Billing Code 3410-05-P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1450

RIN 0560-AI27

Biomass Crop Assistance Program

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Final Rule.

SUMMARY: The Farm Service Agency (FSA) is amending the Biomass Crop Assistance Program (BCAP) regulations to implement changes required by the Agricultural Act of 2014 (the 2014 Farm Bill). BCAP provides financial assistance to producers who establish, collect, harvest, store, and transport biomass crops. The 2014 Farm Bill reauthorizes BCAP, with certain changes that are implemented in this rule. The changes include reducing the payment rate per ton for collection, harvest, storage, and transportation of eligible materials, and limiting the cost share per acre for establishment of biomass crops. The requirements for eligible material and eligible land are revised in this rule, as required by the 2014 Farm Bill. The general scope of BCAP is not changing with this rule.

DATES: Effective Date: **[Insert date 90 days after date of publication in the FEDERAL REGISTER].**

Comment Date: We will consider comments we receive by **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**.

ADDRESSES: We invite you to submit comments on this rule. In your comment, please specify RIN 0560-AI27 and include the volume, date, and page number of this issue of the Federal Register. You may submit comments by any of the following methods:

- Federal eRulemaking Portal: Go to http://www.regulations.gov. Follow the online instructions for submitting comments;
- Mail, Hand Delivery, or Courier: Kelly Novak, FSA CEPD, USDA, STOP 0513, 1400 Independence Ave. SW, Washington, DC, 20250-0513.

All written comments will be available for inspection online at www.regulations.gov and at the mail address above during business hours from 8 a.m. to 5 p.m., Monday through Friday, except holidays. A copy of this rule is available through the FSA home page at http://www.fsa.usda.gov/.

FOR FURTHER INFORMATION CONTACT: Kelly Novak, telephone (202) 720–4053. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

BCAP is an FSA administered program using Commodity Credit Corporation (CCC) funds. Section 9010 of the 2014 Farm Bill (Pub. L. 113–79) amends 7 U.S.C. 8111 and reauthorizes BCAP with certain changes. BCAP provides assistance to biomass producers and owners in two payment categories:

- Matching payments to eligible material owners for the delivery of eligible material to qualified Biomass Conversion Facilities (BCFs). Qualified

BCFs use biomass feedstocks to produce heat, power, biobased products, research, or advanced biofuels. The 2014 Farm Bill adds research as an authorized use of material by BCFs.

- Establishment and annual payments to producers who enter into contracts with CCC to produce eligible biomass crops on contract acres within BCAP project areas.

This rule implements all the required 2014 Farm Bill changes to both parts of the program and seeks comment on FSA's implementation of BCAP, given the required changes and changes to funding. The rule also includes several discretionary changes, including the removal of the participant's option for assignment of BCAP payments to third parties, and a clarification of how the two-year period of eligibility for matching payments, commencing with the effective date of this rule, will be calculated.

Definitions and Terms Used in This Rule

This rule adds, removes, or revises the following definitions:

- "Agricultural residue" is being added and includes crop residues and woody orchard wastes. Both these types of residues can be eligible materials.
- "Beginning farmer or rancher" is being removed, because that term is defined in 7 CFR part 718, which is referenced in § 1450.2.
- "Dry ton" is being revised to clarify requirements for measuring moisture content of eligible woody materials.

- "Eligible crop" is being revised to clarify that noxious and invasive species are ineligible for establishment and annual payments, and to move specific eligibility requirements to § 1450.200.
- "Eligible land" is being added to reflect the 2014 Farm Bill requirements, which add eligibility for Conservation Reserve Program (CRP) acreage or land in the Agricultural Conservation Easement Program (ACEP) that expires in the current year of a BCAP project area signup and has not yet received a CRP or ACEP annual rental payment in the current year.
- "Eligible material" is being revised to reflect the 2014 Farm Bill required changes for matching payments, and to move the specific eligibility requirements for material for matching payments to section § 1450.103.
- "Native sod" is being revised to reflect the 2014 Farm Bill's change in definition for native sod that is required for other USDA programs. For the purposes of consistency with crop insurance and the Noninsured Crop Disaster Assistance Program (NAP) regulations that now restrict the eligibility of native sod for those programs, the definition of native sod for the purposes of BCAP will now include ground that has never been tilled or the producer cannot substantiate that the ground has ever been tilled.
- "Socially disadvantaged farmer or rancher" is being removed, because that term is defined in 7 CFR part 718, which is referenced in § 1450.2.

