

(e) Data furnished by participants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, the failure to provide data could result in program benefits being withheld or denied.

(f) Subject to the availability of funds and all other eligibility provisions of this part, this part provides the terms, conditions and requirements of BCAP. In the event that CCC determines that available funds are insufficient to accommodate the demand for establishment and annual payments as well as all potential applications for matching payments for collection, harvest, storage, and transportation of eligible material, without any advance notice other than that stated here, CCC may prioritize the expenditure of program funds in favor of funding for the selection of BCAP project areas and the establishment and annual payments related to those project areas, and may make such other priorities in approvals that will, in the determination of the Deputy Administrator, advance the purposes of BCAP.

[75 FR 66234, October 27, 2010, as amended at 76 FR 56951, Sept. 15, 2011]

**§ 1450.2 Definitions.**

(a) The definitions in part 718 of this title apply to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions apply to this part:

*Advanced biofuel* means fuel derived from renewable biomass other than corn kernel starch, including biofuels derived from cellulose, hemicellulose, or lignin; biofuels derived from sugar and starch (other than ethanol derived from corn kernel starch); biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste; diesel-equivalent fuel derived from renewable biomass including vegetable oil and animal fat; biogas (including landfill gas and sewage waste treatment gas) produced through the conversion of organic matter from renewable biomass; and butanol or other alcohols produced through the conversion of organic matter from re-

newable biomass; and other fuel derived from cellulosic biomass.

*Agricultural land* means cropland, grassland, pastureland, rangeland, hayland, and other land on which food, fiber, or other agricultural products are produced or capable of being produced.

*Animal waste* means the organic animal waste of animal operations such as confined beef or dairy, poultry, or swine operations including manure, contaminated runoff, milking house waste, dead poultry, bedding, and spilled feed. Depending on the poultry system, animal waste can also include litter, wash-flush water, and waste feed.

*Annual payment* means the annual payment specified in the BCAP contract for BCAP project areas that is issued to a participant for placing eligible land in BCAP.

*Beginning farmer or rancher* means, as determined by CCC, a person or entity who:

- (1) Has not been a farm or ranch operator or owner for more than 10 years,
- (2) Materially and substantially participates in the operation of the farm or ranch, and
- (3) If an entity, is an entity in which at least 50 percent of the members or stockholders of the entity meet the first two requirements of this definition.

*Biobased product* means a product determined by CCC to be a commercial or industrial product (other than food or feed) that is:

- (1) Composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials; or
- (2) An intermediate ingredient or feedstock.

*Bioenergy* means renewable energy produced from organic matter. Organic matter may be used directly as a fuel, be processed into liquids and gases, or be a residual of processing and conversion.

*Biofuel* means a fuel derived from renewable biomass.

*Biomass conversion facility* means a facility that converts or proposes to convert renewable biomass into heat,

power, biobased products, or advanced biofuels.

*Conservation district* is as defined in part 1410 of this chapter.

*Conservation plan* means a schedule and record of the participant's decisions and supporting information for treatment of a unit of land or water, and includes a schedule of operations, activities, and estimated expenditures for eligible crops and the collection or harvesting of eligible material, as appropriate, and addresses natural resource concerns including the sustainable harvesting of biomass, when appropriate, by addressing the site-specific needs of the landowner.

*Contract acreage* means eligible land that is covered by a BCAP contract between the producer and CCC.

*Delivery* means the point of delivery of an eligible crop or eligible material, as determined by the CCC.

*Deputy Administrator* means the FSA Deputy Administrator for Farm Programs, or a designee.

*Dry ton* means one U.S. ton measuring 2,000 pounds. One dry ton is the amount of renewable biomass that would weigh one U.S. ton at zero percent moisture content.

*Eligible crop* means a crop of renewable biomass as defined in this section excluding:

(1) Any crop that is eligible to receive payments under Title I, "Commodity Programs," of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246) or an amendment made by that title, including, but not limited to, barley, corn, grain sorghum, oats, rice, or wheat; honey; mohair; certain oilseeds such as canola, crambe, flaxseed, mustard seed, rapeseed, safflower seed, soybeans, sesame seed, and sunflower seeds; peanuts; pulse crops such as small chickpeas, lentils, and dry peas; dairy products; sugar; wool; and cotton boll fiber; and

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

*Eligible material* is renewable biomass as defined in this section excluding:

(1) Material that is whole grain from any crop that is eligible to receive pay-

ments under Title I of the Food, Conservation, and Energy Act of 2008 or an amendment made by that title, including, but not limited to, barley, corn, grain sorghum, oats, rice, or wheat; honey; or material that is mohair; certain oilseeds such as canola, crambe, flaxseed, mustard seed, rapeseed, safflower seed, soybeans, sesame seed, and sunflower seeds; peanuts; pulse crops such as small chickpeas, lentils, and dry peas; dairy products; sugar; wool; and cotton boll fiber;

(2) Animal waste and by-products of animal waste including fats, oils, greases, and manure;

(3) Food waste and yard waste; and

(4) Algae.

