

**TDA Prepared Brief on  
Proposed Rule for USDA - Biomass Crop Assistance Program  
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BCAP Proposed Rules Highlights

- Submit comments on proposed rules to USDA by April 9, 2010.
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- Background
  - 2008 Farm Bill authorizes the Biomass Crop Assistance Program (BCAP) to assist agricultural and forest land owners and operators with the collection, harvest, storage, and transportation (CHST) of eligible material for use in a biomass conversion facility and to support the establishment and production of eligible crops for conversion to bioenergy in selected project areas.
  - This proposed rule terminates the previously published Notice of Funds Availability (NOFA) from June 11, 2009. A new NOFA for BCAP will be issued following USDA adoption of these rules.
- BCAP Overview
  - Two funding programs:
    - Matching Payments: Funding for agricultural and forest land owners and operators to receive matching payments for eligible material that is sold to qualified biomass conversion facilities for the production of heat, power, biobased products, or advanced biofuels. The matching payment is intended to assist producers with the cost of CHST of eligible material to the facility. Such payments to a particular participant may continue for up to two years after the first payment is issued.
    - Establishment and Annual Payments: Funding for producers of eligible crops of renewable biomass within specified project areas to receive establishment payments of not more than 75 percent of the cost of establishing eligible woody and non-woody perennial crops, and annual payments for up to 15 years for the production of those crops. To be eligible for payment, the establishment and production activities must take place in designated project areas, which may be proposed to the Commodity Credit Corporation (CCC) by biomass conversion facilities or by groups of producers. Production activities may include, but are not limited to, annual payments for producers who are unable to sell crops due to a reduction in the size or scope of a biomass conversion facility's operation or if a producer experiences crop failure caused by no



<b>BCAP Table Summarizing the Major Eligibility Requirements for Both Types of Payments</b>		
	<b>Matching Payments</b>	<b>Establishment and annual payments</b>
Geographic Eligibility Project Sponsor	Not limited geographically Not applicable	Limited to designated project area. A project sponsor proposes project areas and may be a: <ul style="list-style-type: none"> <li>• Biomass conversion facility, including facilities owned by Federal entities, State entities, local government entities, or privately or publicly held entities; or</li> <li>• Group of producers.</li> </ul>
Eligible Material Owner of Eligible Producer.	An eligible material owner may be: <ul style="list-style-type: none"> <li>• A producer within a project area;</li> <li>• A biomass conversion facility;</li> <li>• A person or entity with the legal title to an intermediate ingredient or feedstock; or</li> <li>• A person or a non-Federal entity that has legal title to an eligible material, including Indian Tribes and Tribal members</li> </ul> An Eligible Material Owner cannot be a Federal government entity.	An eligible producer may be a: <ul style="list-style-type: none"> <li>• Biomass conversion facility that owns or operates eligible land or</li> <li>• Person or entity with the legal title to privately held lands or land held in trust by the Federal government.</li> </ul> An eligible producer cannot be a: <ul style="list-style-type: none"> <li>• Federal government entity, or</li> <li>• State or local government entity.</li> </ul>
Land Limitations or Eligible Land.	Eligible material must be harvested or collected from certain: <ul style="list-style-type: none"> <li>• U.S. National Forest System and BLM lands,</li> <li>• Non-Federal lands, including State- and locally-held government lands,</li> </ul> or <ul style="list-style-type: none"> <li>• Tribal land held in trust by the Federal government</li> </ul>	Eligible land is certain: <ul style="list-style-type: none"> <li>• Agricultural land, such as cropland, pastureland, rangeland, grassland, or other lands on which food, fiber, or other agricultural products are produced or capable of being produced; or</li> <li>• Nonindustrial private forest lands that are: <ul style="list-style-type: none"> <li>- Rural lands with existing tree cover, or are suitable for growing trees; and</li> <li>- Owned by any private individual, group, or association.</li> </ul> </li> </ul> Eligible land cannot be: <ul style="list-style-type: none"> <li>• Federal- or State-owned land;</li> <li>• Land that is not native sod; or</li> <li>• Land enrolled in the: <ul style="list-style-type: none"> <li>- CRP;</li> <li>- Wetlands Reserve Program; or</li> <li>- Grassland Reserve Program.</li> </ul> </li> </ul>

