# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

### 7 CFR Part 701

### Emergency Conservation Program

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Record of Decision.

**SUMMARY:** This document presents the Record of Decision (ROD) regarding the changes made to the Emergency Conservation Program (ECP). ECP provides emergency funding to owners, operators, and tenants of farms and ranches who suffered damage to their certain lands as a result of a natural disaster. Under the Proposed Action, Farm Service Agency (FSA) could expand ECP eligibility to other types of farmland, namely land that is timberland, or is a roadbed on an area of land that is eligible for ECP, and also farmsteads, feedlots, and grain bins. To implement the Proposed Action, FSA would develop a proposed rule to expand upon current regulations to reflect changes to the policy that currently only extends the ECP to traditional cropland and forage land. Any proposal to change any rule would be subject to public comment and to consideration and rejection as the circumstances, further reflection, and public comments might warrant. In the interim, however, FSA is inviting comments on the ROD. The ECP Supplemental Environmental Impact Statement (SEIS) tiers from the Emergency Conservation Programmatic Environmental Impact Statement completed in 2003 and published in the **Federal Register** on March 4, 2004. The SEIS analyzes the impacts of the Proposed Action on the nation's environmental resources and economy. The No Action alternative (continuation of current ECP with no modifications) is also analyzed and to provide an environmental baseline.

**DATES:** We will consider comments that we receive by August 16, 2010. We will consider comments submitted after this date to extent possible.

**ADDRESSES:** We invite you to submit comments on this ROD and requests for copies of the Final SEIS (FSEIS) by any of the following methods:

- *Mail:* Matthew T. Ponish, National Environmental Compliance Manager, USDA FSA CEPD, Stop 0513, 1400 Independence Ave., SW., Washington, DC 20250–0513.
- *Hand Delivery or Courier:* Deliver comments to the above address.

All written comments will be available for public inspection at the above address during business hours from 8 a.m. to 5 p.m., Monday through Friday, except holidays. The ECP FSEIS including appendices and this ROD are available on the FSA Environmental Compliance Web site at: *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecrc&topic=nep-cd.*

**FOR FURTHER INFORMATION CONTACT:** Matthew T. Ponish, National Environmental Compliance Manager, phone: (202) 720–6853, or e-mail: *Matthew.Ponish@wdc.usda.gov,* or mail: Matthew T. Ponish, USDA FSA CEPD, Stop 0513, 1400 Independence Ave., SW., Washington, DC 20250–0513. More detailed information on ECP is available from FSA's Web site: *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=copr&topic=ecp.* The ECP FSEIS including appendices and this ROD are available on the FSA Environmental Compliance Web site at: *http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecrc&topic=nep-cd.* Copies of the FSEIS may be obtained from Matt Ponish at the above address.

**SUPPLEMENTARY INFORMATION:**

## The Decision

After reviewing comments from interested individuals and other State and Federal agencies, FSA has decided to develop regulations in a manner consistent with the Proposed Action, which could include expanding land eligibility to include timberland, farmsteads, feedlots, farm roads, farm buildings, or grain bins. This decision was made after comparing the overall environmental impacts and other relevant information with regard to the reasonable alternatives considered in the ECP SEIS. The following briefly describes the purpose and need for the proposed changes and the alternatives considered.

## Purpose and Need for the Proposed Action

The purpose of the Proposed Action is to expand the eligibility requirements of the current ECP. The need for the proposed change would be to better assist producers in recovering from a natural disaster.

## Overview of Current ECP

ECP currently identifies cropland, hayland, and pastureland as eligible land for benefits in the event of natural disasters. The goal of ECP is to provide financial assistance to agricultural producers to restore agricultural lands to a productive state following a natural disaster, and to carry out emergency water conservation and water enhancing measures during periods of severe drought. Producers can apply for one time cost-share and technical assistance for authorized activities under the following emergency conservation (EC) practices:

(EC 1) Removing debris from farmland;

(EC 2) Grading, shaping, releveling, or similar measures;

(EC 3) Restoring permanent fences;

(EC 4) Restoring conservation structures and other similar installations;

(EC 5) Emergency wind erosion control measures;

(EC 6) Drought emergency measures;

(EC 7) Other emergency conservation measures; and

(EC 8) Field windbreaks and farmstead shelterbelt emergency measures.

