

date of enactment of Pub. L. 110-234, see section 4 of Pub. L. 110-246, set out as a note under section 8701 of this title.

§ 8111. Biomass Crop Assistance Program

(a) Definitions

In this section:

(1) BCAP

The term “BCAP” means the Biomass Crop Assistance Program established under this section.

(2) BCAP project area

The term “BCAP project area” means an area that—

(A) has specified boundaries that are submitted to the Secretary by the project sponsor and subsequently approved by the Secretary;

(B) includes producers with contract acreage that will supply a portion of the renewable biomass needed by a biomass conversion facility; and

(C) is physically located within an economically practicable distance from the biomass conversion facility.

(3) Contract acreage

The term “contract acreage” means eligible land that is covered by a BCAP contract entered into with the Secretary.

(4) Eligible crop

(A) In general

The term “eligible crop” means a crop of renewable biomass.

(B) Exclusions

The term “eligible crop” does not include—

(i) any crop that is eligible to receive payments under title I of the Agricultural Act of 2014 [7 U.S.C. 9001 et seq.] or an amendment made by that title; or

(ii) any plant that is invasive or noxious or species or varieties of plants that credible risk assessment tools or other credible sources determine are potentially invasive, as determined by the Secretary in consultation with other appropriate Federal or State departments and agencies.

(5) Eligible land

(A) In general

The term “eligible land” includes—

(i) agricultural and nonindustrial private forest lands (as defined in section 2103a(c) of title 16); and

(ii) land enrolled in the conservation reserve program established under subchapter B of chapter I of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.), or the Agricultural Conservation Easement Program established under subtitle H of title XII of that Act [16 U.S.C. 3865 et seq.], under a contract that will expire at the end of the current fiscal year.

(B) Exclusions

The term “eligible land” does not include—

(i) Federal- or State-owned land;

(ii) land that is native sod, as of the date of enactment of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8701 et seq.);

(iii) land enrolled in the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.), other than land described in subparagraph (A)(ii); or

(iv) land enrolled in the Agricultural Conservation Easement Program established under subtitle H of title XII of that Act [16 U.S.C. 3865 et seq.], other than land described in subparagraph (A)(ii).

(6) Eligible material

(A) In general

The term “eligible material” means renewable biomass harvested directly from the land, including crop residue from any crop that is eligible to receive payments under title I of the Agricultural Act of 2014 [7 U.S.C. 9001 et seq.] or an amendment made by that title.

(B) Inclusions

The term “eligible material” shall only include—

(i) eligible material that is collected or harvested by the eligible material owner—

(I) directly from—

(aa) National Forest System;

(bb) Bureau of Land Management land;

(cc) non-Federal land; or

(dd) land owned by an individual Indian or Indian tribe that is held in trust by the United States for the benefit of the individual Indian or Indian tribe or subject to a restriction against alienation imposed by the United States;

(II) in a manner that is consistent with—

(aa) a conservation plan;

(bb) a forest stewardship plan; or

(cc) a plan that the Secretary determines is equivalent to a plan described in item (aa) or (bb) and consistent with Executive Order 13112 (42 U.S.C. 4321 note; relating to invasive species);

(ii) if woody eligible material, woody eligible material that is produced on land other than contract acreage that—

(I) is a byproduct of a preventative treatment that is removed to reduce hazardous fuel or to reduce or contain disease or insect infestation; and

(II) if harvested from Federal land, is harvested in accordance with section 6512(e) of title 16;

(iii) eligible material that is delivered to a qualified biomass conversion facility to be used for heat, power, biobased products, research, or advanced biofuels; and

(iv) algae.

(C) Exclusions

The term “eligible material” does not include—

(i) material that is whole grain from any crop that is eligible to receive payments under title I of the Agricultural Act of 2014 [7 U.S.C. 9001 et seq.] or an amendment made by that title, including—

- (I) barley, corn, grain sorghum, oats, rice, or wheat;
- (II) honey;
- (III) mohair;
- (IV) oilseeds, including canola, crambe, flaxseed, mustard seed, rapeseed, safflower seed, soybeans, sesame seed, and sunflower seed;
- (V) peanuts;
- (VI) pulse;
- (VII) chickpeas, lentils, and dry peas;
- (VIII) dairy products;
- (IX) sugar; and
- (X) wool and cotton boll fiber;

(ii) animal waste and byproducts, including fat, oil, grease, and manure;

(iii) food waste and yard waste;

(iv) woody eligible material that—

(I) is removed outside contract acreage; and

(II) is not a byproduct of a preventative treatment to reduce hazardous fuel or to reduce or contain disease or insect infestation;

(v) any woody eligible material collected or harvested outside contract acreage that would otherwise be used for existing market products; or

(vi) bagasse.

