

For: State and County Offices

Questionable Activities Under the Biomass Crop Assistance Program (BCAP)

Approved by: Deputy Administrator, Farm Programs



1 Overview

A Background

Notice BCAP-2 provided procedures for implementing BCAP Collection, Harvest, Storage, and Transportation (CHST) Matching Payment Program, including how to qualify Biomass Conversion Facilities (BCF's) to participate in BCAP.

FSA has received reports indicating some CHST-qualified BCF's are requiring eligible material owners to pay "kickbacks", "value-shares", or "BCAP Administrative Fees" to the CHST-qualified BCF. These actions may be considered an abuse of BCAP and are **not** permissible.

B Purpose

This notice:

- provides clarification on policy about fraud, waste, and abuse and examples of possible fraud, waste, and abuse
- instructs State Offices to provide a copy of this notice to all current CHST-qualified BCF's, and any BCF's qualified after publication of this notice
- instructs STC's, COC's, and County Offices to refer cases of violations of laws and regulations (that is fraud, waste, or abuse) according to 9-AO, Part 4
- instructs STC's, COC's, and County Offices to report possible fraud, waste, or abuse to OIG by any of the following methods:
 - telephone at 800-424-9121 (toll free), 202-690-1622, or 202-690-1202 (TDD)
 - online at www.usda.gov/oig
 - mail to United States Department of Agriculture, Office of Inspector General, PO Box 23399, Washington, DC 20026-3399.

Disposal Date	Distribution
April 1, 2010	State Offices; State Offices relay to County Offices

Notice BCAP-8

2 Fraud, Waste, and Abuse

A Review of the CHST-Qualified BCF Agreement

This table provides a review of specific CHST-qualified BCF Agreement (Agreement) terms.

Paragraph	Term
V.A. and V.B.	<p>All CHST-qualified BCF's agree to the following:</p> <ul style="list-style-type: none"> • to develop and maintain a list of renewable biomass purchases, and make this list available on request for examination by USDA representatives, with the understanding that submitting the list by BCF is offered to CCC as a true and correct copy • the record retention will include, but is not limited to the spreadsheet, books, papers, records, contracts, scale tickets, settlement sheets, invoices, written price quotations, or other documents related to BCAP; records will be maintained and retained for no less than 3 years from the date of payment for such renewable biomass purchases.
VII.I.	<p>BCF is asserting now and on an ongoing basis that, until actual written notice to the contrary is given to CCC, there is full and continuing compliance by BCF with all of the terms and conditions of the Agreement. Should BCF fail to comply in full with all of the terms and conditions of this Agreement, some or all of the following will apply, as determined by CCC:</p> <ul style="list-style-type: none"> • BCF will, on demand of CCC, reimburse, with interest, CCC for all matching payments to all individuals or entities who received such payments with respect to any eligible material with respect to which BCF is not in compliance with this Agreement, with such interest to run from the time of the relevant CCC disbursement at a rate that shall be the highest collected or allowed CCC on other claims in other programs • BCF understands that this liability may be in addition to any other liability that may run against the facility under the law, including sanctions, civil and criminal, for false representations or fraudulent claims, including, but not limited to, provisions that appear in 18 U.S.C. 1001 and 15 U.S.C. 714m • it is understood that the failure of BCF to advise CCC in a timely way of a breach of the Agreement will be considered, in light of the ongoing assertion of compliance imposed by this Agreement, to be a false representation of compliance.

Notice BCAP-8

2 Fraud, Waste, and Abuse (Continued)

A Review of the CHST-Qualified BCF Agreement (Continued)

Paragraph	Term
IV.A.	Defines <u>arm's-length transaction</u> as the following: “A transaction between ready, willing, and able disinterested parties who are not affiliated with or related to each other and have no security, monetary, or stockholder interest in each other, as determined by CCC, except that members of: (1) an association of agricultural producers; (2) farmer cooperative organizations; or (3) a farmer cooperative may deliver and sell at market rates eligible material to biomass conversion facilities owned by such associations, organizations or cooperatives notwithstanding whether they have a monetary or stockholder interest in each other.”

B Review of the Notice of Funds Availability (NOFA)

NOFA for CHST of eligible material provides that:

“No payments or other direct benefits are authorized to be paid to CHST-qualified biomass conversion facilities under this NOFA, except when the facility owners are also an owner of eligible material and deliver and sell it to another facility under an arms-length transaction.”

C Types of Fraud, Waste, or Abuse

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

- requiring eligible material owner receiving BCAP matching payment to pay any type of fee associated with participation in BCAP, such as an “administrative fee”
- requiring eligible material owners to return any portion of their matching payments to BCF for **any** reason (also know as “kick-backs” or “value-shares”)
- refusing purchase of eligible material from eligible material owners that do not work through aggregators
- colluding with eligible material owners to purchase material for prices in excess of the market price
- colluding with eligible material owners to purchase ineligible material
- requiring material owners to assign matching payments to wholly or partially owned subsidiaries of CHST-qualified BCF, such as subsidiaries that harvest or transport material.

Notice BCAP-8

2 Fraud, Waste, and Abuse (Continued)

D Penalty for Fraud, Waste, or Abuse

CHST-qualified BCF's found to be engaging in fraud, waste, or abuse will have their CHST-qualification revoked and will be subject to other penalties, as provided for in Agreement, Part VII, Section I.

E Audits by OIG

If requested by OIG, CHST-qualified BCF's will be required to supply information necessary to ensure proper compliance with BCAP policy and procedure.

3 Actions

A State Office Action

State Offices shall:

- follow the instructions in this notice
- ensure that all currently CHST-qualified BCF's receive a copy of this notice
- ensure that BCF's qualified after the publication of this notice receive a copy of this notice
- inform the National Office of any BCF's believed to be engaging in fraud, waste, or abuse
- provide National Office contact information.

B County Office Action

County Offices shall:

- follow the provisions of this notice
- inform the State Office of any BCF's believed to be engaging in fraud, waste, or abuse.

C Contact

If there are questions about this notice, contact Kelly Novak at 202-720-4053.