ECP provides financial and technical assistance to producers for restoring agricultural land to normal production following a natural disaster. Regulatory procedures for implementing ECP are addressed in 7 CFR part 701 and further outlined in internal guidance for FSA State and county offices under FSA Handbook 1–ECP. The following natural disasters are covered by ECP:

- Hurricane or typhoon;
- Tidal waves;
- Tornado;
- Earthquakes;
- High winds, including micro-bursts;
- Volcanic eruptions;
- Storms, including ice storms;
- Landslides;
- Floods;
- Mudslides;
- High water;

- Severe snowstorms;
- Wind-driven water;
- Drought;
- Wildfire; and
- Other natural phenomenon.

Following a disaster event, FSA county committees (COC) or authorized responsible agency officials generally visit the site and make an assessment of the damage to verify that it meets the minimum ECP requirements. The COC then obtains concurrence from the FSA State committee before approving the disaster to qualify the area for ECP and requesting financial assistance from the national office. During periods of severe drought, the determination to implement ECP is made by the FSA National headquarters. For the land to be eligible, the damage must:

- Create new conservation problems which, if not treated, would impair or endanger the land;
- Materially affect the productivity of the land;
- Represent unusual damage that, except for wind erosion, does not occur frequently; or
- Be so costly to repair that Federal assistance is required to return the land to productive agricultural use.

To be eligible for ECP, an owner, operator, or tenant must contribute part of the cost for implementing the approved practice and must also have an interest in the farm. American Indian Tribes or individuals that own eligible land are eligible for ECP benefits. Consistent with a number of other programs and so that the funds will go to private producers who are in need, Federal agencies, States, political subdivisions of States, State agencies, and districts with taxing authority are not eligible for ECP benefits.

The land offered for assistance must be located in the county in which ECP has been approved, be normally used for farming or ranching operations, and be expected to have annual agricultural production. Eligible land, under current rules, is broadly defined as cropland, hayland, and pastureland. Additionally, lands eligible under ECP includes those lands that are:

- Protected by levees or dikes built to U.S. Army Corps of Engineers, Natural Resource Conservation Service, or similar standards, that were effectively functioning before the disaster;
- Protected by permanent or temporary vegetative cover;
- Used for commercially producing orchards, citrus groves, and vineyards;
- Used for producing agricultural commodities;
- Where conservation structures are installed, including waterways, terraces, sediment basins, diversions, windbreaks, etc. not funded by other conservation programs;
- In Christmas tree plantations;
- Devoted to container-grown nursery stock if the nursery stock is grown commercially for wholesale purposes and is grown on land in containers for at least one year ("retail producers" usually do not produce sufficient quantities of product for sale to be considered producers in the same sense as those that produce other agricultural commodities in bulk);
- In field windbreaks or farm shelterbelts where the practice is to remove debris and correct damages caused by the disaster; and
- Lands on which facilities are located in irrigation canals or facilities that are located on the inside of the canal's banks as long as the canal is not a channel subject to flooding.

In general, ECP funds are held in reserve at the national level and allocated after a natural disaster has occurred and ECP has been authorized. Funds are allocated to FSA State offices based on an estimate of funds needed to begin implementing the program and funding availability. The FSA State offices then allocate funds to the appropriate FSA county offices. The funds are then distributed to owners, operators, and tenants applying for ECP benefits.

Owners, operators, and tenants applying for ECP assistance can receive reimbursement for up to 75 percent of the cost of activities covered under the approved conservation practices. The total cost-share provided to an individual person or entity per natural disaster cannot exceed $200,000. In addition, duplicate payments by rule are prohibited as well as being unnecessary to correct the producer's problem and therefore if payments such as cost-share or other benefits have been provided through other FSA emergency or conservation programs for the same or similar expenses for the same land, then financial assistance cannot be provided through ECP.

