Part 3 ECP TA

Section 1 Providing TA

50 ECP TA MOA

A TA Purpose

TA is support and guidance provided to ECP participants and County Offices for the planning, implementation, and certification of ECP practices. FSA, NRCS, or another technical service agency or provider as approved by ECP-PM, can provide ECP TA.

For many ECP practices, FSA provides TA. However, certain ECP practices may require additional technical expertise; FSA has determined that NRCS has personnel with expertise who can provide TA needed for implementing ECP.

Note: Technical responsibility for practice EC4 is assigned to NRCS. States may also use NRCS TA services for additional ECP practices as agreed to by both agencies' State Offices. See paragraph 20.

ECP TA provided to participants includes technical expertise, information, and the tools necessary for rehabilitation of eligible natural disaster damaged farmland. When NRCS provides TA to a participant, FSA is also provided practice performance certification.

50 ECP TA MOA (Continued)

B Determining TA Needs

SED and NRCS State Conservationist shall determine and document:

- the ECP practices for which NRCS will provide TA
- the format for which NRCS will provide a statement of actual costs incurred in providing TA, if deemed necessary
- any other provision deemed necessary by the FSA State Office, FSA State Technical Committee, or the NRCS State Conservationist, that is consistent with and does not nullify any provision of the MOA.

Note: The determination may be documented in the committee meeting minutes, such as State Emergency Board, STC, etc.

50 ECP TA MOA (Continued)

C National MOA

Following is an example of the MOA between NRCS and FSA.

Note: A modification to the MOA was made and references to completing the State-level AD-672 are no longer included; a national level Interagency Agreement (Form-7600) has been developed.

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

50 ECP TA MOA (Continued)

C National 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 is 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.

50 ECP TA MOA (Continued)

C National 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,

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.

50 ECP TA MOA (Continued)

C National 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 delegees.

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

9/29/14
Jason Weller — Date
Chief, NRCS

FARM SERVICE AGENCY/
COMMODITY CREDIT CORPORATION

9/27/2014
Juan M. Garcia — Date
Administrator, FSA, and
Executive Vice President, CCC

51 Major Responsibilities for ECP TA

A TA

The assigned technical agency shall ensure that TA is provided to producers for approved practices to the extent that resources permit.

B Assigned Agency Responsibility for TA

Each assigned technical agency is responsible for carrying out its assigned responsibilities, according to the national MOA.

The assigned agencies shall use technical information provided by NIFA, NRCS, and other agencies to help producers apply practices correctly.

C Technical Responsibility

Technical responsibility for practices includes:

- developing standards and specifications for the practice
- providing TA on the phases in paragraph 52.

52 Reimbursable Activities

A Phases of Reimbursable TA

TA provided in servicing assigned practices may involve all of the following phases of implementing a practice:

- determining whether the practice is needed and feasible
- performing an environmental assessment cultural resource review
- selecting a site

  Note: Determine measures needed and any required layout and design of the practice when selecting a site.

- supervising installation of a practice, if needed, to ensure that practice conforms with specifications
- inspecting practices to determine whether specifications have been met and the extent performed.

53 Outside Assistance

A Agencies Using Outside Assistance

Assigned technical agencies may use assistance from private, State, or Federal sources when the assistance accomplishes the following:

- makes the most effective use of available personnel and facilities with savings to the Federal Government
- maintains the standards and effectiveness of ECP.

Note: Assigned technical agencies are responsible for work completed by other sources, and shall certify that C/S practices were performed according to specifications.

B Producers Using Outside Assistance

A producer is not required to use TA available through ECP.

Producers using outside assistance for practices will qualify for C/S if the assigned technical agency:

- determines that the practice was needed
- certifies that the practice was performed according to the specifications.

Note: A producer that uses outside assistance shall be urged to keep sufficient records to permit the technician to make the necessary determinations.

54 TA Cost to Participants

A Agency Provided TA

A producer who uses TA provided by NRCS and FSA is **not** required to pay for these services.

B Participant Contracted TA

ECP funds are **not** authorized for reimbursement of TA services contracted by the participant. Participants are responsible for all costs for using services other than those of the assigned technical agency.

55 Assigned Technical Agency Responsibilities and COC Action

A Needs Determination

The assigned technical agency shall report on FSA-848, page 2 if the practice is needed and feasible.

FSA-848, page 2 shall include:

- an accurate estimate of needed units and cost upon which COC can base its commitment of funds
- the needed extent and any other pertinent information.

