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HEARING TO REVIEW THE IMPLEMENTATION OF THE 2008 FARM BILL ENERGY TITLE

HEARING

BEFORE THE

SUBCOMMITTEE ON CONSERVATION, CREDIT, ENERGY, AND RESEARCH

OF THE

COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

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HEARING TO REVIEW THE IMPLEMENTATION OF THE 2008 FARM BILL ENERGY TITLE

WEDNESDAY, JUNE 9, 2010

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CONSERVATION, CREDIT, ENERGY, AND RESEARCH,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The Subcommittee met, pursuant to call, at 10:00 a.m., in Room 1300 of the Longworth House Office Building, Hon. Tim Holden [Chairman of the Subcommittee] presiding.

Members present: Representatives Holden, Herseth Sandlin, Dahlkemper, Schauer, Kissell, Boccieri, McIntyre, Bright, Murphy, Owens, Minnick, Pomeroy, Goodlatte, Moran, King, Neugebauer, Schmidt, Smith, Luetkemeyer, Thompson, and Cassidy.

Staff present: Nona Darrell, John Konya, James Ryder, Anne Simmons, Rebekah Solem, Liz Friedlander, Patricia Barr, Tamara Hinton, Josh Maxwell, Mary Nowak, Jamie Mitchell, and Sangina Wright.

OPENING STATEMENT OF HON. TIM HOLDEN, A REPRESENTATIVE IN CONGRESS FROM PENNSYLVANIA

The CHAIRMAN. This hearing of the Subcommittee on Conservation, Credit, Energy, and Research to review the implementation of the 2008 Farm Bill energy title will come to order. I would like to welcome our witnesses and guests to today's hearing. I hope this hearing will provide the Members of this Subcommittee and the public with a better understanding of the progress USDA is making toward full implementation of the 2008 Farm Bill energy title and programs. The Food Conservation and Energy Act of 2008 expanded many of the renewable energy programs originally authorized in the 2002 bill and introduced many new provisions intended to ensure that agriculture will play an important role in moving this country toward energy independence.

This Committee crafted a bill to encourage and move to advanced biofuels by promoting research, development, and demonstration of biomass based renewable energy, and by providing over $1 billion in investments needed to show a promising but fragile industry that we are committed to renewable energy production. Two years later, however, implementation of these energy title programs has been slow and many are not yet operating under a final rule. Money has been awarded under some programs while final rules are still being worked out causing confusion and uncertainty in an industry we intended to strengthen and support.

I hope our witnesses today will speak to this delay in implementation and address our concerns that some of the programs do not seem to be following the intent of Congress. Over the past few decades, we have seen an expanding list of initiatives on not only the Federal, but also the state and local levels that have helped encourage renewable energy production and use. The Department of Agriculture has a successful history in providing support for these programs and should remain the leader in driving our renewable fuel industries. It is important to remember we must all work together to ensure that taxpayer dollars are being spent wisely and as intended if we are to expand domestic production of renewable energy and decrease our dependence on foreign oil. I look forward to hearing from our witnesses today.

And the Ranking Member is on his way. Mr. Moran, do you have any opening statement you would like to make in his absence?

Mr. MORAN. Mr. Chairman, until the arrival of the Ranking Member, my suggestion is that you proceed with the hearing.

The CHAIRMAN. I thank the gentleman.

The chair asks all other Members of the Subcommittee to submit any opening statements for the record.

[The prepared statements of Messers. Peterson, Goodlatte, and Smith follow:]

PREPARED STATEMENT OF HON. COLLIN C. PETERSON, A REPRESENTATIVE IN CONGRESS FROM MINNESOTA

Thank you, Chairman Holden, for calling today's hearing. The energy title of the 2008 Farm Bill is a good example of why this Committee chose to start farm bill hearings earlier this year. Writing the 2008 Farm Bill took longer than expected, resulting in a shorter implementation cycle for the Administration and its agencies. A short implementation cycle can force agencies to rush money out the door, in some cases undoing some of the hard work that goes into preparing a farm bill.

This time, I hope we can produce a bill that USDA can implement more fully before we have to start considering the next version of the farm bill. By doing this, we can avoid wasting precious taxpayer resources, and Congressional intent can be better followed. One example of what can happen when we combine a good idea with an inadequate implementation process is the Biomass Crop Assistance Program. Congress had the right intentions with BCAP, but due to incomplete implementation, BCAP has turned into more of a boondoggle than a boon in many people's eyes.

Compounding the issues surrounding implementation is the fact there is no CBO baseline set for the energy title in the next farm bill, and that is a serious issue we are going to face when we start work on the next bill. Writing good policy and ensuring correct implementation is now even more important given the greater need for Federal investment in renewable energy development. It is important that we take the time to receive feedback, evaluate existing programs and make appropriate changes as we begin that process. In writing the new farm bill, I expect to get policy done the right way, in regular order, and followed by timely implementation. We are committed to investing in energy efficiency and renewable energy production while also ensuring that funding is spent wisely.

Proper oversight and efficient rule making are essential to the sustainability of the energy title and the support of taxpayers. We are never going to see the full potential and promise of renewable energy fulfilled without consistent, reliable, and well-timed investment. It is common knowledge that the renewable energy industry is working in a tough financial environment, and we are asking USDA once again, what can be done in today's credit situation to get these programs working for the bioenergy facilities they were designed to help? We need to consider how to better use existing and new programs to get us further down the road towards energy independence as an industry and nation. Thank you, Chairman Holden, and I yield back my time.

PREPARED STATEMENT OF HON. BOB GOODLATTE, A REPRESENTATIVE IN CONGRESS FROM VIRGINIA

Mr. Chairman, I would like to thank you for holding today's hearing to review the implementation of the 2008 Farm Bill energy title.

The 2008 Farm Bill expanded on the previous energy title by increasing funding for programs for the development of advanced biofuels, and created new policies that would advance next generation biofuels and reduce our reliance on corn ethanol as the only viable commercial biofuel.

Advanced biofuels have enormous potential to create renewable fuel outside of the Corn Belt. Almost ⅔ of the Commonwealth is forested, as is much of the southeastern U.S. Trees are an abundant resource and are available for conversion into both paper and biofuels year-round. Let me also add that, like forestry biomass, Virginia's many agricultural commodities and animal waste products also have the potential to be essential and beneficial resources of a renewable fuel. It is crucial that a diverse market of feedstocks and next generation renewable fuels are developed to meet the renewable fuels mandate that is currently in place.

In May of 2009, President Obama made a directive to USDA to push 2008 Farm Bill energy title dollars out of the door within 30 days. I appreciate the President's enthusiasm to get these programs functional; however, throwing money at the problem is not the solution. It is unfortunate that 2 years after the adoption of the farm bill and 1 year after the President's directive none of the major provisions in the title are operating under their final rules.

USDA has paid out millions of dollars through programs that are not operating the way Congress intended. For example, the Biomass Crop Assistance Program was created to incentivize our farmers to grow dedicated energy crops. However, USDA has paid out hundreds of millions of dollars over the original estimated costs of the program, but no new biomass is being grown. This is not the best use of our taxpayer's dollars and this is not the proper way to invest in our farmers and ranchers who provide the renewable feedstocks needed for our nation's energy diversity.

Again, thank you, Mr. Chairman, for holding this hearing. I look forward to hearing from today's witnesses.

PREPARED STATEMENT OF HON. ADRIAN SMITH, A REPRESENTATIVE IN CONGRESS FROM NEBRASKA

Thank you, Mr. Chairman:

I appreciate the Subcommittee holding a hearing today on the energy title of the 2008 Farm Bill. Nebraska's Third Congressional District is a leader in biofuels, and I remain committed to advancing the critical, timely development of our nation's biofuels industry while decreasing our nation's dependence on foreign oil.

While I am confident we can forward our biofuels agenda to promote a cleaner environment and alleviate the economic pain Americans continue to experience, I remain concerned with the lack of urgency shown by the Department of Agriculture, in conjunction with the Department of Energy and the Environmental Protection Agency, in finalizing rules to validate producers and investors. Without a strong commitment from these agencies, our advanced biofuels industry remains erratic, jeopardizing our nation's path to energy independence.

Again, I appreciate the Subcommittee holding this hearing to review the implementation of the energy title, and I look forward to hearing the observations and recommendations of our witnesses.

Thank you. I yield back.

The CHAIRMAN. We would like to welcome our panel of witnesses to the table today, Mr. Jonathan Coppess, Administrator, Farm Service Agency, U.S. Department of Agriculture; Ms. Cheryl Cook, Deputy Under Secretary for Rural Development, United States Department of Agriculture; Ms. Carmela Bailey, National Program Leader for Biobased Products and Bioenergy, National Institute of Food and Agriculture. Ms. Cook, you may begin when you are ready.

STATEMENT OF CHERYL COOK, DEPUTY UNDER SECRETARY FOR RURAL DEVELOPMENT, U.S. DEPARTMENT OF AGRICULTURE; ACCOMPANIED BY JONATHAN W. COPPESS, J.D., ADMINISTRATOR, FARM SERVICE AGENCY, USDA; AND CARMELA BAILEY, NATIONAL PROGRAM LEADER FOR BIOBASED PRODUCTS AND BIOENERGY, NATIONAL INSTITUTE OF FOOD AND AGRICULTURE, USDA, WASHINGTON, D.C.

Ms. COOK. Thank you, Mr. Chairman, and Members of the Subcommittee. Good morning. On behalf of my colleagues, Jonathan Coppess, FSA Administrator, and Carmela Bailey, National Program Leader for Biobased Products and Bioenergy, National Institute of Food and Agriculture, thank you for the opportunity to appear before you today to discuss implementation of the farm bill energy title. In the interest of time, we would like to submit our written testimony for the record, and I will be delivering a consolidated opening statement on behalf of all three of us so that we can get as quickly as possible to a good discussion with you.

Of course, the energy title is not the only place in the farm bill one finds provisions on energy. This year, USDA is celebrating 75 years of rural electrification and amendments to the Rural Electrification Act are found in subtitle B of Title VI, particularly a new emphasis on renewables. The Rural Utilities Service will lend more than $7 billion to the nation's rural electric cooperatives this year. This will not only provide reliable, affordable electricity to the co-ops 45 million member-owners; these loans and loan guarantee programs also actually operated at negative subsidy rate meaning they make money for the Federal Government too.

Rural Development business programs authorized in Title VI have also been used to finance energy projects including the Business and Industry Loan Guarantee Program, the Rural Business Enterprise Grant Program and the Value-Added Producer Grant Program. In total, Rural Development invested over $460 million last year in energy and energy efficiency for nearly 3,000 businesses creating 7,000 jobs.

America's energy system is in transition, Mr. Chairman. For environmental, economic, and national security reasons, we have to diversify our fuel supply, reduce our dependence on imported oil, reduce our carbon footprint, and develop our abundant renewable energy resources. The Obama Administration is committed to these objectives, and we are grateful for the leadership this Committee and the Congress are showing now through two farm bills in giving us the tools to support that effort.

Because of feedstock and siting requirements much of America's energy future will be rural energy. Biofuels depend on biomass feedstocks that are generated from the farm and our forests. Utility and small scale wind, small scale hydroelectric, solar, and geothermal developments will be located largely in rural areas. Agriculture is energy intensive and improved energy efficiency is as important to farmers and ranchers as it is for other rural residents, public facilities, and rural businesses in all other sectors.

The energy title is necessarily broad in scope reflecting a comprehensive approach among a variety of USDA agencies that support basic research and facilitate feedstock production, market de-

velopment, commercialization, and distribution of renewable energy and energy efficiency technologies with objectives that compliment USDA's core values.

First, from on-farm cost of production to cooking, cooling, freezing, and of course transporting commodities from farms and ranches to food processors and from processors to wholesalers and retailers, the continuation of our abundant and affordable food supply simply requires abundant and affordable energy supplies.

Second, renewables can contribute to net farm income. Renewable energy can assist with both lowering cost of production and increasing revenues that can come from new products and new market opportunities offering diversified income streams and helping producers manage economic risk.

Third, renewables complement an aggressive research and extension agenda that continues the productivity gains American agriculture and its customers enjoyed during the 20th century.

Fourth, renewables can help in creating and sustaining high quality jobs in rural areas, and, fifth, they help in restoring the rural landscapes such as through manure digesters and minimizing future risk to the environment such as by reducing potential fuel for forest fires.

Against that background, I would like to quickly run through the status of programs in the energy title. In our written statement you have a longer, more detailed description. Four of the five programs assigned to Rural Development are currently being implemented. Our objective has been to restore the private sector's confidence in these industries by offering a consistent public-private partnership through loan guarantees. In total, the Section 9003 and 9007 programs awarded funding for over 1,500 projects last year, which we estimate would create or save approximately 10.3 million Btu's of energy, enough to power over 250,000 homes.

The Farm Service Agency received over 24,000 comments on its proposed rule for full implementation of the Biomass Crop Assistance or BCAP program. FSA is currently evaluating those comments and starting to draft its final rule which is tentatively scheduled to be published no later than this fall. A draft environmental impact statement also was published for comment in August 2009, and those comments will be addressed in the final programmatic environmental impact study which will be published soon.

BCAP outlays were about 26 million last year. This year, $511 million has been made available for BCAP of which $233 million has been expended.

NIFA's Biomass Research and Development, or BRDI Initiative, awarded $25 million last year jointly from USDA and from the Department of Energy's Office of Biomass Programs. The BRDI board convened in March of this year, and was briefed on this year's funding announcement. NIFA and the Department of Energy released that announcement on May 7 and the window for pre-application closes July 13. Finally, NIFA's Biodiesel Fuel Education Program provided $1 million to the National Biodiesel Board and the University of Idaho. Contingent upon continued success, NIFA will provide additional support to these projects through 2012.

On behalf of all of us at USDA, Mr. Chairman, Ranking Member Goodlatte, we would like to thank you for your commitment to fu-

ture rural economic opportunity through renewable energy. And we would be happy to address your questions at this time.

[The prepared statement of Ms. Cook follows:]

PREPARED STATEMENT OF CHERYL COOK, DEPUTY UNDER SECRETARY FOR RURAL DEVELOPMENT, U.S. DEPARTMENT OF AGRICULTURE; ACCOMPANIED BY JONATHAN W. COPPESS, J.D., ADMINISTRATOR, FARM SERVICE AGENCY, USDA; AND CARMELA BAILEY, NATIONAL PROGRAM LEADER FOR BIOBASED PRODUCTS AND BIOENERGY, NATIONAL INSTITUTE OF FOOD AND AGRICULTURE, USDA, WASHINGTON, D.C.

Mr. Chairman, Ranking Member Goodlatte, and Members of the Subcommittee, we welcome the opportunity to appear before you today to discuss the implementation of Title IX, the Energy Title, of the 2008 Farm Bill.

America's energy system is in transition. For environmental, economic, and national security reasons alike, America needs to diversify our fuel supply, reduce our dependence on imported oil, reduce our carbon footprint, and develop our abundant renewable energy resources. The Obama Administration is committed to these objectives, and we are grateful for the leadership of the Congress, and in particular its vision in the 2002 and 2008 Farm Bills, in giving USDA the tools to support this vital national effort.

Renewable energy and energy efficiency are important commitments for USDA. Because of its feedstock and siting requirements, much of renewable energy is largely rural energy. Biofuels depend on biomass feedstocks that are generated from the farm and forest. Utility and small scale wind, small scale hydroelectric, solar, and geothermal developments will be located largely in rural areas. Agriculture is energy intensive and improved energy efficiency is therefore an important consideration for agricultural producers just as it is for rural residents, public facilities, and rural businesses in other sectors.

For all these reasons, we at USDA recognize that renewable energy and energy efficiency constitute an enormous opportunity for rural America. With rural broadband, local foods and local markets, and a broad-based rejuvenation of rural business, renewable energy development is among the drivers supporting the revitalization of the rural economy—a rural economy that is more prosperous, that offers more and better jobs, that can attract young families, and that contributes to the nation's efforts towards energy independence and a cleaner environment.

Title IX is broad in scope. The three USDA Agencies testifying today—Rural Development, the Farm Services Agency, and the National Institute of Food and Agriculture—administer a wide variety of programs that support basic research to feedstock production to commercialization, as well as distribution of renewable energy and energy efficiency technologies.

Rural Development

Rural Development administers five Title IX energy programs from the 2008 Farm Bill. Before turning to them in detail, however, it should be noted that Rural Development's support for renewable energy extends well beyond the "9000 series" programs. The commitment to renewable energy is Agency-wide.

For example, most of Rural Development's Title VI business programs have supported renewable energy investments over the years. These include the Business and Industry Guaranteed Loan Program (B&I), the Value-Added Producer Grant program (VAPG), the Rural Business Opportunity Grant (RBOG), the Rural Business Enterprise Grant programs (RBEG), and the Rural Economic Development Loan and Grant program (REDLG). Similarly, the Rural Utilities Service has financed wind, solar and geothermal investments by rural electric cooperatives.

Four of the five Rural Development Title IX programs are currently being implemented. Rural Development is working to present a consistent source of funding to bolster lending and project confidence for these programs. In total, the Section 9003 and 9007 programs awarded funding for 1559 projects during Fiscal Year 2009, which USDA estimates would create or save approximately 10,300,000 million Btu's of energy. This would equate to 1.76 million barrels (5.8 million Btu's per barrel of oil) of crude oil, or enough energy to provide electricity for 250,815 homes (assuming each home consumes 40.9 million Btu's per year).

