

**American Forest & Paper Association/Forest Resources Association  
Joint Conference Call on USDA's Biomass Crop Assistance Program**

**October 29, 2009  
11:00 AM – 12:30 PM EDT**

**Moderators:**

Michael Lisenbigler, USDA  
Kelly Novak, USDA  
Paul Noe, AF&PA  
Richard Lewis, FRA

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*Paul Noe (PN):* Good morning, everyone, and thank you all so much for the overwhelming response that we received for the call. We're very grateful to you all for the many written questions you submitted. We have compiled those and submitted them to USDA, and their responses to those questions will constitute the majority of the call. We also did leave a little room at the end, as our moderator noted, for oral Q&A.

I want to thank very much Mike Linsenbigler, who is the Acting Director of Conservation and Environmental Programs Division of USDA's Farm Service Agency, for joining us today, as well as Kelly Novak, who is a Program Analyst with that program, and their colleagues who are joining us today.

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**BCAP Update:**

*Mike Linsenbigler (ML):* Thanks, Paul and Richard. I'll give you a little bit of an update as far as where we are. On June 11th, USDA issued a notice of funds availability in the Federal Register, which basically gives us the ability to operate the one portion of the BCAP program. BCAP is actually comprised of two components. We have a matching payment component, which is we're operating under, the NOFA. And we have a project area component that we're operating - that we will operate after we publish the final regulation. So there are two components, and we started implementing provisions of the matching payment in late summer this year.

At the same time, in May we started working on a draft environmental impact statement. It was up for public review. I think we received about 600 comments. We're in the process right now of starting the review process of those comments and trying to figure out what adjustments and what the answers should be on the significant number of comments we received on the EIS.

As you and your members are probably well aware, we're in the process of developing regulations. We are in the process right now of working with OMB to try to get a draft regulation out for review. Hopefully in the next – within the month – we're hoping to publish the regulation. And it will be an opportunity for your members and the industry to make comments about the direction of the program.

I'll give you some direction. The NOFA basically is going to be very relatively consistent with the law or statute. Under the regulations there may be more change or variance. And we're looking at some of those variances and for input on the program.

As you mentioned before, there was a change yesterday on the eligible material list. We excluded black liquor for both federal land and also from private land. That was explicitly put out yesterday. And I think we have a couple questions on there.

*Kelly Novak (KN):* We also updated our Biomass Conversion Facilities list. Everybody is aware that the process is opened now, or it has been since we received funds July 17<sup>th</sup>, for a facility to apply if they convert or propose to convert renewable biomass, a bio-based product or advanced biofuel.

So we now have 125 facilities that have been qualified. They are listed on the website, and everybody's aware that once funding is received, we will begin doing approvals of Eligible Material Owners who come in and make an application. So at that point that's where we are with the qualified facilities.

### **Written Questions:**

- 1. Please describe which materials our industry uses to generate energy you believe will qualify as eligible materials. I'm curious particularly about eligibility of materials generated at the mill site (bark, sawdust, fines, and pulping residues) vs. material brought from the woods (dirty chips, logging residues, and submerchantable trees)? Is qualification based on use or incoming material description?**

*ML:* We have a list of eligible material that's available on our website. Materials such as bark, sawdust fines, pulp residues would all qualify. Dirty chips, logging residues, submerchantable trees would all qualify as eligible material if it's brought to a qualified Biomass Conversion Facility.

- a. Are mill residuals (including Black Liquor) burned to generate steam from wood harvested from Non-Federal Lands an eligible BCAP material?**

As we mentioned, black liquor is not going to be eligible. If a wood residue or pulp material is brought to a pulp mill, the component of that would be turned into black liquor and would not be an eligible material.

- b. Can a sawmill that is using sawdust as a fuel to dry lumber be eligible as Eligible Material Owners and as a BCF for the program?**

Our position is you can be either one. You can either be an Eligible Material Owner or a Biomass Conversion Facility, but you can't be both at the same time.

These are just provisions under the NOFA. As we go to rulemaking, there is potential for policy changes. So when the regulation is issued, there's an opportunity for change. I think we're looking at public comment on a number of these issues. So you can provide comments on these issues.

*KN:* This is a bit of a complicated question because you have a few scenarios in get encompassed in this particular question.

