

UNITED STATES DEPARTMENT OF AGRICULTURE
Farm Service Agency (FSA)
OMB Number 0560-NEW
Biomass Crop Assistance Program (BCAP)

FSA is requesting OMB approval for a new information collection on **Biomass Crop Assistance Program (BCAP)**. This information collection will be incorporated into the existing approved information collection package of 0560-NEW upon the six month renewal. The final rule (7 CFR 1450, BCAP) was published on October 27, 2010 (75 FR 66202- 66243).

FSA also included additional burden for the Emergency Conservation Program (ECP) in this information collection request to use the new form that replace AD-245.

1. Explain the circumstances making collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

The Farm Service Agency (FSA) in Conservation and Environmental Programs Division has been tasked with implementing the Biomass Crop Assistance Program (BCAP) authorized by Section 9001 of the 2008 Farm Bill (Pub. L. 110-246), which amends Title IX of the Farm Security and Rural Investment Act of 2002 and adds section 9011 for BCAP.

The BCAP regulation outlined the legislations parameters, program definitions and processes for: 1.Establishing BCAP project areas; 2.Matching payment opportunity for eligible material owners and qualifying biomass conversion facilities; 3. Contracting acreage for producers in BCAP project areas; and 4. Establishment and annual production payments for producers in BCAP projects areas.

The final rule was published on October 27, 2010 (75 FR 66202-66243) in the Federal Register. The final rule provides guidance for the administration of matching payments for the collection, harvest, storage and transportation of eligible material supplied to biomass conversion facilities. The final rule responds to the 24,008 comments prompted by the proposed rule and provides several changes from the proposed rule. Those changes are as follows: removal of both the arms length transaction and related party transaction; the removal of matching payment alternatives and reintroduction of the matching payment of up to \$45 a dry ton; the addition of tiered payment reductions for annual payments according to harvested material end use; enhanced conservation, forest stewardship or equivalent plan use for matching payment approval requirements; process changes to the eligible material list which make the list regional specific; enhanced requirements for qualified biomass conversion facility obligations; clarified definitions related to eligible land for project area contract acreage; and overall reduced the broadness of the collection, harvest, storage and transportation component's scope.

Information collection from eligible biomass owners, biomass conversion facilities, and producers meeting the requirements for matching payments, annual production payment assistance, establishment payments and BCAP project area designation is necessary in order to ensure the financial accountability needed to operate and administer the BCAP.

For matching payment, the 2008 Farm Bill requires that:

The Secretary makes payment for the delivery of eligible material to a biomass conversion facility to:

- A producer of an eligible crop that is produced on BCAP contract acreage or
- A person with the right to collect or harvest the eligible material.
- Payments be made for collection, harvest, storage, and transportation to a biomass conversion facility.

The Secretary may provide matching payments at a rate of \$1 for each \$1 per ton provided by the biomass conversion facility, in an amount equal to not more than \$45 per ton for a period of 2 years.

For BCAP project area designation and establishment and annual production payments, the 2008 Farm Bill requires that:

- A project sponsor submit a project area proposal and meet the eight outlined criteria.
- A producer meets the terms and conditions associated with contracting acreage to receive annual production payments.
- A producer meets the terms and conditions associated with cost-share agreement of 75 percent of establishment payments for perennial crops.

The information CCC and FSA need to collect includes:

- Estimated and actual delivery information on application forms from eligible biomass owners and
- An Agreement from Biomass Conversion Facilities
- Project Area proposal information.
- Producer establishment practices and costs for perennial crops.
- Producer practices and land management of contract acreage including acreage, land management history, and agronomic conditions.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The information for the matching payments will be collected from eligible material owners by FSA County Office staff and entered into the electronic form, BCAP-10 and 11 (similar to the AD-245) and stored in an electronic database. Member's Information collected in the CCC-901 form will be used to determine arm's length transactions and 2-year limitation of eligibility are in compliance. If desired by the eligible material owner an FSA-211 providing power of attorney may also be

completed.