Section 9003—Biorefinery Assistance Program

The Biorefinery Assistance Program provides loan guarantees to viable commercial-scale facilities to develop new and emerging technologies for advanced biofuels. Eligible entities include Indian Tribes, state or local governments, corporations,

farmer co-ops, agricultural producer associations, higher education institutions, rural electric co-ops, public power entities, or consortiums of any of the above.

Two Section 9003 project investments involving different technologies have been announced to date. These projects are:

- Range Fuels, Inc. received approval of an $80 million guaranteed loan on January 16, 2009. The loan closed on February 10, 2010. This is a cellulosic ethanol project.
- Sapphire Energy received approval for a $54.5 million guaranteed loan on December 3, 2009. The loan is expected to close September 2010.

Looking forward, a balance of approximately $80 million remains to be awarded under the Extension Notice of Funding Availability for Fiscal Year 2009. The Fiscal Year 2010 NOFA provides up to $150 million in budget authority for the Program to support loan guarantees.

Type of Notice	Date of Publication in *Federal Register*	Application Deadline
Extension Notice of Funding Availability FY 2009	March 12, 2010	June 1, 2010
Notice of Proposed Rulemaking	April 16, 2010	June 15, 2010 (comments)
Notice of Funding Availability for FY 2010	May 6, 2010	August 4, 2010

The pace of applications for the Section 9003 program has clearly been affected by the recent recession, volatility in world oil prices, and a high level of caution by lenders in the wake of the credit crisis. The level of interest among potential applicants remains high, and we expect volume to increase in the year ahead as the economic recovery gathers strength.

Section 9004—Repowering Assistance Payments

The Repowering Assistance Program provides payments to biorefineries that use fossil fuels to produce heat and power to replace the fossil fuels with renewable biomass. To be eligible, the biorefineries must have been in existence as of June 18, 2008, and applicants must demonstrate the economic, technical, and environmental feasibility of the proposed biomass system.

As of May 14, 2010, project awards totaling $13,269,383 have been approved and will be announced upon applicants' acceptance of conditions and payment agreements.

Congress appropriated mandatory budget authority of $35 million over the life of the 2008 Farm Bill. In FY 2009, the program was allotted $20 million; the remaining funds were to be spread out to provide support in subsequent years, and to allow the public to participate in the regulation formulation. A balance of approximately $6.7 million of budget authority remains from FY 2009 and is available under the Extension Notice of Funding Availability for Fiscal Year 2009. Up to $8 million is authorized in budget authority for the Notice of Funding Availability for FY 2010.

Type of Notice	Date of Publication in *Federal Register*	Application Deadline
Extension Notice of Funding Availability for FY 2009	March 12, 2010	June 15, 2010
Notice of Proposed Rulemaking	April 16, 2010	June 15, 2010 (comments)
Notice of Funding Availability for FY 2010	May 6, 2010	July 20, 2010

Section 9005—Advanced Biofuel Producer Payments

The Section 9005 Advanced Biofuel Producer Payment program provides payments to producers to support and expand production of advanced biofuels refined from sources other than corn kernel starch. To be eligible, producers must enter into a contract with USDA Rural Development for advanced biofuels production and submit records to document such production.

Determination of Payments as per the Notice of Contract Proposals: The Section 9005 program is designed to favor small producers. Five percent of the funds are allocated for payment to producers of over 150,000,000 gallons. Ninety-five percent of the funds will be allocated for small producers (less than 150,000,000 gallons). In Fiscal Year 2009, 156 producers applied and 141 were determined eligible and awarded $14,711,362 in December 2009.

Producer Payments to:	Number of Producers	Awarded 12/09 Amount of Payments	Percentage of Payment
Biodiesel Producers	80	6,472,996	0.44
Anaerobic Digesters	41	294,227	0.02
Non-Corn Kernel Starch Ethanol:			
Producers	16	7,355,681	0.50
Woody Biomass	4	735,568	0.04
Total	**141**	**$14,711,362**	**1.00**

Congress appropriated mandatory budget authority to this program as follows: $55 million for FY 2009 and $55 million for FY 2010. In FY 2009, the program was allotted $30 million. Approximately $15 million remains in allocated 2009 budget authority, and is available under the Extension Notice of Contract Proposals for FY 2009. The remaining FY 2009 funding of $25 million, and $15 million of funding from the FY 2010 allocation, which totals $40 million in budget authority is available for this program in FY 2010.

Type of Notice	Date of Publication in *Federal Register*	Application Deadline
Extension Notice of Contract Proposals for FY 2009	March 12, 2010	May 30, 2010
Notice of Proposed Rulemaking	April 16, 2010	May 17, 2010 (comments)
Notice of Contract Proposals FY 2010	May 6, 2010	July 6, 2010

Section 9007—Rural Energy for America Program (REAP)

The Rural Energy for America Program—known formerly as the Section 9006 "Renewable Energy Systems and Energy Efficiency Improvements Program"—provides loan guarantees and grants to agricultural producers and rural small businesses to purchase and install renewable energy systems and make energy-efficiency improvements.

Renewable energy systems include those that generate energy from wind, solar, biomass, geothermal sources, or that produce hydrogen from biomass or water using renewable energy, and ocean and hydroelectric source technologies. Energy-efficiency projects typically involve installing or upgrading equipment to significantly reduce energy use. Energy audits and feasibility studies are also eligible for assistance.

Eligible applicants for energy audits include state, tribe, or local governments; land-grant colleges and universities; rural electric cooperatives; and public power entities. Eligible applicants for feasibility studies include rural small businesses and agricultural producers.

REAP Performance for FY 2009

# Projects	Funding Type	Grant Only	G-Loan Only	Combo Grant	Combo Loan
904	Grants Less Than $20 Thousand	$12,040,048			
199	Grants Greater than $20,000	$11,167,222			
380	Combinations			$27,774,710.25	$49,007,390.50
2	Guaranteed Loan Only		$8,451,638		
22	EA/REDA	$2,173,631.00			
50	Feasibility Study	$1,244,600.00			
1,557	Total	$26,625,501.00	$8,451,638.00	$27,774,710.25	$49,007,390.50

# Projects	Category	Sub-Category	Grant	G-Loan
49	Biomass Total		$7,431,859	$17,372,569
14		Anaerobic Digester	$4,117,368	$6,619,198
7		Biodiesel Production	$674,096	$1,341,692
5		Solid Fuel Production	$843,936	$754,679
23		Thermal Conversion	$1,796,459	$8,657,000
1,099	Energy Efficiency		$27,857,621	$18,252,122
7	Geothermal		$881,279	$229,599
4	Hybrid		$180,916	$133,996
4	Hydropower		$464,432	$600,000
166	Solar		$5,994,685	$3,399,253

# Projects	Category	Sub-Category	Grant	G-Loan
116	Wind		$8,171,188	$17,471,490
1,485			$50,981,980	$57,459,029
22	EA/REDA		$2,173,631	
50	Feasibility Study		$1,244,600	
1,557	**Total**		**$54,400,211**	**$57,459,029**

For FY 2010, approximately 75 percent of Rural Energy for America Program (REAP) funds are being allocated to the states. The total amount of appropriated and carry over funds for FY 2010 is $99,371,998 ($39.34 million in discretionary, $60 million in mandatory, and $31,998 carryover from FY 2009). The following charts identify the allocations and projected timelines for FY 2010.

REAP Allocation FY 2010

Energy Audit & REDA	$2,400,000
Feasibility Study	$9,694,000
Grants of $20,000 or less (allocated to the states)	$19,865,706
State Allocation	$55,636,292
National Office REAP Reserve	$11,776,000
Total	$99,371,998

REAP Timeline FY 2010

REAP—Type of Notice	Date of Publication in *Federal Register*
Notice of Funding Availability—Rural Energy for America Renewable Energy Systems and Energy Efficiency Improvements Loan Guarantee and Grants FY 2010	April 26, 2010
Notice of Funding Availability—REAP Energy Audits and Renewable Energy Development Assistance Grants	Anticipated, May 27, 2010
Notice of Funding Availability—REAP Feasibility Studies Grants	Draft Pending
Notice of Proposed Rulemaking—Rural Energy for America Renewable Energy Systems and Energy Efficiency Improvements Loan Guaranteeand Grants FY 2010	Draft Pending
Notice of Proposed Rulemaking—REAP Energy Audits and Renewable Energy Development Assistance Grants	Draft Pending
Notice of Proposed Rulemaking—REAP Feasibility Studies Grants	Draft Pending

Section 9009—Rural Self-Sufficiency Initiative

The Rural Self-Sufficiency Initiative provides grants for the purpose of enabling eligible rural communities to substantially increase their energy self-sufficiency. The bill authorizes funds of $5 million per year, beginning in FY 2009 and continuing through FY 2012.

The program awaits implementation. As of June 7, 2010, no funding has been appropriated.

Farm Service Agency

The Farm Service Agency (FSA) is charged with implementation of two programs authorized under the Energy Title of the 2008 Farm Bill. These include the Biomass Crop Assistance Program (BCAP), and the Feedstock Flexibility Program.

Biomass Crop Assistance Program (BCAP)

The Biomass Crop Assistance Program (BCAP) was enacted in the 2008 Farm Bill as an important component of U.S. energy, environmental and agriculture policy. BCAP was designed to jump-start the development of a large scale non-traditional crop base in order to provide expanded biomass options to carbon-dominated materials used for energy purposes. As the nation transitions further into the development of the biofuels sector, BCAP is designed to address a key "chicken-or-egg" dilemma: commercial-scale biomass conversion facilities require an established large-scale crop base for sufficient feedstock supplies; and conversely, crop producers require an established, commercial-scale marketplace to purchase the non-traditional crop. Incentives must exist for landowners to risk switching from conventional revenue-generating crops to non-food, non-feed crops.

BCAP has two primary components. The first allows matching payments to agricultural and forest land owners and operators for the amount paid for the collection, harvest, storage and transportation (CHST) of eligible biomass materials by a qualified Biomass Conversion Facility (BCF). The second allows up to 75 percent of establishment costs and annual payments to encourage the production of non-traditional bioenergy crops within designated BCAP project areas. The contracts are for up to 5 years for annual and non-woody perennial crops or up to 15 years for woody perennial crops.

The President's proposed budget includes preliminary estimates of outlays for BCAP at approximately $263 million in FY 2010, and $479 million in FY 2011.

On June 11, 2009, FSA published a Notice of Funding Availability (NOFA) implementing the BCAP matching payments provisions for the collection, harvest, storage, and transportation of eligible biomass delivered to a qualified BCF. As of May 31, FSA has disbursed payments totaling $233,181,656 on 4,551 contracts in 31 states. On February 8, 2010, FSA published a proposed rule for the full implementation of the BCAP program and suspended the matching payments provisions until publication of the final BCAP regulation.

FSA accepted comments on the proposed rule until April 9, 2010, and more than 24,000 comments were received. Public comments are being addressed and the final rule and environmental impact statement are in the Departmental clearance process. We are optimistic that the final regulation to implement the full BCAP program will be completed in the autumn timeframe.

Feedstock Flexibility Program

The Feedstock Flexibility Program, authorized as a new program under the 2008 Farm Bill, is to be used to avoid forfeitures of sugar to the CCC by diverting surplus supplies to bioenergy production.

In implementing 2008 Farm Bill programs, FSA has prioritized needed regulations to best utilize staff and resources in implementing the entire suite of programs as quickly as possible. Due to the relatively high level of sugar prices (and low likelihood of forfeitures), use of the Feedstock Flexibility Program is not foreseen by FSA in the near term. Currently, the proposed rule for the Feedstock Flexibility Program is within the internal clearance process.

National Institute of Food and Agriculture

The National Institute of Food and Agriculture administers Section 9008, the Biomass Research and Development Initiative with the Department of Energy. The objectives are to develop technologies and processes necessary for abundant commercial production of biofuels at prices competitive with fossil fuels, and high-value biobased products. These objectives are expected to enhance the economic viability of biofuels and power; serve as substitutes for petroleum-based feedstocks and products; and enhance the value of co-products produced—all of which will result in a diversity of economically and environmentally sustainable domestic sources of renewable biomass for conversion to biofuels, bioenergy, and biobased products.

The legislation describes three technical areas that must be addressed, including Feedstocks Development, Biofuels and Biobased Products Development and Biofuels Development Analysis that includes assessment of Federal land. Since 2009, NIFA and DOE have administered Section 9008 which includes managing active projects previously awarded through Rural Development, as well as leading the program with DOE in 2009 and 2010. This program has been very competitive since it was first authorized in the 2002 Farm Bill. Last year, over 800 pre-applications were received in response to the funding opportunity announcement. Of those, 108 invited full applications were reviewed and 12 awards were made, nine by USDA and three by DOE.

As a joint program, USDA and DOE collaborate on drafting the solicitation, selecting reviewers and administering the peer review process. Beginning last year, the DOE Office of Biomass Program and the DOE Golden Field Office are responsible for administering the pre-application process and NIFA is responsible for administering the full application process. Each agency makes final selections independently based on program policy factors, *e.g.,* the contribution of projects to each agency's bioenergy portfolio.

Currently the funding opportunity announcement for pre-applications is open until July 13, 2010. Pre-applications will be peer reviewed in August 2010, invited full applications will be peer reviewed in early January 2011, and awards will be made in February–March 2011. In 2010, $28M in mandatory USDA spending is authorized, and DOE has also committed $5M. Last year, in addition to addressing at least one of the three technical areas, all applicants were required to give consideration to a life cycle perspective of the technologies being proposed.

This year, applicants are required to integrate all three technical areas to accelerate technology implementation and to address sustainability in the fullest sense: renewable resources, beneficial environmental, economic and social impacts.

This year, technical areas have been expanded to emphasize small scale conversion technologies, local-scale woody biomass-to-energy conversion, new industrial crop and bioproduct development, and field testing of biobased products to industry standards and specifications. Products of interest include lubricants, hydraulic fluids, solvents and packaging materials. We anticipate that biobased products, as well as biofuels, will play a prominent role in reducing our reliance on petroleum.

In addition, the FY 2010 solicitation supports models that focus on public lands regarding the current and future potential for feedstock development, including analysis of new policy approaches to stewardship contracting, forest ecosystem restoration post-insect and disease outbreaks, invasive species management, low-value or dead/dying wood, and grassland restoration projects.

A team within NIFA has been organized to develop a post award evaluation process to ensure we capture all the outcomes and impacts of the program and to ensure that research results and technologies are disseminated as appropriate. Post award evaluation will also allow us to more easily identify knowledge gaps as we move forward.

Thank you for the opportunity to describe our successes and challenges in implementing the Energy Title of the farm bill. We are happy to respond to any questions at this time.

The CHAIRMAN. Thank you, Ms. Cook. Mr. Goodlatte has indicated he will submit his opening statement for the record. Ms. Cook, it is the understanding of this Subcommittee that OMB does not testify at hearings outside of their committee of jurisdiction so our request for them to appear was not approved for today's hearing. However, it has come to our attention that several rules and regulations sent to OMB by USDA were not promptly acted on and were held up at OMB for months. In your opinion, what contributed to the hold up at OMB and why did it take months for OMB to approve some of the rules? And we are talking about the Loan Guaranty Program and BCAP.

Ms. COOK. In my opinion, Mr. Chairman, there really wasn't a hold up. There are capacity issues, to be sure. Understand that in the farm bill, we had not only the Title IX energy programs to stand up in Rural Development, we also had several programs from Title VI, particularly the Rural Micro-Entrepreneurship Assistance Program, and changes to the Value-Added Producer Grant program. All of those things were moving forward simultaneously, and they all move forward to one employee, one examiner at OMB, who is responsible for all things dealing with the Rural Business Cooperative Service. She walked shoulder to shoulder with us every step of the way. I have no complaints. There are maybe three occasions where she has actually saved me from myself in the last 15 months in which I have been back at USDA. I believe OMB has been a good partner in this effort to stand up many, many programs.

The CHAIRMAN. Okay. There have been a lot of complaints in regard to BCAP. Could you please tell the Committee for the record why USDA chose to proceed with only making payments under the collection harvest, storage, and transportation portion of the program and disregarded the other portion of the program, and why did USDA only implement and make payments on half of a program? Is this a common practice? Mr. Coppess?

Mr. COPPESS. Thank you, Mr. Chairman. We proceeded with a NOFA on the collection harvest, storage, and transportation—NOFA being Notice of Funding Availability—pursuant to the Presidential directive in early May, and NOFAs are very common. Dep-

uty Under Secretary Cook knows this, Rural Development uses the NOFA process quite a bit, so it is a very common process when you are dealing with a mandatory program in which there is little discretion for the agency or the Department. Congress says do this series of things and that is what we go out and do. So with a NOFA it was an opportunity to begin implementing this program early. It certainly has been, as you mentioned, a couple years since the farm bill has had a chance to get the program, at least part of that program, up and running and see how it worked on the ground. We have seen quite a bit of interest and response to it, so it was not an uncommon process but certainly one that has provided incredible feedback and information for us in the rulemaking process.

The CHAIRMAN. This Subcommittee and full Committee have been struggling with conflicting definitions of *renewable biomass* with the farm bill and EISA; and we see it as a real problem to being able to take advantage of our resources for energy development. We have asked the Speaker to address this. I just wonder if anyone would like to comment about how serious a problem these conflicting definitions are for the intent of Congress for the farm bill.

Ms. COOK. Obviously, the more we can harmonize definitions the better. So says the Deputy Under Secretary with ten different definitions of the term *rural area.* Our belief from USDA is that this Committee and the farm bill has the right definitions, and that is what we support.

The CHAIRMAN. Thank you. The chair recognizes the Ranking Member, the gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman. Ms. Cook, welcome. Why was the rural area requirement included in the Notice of Contract Proposal for the Fiscal Year 2009 and 2010 Bioenergy Program payments?

