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Comments of the Biomass Thermal Energy Council on the Biomass Crop Assistance Program Proposed Rule

Robert Stephenson
Director
Conservation and Environmental Programs Division
Farm Service Agency
U.S. Department of Agriculture
Stop 0513
1400 Independence Ave. SW
Washington, DC 20250-0513

April 1, 2010

Dear Mr. Stephenson:

On behalf of the Biomass Thermal Energy Council (BTEC), I appreciate the opportunity to provide comments on the Biomass Crop Assistance Program (BCAP) Proposed Rule.

BTEC is a non-profit association dedicated to advancing the use of biomass for heat and other thermal energy applications. We represent biomass producers, fuel refiners, appliance manufacturers, distributors, and other organizations in the biomass thermal supply chain. Our 79 members (in 30 U.S. states) represent the full range of biomass feedstocks, including wood residues, agricultural residues, and purpose-grown energy crops.

We very much appreciate the hard work and dedication of your agency in bringing the BCAP program online, and the willingness of both Mike Linsenbigler and Kelly Novak to meet with BTEC members on several occasions. In every instance, Mike and Kelly made themselves readily available to answer our questions and demonstrated considerable knowledge of our industry and how we rely on the biomass resource.

BTEC strongly supports the goals of the BCAP program and are appreciative of the funds made available through local Farm Service Agency offices across the country. In a very short space of time, the use of this program has proven critical to improving the economics of bringing biomass feedstocks to market.

General Commentary:

Policy recognition of the benefits and efficiencies of biomass thermal energy as a key part in our nation's energy portfolio is the main principle upon which our group was founded. Unfortunately, biomass thermal energy is largely overlooked in national level renewable energy public policy. Numerous federal incentives and production mandates exist for biomass-based electric generation and for cellulosic transportation fuels, but there is little recognition in our national policies for biomass thermal, despite the fact that heat represents one-third of all American energy consumption. This disparity exists despite the fact that biomass thermal energy technology is the most efficient way to utilize our finite biomass resources, boasting efficiency rates of up to 90 percent. Biomass electric and cellulosic transportation fuels achieve efficiency rates of approximately 20 and 45 percent, respectively.

We are very pleased that the BCAP program, as currently implemented, fully recognizes the benefits of thermal energy through the un-biased application of the matching payment portion of the program to all biomass renewable energy technologies. We encourage FSA to maintain this recognition in the form of

full matching payments in the final rule. Such an approach is not only good public policy, but it would begin to bring into alignment our energy policy that has been historically skewed toward electricity and transportation fuels.

Specific Comments

Our comments are organized under sectional headings of the proposed rule as follows:

Matching Payments

BTEC prefers that FSA continue with a full \$45 per dry ton matching payment for eligible biomass materials used to produce thermal energy. Again, given biomass thermal energy's proven operational and resource utilization efficiency rates, we believe biomass thermal applications are a sound investment for these funds. We are sensitive, however, to cost control considerations and to sustain the program a lesser matching payment may be necessary. The proposal suggests a \$16 per dry ton matching payment in Option 1, while maintaining the full \$45 matching payment for materials used to make cellulosic ethanol. We oppose this bifurcation on grounds that cellulosic ethanol already enjoys generous subsidies under the 2008 Farm Bill in the form of a \$1.01 per gallon production credit, as well as significant R&D investment by US DOE that is not available to biomass thermal. From a cost control perspective, it would seem to make better sense to exclude materials used to make cellulosic ethanol given the size of the existing subsidies already targeted specifically for that technology. At the very least, we recommend that FSA implement the program to ensure that it is both technology and feedstock neutral and that all biomass energy conversion technologies qualify equally regardless of whether the energy outcome takes the form of electricity, transportation fuels or thermal energy. If a lesser reimbursement rate is selected, we advocate that the Agency apply that rate consistently across the competing technologies. Likewise, if the full \$45 matching payment for cellulosic ethanol is retained, other technologies should be eligible for the same level of support, particularly those that qualify as "advanced biofuels."

To underscore, biomass thermal technology is the most efficient use of the biomass resource with efficiency rates nearing 90 percent in some applications. Converting biomass to electricity is the least efficient at 15 to 20 percent, followed by liquid transportation fuels which top out at 40 percent efficiency. We believe strongly that high efficiency should be promoted by our national energy policies and that operationally efficiency should be a benchmark in the final BCAP rule.

Advanced Biofuels Definition

Many of our members produce, sell, or consume pelletized or chipped biomass fuel products. We strongly support the definition of "advanced biofuels" included within the Supplementary Information and Qualified Biomass Conversion Facility sections of the Proposed Rule to include recognition of wood pellets, grass pellets, wood chips and briquettes.