The information collected from biomass conversion facilities seeking to become qualified biomass conversion facilities will be supplied directly from the biomass conversion facility staff and transmitted via email to FSA headquarters staff in Washington, D.C. where it will be entered into an electronic database. Therefore, an Agreement including the AD-1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters – Primary Covered Transactions and a Biomass Conversion Facility Overview (BCAP-1 Form), must be executed between CCC and the biomass conversion facility. The Agreement will provide the BCAP provisions that must be followed by the biomass conversion facility to ensure equitable treatment of eligible material owners.

The information recorded will be used to produce reports, as needed by FSA to inform the public how FSA has administered matching payment funds at the State and county level and to establish a list of BCAP qualified biomass conversion facilities. When a biomass conversion facility meets these terms and enters into an Agreement and AD-1047 with CCC, FSA county offices will periodically inform the public including agricultural and forest land owners and operators that matching payments may be available for deliveries of eligible material to qualified biomass conversion facilities. FSA county offices will also maintain a publicly available listing of qualified biomass conversion facilities for general public access and distribution that may include general information about the facility and its eligible material needs to encourage eligible material transactions. An online listing of the facilities with address, assigned facility ID number and contact information will also be available on the BCAP web page: www.fsa.usda.gov/bcap

The purpose of the matching payment opportunity is to assist eligible persons or entities with the collection, harvest, storage, and transportation of eligible material delivered for use in a qualified biomass conversion facility as one component of BCAP. Through matching payments, CCC will provide payments at a rate of \$1 for each \$1 per dry ton paid by the qualified biomass conversion facility to the eligible material owner for delivery of eligible material to the facility in an amount not to exceed \$45 per dry ton. This program will be available to eligible material owners for a period of two years. These matching payments may be made to persons delivering eligible material to a qualified biomass conversion facility who possess the right to collect or harvest eligible material and are considered the owners of the eligible material.

The information for the establishment and annual crop production payments will be collected from producers and for project area proposals it will be collected from project sponsors.

There are form number changes for some forms in this information collection: new BCAP-10 and new BCAP-11 were previously BCAP-5; new BCAP 20 and new BCAP-21 were previously BCAP-4; new BCAP-24 was BCAP-3; new BCAP-23 was previously BCAP-4; and new BCAP-22 was previously BCAP-2.

Project sponsors will be either a biomass conversion facility or a group of producers. The project area proposal will be in the form of a project area overview or BCAP-20 and BCAP-21 forms with the BCAP-1 form. That overview will include:

- 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;

- Dry tons of renewable biomass projected to be available from sources other than the eligible crops grown on contract acres;
- Anticipated economic impact in the proposed Project Area, such as the number of jobs created and retained;
- Opportunity for producers and local investors to participate in the ownership of the biomass conversion facility in the proposed Project Area;
- Participation rate by beginning or socially disadvantaged farmers or ranchers;
- Impact on soil, water, and related resources, such as effect on nutrient loads, or soil erosion;
- Variety in biomass production approaches within a project area, including agronomic conditions, harvest and postharvest practices; and monoculture and polyculture crop mixes; and
- Range of eligible crops among project areas.

An environmental screening will also be conducted to determine the NEPA requirements for the project area. The BCAP-22 form will collect information that will be reviewed by a State interagency team possibly consisting of representatives from NRCS, F&WS, FSA, USFS, and EPA. The information will include: GIS shape file, facility address, North American Industry Classification System Code of the facility, production start-up date, facility overview/description, eligible material converted, type of fuel produced, environmental licensing and permitting status, harvesting schedule and frequency, threatened and endangered species habitat presence, intentions for tree planting and harvesting, and wetlands presence provided with sponsor certification.