Ms. COOK. It is consistent with Rural Development's definitions throughout the Rural Business Cooperative Service programs. That is how we proposed it. We specifically solicited comments on that issue in the proposed rules on that program.

Mr. GOODLATTE. It seems to me that if you are buying biomass from farmers producing it in rural areas but they are actually putting it into facilities that are not located in rural areas, you are not helping farmers when you do that.

Ms. COOK. I can appreciate your position, Mr. Goodlatte. I would encourage you and any of your constituents who share that view to submit comments to us. The more comments we receive the easier it is for us to make adjustments.

Mr. GOODLATTE. Why was the domestic ownership requirement included in the Notice of Contract Proposal for the same 2 years payment in the proposed rule for the Bioenergy Program?

Ms. COOK. The same answer really. That is consistent with how we handle Rural Development programs generally. In this economy given our interest in attracting investment of all kinds to rural America to bring new capital into rural areas, that is another issue on which we are hoping to receive comments and perhaps reconsider in the final rule.

Mr. GOODLATTE. Does it make any sense to restrict assistance to biofuel facilities located in the United States employing American workers and utilizing feedstock produced in rural America?

Ms. COOK. Certainly, we want to create jobs and we want to create products and market opportunities that benefit rural people irrespective of where their project ultimately is located.

Mr. GOODLATTE. Or who is financing it, right?

Ms. COOK. I can't disagree with that either. If you think about things like blender pumps, for example, you want those up and down the I–95 corridor in the most densely populated urban areas even though the producers of the biofuel that goes into that blender pump are probably farmers and rural people.

Mr. GOODLATTE. Well, was any analysis done on which to base these requirements?

Ms. COOK. Again, that is part of the rulemaking process. We are hoping to receive comments. We are hoping to receive further analysis from others in the field and——

Mr. GOODLATTE. I know, but you have already spent a lot of the money without figuring out—I mean the President made this commitment to push all the money out the door in 30 days. You know, that is great. People want to see the money spent. But where was the analysis on how to spend it wisely and how to get the maximum bang for your buck, if you will?

Ms. COOK. We have been engaged in what I will call a balancing act for the last year and a half wanting to be thoughtful, to be careful in how we adopt final rules. Obviously the rulemaking process that goes through the *Federal Register* is transparent. Public comment is part of the process that we have for creating program rules. But we had to balance that with an economy in which we simply weren't getting the private sector to participate. We had ethanol companies that had never missed a payment to their lender calling us up to tell us they would have their working capital cut off. We were trying to balance the need to get capital out as quickly as we could to create jobs, to assist with our objectives under the American Recovery and Reinvestment Act and all of our other Rural Development programs, with the need to go through the public comment period and be as thoughtful as we can in developing final rules.

Mr. GOODLATTE. And you couldn't get the public comment period accomplished in a year and a half?

Ms. COOK. Public comment period on these proposed rules closes next week. I don't know off the top of my head how many comments we have already received, but I can assure you we will move as expeditiously as we possibly can.

Mr. GOODLATTE. When was the regulation written that called for the start of the public comment period?

Ms. COOK. You are asking me when the proposed rule was published?

Mr. GOODLATTE. Yes.

Ms. COOK. April.

Mr. GOODLATTE. April of this year?

Ms. COOK. Yes, sir.

Mr. GOODLATTE. Why did it take until April of this year to do that?

Ms. COOK. A number of reasons mostly having to do with capacity. We did have NOSAs out, and we were recruiting applications. We had to process those.

Mr. GOODLATTE. Capacity meaning you didn't have enough people in your office?

Ms. COOK. Staff capacity, yes. We were also standing up the American Recovery and Reinvestment Act with additional funding for the Business and Industry Loan Guarantee Program at the same time, and developing new rules for several programs out of Title VI of the 2008 Farm Bill that also came under the Rural Business Cooperative Service purview.

Mr. GOODLATTE. And you couldn't get all those launched at the same time?

Ms. COOK. Something had to go in order. Something had to be first, something had to be last.

Mr. GOODLATTE. You can't multi-task? That seems to be the thing day these days, to multi-task.

Ms. COOK. We do have plenty of funding left. The notices that are out, the applications that we are recruiting now for these funds are not for the full amount of funding available even in this fiscal year. Our hope is that as we complete the process of rulemaking we will be able to put out a second Notice of Funding Availability, second opportunities in 9003.

Mr. GOODLATTE. Well, let me ask you this. If the rural area requirement is not included in the proposed rule for the Bioenergy Program, why would the U.S. Department of Agriculture keep it in the subsequent Notice of Contract Proposal that was issued for Fiscal Year 2010 payments?

Ms. COOK. I am sorry. I didn't hear your question. Would you mind asking it——

Mr. GOODLATTE. I will repeat it. If the rural area requirement is not included in the proposed rule for the Bioenergy Program, why would the Department keep it in the subsequent Notice of Contract Proposal that was issued for Fiscal Year 2010 payments?

Ms. COOK. To be consistent with the Notice of Contract Opportunities from the previous fiscal year.

Mr. GOODLATTE. But are we never going to change? Do we always have to be consistent with the previous year?

Ms. COOK. The way to change it is through the rulemaking process.

Mr. GOODLATTE. But you started the process without the rulemaking process and now you are saying you can't change it without the rulemaking process?

Ms. COOK. Yes, sir.

Mr. GOODLATTE. Why? If you could start it without it why couldn't you change it without it?

Ms. COOK. We will change it in the rulemaking process.

Mr. GOODLATTE. But not before?

Ms. COOK. Correct.

Mr. GOODLATTE. Why weren't the rural area and domestic ownership requirements raised by the Department for discussion at the public hearing that the USDA held before the Bioenergy Program Notice of Contract Proposal was issued?

Ms. COOK. I am afraid that predates me, Congressman. I don't know. Let me confer with staff if you would indulge me for a moment.

Mr. GOODLATTE. Thank you.

Ms. COOK. My understanding is that that meeting was only a listening forum on our part. We didn't offer comment to the public. We listened to the public's interests on those programs.

Mr. GOODLATTE. Did anybody on your staff know that this was a potential issue that might have been flagged for the people in the hearing?

Ms. COOK. It was considered, yes.

Mr. GOODLATTE. But not discussed publicly?

Ms. COOK. Apparently not.

Mr. GOODLATTE. Okay. Thank you. Mr. Chairman, I have exceeded my time. Thank you very much.

The CHAIRMAN. The chair thanks the gentleman, and recognizes the gentleman from Ohio, Mr. Boccieri.

Mr. BOCCIERI. Thank you, Mr. Chairman. Ms. Cook, I want to reemphasize some quotable items in your testimony. You suggested that renewable energy is largely rural energy. Biomass feedstocks are generated from farm and forest. Hydroelectric, solar, geothermal developments will largely be located in rural areas. Agriculture is energy intensive and improved energy efficiency is therefore an important consideration for agriculture producers. You go on further to say that with rural broadband local foods and local markets and broad-based rejuvenation of rural business, renewable energy development is among the drivers supporting the revitalization of the rural economy. You also suggest that the implementation of energy programs has been largely and severely delayed due to a change in the Administration, and bottom line is that implementation has been slow, delayed, and in some cases highly controversial. I ask you does USDA believe in the statements that you just made? Are there members within the agency that don't appreciate or concur with your testimony today?

Ms. COOK. Our testimony went through the normal clearance process which would have included the Department level review as well as OMB and others.

Mr. BOCCIERI. Since the previous Administration vetoed twice the farm bill, is it your belief that there are some left over from the previous Administration who don't concur with the statements that you made?

Ms. COOK. I don't know, sir.

Mr. BOCCIERI. I find it a little bit ironic that we are talking about energy and conservation, and most of those are going to be beneficial to the rural community, especially since it is such a highly intensive energy user. Even in the energy bill that went through the Congress this year we have seen that there is quite a bit of investment into rural communities as well as exemption from quite a few of the provisions of that bill. Can you comment to that?

Ms. COOK. No.

Mr. BOCCIERI. Okay. Well, I know that there is a lot of controversial talk about some of these energy provisions. I just do not see how saving farmers money on their energy is controversial, and I don't know how this Administration, the "Agriculture Administra-

tion," is suggesting that these are in some way controversial when they can save so much money according to your own words.

Ms. COOK. We have already discussed one point of controversy, which is how one defines *biofuels*. As I stated earlier, our position is that the farm bill has the right definition. There are other points of controversy, however, and they have mostly to do with things that are beyond this Committee's jurisdiction as well as USDA's, for example, how quickly we can get renewable electric projects to the grid. There are issues that are going to have to be dealt with on a broader level by Congress. We have a structure that was anticipating a nationwide competition in electric that just doesn't seem to be happening, and we have a number of grantees. We have worked closely with Committee staff on this and appreciate their hard work. We have a number of grantees under the old 9006 program, which is now 9007 or REAP, who are in danger of not being able to use the funds that we have awarded them in prior years because they simply can't get their projects to the grid.

Mr. BOCCIERI. I would concur that the cheapest energy is the energy we never use, and that is a position that I think is widely held by a lot of farmers especially in Ohio where the number one industry in the state is still agriculture. One of every seven jobs is connected to it. It is an over $80 billion business so anything that we can do to get those loans, those guarantees out to the farmers quickly and expeditiously, I think is of benefit for us all. I know there may be some who may not agree with that. In fact, vetoing the farm bill twice is a pretty strong position that perhaps they don't agree with the remarks that you have made and the remarks that I think are shared by many farmers in the State of Ohio. Thank you, Mr. Chairman.

The CHAIRMAN. The chair thanks the gentleman, and recognizes the gentleman from Kansas, Mr. Moran.

Mr. MORAN. Mr. Chairman, thank you. Secretary Cook, thank you. I want to pick up in part where Mr. Goodlatte left off. I have been trying for a long time to get USDA to recognize their flawed definition under the 9005 Bioenergy Program as it relates to U.S. companies. I raised this topic in October of 2009 with Under Secretary Tonsager, who was seated where you are seated. I raised this topic with Secretary Vilsack, who was seated where you are seated last April, and on both occasions was assured that they recognized there were problems with the definition of a U.S. company under that definition, and what we are talking about is 51 percent for an ownership. Yet, the Notice of Contract Proposal continues to—in fact, 2 weeks after the Secretary tells me he knows there is a problem, you issue the Notice of Contract Proposal with the same definition included. And, again, I guess to highlight Mr. Goodlatte's conversation, if we know there is a problem, it is not statutory. The problem was not created statutorily. You created this definition on your own, why can't we fix it especially when the notice is being apparently, I assume, written at the same time the Secretary assures me that we are going to get this definition—I don't want to put those words in his mouth—indicated there is a problem and we are looking at it, we are going to resolve it.

He didn't tell me he was going to agree with my definition but indicated that something was going to happen. Yet, the proposal

continues to use the same definition—excluding companies that are U.S. companies that are in the process of creating bioenergy, cellulosic ethanol in the case of a Kansas facility, and yet USDA is excluding them from participation in this project.

Ms. COOK. Again, Congressman, the notice that is out currently is not for the full amount of money that is available. Our intent is to publish a second round after the final rule is published. The process by which the Secretary is able to acknowledge that there is a problem and address it is in the rulemaking process, and that is where we will address it based on the comments that we receive.

Mr. MORAN. So the Secretary has no authority to change or modify the second Notice of Contract Proposal. His only authority is through rulemaking process?

Ms. COOK. I won't speak to the Secretary's authorities. I will speak to the process by which we create a program under the farm bill. It is through the rulemaking process with full transparency and full opportunity——

Mr. MORAN. Does USDA never change a Notice of Contract Proposal?

Ms. COOK. I don't know the answer to that question.

Mr. MORAN. Again, it just seems to me that if we recognize there is a problem it ought not be perpetuated while the process which is very slow and cumbersome continues, and especially to have the definition restated 2 weeks after I am told we are going to address this issue. Let me turn to Mr. Coppess. Again, a concern or complaint with USDA: It is only marginally related, I suppose, to the topic of today's hearing but I don't have the opportunity to question the FSA Administrator too often. But I again raised this topic with Secretary Vilsack when he was here in April and it is the CRP sign-up, and we are running out of time. Come July in Kansas and other western states, as you know, Mr. Coppess, we have to destroy cover if we are going to plant crops, and we still do not know when a sign-up is going to occur in regard to a general CRP program.

Mr. COPPESS. Understood, and I certainly understand your concerns. We are, to go back to the rulemaking process a bit, we are in the final stages of that for the CRP general sign-up expecting both the environmental impact statement and the final regulation to come out in the near future, this summer. I do not have a timeframe for you at this point in time, of when that will be published and when exactly we can begin the general sign-up. It is our goal to get there as quickly as we can.

Mr. MORAN. What is the delay in being able to announce a date so farmers or landowners at least can know whether they have a shot at signing up for CRP? If your sign-up date is after July 1, we need to know that because our landowners are going to make a different decision than if your sign-up is June 29. There is a point in time in which there is a practical consequence to this delay in the decision which means landowners either can participate or they can't. As long as USDA keeps saying we are going to do this as soon as possible no one can make a decision.

Mr. COPPESS. I understand, and, again, I cannot peg a date right now at this point in time. We are moving that as quickly as we can. Believe me, I hear the same thing from farmers. I hear the same thing from our county office staff. Our field staff are hearing the

questions throughout the country. There is a significant interest in the general sign-up, and we want to get to that as soon as we can. Obviously, our concern is if you put a date out and you miss it then you have a problem that way as well, so we are kind of between a rock and a hard place at this point. What I can tell you is that we are trying to move that as quickly as we can.

Mr. MORAN. Is the EIS complete?

Mr. COPPESS. The EIS is complete and should be published soon, as I understand.

Mr. MORAN. Thank you, I guess, for your answer. Thank you for responding to me. And, again, I would just stress the importance of this timing. There are practical consequences that can't be overcome with this delay. Thank you, Mr. Chairman.

The CHAIRMAN. The chair thanks the gentleman, and recognizes the gentlewoman from Pennsylvania, Mrs. Dahlkemper.

Mrs. DAHLKEMPER. Thank you, Mr. Chairman, and thank you, Secretary Cook. I want to ask you, as a Member from Pennsylvania I am very interested in the ways that our farmers can work to create sustainable energy resources around our country. Recently, we have all been reminded about how fragile the U.S. energy supply can be, and I believe it is vital to our nation and to our national security to continue to develop alternative sources of energy. In my district alone, I have seen a great promise of biofuels to the agriculture community, and I have also seen the failures of many of the programs developed under the farm bill. In my district, we have a biofuel producer called HERO BX, who cannot even try for loans under the Title IX programs because they are not deemed a rural entity. They are completely shut out because of that rural area requirement.

HERO BX has proposed expanding the USDA population boundaries, and this seems like a much more reasonable definition, of a city *versus* 50,000 being the definition. I know many of the other Members have concerns about the rural classifications as well. And could you comment on any proposals to increase the population definition of *rural* so that we might include these important companies in biofuel programs, and just for your information they are located in the City of Erie, and the City of Erie's population is just a little over 100,000, and so you find farms within a few miles of the biofuels plant. So can you comment, is there any consideration at all to changing this requirement to allow more producers to be qualified for these loan requirements?

Ms. COOK. Congresswoman, thank you for that question. As you know, I am also from Pennsylvania—I love my job, first of all, let me tell you. I have the best job in the Federal Government. But the one thing about my job that drives me insane is trying to define rural areas. As you know, most of our definitions are provided in the farm bill. There are a few that go through a different committee because of the housing programs and the Housing Act of 1949, but most of our definitions come to us through the farm bill; the farm bill provides the default definition, that is the business program definition that a rural area is any place except a city, town or unincorporated area of 50,000 or less and adjacent urbanized areas. In a state like Pennsylvania, that can be quite a challenge.

The farm bill goes on to define *rural area* in other programs as something slightly different. For example, in our Water and Wastewater Disposal Program, the definition is any place except a city, town, or unincorporated area of 10,000 or less, but without that language about adjacent urbanized areas. So in Pennsylvania in a prior life when I had the privilege of serving as Pennsylvania's State Director for Rural Development, we went to many, many small towns in western Pennsylvania with the Water and Wastewater Disposal Program to put that infrastructure in place. We were then often unable to go back with business programs and now with energy programs because of the adjacent urbanized area language that made it impossible to help with the business start-ups and expansions that would use the infrastructure that we put in place with the Water and Wastewater Disposal Program.

Our next opportunity to address you more directly on this is with the report we owe you from the 2008 Farm Bill. Section 6018 asked us to provide a report back to Congress on all the different definitions that we have, and some of the challenges that has created for us in delivering programs. You will be getting that as soon as we can get it into the clearance process, but we look forward very much to working with you in the next farm bill in addressing this, not just in the energy title but in all of Rural Development's programs. We want to get a better sense of what is rural, what role should rurality play in Rural Development's programs, and try to come up with a definition that is equally sensible in New Jersey and New Mexico.

Mrs. DAHLKEMPER. Thank you. I appreciate it and look forward to the report. I also have a question about the BCAP program. Federally funded research through the USDA ARS found that more than 95 percent of the bark supply in the United States has been utilized as a value-added product that exists in an established market. Has USDA conducted a comprehensive economic impact study, including a thorough cost-benefit analysis of the potential economic impacts that BCAP subsidies will have on agriculture industries that rely on bark, bark-based materials and mulches as value-added products for the production of agriculture crops?

Mr. COPPESS. We have done cost-benefit analysis and economic analysis for the proposed and final rule. As I said, I don't know if we have a more detailed set of research within the Department on that issue. We certainly heard concerns about that as we have operated in the Notice of Funding Availability, and we are working in the final rule to address those issues exactly how we do it and how that comes out. It is still under process as we review comments and try to review the proposed rule for a final set of parameters on that.

