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## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1450

RIN 0560-A113

#### Biomass Crop Assistance Program; Corrections

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

**ACTION:** Interim rule; correction.

**SUMMARY:** The Commodity Credit Corporation (CCC) is amending the Biomass Crop Assistance Program (BCAP) regulation to provide specifically for prioritizing limited program funds in favor of the “project area” portion of BCAP. CCC is also correcting errors in the regulation.

**DATES:** *Effective Date:* September 15, 2011.

*Comment Date:* We will consider comments that we receive by November 14, 2011.

**ADDRESSES:** We invite you to submit comments on this interim rule. In your comment, include the Regulation Identifier Number (RIN) and the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Mail:* Kelly Novak, BCAP Program Manager, Conservation and Environmental Program Division, FSA, United States Department of Agriculture (USDA), Mail Stop 0513, 1400 Independence Avenue, SW., Washington, DC 20250-0513.

- *Hand Delivery or Courier:* Deliver comments to the above address.

All written comments will be available for public inspection at the above address during business hours

from 8 a.m. to 5 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION, CONTACT:** Kelly Novak, *phone:* (202) 720-4053. Persons with disabilities or who require alternative means for communication (Braille, large print, audio tape, *etc.*) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

#### SUPPLEMENTARY INFORMATION:

##### Background

CCC published a final rule on October 27, 2010 (75 FR 66202-66243) implementing BCAP as authorized by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill, Pub. L. 110-246). Section 9001 of the 2008 Farm Bill authorized such sums as necessary for BCAP. The Supplemental Appropriations Act, 2010 (Pub. L. 111-212) enacted on July 29, 2010, limited BCAP funding to \$552 million in fiscal year 2010 and \$432 million in fiscal year 2011. The Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112-10, referred to as the 2011 Appropriations Act) enacted on April 15, 2011, reduced further the total amount of money available for BCAP in FY 2011 to \$112 million.

BCAP has two parts—one is for ‘project areas’ to support the establishment of new sources of bioenergy. CCC provides establishment and annual payments to agricultural and forest land owners for the production of new crops for bioenergy and bio-based products. The other part of BCAP is for matching payments for the collection, harvest, storage and transportation (CHST) of existing sources of biomass. The limited funding available for BCAP means that not all BCAP requests can be funded. This interim rule explicitly provides a priority for funding establishment and annual payments for project area activities because such activities will produce the greatest long term good in BCAP by providing an ongoing supply of new biomass. CHST would only be funded if resources are available after funding all eligible project area applications. The rule also enables prioritization among project area proposals if eligible requests exceed available funding. Future funding for BCAP could make such prioritizing unnecessary.

Under prioritization, FSA will issue a notice inviting project area proposals by

a specified deadline. Applicants will be given at least 30 days to prepare their proposals. After the application period closes, FSA will review all proposals as a batch against a set of selection criteria, including, but not limited to, the following criteria as specified in 7 CFR 1450.202(a):

(1) The dry tons of the eligible crops proposed to be produced in the proposed project area and the probability that such crops will be used for BCAP purposes;

(2) The dry tons of renewable biomass projected to be available from sources other than the eligible crops grown on contract acres;

(3) The anticipated economic impact in the proposed project area;

(4) The opportunity for producers and local investors to participate in the ownership of the biomass conversion facility in the proposed project area;

(5) The participation rate by beginning or socially disadvantaged farmers or ranchers;

(6) The impact on soil, water, and related resources;

(7) The variety in biomass production approaches within a project area, including agronomic conditions, harvest and postharvest practices, and monoculture and polyculture crop mixes; and

(8) The range of eligible crops among project areas.

This interim rule also makes technical changes to the existing regulations to clarify a provision dealing with the eligibility of woody materials from forest lands, and corrects the use of the word “chapter” instead of “title,” and the word “applies” instead of “apply.” The clarification of the woody material eligibility provision is needed because as inadvertently written in the previous final rule, any herbaceous biomass (such as switchgrass) would not qualify for a matching payment unless it was removed to reduce forest fire, disease or insect infestation, or restore forest ecosystem health—conditions that are intended for woody biomass outside of BCAP project areas. The clarifying change would not affect woody biomass eligibility; rather it ensures that all herbaceous biomass (not just crop residues) qualifies for matching payments.

