UNITED STATES DEPARTMENT OF AGRICULTURE
Farm Service Agency
Washington, DC 20250

Notice DCP-181

For: State and County Offices

DCP and Conservation Program OIG Findings

Approved by: Deputy Administrator, Farm Programs

1 Overview

A Background

OIG recently completed an audit of NRCS program activity related to conservation easement programs that offer landowners the opportunity to restore their land to a natural state. The audit covered Emergency Watershed Protection Program (EWP), Grassland Reserve Program (GRP), and Wetlands Reserve Program (WRP).

The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) requires a reduction of DCP base acres if the sum of the base acres including bases acres for peanuts, for a farm, together with the following acreages exceeds the actual cropland for the farm:

- any acreage on the farm enrolled in CRP or WRP
- any other acreage on the farm enrolled in a conservation program for which payments are made in exchange for **not** producing an agricultural commodity on the acreage.

B Purpose

This notice:

- advises State and County Offices of OIG's findings for the audit conducted and action required to reach management decision for the audit
- reminds County Offices of the requirement for reducing DCP base acreage when a conservation easement is recorded
- notifies State and County Offices of actions required based on OIG's findings
- provides reporting requirements for all easements recorded for FY 2002 and future years.

Disposal Date	Distribution
March 1, 2008	State Offices; State Offices relay to County Offices

2 OIG Audits

A Background

OIG previously conducted an audit (Audit Report No. 10099-3-SF) of WRP easements recorded for FY's 1999-2003. In that audit, OIG found that NRCS did **not** consistently inform FSA of easements that had been recorded. The audit demonstrated a need for improved interagency communication between NRCS and FSA, which OIG identified as a major Departmental management challenge in 2005 and 2006.

As a result, NRCS agreed to provide FSA with a list of all recorded and pending easements on an annual basis. NRCS completed that action by September 2005. On September 29, 2005, NRCS issued a management alert to all State Conservationists according to OIG's instructions.

B Audit 50099-11-SF

As a follow-up to Audit Report No. 10099-3-SF, OIG conducted another audit in which they expanded the scope to include WRP easements as well as EWP and GRP easements. The objectives of this audit were to:

- review FSA's and NRCS' controls to ensure the proper disposition of DCP base acreage on land subject to conservation easements

- identify improper farm subsidy payments to producers participating in conservation easement programs.

This audit covered FY's 1999-2005.

Based on the findings of this audit, OIG recommended actions that should be taken by both NRCS and FSA. The recommendations for FSA are detailed in the remainder of this notice.

3 NRCS Did Not Notify FSA of WRP and EWP Easements

A Finding

OIG found that NRCS did **not** properly notify FSA when the easements were recorded, which allowed easement-encumbered lands to continue to receive DCP payments. Based on this finding, NRCS implemented a policy of requiring producers to file CCC-505 when the easement is offered for enrollment in WRP, if DCP base acreage is being retired through the easement. CCC-505's are also required indicating no base acreage will be retired through the easement. NRCS:

- obtains CCC-505 from the landowner at the time the land is offered for enrollment in WRP
- provides CCC-505 to FSA, along with other documentation related to the easement, when the easement has been recorded.

B Action Taken

1-DCP, Amendment 38 clarified the responsibilities of FSA and NRCS about actions required to comply with all statutory mandates. CCC-910 was developed jointly by NRCS and FSA to assist landowners with determining the number of DCP base acres required to be reduced if acreage is enrolled in WRP.

NRCS has taken action to ensure that NRCS State and Field Offices are properly trained about their responsibilities of notifying FSA of recorded easements.

4 OIG Findings Affecting DCP Benefits

A Ensure That DCP Base Acreage Has Been Reduced on Easement-Encumbered Lands

OIG found situations where FSA had **not** reduced DCP base acreage properly for a number of easements reviewed. Although FSA may **not** have been aware that the land had been enrolled in WRP or other conservation programs, statutory restrictions still prohibit disbursing DCP benefits on land enrolled in those programs. As a result, OIG found a number of situations where DCP benefits have been disbursed improperly because:

- DCP base acreage was retired through the easement; however, DCP base acreage was **not** reduced in FY the easement was recorded
- the farm did **not** have enough cropland to support both easement acreage and DCP base acreage.

4 OIG Findings Affecting DCP Benefits (Continued)

B Ineligibility to Receive DCP Payments When NRCS Authorizes Cropping on the Easement

OIG found that FSA improperly allowed producers to receive DCP payments in FY's easements were recorded when landowners had received authorization from NRCS to crop the easement acreage. This occurred because program procedure was inconsistent with the restrictions of the 2002 Farm Bill.

Cropping rights letters issued by NRCS allow landowners to crop easement acreage after the easement is recorded. Before 2002, landowners that received cropping rights letters from NRCS were allowed to receive PFC payments on easement-encumbered land in FY the easement was recorded; however, the 2002 Farm Bill prohibits landowners from receiving DCP payments on land enrolled in various conservation easement programs.

C FSA Action to Date

On May 2, 2006, FSA issued 1-DCP, Amendment 36 that:

- removed the exception that provided that cropland enrolled in WRP may be eligible for DCP purposes in FY that WRP easement is recorded or WRP C/S restoration agreement is approved

- specified that County Offices shall:

  - ensure that base acres are reduced, as necessary, based on 1-DCP, subparagraph 426 F
  - update the farm records system to reflect WRP enrollment for affected program years

- specified that affected DCP contracts shall be updated with the correct base acreage. State and County Offices were instructed to follow 7-CP provisions for handling overpayments that may have resulted for 2005 and prior contract periods based on the revised policy.

