) land adjacent to water impoundment reservoirs that is subject to inundation when the reservoir is filled to capacity; (e) land subject to flowage or flood easements and inundations when water is released in normal operations; and (f) land located in an old or new channel of a stream, creek, river, or other waterway.

4. The land **must not be owned or controlled by the United States government, a state government, or a political subdivision of a state**—such as a county. Tribal lands are eligible for ECP cost-share assistance.
5. Poor **farming practices** must not have materially contributed to the damage.

#### IV. ECP Cost-Sharing

##### A. Expenses Eligible for ECP Cost-Sharing

In general, once FSA has decided that a producer is eligible for ECP, cost-sharing is available for all reasonable expenses incurred in the completion of the approved conservation practice.<sup>16</sup> Eligible costs may include new or used materials, services, labor, and sales tax.<sup>17</sup>

However, FSA regulations set some limits on the conservation practice expenses that may be eligible for ECP cost-sharing.

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<sup>16</sup> 7 C.F.R. § 701.23(a).

<sup>17</sup> ECP Handbook, page 1-85, para. 46.A (Mar. 30, 2004).

1. Cannot exceed the **minimum needed** to fix the conservation problem.<sup>18</sup>
2. Must be for **new measures**, not normal upkeep or maintenance.<sup>19</sup>
3. Expenses for labor and equipment provided by the producer are only eligible if they are **beyond what is required for the normal operation** of the farm or ranch.<sup>20</sup>
4. Expenses for labor and equipment provided by the producer must be **less than what would be charged by contractors** regularly employed in such work.<sup>21</sup>
5. Any expenses **reimbursed by a third party**—including an insurance indemnity payment—will be excluded from the expenses eligible for ECP cost-sharing.<sup>22</sup>
6. If a producer receives an ECP award and then later receives **duplicate payments** or benefits for the same or similar expenses, the producer must refund any ECP payments received.<sup>23</sup>

## **B. ECP Cost-Share Assistance Limits**

The ECP regulations set the following limits on the amount of cost-share assistance that can be awarded.<sup>24</sup>

1. An eligible producer may receive **up to 75 percent** of either the producer's total actual costs or total allowable costs, whichever is less.
2. An eligible **limited resource producer may receive up to 90 percent** of either the producer's total actual costs or total allowable costs, whichever is less.
3. The ECP Handbook states that FSA county committees will set **maximum payment levels for particular conservation practices** that can reduce an award below the general percent-of-cost levels discussed above.<sup>25</sup>

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<sup>18</sup> 7 C.F.R. § 701.23(b)(4), (c).

<sup>19</sup> 7 C.F.R. § 701.31(a).

<sup>20</sup> 7 C.F.R. § 701.23(b)(1)-(2).

<sup>21</sup> 7 C.F.R. § 701.23(b)(3).

<sup>22</sup> 7 C.F.R. § 701.23(d).

<sup>23</sup> 7 C.F.R. § 701.11(b).

<sup>24</sup> 7 C.F.R. § 701.26.

4. An ECP payment for conservation practices to rehabilitate damaged farmland cannot be more than **50 percent of the agricultural value of the affected land**, as determined by FSA.
5. The maximum ECP cost-share payment is **\$200,000 per person, per disaster** for all conservation practices.<sup>26</sup>

## V. ECP Request and Approval

### A. Submitting a Request for ECP Cost-Share

A specific ECP sign-up period will be set when ECP is authorized in a county, but there are general time limits for submitting requests.<sup>27</sup>

1. The sign-up period must be **at least 30 days** from the date ECP authorization is granted.
2. The FSA county committee may accept **late requests** for ECP cost-share assistance in “justifiable” cases.
3. If a county does not have funds for ECP—either because no funds have been allocated or the allocation has been exhausted—the FSA office is still **required to accept ECP requests** and respond in writing to explain the current status of the program and the action, if any, taken on the request.<sup>28</sup>
4. If the county has received state-level approval to implement ECP, but funds are not available, the FSA county office may complete the preliminary steps toward approval, including making an on-site inspection.<sup>29</sup>
5. In general, FSA will not provide ECP assistance for conservation practices or practice components that are **started before a request for ECP cost-sharing is submitted and approved**.<sup>30</sup>

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<sup>25</sup> ECP Handbook, pages 1-83 and 1-84, paras. 44-45 (Mar. 30, 2004).