Matching Payments

The changes to the BCAP matching payments required by the 2014 Farm Bill

include a reduced payment rate of up to $1 for each $1 per ton provided by the biomass conversion facility, in an amount not to exceed $20 per dry ton (previously $45 per ton) for a period of up to 2 years. The rate is being changed in § 1450.106.

As specified in the 2014 Farm Bill and in this rule, bagasse, which includes sugar cane and sorghum biomass, is now specifically excluded from the definition of an eligible material and the requirements for eligible materials in Subpart B. This rule also requires that all eligible material be collected or harvested directly from the land according to an approved conservation plan, forest stewardship plan, or equivalent plan. For example, manufacturing wood wastes that are not harvested directly from the land, such as sawdust or sawmill residues, are not eligible woody material. Woody material, including orchard waste, must be collected and harvested directly from the land and must also be a by-product of preventive treatments for hazardous fuel reductions, or reduction or containment of disease or insect infestations. Woody material that is a by-product of preventative treatments solely for the purpose of restoring ecosystem health is no longer eligible. Woody material that can be used to create a higher-value product (such as a mulch product) is not eligible. The 2014 Farm Bill definition of "eligible material" also specifies that eligible material can now be used by a biomass conversion facility for the purpose of research, in addition to heat, power, biobased products and advanced biofuels.

The 2014 Farm Bill clarifies that the rate for matching payments must be based on a "dry" ton. Therefore, this rule adds a requirement that biomass conversion facilities must use the applicable American Society for Testing and Materials (ASTM) standards to determine dry ton weight of eligible materials. In addition, the eligible material owner, as specified in § 1450.104, is required to submit a request for payment on approved

eligible woody material deliveries based on the dry ton weight that was determined using an ASTM standard.

The 2014 Farm Bill continues the matching payment eligibility period of 2 years total per eligible material owner. This rule specifies that any matching payments received before the effective date of this final rule will not count towards an eligible material owner's 2-year period of eligibility for matching payments. This is a discretionary decision. FSA determined that the revised requirements for eligible materials and the reduction in payment rate changed the scope of the matching payments part of BCAP to the extent that a new 2-year period of payment eligibility for eligible material owners is appropriate.

Project Areas

The changes to BCAP establishment and annual payments required by the 2014 Farm Bill include:

- Project area selection criteria will include consideration of existing project areas and continuation of funding to advance the maturity of such project areas;
- Land eligibility will now include expiring CRP land and ACEP land, but the 2014 Farm Bill prohibits the Secretary from making a BCAP payment if a CRP or ACEP payment was received in the same year;
- Establishment payment rates are reduced to not more than 50 percent of the costs of establishing an eligible perennial crop, not to exceed $500 per acre, except that socially disadvantaged farmers or ranchers may be

reimbursed up to $750 per acre; and

- Any plant that is an invasive or noxious species is explicitly excluded from the definition of "eligible crop."

The 2014 Farm Bill also provides specific authority for the Secretary to consider whether the biomass conversion facility for the project area has equity sufficient to be in operation by the date on which the eligible crops are ready for harvest. Under prior regulations, CCC could require information demonstrating that the biomass conversion facility would have sufficient equity available to operate. We are requesting comments on how we should apply this criterion in future Requests for Proposals (see Comments Requested section below).

The 2014 Farm Bill clarifies that eligible crops for a project area do not include invasive or noxious species or varieties of plants. Therefore, this rule amends § 1450.200 to effect that exclusion. If a project area proposal includes species or plant varieties whose potential to be invasive or noxious has not yet been determined, the 2014 Farm Bill requires CCC to use "credible risk assessment tools or other credible sources" to determine which plants are invasive or noxious in a particular area. We are requesting comments on which credible risk assessment tools or other credible sources for determination CCC should use (see Comments Requested section below). The requirement to use credible risk assessment tools to determine which plants are invasive or noxious is in addition to the existing National Environmental Policy Act (NEPA) requirements that apply to BCAP, which are not changing. FSA will continue to require the appropriate level of (NEPA) review, consistent with 7 CFR 799, for BCAP project area proposals.

