

For: State and County Offices

**Requesting a Matching Payment, Obtaining a Conservation Plan, and Approving
Matching Payment Agreements for Nonwoody Biomass**

Approved by: Acting Deputy Administrator, Farm Programs

1 Overview

A Background

Notice Biomass Crop Assistance Program (BCAP)-17 provided:

- an overview of the matching payments business process
- guidance for entering into a BCAP agreement with a biomass conversion facility (BCF).

Notice BCAP-18 provided guidance for qualifying BCF's for participation in BCAP.

Matching payments provide an eligible material owner (EMO) a payment for the collection, harvest, storage, and transportation (CHST) of eligible material to a qualified BCF (QBCF).

The payment rate for matching payments is \$1 for each \$1 per dry ton paid by QBCF to EMO **not** to exceed \$45 per dry ton. EMO may **not** receive matching payments beyond a 2-year period.

The availability of matching payments is subject to availability of BCAP funds. Applications for matching payments (AD-245, page 1's) may **only** be approved if sufficient funds are allocated to County Office BCAP ledgers.

B Purpose

This notice provides guidance for:

- EMO initiating a matching payment agreement with FSA on expected deliveries of nonwoody eligible material to QBCF

Disposal Date	Distribution
July 1, 2011	State Offices; State Offices relay to County Offices, State Forestry Agencies, State NRCS Offices, and State RD Renewable Energy Coordinators

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1 Overview (Continued)

B Purpose (Continued)

- obtaining a conservation plan covering the area from which nonwoody eligible material will originate
- FSA approval of the matching payment agreement.

Notes: Future directives will provide guidance on EMO delivery of eligible material and making payments.

Future directives will provide additional guidance on initiating matching payment agreements and planning requirements for woody eligible material.

Notice BCAP-18, Exhibit 1, provided definitions applicable to matching payments.

2 Major Changes and Basic Sequence

A Major Changes

See Exhibit 1 for tables summarizing the provisions for determining whether otherwise eligible materials are eligible for matching payments authorized by the final rule.

B Matching Payments Basic Sequence

The basic sequence of events for matching payments is as follows.

Step	Basic Sequence
1	BCF becomes qualified according to Notice BCAP-18.
2	EMO enters into a binding agreement with QBCF to deliver eligible material.
3	EMO initiates a matching payment application using AD-245, page 1, and County Office makes eligible material, EMO, and related eligibility determinations.
4	EMO certifies to a conservation, forest stewardship, or equivalent plan for each field (CLU) from which eligible material covered by AD-245, page 1 will be collected.
5	County Office approves eligible AD-245, page 1's, provided all of the following are met: <ul style="list-style-type: none">• EMO, eligible material, and related eligibility determinations are made• EMO has certified to conservation, forest stewardship, or equivalent plan requirements• matching payment funds are available on the County Office's BCAP ledger.

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2 Major Changes and Basic Sequence (Continued)

B Matching Payments Basic Sequence (Continued)

Step	Basic Sequence
6	County Office informs EMO of approval and EMO begins delivering eligible material to QBCF. QBCF monitors and records deliveries.
7	After EMO completes deliveries, EMO requests payments from County Office using 1 or more AD-245, page 2's.
8	County Office makes payment to EMO.

Note: This notice covers Steps 2 through 6.

3 EMO and QBCF Enter Into a Binding Agreement

A Binding Agreement Requirement

EMO and QBCF **must** enter into a binding sales contract, binding letter of intent, or other binding agreement for the sale and delivery of eligible material to QBCF. A copy of this binding agreement **must** be submitted to the County Office at the time AD-245, page 1 is submitted by EMO.

B Binding Agreement Content

The binding agreement **must** include all of the following information:

- expected type (or types) of eligible material
- an estimate of the expected total tonnage (green tons) of each type of eligible material
- expected total dry-ton equivalent (dry tons) of each type of eligible material
- date (or dates) of delivery for each type of eligible material
- expected price (or prices) per dry ton to be paid by QBCF to EMO for each type of eligible material

Note: Notice BCAP-18, subparagraph 2 B provides that QBCF **must** agree to purchase all biomass at fair market value from all sellers with no price differences between eligible material purchased from EMO's and biomass purchased from nonparticipants in BCAP.

- QBCF facility ID number and planned delivery location.

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3 EMO and QBCF Enter Into a Binding Agreement (Continued)

C Other Provisions When QBCF is EMO

An entity that owns or controls QBCF may qualify for matching payments for the delivery of eligible material to its own facility or to QBCF owned by an entity affiliated with QBCF, provided all other program requirements are met.

An entity that owns or controls QBCF that owns eligible material may also qualify for matching payments for the sale and delivery of eligible material to an unrelated QBCF, provided all other program requirements are met under the general terms of this notice.

4 Eligible Material Provisions

A Eligible Material List

To be determined to qualify for matching payment, COC or CED must determine the eligible material meets all of the following requirements:

- meets the definition of eligible material in BCAP-18, Exhibit 1
- is consistent with the guidance provided in the eligible material list on FSA's BCAP web site
- meets all the requirements of this paragraph.

Note: The eligible material list is subject to periodic updates and may be found at www.fsa.usda.gov/bcap.