Mrs. DAHLKEMPER. So you can't tell me what the economic analysis has found at this point, the impact analysis?

Mr. COPPESS. I don't know it off the top of my head as far as if we specifically did an analysis that you are talking about. I have not seen that specifically on the bark.

Mrs. DAHLKEMPER. So has there not been or has there been an economic impact analysis on this?

Mr. COPPESS. There is a general cost-benefit——

Mrs. DAHLKEMPER. You are talking about bark, bark-based materials, landscape mulch, nursery greenhouse growing medium, those type of products.

Mr. COPPESS. We have done the overall program cost-benefit analysis. I do not know of a specific one on bark, mulch, and that sort of connection.

Mrs. DAHLKEMPER. It is a big part of the agriculture industry, and I would appreciate if you would consider doing an impact analysis on that, and I would like to see any information on that that you have. I would appreciate that. And my time has expired. I yield back.

The CHAIRMAN. The chair thanks the gentlewoman, and recognizes the gentleman from Pennsylvania, Mr. Thompson. Oh, the gentleman from Texas has returned. I recognize the gentleman from Texas.

Mr. NEUGEBAUER. Thank you, Mr. Chairman. And you may have addressed this question. I am sorry but I wanted to hear your response. The definition of what qualifies as an advanced biofuel in the energy title is very inclusive. That is due to the definition of *renewable biomass* that many on this Committee prefer to the one included in the Clean Air Act. I find it of concern that the May 6 NOCP for the Bioenergy Program requires facilities to be producing fuels that meet the RFS to be eligible for funds. In other words, you are using the definitions in the Clean Air Act to determine the eligibility for a farm program. Why is USDA changing the definition that Congress intended and is the EPA influencing the USDA administration of these farm bill programs?

Ms. COOK. I did address this earlier. Obviously, the more we can do to harmonize definitions the better, but USDA does believe that the farm bill definitions are the right definitions. They are the ones that provide the best opportunity to America's farmers and ranchers, and it is an area where we are hoping we get lots of comments from Members of Congress and their constituents.

Mr. NEUGEBAUER. But, if I understand this, the May 6 document for the Bioenergy Programs requires facilities to be producing fuels that meet the RFS to be eligible, and the RFS definition is different than the one in the farm bill. Why are you requiring one that is different than the farm bill?

Ms. COOK. We did that for the sake of consistency but please understand that that notice went out after the proposed rule had gone out, and once the proposed rule goes out then that process is in motion, and we are specifically requesting comments on areas like this so that when we get to a final rule and a permanent program, we have the best product we can for American agriculture.

Mr. NEUGEBAUER. So my friend, Mr. Goodlatte, is trying to ascertain here where we got ahead of the rules and now we are trying to come back and fix the rules, but we can't fix it until we get the rules in place?

Ms. COOK. It is a delicate balance. What we are trying to do is get dollars out in an economy where rural America needed investment. We are trying to put capital out there on the street as quickly as we could, but not all of it because we do recognize that the way you get to a final permanent program is through the rule-

making process. So our intent is to offer a second bite of the apple, if you will, once we have the final rule in place.

Mr. NEUGEBAUER. Well, just for the record, I want to be clear that many of us worked very hard on the farm bill, and we thought we were making farm policy. And I am not sure I agree with everything that the EPA is doing, and I am concerned about this Administration using EPA to implement some things that this Congress has not passed into law. I want to be on the record as saying that I hope, and it is the intent of this Committee, that you follow the farm bill for the implementation of this program. If you want to do something different than that, I suggest you take a legislative approach and not an administrative approach, but this is the law that was passed. This is the definition that was intended, and I hope that you will abide by the law.

Ms. COOK. Thank you, Congressman.

Mr. NEUGEBAUER. With that, I yield back.

The CHAIRMAN. The chair thanks the gentleman and recognizes the gentleman from Michigan.

Mr. SCHAUER. Thank you, Mr. Chairman. Thank you for your testimony. I will address this to you, Ms. Cook, you mentioned an agency wide commitment to the implementation of the energy title of the 2008 Farm Bill. Given that the issue falls under multiple departments the ultimate question is who is in charge. Let me give an example: Section 9008, the Department of Energy's biomass programs in the Golden Field office have jurisdiction as does the USDA's National Institute of Food and Agriculture. So who is in charge, how is the coordination happening, who takes the lead? I am from Michigan, but I think every Member feels this way given the fact that we need jobs and rural America is an engine, in Michigan it is a $70 billion industry. Agriculture is the second largest industry in the industrial sector. But given the fact that we need jobs, give me some good news about the fact that Bioenergy Programs within the Administration and under this farm bill can quickly create jobs, can quickly generate jobs.

Ms. COOK. Let me answer your question which is who is in charge. That is Tom Vilsack. Secretary Vilsack has convened an energy council coordinating committee of all of the agencies and offices in USDA that have a role to play in energy. That group is meeting weekly and reporting through the Secretary's senior advisor for renewable energy to the Secretary himself. We are making sure that the left hand knows what the right hand is doing, and to the extent humanly possible we are keeping each other informed and leveraging each other's resources. And as the BRDI process has shown, we are also reaching outside of USDA to the extent possible to coordinate with other Federal agencies and help them spend their money in rural America too.

Mr. SCHAUER. Any other comments about job creation in the short term as a result of this title of the farm bill?

Ms. COOK. Based on investments made last year by Rural Development in about 3,000 businesses that we have created 7,000 jobs in rural America. Equally important, though, is to recognize that the biofuels industry especially is already big business in rural America, and we have worked very hard to save the jobs that are already there. As I mentioned earlier, we have had ethanol compa-

nies in particular that never missed a payment to their lender have their working capital cut off just because of the state of the economy and lender nervousness. We have worked hard through our Business and Industry Guaranteed Loan Program to shore those businesses up and keep those jobs in rural America. We believe that consistency and that demonstration of commitment by USDA is what will draw lenders into these renewable programs in Title IX.

Mr. SCHAUER. Thank you. Final comment. For the record, Jim Turner, the Michigan Director, is doing a very good job as is Christine White, the FSA Director. Thank you.

Ms. COOK. Thank you. I know them both well, and I agree.

The CHAIRMAN. The chair thanks the gentleman, and recognizes the gentleman from Pennsylvania, Mr. Thompson.

Mr. THOMPSON. Thank you, Mr. Chairman, and Ranking Member, and thanks to the panel for your testimony, and specifically Ms. Cook for your past service in Pennsylvania with USDA and also with the Department of Agriculture in the state there. My question, I am always critical of any product or program that needs huge government subsidies in order to turn a profit, and the whole definition of what is viable. And the farm bill is just one example of Congress authorizing billions of dollars, obviously, for such subsidies since specifically we are talking about alternative forms of energy, and we want to make sure it is a proper investment going forward into the future.

So my question is how far away are we from having these renewables be viable on their own without massive government assistance? Essentially, if the subsidies stop today, how many of these would truly be viable on their own in terms of being productive cost effective?

Ms. COOK. This might require a team approach, Congressman, but I will start if that is all right with you. Most of what Rural Development does in the energy field, and for that matter in business development in general, is in the form of loan guarantees. In other words, there really is no subsidy. We are simply co-signing the note, if you will. They are borrowing money from a private sector lender and in the event the loan goes bad and they are not able to fully repay that loan, we would ask the lender to do all the normal servicing actions and at the end of the day if there is a loss then the government would step in and cover a percentage of that loss.

Very rarely do we have outlays in our loan guarantee programs. I won't say never but very rarely. We believe that that is the most effective way to use taxpayer funds. We get the best leverage of all with loan guarantee programs and that is why we focused on rolling those out. As to the viability of those projects, frankly, we rely very heavily, especially in the 9003 program on the Department of Energy and their expertise in helping us understand the feasibility of some of these things. Who knew you could use algae for a fuel? That is certainly not an area of expertise for USDA Rural Development, and so we have relied heavily particularly on the Department of Energy to give us that guidance.

Mr. THOMPSON. And in terms of obviously deciding which ones to go forward with investing taxpayer dollars, then I am assuming

there are economic studies or models that are done as a part of vetting which alternative energies really have the efficacy studies to say this is a good investment for America. This is going to pay off and turn around.

Ms. COOK. We look at feasibility from a number of angles. We look primarily at the technical feasibility and scientific feasibility of some of these very new technologies, but historically we look at feasibility in terms of the competencies of the management. We look at feasibility in terms of the regulator environment where this project is to be located. We look at a whole range of things to ensure that we are making as good of an investment of taxpayer dollars as we can.

Mr. THOMPSON. Thanks. I wanted to just touch on unintended consequences because those tend to happen. Actually over the past 18 months, I have heard a fair amount from different constituents in business regarding what appears to be an unintended consequence of the BCAP program. You know, it is inflating the feedstock, specifically woody biomasses can be used for energy, also has other uses, obviously, whether it is wall board. There are other industries that are not energy-related that are using that, and the complaints they brought to me is how it is driving up because of the government subsidies, BCAP, and maybe others, I am not sure. It is actually inflating—they tell me that when they go to market they see the cost they are competing with to purchase that ingredient that they need, that basic feedstock, and I don't know if you have heard anything similar to that, and, if so, has USDA—any response to that?

Mr. COPPESS. I will take that one, I guess, on the BCAP topic. Certainly, we have heard some of the same concerns. We have heard anecdotally, and it has been written about in articles. We have not seen any documented evidence where it is driving from one area to another or that there is somebody losing out on that, but there is a significant concern. We have gotten very valuable information as we ran through this NOFA process and saw the collection harvest, storage, transportation payments out in the field and what they did, and we have taken that into the final rulemaking and are looking at how we can adjust that. Certainly, under the statute when it comes to Federal lands you have a restriction on any higher value-added purpose, but that cannot be an eligible material but does not apply to private lands. So we are looking at that at how we can do that in the rulemaking if there is a way to make it more consistent and address the concerns that we have heard as well.

Mr. THOMPSON. Okay. Thank you. And some of the concerns I have heard have been around private lands but also obviously the forest lands. With those—Ms. Cook knows the Allegheny National Forest in my Congressional district is rather large, 413,000 acres, a lot of timber there that adds a whole different dimension to it. A lot of frustration too because there is a lot of downed timber on those Federal lands that is sitting there creating disease and forest fire potential and yet because of a statute that Congress passed, they are not able to harvest and use that. They see it as just a resource that could be used. So thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. The chair thanks the gentleman and recognizes the gentleman from Idaho, Mr. Minnick.

Mr. MINNICK. Mr. Coppess, I am disturbed by your answer to Mr. Thompson's question about whether you have gotten definitive feedback that the BCAP subsidy is not having substantial disruptive effect on traditional users of bark and other forest residue. I come from Idaho. It is a very heavily forested state. I have personal experience in the nursery industry and also in the forest products industry, and I want to assure you that my constituents representing those two industries are extremely upset and distressed because it is having substantial impact on their cost structure and even their economic viability. The USDA ARS did a study that showed that 95 percent of the bark is going currently to value-added. It is used as a fuel or it is used as mulch in these two industries, and that 95 percent of the bark currently goes to those uses.

And it is obvious if you are going to give a subsidy to divert this raw material to other uses, it is going to cause the traditional users to have to pay that subsidy and more to continue to get access to this product. Now Mrs. Dahlkemper, when she spoke, mentioned the nursery industry. The container nursery industry is about a $17 billion industry, $17 billion, and almost every container grown product: trees, shrubs, needs bark in order to produce. Every forest products processor has a boiler. Bark is a principal feedstock in that boiler so it is obvious that whatever subsidy you provide is going to have a substantial cost impact and impact the cost of not just what these industries produce but indirect impacts on what everybody pays.

Everybody uses paper. Everybody uses lumber in some form or another and by increasing the cost through the BCAP program you are affecting every consumer in America. So I would urge you, one, to do that cost benefit analysis that you indicated in response to Mrs. Dahlkemper's question you are considering, and, two, that you have a finding as you define the end-uses to which these products go and the sources from which they come that allows these traditional industries to continue to have access to the raw materials. Is that something you contemplate doing?

Mr. COPPESS. Thank you, sir, and I want to be very clear that I wasn't downplaying it or saying that that concern doesn't exist and the problem isn't out there. We have certainly heard that, and I understand your point completely. That is why in this final rulemaking process, that is one of the main areas that we are looking to address how we remain consistent across lands and how we address any of the issues with competition for feedstock among various industries. Certainly, there are jobs, there are businesses at stake, and we do not take that lightly.

Under the Notice of Funding Availability, which has been terminated and is no longer in operation is when we heard that concern and we have taken that feedback and we will use that in the final rule. So I definitely understand the concerns and we can address that and try to deal with it in a way in the final rule that will help avoid those sort of problems on the ground.

Mr. MINNICK. In defining these final rules, are you predisposed to try to protect the existing users of this raw material or is it sim-

ply all up in the air? Are you inclined to try to protect these important producers? I have paper makers in my district that don't know whether they are going to be able to operate because they have to make commitments with respect to raw materials and markets that are simply not going to wait while you engage in this rulemaking and could force them into substantial operating losses unless you provide them under those rules with some protection for their existing sources of raw material.

Mr. COPPESS. And that is certainly a significant consideration and we are not ignoring that. We have heard very loud, very clearly the concerns about that on the ground in specific areas. Obviously, different parts of the country you have different concerns and different issues that come up, so what we are looking at doing is to tailor that final rule, keep within the statutory language and the intent of Congress and the regulation, but narrowly work on that rule to make certain that it works in the countryside and does not have the unintended——

Mr. MINNICK. What is your time line for finalizing this rulemaking process?

Mr. COPPESS. In reviewing the comments, we are looking to have that out in the fall, if not earlier. At this point in time we are waiting on a few pieces of the final environmental impact statement and there is also at the end of the—once we put out the final rule there is also a 60 day comment period for Congress to review the rule so there is still ample time for that, but we are expediting this as quickly as we can get it through. I would like to see it out as soon as possible.

Mr. MINNICK. I apologize, Mr. Chairman. One follow-up observation. If you can't protect in the final rules those existing sources that Congressional review, I suspect given the sentiments and the importance of these industries is going to be quite detailed so please help us out so we don't have to put ourselves through that this fall. Thank you, sir. I yield back.

The CHAIRMAN. I thank the gentleman, and recognize the gentleman from Iowa, Mr. King.

Mr. KING. Thank you, Mr. Chairman, and I thank the witnesses for their testimony. Ms. Cook, I will just make a comment that is my observation and give you an opportunity to perhaps clarify. One of the things that I heard you say is that problems in getting these rules published as the burden of all the other work including the stimulus plan being something that I characterize as, "may have swamped the staff temporarily," and now you can see your way out to get this done?

Ms. COOK. We do, Mr. Chairman. We are in the home stretch of the American Recovery and Reinvestment Act with respect to the Business and Industry Loan Guaranteed Program, which received a significant infusion of funding under that legislation. We have exhausted funds available other than the few projects that may drop out between now and the end of September that we can bring another one in quickly and make sure we use those funds. We have exhausted American Recovery and Reinvestment Act funds for the Rural Business Cooperative Service.

Mr. KING. And I don't think I need to reiterate some of the statements made by my colleagues about how difficult it is to do plan-

ning and farming operations without an implemented farm bill. But I notice Ms. Bailey has been kind of left out of this discussion, so not to diminish your importance here I would like to direct some questions perhaps to you, Ms. Bailey. And that would be looking at Biomass Crop Assistance Program, that is your field of expertise, isn't it?

Ms. BAILEY. No, sir.

Mr. KING. Okay. Then I will go back to Ms. Cook or Mr. Coppess.

Mr. COPPESS. Biomass is me.

Mr. KING. Okay. Then, fine. My curiosity remains, Mr. Coppess. Do you know how much has been distributed in funds from that program to date?

Mr. COPPESS. Under the Notice of Funding Availability, we have paid out in both Fiscal Year 2009 and 2010 the most recent data I have is in the $235 million range.

Mr. KING. And could you break that down for me and tell me what that is going for?

Mr. COPPESS. Yes, and it is on our website, and we have quite a long list of materials. The bulk of it, about 98–99 percent of it, has been in the woody biomass category, everything from slash thinnings, shrubs and trees removed for forest fire fuel efforts to a few agricultural resources, some corn cobs, hulls, and nondigestable products, as well as hardwood chips and a host of material like that. I can certainly provide you this list if you would like to see it.

Mr. KING. It is available on the website?

Mr. COPPESS. It is available on our website.

[The information referred to is located on p. 41.]

Mr. KING. And that would include pellitized wood products for fuel?

Mr. COPPESS. Yes.

Mr. KING. And are you aware of any discussions or any information that might have indicated that some of those subsidized wood pellets could have been shipped overseas and still been funded by U.S. taxpayers?

Mr. COPPESS. There is no restriction on the shipping of at that point it would be the biobased product made from the eligible material.

Mr. KING. So it is possible, and I am not making this as an accusation or an allegation, just a hypothetical. I want to make that clear at this point. But it is possible that we could be subsidizing pelletized wood products with the U.S. taxpayer dollars that are shipped overseas that buy down that product for users in overseas markets?

Mr. COPPESS. Well, we would be paying the matching payment assistance for the material brought into a facility in this country, and where that facility sells or markets its product we have not considered that as an issue or in the rulemaking process.

Mr. KING. But your instinct on this not having an opportunity to consider it would be that the answer is yes to that, that it is possible?

Mr. COPPESS. I would imagine it is certainly possible that they could be selling overseas.