First of all, if a sawmill were a Biomass Conversion Facility and they sought to actually come into the program to be qualified, they would have to provide us with proof that they were doing a conversion process. Meaning that they would have something like a woodchip boiler. They would have woodchips that they're burning in the boiler; sawdust

as well. So that we get them qualified as a Biomass Conversion Facility the sawdust, of course, would have to come from another source. That would be in order for them to be eligible for a matching payment, so there would have to be a supplier.

I think the question here is whether or not they can be both material owner as well a qualified BCF. And the answer to that is, quite honestly, no because we do not allow for duplicative payments on source materials that are used. So if that facility were qualified, most likely its suppliers of sawdust, whatever it might be, would be asking for payment. Therefore, they could not be a material owner and turn around and sell that to another sawmill. It would be a duplicative payment.

In addition to that, if they chose not to be a Biomass Conversion Facility and they wished to market their sawdust and sell it to other sawmills, that would be accessible, provided that the sawmill that they're selling to is a qualified Biomass Conversion Facility.

- 2. When will the matching funding for the 2010 BCAP Program be announced, and what do you anticipate the funding level (\$) will be for fiscal year 2010?**
- a. How long is the program going to be funded?**
  - b. Please describe the CCC funding mechanism. Is it true that there is in essence no limit on BCAP funds?**

*ML:* The program is funded out of the Commodity Credit Corporation. The Commodity Credit Corporation was developed back in the 1930s as part of USDA's effort to help farmers during the Great Depression. The CCC has right now a \$30 billion borrowing authority. And it was designed primarily because USDA did not know or it was difficult to figure out what commodity prices were going to be. So there needed to be some flexible approach as far as providing revenue and commodity program payments to farmers. So the BCAP program is funded out of those \$30 billion borrowing authority. It doesn't require Congressional appropriation for the program.

What the law says for the matching payment provision says for funding is: "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 the fiscal years 2008 through 2012." So the Secretary has the opportunity to provide the funds as necessary to fund the program.

The way we work it in USDA is that the Farm Service Agency will make a request for funding to the Office of Management and Budget. This was done prior to October 1st. We're still waiting to find out the status of that funding request for funds. So your issue as far as when will funding for the program be announced, to be honest with you we're not really sure, and we're not sure if we will be fully funded at the requested amount or not.

We had requested \$25 million in FY '09 for a month-and-a-half period, so our request for FY '10 would be well north of that \$25 million that was requested in '09.

**3. Are wood pellets destined for Europe eligible for this funding?**

*KN:* I think a piece to that question is missing. I think what we mean is: is the production of wood pellets destined for Europe eligible for funding? And the answer to that question would be, yes, they would be eligible for funding. So the material owner who supplies perhaps the wood pellet facility that's been qualified, that material that they've sold to the wood pellet facility that might be selling or marketing their wood pellets over to Europe, that sawdust supplier would

be eligible for payment.

- 4. Has the USDA considered the potential impact on biomass costs for facilities that may not be BCF's and the consequences of creating economic levers for companies receiving the incentive funding, which may make some investments/projects feasible that would not be economically viable without the incentives?**

*ML:* Under the NOFA, basically USDA is operating under the conditions that were in the statute. As part of our analysis for the Environmental Impact Statement, we did take a look at some of the economic impacts associated with the matching payment provisions of the program. We've also received a lot of input in regard from your association and from many folks in the industry. And those are taken in consideration as we're going through in the development of a regulation.

Once we publish a regulation, we will have the opportunity to take a look and review comments that are received during rulemaking. We're taking your concerns seriously. And we have the potential to review those. And going through the rulemaking process, make whatever necessary judgments deemed necessary.

- 5. How can the burden of sampling moisture content on every load of wood be reduced? Is there a possibility that a standard moisture content average or a sampling procedure can be used for wood biomass so that a consuming mill would not have to do moisture content checks on each load? State FSA offices seem to be giving inconsistent answers.**

*KN:* First of all, I'll say that we're operating under the NOFA. And so the NOFA says specifically that you must have access to accurate moisture measurement, and you have to record the accurate dry ton weight on your receipts that you provide to your suppliers. With that said, we do understand. We have taken a lot of comments from the NOFA concerning the moisture measurement methods that are available.