Note: CED shall consult the State Office if unable to perform needs determination on practices for which FSA is assigned technical responsibility.

B Required Action for Favorable Determinations

If the assigned technical agency indicates a favorable determination, the technical agency shall take the following action.

Step	Assigned Technical Agency Action
1	Indicate the extent needed.
2	Complete the needs statements on FSA-848, page 2.
3	Enter estimated cost of the practice.
4	Sign and date FSA-848, page 2.
5	Submit FSA-848, page 2 to COC for review.

55 Assigned Technical Agency Responsibilities and COC Action (Continued)

C Required Action for Unfavorable or Questionable Determinations

The following action is required when an unfavorable or questionable determination is received by COC.

IF the assigned technical agency indicates...	THEN...

an unfavorable determination	• there shall be a statement to that effect, including the reasons on FSA-848, page 2
	• the assigned technical agency should explain the basis for the unfavorable determination to the producer
	• COC shall:
	  • promptly notify the producer, in writing, that the practice was not approved and the basis for the decision
	  • advise the producer of the right to appeal the determination.

a practice may not be eligible	• the assigned technical agency shall provide written description of the eligibility question on FSA-848, page 2 • COC shall consider this statement when reviewing the request for approval.

D Change in Estimated Cost Before Performance

The assigned technical agency shall provide the following information if the estimated cost changes before performance.

If the assigned technical agency determines the C/S estimate is too low or too high before the practice is performed:

- the assigned technical agency shall submit a revised estimate to COC
- COC may choose to increase the approval accordingly.

Note: COC shall decrease estimates that are too high.

56 Assigned Technical Agency Responsibilities and Reporting on FSA-848B, Page 2

A Practice Performance Verification

The assigned technical agency shall provide practice performance certification on FSA-848B, page 2.

57-60 (Reserved)

Section 2 Transfer of Funds for TA

61 Billing TA Expenses

A Providing Reimbursement to NRCS for TA

Along with the MOA, FSA and NRCS signed an Interagency Agreement (Form-7600) at the National level.

Note: State Offices will no longer execute AD-672.

B Actual Costs

NRCS States Offices shall bill FSA State Offices for the actual cost of ECP services performed, consistent with the terms and conditions described in the MOA, but not to exceed 10 percent of the amount of funds allocated to counties.

C TA Billing Frequency and Details

No more than quarterly, the NRCS State Offices shall submit to FSA State Offices (by an agreed upon documented source such as e-mail, memorandum, etc.) a statement of costs incurred providing ECP TA. The statement shall include the following:

- FY and quarter
- disaster ID
- County Office name where service was provided
- itemization of charges, such as number of personnel hours by employee and dates of service provided
- dollar amount of reimbursement.

D Billing Verification

After receiving statement of costs incurred providing TA and before payments are processed, the FSA State Office shall forward a copy of the statement to the applicable County Office for CED and DD review. CED shall verify that charges for ECP TA reimbursement are reasonable. If necessary, CED shall coordinate review of charges with the applicable NRCS field office.

After completing the ECP TA billing review and resolving any issues, CED shall notify SED through DD of the verification results. Before forwarding to SED, DD shall review CED's results and make any necessary comments or revisions.

62 Processing TA Reimbursement by IPAC

A Billing Approval

Once the verification process in subparagraph 61 D is complete, the FSA State Office shall:

- approve the invoice
- notify the submitting NRCS State Office of approval.

B NRCS Processing

Upon notification from FSA, NRCS State Office will then notify the NRCS National Accounts Receivable Servicing Team of the pending TA payment due.

The NRCS National Accounts Receivable Servicing Team initiates the payment process through IPAC.

63-69 (Reserved)

Part 4 ECP Funds Management

Section 1 National Program Funds

70 National Reserve

A ECP Funds Reserve

ECP funds are held in reserve at the national level.

Other than when administering an active ECP implementation, States are not authorized to maintain funds reserves.

71 CFLS, eFMS Allocations

A Fund Allocation

The National Office will allocate funds to States after a determination has been made authorizing ECP designation and a funding needs determination has been made.

Funds are not immediately allocated to States based on the estimate of funds needed to begin an ECP implementation.

72 (Reserved)

Section 2 County C/S Funds Management

73 COC Determination of Funds Needed

A C/S Funds Need Update and Funding Request

The county's initial ECP implementation request includes an **estimate** of C/S funds needed.

After the County Office enrollment period has ended, all needs determinations have been entered onto each FSA-848A, and all requests have been prioritized, CED shall summarize C/S request amounts COC is willing to approve and submit an updated funding request to the State Office Program Specialist. The C/S funding summary shall be by:

- county
- ECP practice
- C/S amount.

