

poration, including the use of such sums as are necessary, to carry out this section.

(Pub. L. 107-171, title IX, §9010, as added Pub. L. 110-234, title IX, §9001(a), May 22, 2008, 122 Stat. 1325, and Pub. L. 110-246, §4(a), title IX, §9001(a), June 18, 2008, 122 Stat. 1664, 2086.)

REFERENCES IN TEXT

The date of enactment of the Food, Conservation, and Energy Act of 2008, referred to in subsec. (b)(2)(A), is the date of enactment of Pub. L. 110-246, which was approved June 18, 2008.

The Agricultural Adjustment Act of 1938, referred to in subsec. (b)(5), is act Feb. 16, 1938, ch. 30, 52 Stat. 31. Part VII of subtitle B of title III of the Act is classified to subpart VII (§1359aa et seq.) of part B of subchapter II of chapter 35 of this title. For complete classification of this Act to the Code, see section 1281 of this title and Tables.

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 L. 110-234 was repealed by section 4(a) of Pub.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 9010 of Pub. L. 107-171 was classified to section 8108 of this title, prior to the general amendment of this chapter by Pub. L. 110-246.

§ 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 Food, Conservation, and Energy Act of 2008 [7 U.S.C. 8701 et seq.] or an amendment made by that title; or

(ii) any plant that is invasive or noxious or has the potential to become invasive or

noxious, 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 agricultural and nonindustrial private forest lands (as defined in section 2103a(c) of title 16).

(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;

(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.);

(iv) land enrolled in the wetlands reserve program established under subchapter C of chapter 1 of subtitle D of title XII of that Act (16 U.S.C. 3837 et seq.); or

(v) land enrolled in the grassland reserve program established under subchapter D of chapter 2 of subtitle D of title XII of that Act (16 U.S.C. 3838n et seq.).

(6) Eligible material

(A) In general

The term “eligible material” means renewable biomass.

(B) Exclusions

The term “eligible material” does not include—

(i) any crop that is eligible to receive payments under title I of the Food, Conservation, and Energy Act of 2008 [7 U.S.C. 8701 et seq.] or an amendment made by that title;

(ii) animal waste and byproducts (including fats, oils, greases, and manure);

(iii) food waste and yard waste; or

(iv) algae.

(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.

(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 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 producers of eligible crops 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 includes, at a minimum—

- (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 appropriate information about the biomass conversion facility or proposed biomass conversion facility that gives the Secretary a reasonable assurance that the plant will be in operation by the time that 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 such 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 (as defined in section 2279(e) of this title);
- (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; and
- (ix) any additional information, as determined by the Secretary.

(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, contracts 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; or
 - (II) a forest stewardship plan or an equivalent plan; and
- (iv) any additional requirements the Secretary considers appropriate.

(C) Duration

A contract under this subsection shall have a term of up to—

- (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

The amount of an establishment payment under this subsection shall be up to 75 percent of the costs of establishing an eligible perennial crop covered by the contract, 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.

(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) there are such other circumstances, as determined by the Secretary to be necessary to carry out this section.

(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.

(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 \$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.

(3) Limitation on assistance for BCAP contract acreage

As a condition of the receipt of 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 the date of enactment of the Food, Conservation, and Energy Act of 2008, 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

Of the funds of the Commodity Credit Corporation, the Secretary shall use to carry out this

section such sums as are necessary for each of fiscal years 2008 through 2012.

(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.)

REFERENCES IN TEXT

The Food, Conservation, and Energy Act of 2008, referred to in subsec. (a)(4)(B)(i), (6)(B)(i), is Pub. L. 110-246, June 18, 2008, 122 Stat. 1651. Title I of the Act is classified principally to chapter 113 (§8701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8701 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) and (e), is the date of enactment of Pub. L. 110-246, which was approved June 18, 2008.

The Food Security Act of 1985, referred to in subsecs. (a)(5)(B)(iii)-(v) and (c)(3)(B)(ii), is Pub. L. 99-198, Dec. 23, 1985, 99 Stat. 1354. Subtitles B and C of title XII of the Act are classified generally to subchapters II (§3811 et seq.) and III (§3821 et seq.), respectively, of chapter 58 of Title 16, Conservation. Subchapters B and C of chapter 1 of subtitle D of title XII of the Act are classified generally to subparts B (§3831 et seq.) and C (§3837 et seq.), respectively, of part I of subchapter IV of chapter 58 of Title 16. Subchapter D of chapter 2 of subtitle D of title XII of the Act is classified generally to subpart D (§3838n et seq.) of part II 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.

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.

§ 8112. Forest biomass for energy**(a) In general**

The Secretary, acting through the Forest Service, shall conduct a competitive research and development program to encourage use of forest biomass for energy.

(b) Eligible entities

Entities eligible to compete under the program under this section include—

- (1) the Forest Service (acting through Research and Development);
- (2) other Federal agencies;
- (3) State and local governments;
- (4) Indian tribes;
- (5) land-grant colleges and universities; and
- (6) private entities.

(c) Priority for project selection

In carrying out this section, the Secretary shall give priority to projects that—

- (1) develop technology and techniques to use low-value forest biomass, such as byproducts of forest health treatments and hazardous fuels reduction, for the production of energy;
- (2) develop processes that integrate production of energy from forest biomass into bio-refineries or other existing manufacturing streams;