B Qualifying Material Collection and Harvesting Requirements

To be determined to qualify for matching payment by COC or CED, the eligible material **must** also be collected or harvested:

- by EMO directly from any of the following:
 - FS land
 - BLM land
 - non-Federal land
 - land belonging to an Indian or Indian tribe that is held in trust by the U.S. or subject to a restriction against alienation imposed by the U.S.

Notes: Non-Federal land includes land owned by State and local Governmental entities in addition to privately owned land.

Material from other Federal land is **not** eligible.

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4 Eligible Material Provisions (Continued)

B Qualifying Material Collection and Harvesting Requirements (Continued)

- by EMO, consistent with a conservation, forest stewardship, or equivalent plan

Note: See paragraph 11 for conservation plan provisions related to nonwoody eligible material.

- handled, and transported in a manner that does **not** introduce or spread invasive species

Note: Executive Order 13112 provides, among other things, that Federal Agencies not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the U.S. or elsewhere.

- **after** the date of the publication of the BCAP final rule, October 27, 2010.

C Other Eligible Material Requirements

To qualify for matching payment by COC or CED, all material **must** also meet all of the following conditions:

- material collected or harvested **outside** contract acreage that must be separated from material used for a higher-value product after delivery to BCF does **not** qualify
- may **not** change ownership before delivery to QBCF
- must be handled in a manner so that it can be directly associated with CLU from which it was obtained.

E Other Land Requirements for Eligible Material

When eligible material is collected and harvested from:

- CRP contract acreage, it **must** be harvested or collected under CRP's managed haying and grazing requirements according to 2-CRP, Part 13
- land enrolled under other Federal program, it **must** be harvested or collected according to provisions allowed by those programs
- other State, local Government, and Native American land, it **must** be harvested and collected according to all applicable Federal, State, and local laws and regulations.

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5 Nonqualifying Materials

A Materials Ineligible for Matching Payment

Any of the following is ineligible for a matching payment:

- intermediate ingredients and feedstocks, including any material generated by any type of factory or processing facility, including intermediate QBCF's, food processing facilities, other facilities that use plant materials, a waste handling facility, any other industrial plants, or other related facilities

Note: These materials are ineligible for payment because the renewable biomass was **not** collected or harvested directly from land by EMO.

- any material harvested or collected in a manner other than consistent with the conservation, forest stewardship, or equivalent plan
- any material, harvested outside of contract acreage, delivered to QBCF in a load where some part of that load will be used for a higher-value product

Exception: *De minimis* amounts of normally occurring foreign material, including minimal amounts of Title I commodities listed under 8-LP, paragraph 225 or 7-CN, or related matter in a load resulting from normal industry biomass harvesting and collection practices, may qualify for matching payment.

- any material that will not or was not used at QBCF to produce heat, power, advanced bio-fuels, or bio-based products
- any woody material, other than from BCAP contract acreage, for which there is an existing local market, and therefore, could be used for higher-value products
- any material harvested or collected from CLU/field, or from any designated parts of CLU/field, or CLU's/fields, for which COC or CED determines does **not** meet all eligible material requirements according to paragraph 4

Examples: On a 100-acre CLU with a mixed stand of pines and hardwoods, a forester has determined that a portion of the pine trees must be removed to contain an outbreak of pine-bark beetles. Those pine trees that must be removed to address the infestation meet the matching payment qualification that they be harvested for the purpose of controlling an insect infestation. The other pine trees and the hardwoods on that CLU that do **not** have to be harvested to address the infestation do **not** meet that qualification.

- any material harvested or collected from land not located within the U.S.
- any material that has already been subject to another AD-245, page 1 by any County Office.

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6 EMO's

A EMO Requirements

To be considered EMO, a person or legal entity **must** be producer of an eligible crop that is produced on land enrolled under a BCAP contract or have legal right to harvest or collect eligible material.

Notes: A person or legal entity with the right to harvest or collect eligible material must also assume the risk of loss for the eligible material to be eligible for matching payments.

When land ownership has not been established at the time AD-245, page 1 is submitted to the County Office, use 3-CM to determine land ownership before approving AD-245, page 1.

A non-landowner must provide, to the County Office, a copy of a written permit, contract, or agreement from the landowner that authorizes the transfer of ownership of the eligible material for each CLU/field where eligible material is to be harvested or collected.

Exhibit 2 includes an example of an agreement that **may** be completed and submitted to the County Office as a part of AD-245, page 1. Other legal transfer documentation may also be used by COC or CED for this determination.

EMO's **must**:

- certify that the eligible material has been harvested consistent with a conservation, forest stewardship, or equivalent plan

Note: See paragraph 11 for further guidance on preparing and obtaining conservation plans for the collection or harvest of nonwoody eligible material. Guidelines for woody biomass will be provided in a forthcoming notice.

- retain records for each load of eligible material documenting the location of the FSA CLU's/field's from which the biomass was harvested and collected
- harvest or collect eligible material directly from land
- be in compliance with HEL and WC provisions of 6-CP

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6 EMO's (Continued)

A EMO Requirements (Continued)

- apply for a matching payment at the County Office on AD-245, page 1

Notes: Multiple payment requests using AD-245, page 2, may be submitted for a single approved AD-245, page 1, when incremental payments are requested for incremental deliveries of loads associated with 1 approval.