Limited resource producers may receive financial assistance for up to 90 percent of the cost of the covered activities. The definition of a "limited resource producer" is:

> Any producer with direct or indirect gross farm sales no more than $100,000 in each of the previous two years and has a total household income at or below the national poverty level for a family of four or less than 50 percent of the county median household income in each of the previous two years.

These kinds of determinations are made for other farm programs and they use an index. The process is described at a website used by the Natural Resources and Conservation Service at *http://www/lfrrtool.sc.egov.usda.gov* and information will be available at local offices of the FSA for any person who feels that this provision may apply to them.

**Alternatives Considered**

FSA reviewed the following alternatives prior to making this decision. The first table describes several alternatives considered, but eliminated from further study and the rationale for their elimination. These alternatives were determined not to be reasonable as explained in the table. The second table shows alternatives determined to be reasonable that were evaluated in detail in the ECP SEIS.

LIST OF ALTERNATIVES ELIMINATED FROM FURTHER STUDY

| Alternative | Rationale for elimination |
|---|---|
| Expand eligibility to include land supporting horses used for recreation, commercial, or other purposes (such as race horses). | Agricultural programs have traditionally not treated those activities as "agricultural" production for purposes of "farm" programs; this alternative was therefore considered for purposes of this exercise to be beyond the scope of the agency's authority. This issue can, however, be revisited when actual regulations are proposed for the program. |
| Make ECP available only in natural disasters declared by the President or Secretary of Agriculture. | There are insufficient records to allow, without great cost, a substantial analysis of this option and given the history of this program this option was seen as being unduly limiting given that unlike other disaster related statutes there is no specific provision limiting this program to those areas that have been, as such, officially the subject of a Presidential or Secretarial disaster declaration. |

LIST OF ALTERNATIVES ELIMINATED FROM FURTHER STUDY—Continued

| Alternative | Rationale for elimination |
|---|---|
| Combine ECP with Emergency Watershed Protection Program (EWP). | EWP is administered by a different agency, the Natural Resources Conservation Service, to undertake community-level emergency measures to control runoff and prevent soil erosion to safeguard lives and properties from floods, drought, or any watershed damaged by natural disaster. ECP is directed at farm level aid and therefore the programs do not appear to be sufficiently compatible to warrant analysis and considering community-based efforts is beyond the scope of this SEIS. |

LIST OF REASONABLE ALTERNATIVES CONSIDERED

| Alternative | Description |
|---|---|
| No Action | Serving as the baseline for comparison of the Proposed Action, the No Action Alternative is continuation of ECP as currently configured. |
| Proposed Action | Expanding eligible farmland to include timberland, farmsteads, feedlots, farm roads, farm buildings, and grain bins meets the Proposed Action's purpose and need, and there is sufficient information to perform a meaningful analysis. |

Based upon the analyses and conclusions presented in the Draft and Final SEISs, FSA has identified the Proposed Action as the preferred alternative. Within the context of the Proposed Action's purpose and need, this alternative is both environmentally responsible and reasonable to implement.

**Public Involvement**

Responses to the FSEIS public comments and FSA's analyses supporting this Record of Decision are presented in the following discussion.