Mr. KING. Worthy of taking a look at, would you agree?

Mr. COPPESS. We can look into it.

Mr. KING. It is something that we should know if we are doing that. Also, it would be possible, what kind of safeguards would you have in place if their subsidy for pelletized wood products that might just be burned for the sake of receiving a subsidy as opposed to utilization of the energy, perhaps venting the heat rather than utilizing that?

Mr. COPPESS. I am not sure I quite understand. Where we come into this process with the BCAP matching payment is a matching payment to the person that delivers the material to the facility, so at that point, we are kind of out of it as far as what it is used for. Maybe the facilities burn them on-site or you can obviously sell them in the market and do so. So I don't have that information on exactly where the end-user or the end-purchaser is of the products that the eligible material goes into.

Mr. KING. And I am posing just as a hypothetical because sometimes we get wrapped up in things that we start a program and we have a narrow look at what that program is used for without looking at the end result, and then the machinery just goes in place. And just to make a case in point, as I watched the clock run out here, I recall that about 3 years ago in this Congress there was an effort made to take the carbon footprint here in the Capitol complex down to zero. And that entailed converting the power plant, about half of that energy was produced from natural gas, the other from coal, converting it all over to natural gas and it still left a carbon footprint that was charged out at $89,000, and those carbon credits were purchased then on the market out of Chicago. I traced those carbon credits down and they went to in part to a plant that had been subsidized for burning switchgrass, but it had been 2 years since they burned any switchgrass. They received the subsidy anyway.

And it brings my focus to these kind of programs that I think we need a broader follow-up to determine once we start on these and we say our limit or our responsibility is with the producer of the product who receives the subsidy. We do have a responsibility to see how that subsidy is being used and what the broader implications are. I raise that point, Mr. Coppess, and I wouldn't require a response to that, but I appreciate your testimony and everyone else's. Thank you, Mr. Chairman. I yield back.

The CHAIRMAN. The chair thanks the gentleman, and recognizes the gentleman from North Dakota, Mr. Pomeroy.

Mr. POMEROY. Thank you, Mr. Chairman. I will start with Ms. Cook. Ms. Cook, we had a problem with canola as a feedstock for biodiesel. Are you familiar with that issue?

Ms. COOK. Somewhat, mostly from my prior life in the Commonwealth of Pennsylvania where we also were looking at canola as a——

Mr. POMEROY. Canola is a terrific feedstock for biodiesel production. Unfortunately, the Environmental Protection Agency left if off the list of qualified commodities for the renewable fuels standard. I have met with them. They have offered no explanation for why canola did not qualify. They indicated they would fix it, and we are looking at an adjustment probably to be coming in August. They

followed up. There was no basis whatsoever for them to be left off the list of qualified feedstock.

Now the problem that USDA has is picking up the EPA work as basically the universe that might qualify for the producers support under Section 9005 program were out of luck relative to canola production even though on merit it should never have been. How can we address this?

Ms. COOK. Congressman, my understanding is that canola is going through a more formal appeals process with EPA. We are providing information from USDA to EPA to be helpful to them in that appeal process, but certainly we acknowledge that canola is a useful tool in biodiesel production.

Mr. POMEROY. Thank you for saying that. I don't think there is any evidence in the Administration in either agency regarding that. Now if the U.S. Department of Agriculture is given authority by Congress to administer the Producers Support Program, and in light of your statement that canola is a useful commodity relative to biodiesel production, why would you construct a rule that does not allow canola producers to receive support under the section under the 9005 program?

Ms. COOK. Section 9005 does accommodate commodities that are under the appeal process and so——

Mr. POMEROY. I believe it only accommodates the commodities under the appeals process to the extent that the appeal has been favorably resolved. Now I am talking about canola producers in North Dakota in the summer of 2010. Are you telling me that there is capacity within the USDA's administration of this program to support those producers?

Ms. COOK. If you will give me a moment to double check this with staff, that is my understanding. Yes, in 2010. While they are actively under appeal, they are covered in 9005.

Mr. POMEROY. That is correct. Am I misinformed then that it doesn't have to be final adjudication in favor of the commodity that while under appeal?

Ms. COOK. That is correct. While they are under appeal, they are eligible.

Mr. POMEROY. Okay. I did not understand that. That is good news. Thank you. The second issue, the Administration puts a deep knife to the rural electric cooperatives recommending a $2.5 billion cut in its budget from a $4 billion program, and this is under the Rural Development Electric Loan Program. You state in your testimony America needs to diversify our fuel supply, reduce our dependence on imported oil, reduce our carbon footprint, develop our abundant renewable energy resources and the Administration is committed to this objective as I believe it to be. What would be the rationale for this depth of cut?

Ms. COOK. Again, the rural electric programs are operated in a negative subsidy rate. In other words, they actually make money for the Federal Government.

Mr. POMEROY. They make money.

Ms. COOK. It is purely a matter of capacity in terms of what we are able to put out the door and a matter of trying to build additional program resources and particularly loan guarantees.

Mr. POMEROY. Now if we are trying to enhance, just for an example, wind power, Sunday night driving around my home county, Barnes County in North Dakota, I couldn't recognize the place for the towers all over the place. An opportunity to landowners that are hosting the towers, we hope to increase the landowners' opportunity by allowing them to get even better deals with the wind tower developers. We also want to make sure they can get transmission to get this power out. That is where the resources, cutting these resources for rural electric co-oops, could diminish their ability to build out wind power, wouldn't it?

Ms. COOK. Mr. Congressman, we are very concerned about that entire region of the country in terms of wind power and getting it distributed, not just our own capacity but the capacity of MISO to get those projects reviewed and onto the grid.

Mr. POMEROY. It is going to take some money to do it, so I hope that that cut recommendation would not be advanced. I have heard less than an enthusiastic defense of the budget recommendation from you this morning. It is a bad idea. It should go forward. There is another bad idea within it, and that would be the one that would hold funds for natural gas peaking stations. Now wind doesn't blow all the time even in North Dakota, but we take a good run at it. Once in a while the wind stops and you have to have some ancillary power source to meet the demand for which you have contracted. Natural gas peaking stations are a natural compliment to maximize the potential for wind power in this country, yet now U.S. Rural Development apparently is going to restrict any funds from being available for natural gas peaking stations. What is the rationale for that? It seems directly at odds with your testimony.

Ms. COOK. Congressman, I am afraid I am not up to speed on that issue. Let me get back to you for the record on that question.

Mr. POMEROY. It is an important issue. I look forward to your response to the record. Thank you very much.

The CHAIRMAN. The chair thanks the gentleman and recognizes the gentleman from Nebraska, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman. Mr. Coppess, I was wondering if there is an environmental impact statement or an analysis relating to indirect land use as to whether or not Nebraska should stay in the Big 12 or not. I am just kidding. Although I might be making somewhat of a statement as it relates to the reach of certain agencies. But actually, Ms. Cook, on a very serious note, if you could elaborate. You touched briefly on the loan guarantee issue and how often those are actually used and Federal dollars are expended. You said rarely. Is that the case?

Ms. COOK. The default rate in our loan guarantee programs generally is very low.

Mr. SMITH. Do you have some more specific numbers with that? I don't want to put you on the spot but could you elaborate on that?

Ms. COOK. Again, I would be happy to get that to you for the record, if you would like, program by program, because we do have a number of loan guarantee programs. Now that the Business and Industry Loan Guarantee Program, of course, is our bread and butter business assistance program, but within the energy realm both 9007 and 9003 offer loan guarantees, so I would be happy to give that to you by program.

Mr. SMITH. Okay. Thank you. And then also is it accurate that only two awards have been made under the Bio-Refinery Assistance Program?

Ms. COOK. That is correct.

Mr. SMITH. That seems low. Could you elaborate on perhaps what may need to be changed or what the situation is there?

Ms. COOK. I think this program perhaps more than any other has been a victim of the general economy over the last couple of years. We are talking about new advanced biofuels technologies for production facilities that are very, very expensive. The lender community simply has struggled with this. The first of these two that we did was to Range Fuels company in Georgia. It was one of the last deals done in the previous Administration, and one of the first things that we had to do was work with the lender to restructure that deal, frankly, because even though we had already issued the loan note guarantee they were still reluctant to close the loan. They were that nervous about moving forward under these general economic conditions.

We are looking in the proposed rule hopefully at comments in a number of areas, among them the level of guarantee, which is proposed at 80 percent. One of the things we did under the American Recovery and Reinvestment Act and our Business and Industry Loan Guarantee Program was set those funds aside with a different structure. We used a 90 percent guarantee and a lower loan origination fee, and now that those funds have been exhausted, we are going back to look at that and see if that did actually make a difference. Did that bring lenders back to the table where our regular program at 80 percent with a two percent loan origination fee didn't. We will make the same analysis to the extent we can for 9003, and hopefully get comments from the industry on whether that is a factor. If we went from 80 percent to 90 percent for 9003, would that do it? Would that bring bankers in? If we could adjust the fee structure in some way to make the guarantee more appealing, would that bring people back to the table? We are looking at all of those things.

Mr. SMITH. Okay. Thank you. I yield back.

The CHAIRMAN. I thank the gentleman, and recognize the gentlewoman from South Dakota.

Ms. HERSETH SANDLIN. Thank you, Mr. Chairman. I thank you and the Ranking Member for holding this important hearing. I thank our witnesses for their testimony and responses to my colleague's questions. I do want to associate myself with some of those comments, Mr. Thompson's comments with regard to the ongoing concern that we are allowing biomass on our Federal forests to rot or to be burned releasing methane and carbon into the atmosphere instead of utilizing that biomass effectively for bio-refining in advance biofuels. And I know that a number of us on this Committee have been working and will continue to work to make those changes to the *renewable biomass* definition from the 2007 Energy Bill. I think in the unintended consequence of the interim funding program for BCAP matching funds is the unfortunate situation that developed with black liquor in terms of how much more cost to the taxpayers with exploitation of a loophole in that instance for

tax credits *versus* the unintended consequence of those matching funds.

You know, as we worked with Chairman Peterson to establish the BCAP program in the last farm bill the intention really was to help farmers establish new dedicated energy crops. My first question would be, Mr. Coppess, despite the concerns that I share I have heard from my constituent businesses like Dakota Panel that Mr. Minnick and Mr. Thompson have heard and taking into account those concerns as you develop the final rule. Aside from that, do you have confidence that the final rule, and some of what we have seen and how the BCAP programs have been utilized in other areas, that the program is going to be successful in meeting the goal of creating a dependable market and supply for biomass feedstock?

Mr. COPPESS. Thank you. And I want to point out the final rule will encompass, which you mention is one of the major parts of this program, is the ability to provide that assistance to farmers and landowners to grow new bioenergy, biomass crops, and that is a key, key component to it. I think it is why I would hazard to use a crystal ball and how the industry is going to grow and what it will do. I do think that once we, based on what we have seen, once we unleash that capability of the American farmer and the producer to work on these crops and begin producing them that years from now we will see some great benefits out of this and the potential of real transformation in our energy sector because just based on how productive we are in other crops we grow.

I think the potential of this program is incredible. The potential for farmers is big. Certainly, that part of it was not what we operated under in the NOFA, and so I understand that frustration. We certainly heard that as well that farmers want to see that potential out there. So it will be a part of the final rule. It will be a big part of the final rule and a major component of this program.

Ms. HERSETH SANDLIN. And then with regard to Mr. Pomeroy's comments in terms of some of the President's proposed cuts as it relates to programs that service rural electricity needs, and the investments that our co-ops make that are community investments that have facilitated the production of renewable energy: I share his concerns and agree with him that some of these proposals are bad ideas. We will be working across the aisle with colleagues that share those concerns. It is not a partisan issue, in many respects a regional issue, to combat those proposals. I would like to spend the rest of the short time I have in questions on the REAP program.

Mr. Fortenberry and I worked hard on the last farm bill as it related to reauthorizing this important program. I think as we look to streamline delivery of REAP to farmers and to rural businesses, it is critical that we have funding notices that come sooner than they came this year. When you have a final deadline of June 30 when you had the grants and loan guarantees notice April 26, separate funding notice for the energy audits May 27, it is a pretty short turnaround. I understand the importance of getting this money out the door and more jobs can be created transitioning to a clean energy economy, energy efficiency technology that can be deployed. But, looking ahead to next year, is it feasible that USDA

can issue REAP funding notices for FY 2011 by December of this year, and, if not, why not? What can USDA be doing to accelerate the REAP funding cycle and give producers and rural businesses more time to plan and apply for REAP funding? Ms. Cook.

Ms. COOK. Thank you for the question. The REAP program, of course, is the successor to the 9006 program from the 2002 Farm Bill, and it is the one area of the energy title where we did have a pre-existing regulation. That is the good news and the bad news. In looking at what came first and what comes last as we are trying to prioritize our work and stand up a number of new programs at the same time, we are really just now getting started with a proposed rule to make changes in REAP. We are working on it though. And as I have indicated in prior questioning, we are done now with the Rural Micro-Entrepreneurship Assistance Program. The proposed rule is out. The Value-Added Producer Program is out from Title VI. We are out with proposed rules now from everything in Title IX, so we are at a point where I believe we can move as expeditiously as possible on changes in proposed rules for 9007. Whether we can do it by the end of the first quarter of the new fiscal year, I don't know. Some of that depends on how many comments we get, frankly, in the proposed rules that are currently outstanding.

Ms. HERSETH SANDLIN. I appreciate the response to the question. I do hope that you are looking at internal time tables to move. I understand the impact of how many comments you may get, but I hope that you are working toward a self-imposed deadline that can be more effective because we are going to be doing some work this summer. Iowa has very high success rates in getting REAP grants, and we want South Dakota to be able to get our share of those REAP grants as well. This kind of information is going to be very useful to us as we move forward the rest of the summer and the rest of the year. And so if you could keep us apprised, the Committee as a whole, and certainly our office will be in touch with you to get as much information in a more timely way as possible.

Ms. COOK. I look forward to that conversation. One of the things we have had by way of directive from Secretary Vilsack is a clear message that he wants REAP to be a national program. And so one of the things we have done this year is distribute more of the money out to our 47 state offices to ensure that we get a national program. I am confident that South Dakota will get its fair share of those funds.

Ms. HERSETH SANDLIN. Well, we will look forward to working with Elsie Meeks to do that. Thank you very much.

The CHAIRMAN. I thank the gentlewoman and recognizes the gentleman from Missouri.

Mr. LUETKEMEYER. Thank you, Mr. Chairman. Ms. Cook, I was kind of curious. How is the biofuel industry doing as a whole?

Ms. COOK. As a whole, it has been a difficult couple of years as it has been for the economy in general. We have seen first generation biofuel companies that have never missed a payment to their lender finding that their working capital has been cut off because lenders are that nervous. At the same time, demand for biofuels is strong and getting stronger. Sale of flexible fuel vehicles, for example, continues to grow, particularly in this part of the country, so

we know the demand is there. We know that production capacity is there. It is a matter of restoring the confidence of the private lending sector to bring those things together and get those projects going.

Mr. LUETKEMEYER. With regards to the guarantees that are issued if the industry is doing well and demand has occurred that we can ascertain, do you take into consideration the number of or the capacity that is already out there when you agree to a guarantee, so that you don't over capacitize the industry and therefore impair those individuals or companies that are out there?

Ms. COOK. We look at the feasibility of the project from as many perspectives as we can. That would include whether they have a market for their product.

Mr. LUETKEMEYER. But you don't look at the capacity overall of the entire industry to see if you are adding more capacity than what is necessary?

Ms. COOK. I don't believe we are at that point yet. If it reaches that point that we have over-saturated the market with biofuels then that becomes part of the feasibility of the product.

Mr. LUETKEMEYER. Well, I am not saying that the market is over-saturated with fuel. What I am saying is we have more capacity to produce than we have need for the product at this point, and my concern is that we are putting people and business that don't need to be there and, therefore, impacting those who are already in business. And my question is are you taking that into consideration when you do a guarantee? Is that part of your process?

Ms. COOK. We want to start businesses that we believe will survive. We want to start businesses that we believe will have the ability to service their debt with us and pay their loan back. So, yes, to the extent that it affects the feasibility of that business to survive, we would look at that. I would add, though, that the biggest problem that I see is the distribution system to get biofuels to the places that it is needed. Blender pumps are something that I mentioned earlier as an area that we would really like to zero in on. We would like to help service stations up and down the East Coast, up and down the West Coast, every place that there are Clean Air Act requirements and vehicles that need that fuel to make sure that it is actually readily available.

Mr. LUETKEMEYER. Well, part of the scenario also is our trade policy with regards to allowing other ethanol and biodiesel fuels in from other countries. I mean is that taken into consideration, the trade policy, that sort of thing when you are looking at these guarantees as well?

Ms. COOK. No, sir. We don't look at trade policy.

Mr. LUETKEMEYER. Okay. Ms. Bailey, you have been left out of the discussion here. A quick question for you here. With regards to the food that we are looking at producing, do you do an analysis every year or every so often of the increasing cost of producing that food at all?

Ms. BAILEY. Well, I am sorry I can't answer that question. Within the National Institute of Food and Agriculture, I am focused on bioenergy, biobased product research and development.

Mr. LUETKEMEYER. Well, are you interested in the cost of what that is to the food production? In other words, in Ms. Cook's testi-

mony here one of the words or some of the words were agriculture is energy intensive and the production of our food is—energy is a big part of that production. That is not part of your purview?

Ms. BAILEY. Well, from an expanded perspective, yes, it would be. Yes, sir. In the context of 9008, the Biomass Research and Development Initiative, we are supporting research, development, and demonstration of technologies to produce biofuels and biobased products sustainably taking into account the environmental, economic, and social implications of those technologies.