*Eligible material owner*, for purposes of the matching payment, means a person or entity having the right to collect or harvest eligible material, who has the risk of loss in the material that is delivered to an eligible facility and who has directly or by agent delivered or intends to deliver the eligible material to a qualified biomass conversion facility, including:

(1) For eligible material harvested or collected from private lands, including cropland, the owner of the land, the operator or producer conducting farming operations on the land, or any other person designated by the owner of the land; and

(2) For eligible material harvested or collected from public lands, a person having the right to harvest or collect eligible material pursuant to a contract or permit with the US Forest Service or other appropriate Federal agency, such as a timber sale contract, stewardship contract or agreement, service contract or permit, or related applicable Federal land permit or contract, and who has submitted a copy of the permit or contract authorizing such collection to CCC.

*Equivalent plan* means a plan approved by a State or other State agency or government entity that is similar to and serves the same purpose as a forest stewardship plan and has similar goals, objectives, and terms. These plans generally address natural resource concerns including the sustainable harvesting of biomass, when appropriate, by addressing the site-specific needs of the landowner.

*Establishment payment* means the payment made by CCC to assist program participants in establishing the practices required for non-woody perennial crops and woody perennial crops, as specified in a producer contract under the project portion of BCAP.

*Food waste* means, as determined by CCC, a material composed primarily of food items, or originating from food items, or compounds from domestic, municipal, food service operations, or commercial sources, including food processing wastes, residues, or scraps.

*Forest stewardship plan* means a long-term, comprehensive, multi-resource forest management plan that is prepared by a professional resource manager and approved by the State Forester or equivalent State official. Forest stewardship plans address the following resource elements wherever present, in a manner that is compatible with landowner objectives concerning:

- (1) Soil and water;
- (2) Biological diversity;
- (3) Range;
- (4) Aesthetic quality;
- (5) Recreation;
- (6) Timber;
- (7) Fish and wildlife;
- (8) Threatened and endangered species;
- (9) Forest health;
- (10) Archeological, cultural and historic sites;
- (11) Wetlands;
- (12) Fire; and
- (13) Carbon cycle.

*Higher-value product* means an existing market product that is comprised principally of an eligible material or materials and, in some distinct local regions, as determined by the CCC, has an existing market as of October 27, 2010. Higher-value products may include, but are not limited to, products such as mulch, fiberboard, nursery media, lumber, or paper.

*Highly erodible land* means land as determined as specified in part 12 of this title.

*Indian tribe* has the same meaning as in 25 U.S.C. 450b (section 4 of the Indian Self-Determination and Education Assistance Act).

*Institution of higher education* has the same meaning as in 20 U.S.C. 1002(a)

(section 102(a) of the Higher Education Act of 1965).

*Intermediate ingredient or feedstock* means an ingredient or compound made in whole or in significant part from biological products, including renewable agricultural material (including plant, animal, and marine material), or forestry material that is subsequently used to make a more complex compound or product.

*Legal entity* has the same meaning as in the regulations in §1400.3 of this chapter.

*Matching payments* means those CCC payments provided for eligible material delivered to a qualified biomass conversion facility.

*Native sod* means land:

- (1) On which the plant cover is composed principally of native grasses, grasslike plants, forbs, or shrubs suitable for grazing and browsing; and
- (2) That had never been tilled for the production of an annual crop as of June 18, 2008.

*Nonindustrial private forest land* means, as defined in 16 U.S.C. 2103a (the Cooperative Forestry Assistance Act of 1978, as amended), rural lands with existing tree cover, or suitable for growing trees, where the land is owned by any private individual, group, association, corporation, Indian tribe, or other private legal entity.

*Offer* means, unless otherwise indicated, the per-acre rental payment requested by the owner or operator in such owner's or operator's request to participate in the establishment payment and annual payment component of BCAP.

*Operator* means a person who is in general control of the land enrolled in BCAP, as determined by CCC.

*Participant* means a person who is participating in BCAP—either as a person who has applied for and is eligible to receive payments, has a BCAP contract, or is a project sponsor.

*Payment period* means a contract period of either up to 5 years for annual and non-woody perennial crops, or up to 15 years for woody perennial crops, during which the participant receives an annual payment under the establishment payment and annual payment component of BCAP.

*Person* has the same meaning as in the regulations in §1400.3 of this chapter. In addition, for BCAP, the term “producer” means either an owner or operator of BCAP project acreage that is physically located in a BCAP project area, or a producer of an eligible crop produced on that acreage.

*Producer* means, with respect to subpart B of this part, a person who had the risk of loss in the production of the material that is the subject of the BCAP payment; and with respect to subpart C of this part, an owner or operator of contract acreage that is physically located within a BCAP project area or a producer of an eligible crop produced on that acreage and who has the risk of loss in the relevant crop at the relevant period of time or who will have the risk of loss in crops required to be produced.

*Project area* means a geographic area with specified boundaries submitted by a project sponsor and approved by CCC under the establishment payment and annual payment component of BCAP.

*Project sponsor* means a group of producers or a biomass conversion facility who proposes a project area.