See subparagraph 10 A to determine the proper County Office for submitting AD-245's.

- submit accurate and complete information when submitting AD-245, page 1 requesting payment
- be determined to be within the 2-year maximum payment duration limit
- **not** be a Federal Agency, Federal Department, or any other Federal entity.

Exception: A payment may be issued to BIA on behalf of tribes according to 1-CM.

To be eligible for matching payments as EMO, a person or legal entity:

- can be a State, tribal, county, or other local Governmental entity, or foreign owner, provided all other eligibility criteria are met
- can be QBCF, provided all other eligibility criteria are met
- can be a person or entity other than a land owner, provided they acquire ownership of the eligible material **before** it is harvested and collected in the field
- can be EMO and use a third party to conduct the actual collection or harvesting and/or handling and delivery of the eligible material, provided those parties do **not** own the material
- **cannot** be a depot operator, aggregator, consolidator or similar person or entity if they were not responsible for the collection or harvest of materials delivered to QBCF
- **must**, in the case where QBCF indicated on their AD-245, page 1 changes ownership, request a new AD-245, page 1 reflecting a new binding contract with the new owner.

Note: Neither AGI nor controlled substance provisions apply to EMO's.

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7 2-Year Payment Duration Limit

A General Rule

For any EMO, matching payments are only available for a 2-year (730 calendar days) duration beginning the date that CCC issues the first matching payment to that EMO. EMO's may deliver eligible material for the entire 2-year period, provided that AD-245, page 1 has been approved. The 2-year eligibility period begins the day of first payment is issued to EMO. AD-245, page 1's for eligible material to be delivered during the 2-year period **must** be approved by FSA **before** the 2-year period ends.

Notes: Deny any requests for matching payments from any EMO for which the 2-year period has been exceeded. Provide appeal rights according to 1-APP.

Reorganizing an entity to evade the 2-year duration may be considered a scheme and device.

The date the first payment is issued is the date the County Office submits the payment to NPS.

B CHST Payment Provisions

For EMO who received a CHST payment authorized under Notice BCAP-2, the 2-year period must be determined by calculating the number of calendar days between the date that CCC issued the first payment and the date last payment was issued under notice of funding availability (NOFA). Subtract that amount from 730 calendar days. The result is the number of days that matching payments may be authorized for that EMO according to this notice. If a single payment was issued under NOFA, subtract a single day from the 2-year period.

The 2-year duration must be manually controlled by County Offices.

8 Signup Period and Funds Control/CRES

A Continuous Signup

AD-245, page 1, may be submitted to a County Office at any time during normal business days.

County Offices **must** have a funding allocation for matching payments **before** COC or CED approves AD-245, page 1.

Note: When funding is **not** available, County Offices must accept AD-245, page 1's from producers and notify them that their request of matching payments **cannot** be processed because of the lack funding.

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8 Signup Period and Funds Control/CRES (Continued)

B Allocations and CRES Ledgers

A 2011 BCAP single ledger has been established in CRES for State and County Offices to manage allocations of funds for matching payments under this notice.

Note: Allocations of funds issued under the authority of Notice BCAP-2 must **not** be used to approve matching payments under this notice.

All approval and payments administered under this notice **must** be managed using **only** ledger and related BCAP CRES Fund Code, “**84**”.

Allocations and ledgers for BCAP funds will **not** be established separately for “regular” and “crop residue”, as was done previously.

Previously established ledgers for NOFA-based CHST matching payments are still supported in CRES **only** to support the continued processing of corrections to payments approved under Notice BCAP-2.

C E-Funds and Allotment

The e-funds allotment to be used for 2011 payment control is, “**2766 BCAP Coll-Harvest-Stor-Tran**”.

CEPD will allot e-funds to support payment processing to States Offices that will manage funding for the State.

Note: See Notice FI-2917 for additional e-funds control requirements.

9 CRES System Preparation and Use

A CRES General Preparation Using the County Eligibility Table

CRES has been enhanced to control BCAP allocations and AD-245, page 1’s. County Offices **must** follow 1-CONSV and this notice for all AD-245/AD-862 systems, reports, and related letter handling.

AD-862 and related data collection is **not** required for BCAP records.

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9 CRES System Preparation and Use (Continued)

A CRES General Preparation Using the County Eligibility Table (Continued)

Follow these steps to prepare CRES for BCAP.

Step	Action
1	On Application Selection Menu FAX07001, ENTER “5”, “Conservation”, and PRESS “Enter” to continue.
2	On Conservation Main Menu EEA000, ENTER “1”, “AD-245/AD-862 Menu”, and PRESS “Enter” to continue.
3	On Conservation AD-245/AD-862 Menu EEA100, ENTER “12”, “County Eligibility Table Update Menu”, and PRESS “Enter” to continue.
4	On County Eligibility Table Update Menu EEA205, ENTER “1”, “Programs”, and PRESS “Enter” to continue.
5	On Conservation Update Program Eligibility Menu EEA21000, change the “Eligibility” status to “Y” for “BCAP Program” and PRESS “Enter” to continue.
6	On Conservation Update Program Eligibility Menu EEA21005, PRESS “CMD7”.

