

For: State and County Offices

ECP Technical Assistance (TA) Memorandum of Agreement (MOA) With NRCS

Approved by: Deputy Administrator, Farm Programs



1 Overview

A Background

1-ECP, Part 1, Section 6, provides guidance on ECP TA. To clarify the responsibilities for FSA and NRCS, for ECP TA, and eliminate the requirement for each State Office to develop their own MOA, a national level MOA was recently signed.

B Purpose

This notice provides policy about:

- the national MOA with NRCS for ECP TA
- reimbursing NRCS for approved ECP TA services.

2 Contact

A State Offices

If there are questions about this notice, contact Martin Bomar, FSA ECP, EFRP Program Manager, by either of the following:

- e-mail to **martin.bomar@wdc.usda.gov**
- telephone at 202-205-4537.

B County Offices

If there are questions about this notice, contact the State Office.

Disposal Date	Distribution
January 1, 2015	State Offices; State Offices relay to County Offices and State Conservationist

Notice ECP-72

3 Policy

A Administering ECP C/S Agreements

FSA will continue to administer all ECP C/S agreements, including compliance determinations.

B Environmental and Cultural Resource Compliance

FSA will continue to serve as the lead Agency for purposes of complying with the provisions of the Endangered Species Act, the National Historic Preservation Act, NEPA, and other applicable laws, Executive Orders, and regulations according to 1-EQ and 7 CFR Part 799.

C Major Responsibilities of State Office for ECP TA

To help provide efficient and timely ECP TA, the State Office is responsible for:

- consulting with NRCS, at least yearly, to plan for allocating needed resources for ECP TA if ECP is implemented
- providing ECP policy guidance and materials to NRCS, including copies of practice policies, procedures, and all applicable notices
- reviewing and verifying, with the County Office, the statement of actual costs incurred in providing TA services, submitted by the State Conservationist or designee, and process payment

Note: Costs should **only** be associated with the following:

- responsibilities described in ECP TA MOA, subparagraph V(A) (Exhibit 1) for counties approved for ECP implementation, according to 1-ECP
- other items approved by the ECP program manager.
- developing and signing AD-672, with the State Conservationist at the beginning of each FY, if ECP funds are currently allocated to the State and ECP TA is needed from NRCS or immediately upon receiving ECP allocations needing NRCS TA.

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3 Policy (Continued)

D Major Responsibilities of County Offices for ECP TA

To help provide efficient and timely ECP TA, County Offices are responsible for:

- consulting with NRCS to plan for allocating needed resources for ECP TA when ECP is implemented
- providing the following:
 - a copy of FSA-848, **after** page 1 is completed and signed by the participants, and an electronic copy of the aerial photograph or GIS layer to the District Conservationist or designee
 - a copy of FSA-848B, **after** page 1 is completed and signed by the participants, and an electronic copy of the aerial photograph or GIS layer to the District Conservationist or designee
 - guidance to the District Conservationist or designee on completing FSA-848 and FSA-848B TA portions.

E Providing Reimbursement to NRCS for TA

State Office is responsible for the following:

- reimbursing NRCS for TA on a quarterly basis, or as billed by NRCS
- Note:** ECP TA reimbursement shall **not** exceed 10 percent of the current allocation of funds for ECP, for that ECP disaster designation, in each State.
- recording ECP TA payments in the Conservation Funds Ledger System.

Note: FSA anticipates a policy change in the near future whereby TA reimbursement will occur at the national level.

4 Action

A State Office Action

State Offices shall immediately implement the provisions of this notice.

B County Office Action

County Offices shall immediately implement the provisions of this notice.

National Level ECP TA MOA

Memorandum of Agreement (MOA)

Between

Natural Resources Conservation Service (NRCS)

And

Farm Service Agency (FSA)

For Provision of the Technical Assistance for the Emergency Conservation Program (ECP)

Through September 30, 2019

I. Purpose

The purpose of this MOA is to provide for the implementation, cooperation, expectations, and responsibilities between NRCS and FSA in carrying out technical assistance for ECP.