*Qualified biomass conversion facility* means a biomass conversion facility that meets all the requirements for BCAP qualification, and whose facility representatives enter into a BCAP agreement with CCC.

*Renewable biomass* means:

(1) Appropriate materials, pre-commercial thinnings, or invasive species from National Forest System land and U.S. Department of the Interior, Bureau of Land Management land that:

(i) Are by-products of preventive treatments that are removed to reduce hazardous fuels, to reduce or contain disease or insect infestation, or to restore ecosystem health;

(ii) Would not otherwise be used for higher-value products; and

(iii) Are harvested in accordance with applicable law and land management plans and the requirements for old-growth maintenance, restoration, and management direction of 16 U.S.C. 6512 (specifically, sections 102(e)(2), (3), and (4) of the Healthy Forests Restoration Act of 2003 and large-tree retention provisions of subsection (f)); or

(2) Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian Tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(i) Renewable plant material, including:

(A) Feed grains;

(B) Other agricultural commodities;

(C) Other plants and trees; or

(D) Algae;

(ii) Waste material, including:

(A) Crop residue;

(B) Other vegetative waste material (including wood waste and wood residues);

(C) Animal waste and byproducts (including fats, oils, greases, and manure); and

(D) Food waste and yard waste.

*Socially disadvantaged farmer or rancher* means, unless other classes of persons are approved by CCC in writing, a farmer or rancher who is a member of a group whose members have been subject to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities. Groups include:

(1) American Indians or Alaskan Natives;

(2) Asians or Asian Americans;

(3) Blacks or African Americans;

(4) Native Hawaiians or other Pacific Islanders; and

(5) Hispanics.

*Technical assistance* means assistance in determining the eligibility of land and practices for BCAP, implementing and certifying practices, ensuring contract performance, and providing annual rental rate surveys. The technical assistance provided in connection with BCAP to owners or operators, as approved by CCC, includes, but is not limited to: Technical expertise, information, and tools necessary for the conservation of natural resources on land; technical services provided directly to farmers, ranchers, and other eligible entities, such as conservation planning, technical consultation, and assistance with design and implementation of eligible practices; and technical infrastructure, including activities, processes, tools, and functions needed

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to support delivery of technical services, such as technical standards, resource inventories, training, data, technology, monitoring, and effects analyses.

*Tribal government* means any Indian tribe, band, nation, or other organized group, or community, including pueblos, rancherias, colonies and any Alaska Native Village, or regional or village corporation as defined in or established pursuant to 43 U.S.C. 1601–1629h (the Alaska Native Claims Settlement Act), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

*Violation* means an act by the participant, either intentional or unintentional, that would cause the participant to no longer be eligible to receive or retain all or a portion of BCAP payments.

*Yard waste* means any renewable biomass generated from municipal or residential land, such as urban forestry materials, construction or demolition materials, trimmings from grasses and trees, or biomass removed due to invasive species or weather-related disaster, that can be separated from and has low potential (such as contamination with plastics, metals, chemicals, or other toxic compounds that cannot be removed) for the generation of toxic byproducts resulting from conversion, and that otherwise cannot be recycled for other purposes (such as post-consumer waste paper).

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#### § 1450.3 General.

(a) The objectives of BCAP are to:

(1) Support the establishment and production of eligible crops for conversion to bioenergy and biobased products in selected project areas; and

(2) Assist agricultural and forest landowners and operators with matching payments to support the collection, harvest, storage, and transportation costs of eligible material for use in a biomass conversion facility.

(b) A participant must implement and adhere to a conservation plan, forest stewardship plan, or equivalent plan prepared in accordance with BCAP guidelines, as established and deter-

mined by CCC. A conservation plan, forest stewardship plan, or equivalent plan for contract acreage must be implemented by a participant and must be approved by the conservation district in which the lands are located, or, in the case of Federal lands, the appropriate approval authority of jurisdiction. If the conservation district declines to review the conservation plan, forest stewardship plan, or equivalent plan, the provider of technical assistance may take such further action as is needed to account for lack of such review.

(c) Agricultural and forest landowners and operators must comply with any applicable existing conservation plan, forest stewardship plan, or equivalent plan and all other applicable laws, regulations, or Executive Orders for any removal of eligible material for use in a biomass conversion facility to receive matching payments.

(d) Except as otherwise provided in this part, a participant may receive, in addition to any payments under this part, financial assistance, rental or easement payments, tax benefits, or other payments from a State or a private organization in return for enrolling lands in BCAP, without any commensurate reduction in BCAP payments.

#### § 1450.4 Violations.

(a)(1) If a participant fails to carry out the terms and conditions of a BCAP contract, CCC may terminate the BCAP contract.

(2) If the BCAP contract is terminated by CCC in accordance with this paragraph:

(i) The participant will forfeit all rights to further payments under the contract and must refund all payments previously received, plus interest; and

(ii) The participant must pay liquidated damages to CCC in an amount as specified in the contract.

(b) CCC may reduce a demand for a refund under this section to the extent CCC determines that such relief would be appropriate and would not deter the accomplishment of the purposes of BCAP.