B CRES BCAP Practice Updating in the County Eligibility Table

The single program practice used in CRES is “BC1”, description, “Biomass CHST”.

There is no practice description for this practice.

County Offices **must** complete the following steps to make the BCAP practice eligible.

Step	Action
1	On Application Selection Menu FAX07001, ENTER “5”, “Conservation”, and PRESS “Enter” to continue.
2	On Conservation Main Menu EEA000, ENTER “1”, “AD-245/AD-862 Menu”, and PRESS “Enter” to continue.
3	On Conservation AD-245/AD-862 Menu EEA100, ENTER “12”, “County Eligibility Table Update Menu”, and PRESS “Enter” to continue.
4	On County Eligibility Table Update Menu EEA205, ENTER “2”, “Practices”, and PRESS “ENTER” to continue.
5	On Practice Eligibility Menu EEA21010, ENTER “BC1” under “Practice Code To Change” and PRESS “Enter” to continue.
6	On Update Practice Eligibility Menu EEA21015, do the following: <ul style="list-style-type: none"> • change “N” to “Y” for the “Practice Eligibility Status”, PRESS “Tab” • for “Soil Loss Calculation” ENTER “FSA”, PRESS “Tab” • for “Technical Determination” ENTER “FSA”, PRESS “Tab” • for “Cost Share Level” leave blank, PRESS “Tab” • for “Lifespan” leave blank, PRESS “Enter” to continue.
7	On the Update Practice Eligibility Menu EEA21010, PRESS “Cmd7”.

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9 CRES System Preparation and Use (Continued)

C CRES Technical Practices and Updating Component Codes

The Tech Practice/Component Codes provided in the following table are distributed to all County Offices preloaded in CRES. County Offices **must** add, delete, or change component codes for BCAP to reflect the codes authorized for use in this notice according 1-CONSV, paragraph 20.

To prepare for BCAP agreement processing, County Offices **must** enter all applicable component codes needed in the County Eligibility Table.

Use the specific description associated with the component code when loading component descriptions. All units used for payment components in the County Eligibility Table must only be, “**DRTON**”.

Use the following table to update component codes. Component codes for woody eligible material will be provided in a forthcoming directive.

Tech Practice/ Component Code	Tech Practice Code/Component Description
	Federal Woody Resources Tech Practice Code = 5000
	Agricultural Resources Tech Practice Code = 5001
ACAM	Camelina
ACCS	Corn cobs and stover
ARIS	Rice straw
ASOR	Sorghum varieties not eligible for Title 1 payments
ASUB	Sugar beets
ASUC	Sugar cane
ASWG	Switchgrass
AWHS	Wheat straw
	Non-Federal Woody Resources Tech Practice Code = 5002
	Herbaceous Resources Tech Practice Code = 5003
	Waste Material Tech Practice Code = 5004

Note: Updated tables will be provided as the eligible material list is updated and additional codes are requested.

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9 CRES System Preparation and Use (Continued)

D CRES COC-Willing-to-Approve, Conservation Plans, and Farm/Tract/CLU Numbers

CRES will **require** entering the following:

- “COC Willing to Approve” date
- “Farm”, “Tract”, and “CLU/Field” numbers
- “Conservation Plan Indicator”.

Note: These elements were optional or disallowed in CRES for the 2009 and 2010 BCAP CHST AD-245’s.

10 Handling AD-245, Page 1

A AD-245, Page 1, Submission Requirements

All of these provisions apply to AD-245, page 1, submission requirements:

- AD-245, page 1, **must** be submitted and approved **before** delivery by EMO to the County Office with administrative responsibility for CLU or CLU’s of land from which eligible material is to be harvested and collected
- one AD-245, page 1, may be submitted for all CLU’s administered within 1 county for which a given EMO seeks matching payment and has a sales agreement or binding Letter of Intent from QBCF for planned eligible material planned to be harvested and collected within the 2-year payment limit duration
- for eligible material harvested and collected from multiple CLU’s in different counties, separate AD-245, page 1’s **must** be submitted to each County Office with administrative responsibility for CLU’s of land from which eligible material is to be harvested and collected
- for eligible material to be harvested or collected from FS or BLM Federal land that cross county boundaries, separate AD-245, page 1’s **must** be submitted to each County Office with administrative responsibility for CLU’s of land from which eligible material is to be harvested and collected.

Note: When EMO has not participated in FSA programs, County Office **must** create new records in Farm Records and SCIMS to record farm, tract, CLU/field, landowner, and land operator data **before** AD-245, page 1, can be processed.

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10 Handling AD-245, Page 1 (Continued)

B Additional Requirements

All of these requirements also apply:

- EMO **must** apply for matching payment at the County Office **before** delivering the eligible material to QBCF
- AD-245, page 1 **must** include all of the following information based on information obtained from sales contracts or binding Letters of Intent for each load as follows:
 - estimate of the total dry-equivalent tons of eligible material expected to be sold and delivered to QBCF
 - types of eligible material that is expected to be sold
 - name and facility ID number of QBCF that will purchase the eligible material
 - a copy of the sales contract that includes the expected per dry ton price the owner plans to receive for the delivery of the eligible material
 - CLU locations from which the eligible material is to be harvested or collected

Note: County Offices **must** delineate all tracts and CLU's within a county for each AD-245, page 1.