B TA Funds Need Estimate

Along with the C/S funding summary, COC shall also include an estimate of TA funds needed. The TA funds need summary shall be by:

- county
- ECP practice
- TA amount.

Note: TA funds will not be allocated to the State or County Office.

74 County C/S Allocation

A Funds Availability

If funds are available and are approved for the county ECP implementation, the State Office Program Specialist will allocate C/S funds to County Offices through:

- CFLS, by disaster ID
- eFMS.

75 Monitoring Funds

A Active ECP Implementations

CED must:

- ensure that all FSA-848's are loaded in CSS
- ensure that all FSA-848A approvals are made in CSS as soon as funds are allocated to the County Office (subparagraph 175 B)
- track producer requests throughout the signup period and during performance to identify any unobligated funds, as soon as possible, that are available for return to the State Office
- determine the amount of funds, not needed for the disaster, that are available for return to the State Office.

B Releasing Unused Funds

COC's are **not** authorized to hold unused funds in reserve.

Because maintaining County Office reserves is not authorized, CED's shall return ECP funds to the State Office as soon as it is determined that the funds will not be needed for the disaster for which the funds were originally allocated.

CED's shall notify the State Office Program Specialist by e-mail of the amount available for release. State Offices will transfer funds to the State reserve.

76-80 (Reserved)

Section 3 State C/S Funds Management

81 Funds Control and State C/S Allocations

A Notification of COC Funds Need Determination

The county's initial ECP implementation request includes an estimate of C/S funds needed.

After the County Office enrollment period has ended, CED shall submit an updated C/S funding request and TA needs estimate to the State Office Program Specialist.

B State C/S Allocation Request

State Office Program Specialist shall review COC's updated C/S funds request and TA funds estimate and, if needed, revise as applicable before submitting the National Office.

After reviewing the COC's updated C/S funds request and TA funds estimate, State Office Program Specialist shall submit the funds needs request to the ECP-PM by e-mail.

ECP funds are held in reserve at the national level. C/S funds are allocated to States for county implementation after an:

- ECP designation is authorized
- assessment of funds needed is made by COC upon completion of the ECP enrollment period.

C/S funds will be allocated by the National Office to State Offices through:

- CFLS, by disaster ID
- eFMS.

Note: TA funds will be held in reserve at the National Office. See subparagraph 82 B.

81 Funds Control and State C/S Allocations (Continued)

C State C/S Allocation to County

Once C/S funds are approved for the county implementation and are allocated from the national reserve to the State reserve, State Office Program Specialist will allocate C/S funds to County Offices through:

- CFLS, by disaster ID
- eFMS.

82 Reserves

A C/S Reserve

State Offices may maintain small reserves, that are sufficient to cover needed adjustments.

C/S funds may be transferred from the program's State reserve for a disaster, to a nondesignated ECP county to pay C/S for eligible restoration work where the producer's farm is administratively headquartered.

Note: State Specialist must submit a request to the ECP-PM to add the applicable county to the Disaster ID.

Unused ECP funds shall be returned to CEPD according to paragraph 83.

B TA Reserve

Funds will be held in reserve at the National Office to reimburse NRCS for TA.

CED shall summarize TA funds needed and include the amount when submitting the C/S funds request to the State Office Program Specialist. The TA funds summary shall be by:

- county
- ECP practice.

State Offices shall provide the expected TA funds needed when updating the National Office of a county's C/S funds need.

83 Requesting and Releasing Funds

A State Request for Additional Funds

With proper justification, SED may request additional funds from ECP-PM.

B Releasing Unused Funds

SED shall return ECP funds to CEPD as soon as it is determined that the funds will not be needed for the disaster for which they were originally allocated. STC reserves are not authorized except as provided in paragraph 82.

- CED shall notify the State Office Program Specialist by e-mail of the amount available for release.
- State Offices shall notify CEPD, Attention: ECP-PM and Planning and Analysis Branch, by e-mail of the amount to be released.

Notes: State Offices shall **not** adjust State ECP ledgers without a signed FSA-357.

SED must:

- require timely loading of all FSA-848's in CSS
- track producer requests throughout the signup period and during performance to release any unobligated funds as soon as possible.

84 Expenditure Limitations

A Authority

States do **not** have over obligation authority.

States may transfer funds among County Offices for the same disaster designations that have been approved to implement ECP.

85-90 (Reserved)