A public notice announcing a "Notice of Intent to Prepare an Environmental Impact Statement: Request for Comments" was published in the **Federal Register** on October 24, 2007 (72 FR 60312); the comment period ended December 24, 2007. Locations for holding public scoping meetings were chosen based upon a density model of where ECP was used the most and areas that received the most ECP funding since 2002. Following the Notice of Intent, a public announcement was placed in local newspapers in cities selected for public scoping meetings in September and October of 2007. Public scoping meetings were held in seven States at the locations and dates in the table below. The meetings consisted of a presentation on the proposed changes, a description of the existing program and preliminary alternatives, followed by a comment period that was recorded by court reporters. A project website was created where interested persons could access information on the proposed changes, the places and times of meetings, and for making comments online. Few comments were received; the comments were generally supportive of ECP. A substantive comment concerned making the costs eligible for removing livestock that died as a result of a disaster to an appropriate disposal location as reburial onsite may be a water quality hazard. Prior to preparing and publishing a Draft SEIS (DSEIS), FSA undertook preparatory studies to determine the basic parameters for conducting the analyses. These included determining which environmental resources, if any, could be eliminated from further analysis in the DSEIS, and which alternatives were determined to be reasonable. Public notice announcing the availability of the DSEIS was published in the **Federal Register** on May 27, 2008 (73 FR 30376), and copies of the DSEIS were mailed to 17 Federal agencies. The public comment period ended on June 29, 2008.

LIST OF PUBLIC SCOPING MEETINGS

| State, town | Date of meeting | Time of meeting | Meeting location |
|---|---|---|---|
| Alabama, Mobile | September 13, 2007 | 6:30 p.m | Jon Archer Agricultural Center, 1070 Schillinger Road. |
| California, Dixon | October 29, 2007 | 6:30 p.m | USDA FSA Office, 1170 N. Lincoln St., Suite 109. |
| Florida, Naples | September 14, 2007 | 5:30 p.m | Double Tree Guest Suites, 12200 Tamiami Trail North. |
| Georgia, Atlanta | September 17, 2007 | 6:30 p.m | Hyatt Place Atlanta Airport, 1899 Sullivan Road. |
| Louisiana, Franklinton | October 25, 2007 | 6:30 p.m | LSU Southeast Research Station, 41217 Bethel Road. |
| Missouri, Columbia | October 22, 2007 | 6:30 p.m | FSA State Office, Parkdale Center, Suite 232 601 Business Loop, 70W. |
| Texas, Amarillo | October 24, 2007 | 6:30 p.m | Texas A&M University Research & Extension Center, District Office, 6500 Amarillo Blvd. West. |

Comments were received from two Federal agencies and one State agency. FSA compiled and reviewed all of the comments submitted. Changes to the DSEIS, in response to agency and public comment, included providing consistency in language on the nature of consultation with the U.S. Fish and Wildlife Service (USFWS) under the Endangered Species Act, coordination of FSA personnel with those of the Federal Emergency Management Agency (FEMA) in response to disasters, the potential for certain practices to spread invasive plant species, and the potential that wildlife displaced may not have access to suitable habitat. Substantive comments will be further considered by FSA in the development of future policy; the issues include:

- Removal rather than burial of livestock that died as a result of a disaster,
- Addressing long-term needs with short-term disaster relief efforts, and
- Insect infestations as an addition to the list of eligible disasters.

**Impacts Summary**

The FSEIS outlines and compares all of the alternatives potential impacts. Both beneficial and adverse effects were identified for activities authorized by ECP that would now be implemented on the new land categories as described in the Proposed Action. Removing debris, shaping and leveling land, re-establishing vegetation, and restoring conservation structures after a natural disaster, as allowed under the existing ECP would now also have long-term benefits for vegetation and wildlife on timberlands and farmsteads included in the Proposed Action. Re-establishing permanent vegetation and conservation structures would ultimately improve local water quality, reduce soil erosion, and enhance wildlife habitat by promoting biological diversity on these new land categories. Beneficial impacts to surface water quality, groundwater quality, forest health, forest-related resources, floodplains, and wetlands would be realized from implementation of the conservation practices established on farmsteads and timberlands. Re-establishing vegetation, wind control measures, and releveling land would all reduce erosion potential and protect the area from soil loss. Restoration activities that include mechanical removal of debris, using heavy equipment to shape and level land, and ground preparations for installing vegetation, would not be substantially different than similar activities on agricultural lands.