- a copy of the approved conservation, forest stewardship, or equivalent plan with each CLU delineated
- "Referral Expires" date (see 1-CONSV, subparagraph 108 B)
- "Practice-To-Begin" date based on the earliest date of delivery in the binding agreement (See 1-CONSV, subparagraph 108 B)
- "Practice-To-Be-Completed-By" date (see 1-CONSV, subparagraph 108 B)
- "COC-Willing-to-Approve" date reflecting the date COC determines all eligibility have been met, adequate funding is available for commitment on the ledger, and an plan referral is forwarded. (See 1-CONSV, subparagraph 108 B and paragraph 123).

Note: After delivery, EMO **must** notify County Office and request the matching payment.

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10 Handling AD-245, Page 1 (Continued)

C Creating AD-245, Page 1, in CRES

All information required to make a BCAP matching payment **must** be found on the payment transaction documents provided by QBCF to EMO. See 1-CONSV, Part 5, for more information.

Partial payments are allowed. Repeat the following process for **each** BCAP matching payment.

Enter BCAP application into CRES following these steps **in the order given**.

Step	Action
1	On Application Selection Menu FAX07001, ENTER “5”, “Conservation”.
2	On Conservation Main Menu EEA000, ENTER “1”, “AD-245/AD-862 Menu”.
3	On Conservation AD-245/AD-862 Menu EEA100, ENTER “1”, “Create Initial AD-245”, and PRESS “Enter” to continue.
4	On Conservation AD-245 Initial Data Screen EEA11000, enter either of the following: <ul style="list-style-type: none"> • last 4 digits of applicant’s ID • farm number. PRESS “Enter” to continue. Note: Farm and tract numbers are a required field. PRESS “Enter”, if farm and tract information is not applicable for the payment.
5	If an applicant ID number is used on the AD-245 Initial Data Screen EEA11005, the selected producer will be displayed. PRESS “Enter” to continue.
6	On Conservation AD-245 Initial Data Screen EEA11005, do the following: <ul style="list-style-type: none"> • enter program code number for BCAP, and PRESS “Tab” • ENTER practice code “BC1”, and PRESS “Enter” to continue.
7	On Conservation AD-245 Initial Data Screen EEA11010, do the following: <ul style="list-style-type: none"> • enter multi-participants; “N” for a single participant or “Y” for multiple participants; PRESS “Tab” • leave the “Describe Problem” field blank • enter facility code ID and PRESS “Tab” • in “Practice Location” field, enter location from which the biomass material was harvested. Note: The “Practice Location” field shall be populated with the “Farm”, “Tract”, and “CLU” numbers where the biomass originated. PRESS “Enter” to continue.

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10 Handling AD-245, Page 1 (Continued)

C Creating AD-245, Page 1, in CRES (Continued)

Step	Action
8	<p>On Conservation Practice/Component Screen EEA12000, do the following:</p> <ul style="list-style-type: none"> • for “Conserv. Plan”, ENTER “Y” and PRESS “Tab” • for “Extent Requested”, enter tonnage of biomass • add appropriate component code. <p>PRESS “Enter” to continue.</p>
9	<p>On Conservation AD-245 Application Status Screen EEA16000, no dates are Required. PRESS “Enter” to continue.</p>
10	<p>On Conservation AD-245 Process Status Screen EEA17000, do the following:</p> <ul style="list-style-type: none"> • print AD-245, page 1 for signature • ENTER “4”, “Approval Process”. <p>PRESS “Enter” to continue.</p> <p>Note: A “Needs Determination” shall not be populated for BCAP Matching Payments.</p>
11	<p>PRESS “Enter” to continue through Conservation AD-245 Control Number Selection Screen EEA10500.</p>
12	<p>On Conservation AD-245 Ledger Data Screen EEA14005, do the following:</p> <ul style="list-style-type: none"> • for “Extent Approved”, enter dry tonnage of biomass, PRESS “Tab” • for “C/S Approved”, enter total matching BCAP payment, PRESS “Tab” • for “Extent Approved”, enter dry tonnage of biomass, PRESS “Tab” • for “C/S Approved”, enter matching BCAP payment for the contract. <p>PRESS “Enter” to continue.</p>
13	<p>On Conservation AD-245 Application Status Screen EEA16010, for “Approved by COC” or “State Forester Date”, enter contract approval date. PRESS “Enter” to continue.</p>
14	<p>On Conservation AD-245 Application Status Screen EEA17000, print AD-245, page 1 and 2, AD-862, and the approval letter. PRESS “Enter” to continue.</p>

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11 Conservation Plans for Nonwoody Eligible Material

A Conservation Plan Requirement

BCAP regulation requires that participants for matching payments have a new or amended conservation plan, forest stewardship plan, or equivalent conservation or forest stewardship plan. Producers will request that NRCS update or create new conservation plans for BCAP purposes.

To meet BCAP requirements, NRCS will develop or update conservation plans to contain the following information, in addition to what would normally be included in plans of that format:

- EMO planning objectives
- total number of acres and location where harvest or collection will occur
- name of EMO.