On August 4, 2006, 1-DCP, Amendment 38 was issued that further clarified action that should be taken for easements filed in FY 2004 and future FY's.

Based on OIG findings, the National Office has conducted a further review of 1-DCP procedure that included the exception to allow producers to receive DCP payments in the same FY easements were recorded. While there was a timeframe where procedure clearly indicated that producers were **not** allowed to receive payment, even if NRCS authorized cropping on the easement, 1-DCP procedure was **not** consistent with the statute after enactment of the 2002 Farm Bill.

5 State and County Office Action

A Review Recommendations

Based on OIG finding that DCP payments may have been issued on acreage enrolled in conservation programs, FSA has agreed to review **each** farm in which an easement has been recorded to ensure that DCP base acreage was reduced as required by applicable statutes.

In response to Audit Report No. 10099-3-SF, NRCS agreed to:

- provide FSA with a list of all, EWP, GRP, and WRP easements recorded in FY's 1999-2003

  Note: This action was through the management alert completed by September 2005.

- develop a comprehensive procedure to address transferring or retiring crop bases on easement-encumbered lands by requiring CCC-505's when land is offered for enrollment in WRP and then notifying FSA immediately when the easement is recorded

- NRCS issued a national bulletin on March 10, 2006.

Therefore, FSA State Offices shall:

- follow-up with applicable County Offices to ensure that DCP base acreage was reduced as required in 1-DCP, Part 7 for all easements recorded for EWP, GRP, and WRP

  Note: State Offices shall use the listings and information provided by NRCS to determine which County Offices **must** be contacted to complete the review.

- ensure that base acreage is **immediately** reduced for FY easements were recorded and all future FY's, if DCP base acreage was **not** reduced as required

  Note: State and County Offices are **not** authorized to delay DCP base acreage reductions if it is determined that a reduction is required. County Offices shall immediately reduce base acreages, as applicable according to 1-DCP, subparagraph 426 F, even if relief options may be pursued.

- provide a report to the Director, PECD documenting the results of the review. See subparagraph 5 C.

5 State and County Office Action (Continued)

B Reporting Requirements

To close OIG's audit, FSA State Offices are required to report their review findings to PECD by **January 31, 2008**.

State Offices shall use the listing provided by NRCS to review each easement recorded in FY 2002 and future FY's to ensure that DCP base acreage was reduced as required in 1-DCP, Part 7. For each easement recorded, State Offices shall provide the following information to PECD through e-mail to the DCP Program Manager:

Note: A spreadsheet will be provided to DCP specialists for submitting this information.

- State and county
- easement number
- FY easement was recorded
- whether DCP base acreage was retired through the easement
- certification that DCP base acreage has been reduced in which CCC-505 was provided by NRCS for base acreage that was retired through the easement for FY the easement was recorded and future FY's
- certification that a review has been conducted to verify that DCP base acreage has been reduced, as applicable, to comply with cropland restrictions mandated by 2002 Farm Bill
- DCP overpayment amount for FY the easement was recorded
- DCP overpayment amount for subsequent FY's in situations where DCP base acreage was **not** reduced in FY the easement was recorded
- actions taken about collection of the all overpayment amounts.

6 Equitable Relief

A Requests for Relief

Because of the nature of the reviews, FSA COC's and STC's may pursue equitable relief or finality rule provisions for overpayments that may have been issued for easement-encumbered lands. However, the circumstances of each case will determine whether the equitable relief or finality rule provisions may be applicable.

Any request under equitable relief or the finality rule **must** meet 7-CP provisions, including the requirement that the producer did **not** have reason to know the determination was erroneous. Even if equitable relief or finality rule will be pursued for the applicable case, County Offices shall:

- **immediately** reduce DCP base acreage as required by 1-DCP
- transfer all overpayments to Common Receivable System and notify producers of the debt according to existing FI procedure.

COC's, STC's, and SED's shall review cases in which equitable relief or finality rule is being pursued on a case-by-case basis to determine whether 7-CP provisions can be met. It should **not** be automatically assumed that cases meet the equitable relief or finality rule provisions simply because 1-DCP procedure may have been incorrect or because the review is being conducted after-the-fact.

B Examples

Because cases may be unique, State Offices shall contact PECD for guidance about the applicability of equitable relief and finality rule provisions. Following are examples where equitable relief or finality rule would **not** be applicable.

Example 1: FSN 100 was enrolled with 100 percent of DCP base acreage being attributable to the landowner. NRCS accepted CCC-505 signed by the landowner; however, CCC-505 was **not** immediately provided to FSA.

The applicable FSA County Office shall immediately reduce DCP base acreage according to CCC-505 that may result in DCP overpayments to the landowner. Unless it can be specifically documented that FSA staff in some way misinformed the landowner, this case would **not** meet the requirements for equitable relief or finality rule because the landowner had reason to know the acreage would be reduced by signing CCC-505.

6 Equitable Relief (Continued)

B Examples (Continued)

Example 2: FSN 200 was enrolled in DCP with the operator receiving 100 percent of the DCP payment shares. The landowner offers the entire farm for enrollment in WRP and the easement closed during FY 2005 contract period. NRCS did **not** issue a cropping rights letter to the landowner.

Although 1-DCP included an exception that allowed producers to receive DCP payments, the exception was contingent on NRCS issuing the cropping rights letter. Therefore, the erroneous 1-DCP procedure **cannot** be used in this example as a reason to find that equitable relief can be met.