We have also had a research briefing paper presented to us from the Forest Service and their partners that reviews very thoroughly some of the ASTM standards and ASAE standards for sampling using moisture probes, etc. And the proposed rule will reflect the research that's been done and the comments that we've taken on this issue with moisture measurement.

But as it stands, under the NOFA is what we're operating under now. So all FSA offices have been told that they must comply with what the NOFA says. And, again, that is accurate moisture measurement equipment is to be used and is to be recorded on the receipt.

- 6. Can you explain the requirements for the forest management plan, and what is expected for the Eligible Material Owners delivering to BCF's? Example: I buy eligible wood materials from several landowners, and I send this volume to a qualified BCF, do I need to have management plans to receive matching payments or do I qualify as an "aggregator" of the material and do not need any management plan? Are you amenable to simplifying approval of biomass harvesting – for example, if the land is third-party certified, or there is a third-party certified procurement system, or the biomass is harvested in a state with high compliance with Best Management Practices?**

*ML:* One of the things USDA would like to do and it would like to see out of the biomass conversion program is that we utilize our forest resources in a sustainable manner. What the

NOFA describes is that for landowners they either have a forest stewardship or equivalent forest management plan provided that there's no additional cost to the commodity credit corporation.

What we've taken into account is that for aggregators, somebody that may be taking forest material off of 20, 30, 40 different landowners, that there's going to be a real difficult challenge to making sure everybody has a forest management plan on their land. We're not explicitly requiring it for the aggregators to make sure that all the materials conforms with a forest stewardship plan or forest conservation plan on that land.

The question, "Are you amenable to simplifying the approval of biomass harvesting"? I think we are looking at all options. We know there are some states that have very strong regulatory requirements as far as how forestry material is going to be harvested. I think this is going to be an issue for discussion as part of the rulemaking. And we would like your comments, especially during rulemaking, as far as what's the best way we can handle making sure these forces are-- maintain a sustainable manner and also that it's not an undue burden on the industry.

**7. FSA uses the government's fiscal year in some discussions regarding funding and BCAP allocations, but they also request information based on a calendar year basis. Are the allocations made for fiscal year or calendar year? We are currently in FY2010, so is FSA currently accepting FY2010 allocation requests?**

*KN:* To answer that, you'd want to know a little bit about the timeline here. August 20th was the date of the first qualification of the first Biomass Conversion Facility. So we did have fiscal year 2009 funds available until the end of the fiscal year, which of course ended on September 30th. So that was about a month and 10 days.

For the allocation requests that were made for that fiscal year 2009 funds, service performance was allocated for performance out to the end of the calendar year. That was somewhat of an exception. So it only went to December 31st instead of ending on September 30th. However, folks who were suppliers who were working with a qualified facility would have had to come in to a county office by September 30th to make their obligation for payment. With that said, we are proceeding normally as normally we do on a fiscal year. So all allocations fiscal year 2010 onward will be done on a fiscal year basis.

One other thing though that is a factor for fiscal year 2010 under the NOFA, that when the funds are received here and we do an allocation request for all the states, the states will be working with you at that point to format what will be their allocation requests. We do have the consideration that the final rule will also be affecting what that allocation request would be.

**8. We would appreciate any update on whether the guidance will change for the arm's length transaction so that intracompany sales based on market prices could be included.**

*ML:* We've had a lot of interest as far as arms-length transaction, and that will likely be an item as for discussion as part of the proposed regulation that will be coming out. So I would wait until the proposed reg and take a look at those provisions to see, you know, the status of what we're going to do in arms-length transactions.

**9. Is there a standard conversion to calculate the bark content of roundwood that will be used for heat or energy production received at a BCF? If not, can we use historical averages on % of fuel derived from green weight?**

*KN:* The answer to your question is that, no, we do not have a standard conversion process or chart that lets those facilities know or sets a limit on the percentage of bark that we expect from round wood. We are relying, under the NOFA, for you to make your percentage estimations based on your historical averages there at your facility.

**10. What is the status of the Programmatic Environmental Impact Statement? When are the final rules of the program going to be released?**

*ML:* As I mentioned before, the programmatic EIS was a draft. The EIS was published and we received comments until I think it was September 24th. And we received over 600 comments.