In addition, during our review of the final rule, we discovered a few inconsistencies between the text in the

preamble and the rule. Those inconsistencies do not require corrections to the rule, therefore, we identified the problems and the correct text in a separate document. That clarification document further describes these corrections and is available on the FSA Web site at <http://www.fsa.usda.gov/FSA/federalNotices?area=home&subject=lare&topic=frd-ii> and on [regulations.gov](http://www.fsa.usda.gov/regulations.gov).

#### Notice and Comment

Because this rule addresses an immediate need produced by a change in the funding level for BCAP and otherwise makes technical changes, it has been determined that it would be contrary to the public interest to delay the effective date of this rule. Therefore, prior comment and a delay in the effective date of this rule are not required by the Administrative Procedures Act (5 U.S.C. 553), the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), or by the memorandum of the Secretary of Agriculture published in the **Federal Register** on July 24, 1971 (36 FR 13804).

#### Executive Order 12866

The Office of Management and Budget (OMB) designated this rule as significant under Executive Order 12866, “Regulatory Planning and Review,” and has reviewed this rule. A summary of the cost benefit analysis is provided below and is available from the contact information listed above.

#### Summary of Costs and Benefits

This interim rule will allow CCC to prioritize available funds for the establishment of BCAP crops to maximize the benefits of BCAP. For FY2011, \$196 million was initially made available to CCC, reflecting the estimate in the cost-benefit analysis accompanying the BCAP final rule and the authority in the 2008 Farm Bill for “such sums as are necessary” from CCC to operate the program. The 2011 Appropriations Act provides a final level of funding for BCAP in FY 2011 of \$112 million, a reduction of \$84 million from the previously available amount. In 2011, CCC received over 40 project area proposals well exceeding \$160 million in funding need, therefore exceeding available funding. Given the limits in appropriated funds and the prioritization provisions of this interim rule, the cost of BCAP is therefore estimated to be \$112 million in 2011. In FY 2011, \$83.2 million of the total annual cost is estimated to be establishment and annual payments for project areas including technical assistance, with the remaining costs

comprising CHST payments and a 1 percent reserve.

#### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking for this rule. As noted above in the Notice and Comment section, CCC is using the good cause justification of the Administrative Procedures Act to issue an interim rule effective on publication with an opportunity for comment.

#### Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part 799). The technical corrections identified in this interim rule do not change the structure or goals of BCAP and can be considered simply administrative in nature. Therefore, CCC has determined that NEPA does not apply to this interim rule and no environmental assessment or environmental impact statement will be prepared.

#### Executive Order 12372

Executive Order 12372, “Intergovernmental Review of Federal Programs,” requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. This rule neither provides Federal financial assistance or direct Federal development; it does not provide either grants or cooperative agreements. Therefore, this program is not subject to Executive Order 12372.

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” The provisions of this rule will not have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with such provision or which otherwise impede their full implementation. The rule will not have retroactive effect. Before any judicial action may be brought regarding this rule, all

administrative remedies must be exhausted.

#### Executive Order 13132

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

#### Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” The policies contained in this rule do not have tribal implications that preempt tribal law.

#### Unfunded Mandates

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, or tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) for State, local, or tribal governments, or the private sector. In addition, CCC is not required to publish a notice of proposed rulemaking for this rule. Therefore, this interim rule is not subject to the requirements of sections 202 and 205 of UMRA.

#### Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

This rule has not been determined to be major under SBREFA (Pub. L. 104–121). SBREFA normally requires that an agency delay the effective date of a major rule for 60 days from the date of publication to allow for Congressional review. Section 808 of SBREFA allows an agency to make a major regulation effective immediately if the agency

finds, as was set out above, there is good cause to do so.