<sup>26</sup> 7 C.F.R. § 701.27.

<sup>27</sup> 7 C.F.R. § 701.13; ECP Handbook, pages 3-1 and 3-2, paras. 151.B, 152.A (Mar. 30, 2004).

<sup>28</sup> ECP Handbook, page 3-3, para. 153.A, C-D (Mar. 30, 2004).

<sup>29</sup> ECP Handbook, pages 3-3 and 3-53, paras. 153.C, 171.A (Mar. 30, 2004).

<sup>30</sup> 7 C.F.R. § 701.15(a). See also ECP Handbook, page 3-58, para. 175.D (Mar. 30, 2004).

A waiver of this requirement is possible on a case-by-case basis if the disaster created a situation that required the producer to take immediate action.<sup>31</sup>

- a. A waiver to allow cost-share coverage of conservation practices begun before an ECP request was submitted and approved will only be available if an ECP **request is filed within 15 days after the start of the sign-up period** for the county.<sup>32</sup>
- b. A pre-submission or pre-approval conservation practice will be eligible for ECP cost-share under a waiver only if the **practice was started no more than 60 days before the ECP disaster designation** was approved by the FSA county office.<sup>33</sup>
- c. The producer will be required to demonstrate that it was **necessary to take immediate action**.

For practices begun before an ECP request is submitted, the ECP Handbook lists emergency repair of fences to contain livestock and a pond dam that poses an immediate threat to life and property as examples of measures that could qualify for a waiver.<sup>34</sup>

For practices begun after an ECP request has been submitted, but before cost-sharing has been approved, the ECP Handbook lists contractor availability and the need to take steps to prevent further losses as examples of measures that could qualify for a waiver.<sup>35</sup>

## **B. ECP Cost-Share Approval Process: Inspection and Ranking**

Before approving an ECP request, FSA will make an on-site visit to the farm to assess the type and extent of the damage and determine whether the ECP eligibility requirements are met.<sup>36</sup> The farm visit is to be made “as soon as possible” after an ECP request is submitted.

The FSA county committee will prioritize all ECP requests received before making approval decisions. Priority for ECP approval is based on factors such as: (1) the

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<sup>31</sup> 7 C.F.R. § 701.15(b)(1)-(2); ECP Handbook, page 3-58, para. 175.D, E (Feb. 8, 2007).

<sup>32</sup> ECP Handbook, page 3-58, para. 175.E (Feb. 8, 2007); 7 C.F.R. § 701.15(b)(3).

<sup>33</sup> 7 C.F.R. § 701.15(b)(4); ECP Handbook, page 3-58, para. 175.E (Feb. 8, 2007).

<sup>34</sup> ECP Handbook, page 3-58, para. 175.E (Feb. 8, 2007).

<sup>35</sup> ECP Handbook, page 3-58, para. 175.D (Feb. 8, 2007).

<sup>36</sup> 7 C.F.R. § 701.14; ECP Handbook, page 3-53, para. 171.A (Mar. 30, 2004).

type and degree of damage; (2) the type of practices needed to address the problem; (3) the availability of funds; (4) the availability of technical assistance; (5) environmental concerns; (6) safety factors; and (7) the welfare of eligible livestock.<sup>37</sup>

## **VI. Completing Conservation Practices**

Cost-shares approved under ECP will normally not be considered earned until all components of the approved practice are completed according to FSA specifications and ECP provisions.