What the agency will do now is we'll review the comments. We'll make whatever necessary adjustments to the EIS to improve areas of concern. We'll address all 600 questions in there. And we hope to release the final EIS at about the same time the final reg is going to be published.

Our draft regulation should be hopefully within a month timeframe. And we would probably likely have a 60-day comment period on the regulations.

**11. If a BCF is located in one state and buys wood residue in five states, do I need register as a BCF in each state or just through the state FSA office where the BCF is located?**

*KN:* The answer to that question is found in the instructions on the website for the agreement application for the Biomass Conversion Facility. And it does say that the BCF, the Biomass Conversion Facility, will make an application to the state office where the facility is physically located. And then if you're buying residue from suppliers in five different states, you will report that on your BCAP-1 form overview in putting down which counties that you do business operation in. That lets the FSA office know in the state that you do do business outside of the state, and that will accommodate them with their allocation requests.

**12. As an EMO, do I need to re-apply for approval for each FY of the program? For example, if I apply now do I need to re-apply after December 2009 for 2010?**

*ML:* The way the application process for payment works is that after we have a qualified biomass conversion for the facility, an Eligible Material Owner would secure either a contract or some type of letter of intent that they plan to deliver X amount of tons at X amount of price to a qualified Biomass Conversion Facility. At that point, after the Eligible Material Owner has either a contract or letter of intent, it would go to a local FSA office where the material is originating from.

At that point they would submit that application. For example, if Eligible Material Owner was going to sell 1,000 tons to the Biomass Conversion Facility at \$20 a ton, at that point in time the county office would fill out what we call an AD245, a two-page application for payment form. It should take about 15 minutes to make the application.

At that time, the county office would obligate money for that Eligible Material Owner into an account. And that Eligible Material Owner would make deliveries of the product; let's say 100 tons a couple times. The facility would then gather those receipts, scale tickets and all, and bring those to the county office and receive payment.

At the end of that – after the \$20,000 is used up – if the producer or the Eligible Material Owner would like to make further deliveries to the facility, they could stop into the office, another letter of intent or contract, and if funds are available submit another application to the county office.

Originally, for those producers that are Eligible Material Owners that delivered or signed up before in the initial days of the program, FY '09, we had for delivery prior to December 31, 2009. So, effectively, they had a three- or four-month window to deliver materials.

As soon as we get funding, new funding for FY 2010, those Eligible Material Owners can submit applications, and we would probably submit applications for the rest of the fiscal year, which would go till September 30, 2010.

**13. When will facilities that applied for registration as BCF's several weeks ago hear whether or not they have been approved? How long does BCF registration take?**

*KN:* Well, I'll say for qualifying facilities, most of you do know that you work with your state offices, as I had mentioned before. And it takes some time to process back and forth and make sure everything is completed on the form. Once everything is completed on the form and the agreement is fully executed, then the state office forward that electronically to the national office. The national office, at that point, according to your agreement that you would have a copy of, has 15 business days to process the application.

Sometimes we found that we do need to return the application to the state office because of deficiencies, meaning that it hasn't been completed. But once the final completion is done, a facility ID number is assigned, then the contact is made with the state office letting them know that a facility ID number will soon appear on the website and that they may contact you and let you know that you've been approved and to wait for the facility ID number.

All said, that shouldn't be more than four weeks of time through the whole process. That's give or take that all forms have been completed correctly and there are no deficiencies.

**14. Will there be a "true-up process" next spring to move allocations around from States that aren't using their allocation to those States that are?**

*ML:* FSA will monitor the allocations we provided out to state offices to see how the fund utilization rates are being used. Our goal is to try to fully utilize the funds and try to prevent one state from not having any money available while another state is holding on to a pile of money that isn't used. So we will monitor funds all the time, and it could happen well before next spring.

**15. After approval as a eligible material owner by the FSA, what is the expected timeline for payment after a eligible material owner delivers eligible wood to an approved BCF and submits paper work to the proper FSA office?**

*KN:* I'd like to clarify that the Eligible Material Owner, when he goes in to qualify and get approved for the delivery, they will have to return to that very same county office to finish the paperwork after the delivery is made. It's a relatively quick process when they go back in with the receipt and give information about the point of origin about the materials. They also can be coming back in with the scale ticket.