### Paperwork Reduction Act

The information collection required for this rule has been approved by OMB under OMB control number 0560-0082.

### E-Government Act Compliance

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

### List of Subjects in 7 CFR Part 1450

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

For the reasons discussed above, this rule corrects and amends 7 CFR part 1450 as follows:

### PART 1450—BIOMASS CROP ASSISTANCE PROGRAM (BCAP)

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

**Authority:** 7 U.S.C. 8111.

■ 2. Amend § 1450.1 to add paragraph (f) to read as set forth below:

#### § 1450.1 Administration.

\* \* \* \* \*

(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.

#### § 1450.2 [Amended]

■ 3. Amend § 1450.2(a) by removing the word “chapter” and adding, in its place, the word “title”.

#### § 1450.5 [Amended]

■ 4. Amend § 1450.5, in paragraph (a), by removing the word “applies” and adding, in its place, the word “apply”.

#### § 1450.102 [Amended]

■ 5. Amend § 1450.102, in paragraph (a)(3), by removing the words “not crop residues” and adding, in their place, the words “woody eligible material collected and harvested on land other than contract acreage”.

#### § 1450.206 [Amended]

■ 6. Amend § 1450.206, in paragraph (a)(3), by removing the word “chapter” and adding, in its place, the word “title”.

Signed on September 6, 2011.

**Bruce Nelson,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 2011-23596 Filed 9-14-11; 8:45 am]

**BILLING CODE 3410-05-P**

### NUCLEAR REGULATORY COMMISSION

#### 10 CFR Parts 30, 36, 39, 40, 51, 70, and 150

[NRC-2010-0075]

RIN 3150-AI79

#### Licenses, Certifications, and Approvals for Materials Licensees

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC or the Commission) is amending its regulations by revising the provisions applicable to the licensing and approval processes for byproduct, source and special nuclear materials licenses, and irradiators. The changes will clarify the definitions of “construction” and “commencement of construction” with respect to materials licensing actions conducted under the NRC’s regulations. The NRC is adopting these changes to further improve the effectiveness and efficiency of the licensing and approval processes for future materials license applications, as well as to eliminate certain inconsistencies that currently exist within the NRC’s regulations with respect to the use and definition of the terms “construction” or “commencement of construction” for certain materials licensees for purposes of its environmental reviews.

**DATES:** This final rule is effective on November 14, 2011.

**ADDRESSES:** You can access publicly available documents related to this document using the following methods:

- *NRC’s Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC’s PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available electronically at the NRC Public Library at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC’s public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC’s PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdresource@nrc.gov](mailto:pdresource@nrc.gov).

- *Federal Rulemaking Web Site:*

Public comments and supporting materials related to this final rule can be found at <http://www.regulations.gov> by searching on Docket ID NRC-2010-0075. Address questions about NRC dockets to Carol Gallagher, telephone: 301-492-3668; e-mail: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Ms. Tracey Stokes, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-1064; e-mail: [Tracey.Stokes@nrc.gov](mailto:Tracey.Stokes@nrc.gov).

#### SUPPLEMENTARY INFORMATION:

- I. Background
- II. Summary and Analysis of Public Comments on the Proposed Rule
- III. Discussion
- IV. Section-by-Section Analysis
- V. Agreement State Compatibility
- VI. Voluntary Consensus Standards
- VII. Environmental Impact—Categorical Exclusion
- VIII. Paperwork Reduction Act Statement
- IX. Regulatory Analysis
- X. Regulatory Flexibility Certification
- XI. Backfit Analysis
- XII. Congressional Review Act

#### I. Background

On July 27, 2010 (75 FR 43865), the NRC published a proposed rule, “Licenses, Certifications, and Approvals for Materials Licenses.” The rule proposed to amend the NRC’s regulations to clarify the definitions of “construction” and “commencement of construction” applicable to the licensing and approval processes for byproduct, source and special nuclear materials licenses, and irradiators. The