As required by the 2014 Farm Bill, this rule amends § 1450.202 to include status as an existing project area as a new criterion in selecting BCAP project areas for funding, in order to advance the maturity of existing project areas. The 2014 Farm Bill does not specify what is meant by "maturity" of a project area. Different factors could be considered when determining "maturity," including the harvesting of longer term crops, such as biomass trees, or the expansion of a project area, making it more economically viable in the long term. We are requesting comments on how FSA should apply this criterion (see Comments Requested section below).

This rule amends § 1450.204 to make the changes in the definition of eligible land required by the 2014 Farm Bill. Specifically, CRP contract acreage and Grassland Reserve Program (GRP) contract acreage were previously not eligible for BCAP, regardless of whether or not the CRP or GRP contract was due to expire within the year. The 2014 Farm Bill allows CRP acres that are in their expiring year, and which have not yet received an annual rental payment, to be eligible for enrollment into BCAP. The 2014 Farm Bill consolidates non-easement GRP acres into the CRP, so GRP acres are included in the provisions for expiring CRP land. The 2014 Farm Bill also consolidates GRP easements and Wetland Reserve Program (WRP) contract acreage into the newly created ACEP, administered by the USDA Natural Resources Conservation Service (NRCS). Therefore, § 1450.204 now specifies that the expiring ACEP acres are also eligible for enrollment in BCAP, provided no current year annual payment was received. This rule removes obsolete references to GRP and WRP acreage eligibility.

This rule is revising the levels and rates for establishment payments in § 1450.213 to reflect the limits provided in the 2014 Farm Bill. Specifically, the 2014 Farm Bill

reduces the cost share for establishment payments from 75 percent to 50 percent of actual establishment costs and sets a payment limit of $500 per acre. The limit is $750 per acre if the producer is a socially disadvantaged farmer or rancher. There was no previous cap on payments per acre.

Removal of Assignment Provisions

As a discretionary decision, this rule removes § 1450.9 "Assignments." That section included provisions that allowed participants to assign BCAP payments, including both matching and establishment payments, to third parties. This change is intended to improve program integrity and transparency. BCAP payments, as specified in the 2014 Farm Bill, are intended to benefit the land owner or operator or the eligible material owner. The removal of assignment of payments, under the matching payment portion of the program, lessens the potential for inappropriate assignment of payments to biomass conversion facilities under unauthorized value sharing arrangements. The removal of assignments, under the project area portion of the program, will likely provide greater clarity to stakeholders in project areas, which include project area sponsors and the contracting producers. The removal of the assignment of payment will help clarify that any crop establishment or harvesting services provided by the project sponsor or any other provider to the producer are services outside the scope of the BCAP program and the BCAP contract, and that financial responsibility for those actions is between the service provider and the producer.

Policy Changes for Project Area Activities

FSA will make certain changes to the way the establishment and annual payments portion of BCAP is implemented. These policies do not require changes to the regulations. As noted below, we are requesting comments on this rule and on implementation issues; these changes are being explained to provide information for the commenters (see Comments Requested section below).

The requirements for project area signup are largely unchanged by the 2014 Farm Bill. FSA will continue to initiate project area signup by first requesting project area proposals. Once FSA receives proposals, FSA will select and designate geographic-and-eligible-crop-specific project areas, and then announce producer signup at FSA county offices.

The process for producer signup is changing, to improve program effectiveness. In an effort to provide more timely outreach during signup, FSA will be evaluating and adjusting the timing of the producer signup process. In previous years, BCAP signup periods for establishment payments in approved project areas were relatively short and at less than optimal times for establishing crops. Therefore, FSA is revising the producer signup process to allow project area signups to take place on a continuous basis within the constraints of available funding.

As noted below in the Comments Requested section, FSA welcomes public input on BCAP implementation issues and policies. Most of the itemized issues pertain to changes the 2014 Farm Bill made to the establishment and annual payments component of the program.

Funding Changes in the 2014 Farm Bill

The 2014 Farm Bill specifies the annual amount of funds authorized for BCAP and specifies how funding may be allocated among various activities. Specifically, the 2014 Farm Bill provides mandatory funding of $25 million for each of fiscal years 2014 through 2018, and specifies that the Secretary must use not less than 10 percent, nor more than 50 percent, of the funding for each fiscal year for BCAP matching payments. The $25 million each fiscal year is subject to sequestration or other reductions through the appropriations process. Section 716 of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) effectively limited the funding available for BCAP in fiscal year 2015 to $23 million. The previous authorization for BCAP provided such sums as necessary from the mandatory appropriation for CCC; however, subsequent Congressional actions in the annual appropriations acts placed restrictions on the amount of funding available. The overall result of the 2014 Farm Bill changes in funding is to provide a more stable and predictable stream of funding for BCAP, although the annual amount of funding available is less than in some previous years.