FSA will develop and incorporate into the plan additional elements including:

- the purpose of the harvest
- the expected volume of biomass collected or harvested.

FSA will develop the elements above based on information provided pursuant to subparagraph B and future guidance to be provided in a subsequent notice.

B State Office Responsibility

FSA State Office staff shall coordinate with appropriate NRCS State Office counterparts to identify existing or developing new materials to guide EMO implementation of conservation plans to meet BCAP requirements. The materials may include:

- information on the harvest of eligible biomass material in a manner that protects resources of concern; this guidance may include the following:
 - tools for estimating the volume of biomass that may be collected or harvested using crop yield as related to predominant soil type
 - dates for when harvest can occur (generally after the primary nesting has occurred)
 - how the material should be collected or stored on the site to minimize adverse environmental impacts
 - appropriate technical practice or standard for the crop removal
- a matrix, by county, that shows where harvest of crop residue, pasture land, or range land could have an adverse impact on threatened and endangered species.

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12 Approving AD-245, Page 1

A County Office Actions

EMO **must** have an approved conservation plan **before** AD-245, page 1, may be approved by COC or CED. See paragraph 11.

COC or CED may **only** approve AD-245, page 1, for whole or partial CLU's determined eligible.

Notes: AD-245, page 1, approvals must record **only** tonnage quantities for the entire AD-245, page 1, **not** separately by each CLU. Approvals must only be based on tonnage. No acreage approved is authorized to be recorded.

There are no requirements for EMO to submit any lobbyist disclosure forms or related documents to be eligible for matching payments.

B Notifying Recipients

Notify EMO of AD-245, page 1 approval, including copies of maps with approved CLU's and approval cover letter.

See example approval cover letter in Exhibit 3 and example disapproval letter in Exhibit 4.

C Obligations of EMO's With Approved AD-245, Page 1's

EMO's with AD-245, page 1 approved by COC or CED agrees to **all** of the following:

- adhere to the terms and conditions of this notice.
- be jointly and severally responsible, if EMO has a share of the payment greater than zero, with other EMO's for compliance with the provisions of the agreement and the provisions of the BCAP agreement, this notice, and the final rule, and for any refunds or payment adjustments that may be required for violations of any of the terms and conditions of the BCAP agreement, this notice, and the final rule
- comply with all previously existing conservation, forest stewardship, or equivalent plan requirements, and any other applicable laws, regulations, or executive orders for any removal of eligible material for use in BCF to receive matching payments.

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12 Approving AD-245, Page 1 (Continued)

C Obligations of EMO's With Approved AD-245, Page 1's (Continued)

In addition, when signing AD-245, page 1, EMO agrees to the following printed statement that will be automatically printed by CRES for all AD-245, page 1's in the Remarks section:

“The applicant acknowledges and certifies that: (A) Notwithstanding the “APPLICANT’S REQUEST” above, payment requests for collection, harvest, storage, and transportation are authorized by section 9011(d) of the Farm Security and Rural Investment Act of 2002, as amended, for eligible biomass material delivered and sold only to a BCAP-qualified facility, (B) they are the owner of the eligible biomass material, and understands that payments will be provided at a rate of \$1 for each \$1 per dry weight ton delivered and sold to such a facility, limited to \$45 per dry weight ton for up to 2 years, (C) any harvesting or collection of biomass on cropland will only be done consistent with the highly erodible land compliance plans required by Food Security Act of 1985, as amended, and (D) that they received a copy of the BCAP Federal Register notice, and authorize the facility to release any and all records of their transactions upon request by USDA.”

13 Handling Performance Extensions

A General Rule

COC or CED may extend the time to complete delivery of eligible material and request payment for a period of time **not** to exceed 60 calendar days after the practice expiration date on AD-245, page 1, if **all** of the following apply:

- extension is requested **before** the expiration date
- extension will **not** exceed the 2-year total matching payment time limit
- agreement between EMO and the facility allows for the requested extension.

B Justifying and Documenting Extensions

An extension of time **must** be based on a reasonable expectation of near-term deliveries. COC or CED must limit the extension to the minimum time necessary to complete the deliveries.

Determination and justification **must** be recorded in COC minutes and County Office **must** make pen and ink changes on AD-245, page 1, item 4, with employee initial and date.

13 Handling Performance Extensions (Continued)

C Notification for Authorized Extensions

County Offices must notify the participant, in writing, whether an extension has been authorized. If an extension is authorized, County Office shall also notify the participant of the new AD-245, page 1, expiration date by providing a copy of the revised AD-245, page 1.

D Practice Expiration Notices

Monthly, County Offices **must** prepare a computer-generated list of AD-245, page 1's, expiring in 15 calendar days to track of delivery expiration dates (established according to subparagraph 11 A) that need to be completed within a 15-calendar-day period. See 1-CONSV, paragraph 292.

Mail expiration notices to participants on the list, using example letters in Exhibit 5 and 6.

E Final Date to Report Deliveries and Submit Payment Request

All deliveries and payment requests must be reported on or before the practice expiration date.

