



**INSTITUTE FOR AGRICULTURE AND TRADE POLICY**

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Regarding: 6264 Federal Register / Vol. 75, No. 25 / Monday, February 8, 2010 / Proposed Rules  
for the Biomass Crop Assistance Program (BCAP) 7 CFR Part 1450

To whom it may concern:

The Institute for Agriculture and Trade Policy is submitting these comments on the Proposed Rule for the Biomass Crop Assistance Program (BCAP). The Institute for Agriculture and Trade Policy works locally and globally at the intersection of policy and practice to ensure fair and sustainable food, farm and trade systems. We have been involved in national and global policy on food, farming, clean energy, trade and global governance for 23 years. In particular, we helped shape the Biomass Crop Assistance Program as it was passed into law last year, and will continue to monitor and contribute to its development and support its implementation. Our goal is for BCAP to meet its vital legislative intent of supporting farmers and bioenergy producers in new and sustainable biomass crop establishment. Thus we are pleased to have at long last a draft rule explaining how the BCAP program will be administered. Unfortunately, the rule is vague or silent on many important features, and we hope that FSA considers carefully the public comments so that the final rule can be vastly improved before launching the central part of BCAP: the crop assistance projects.

#### **Recommendations:**

**Issue a supplemental Programmatic Environmental Impact Statement (PEIS) to thoroughly address alternatives and their relative impacts on soil, water, climate, wildlife and local economies.**

Previously we have commented on the scoping of the BCAP PEIS, which we and others have said set up an odd set of alternatives that we felt were illegal, as they were in contradiction to the BCAP statute. We also commented on the draft PEIS, which we and many others found to be totally inadequate in evaluating the numerous potential environmental impacts of biomass feedstock growing and harvest. One of the most egregious problems with the draft PEIS was

that it completely ignored matching payments for the Collection Harvest Storage Transportation (CHST) program of BCAP. The National Environmental Policy Act (NEPA) must be followed, and a legitimate analysis of environmental impacts of different options must be produced.

**Suspend the current CHST portion of BCAP due to its violation of NEPA requirements. Create a modified CHST with matching payments available only to biomass owners/deliverers in BCAP project areas.**

The matching payments for CHST were originally envisioned to mirror the cost-sharing and annual payments to farmers, in that they would only be offered in selected project areas in order to help these new biomass crops be competitive in the market. Despite the lack of environmental review, FSA proceeded—in defiance of the National Environmental Policy Act—to issue a notice of funding availability and launch the CHST program, with no rules or public comment period. What has ensued has been of great concern, as payments escalated beyond anyone's expectation. The CBO originally estimated a \$70 million cost for both parts of BCAP over the five-year life of the farm bill, but USDA asked for \$514 million for the first quarter of 2010. So far, based upon USDA provided information, \$164 million has been spent on CHST in the first five months of the fiscal year. It seems entirely likely that continued growth in applications and volumes of biomass will use up the \$514 million, while the cost-benefit analysis predicts \$800 million for each of the next two years—just for CHST.

To date, the forest paper and products industry has captured the bulk of the payments, largely for no public purpose as most of the users were already buying or using biomass for pre-existing energy purposes. This has caused widespread concern within the existing wood industries, as their markets are being greatly disrupted. Of greatest concern is that there has been absolutely no study or evaluation of the environmental impacts of the four million tons of biomass removed from forest and farmland thus far. None.

Following our recommendation would return this program to its original Congressional intent for CHST, which is to help drive the development of new methods, equipment, infrastructure and investment for getting biomass crops from the field to the biomass conversion facility. The effect of our recommendation would be to stop matching payments for woody, agricultural and herbaceous resources and waste materials, unless they were sourced within a BCAP project area and used for new energy production. We do commend the Farm Service Agency (FSA) for suspending new applications to CHST while a rule and public comment period allow FSA to revise and restrict the rules. However, we understand that existing contracts are being honored and payments continue, and the rule should halt those payments.

**Establish a competitive ranking process for the selection of BCAP Projects.**

BCAP was designed to promote biomass production for energy in a way that meets strong requirements for environmental and climate sustainability. The proposed rule fails to institute those requirements. The law lays out eight BCAP Project Area Selection Criteria which FSA is obliged to use. These are not eligibility requirements, which would be written as yes-no questions if Congress intended for BCAP to be an entitlement program. Instead, they are qualities and relative impacts to be considered in selection of projects. For example, the criteria “impact on soil, water and related resources” entails many factors which should be compared between applicants, such that the highest environmental performance ranks highest. FSA should develop application requirements to solicit information on how the applicant expects to perform on each criteria. A scoring and ranking process, including recommendations from

review panels of qualified experts, should be created. Only the highest performing project applications that are determined to meet all of the requirements should be selected.

**Put top priority on the selection criteria of how feedstock production affects soil, water and wildlife resources.**

According to the 2008 Farm Bill and the accompanying Manager's Statement, BCAP's primary focus is succinctly stated: "promoting the cultivation of perennial bioenergy crops and annual bioenergy crops that show exceptional promise for producing highly energy-efficient bioenergy or biofuels, preserve natural resources, and are not primarily grown for food or animal feed." We feel strongly that biomass production is only worthwhile if it protects soil, water, climate and wildlife, and every project should be rigorously evaluated to make sure this is the case in order to meet the legislative intent.

**Put a priority on the selection criteria of local ownership opportunity, and participation by beginning and socially disadvantaged farmers.**

BCAP is not an entitlement. Projects are to be selected based on their performance on these criteria. Applications should demonstrate effort to include producers, and especially beginning and historically disadvantaged producers, in owning this new enterprise of biomass for energy. Farmers should have the opportunity to invest in the profit-making potential of the entire energy operation—not just to sell biomass.