The 2014 Farm Bill also specifically authorizes funding of technical assistance from available BCAP funds. BCAP included technical assistance previously, but FSA did not have the specific authorization to use BCAP funds for those activities. FSA plans to expand technical assistance activities to provide BCAP with enhanced compliance spot checks, greater breadth of environmental reviews, outreach, and training. In addition, BCAP technical assistance will continue to include the development and evaluation of conservation plans, forest stewardship plans, or equivalent plans for participants.

As noted in the next section, FSA seeks comments on how FSA should prioritize and implement various BCAP activities, given the funding authorization provided in the 2014 Farm Bill.

Miscellaneous Corrections

This rule makes several minor technical corrections, such as correcting typographical errors.

Comments Requested on BCAP Implementation

FSA is requesting public comments on how BCAP should be implemented in future years, given the new requirements in the 2014 Farm Bill and the limited funding authority. FSA is, in particular, requesting public comments on the following questions:

- What information could FSA reasonably collect that would provide assurance that the biomass conversion facility has sufficient equity to be in operation by the date on which project area eligible crops are ready for harvest?
- How could FSA best determine if expansion of a project area would advance the maturity of that project area?
- What credible risk tools and sources should FSA consider in determining whether proposed crops are potentially invasive?
- With a new cost share cap of 50 percent for establishment costs for perennial crops in project areas, what establishment practices should FSA consider as most important to support?

- With the new limits to the BCAP budget, what priorities should FSA consider in implementing the program?

Please provide information on these issues, and any other issues of concern with BCAP implementation, to the contacts listed in the ADDRESSES section. Specific comments addressing the issues raised above are most helpful; all comments are welcome. Proposals for alternatives should address data sources, costs, and the provisions of the 2014 Farm Bill that support the alternative. The following suggestions may be helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide any technical information and data on which you based your views.
- Provide specific examples to illustrate your points.
- Offer specific alternatives to the current regulations or policies and indicate the source of necessary data, the estimated cost of obtaining the data, and how the data can be verified.

Submit your comments by the comment period deadline.

Notice and Comment

We are issuing this final rule without prior notice and opportunity for comment. The Administrative Procedure Act (APA) exempts rules "relating to agency management or personnel or to public property, loans, grants, benefits, or contracts" from the statutory requirement for prior notice and opportunity for comment. 5 U.S.C. 553(a)(2).

However, FSA is providing a 60-day comment period and we invite you to participate in this rulemaking by submitting written comments, data, or views. We will consider the comments we receive and may conduct additional rulemaking based on the comments.

Executive Orders 12866 and 13563

Executive Order 12866, "Regulatory Planning and Review," and Executive Order 13563, "Improving Regulation and Regulatory Review," direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866, and therefore, OMB has not reviewed this rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule whenever an agency is required by APA or any other law to publish a proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is exempt from notice and comment rulemaking requirements of the

APA and no other law requires that a proposed rule be published for this rulemaking initiative.

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508), and the FSA regulations for compliance with NEPA (7 CFR part 799). The 2014 Farm Bill extended and revised BCAP and authorized its funding through 2018. FSA has no discretion in these BCAP provisions or changes; the only discretionary provisions in this final rule are minor editorial clarifications. The general scope of BCAP, as implemented under the 2008 Farm Bill, is unchanged. As such, FSA has determined that this final rule does not constitute a major Federal action that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this regulatory action.

Executive Order 12372

Executive Order 12372, "Intergovernmental Review of Federal Programs," requires consultation with State and local officials that would be directly affected by proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed

Federal financial assistance and direct Federal development. For reasons specified in the final rule related notice regarding 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, "Civil Justice Reform." This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The rule does not have retroactive effect. Before any judicial action may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR parts 11 and 780 are to be exhausted.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, "Federalism." The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments."

Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FSA has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under Executive Order 13175. If a Tribe requests consultation, FSA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified in this rule are not expressly mandated by the 2014 Farm Bill.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, or the private sector. Agencies generally need to prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal

governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

SBREFA

SBREFA normally requires that an agency delay the effective date of a major rule for 60 days from the date of publication to allow for Congressional review. This rule is not a major rule under SBREFA. Therefore, FSA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review.