Mr. LUETKEMEYER. What do you see then about the different impacts on food costs with all the regulations coming out? Is it making it cheaper to produce food or is it making it more expensive to produce food?

Ms. BAILEY. Well, hopefully it would make it cheaper to produce food as we become more——

Mr. LUETKEMEYER. I am not saying hopefully. I am saying in reality what is it doing?

Ms. BAILEY. I can't address that. I am sorry.

Mr. LUETKEMEYER. Okay. Thank you. Ms. Cook, we had Secretary Vilsack in the other day, and one of the concerns that I have is the future of agriculture and especially food production from the standpoint of the regulation, taxation. This money, we are talking about energy and it is a huge, huge cost to producing our food in this country, and I am very concerned about that as a whole. And in discussing with Mr. Vilsack, he committed to us to continue to work with us with regards to the EPA and other agencies that have an impact on food production and the cost of that production, so can I get that same commitment from you this morning?

Ms. COOK. Absolutely.

Mr. LUETKEMEYER. Thank you very much. I yield back, Mr. Chairman.

The CHAIRMAN. I thank the gentleman and recognize the gentleman from North Carolina, Mr. McIntyre.

Mr. MCINTYRE. Thank you, Mr. Chairman, and thanks to our panelists. Ms. Cook, as both a Member of this Subcommittee and as Chairman of the Subcommittee on Rural Development, Biotechnology, Specialty Crops, and Foreign Agriculture, thank you for your leadership. Especially thank you for getting those Micro-Enterprise Assistance Program rules implemented. That is something we were excited about to help our very small businesses which we know are the fastest job generators of all small businesses for those that employ less than ten people. Even Google started out with only two people, so it is a great success story when we can help our very small businesses, and we urge you to emphasize that as much as possible in your offices across the country to help our economy with very small businesses. I wanted to ask you specifically can you give some examples of typical projects that agriculture and rural small businesses have applied for under the REAP program?

Ms. COOK. Projects range from green dryers, things like that, to wind power. We have done quite a bit of wind in the upper Midwest, for example. We look forward to doing more with manure digesters. And, as I said earlier, Congressman, Secretary Vilsack has basically commanded that we do a better job of making REAP a na-

tionwide program, so I believe we will see a much greater diversification of project type as REAP moves forward this year.

Mr. MCINTYRE. Have you had any chance to work with the National Center for Renewable Energy in Golden, Colorado?

Ms. COOK. Personally, no.

Mr. MCINTYRE. If you could, please, have someone under your authority talk with them. They had told me 2 years ago when I visited their facility in Golden that they were looking to double the number of bio-refineries in America. They were looking to do it primarily in rural areas, primarily areas of high unemployment, primarily areas of large amounts of agricultural stover, including plant and animal waste. That sounds like eastern North Carolina to me. We are very interested. I hosted an alternative energy summit at UNC Wilmington July of last year, and then I hosted a green jobs summit in April of this year at Cape Fear Community College in Castle Hayne, just outside of Wilmington, North Carolina. And the place was packed, and I believe those opportunities to work with the National Center for Renewable Energy and their desire to double the number of bio-refineries would tie hand and glove with the jurisdiction of this Subcommittee and also with the work that you are about. Would you have someone that would commit to investigating that and report back?

Ms. COOK. There are two gentlemen behind me, who I am sure would be happy to follow up.

Mr. MCINTYRE. Thank you. And in particular, would you have them contact my office once they find out that result as well as the Committee's staff?

Ms. COOK. Thank you, Mr. Chairman. We will do that.

Mr. MCINTYRE. Thank you. In the time remaining, I would like to ask you, how do you see the energy audits working along side other parts of the REAP program?

Ms. COOK. In what way?

Mr. MCINTYRE. Well, you talk about it is important to include energy audits under the REAP program, so I am wondering what is the benefit or where do you see them working for a benefit under the REAP program?

Ms. COOK. In a number of contexts, among them helping farmers understand that their own cost of production can be lowered, and, frankly, to engender additional applications for REAP in the following year.

Mr. MCINTYRE. Some of the complaints we have heard is that there are not enough folks out in the field to carry out the energy audits in rural areas. Do you know what is being done to address this concern?

Ms. COOK. No, sir, but I would be happy to give you more information for the record on that?

Mr. MCINTYRE. That would be good because obviously if the product doesn't reach the final link of being delivered then no matter how good the program is, it is not going to help the people that need it. That is a concern that we have been hearing, that there are not enough folks out and available in the field to actually do this. So if you could give that some attention too and let us know what efforts you can make in that regard, that would be most help-

ful. With that, thank you again for your leadership. Thank you, Mr. Chairman.

The CHAIRMAN. The chair thanks the gentleman and recognizes the gentleman from Louisiana, Mr. Cassidy.

Mr. CASSIDY. Thank you, Mr. Chairman. Mr. Coppess, I am told that the BCAP works for—if you set up a new BCAP it works if you want to create bioenergy, if you will, but if you have one that is old that it doesn't apply for subsidies, does that include expansion so somebody is burning rice hulls, if you will. People in my state do that, have been doing it for some time. Now apparently they don't benefit from these programs because I gather you want additionality. If they expand, will they benefit or have potential benefit from these programs?

Mr. COPPESS. Thanks for the question. I want to point out that at a biomass conversation facility there is no limit in the statute for new or old. On a rice hull issue the concern would be that the statute restricts any matching payment to this point going for Title I commodities so I don't know if that is——

Mr. CASSIDY. I gather that Title I does not include the stalk and the hull.

Mr. COPPESS. The residue is left on the field, crop waste, residues. Yes, those are eligible.

Mr. CASSIDY. So even though it is an existing facility, it would still potentially benefit if it otherwise meets the provisions of the law.

Mr. COPPESS. Well, the one trouble, we are still in the final rulemaking process so I can't say how the final program will run. Under the Notice of Funding Availability, which matching payments, what we have been making matching payments under, there was not a distinction made between an existing facility or any requirement, as you said, for additionality or building new facilities.

Mr. CASSIDY. Okay. What about vertically integrated companies? So if you own your own land and you are doing your own residue, if you will, do you still qualify?

Mr. COPPESS. In the Notice of Funding Availability, again, not the final rule that is being finalized, in the Notice of Funding Availability, we did have a restriction on what we called arm's-length transaction, that you could not sell yourself biomass and get a matching payment.

Mr. CASSIDY. Now it seems though if the ultimate goal is to decrease carbon footprint, for example, why does it matter? Do you follow what I am saying? I mean it is there, and I either truck it down the street and let somebody else burn it, or burn it in my own facility and eliminate the carbon footprint of the diesel required to truck it down the street. In a sense, we are incentivizing people to sell their residue to someone else as opposed to setting up a facility to do it for themselves. Does that make sense?

Mr. COPPESS. I understand what you are saying. I think our concern has been trying to find that balance where these incentives go in and how it works so that we do not get in a situation that could cause issues if, in fact, the program is being used in a way it shouldn't be. So under the Notice of Funding Availability, we restricted that to an arm's-length transaction so that——

Mr. CASSIDY. Now arm's length, just to define that. So if you have a holding company and one of the—so it is a holding company, so the rice farmers, and one is energy production and one is rice production, if you will, is that considered an arm's length? I am trying to give you a graphic with my own arms.

Mr. COPPESS. I understand. I am not sure exactly. As I am sitting here, I am trying to piece that together because what we have tried to avoid—I know we ran into issues, for example, co-ops were one in which a member of a co-op would be able to deliver to the facility and still get that matching payment. One of the things we are working on in the proposed rule, we proposed or suggested changing that arm's-length restriction in part because there was some difficulty administering it to a related party transaction. We proposed being more flexible in how we do that to make certain that what we are getting to is not problematic, but also doesn't cut people out that——

Mr. CASSIDY. So you are working on this. Let me kind of go to Ms. Bailey. I am sorry. I just got a yellow light. I have to hustle. Is there anything in here to encourage conservation? I read that 30 percent of electricity produced in this nation is lost in the grid because we have inadequate power lines, *et cetera.* Intuitively, I know some rural communities are probably particularly vulnerable to this because I imagine their infrastructure is less constantly upgraded. Does this include anything to allow municipally-owned utilities or even investor-owned utilities focusing on the rural areas to pull down grants to upgrade their conservation, if you will, through the power lines, *et cetera?*

Ms. BAILEY. In the context of 9008, sir?

Mr. CASSIDY. Looking at 9009.

Ms. BAILEY. Congressman, that would be a Rural Development program. That is one of the five programs and the one we have not rolled out yet. We have not requested or received funding for that program. However, we do have significant investments going into energy conservation through the Rural Housing Service, which we actually haven't talked about at all today.

Mr. CASSIDY. Now would that be for homeowners or for rural utilities?

Ms. COOK. Rural homeowners through the Section 504 program and through the Housing Preservation Grant Program. Also in the Community Facilities Program of Rural Development opportunities for nonprofit organizations, municipalities, and tribes to apply for funding both long term loans——

Mr. CASSIDY. I am sorry. So just to put a point on it, Ruston, Louisiana, it is not my district but I know of it, has a municipal utility. And I understand that just the inherent inefficiencies of this you need bigger power lines and such like that, but they are losing 20 to 30 percent to their electrical grid. Is there anything in which you just described that will allow Ruston, Louisiana, to upgrade their power structure, if you will, to decrease that?

Ms. COOK. Let me start with my most fundamental question. Are they in a city, town or unincorporated area of less than 20,000?

Mr. CASSIDY. It is probably like 20,000, but it is going to be a city or town.

Ms. COOK. I would be happy to follow up with you on that specific question, Congressman. If you will indulge me before I lose Congressman Luetkemeyer, I just want to revisit a statement that I gave you before. I realize you are a very busy man but I did speak too quickly in telling you that we don't consider trade policy as we make these individual loan guarantees, and I would like to provide more information for you to the record. I am sorry, Congressman.

Mr. CASSIDY. My time is up. Thank you very much, and follow up with me, please, and I will understand it more later. Thank you.

The CHAIRMAN. The chair thanks the gentleman, and recognizes the gentleman from North Carolina, Mr. Kissell.

Mr. KISSELL. Thank you, Mr. Chairman, and I thank the panel for being here. This is a very important aspect of our lives and especially in rural areas, and I would like to associate myself with my colleague from North Carolina, Mr. McIntyre, and the questions he asked and the response that he requested, and we would love to have that. As he said, sounds like his district in eastern North Carolina sounds like my district in central North Carolina. We have also held biofuel summits with a great deal of interest not only in the ag community but in the communities in general because these are communities that have been hurt so strongly with economic development in the last few years with some of our trade deals.

That said, it was mentioned by one of you, and I apologize, I am not sure who it was, but blender pumps, like to have them up and down the East Coast. What do we have to do to get there?

Ms. COOK. That was me, Congressman. I mentioned that a couple of times. At the moment, what I have to do is convince my colleagues at HUD, EDA, and other funders who can go into non-rural areas that that is something that they ought to be investing in as well. We are having those conversations, but, frankly, it is a little frustrating because Rural Development by definition can't go to Philadelphia to the Pennsylvania Turnpike stop right off the Schuylkill Expressway and put in blender pumps. The pumps themselves are not that expensive. We are talking $20,000, $25,000 per pump. Obviously, the tanks that would go underground to support the blending process are significantly more expensive. But our contribution in Rural Development would be limited to cities, towns, and unincorporated areas of less than 50,000.

Mr. KISSELL. As we talk about capacities of biofuels, I went to a hearing out in South Dakota and the good folks out there were saying just give us a chance and we will compete with oil and other sources of energy. Just give us the chance to move our goods on an even basis somewhere else. And where I am from, North Carolina, blender pumps have never been discussed. I think it is something that would allow us to move towards that idea of expanding that capacity and the things that we have talked about here today. In just the couple minutes I have left, the hearing is about implementation of energy in terms of the 2008 Farm Bill. We are actually holding hearings for 2012. Just real quickly for each of you, is there a lesson that you have seen in the implementation of 2008 that you would tell the Committee make sure you do this, or don't do this or whatever in terms of 2012, any lessons already learned

that we need to run the flag up a little bit higher as we prepare for 2012?

Mr. COPPESS. Well, thank you. I will take first crack. I think one of the key things for us is seeing this final rule in place and getting more feedback on it because we have not been able to put all of BCAP into place. We certainly have learned quite a few lessons and are very happy to discuss those as we go along using the NOFA process to do the matching payments and what kind of material brings in some of the concerns that were raised today about competing for biomass and what it means on the ground in certain areas. I guess the short answer is I don't have a great answer for you today because we are still learning those lessons in this program because we don't have the full program up and running. I do believe as we get closer to the next farm bill, we will know quite a bit from these programs, and I look forward to any discussions we have on that.

Ms. COOK. I will start by echoing my colleague's comments. We are looking forward to completing the rulemaking process, making sure we have properly implemented the law as it exists today before making suggestions on how to change the law. But on some of the things we are looking at, frankly, I don't feel we are doing enough to coordinate Federal, and particularly Rural Development, investments with what states are doing. We have a lot of states that are trying to invest in renewable energy that also have passed renewable fuels standards and also have passed alternative energy portfolio standards and are doing their best to get those dollars out, create those jobs, create those businesses, for all the same reasons that the three of us are sitting here, and we really haven't done enough to coordinate that.

The second area where I think all of us need to maybe take a closer look is the entire energy grid. We need to look at the amount of investment it is going to take to upgrade our transmission lines and be able to deliver renewable energy as we create more and more ability to generate renewable energy. We have to be able to get it to the consumer and we are just not there today.

Ms. BAILEY. Congressman, I would like to add that 9008, we consider that to be a successful program, is making considerable contributions and moving cutting edge technologies into the marketplace, and I would be happy to get back to you with more specifics.

Mr. KISSELL. Thank you, and thank you, Mr. Chairman.

The CHAIRMAN. The chair thanks the gentleman, and the chair thanks the witnesses for their time today. Under the rules of the Committee, the record of today's hearing will remain open for 10 calendar days to receive additional materials and supplementary written responses from the witnesses to any question posed by a Member. This hearing of the Subcommittee on Conservation, Credit, Energy, and Research is adjourned.

[Whereupon, at 11:45 a.m., the Subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

SUPPLEMENTARY INFORMATION *

BCAP CHST Component Report FY 2009 and FY 2010

[as of Tuesday, October 19, 2010]

Component	*Contracts*	*Payments*
Agriculture Resources:		
Corn cobs	15	$61,612
Grain or nut hulls, non-digestible	10	$190,176
Category Total:	**25**	**$251,788**
Federal Woody Resources:		
Bark	49	$2,776,752
Forest harvest slash (branches and tops)	42	$3,003,327
Forest thinnings materials	29	$1,759,185
Hardwood chips	34	$1,086,877
Softwood chips	49	$2,822,513
Tree and shrub species without timber, lumber, or wood pulp value (including fuelwood)	21	$986,615
Category Total:	**224**	**$12,435,269**
Herbaceous Resources:		
Grasses	70	$210,572
Legumes	4	$4,466
Category Total:	**74**	**$215,038**
Non-Federal Woody Resources:		
Bark	1,362	$46,935,960
Cutoffs	26	$650,509
Forest harvest slash (branches and tops)	366	$30,056,133
Forest thinnings materials	385	$27,239,057
Fuelwood (including types of hog fuel not otherwise included on this list)	727	$34,408,340
Hardwood chips	765	$32,569,367
Post-disaster debris	9	$1,016,752
Softwood chips	463	$17,654,790
Category Total:	**4,103**	**$190,530,908**
Waste Materials:		
Non-edible fats, oils, and greases derived from plants	11	$162,067
Non-edible, non Title 1 plant processing waste and scraps	53	$3,283,828
Orchard wood waste	116	$15,015,889
Pellets	69	$5,367,939
Roadway maintenance cuttings	6	$20,327
Sawdust	350	$12,842,021
Shavings	60	$2,860,136
Category Total:	**665**	**$39,552,207**
National Totals:	**5,091**	**$242,985,210**

Notes: Contracts may exceed number of AD–245's since multiple components may be recorded on a single AD–245. Only includes records with a valid component code.

States with less than four facilities or less than four records are not reported because of confidentiality concerns.

SUBMITTED QUESTIONS

Questions Submitted by Hon. Tim Holden, a Representative in Congress from Pennsylvania

Response from Cheryl Cook, Deputy Under Secretary for Rural Development, U.S. Department of Agriculture

Question 1. You mention the commitment of renewable energy is an Agency-wide. Given the issue falls under the jurisdiction of multiple agencies, not to mention mul-

*The report was accessed on December 2, 2010 from the FSA website (*http://www.fsa.usda.gov/Internet/FSA_File/bcap_chst_component_report.pdf*).

tiple Departments, how is the overlap being coordinated? Is there a point Agency on renewable energy? Who takes the lead?

Answer. There are several different renewable energy-related programs, initiatives, and activities across the Department as well as across the Administration. On biofuels, the President called for the Biofuels Interagency Working group, led by USDA, DOE and EPA, though larger in membership. In order to coordinate all efforts within USDA, the Secretary has convened the Energy Council, which he chairs. Members of the Council include Sub-Cabinet officials whose jurisdiction includes energy activities. To supplement this body, the internal USDA Energy Council Coordination Committee (ECCC) also meets weekly to discuss all energy related activities. This group is working to continuously improve coordination and collaboration across mission areas within the department; to encourage increased communication and awareness and to ensure there is not duplication of program activities. It is very important to the Administration that these efforts are coordinated and complementary.