II. General Provisions

Technical assistance is needed for the implementation of ECP. FSA has determined that NRCS has personnel with expertise who can provide technical assistance needed for the implementation of the ECP.

III. Authority

The authorities for FSA and NRCS to enter into this agreement are:

- A. The Economy Act, 31 U.S.C. § 1535, which provides that an agency may place an order with a major organizational unit within the same agency or another agency for goods or services if:
 - 1. Funds are available;
 - 2. The ordering agency decides the order is in the best interest of the United States Government;
 - 3. The servicing agency to fill the order is able to provide or get by contract the ordered goods or services; and
 - 4. The ordering agency decides ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial

National Level ECP TA MOA (Continued)

enterprise (payments must be made on the basis of the actual cost of goods or services provided); AND,

- B. The Agricultural Credit Act of 1978, as amended (P.L. 95-334; 16 U.S.C. Sections 2201-2206), the Soil Conservation and Domestic Allotment Act, as amended (16 U.S.C. 590a-590f, 590g), and the regulations at 7 CFR parts 610 and 701. Other authorities may also apply.

IV. Economy Act Findings

As set forth in the attached "Determinations and Findings Pursuant to 48 CFR subpart 17.5" FSA states that sufficient funding amounts are available, that this agreement is in the best interest of the United States Government, and that the services requested cannot be provided by contract as conveniently or cheaply by a commercial enterprise.

NRCS states that it has the capability and expertise to provide or get by contract the requested services.

V. Responsibilities

NRCS and FSA agree, subject to the availability of funds, that:

A. NRCS will:

1. As directed by FSA, provide technical assistance both directly or through NRCS approved Technical Service Providers (TSP) and assure all technical work done will meet NRCS technical requirements, including the National Planning Procedures Handbook for conservation planning and the Field Office Technical Guide (FOTG) requirements for conservation practices and systems.
2. Submit to the appropriate FSA State Office a statement of actual costs incurred in providing the technical services during the fiscal year.
3. Adhere to FSA environmental and cultural resource policy in FSA's Environmental Quality Programs Handbook 1-EQ regarding compliance with the National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), Endangered Species Act (ESA), Clean Water Act, and all other applicable Federal, State, Tribal, and local environmental laws, regulations, and Executive Orders. NRCS will be responsible for completing, NRCS form CPA-052, or State modified version of the CPA-052, to document the potential environmental impacts associated with the proposed ECP contract and associated conservation practices and for recommending further action by FSA to complete their regulatory responsibilities.

National Level ECP TA MOA (Continued)

4. Supply FSA with available information supporting the recommendations and findings on the NRCS CPA-052, Environmental Evaluation Worksheet or State modified version. FSA will complete required consultation before signing the NRCS CPA-052 form or State modified form and carry out such consultation with the SHPO and Tribal governments or their THPOs. This will ensure FSA will make an informed decision regarding the effects if its proposed action and any alternatives considered. NRCS field staff will provide information extracted from extant and available cultural resources review forms that are in NRCS files, relevant endangered species and/or critical habitat lists, and all other best available information that is necessary for FSA to make an informed decision. NRCS shall provide FSA either copies of the cultural resources data forms from NRCS files or a list of documentary records, files, and other information resources accessed and checked for FSA. If necessary, NRCS will recommend additional records or resources that FSA may want to check prior to entering into SHPO or Tribal consultation or making final NHPA Section 106 decisions. These data shall be provided on the CPA-052 or State modified version.