**Eligible materials for BCAP projects should be perennial and woody crops intentionally grown by producers.**

These are often called dedicated energy crops and were clearly prioritized by Congress in the passage of BCAP. Non-eligible materials should include wastes, residues of annual crops or forests, animal wastes or byproducts or food wastes.

**No Title 1 crop residue should be eligible for any part of BCAP.**

The law says that BCAP-eligible crops exclude "any crop that is eligible to receive payments under Title 1 of the Food, Conservation, and Energy Act of 2008 or an amendment made by that title." To any reasonable person, and to virtually everyone involved in the passage of BCAP, the word "crop" is operative and it means the entire plant that is grown. Congress meant to exclude corn stover and all other residues of Title 1 commodity crops. If Congress had meant to divide the grain from the residue in its meaning, they would have excluded "any commodity" eligible under Title 1. But they said crop, and that was because they did not intend for the inclusion of commodity crop residues which are a byproduct of commodity product, for which the CCC already pays direct payments, crop insurance subsidies, countercyclical subsidies, and disaster payments. There is no rational reason to subsidize again a byproduct of another product that is already fully subsidized. In addition, many scientists and agriculture officials have serious objections to removal of residues which will potentially cause increasing erosion and greenhouse gas emissions from the soil due to loss of cover, organic matter and soil degradation.

**Delegate to NRCS the exclusive authority and sufficient funding to set standards for required conservation plans for BCAP contracts, and to approve or deny proposed plans.**

The law clearly stated that every producer with a BCAP contract must develop a site-specific conservation plan, and that the plan must be approved to ensure there will be no environmental degradation. However, the draft rules released are fatally flawed by their lack of specificity as to what must be included in the plan, what minimum performance is required, what resources will

be considered and who has authority to administer all of the above. Instead, the rules would define a conservation plan using the exact words that define a Conservation Reserve Program conservation plan, an irrelevant plan because it is intended for “solving identified natural resource problems by devoting eligible land to permanent vegetative cover [...] or comparable measures.” BCAP has a completely different purpose of stimulating biomass production without environmental harm. We object to assigning local soil and water conservation districts the responsibility to approve or deny the individual plans because, while incredibly knowledgeable and important for local conservation issues, they often understandably do not have knowledge of specific biomass-related issues, relevant guidance to use in approving or disapproving, nor staff to assist farmers with plans, and, most critically, no dedicated funding to carry out this role. We wonder if they or any of their representatives were ever asked if they could perform this role. And then, even if they do deny approval, FSA retains the right in the proposed rule to approve plans anyway. This confused and conflicting administration does not represent the type of verification and decision-making that is needed for a new working lands program such as BCAP. Therefore, while we are opposed to the overall administration proposed, we strongly object to the proposed rule that FSA can approve any plan for no particular reason, even if denied approval by conservation districts.

FSA should sign a memorandum of agreement with the Natural Resources Conservation Service (NRCS), similar to that used for jointly implementing the Conservation Reserve Program, but designed specifically for biomass crop establishment and management. Authority and funding should be transferred to NRCS to set national standards for conservation plans for all acres included in BCAP contracts, and both new and pre-existing conservation or forest stewardship plans should be reviewed by NRCS to determine if standards are met. NRCS should use a conservation measurement tool like that developed for the Conservation Stewardship Program to determine minimum allowable conservation performance scores for impacts on soil quality, soil erosion, soil carbon, water quality, water quantity, climate and wildlife. CHST matching payments (within project areas only, we recommend) should also require approved conservation plans for all biomass harvests.

#### **Allow sales from BCAP acres to buyers other than the project facility, with payment reductions.**

Although the intent is for BCAP producers to sell to the bioenergy facility, it is important that the facilities not attain undue power over biomass producers in the market, especially as facilities may not be ready to operate when planned, may scale back production or slash prices to levels unprofitable for producers after farmers have already established the crop, locking them into this long-term investment. Farmers should always retain the right to sell their biomass elsewhere, although that may certainly require reductions in payments to biomass producers. In addition, seed harvests from BCAP contract acres should also be allowed. These new energy crops will need massive increases in commercial seeds, often from locally adapted native species for sale within the local region, and BCAP producers could help meet that need without providing significant market distortions for existing native seed producers.

#### **Do not allow irrigation on BCAP contract acres.**

In incentivizing the next generation of biomass crops for bioenergy and biofuel production, reduced use of inputs is desired. Considering the growing concerns about water availability, it does not make sense for public dollars to incentivize biomass cropping systems that use or require irrigation. The goal is to focus on resilient biomass crops that can grow satisfactorily with rainfall, so we think irrigation should not be an allowed practice for BCAP crops.

**Do not allow genetically modified varieties of biomass crops.**

Introducing genetically modified varieties of biomass raises the potential for unintended adverse environmental impacts, especially the possibility of creating invasive species and cross-pollination contamination of native species and natural ecosystems. The PEIS pointed out that expensive and lengthy site-specific environmental reviews will have to be done if GMOs are used. There is no need to subsidize GMOs under BCAP because there are so many existing crop varieties that have already been identified as extremely productive, are native varieties supremely suited for their local areas, or are varieties that can be improved effectively using traditional, non-GMO breeding techniques.

**Clearly prohibit conversion of forests, wetlands, prairies or any natural ecosystems to biomass crops.**

Biomass crops should be grown on former croplands and marginal lands that are better suited to perennial biomass than annual crops, in order to prevent erosion and water runoff. They should never be the cause of destruction of natural ecosystems that already provide numerous environmental benefits.

Thank you for the opportunity to comment on the Biomass Crop Assistance Program, and for your consideration of our comments. Please contact us with any questions.

Sincerely,

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