The Biomass Research and Development Board (Board) was created by the Biomass Research and Development Act of 2000, which was further amended by the Food, Conservation and Energy Act of 2008. The Board's mission is to coordinate federal research and development activities relating to biobased fuels, power, and products.

Membership must include the following agencies:

- U.S. Department of Agriculture.
- Department of Energy.
- National Science Foundation.
- Environmental Protection Agency.
- Department of the Interior.
- Office of Science and Technology Policy.

Members for 2010 are:

Co-Chairs:

Steven Koonin, Under Secretary for Science, U.S. Department of Energy.

Dallas Tonsager, Under Secretary for Rural Development, U.S. Department of Agriculture.

Members:

TBD

Question 2. It has come to the attention of the Committee that some of the regulations currently out for public comment must factor in the amount of greenhouse emissions reduction. These factors were not part of the statute. Can you please tell us where this consideration came from?

Answer. To support the Administration's objectives to reduce impacts of energy production and consumption on climate change via reduction of GHG emissions, the proposed rules request the public to comment on whether lifecycle GHG reduction criteria should be added for purposes of scoring projects for funding prioritization. Efficiency is the goal: renewable energy will be the most successful if it also improves the environment.

Question 3. There has been discussion about the rural area requirement that you've imposed on several energy title programs, even though there's no statutory requirement. Is there a reason that the energy title programs should be treated differently than the rest of your portfolio? For instance, the biodiesel industry has developed differently than the ethanol industry did and has plants located in urban areas than we saw with corn ethanol. Is there a reason that USDA programs shouldn't support the biodiesel industry that's using either raw ag products or recycled ag waste, no matter where they're located?

Answer. The rural area requirement reflects an effort to promote consistency with the Rural Development Mission Areas. USDA is aware that this has raised concerns for some within the biofuel industry and asked for comments on this issue in the proposed rules. USDA will take the comments received into consideration in the issuance of the interim final rules on these programs. With regard to Section 9005, Bioenergy Program for Advanced Biofuels, the FY09 Notice of Contract Proposals has been extended to allow producers in non-rural areas to apply.

Question 4. In your testimony you mentioned that FSA has "prioritized" needed regulations to best utilize staff and resources in implementing the entire suite of programs as quickly as possible. What factors went into the determination of how programs should be prioritized?

Answer. Several factors can influence the implementation schedule for regulations. However, the overall goal is always to implement programs as swiftly as possible. Examples include, but are not limited to, the following factors: whether the completion of a draft or final Environmental Impact Statement is required before issuing the rule; whether Congress has provided appropriations for the program established by the rule; whether the program can be partially implemented administratively before the full rule is promulgated; whether there is statutory authority to provide for an interim rule, rather than for a proposed final rule; whether there is a level of urgency (*i.e.,* the need to address a financial crisis among stakeholders, to provide timely disaster assistance, or to meet seasonal thresholds, such as planting or harvest periods); and the complexity of the program, particularly new programs, which may require the careful development of new formulas, calculations, or software.

Question 4a. Can you give us a sense of some of the challenges that you face as you implement the energy programs authorized by the 2008 Farm Bill?

Answer. One of the major issues we are seeing when implementing our energy programs is the reluctance among lenders to become involved in financing loan guarantees. Lenders are reticent to lend and it makes it very hard for many of the new technologies to get past the "Valley of Death" stage between pilot/demonstration and commercial scale facilities.

Question 4b. How has the implementation of the American Recovery and Reinvestment Act (ARRA) affected the implementation of the energy programs authorized by the Farm Bill?

Answer. None of the USDA Energy Programs under Title IX of the Farm Bill received ARRA funding, so the programs were not directly affected.

Section 9002 Biobased Products

Question 5. The 2002 Farm Bill created and the 2008 Farm Bill further called for USDA to rapidly implement a Federal Biobased procurement program, including creation of a label that would help consumers identify biobased products. When will USDA issue the important biobased label?

Answer. We expect to publish the voluntary "USDA Certified Biobased Product" label rule in the *Federal Register* this fall. In July 2009, USDA published a proposed rule outlining a voluntary labeling program for biobased products. Public comments have been received. A final rule that responds to those comments is under development. We are expecting review and publication of the rule by the fall.

Question 6. Has Secretary Vilsack has sent requests to other agencies asking that they comply with the Farm Bill and buy biobased. What is the response to those requests? How will USDA follow up on these requests?

Answer. Secretary Vilsack sent letters to his fellow cabinet members urging support for the BioPreferred Program in February 2009 and again in April 2010. The latest call for action has been well received; thus far six cabinet level agencies have responded and pledged their strong support for the purchase and use of biobased products. These include the Departments of Defense, Commerce, Treasury, Education, the Interior, and Energy. These response letters will be posted on the BioPreferred website for public viewing (see *http://www.biopreferred.gov*). USDA believes this high level commitment to the program from other Federal agencies will allow vendors seeking to supply biobased products to inform procurement officials of the commitment of their Departments' top management to the BioPreferred Program. USDA anticipates additional letters of support, which also will be posted as they are received. USDA is continuing the education process regarding biobased product purchase requirements at all levels of the Federal government. BioPreferred program staff are designing training with the Federal Acquisition Institute and the Defense Acquisition University to assure new and existing procurement officials are aware of the strong government-wide support for biobased products.

Section 9003 Biorefinery Assistance Program

Question 7. You mention that you have two projects to date for this program, but state the level of interest remains high. What do you think is the contributing factor to not having more awards at this point? Is the lending community hesitant or does the program needs to be changed? And what are you doing to ensure that we start getting loan guarantees out to these projects?

Question 8. USDA has issued the proposed rulemaking for the Biorefinery Assistance loan guarantee program, Sec. 9003, to assist in the development, construction or retrofitting of commercial biorefineries. This program was established in 2008, but has only made two loan guarantees. And, as we all know, DOE has not issued a single loan guarantee to a biorefinery. Are requirements for loan guarantee pro-

grams to evaluate risk of projects flexible enough to fund new biofuel technology projects which are much different than wind or solar projects? How will administration of the USDA program be different than administration of the DOE program?

Answer 7–8. The Agency has received numerous inquiries and requests to meet and discuss the Section 9003 program. USDA considers these inquiries indicative of the keen level of interest from projects to participate in the program. While some projects have indicated difficulty in finding a lender to participate, an encouraging number have successfully identified a lender of record. USDA works directly with the lender to set up a 9003 proposal.

The risks and uncertainties of still unproven technologies are consequential. The Agency maintains high standards of due diligence for these inherently risky projects to ensure that these significant investments are safe and protect the taxpayers interests. The Section 9003 loan guarantee applications undergo three comprehensive reviews for technical, environmental, economic and financial feasibility/viability. The most formidable challenge of these very capital intensive projects is providing adequate private sector financing. A partnership of technical and financial expertise from both private and public sectors is required to bridge the developmental gaps and to distribute the associated risks. Stringent due diligence can only serve to encourage prospective financial partners to participate in these worthwhile projects.

The pace of applications for the Section 9003 program has clearly been affected by the recent recession, volatility in world oil prices, and a high level of caution by lenders in the wake of the credit crisis. The level of interest among potential applicants remains high, however, so the Agency anticipates that more applications will be submitted in the year ahead as the economic recovery continues to strengthen.

Since the publications of the Section 9003 Extension Notice of Funding Availability for remaining funds from FY 2009, and the FY 2010 Notice of Funding Availability, Rural Development has responded to a number of inquiries involving: the retrofitting of existing facilities to accommodate pretreatment and processing of cellulosic feedstocks (mostly corn residue and woody biomass) to make fuel ethanol; the construction of new facilities for either the biochemical or thermochemical conversion of: perennial grasses such as switchgrass, reed canary grass, and miscanthus; energy cane; sorghum; and woody biomass such as poplar, hybrid poplar, willow, and silver maple.

Rural Development also responded to a number of inquiries that involve biorefineries to process oilcrops including oilseeds (camelina) and algae into third generation biofuels; the so-called, "drop-in" or "pipeline ready" replacement fuels for existing fossil fuels such as gasoline, diesel, and aviation fuel.

The Section 9003 program has about $150 million in budget authority, available in FY 2010. The Section 9003 Biorefinery Assistance Notice of Funding Availability for FY 2010 application deadline was August 4, 2010. The Agency received six applications totaling over $705 million that currently are under review that will compete for the funding available.

On April 16, 2010, USDA published a proposed rule and accepted comments through June 15, 2010. The Agency is currently reviewing the comments to determine potential changes for the final rule.

The program considers advanced biofuel technologies. The Agency requires a feasibility study, which includes a technical assessment that provides information used to conduct our due diligence and approval process. The Agency guidance concerning the preparation of the documents, allows applicants to tailor the information to a particular technology and project. The Agency implements the program from the National Office, and uses our State and area offices to assist in the process. Communication with private sector lenders prior to the development of an application and during the Agency's review has proved to be a crucial factor in implementing the program.

USDA is working with DOE to see how the respective department's loan guarantee programs can complement each other in accomplishing the common goal of advancing the production of advanced biofuels.

Question 9. As you know, non-fuel biobased products, such as bioplastics, also made from renewable biomass, provide similar benefits as biofuels—such as job creation, enhanced rural economies, greenhouse gas reductions and reduced use of petroleum. The modern bio-refinery will need to mimic the petroleum refinery platform in that it will produce multiple products and materials from one feedstock. USDA has provided some support for biobased materials through programs such as the Biobased Markets Program but how can USDA further incentivize these products and help create markets for them? Should these products qualify for the grants and loan guarantees under the Biorefinery Assistance Program? Why or Why not?

Answer. The Agency recognizes that other biobased products can potentially be a sizeable portion of a biorefinery's revenues and thus affect the financial viability of

the biorefinery. However, the primary goal of this program is to encourage the production of advanced biofuels. Under the Section 9003 Notice of Proposed Rulemaking the Agency requested comments on the percentage of a biorefinery's sales that must come from the sale of eligible advanced biofuels in order to be eligible under this program. The public comment period closed June 15, 2010, and the Agency is currently reviewing same. This issue will be addressed in the interim rule that RD anticipates publishing later.

Question 10. We know that as folks are struggling to find capital, there has been discussion of the use of the bond market to finance projects. It's my understanding that several entities have approached USDA about this approach, so I'm wondering if you're able to tell us whether you think this is an option either under the Biorefinery Assistance Program or your other rural development loan guarantees. And if so, would you be able to make it work without any legislative changes to the statutory language?

Answer. The Agency's guaranteed programs already can consider bond financing in circumstances where the lender purchases all bonds and sells and/or participates thereafter. Under the Agency's statutory authority, the Agency guarantees run to lenders, not to investors.

Question 11. In your testimony on Section 9003, you mention that applications for the program have been affected by a number of factors, including the recession and a high level of caution among lenders. What are the nature of the concerns lenders have expressed?

Question 11a. What steps has USDA taken (or what steps will the Department take in the future) to address lender concerns?

Answer 11–11a. Rural Development recognizes the magnitude of the financial exposure and risk born by lenders that participate in Section 9003 program.

On April 16, 2010, USDA published a proposed rule and accepted comments through June 15, 2010. The Agency requested comments on the following:

Preapplications. The Agency requested comments on whether or not a preapplication process for the Biorefinery Assistance program will provide sufficient benefit to lenders and borrowers.

Feedstocks. The Agency requested comments on eligibility of certain types of feedstocks. For example, should by-products from the pulp and paper production process which are commonly used for on-site energy production or recycled be an eligible feedstock for a biorefinery seeking a loan guarantee under this program?

Rural area requirement. As proposed, only biorefineries located in rural areas will be eligible for loan guarantees. The Agency requested comments on whether biorefineries located in non-rural areas should also be eligible for a loan guarantee under this program.

Foreign ownership. The Agency requested comments on whether biorefineries that do not meet the proposed citizenship requirements of at least 51 percent domestic ownership should be eligible for a loan guarantee under this program.

Program obstacles. The Agency requested comments on any and all provisions for the proposed Biorefinery Assistance program and the Business and Industry Guaranteed Loan program that present an obstacle for stakeholders applying for assistance in either program.

Processing technology owned by the borrower. The Agency requested comments on whether the processing technology owned by the borrower should be included as an eligible project cost. Examples of potential eligible project costs associated with the processing technology could include, but not be limited to: highly skilled labor, laboratory costs and testing, and equipment.

Percent revenue from sale of advanced biofuel. The Agency requested comments on the percentage of a biorefinery's sales that must come from the sale of eligible advanced biofuels in order to be eligible under this program. The Agency does recognize that other biobased products can potentially be a sizeable portion of a biorefinery's revenues and thus affect the viability of the biorefinery.

Value of feedstock supplied by producer associations and cooperatives. The Agency requested comments on the percentage of feedstocks that must be purchased from producer association and cooperatives in order to be awarded points in the scoring of applications. The Agency proposed a 60 percent threshold for such purchases. The Agency attempted to strike a balance between giving priority to the purchase of feedstocks from producer associations and cooperatives and encouraging new feedstocks and technologies.

Measuring potential for rural economic development. The Agency requested comments on metrics that can be used for measuring rural economic development.

Measuring positive impacts on resource conservation, public health, and the environment. The Agency requested comments on metrics that can be used for meas-

uring each of these three areas—resource conservation, public health, and the environment.

Definition of agricultural producer. The Agency requested comments on the definition of agricultural producer in which "50 percent or greater of their gross income is derived from the [agricultural] operations."

Local ownership. The Agency requested comments on the definition of "local owner" in scoring applications. The Agency sought comments in particular on the relationship of an owner to the area supplying the feedstock to the biorefinery and whether the proposed distance of 20 miles beyond the feedstock area is reasonable.

The Agency is currently reviewing the comments to determine potential changes for the final rule.

Section 9004 Repowering Assistance

Question 12. It is our understanding USDA wants companies to pay all the up front costs before applying for assistance. Given the current economic climate, many companies can't get financing to implement all the changes and then get reimbursement. Is there a better way to do this?

Answer. Rural Development anticipated that the process to replace fossil fuel use among a limited number of biorefinery sites producing liquid transportation fuels would be a highly capital intensive prospect. Although USDA can pay up to $5 million of these costs, the Agency looked for the right set of incentives to encourage projects that were truly sustainable—economically, environmentally, and socially viable, to apply.

The Agency discovered after the first round that most projects are less capital intensive than anticipated. Other than making a direct grant, there is no other feasible option.

Based on comments received during the proposed rule comment period, USDA is evaluating various options. USDA will consider these comments and the options in the development of the interim final rule.

Section 9005 Bioenergy Program for Advanced Biofuels

Question 13. Why was the rural area requirement included in the Notice of Contract Proposal (NOCP) for FY09 and FY10 payments? Was any analysis done on which to base this requirement? If the rural area requirement is not included in the Proposed Rule, why would USDA keep it in the subsequent NOCP that was issued for FY10 payments?

Answer. Rural Development administers the Section 9005 Bioenergy Program for Advanced Biofuels in a manner that is consistent with the mission for rural areas for Rural Development programs across the mission area. The Section 9005 proposed rule solicited public comment regarding the rural area requirement. Information obtained from the public will used to justify permanent regulations for the 9005 program.

The Agency published the original NOCP for FY 2010 on April 16, 2010, in an effort to be consistent with 2009 NOCP. Based on comments received during the public comment period for the proposed rule on this program, the rural area requirement for Section 9005 was removed in a subsequent NOCP for FY 2010 that extended the application period to allow producers in non-rural areas to qualify and make application.

Question 14. Why weren't the rural area and domestic ownership requirements raised by USDA for discussion at the public hearing that USDA held on this program before the NOCP was issued?

Answer. The public hearing held prior to preparation of the initial NOCP was designed as a listening forum to afford the public an opportunity to provide comments on the implementation of Title IX before any notice or proposed rule was developed. USDA only listened to the comments received during this forum and did not discuss any specific policy issues at the forum. Rural Development administered the Section 9005 Bioenergy Program for Advanced Biofuels consistent with the requirements of Rural Development programs across the mission with respect to rural definition and rural area. The concerns related to consistency were identified during the development of the notices, which was after the public hearing. The proposed rule requested comment on rural definition and rural area. USDA is considering these comments as we develop the interim final rule.

Question 15. What is the timeline for issuing a Final Rule for the Section 9005 Program? Do you anticipate making payments of remaining FY 2010 funds under a Final Rule within FY 2010? Was it not possible to make payments of the full FY 2010 funding amount under a Final Rule within FY 2010? If not, why?

Answer. The Agency anticipates the interim rule to be published sometime in Fiscal Year 2011. The FY10 NOCP was cancelled and FY 10 funding will not be made available until the interim final rule is published.

Question 16. Why was only $30 million provided in FY09, when the statue prescribed $55 million? (USDA initially said OMB would not allow the full amount absent the benefit of a rulemaking process and public comment period. However, now USDA has made FY10 funds available while the Proposed Rule is still pending).

Answer. USDA is currently in the end stages of finalizing a regulation for Section 9005 that meets the needs of the public. To create a program that targets the correct recipients and provides a fair and equitable amount of funding per applicant, USDA needed to take public comments on the rule. As this process has taken more time than what was initially expected, the Administration decided to release as subset of funds through two NOFAs in 2009 and 2010. The public voiced legitimate concerns over the 2010 NOFA, causing us to pull the available funding. A final regulation will be published shortly, releasing the remaining 2009, 2010, and new 2011 funds.

Question 17. Why was the domestic ownership requirement included in the Notice of Contract Proposal for FY09 and FY10 payments and the Proposed Rule? Was any analysis done on which to base this requirement?