14 Canceling and Reinstating Approved AD-245, Page 1's

A Canceling Approved AD-245, Page 1's

Cancel an approved AD-245, page 1, when payment is not requested by the practice expiration date. Canceling an approved AD-245, page 1, also de-obligates the funds.

When AD-245, page 1, is canceled, County Office **must**:

- document the action taken on AD-245, page 1 in the file
- notify the participant of the action taken.

B Conditions to Reinstate Canceled Approvals

County Office may reinstate a canceled AD-245, page 1 approval when **all** of the following conditions apply:

- participant requests reinstatement
- delivery was started **before** cancellation
- delivery was or will be completed within a time prescribed by County Office
- funds are available for obligation
- all eligibility criteria are still met.

Notice BCAP-20

15 Fraud, Waste, Abuse, and/or Scheme and Device

A Prohibited Activities

QBCF may **not** require EMO to pay kickbacks, value-shares, paperwork handling fees, BCAP administrative fees, or similar payments. In such cases or in similar situations, COC **must** review to determine whether a scheme and device has occurred and, if necessary, notify OIG.

Examples of fraud, waste, or abuse used by QBCF's to defeat BCAP's purpose may include, but are **not** limited to the following:

- requiring EMO to pay any type of fee associated with participation in BCAP, such as an administrative fee
- requiring EMO to return any portion of its matching payment to QBCF for any reason, also known as kickbacks or value-shares
- colluding with EMO to purchase material for prices above or below the fair market price, whether or not the real prices are fully documented
- colluding with EMO to purchase ineligible material
- requiring EMO to assign a matching payment to wholly or partially owned subsidiaries of QBCF, such as subsidiaries that harvest or transport material
- requiring or allowing EMO to do anything for QBCF other than delivering eligible material, as outlined in the sales agreement or binding Letter of Intent.

Notice BCAP-20

16 **Contacts**

A State and County Office Contacts

If there are questions about this notice:

- County Offices may contact the State Office.
- State Offices may contact either of the following:
 - Kelly Novak, by telephone at 202-720-4053, for policy or procedure questions
 - Bryan Rogers, by telephone at 202-720-6825, for CRES/automation questions.

B BCF and Producer Contacts

BCF's with questions about qualification should contact the State Office for the State where the facility is primarily located.

Producers of biomass with questions about eligible material and EMO qualification, and related program participation should contact the County Office.

17 **Action**

A State Office Action

State Offices shall ensure County Offices follow the provisions of this notice.

B County Office Action

County Offices must read and follow the provisions in this notice.

Material Payment Eligibility Summary

This table provides the material payment eligibility summary.

Herbaceous Material		
Eligibility Provision	On Contract Acreage	Outside Contract Acreage
Higher Product Value or Existing Product Market use test. (Existing market on or before October 27, 2010, where the material is harvested or collected.)	Not Required	Not Required
Byproducts of a preventative treatment that does 1 of the following: <ul style="list-style-type: none"> • addresses disease/infestation • reduces hazardous fuel • restores ecosystem health. 	Not Required	Not Required
Federal collection/harvest according to old-growth maintenance, restoration, and management direction provided by 16 U.S.C. 6512 for Federal lands.	Not required	Not Required
Must be separated from higher-product value material before the point of delivery.	Not required	Required
Collected or harvested directly from the land by EMO.	Required	Required
Must not have been delivered before October 27, 2010.	Required	Required
Collected or harvested consistent with a conservation plan, forest stewardship plan, or equivalent plan	Required	Required
Consistent with Executive Order 13112 “Invasive Species”.	Required	Required

Example of Landowner Agreement for Biomass Harvesting and Collection

**Landowner Agreement for Biomass Harvesting and Collection
BCAP Matching Payments**

Current Date _____,

The undersigned agrees that:

(Name of Biomass Harvester/Collector)

_____,

Located at:

(Address of Biomass Harvester)

_____,

Has a my permission as a landowner of the land described at:

(Location of Land for Biomass Harvesting)

_____,

To harvest and collect biomass, and retain ownership of such biomass from this land for their own purposes.

This agreement expires:

Date _____

Landowner Name and Address: _____

Example of AD-245, Page 1 Approval Cover Letter for EMO

COUNTY NAME

EMO Name
EMO Address
City, State 12345

Dear EMO:

Your request for Matching Payments under the Biomass Crop Assistance Program (BCAP) has been approved for the estimated dry tonnage of eligible material on the enclosed AD-245, page 1.

Please note that the total tonnage requested may have been adjusted before approval.

BCAP matching payments for collection, harvest, storage, and transportation of eligible materials will be available at the rate of \$1 for each \$1 per dry ton paid by the qualified biomass conversion facility (QBCF), which is also specified on the enclosed application.