The proposal is expected to detail these criteria with the following information and it will be reviewed at the State level by State Forester and State Environmental Coordinator and at the National Level by an interagency team as well possibly consisting of representatives from DOE, NRCS, F&WS, FSA, USFS, and EPA:

- A clear description of the eligible land and eligible crops of each producer that will participate in the proposed BCAP project area, which includes specific geographic description using shape files, etc.;
- A letter of commitment from a biomass conversion facility that the facility will use the eligible crops intended to be produced in the proposed BCAP project area;
- Evidence that the biomass conversion facility has sufficient equity available, as determined by the Secretary, if the biomass conversion facility is not operational at the time the proposal is submitted to the State conservation specialist

A listing of BCAP project areas will appear on the BCAP web page showing only project area ID number and geographic boundaries.

The information for the establishment and annual crop production payments will be collected by a contract and worksheet (BCAP-24 and BCAP-23, and FSA-848 forms, respectively) and information will include: soil map data, acreage, farm, tract, & CLU (field) numbers, soil rental rates, soil survey ID number, participants' names, participant share holdings, conservation practices to be installed or used, contract period, and producer signature and certification.

The BCAP producer contract will also use the existing AD-1026 and BCAP-817U forms. The AD-1026 form ensures that before producers clear, plow, or otherwise prepare areas not presently under crop production for planting, they certify that production will not violate either Highly Erodible Land

Compliance (HELC) or wetland conservation provisions. Most producers will already have existing AD 1026 forms. In addition we will also require producers to complete and submit the BCAP 817U form annually for the certification of compliance with BCAP.

Other forms will be used as needed to facilitate payments for special circumstances, such as assignment of payment (CCC-36 form), joint payment authority (CCC-37 form), applicant's agreement to complete an uncompleted practice (FSA-18 form), application for payment of amounts due to persons who have died or disappeared (FSA-325 form), power of attorney (FSA-211); member's information (CCC-901); report of acreage (FSA-578); and voluntary permanent direct and counter-cyclical program base reduction (CCC-505 form).

The purpose of the BCAP project area designation and establishment payments and annual production payments are to stimulate and support the development of long term biomass feedstock that can be converted into heat, power, biobased products or advance biofuels. Producers within the project area are then eligible to enter contract acreage with USDA/FSA/CCC and receive annual production payments for up to five years for annual and perennial crops and up to 15 years for woody crops. In addition producers of eligible perennial crops could receive reimbursement for up to 75 percent of their establishment costs, which include: cost of seed stock and stock, cost of planting, as determined by the Secretary, and in the case of non-industrial private forestlands, the cost of site preparation and tree planting.

For BCAP project area proposals, the information will be collected from project sponsors, either the BCF or a group of producers, and entered into a web based system by the State FSA office. The State FSA office will notify the National office of the recommended proposal for review and its entry into the database system. The proposal will be reviewed by a National office proposal review team, similar to the State FSA office review team, consisting of FSA representatives, sister agency expertise in BCF infrastructure and feed stock supply, as well as environmental impact. The proposal will either be accepted as a project area designation or sent back to the State Office as incomplete. The approved proposals will be assigned a project ID number in a national data base system. Producers within these designated systems will then voluntarily supply information related to the BCAP establishment payment and annual payment worksheets and contracts to the County FSA office. The information will be entered into a web based FSA data base. This program will be available to producers and project sponsors for proposal and application until the authorization for BCAP sunsets. Producers may enter into contracts for a period of up to 5 years for the production of annual and perennial herbaceous crops and up to 15 years for woody perennial crops. Establishment payments are only available to producers that establish new perennial crops. These establishment and annual payments may be made to producers that have eligible land and are producing eligible crops, which are locate within a designated project area and that conform with biomass harvesting plans. Annual payment information will be linked to data base information concerning matching payments as to implement appropriate payment reductions.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

All information collected from eligible biomass owners will be transcribed into a FSA electronic database by FSA county staff. This information collection method was chosen due to FSA staff &

patron familiarity with the process. All forms used for the producer establishment and annual production payments are similar to those forms used by other FSA Conservation programs including CRP, EAP, and ACP. All forms will be web based. The 848 Forms will be used by the Emergency Conservation Program (ECP) but information collected will be used only for ECP and not BCAP, as users most often will not overlap. Information collected on AD-1047 and Agreement from biomass conversion facilities seeking to become a qualified facility will be emailed to FSA staff in Washington, D.C. where it will be entered into a FSA electronic database. Approximately 97 percent of the forms used will be available electronically.