B. FSA has overall program authority and responsibility and will:

1. Administer all ECP contracts, including compliance determinations.
2. Hold in State Office reserve, from ECP funds allocation to the State, an amount adequate but not greater than 10 percent of the funds allocated to the State, to reimburse NRCS for technical assistance.
3. Serve as the lead agency for purposes of complying with the provisions of the NEPA, NHPA, ESA, and other applicable laws, Executive Orders, and regulations as provided for in FSA's Environmental Quality Programs Handbook 1-EQ and 7 CFR part 799.
4. Complete all consultations with the State Historic Preservation Officer, Tribal Historic Preservation Officer, Tribal governments, as required of the lead agency, and all findings of historic property National Register of Historic Places eligibility and effects to these properties, as required by the Advisory Council on Historic Preservation (ACHP) regulations at 36 CFR Part 800. FSA will make the final determination of finding of effects in regards to the potential impacts to the environment, determinations of eligibility and effect and decisions on appropriate treatments regarding cultural resources related to the proposed ECP contract and associated conservation practices according to regulations at 36 CFR part 800.2(a)(2).
5. Complete all consultations with the U.S. Fish and Wildlife Service and National Marine Fisheries Service, as required by the lead agency,

National Level ECP TA MOA (Continued)

including the development of Biological Assessments or other documentation as deemed appropriate in order to make and support the determination of finding of effects in regards to the potential impacts to the environment, and effect and decisions on appropriate treatments regarding at-risk species and other natural resource concerns related to the proposed ECP contract and associated conservation practices.

C. NRCS and FSA agree to:

1. Fully comply with the information gathering provisions of section 1619 of the Food, Conservation, and Energy Act of 2008, 7 U.S.C. 8791(b), section 1244(b) of the Food Security Act of 1985, 16 U.S.C. 3844(b), the Privacy Act, the Freedom of Information Act, and related acts concerning privacy and the dissemination of records.
2. Enter into a state level reimbursable agreement (Form AD-672) for each fiscal year based on this MOA and any amendments hereto, for ECP technical assistance.
3. Amend Form AD-672 quarterly, or as deemed necessary by FSA, based upon current funds held in reserve for technical assistance.
4. Determine, between the FSA State Executive Director and the NRCS State Conservationist, and document in the State Emergency Board minutes:
 - a. The ECP practices for which NRCS will provide technical assistance;
 - b. The format for which NRCS will provide statement of actual costs incurred in providing the technical assistance, if deemed necessary;
 - c. Any other provision deemed necessary by the FSA State Office, FSA State Technical Committee, or the NRCS State Conservationist, that is consistent with this Memorandum of Agreement and does not nullify any provision in this Memorandum of Agreement.
5. Cooperate at all levels to ensure consistent implementation of ECP policies and procedures. When differences occur, the parties will provide information and recommendations to the next level (i.e. county offices would forward information and recommendations to the State offices, State offices would forward information and recommendations to NHQ). The Chief, NRCS, and Administrator, FSA, have final authority for ensuring consistent implementation of ECP policies and procedures.

National Level ECP TA MOA (Continued)

D. This MOA:

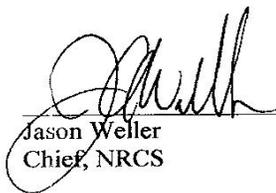
- 1. Will take effect upon the signature of Administrator of FSA and the Chief of NRCS.
- 2. May be terminated at any time by one party providing 30 days written notice. Should this MOA be terminated, billing will be submitted for services rendered.
- 3. Will run for a period of 5 years from date of execution.
- 4. May be modified by written amendment duly executed by the Administrator of FSA and the Chief of NRCS, or their delegates.

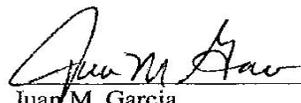
E. Nothing in this MOU shall obligate either NRCS or FSA to obligate or transfer any funds. The national level reimbursable agreement (Form AD-672) referenced above will address the obligation or transfer of funds, contingent upon the availability of funds. Negotiation, execution, and administration of this agreement must comply with all applicable statutes and regulations. Obligations under this MOA are subject to the availability of funds; in the event that adequate funding is not made available, FSA and NRCS may terminate their responsibilities under this agreement as agreed to under the termination clause of this agreement.

F. This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

NATURAL RESOURCES
CONSERVATION SERVICE

FARM SERVICE AGENCY/
COMMODITY CREDIT CORPORATION

 9/29/14
 Jason Weller Date
 Chief, NRCS

 8/27/2014
 Juan M. Garcia Date
 Administrator, FSA, and
 Executive Vice President, CCC