The following should serve as a guide in completing and reporting the activity to receive matching payments:

- The amount approved indicated on the enclosure represents the amount of funds that have been approved and obligated. Materials delivered in excess of this estimate may not be eligible for payment.
- Any material delivered before the approval date is **not** eligible.
- Any material that has been approved for a matching payment may now be collected and harvested and delivered to the Qualified Biomass Conversion Facility (QBCF) within the approved amounts and according to plan provisions.
- Upon delivery, QBCF will provide you with copies of scale tickets and/or settlement sheets for all material delivered specifying the following:
 - Name and ID number of QBCF
 - Names of QBCF authorized representative that purchased and received the eligible materials
 - Date of the actual delivery
 - Eligible material type by common use name
 - Net weight recorded in total tons and the dry-ton equivalent
 - Price per dry ton paid
 - Person or entity that delivered the eligible material
 - EMO (EMO) at the time of delivery
- In addition to providing to the county office copies of scale tickets and/or settlement sheets, you are required to obtain copies of all receipts, invoices, canceled checks and other transaction documentation which contain supporting information about these deliveries and related transactions which include tonnage and price amounts which match those provided by QBCF. After each delivery, or deliveries, for which payment is requested submit copies of all transaction documents with 1 or more AD-245, Page 2 payment request to this office.

Example of AD-245, Page 1 Approval Cover Letter for EMO (Continued)

- All requests for payment must be submitted by the practice expiration date indicated on the enclosed application that is *[Insert Practice Expiration Date]*. The funds obligated on the enclosure will **only** cover Matching Payments for materials delivered to QBCF on or before this practice expiration date. You may request an extension of up to 30 calendar days if necessary. Requests for an extension must be received by the county FSA office in writing before this practice expiration date to be considered.
- Please be advised that:
 - all material must be harvested and collected according to the plan.
 - all woody biomass harvested and collected from FS or BLM Federal land must be performed according to the permit or contract entered into with the applicable Federal land managers.

Matching payments are only available for a period of 2-years based on the date of your first matching payment. The two-year period for MP eligibility begins on the date of issue of the first MP. Additional rules may apply if you received a payment for the same purpose during 2009 or 2010 program years.

The first delivery and request for payment must occur by *[insert date]* or funds may no longer be available.

As an approved participant you are required to carry out the terms and conditions of the BCAP matching payment application including the applicable plan. Failure to adhere to these provisions may result in the termination of this agreement.

Any approved participant with a payment share greater than zero is jointly and severally responsible with the other participants for compliance with the MP provisions and for any refunds or payment adjustments that may be required for violations of the terms and conditions.

Please contact this office within 14 days to acknowledge receipt of this letter and confirm your intent to continue participating in BCAP Matching Payments.

Sincerely,

[Insert Name]

County Executive Director

Enclosure

Example of Disapproval AD-245, Page 1 Letter for EMO

EMO Name EMO Address City, State 12345 Dear EMO: This letter concerns your application for a Biomass Crop Assistance Program Matching Payment. Your request has been disapproved as documented on the attached AD-245. Your application or payment was disapproved because of (insert as applicable):	
1	You were determined not to be an eligible material owner.
2	You were determined not to own eligible material.
3	You failed to delivery eligible material to a qualified Biomass Conversion Facility (QBCF).
4	You delivered eligible material after the performance deadline requirement.
5	Your payment request cannot be approved because of the 2-year maximum payment duration limit.
6	Your payment request cannot be approved because you failed to submit adequate supporting transaction documents for your payment request.
7	Your payment request cannot be approved because you submitted supporting transaction documents for your payment request to the wrong County Office.
8	Your payment request cannot be approved because you were determined to have collected or harvested biomass in conflict with the approved plan.
9	Your payment request cannot be approved because you have already received payment for this eligible material from this, or another, County Office.
10	Your payment request cannot be approved because you are QBCF for whom it has been determined that you own or control the eligible material and are requesting payment based on a sales transaction prices instead of fair market price.
11	Your payment request cannot be approved because a scheme or device was determined to have occurred regarding this application.
12	Your payment request cannot be approved because you delivered eligible material that does not qualify for matching payment.
13	Other? (Describe.):
Additional Comments If you do not agree with this decision, you may follow the instruction on the enclosed Appeal Rights instruction page. Sincerely, <i>[Insert Name]</i> County Executive Director Enclosure	

Example of General Practice General Notification Letter

EMO Name
EMO Address
City, State 12345

Dear EMO:

A request for payments has not been received for your Biomass Crop Assistance Program Matching Payment agreement.

All deliveries of material to the qualified biomass conversion facility subject to this approval, and, subsequent requests all for payment with transaction document copies are required to be submitted to this office before the practice expiration date of *[insert date]*.

If we do not receive copies of transaction documentation and a request for payment in the County Office using AD-245, page 2, by the date above your Agreement will be cancelled and the funds may no longer be available.

See attached AD-245, page 1 copy for more information.

Sincerely,

[Insert Name]
County Executive Director

Enclosure

Example of Practice Expiration 15-Calendar-Day Notification Letter

EMO Name
EMO Address
City, State 12345

Dear EMO:

Your approved Biomass Crop Assistance Program (BCAP) Matching Payment Agreement is due to expire on *[insert date]*.

Matching payment requests are considered to be filed in a timely manner if the required delivery documentation is received in the County Office or post marked on or before the practice expiration date.

If we do not receive copies of all transaction documents and a request for all payments for this approval in the County Office using AD-245, page 2 by this date your Agreement will be terminated and the funds may no longer be available.

See attached AD-245, page 1 copy for more information.

Sincerely,

[Insert Name]
County Executive Director

Enclosure