Information collected for the BCAP project area applications and subsequent contracts with producers for establishment and annual payments will also be entered into a FSA electronic web based database at the State and County office levels.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purpose described in Item 2 above.

The information collected on the forms used in the BCAP, CRP and ECP are not duplicated by any other collection methods. The information relates specifically to practices and practice components that are designed specifically to the intentions on each program.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.

The information collected does not adversely impact small businesses or other small entities. There are about 1,000 small businesses or entities in this information collection.

6. Describe the consequences to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

Failure to collect information from either the eligible biomass owner or the biomass conversion facility and BCAP project areas and the respective producers and committed biomass conversion facilities will result in insufficient data necessary to properly administer BCAP in a financially sound manner.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- requiring respondents to report information to the agency more often than quarterly;

Yes, if eligible biomass owners elect to collect matching payments more often than quarterly.

- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it; **No**
- requiring respondents to submit more than an original and two copies of any document; **No**
- requiring respondents to retain records, other than health, medical, government contract, grant-

- in-aid, or tax records for more than three years; **No**
- in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study; **No**
- requiring the use of a statistical data classification that has not been reviewed and approved by OMB; **No**
- that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or **No**
- requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law. **No**

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8 (d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instruction and record keeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Five persons were contacted about the ICR:

1. Patty Engler, USDA Natural Resources Conservation Service (NRCS), 410-489-7987 or 202-395-4354.
2. Elizabeth Crane, USDA NRCS, 202-720-0242,
3. Ted Beauvais, US Forest Service, 202-205-1190.
4. Steve Marshall, US Forest Service, 202-205-1380.
5. Chris Cassidy, USDA Rural Development, 360-704-7707

The FSA/CCC consulted with NRCS, Patty Engler and Elizabeth Crane; US Forest Service, Ted Beauvais and Steve Marshall; and USDA Rural Development, Chris Cassidy for matters of data collection related to the BCAP payments as they relate to the biomass conversion facilities permitting and operational requirements, conservation plans, and forest stewardship plans or the acceptable equivalent. The project area selection criteria were reviewed also for clarity of instruction used for the BCAP-20 and BCAP-21, the information overview of the project area.

The proposed rule was published on February 8, 2010 at 75 FR 6264-6288 to solicit public comments on the rule and information collection activities. CCC received 24,008 comment submissions on the proposed rule from all States, the District of Columbia, the Virgin Islands, Puerto Rico, Northern Mariana Islands, US Minor Islands, and 88 other countries. Comments were from individuals, trade groups and other organizations, State and local government entities, Federal entities, Tribes, and Alaska native corporations. The majority of the comments were submitted as one of 4 different form letters. One form letter dominated the comments, although many commenters edited the form letter for their personal submission. The letters represented the

comments of associations, a corporation, and another interested organization.