Answer. Rural Development administers the Section 9005 Bioenergy Program for Advanced Biofuels in a manner that is consistent with the provision of other Rural Development programs across the mission area. The Section 9005 proposed rule solicited public comment regarding the foreign ownership requirement. Based on the comments received during the comment period, USDA issued a subsequent NOCP for FY 2010 that extended the application period to allow producers with foreign ownership to qualify and make application.

Question 18. Where in the process of "undergoing an appeal" to EPA does a facility's fuel have to be for you to consider them eligible? Formally submitted or given notice that they're working on the modeling and will be submitting?

Answer. The process of "undergoing an appeal" requires the producer to formally submit an appeal to EPA to be considered under the program.

Question 19. It has come to the attention of the Committee that applicants for the 9005, Bioenergy program, must be an approved biofuel under the RFS2. Can you tell elaborate on why you included that?

Answer. In an effort to be consistent with the Administration's priority on renewable fuels, the Department incorporated the RFS2 requirements to ensure that the advanced biofuels produced would have a market awaiting their production. The parameters of that market are set in the RFS2.

Question 20. For the supplemental FY09 payments that USDA is making, why are you not allowing payments to producers that made qualifying fuel in 2009 but did not get their facility registered under the original FY09 deadline?

Answer. The Extension Notice for FY 2009 payments was not a request for additional applications. The Agency offered the remaining FY 2009 funding to all applicants eligible under the original FY 2009 Notice.

Question 21. Why can't USDA accept new facilities that produced eligible fuel in 2009 since USDA has supplemental and carry over funds and is actually soliciting companies to make applications for supplemental payments—but only if they were signed up the qualifying fuel by the original deadline?

Answer. The Extension Notice for FY 2009 payments was not a request for new applications. The Agency offered the remaining FY 2009 funding to all applicants eligible under the original FY 2009 Notice.

Other Information:

On April 16, 2010, USDA published a proposed rule, with comments due by June 15, 2010. The Agency retained the 51% U.S. citizen ownership requirement in the proposed rule, as in the 2009 NOCP.

Comments were solicited regarding:

- If entities do not sell the advanced biofuel, but use the biofuel for internal purposes, should these entities be entitled to Program payments? How should the on-site usage be verified?
- Whether the proposed rule is following the intent of the Program.
- The appropriateness of the proposed payment rates.
- Should the program modify the 51 percent domestic ownership requirement?
- Should advanced biofuels produced at biorefineries that are located in non-rural areas be eligible for payments?

The Agency is considering an approach to offer different payment rates based on the advanced biofuels' lifecycle greenhouse gas (GHG) emissions. This approach would offer a significantly higher payment rate for biofuels that are demonstrated to significantly reduce GHGs emissions relative to the conventional fuels that they replace.

A NOFA releasing $40 million in budget authority for FY 2010 was published in the *Federal Register* on May 6, 2010. The window for applications closed on July 6, 2010.

Section 9007 Rural Energy for American (REAP)

Question 22. With respect to Section 9007 of the 2008 Farm Bill, the REAP Program, you mentioned that energy efficiency "projects" typically involve installing or upgrading equipment to significantly reduce energy use. Can you give examples of what you mean by equipment "installation" or "upgrades" equipment?

Answer. The Rural Energy for America Program (REAP) can help agriculture producers and rural small businesses purchase or construct renewable energy systems and install energy efficiency improvements. The program has financed grain dryers, refrigeration units, reverse osmosis equipment, and anaerobic digesters. Energy efficiency improvements must demonstrate an energy savings to qualify for the program.

Question 23. I didn't see any mention of a proposed or final rule for REAP. What's the status of the rule?

Answer. A proposed rule that incorporates the energy audits, renewable energy development assistance, and feasibility provisions into the current regulation will be published in Fiscal Year 2011.

Question 24. There have been some concerns about the fact that REAP has been operating on solicitations of applications and other funding notices instead of a rule. This has kept folks wondering from year to year exactly how the program is going to be operated and led to some complaints from the field. Any response to them?

Answer. The 2010 Appropriation Act provided $39 million in funding for grants and loan guarantees in addition to the $60 million of Farm Bill mandatory funding. USDA published a Notice of Solicitation of Applications (NOSA) in FY 2010 to solicit applications for the purchase of renewable energy systems and to make energy efficiency improvements in the *Federal Register* on April 26, 2010.

A separate NOFA for $2.4 million in funding to conduct Energy Audits and Renewable Energy Development Assistance was published in the *Federal Register* on May 27, 2010. Additionally, USDA published a third NOFA in the *Federal Register* for feasibility studies on August 06, 2010.

A proposed rule that incorporates the energy audits, renewable energy development assistance, and feasibility provisions into the current regulation will be published in fiscal year 2011. The current rule was designed to require an annual notice of the amount of funding availability to be published each year to advise potential applicants of the amount of funding available.

Section 9008 Biomass Research Development Initiative (BRDI)

Question 25. What types of projects have you been funding under Biomass R&D? Have you tried to balance research with development requests

Answer. BRDI supports applied and developmental research and demonstrations. Any research that is basic or early applied would have to be conducted in the context of addressing a technology gap, and could be considered "directed" basic research. In FY09, one project funded by USDA was a demonstration, one project funded by DOE was a demonstration and 10 projects funded by USDA and DOE were research and development projects.

Question 26. Can you tell us the dollar amount requested by those 108 full applications under the last soliciation? And how much funding did you have available in FY09?

Answer. The 108 full applications that were reviewed totaled $282,165,356. In FY09, USDA was authorized for $20M and the DOE contribution was $5M.

Question 27. Why was the decision made to require applicants to meet all three technical areas, including the development of biomass and modeling?

Answer. After extensive discussions about the FY 2010 solicitation, the USDA–NIFA and DOE Office of Biomass Program team members determined that integrating the three technical areas would result in projects that would effectively coordinate biomass production and conversion technology, and would generate useful data for determining environmental quality, cost effectiveness, and social impacts associated with the technologies being proposed. Addressing all three technical

areas requires a more systematic approach that is anticipated to result in near term successful outcomes for sustainably producing biofuels and biobased products.

Question 28. The Congressional intent on clarifying the third technical aspect under the Biomass R&D Program was to get at the availability of adequate modeling on issues related to feedstock and bioenergy production. So, I'm wondering, why you would require applicants to look at all three of these aspects together when both the Federal agencies and Congress agree that we need better modeling capabilities to make the kinds of decisions that are being made on biofuels policy? Was there a lack of understanding about Congressional intent?

Answer. USDA–NIFA understands and has an appreciation for the Congressional intent of Technical Area C and the need for strategic guidance. The solicitation states that all three technical areas must be adequately addressed, but that does not preclude an applicant from emphasizing any particular technical area, *e.g.,* focusing on Technical Area C. A model is only as useful as the quality of data input. Systematic evaluations and analyses that are conducted in conjunction with feedstock production and conversion result in data that can support existing models or the development of new models. The anticipated result is more robust modeling that will provide the desired strategic guidance for truly sustainable biomass technologies.

Question 29. With respect to the Section 9008, you mention that the Fiscal Year 2010 solicitation supports models that focus on public lands regarding feedstock development; including analysis of new policy approaches to stewardship contract, forest ecosystem restoration, invasive species management, and grassland restoration projects. Can you explain the extent of the Forest Service's involvement regarding section 9008?

Answer. Statutory language was used verbatim in the FY 2010 solicitation to support biofuels development analysis and models:

> "(i) STRATEGIC GUIDANCE.—The development of analysis that provides strategic guidance for the application of renewable biomass technologies to improve sustainability and environmental quality, cost effectiveness, security and rural economic development; or
>
> (ii) ENERGY AND ENVIRONMENTAL IMPACT.—Development of systematic evaluations of the impact of expanded biofuel production on the environment (including forest land) and on the food supply for humans and animals, including the improvement and development of tools for life cycle analysis of current and potential biofuels; or
>
> (iii) ASSESSMENT OF FEDERAL LAND.—Assessments of the potential of Federal land resources to increase the production of feedstocks for biofuels and biobased products, consistent with the integrity of soil and water resources and with other environmental considerations."

On December 2, 2009 the Biomass Research and Development Technical Advisory Committee submitted, as required by legislation, their recommendations for Section 9008. The twenty-nine recommendations included the following:

- ". . . strategies be developed to encourage the utilization of woody biomass derived from federal, state and private lands . . ." The committee suggested that long-term (10 year minimum) contracts for utilization of biomass from federal lands be examined.
- ". . . research be funded to help in the identification, development, and selection of appropriate systems that might be used to harvest, consolidate and convert invasive species into biofuels or biopower."
- ". . . develop best management practices for sustainable productivity of agriculture and forestry systems for biomass feedstocks." An example of best management practices that should be developed includes an analysis of forest and grassland protection and restoration operations.

For the FY 2010 solicitation, it was determined that the broader language in the statute encompassed the recommendations of the Technical Advisory Committee.

As a Federal research agency, the USDA Forest Service is eligible to submit applications to the Biomass Research and Development Initiative—Section 9008. The USDA Forest Service has no extensive involvement regarding the program beyond this capacity.

Section 2010 Biomass Crop Assistance Program (BCAP)

Question 30. USDA has stated in its proposed rules that it "seeks to avoid diverting any materials potentially eligible for BCAP matching payments from existing

value added production processes already occurring in the marketplace." What is the reason for avoiding product diversion is to avoid market distortions?

Answer. During the operation of the Notice of Funding Availability (NOFA), concerns were raised by some users of biomass feedstocks, such as mulch producers, nursery growers, and particle board manufacturers, that BCAP payments were affecting the price and availability of their respective feedstocks. These groups submitted written comments during the public comment period of the proposed BCAP rule, and FSA has closely reviewed these important comments as the final BCAP rule is developed.

Question 31. Do you believe that the proposed rule implementing the BCAP program achieves the Department's stated goal "to avoid diverting *any* materials potentially eligible for BCAP matching payments from existing value added production processes"?

Answer. Yes. The language proposes that vegetative wastes, such as wood waste and wood residues, collected or harvested from both public and private lands, should be limited to only those that would not otherwise be used for a higher-value product. More specifically, for materials collected from both public and private lands, CCC is proposing to exclude from matching payment eligibility wood wastes and residues derived from mill residues (*i.e.,* tailings) or other production processes that create residual byproducts that are typically used as inputs for higher value-added production (*i.e.,* particle board, fiberboard, plywood, or other wood product markets).

Question 32. Did the Department conduct any analysis of the impact of the proposed rule on the forest products industry before publishing the rule? What impact did you find?

Answer. No—no specific analysis was conducted on the forest products industry.

Question 33. In the proposed rule, USDA states that it would exempt wood waste and residues that would be used to create higher-value products such as wood panels. Do you believe that allowing matching payments for wood biomass that could be used to create pulp, paper and packaging could divert these raw products from higher value use?

Answer. Apart from the Congressional authority in the statute, it is generally economically unfeasible, with or without BCAP matching payments, for these feedstocks to be used for energy purposes rather than for pulp, paper and packaging.

Question 34. As you know, Congress created in BCAP both a matching payments component for the delivery of biomass to biomass conversion facilities, as well as a supply component to promote the production of energy crops. However, the Conference Report stated that "the primary focus of the BCAP will be promoting the cultivation of perennial bioenergy crops that show exceptional promise for producing highly energy-efficient bioenergy or biofuels, that preserve natural resources, and that are not primarily grown for food or animal feed." And yet, the funding for the BCAP program is skewed towards the matching payments component, which would receive $2.1 billion for years 2010–2013 under the proposed rule, while the supply component would receive only $536 million for years 2010–2012 for establishment cost share and technical assistance and for annual payments over 2010–2026. Do you believe that, of the 2 aspects of the BCAP program—the supply component—is less likely to result in market distortions?

Answer. No. Both aspects of the BCAP rule—the establishment and annual payments, and the matching payments—are by design to influence markets, providing incentives to cultivate, harvest, transportation and deliver biomass where it would otherwise not occur under present market conditions. Further economic studies coinciding with BCAP outcomes would be required to determine which two aspects of BCAP more successfully incentivized the biomass marketplace.

Question 35. If the program were realigned so that more of the available funds are allocated for the supply program, would this help prevent market distortions? What allocation of funds do you contemplate for the supply component *versus* the matching payments component?

Answer. BCAP will encourage producers to make choices on types of biomass grown and consumers to make choices on types of biomass consumed—affecting demand and supply of non-feed, non-food dedicated energy crops. The necessary funding for the establishment and annual payments portion of BCAP, therefore, will rest largely on the level and type of interest from applicants seeking to participate in the program during the time remaining until the next farm bill reauthorization in 2012.

Question 36. Creating sustainable feedstocks for a growing advanced biofuels industry is vital to meeting the renewable fuels standard enacted by Congress. The Biomass Crop Assistance Program (BCAP) in the 2008 Farm Bill is a promising pro-

gram that could help a lot of farmers get started growing dedicated energy crops, but I have heard from farmers that USDA has been slow to implement the program, and that the restrictions and requirements that USDA has proposed could really hamper its impact. What can USDA do to get an effective and usable Biomass Crop Assistance Program (BCAP) up and running quickly?

Answer. USDA is working to issue the final rule on BCAP this fall so that interested applicants can participate in preparation for the 2011 crop year.

Question 37. While BCAP is important, its reach is limited. What else will USDA do to incentivize agricultural land owners to begin collecting agricultural residues and grow and manage dedicated energy crops?

Answer. USDA will continue the federal investment in associated energy projects of Title IX of the 2008 Farm Bill, and explore how existing programs, such as risk management and disaster assistance, credit mechanisms, research, and technical assistance can be used to further develop a dedicated energy crop infrastructure.

Question Submitted by Hon. Steve Kagen, a Representative in Congress from Wisconsin

Question. There is a company in my State of Wisconsin that allows its customers (many of whom are my constituents) to pay for new energy technology with the energy cost savings resulting from the technology itself. At the end of a specified period of time, as defined in a supply contract, the ownership of the equipment is transferred from the company to its customer, the farmer. Unfortunately, a farmer in Northeastern Wisconsin that takes advantage of creative financing options like this are barred from applying for Rural Energy for America Program (REAP) funding, the main source of funding at USDA that farmers can use to make investments in energy efficiency and renewable energy technology. This is a problem—if a farmer could enter into this kind of financial arrangement and also take advantage of the REAP program, the amount of time it takes for that farmer to pay for the technology would decline significantly, and that farmer would be able to take advantage of 100% of the cost savings much sooner.

While farmers don't control the cost of electricity—or the fact that electricity costs are rising—they can control when they use electricity and how much electricity they use, but only if they have the resources they need to invest in the right technology. As long as farmers that utilize creative financing options are excluded from REAP, however, they cannot maximize their use of available resources. Is USDA willing to work with Congress, as we draft the next Farm Bill, to solve this problem?

Answer. The Rural Energy for America Program (REAP) assists agricultural producers and rural small business purchase or construct renewable energy systems and install energy efficiency improvements. The Agency is open to discuss alternatives that will promote and expand the REAP program and increase energy savings and renewable energy production.

Questions Submitted by Hon. Adrian Smith, a Representative in Congress from Nebraska

Question 1. Congress authorized $300 million over 4 years for Section 9005, the Advanced Bioenergy Program, of the Energy Title of the 2008 Farm Bill. While the statute provided $55 million in Section 9005 funds for Fiscal Year 2009, the Department of Agriculture paid out only $30 million, carrying the other $25 million to FY 2010.

Answer. USDA is currently in the end stages of finalizing a regulation for Section 9005 that meets the needs of the public. To create a program that targets the correct recipients and provides a fair and equitable amount of funding per applicant, USDA needed to take public comments on the rule. As this process has taken more time than what was initially expected, the Administration decided to release as subset of funds through two NOFAs in 2009 and 2010. The public voiced legitimate concerns over the 2010 NOFA, causing us to pull the available funding. A final regulation will be published shortly, releasing the remaining 2009, 2010, and new 2011 funds.

Question 1a. The USDA proceeded to request applications for supplemental 2009 and 2010 advanced fuel production while at the same time considering a proposed rule which would make significant changes to the program.

Despite the fact USDA is making supplemental FY 2009 payments and rolling unused supplemental funds to FY 2010, USDA is denying payments to producers who made qualifying fuel in 2009 but did not apply under the original FY 2009 deadline.

Why, if USDA has supplemental 2009 funds and is soliciting facilities for application, are you denying payment to facilities which would have qualified under the original FY 2009 deadline, but did not initially apply?

Answer. USDA is currently in the end stages of finalizing a regulation for Section 9005 that meets the needs of the public. To create a program that targets the correct recipients and provides a fair and equitable amount of funding per applicant, USDA needed to take public comments on the rule. As this process has taken more time than what was initially expected, the Administration decided to release as subset of funds through two NOFAs in 2009 and 2010. The public voiced legitimate concerns over the 2010 NOFA, causing us to pull the available funding. A final regulation will be published shortly, releasing the remaining 2009, 2010, and new 2011 funds.

Question 2. In FY 2009, Section 9005 payments were obligated using a rule with several unjustified restrictions. USDA is now considering a proposed rule which would make corrections and significant changes, likely allowing currently ineligible producers to qualify. Why is the USDA prepared to release 2010 dollars under the obviously conflicting rule?

Answer. The Agency published a NOCP for FY 2010 that was consistent with the 2009 NOCP. The Agency wanted to provide payments to an industry having financial difficulties. However, the rural area requirement for Section 9005 was removed under the Notice of Proposed Rule Making published on April 16, 2010. The Agency received comments on whether biorefineries located in non-rural areas should be eligible for the program. In addition, comments were received concerning foreign ownership. The Agency is currently reviewing all comments.

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