Federal Assistance Programs

The title and number of the Federal Domestic Assistance Program found in the Catalog of Federal Domestic Assistance to which this rule applies is the Biomass Crop Assistance Program – 10:087.

Paperwork Reduction Act of 1995

The regulatory changes in this rule do not require changes to the information collection requests currently approved by OMB control number 0560–0082.

E-Government Act Compliance

FSA and CCC are committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 1450

Administrative practice and procedure, Agriculture, Energy, Environmental protection, Grant programs--agriculture, Natural resources, Reporting and recordkeeping requirements, Technical assistance.

For the reasons discussed above, CCC amends 7 CFR part 1450 as follows:

PART 1450--BIOMASS CROP ASSISTANCE PROGRAM (BCAP)

1. The authority citation for part 1450 continues to read as follows:

Authority: 7 U.S.C. 8111.

Subpart A – Common Provisions

§ 1450.1 [Amended]

2. Amend § 1450.1, in paragraph (b), by removing the word "Program" and adding the word "Programs" in its place.

3. Amend § 1450.2 as follows:

a. Add, in alphabetical order, definitions for "Agricultural residue" and "Eligible land", to read as set forth below;

b. Remove the definitions for "Beginning farmer or rancher" and "Socially disadvantaged farmer or rancher";

c. Revise the definitions for "Dry ton", "Eligible crop", "Eligible material", and "Technical assistance", to read as set forth below;

d. In paragraph (2) of the definition of "Native sod", add the words "or the producer cannot substantiate that the ground has ever been tilled" immediately after the word "tilled"; and

e. In the definition of "Yard waste", remove the word "byproducts" and add the word "by-products" in its place.

The revisions and additions read as follows:

§ 1450.3 Definitions.

* * * * *

Agricultural residue means crop residue from agricultural lands, including woody orchard waste.

* * * * *

Dry ton means one U.S. ton measuring 2,000 pounds. One dry ton is the amount of renewable biomass that would weigh one U.S. ton at zero percent moisture content. Woody material dry ton weight is determined in accordance with applicable American Society for Testing and Materials (ASTM) standards.

Eligible crop means a crop of renewable biomass as defined in this section that is eligible for establishment payments and annual payments as specified in Subpart C of this part.

Eligible land means agricultural and nonindustrial private forest lands on which eligible crops for establishment payments and annual payments may be grown, as specified in subpart C of this part.

Eligible material means renewable biomass, including agricultural residue, as defined in this section that is harvested directly from the land and that is eligible for matching payments, as specified in subpart B of this part.

* * * * *

Technical assistance means assistance in determining the eligibility of land and practices for BCAP, implementing and certifying practices, ensuring contract performance, and providing annual rental rate surveys. BCAP technical assistance may include, but is not limited to: technical expertise and services, information, and tools necessary for the conservation of natural resources on land; technical services provided directly to farmers, ranchers, and other eligible entities, such as conservation planning, technical consultation, and assistance with design and implementation of eligible practices; and technical infrastructure, including activities, processes, tools, and functions needed to support delivery of technical and program services, such as technical standards, resource inventories, training, data, technology, monitoring, compliance spot checks, and effects analyses.

* * * * *

§ 1450.9 [Removed]

4. Remove § 1450.9.

§§ 1450.10 to 1450.13 [Redesignated]

5. Redesignate §§ 1450.10 through 1450.13 as §§ 1450.9 through 1450.12.

6. Revise newly redesignated § 1450.9(b) to read as follows:

§1450.9 Appeals.

* * * * *

(b) Determinations by the Natural Resources Conservation Service, U.S. Forest Service, Department of Interior, Bureau of Land Management, or other authorized technical assistance provider may be appealed in accordance with procedures established in part 614 of this title or otherwise established by the respective Agency.

Subpart B – Matching Payments

7. Revise § 1450.101(a)(2)(v) and (vi) to read as follows:

§ 1450.101 Qualified biomass conversion facility.

(a) * * *

(2) * * *

(v) Use commercial weight scales that are certified for accuracy by applicable State or local authorities and accurate moisture measurement equipment to determine the dry ton weight equivalent of actual tonnage delivered. Woody material dry ton weight must be determined in accordance with applicable ASTM standards; and

(vi) Purchase eligible material at a fair market price that is consistent with similar products, regardless of whether or not the seller has applied for or receives a matching payment authorized by this subpart or if the seller and purchaser are related entities.