(7) Producer

The term “producer” means an owner or operator of contract acreage that is physically located within a BCAP project area.

(8) Project sponsor

The term “project sponsor” means—

- (A) a group of producers; or
- (B) a biomass conversion facility.

(9) Socially disadvantaged farmer or rancher

The term “socially disadvantaged farmer or rancher” has the meaning given the term in section 2279(e)¹ of this title.

(b) Establishment and purpose

The Secretary shall establish and administer a Biomass Crop Assistance Program to—

(1) support the establishment and production of eligible crops for conversion to bioenergy in selected BCAP project areas; and

(2) assist agricultural and forest land owners and operators with the collection, harvest, storage, and transportation of eligible material for use in a biomass conversion facility.

(c) BCAP project area

(1) In general

The Secretary shall provide financial assistance to a producer of an eligible crop in a BCAP project area.

(2) Selection of project areas

(A) In general

To be considered for selection as a BCAP project area, a project sponsor shall submit

to the Secretary a proposal that, at a minimum, includes—

(i) a description of the eligible land and eligible crops of each producer that will participate in the proposed BCAP project area;

(ii) 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;

(iii) 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 Secretary; and

(iv) any other information about the biomass conversion facility or proposed biomass conversion facility that the Secretary determines necessary for the Secretary to be reasonably assured that the plant will be in operation by the date on which the eligible crops are ready for harvest.

(B) BCAP project area selection criteria

In selecting BCAP project areas, the Secretary shall consider—

(i) the volume of the eligible crops proposed to be produced in the proposed BCAP project area and the probability that those crops will be used for the purposes of the BCAP;

(ii) the volume of renewable biomass projected to be available from sources other than the eligible crops grown on contract acres;

(iii) the anticipated economic impact in the proposed BCAP project area;

(iv) the opportunity for producers and local investors to participate in the ownership of the biomass conversion facility in the proposed BCAP project area;

(v) the participation rate by—

(I) beginning farmers or ranchers (as defined in accordance with section 1991(a) of this title); or

(II) socially disadvantaged farmers or ranchers;

(vi) the impact on soil, water, and related resources;

(vii) the variety in biomass production approaches within a project area, including (as appropriate)—

(I) agronomic conditions;

(II) harvest and postharvest practices; and

(III) monoculture and polyculture crop mixes;

(viii) the range of eligible crops among project areas;

(ix) existing project areas that have received funding under this section and the continuation of funding of such project areas to advance the maturity of such project areas; and

(x) any additional information that the Secretary determines to be necessary.

¹ See References in Text note below.

(3) Contract**(A) In general**

On approval of a BCAP project area by the Secretary, each producer in the BCAP project area shall enter into a contract directly with the Secretary.

(B) Minimum terms

At a minimum, a contract under this subsection shall include terms that cover—

- (i) an agreement to make available to the Secretary, or to an institution of higher education or other entity designated by the Secretary, such information as the Secretary considers to be appropriate to promote the production of eligible crops and the development of biomass conversion technology;
- (ii) compliance with the highly erodible land conservation requirements of subtitle B of title XII of the Food Security Act of 1985 (16 U.S.C. 3811 et seq.) and the wetland conservation requirements of subtitle C of title XII of that Act (16 U.S.C. 3821 et seq.);
- (iii) the implementation of (as determined by the Secretary)—
 - (I) a conservation plan;
 - (II) a forest stewardship plan; or
 - (III) a plan that is equivalent to a conservation or forest stewardship plan; and
- (iv) any additional requirements that Secretary² determines to be necessary.

(C) Duration

A contract under this subsection shall have a term of not more than—

- (i) 5 years for annual and perennial crops; or
- (ii) 15 years for woody biomass.

