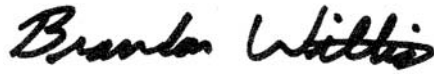


For: State and County Offices

Publicizing the Biomass Crop Assistance Program (BCAP) Proposed Rule, Notifying Biomass Conversion Facilities (BCF's) and Eligible Material Owners, and Answering Questions

Approved by: Deputy Administrator, Farm Programs



1 Overview

A Background

On February 3, 2010, the BCAP proposed rule:

- was posted for public display at OFR
- terminated the June 11, 2009, Notice of Funds Availability (NOFA) that had provided for BCAP collection, harvest, storage, and transport (CHST) matching payments.

Consistent with the proposed rule on display at OFR, Notice BCAP-10 withdrew authority to approve BCAP AD-245's for CHST matching payments.

On February 8, 2010, the BCAP proposed rule was published in the FR with a 60-calendar-day public comment period.

B Purpose

This notice:

- reiterates Notice BCAP-10 policy
- provides further guidance about terminating BCAP NOFA, including notification to qualified BCF's and eligible material owners with pending AD-245's applications **not** approved by February 3, 2010
- provides an example letter to notify qualified BCF's
- provides questions and answers.

Disposal Date	Distribution
January 1, 2011	State Offices; State Offices relay to County Offices and to qualified BCF's

Notice BCAP-11

2 Approval Authority and Payment Policy

A Suspending Approval Authority

COC shall **not** approve any AD-245, page 1, for BCAP CHST matching payments after COB February 3, 2010.

Note: AD-245, page 1, for 2009 and 2010 CHST is covered by this suspension of approval authority.

B Payments for Prior Approved AD-245

County Offices may continue to issue payments to eligible material owners who meet **all** program requirements provided AD-245, page 1, was approved before COB February 3, 2010.

Notes: Producers with an approved AD-245, page 1, may make deliveries of eligible material to qualified BCF's through March 31, 2010, or the time period specified in Notice BCAP-6.

For AD-245, page 1, approved before COB February 3, 2010, increases in approval amounts must **not** be authorized.

C Notifying Eligible Material Owners

COC's shall notify eligible material owners, in writing, of matching payment requests denied because of the NOFA termination.

D Relief Requests and Waivers

DAFP shall review requests for relief and waivers on approval authority and payment policy on a case-by-case basis. Any request for relief must contain at a minimum the following:

- copy of participant's written request for relief
- copy of COC and STC minutes thoroughly documenting request and justification
- copy of all applicable forms and documents in the case file
- all documentation used by COC and STC during review
- narrative of the case in chronological order.

Notice BCAP-11

3 Exhibit Information

A Qualified BCF's

Existing agreements with qualified BCF's remain in effect. No additional agreements will be processed or approved before publicizing the BCAP final rule, unless approved by DAFP according to subparagraph 2 D.

SED's shall notify qualified BCF's of the NOFA termination using Exhibit 1.

B Questions and Answers

Questions and answers are available in Exhibit 2.

4 Action

A State Office Action

State Offices shall:

- ensure that County Offices are aware of and follow the provisions of this notice
- notify qualified BCF's in their State of the NOFA termination using Exhibit 1.

B County Office Action

County Offices shall follow the provisions of this notice.

Example Notification Letter

State Offices must use this letter to notify qualified BCF's.

[insert name of qualified biomass conversion facility contact]

[insert qualified biomass conversion facility name]

[insert qualified biomass conversion facility mailing address]

Dear [insert name of qualified biomass conversion facility contact]:

The purpose of this letter is to provide information concerning the proposed rule under the Biomass Crop Assistance Program (BCAP) and the termination of the Notice of Funding Availability for the Collection, Harvest, Storage, and Transportation (CHST) matching payments effective close of business (COB) February 3, 2010.