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Eligible Crop or Material	<p>Eligible material is certain:</p> <ul style="list-style-type: none"> <li>• Materials, pre-commercial thinnings, or invasive species from National Forest System land and U.S. Bureau System land that: <ul style="list-style-type: none"> <li>- Are byproducts of preventive treatments that are removed to reduce hazardous fuels, to reduce or contain disease or insect infestation, or to restore ecosystem health:</li> <li>- Would not otherwise be used for higher-value products; and</li> <li>- Are harvested in accordance with applicable law and land management plans and the requirements for old-growth maintenance, restoration, and management direction of section 102 (e)(2), (3), and (4) of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512) and large-tree retention of subsection (f)</li> </ul> </li> <li>• 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: <ul style="list-style-type: none"> <li>- Renewable plant materials such a feed grains, other agricultural commodities, and other plants and trees; and</li> <li>- Waste materials including vegetative waste comprised of crop residues such as corn stover or wood wastes and wood residues that would not otherwise be used for higher-value products</li> </ul> </li> </ul> <p>Eligible material does not include:</p> <ul style="list-style-type: none"> <li>• Whole grain derived from any crop that is eligible to receive payments under Title 1 of the 2008 Farm Bill</li> <li>• Animal waste and byproducts (including fats, oils, greases, and manure);</li> <li>• Food waste and yard waste;</li> <li>• Algae.</li> </ul>	<p>Eligible crop is:</p> <ul style="list-style-type: none"> <li>• Renewable plant materials such as feed grains, other agricultural commodities, other plants and trees, and algae;</li> <li>• Waste materials including vegetative waste comprised of crop residues such as corn stover, wood wastes, and wood residues;</li> <li>• Animal waste and byproducts,</li> <li>• Food Waste; and</li> <li>• Yard waste.</li> </ul> <p>Ineligible crops include:</p> <ul style="list-style-type: none"> <li>• Any crops that is eligible to receive payments under Title 1 of the 2008 Farm Bill.</li> <li>• Any plant that is invasive or noxious or has the potential to become invasive or noxious.</li> </ul>
Authorized Payments	<p>A matching Payment at a rate of \$1 for each \$1 per dry ton equivalent paid by the qualified biomass conversion facility:</p> <ul style="list-style-type: none"> <li>• In an amount up to \$5 per dry ton but only for on-site heat or power production from wood wastes and residues above an historical baseline;</li> <li>• In an amount up to \$45 per dry ton for materials used to produce advanced biofuels and in an amount up to \$16 per dry ton for material used for renewable energy or biobased products; or</li> <li>• In an amount to be reduced in relation to increases in biofuel product production above a historical baseline</li> </ul>	<p>Establishment payments at a rate of not more than 75 percent of establishment costs based on:</p> <ul style="list-style-type: none"> <li>• The costs of seed and stock for perennials;</li> <li>• The cost of planting the perennial crop; and</li> <li>• For non-industrial forest land, the costs of site preparation and tree planting(s).</li> </ul> <p>Annual payments equal to the market rate plus any incentive as provided for in a specific project area.</p>

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Payment Reductions	There are no comparable payment reductions If eligible and ineligible materials are comingled in the load, payment will only be made for eligible materials	Annual payments will be reduced if: <ul style="list-style-type: none"> <li>• An eligible crop is used for a purpose other than the production of energy at the biomass conversion facility;</li> <li>• An eligible crop is delivered to the biomass conversion facility outside of the project area;</li> <li>• The producer receives a payment for collection, harvest, storage, or transportation; or</li> <li>• The producer violates a term of the contract.</li> </ul> Under the proposed rule, payments may cease and producers may be subject to contract terminations for failure to establish eligible crops.
Payment Timing	Matching payments are paid within 30 days after submission of sales invoice(s) from the qualified biomass conversion facility and completion of application for payment.	Establishment payments are paid when the perennial or tree crop practice or identifiable portion of the practice has been completed according to the BCAP conservation or forestry plan. Annual payments are paid: <ul style="list-style-type: none"> <li>• As an advance payment in an amount equal to 50 percent within 30 days of contract approval with the remaining 50 percent within 30 days of the first-year contract anniversary date, and</li> <li>• Within 30 days of the contract anniversary beginning with the second-year contract anniversary.</li> </ul>
Duration	Payment duration is two years from the date on which the first matching payment is issued to an eligible person or entity.	Contract duration is up to: <ul style="list-style-type: none"> <li>• Five years for annual and non-woody perennial crops, and</li> <li>• 15 years for woody perennial crops.</li> </ul>
Project Area Proposals or Matching Payment Applications	An eligible material owner must apply for a matching payment at the FSA county office after delivery of eligible material to a qualified biomass conversion facility.	Project area proposals may be submitted under a continuous signup. After a project area has been approved, eligible persons and legal entities within that project area may enroll in a BCAP contract on a continuous basis at the FSA county office.