(4) Relationship to other programs

In carrying out this subsection, the Secretary shall provide for the preservation of cropland base and yield history applicable to the land enrolled in a BCAP contract.

(5) Payments**(A) In general**

The Secretary shall make establishment and annual payments directly to producers to support the establishment and production of eligible crops on contract acreage.

(B) Amount of establishment payments**(i) In general**

Subject to clause (ii), the amount of an establishment payment under this subsection shall be not more than 50 percent of the costs of establishing an eligible perennial crop covered by the contract but not to exceed \$500 per acre, including—

- (I) the cost of seeds and stock for perennials;
- (II) the cost of planting the perennial crop, as determined by the Secretary; and
- (III) in the case of nonindustrial private forestland, the costs of site preparation and tree planting.

(ii) Socially disadvantaged farmers or ranchers

In the case of socially disadvantaged farmers or ranchers, the costs of establishment may not exceed \$750 per acre.

(C) Amount of annual payments**(i) In general**

Subject to clause (ii), the amount of an annual payment under this subsection shall be determined by the Secretary.

(ii) Reduction

The Secretary shall reduce an annual payment by an amount determined to be appropriate by the Secretary, if—

- (I) an eligible crop is used for purposes other than the production of energy at the biomass conversion facility;
- (II) an eligible crop is delivered to the biomass conversion facility;
- (III) the producer receives a payment under subsection (d);
- (IV) the producer violates a term of the contract; or
- (V) the Secretary determines a reduction is necessary to carry out this section.

(D) Exclusion

The Secretary shall not make any BCAP payments on land for which payments are received under the conservation reserve program established under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831 et seq.) or the agricultural conservation easement program established under subtitle H of title XII of that Act [16 U.S.C. 3865 et seq.].

(d) Assistance with collection, harvest, storage, and transportation**(1) In general**

The Secretary shall make a payment for the delivery of eligible material to a biomass conversion facility to—

- (A) a producer of an eligible crop that is produced on BCAP contract acreage; or
- (B) a person with the right to collect or harvest eligible material, regardless of whether the eligible material is produced on contract acreage.

(2) Payments**(A) Costs covered**

A payment under this subsection shall be in an amount described in subparagraph (B) for—

- (i) collection;
- (ii) harvest;
- (iii) storage; and
- (iv) transportation to a biomass conversion facility.

(B) Amount

Subject to paragraph (3), the Secretary may provide matching payments at a rate of up to \$1 for each \$1 per ton provided by the biomass conversion facility, in an amount not to exceed \$20 per dry ton for a period of 2 years.

²So in original. Probably should be preceded by “the”.

(3) Limitation on assistance for BCAP contract acreage

As a condition of the receipt of an annual payment under subsection (c), a producer receiving a payment under this subsection for collection, harvest, storage, or transportation of an eligible crop produced on BCAP acreage shall agree to a reduction in the annual payment.

(e) Report

Not later than 4 years after February 7, 2014, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the dissemination by the Secretary of the best practice data and information gathered from participants receiving assistance under this section.

(f) Funding

(1) Authorization of appropriations

There is authorized to be appropriated to carry out this section \$25,000,000 for each of fiscal years 2019 through 2023.

(2) Collection, harvest, storage, and transportation payments

Of the amount made available under paragraph (1) for each fiscal year, the Secretary shall use not less than 10 percent, nor more than 50 percent, of the amount to make collection, harvest, transportation, and storage payments under subsection (d)(2).

(3) Technical assistance

Effective for fiscal year 2014 and each subsequent fiscal year, funds made available under this subsection shall be available for the provision of technical assistance with respect to activities authorized under this section.

(Pub. L. 107–171, title IX, §9011, as added Pub. L. 110–234, title IX, §9001(a), May 22, 2008, 122 Stat. 1327, and Pub. L. 110–246, §4(a), title IX, §9001(a), June 18, 2008, 122 Stat. 1664, 2089; amended Pub. L. 112–240, title VII, §701(f)(10), Jan. 2, 2013, 126 Stat. 2365; Pub. L. 113–79, title IX, §9010, Feb. 7, 2014, 128 Stat. 932; Pub. L. 115–334, title IX, §9010, Dec. 20, 2018, 132 Stat. 4887.)