On February 3, 2010, a proposed rule for the BCAP was made available for public display at the Office of the Federal Register. The proposed rule was published in the Federal Register on February 8, 2010. The text of the Proposed Rule can be found on the Federal Register web page or from the FSA website at: **www.fsa.usda.gov/bcap**

The Notice of Funds Availability (NOFA) for CHST payments for eligible material was published on June 11, 2009. The authority to obligate funds under the NOFA was terminated and rescinded effective COB February 3, 2010. Generally, no new applications for CHST payments will be approved and no additional funds will be obligated. FSA will continue to make payments for deliveries of eligible material covered by a matching payment request approved before February 3, 2010.

The Farm Service Agency looks forward to working with you as the final regulation on the BCAP is developed. Our intention is that future obligations of funds will be made under this BCAP final rule, which is expected to be published later this year.

Sincerely,

[insert SED's name for qualified biomass conversion facilities]

State Executive Director

bcc: CEPD, Kelly Novak

Questions and Answers

The following questions and answers were developed to illustrate existing policy.

- Q1.** Is any funding available to approve AD-245, page 1, which were not approved by COB February 3, 2010?
- A1.** No general allocation of funding will be provided. However, on an individual case basis, DAFP will review requests for relief.
- Q2.** May proposed agreements with BCFs be submitted for review?
- A2.** No, the State Office should notify the applicant BCF that NOFA has been terminated and qualification of BCFs will only resume under the BCAP final regulation.
- Q3.** May approval on AD-245, page 1, made before COB February 3, 2010, be amended to add additional weight or funding for a matching payment? For example, if a BCF accepted delivery of 120 tons of material from an eligible material owner when the approved AD-245 was for 100 tons, could AD-245 be amended so that matching payments could be made for the additional 20 tons?
- A3.** Because adding weight would result in an obligation of funds, no funding is authorized to be approved. However, on an individual case basis, DAFP will review requests for relief.
- Q4.** If the cost per dry ton on an already approved delivery exceeds the amount of eligible material owners obligated amount on an approved AD-245, may the State Office allocate additional funds so that the County Office may amend AD-245, page 1, which was approved before COB February 3, 2010?
- A4.** No funding may be allocated. However, on an individual case basis, DAFP will review requests for relief.
- Q5.** COC approved AD-245, page 1, before COB February 3, 2010, but the approval had not been recorded in the automated system. Is this an acceptable approval?
- A5.** Yes.
- Q6.** To whom should State Offices return funds?
- A6.** State Offices should return funds to Shawn Bucholtz, Branch Chief, CEPD.
- Q7.** Will there be any additions or subtractions to the eligible material list that was developed under this NOFA?
- A7.** FSA will continue to update the eligible material list on the public BCAP web site at www.fsa.usda.gov/bcap.

Questions and Answers (Continued)

- Q8.** Will the qualified BCF's be contacted?
- A8.** Yes, the State Office will notify the qualified BCF's according to this notice.
- Q9.** How is the 2-year limit on matching payments affected by the NOFA termination?
- A9.** This is a matter for which a public comment may be submitted according to the proposed rule published on February 8, 2010.
- Q10.** Is there going to be any consideration given to the difference in timing across the nation that the BCAP termination created?
- A10.** Providing for authority to approve AD-245, page 1, through COB February 3, 2010, was a consistent application of the provision terminating NOFA.
- Q11.** Will the approved applicants continue to have the 30-calendar-day extension available to them for delivering approved and undelivered material to the facility after March 31, 2010?
- A11.** Yes.
- Q12.** Are County Offices to officially disapprove pending applications?
- A12.** Yes. County Offices shall notify the applicants of the disapproval in writing.
- Q13.** Will there be a new agreement required for facilities that already have their identification number established?
- A13.** The answer to this question depends upon provisions in the final rule that may or may not require changes to the agreement.
- Q14.** If an AD-245 must be spot checked because the CHST payment amount exceeds \$50,000 and the BCF accepting the material is in a different State from the County Office paying that AD-245, who must perform the spot check.
- A14.** The County Office making the payment has the responsibility for conducting the spot check. However, this does not preclude agreements between States to streamline the spot checking process.