Eligible Materials Definition

BTEC is concerned with the proposed rule's narrowing of the "eligible material" definition to exclude vegetative wastes, including wood wastes and wood residues that would otherwise be used for "higher value products." This exclusion language can be interpreted very broadly and arbitrarily and could be construed to apply to sawdust—a principal ingredient to making pellet fuel. In many parts of the country, there are no "higher value product" markets available, and use of residuals in the manufacture of pellets may in fact be the highest value product. We are aware of the concerns expressed by those in the composite panel industry about alleged market distortions associated with BCAP. One option for addressing the concern about BCAP payments diverting material that would otherwise be destined for

“higher value products” would be to automatically qualify preexisting (pre-BCAP) business relationships for eligible material delivery. For example, if an entity had been selling residuals to a pellet fuel facility prior to inception of the BCAP program, it is reasonable to conclude that those residuals were finding their highest value in the marketplace. We assert that those same residuals should qualify as eligible material under BCAP since free market forces had already determined the highest value for the material. This approach would address the regional market differences which may exist, and which make it inappropriate to apply the proposed language uniformly across the country.

Transactions Between Parties:

The draft rule replaces the “arms length transaction” provision in the NOFA with “related party transaction” language. As we understand this provision, it would preclude a biomass conversion facility from receiving matching payments if it sells qualified material to itself. In our industry, a number of pellet fuel facilities own forest and agricultural lands from which they source raw material feedstocks. Under a related party transaction restriction, land owning companies in this position would be ineligible for BCAP matching payments if they sell eligible material to biomass conversion facilities they own. However, if that same material is sold to a competing pellet fuel facility, that transaction would qualify for a matching payment under BCAP.

Another consideration is the fact that, it is common practice for biomass conversion facilities, whether they are paper mills, sawmills, or pellet fuel facilities, to purchase timber on the stump and negotiate an extended period to harvest this material. In this way supply can be guaranteed, or timber on high ground sites can be held in reserve for harvest during regular wet logging periods. In our view, practices such as this that seek to maintain a steady supply of biomass feedstocks are precisely what the CHST matching payment was designed to encourage. However, the landowners that negotiate these supply contracts and assume the financial risk would be ineligible for matching payments under the program. We would ask that this restriction be revisited in light of these circumstances.

Moisture Testing Requirements

We support the adoption of the industry-wide standard for measuring moisture as outlined in the Discussion of Comments on NOFA section of the Proposed Rule. For reference, the cited section reads as follows:

“Most indicated that common industry practice is to measure in terms of green-tons with the general assumption of a moisture level of 45 to 50 percent. Based on these comments, CCC proposes to modify its requirement for moisture testing and adopt the industry-wide standard for measuring moisture.”

Scale Tickets

We support the proposed changes to scale ticket reporting requirements as outlined in the Discussion of Comments on NOFA section of the Proposed Rule. For reference, the cited section reads as follows:

“Nearly 25 percent of the comments opposed the requirement to present scale tickets or a check to qualify the delivery and validate eligibility for a matching payment. The commenting parties indicated that the burden and cost of recording on each scale ticket was too high. CCC generally agrees with the comment and modified the requirement in § 1450.104(f) so the required information that must be submitted includes total actual tonnage delivered, total dry-weight tonnage equivalent using standard moisture determinations, total payment including per ton

payment rate(s) matched with actual tonnage, and the qualified biomass conversion facility's certification as to the authenticity of the information.”

Forest Stewardship Plans

We support the inclusion of alternative equivalent forest stewardship plans such as the American Tree Farm Program, the Sustainable Forestry Initiatives Program or State Best Management Programs. Our experience with these programs is that they are rigorous and drive top quality land management practices on the landscape.

Eligibility of Export Pellets

We have concerns about biomass pellets that are destined for export outside the United States qualifying for payment under BCAP. It is our understanding that the intent of the Biomass Crop Assistance Program was to promote domestic biofuel production to address U.S. energy needs using home grown feedstocks. Pellet or chip facilities currently serving the export market are doing so with substantial market advantages in the form of subsidies from foreign countries where the pellets or chips are being consumed. In our view, qualifying pellets or chips destined for export to additional reimbursement under BCAP undermines the intent of the authorizing statute by diverting domestically produced renewable fuel that may otherwise be used to meet domestic energy demands. BTEC respectfully requests that language be added to the final rule clarifying that BCAP funding be made available to only eligible material owners and biomass conversion facilities that produce pellet or other biomass fuels for domestic U.S. consumption.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey A. Serfass", with a horizontal line extending to the right.

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