### **A. Completed by FSA Deadline—Typically Six Months From Approval, 60 Days for Drought Emergency Measures**

A producer must complete the approved conservation practice within a specific period of time. The FSA county committee establishes a completion deadline for each practice, usually no more than six months from the date of approval.<sup>38</sup> The completion date for drought emergency measures will be no more than 60 calendar days from the date of approval.<sup>39</sup>

Time extensions may be approved by the FSA state committee.

### **B. Performance Must Meet Minimum Requirements**

FSA establishes minimum requirements for ECP conservation practices. In some cases, a producer may receive ECP cost-share assistance for work done even if the minimum requirements for the approved practice are not met.<sup>40</sup> The producer must establish that a reasonable effort was made to satisfy the minimum requirements for the practice and that the practice, as performed, will adequately address the problem.

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<sup>37</sup> 7 C.F.R. § 701.16(a); ECP Handbook, page 3-55, para. 173.B (Feb. 8, 2007). The regulations state that this list is not exclusive, and other factors “deemed appropriate by FSA” may be considered. 7 C.F.R. § 701.16(a).

<sup>38</sup> ECP Handbook, page 3-67, para. 182.A (Mar. 30, 2004).

<sup>39</sup> ECP Handbook, page 3-67, para. 182.C (Mar. 30, 2004).

<sup>40</sup> 7 C.F.R. § 701.32.

### **C. Partial Payment for Partial Performance**

A producer may be paid for partial completion of a conservation practice before the rest of the conservation practice is completed, if the FSA county committee determines that the completed components are a “reasonable attainment” toward completing the approved practice.<sup>41</sup>

Partial payments will only be made if the producer will complete the remaining components of the conservation practice within the time set by the FSA county committee, whether or not cost-share payments will be available for those remaining components. If the remaining components are not completed within the time required, the producer must refund the partial payment unless reasons beyond the producer’s control prevented completion of the practice.

### **D. Report Work Performed and Request Payment by Deadline in Agreement**

No later than the “payment request deadline” specified in the ECP agreement, the producer must: (1) certify to FSA that the practice has been performed, and (2) request payment.<sup>42</sup>

By that same deadline, the producer must provide FSA with a signed performance report setting out information establishing that the producer has performed the approved conservation practice and complied with other ECP requirements. Supporting data for a performance report may include invoices, canceled checks, receipts, analysis tags, and similar evidence of expenses.<sup>43</sup>

FSA may make an exception to the deadline for reporting performance and requesting payment in cases where failure to submit the required information within the time limit was due to reasons beyond the producer’s control.

## **VII. Producer’s Long-Term Obligations**

Producers receiving ECP cost-share assistance are responsible for the maintenance and proper use of the conservation practice.

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<sup>41</sup> ECP Handbook, page 4-55, para. 321.B (Mar. 30, 2004).

<sup>42</sup> 7 C.F.R. § 701.21(a).

<sup>43</sup> ECP Handbook, page 3-123, para. 215.A (Mar. 30, 2004).

**A. Maintenance and Proper Use During Practice “Lifespan”**

For many conservation practices, FSA establishes a “lifespan,” or minimum period of time that the practice is expected to function with proper maintenance.

ECP conservation practices are subject to spot checks by FSA throughout their lifespan. If FSA believes that a conservation practice has not been properly maintained during its lifespan, the producer will have to refund all or part of the cost-share assistance for that practice.<sup>44</sup>

**B. Loss of Control of the Land Where Practice Is Located**

If a producer loses control of the land during the lifespan of a conservation practice, and the person taking control of the land chooses not to maintain the practice, the producer may have to refund cost-share payments received for that practice.<sup>45</sup>

The ECP Handbook states that refunds will only be required if the land is lost voluntarily and that no refund will be required if FSA determines that the practice has served its purpose for its lifespan or failure to maintain the practice was due to conditions beyond the producer’s control.<sup>46</sup>

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<sup>44</sup> 7 C.F.R. § 701.31.

<sup>45</sup> 7 C.F.R. § 701.37.

<sup>46</sup> ECP Handbook, page 5-27, para. 405.D (Mar. 30, 2004).