The public comments on this information collection request were listed in the spreadsheet. Three comments were submitted by 18 commenters concerning information collection. One comment (Sec. 1450.201) suggested that general information rather than producer specific information should be required for Project Area Proposals. FSA had intended to collect general information in the Project Area Proposal under the proposed rule, but clarified the language in this rule. Another comment (Sec. 1450.100) was concerned that FSA should collect information concerning the point-of-origin of eligible materials while minimizing the administrative burden of participating in the program. FSA agreed with the commenters concerns and modified the BCAP-10 and BCAP-11 to record farm and tract data for all land producing eligible materials. The last comment (Sec. 1450.201) suggested that FSA provide a 'template' Project Area Proposal that outlines an 'acceptable' proposal. Project area proposals will inherently be unique depending on what the project sponsor chooses to propose. It would be administratively infeasible to provide a template that applies to all potential issues and variability across the country.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payments or gifts are provided to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

All information collected is treated as confidential. Agency policy prohibits the giving out of individual information. This information is handled according to the Privacy Act and Freedom of Information Act.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior or attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

No questions of a sensitive or personal nature are collected

12. Provide estimates of the hour burden of the collection of information. Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated.

See attached FSA-85-1.

The record keeping requirements associated with receiving cost-share payments and others would be maintained as normal business practices and they will have no burden impact.

The average hourly rate for the respondents is \$12.00. The respondent's annual cost burden associated with this information collection is \$452,892 (37,741 hours x \$12.00).

13. Provide estimates of the total annual cost burden to respondents or record keepers resulting from the collection of information (do not include the cost of any hour burden shown in items 12 and 14). The cost estimates should be split into two components: (a) a total capital and start up cost component annualized of its expected useful life; and (b) a total operation and maintenance and purchase of services component.

There is no capital, startup or ongoing operation/maintenance costs associated with this information collection to respondents or record keepers.

14. Provide estimates of annualized cost to the Federal government. Provide a description of the method used to estimate cost and any other expense that would not have been incurred without this collection of information.

The total estimated annual cost to the Federal government for program administration is \$599,692.

The IT support (technical labor and computer equipments) to support BCAP will be approximately \$50,000 annually.

To process an AD-245 or web based equivalent through all its steps will take 30 minutes.
(25,000 AD-245's x 30 minutes times \$18.22) = \$227,750.

Paper, storage, and dissemination of data: \$1,750.
(25,000 forms times \$.07 per form: AD-245 page 1 and page 2 [5,000 times 4]).

Program administration:

Average PA salary at GS-5 step 5 (\$30,261) and GS-7 Step 5 (\$37,481) = \$33,871 or 16.28/hour.

Average CED salary at GS9 Step 5 (\$45,848) and GS 11 Step 5 (\$50,489) = \$20.16/hour.

Average for County Office = \$18.22

BCAP Program Manager: GS-12 step 5 salary at \$38.53/HHr x 2,400 (600x4) = \$92,442.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-1.

Under the NOFA released on June 11, 2009 and then terminated on February 3, 2010 the matching payment opportunity was very broad. The final BCAP rule published on October 27, 2010 is much more restrictive and estimates of participation in the matching payment opportunity are estimated to be substantially less. In addition, it is now know how the more restrictive parameters of the program will affect the estimated number of BCAP project area producers expect. The BCAP project area was not enacted under the NOFA release in June 2009. The annual burden hours in this information is 37,741. It has been reduced under the proposed ICR by 219,601 hours. The total annual responses in this request is 326,095 (in the last request, it was 681,900 total annual responses.)

16. For collections of information whose results are planned to be published, outline plans tabulation and publication.

A summary of total annual payments to and tons of biomass delivered by eligible biomass owners and producers according to geographic distribution will be published. Qualified biomass conversion facility listings and BCAP project areas listings information will be made public by FSA County Offices and the FSA website.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reason that display would be inappropriate.

We are seeking approval to not display the OMB expiration date on the forms associated with this information collection.

18. Explain each exception to the certification statement identified in Item 19 “Certification for Paperwork Reduction Act.”

USDA is able to certify compliance with all provision under Item 19 of OMB Form 83-1.

19. How is this information collection related to the Customer County Office? Will this information be part of their one-stop shopping?

Eligible biomass owners and producers will continue or establish a relationship with FSA County Offices administratively responsible for the geographic location where the renewable biomass was established, grown and harvested.