Editorial Notes

REFERENCES IN TEXT

The Agricultural Act of 2014, referred to in subsec. (a)(4)(B)(i), (6)(A), and (C)(i), is Pub. L. 113–79, Feb. 7, 2014, 128 Stat. 649. Title I of the Act is classified principally to chapter 115 (§9001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9001 of this title and Tables.

The Food Security Act of 1985, referred to in subsecs. (a)(5)(A)(ii), (B)(iii), (iv), and (c)(3)(B)(ii), (5)(D), is Pub. L. 99–198, Dec. 23, 1985, 99 Stat. 1354. Subtitles B, C, and H of title XII of the Act are classified generally to subchapters II (§3811 et seq.), III (§3821 et seq.), and VII (§3865 et seq.), respectively, of chapter 58 of Title 16, Conservation. Subchapter B of chapter 1 of subtitle D of title XII of the Act is classified generally to subpart B (§3831 et seq.) of part I of subchapter IV of chapter 58 of Title 16. For complete classification of this Act to the Code, see Short Title of 1985 Amendment note set out under section 1281 of this title and Tables.

The date of enactment of the Food, Conservation, and Energy Act of 2008, referred to in subsecs. (a)(5)(B)(ii),

is the date of enactment of Pub. L. 110–246, which was approved June 18, 2008.

Section 2279(e) of this title, referred to in subsec. (a)(9), was redesignated section 2279(a) of this title by section 12301(b)(3) of Pub. L. 115–334.

CODIFICATION

Pub. L. 110–234 and Pub. L. 110–246 enacted identical sections. Pub. L. 110–234 was repealed by section 4(a) of Pub. L. 110–246.

PRIOR PROVISIONS

A prior section 9011 of Pub. L. 107–171 was classified to section 8109 of this title, prior to the general amendment of this chapter by Pub. L. 110–246.

AMENDMENTS

2018—Subsec. (a)(6)(B)(iv). Pub. L. 115–334, §9010(1)(A), added cl. (iv).

Subsec. (a)(6)(C)(iv) to (vii). Pub. L. 115–334, §9010(1)(B), redesignated cls. (v) to (vii) as (iv) to (vi), respectively, and struck out former cl. (iv) which read as follows: “algae;”.

Subsec. (f)(1). Pub. L. 115–334, §9010(2)(A), amended par. (1) generally. Prior to amendment, text read as follows: “Of the funds of the Commodity Credit Corporation, the Secretary shall use to carry out this section \$25,000,000 for each of fiscal years 2014 through 2018.”

Subsec. (f)(3). Pub. L. 115–334, §9010(2)(B), amended par. (3) generally. Prior to amendment, par. (3) related to funds for technical assistance.

2014—Pub. L. 113–79 amended section generally. Prior to amendment, section related to the Biomass Crop Assistance Program.

2013—Subsec. (f). Pub. L. 112–240 designated existing provisions as par. (1), inserted heading, and added par (2).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 effective Sept. 30, 2012, see section 701(j) of Pub. L. 112–240, set out in a 1-Year Extension of Agricultural Programs note under section 8701 of this title.

EFFECTIVE DATE

Enactment of this section and repeal of Pub. L. 110–234 by Pub. L. 110–246 effective May 22, 2008, the date of enactment of Pub. L. 110–234, see section 4 of Pub. L. 110–246, set out as a note under section 8701 of this title.

§ 8112. Repealed. Pub. L. 113–79, title IX, § 9011, Feb. 7, 2014, 128 Stat. 938

Section, Pub. L. 107–171, title IX, §9012, as added Pub. L. 110–234, title IX, §9001(a), May 22, 2008, 122 Stat. 1331, and Pub. L. 110–246, §4(a), title IX, §9001(a), June 18, 2008, 122 Stat. 1664, 2093; amended Pub. L. 112–240, title VII, §701(f)(11), Jan. 2, 2013, 126 Stat. 2366, related to a competitive research and development program to encourage use of forest biomass for energy.

§ 8113. Community Wood Energy and Wood Innovation Program

(a) Definitions

In this section:

(1) Community wood energy system

(A) In general

The term “community wood energy system” means an energy system that—

(i) produces thermal energy or combined thermal energy and electricity where thermal is the primary energy output;