However, wildlife may be temporarily displaced during restoration, or displaced long term until habitat structure is re-established after a disaster. It is possible that due to the scope of the damage caused by a natural disaster that no suitable habitat is nearby, or nearby habitat may already have established wildlife at a capacity that cannot sustain additional animals in the long term. Of the new categories of farmland included in the Proposed Action, timberland has the most potential for having undisturbed land. Establishing access roads and restoration of timberland areas would temporarily remove vegetation in the immediate area and have the potential for spreading invasive plant species. This activity also has the potential to increase soil erosion that may increase sedimentation of nearby waters. The use of heavy machinery, especially in timberland areas, could compact soils, impairing water infiltration and vegetation growth.

The Proposed Action to expand the program eligibility to timberland, farmsteads, and farm buildings would increase the potential for encountering a historic property. The use of heavy equipment could negatively affect historic properties through ground disturbance.

Potential benefits and adverse impacts to these sites would be the same as those described in the current ECP. Most of the above possible adverse impacts may be controlled by employing best management practices that minimize this potential, such as washing equipment before entering or leaving the work area to minimize spreading invasive plant species, ensuring seed mixes do not include invasive or noxious species, controlling access of machinery to the work area, employment of silt fencing, use of vegetative strips to stabilize soil, and stockpiling topsoil for re-use in establishing new vegetation.

Protected species that occur or have the potential to occur in areas approved for ECP would be protected through informal consultation with USFWS during the site-specific environmental evaluation. If impacts are identified, formal consultation with USFWS would be completed.

If negative impacts to listed species are found, it is not likely the land would be approved for ECP. However, FSA would continue to encourage FSA State offices to develop memoranda of understandings with USFWS to expedite reviews at the site specific level.

Under the Proposed Action, expanding the eligibility of ECP allows for the continuation of cost share payments to producers, and allows more producers to apply for assistance.

**Rational for Decision**

None of the impacts discussed in the FSEIS are considered significant, and there are no adverse cumulative impacts expected on environmental resources. It is possible to manage most of these concerns and therefore minimize any potentially adverse effects by employing best management practices, and through site specific environmental evaluations for certain practices prior to enrolling particular lands into ECP. Further avoidance, minimization, and mitigation of impacts would be addressed in the Federal and State permitting processes prior to enrolling specific lands. These measures would be incorporated into a conservation plan prior to accepting land proposed for enrollment in ECP.

**Implementation and Monitoring**

FSA will implement the Proposed Action as specified in the ECP FSEIS. The Proposed Action alternative allows different types of land to be eligible for ECP benefits, thereby potentially providing producers greater financial assistance. Restoring land to agricultural production after a natural disaster provides long-term benefits to water quality, improves soil stability, restores wildlife habitat, and helps to stabilize the local economy. Any deviation from the Proposed Action alternative and the area of potential effects evaluated in the FSEIS may require supplemental environmental analyses. FSA will ensure that impacts are minimized through a process of completing site-specific environmental evaluations for certain ECP practices for each application.

Signed in Washington, DC, on June 25, 2010.

**Jonathan W. Coppess,**

*Administrator, Farm Service Agency.*

[FR Doc. 2010–16755 Filed 7–15–10; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1221

**[Doc. No. AMS–LS–10–0003]**

### Sorghum Promotion and Research Program: Procedures for the Conduct of Referenda

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Commodity Promotion, Research, and Information Act of 1996 (Act) authorizes a program of promotion, research, and information to be developed through the promulgation of the Sorghum Promotion, Research, and Information Order (Order). The Act requires that the Secretary of Agriculture (Secretary) conduct a referendum among persons subject to assessments who, during a representative period established by the Secretary, have engaged in the production or importation of sorghum. This proposed rule establishes procedures the Department of Agriculture (USDA) would use in conducting the required referendum as well as future referenda. Eligible persons would be provided the opportunity to vote during a specified period announced by USDA. For the program to continue, it must be approved, with an affirmative vote, by at least a majority of those persons voting who were engaged in the production or importation of sorghum during the representative period.