* * * * *

8. Amend § 1450.102 as follows:

a. In paragraph (a)(2), remove the words "eligible material" and add the words "eligible material, regardless of whether the eligible material is produced on contract acreage authorized by subpart C of this part," in their place; and

b. Revise paragraph (a)(3).

The revision reads as follows:

§ 1450.102 Eligible material owner.

(a) * * *

(3) Certify that the eligible material for which a payment may be issued as

specified in § 1450.106 has been harvested according to a conservation plan, forest stewardship plan, or equivalent plan, and, if woody eligible material collected or harvested on land other than contract acreage, the woody material is a by-product of preventative treatments that was removed to reduce hazardous fuels or to reduce or contain disease or insect infestation.

* * * * *

9. Amend § 1450.103 as follows:

a. Revise the section heading;

b. Revise paragraph (a), introductory text;

c. Remove paragraph (a)(1) and redesignate paragraphs (a)(2) through (4) as paragraphs (a)(1) through (3);

d. Revise newly redesignated paragraph (a)(2)(i);

e. Revise paragraphs (b)(1), (3) and (4) and add paragraphs (b)(5) through (10); and

f. Add paragraph (c).

The revisions and additions read as follows:

<u>§ 1450.103 Eligible material for payments.</u>

(a) Except for the exclusions specified in paragraph (b) of this section, in order to qualify for matching payments, eligible material must meet the following requirements:

* * * * *

(2) * * *

(i) By-products of preventative treatments that were removed to reduce hazardous fuels or to reduce or contain disease or insect infestation; and

* * * * *

(b) * * *

(1) Any eligible material delivered before **[Insert date 90 days after date of publication in the FEDERAL REGISTER]**;

* * * * *

(3) Material that is whole grain from any crop that is eligible to receive payments under title I of the Agricultural Act of 2014 or an amendment made by that title, including, but not limited to, barley, corn, grain sorghum, oats, rice, or wheat; honey; mohair; certain oilseeds such as canola, crambe, flaxseed, mustard seed, rapeseed, safflower seed, soybeans, sesame seed, and sunflower seeds; peanuts; pulse; chickpeas, lentils, and dry peas; dairy products; sugar; and wool and cotton boll fiber;

(4) Animal waste and by-products of animal waste including fats, oil, grease, and manure;

(5) Food waste and yard waste;

(6) Algae;

(7) Woody eligible material that is not a by-product of a preventative treatment to reduce hazardous fuel or to reduce or contain disease or insect infestation;

(8) Any woody eligible material collected or harvested outside contract acreage that would otherwise be used for higher-value products;

(9) Any otherwise eligible material collected or harvested outside contract acreage that, after delivery to a biomass conversion facility, its campus, or its affiliated facilities, must be separated from an eligible material used for a higher-value market

product in order to be used for heat, power, biobased products, research, or advanced biofuels; or

(10) Bagasse.

(c) For eligible woody material harvested or collected from public lands, a person having the right to harvest or collect eligible material pursuant to a contract or permit with the U.S. Forest Service or other appropriate Federal agency will not be eligible for additional haul costs unless the facility is a further distance than specified in the contract requirement or the material was not a mandatory removal item from Federal lands.

10. Amend § 1450.104 by revising paragraphs (a), (b), and (f)(1) to read as follows:

§ 1450.104 Signup.

(a) Applications for participation and requests for payments under this subpart will be accepted as specified in the FSA announcement(s) in a given fiscal year through the end of the announced sign up period on a continuous basis, subject to the availability of funds.

(b) An eligible material owner must apply to participate in the matching payments component of BCAP before delivery is made to a qualified biomass conversion facility and before payment for the eligible material is received from the qualified biomass conversion facility. The application must be submitted to the FSA county office servicing the tracts of land where the collection and harvest will occur and must be approved by CCC, before any delivery is made to or payment is made by the qualified biomass conversion facility for the eligible material.

* * * * *

(f) * * *

(1) Total actual tonnage delivered and a total dry weight tonnage equivalent amount determined by the qualified biomass conversion facility using standard moisture determinations applicable to the eligible material (Woody material dry ton weight is determined in accordance with applicable ASTM standards);

* * * * *

11. Amend §1450.106 as follows:

a. Revise paragraph (a); and

b. In paragraph (b), remove the amount "$45" and add the amount "$20" in its place.

The revisions read as follows:

<u>§ 1450.106 Payments.</u>

(a) Payments under this subpart will be made for a term not to exceed 2 years, commencing on the date that CCC issues the first payment under this subpart to the participant. The 2-year eligibility period for each participant runs from the date that the participant is first issued any matching payment from CCC, regardless of payment for subsequent deliveries to any other biomass conversion facility. The eligibility period will not include any BCAP matching payments received prior to **[Insert date 90 days after publication in the FEDERAL REGISTER].**

* * * * *

Subpart C – Establishment Payments and Annual Payments

12. Add § 1450.200(b) to read as follows:

§ 1450.200 General.

* * * * *

(b) Eligible crops include renewable biomass, as defined §1450.2, excluding:

(1) Any crop that is eligible to receive payments under title I of the Agricultural Act of 2014 or an amendment made by that title, including, but not limited to, barley, corn, grain sorghum, oats, rice, or wheat; honey; mohair; certain oilseeds such as canola, crambe, flaxseed, mustard seed, rapeseed, safflower seed, soybeans, sesame seed, and sunflower seeds; peanuts; pulse; chickpeas, lentils, and dry peas; dairy products; sugar; and wool and cotton boll fiber; and

(2) Any plant that CCC has determined to be either a noxious weed or an invasive species. With respect to noxious weeds and invasive species, a list of such plants will be available in the FSA county office.

13. Amend § 1450.201 as follows:

a. In paragraph (a)(3), add the words "has or" immediately before the word "will"; and

b. Revise paragraph (a)(4).

The revision reads as follows:

§ 1450.201 Project area proposal submission requirements.

(a) * * *

(4) Any other information that gives CCC a reasonable assurance that the biomass conversion facility will be in operation in a timely manner so that it will use the eligible crops, as determined by CCC.

* * * * *

14. Amend § 1450.202 as follows:

a. In paragraph (a)(8), remove the word "and";

b. Revise paragraph (a)(9); and

c. Add paragraph (a)(10).

The revision and addition read as follows:

§ 1450.202 Project area selection criteria.

(a) * * *

(9) Status as an existing project area that has received funding under this subpart and the continuation of funding such project areas to advance the maturity of such project areas; and

(10) Any other necessary additional information, as determined by CCC.

* * * * *

15. Amend § 1450.204 as follows:

a. Revise paragraphs (b)(3) and (4); and

b. Remove paragraph (b)(5).

The revisions read as follows:

§ 1450.204 Eligible land.

(b) * * *

(3) Land enrolled in the Conservation Reserve Program (CRP) as specified in part 1410 of this chapter for which either:

(i) The enrollment is not expiring in the current fiscal year; or

(ii) A CRP payment for this land has been received in the current fiscal year; or

(4) Land enrolled in the Agricultural Conservation Easement Program (ACEP) for which either:

(i) The enrollment is not expiring in the current fiscal year; or

(ii) An ACEP payment for this land has been received in the current fiscal year.

§ 1450.211 [Amended]

16. Amend § 1450.211, in paragraph (g)(4), by adding the word "by" immediately before the word "CCC".

§ 1450.212 [Amended]

17. Amend § 1450.212, in paragraph (d), by removing the words "agreed to" and adding the word "determined" in their place.

18. Amend § 1450.213 by revising paragraphs (a) and (b) to read as follows:

<u>§ 1450.213 Levels and rates for establishment payments.</u>

(a) CCC will pay not more than 50 percent of the actual or average cost (whichever is lower) of establishing non-woody perennial crops and woody perennial crops specified in the conservation plan, forest stewardship plan, or equivalent plan, not to exceed $500 per acre. For socially disadvantaged farmers or ranchers, as defined in part 718 of this title, establishment payments may not exceed $750 per acre.

(b) The average cost of performing a practice will be determined by CCC based on recommendations from the State Technical Committee. Such cost may be the average cost in a State, a county, or a part of a State or county, as determined by CCC. The average cost as determined by CCC will be used for payment purposes, if it is less than the actual cost for an individual participant.

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§ 1450.215 [Amended]

19. Amend § 1450.215, in paragraph (c), by removing the words “the contract” each time they appear and adding the words “the BCAP contract” in their place.

Signed at Washington, D.C. on February 23, 2015.

Val Dolcini
Executive Vice President
Commodity Credit Corporation, and
Administrator,
Farm Service Agency.

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