And provided that all the information is correctly recorded on the receipt and the scale ticket,

which both include a signature and electronic signature as acceptable; it should be done actually quite quickly because we do have an electronic funds code. There will be a need to be certain that the funds are available at that time. And if they are not transferred make them available.

**16. To receive 2010 matching funding, by what date does a supplier need to sign up with the FSA?**

*ML:* FSA runs our sign-up process on a continuous basis for BCAP. So when funds are available in the county office, Eligible Material Owners can sign up at any point in time. They can sign up throughout the year, depending on the availability of funds. So there is no specific cutoff date for applications for the program.

**17. How will the 2010 matching funds be distributed to:**

**a. The approved facilities?**

*KN:* I just want to be clear here that only the suppliers are eligible for the matching payment opportunity. The approved facilities never receive any direct payment. All their benefits are indirect.

**b. The suppliers? (For instance for 2009, the funds were allocated or distributed first come, first served).**

*KN:* So the supplier for the 2010 matching funds, they ask a further question on there, "Will there be an allocation or distribution on a first-come first-serve basis?" My answer to that would be that funds are allocated to each state and the Eligible Material Owners can only be approved for funds if that allocation is available in the state. So it is somewhat of a first-come first-serve basis. And, of course, the Biomass Conversion Facilities would already need to be approved. And contracts and receipts and all would have to be currently updated and made sure that all of the information is available for the county office.

**18. What reasonable documentation and substantiation of the amount of biofuel produced and recovered for cogen burning would be required for this type of operation to qualify for BCAP subsidy?**

*ML:* To be honest with you, we're still working on that answer. And we'd probably like to get input from the industry as far as what type of information is available and how best to kind of be able to document actual material used in it versus what's used for production and manufacturing activities. So we're still working. We haven't come up with a defined set of criteria yet, but we would like your input on that.

**19. If the biomass producer is also the landowner, what type of proof of ownership is required? If the producer is a very large landowner, like Weyerhaeuser, producing biomass from multiple (10, 20+) sites in a county, would a county map showing ownership boundaries with the multiple sites indicated suffice for proof of ownership? Is the producer required to keep the material from each and every landowner separate?**

*KN:* The answer to this question-- well, the first portion of this question, is that each and every landowner that keeps their legal title to the material does need to show proof of ownership. Proof of ownership, whether or not it could be considered a copy of a county map showing the

boundaries of the multiple sites. What we need to see is that you have proof of ownership of the material. And I don't believe a map showing where the boundaries of ownership would suffice. There needs to be a little bit more backup with the map to show that there is ownership involved.

The last portion of the question, again, just to restate that, is the producer required to keep the material from each and every landowner separate. We are aware that we do have aggregators and brokers who will be partaking and keeping legal title to the eligible material, which will then be selling it to the Biomass Conversion Facility. We don't anticipate that they would keep the materials separate, that there would be some comingling of materials, especially in the case of sawdust, which is an intermediate ingredient used quite often.

So the answer to that question would be, no, that they're not expected to keep each landowner's materials separated. Landowners, however, they are to report to the county office where the land is located in order to apply for a payment. So if you are a landowner of many different sites, you'll have to go to many different county offices. Therefore, you are going to need to show each county office some type of reporting on that particular material that comes off of that particular piece of land.

**20. How does the 2 year time period for a supplier work if the supplier has signed up for more than one facility with different sign up dates for each facility and FSA? For instance, Supplier X signs up with the FSA to deliver to Facility A in September 2009 and then Supplier X signs up the FSA to deliver to Facility B at a later date. Does the 2 year window for all facilities Supplier X delivers BCAP wood begin with the sign up of September 2009 or does a new 2 year clock begin with the sign up date of Facility B?**

*ML:* What FSA will do is take a look and figure for the individual or for the original date that they originally signed up for BCAP. And we will create a database which will record for every individual, either supplier or Eligible Material Owner. The first date they signed up for enrollment into the BCAP or the first date the application was approved by the county committee. That will be the start date for the two-year timeframe. And that database, once available, will be available for all county offices in the whole country.

And so they will take a look in that database and see where, for example, Mike's Logging Company, the first date that Mike's Logging Company ever applied. And if it was October 1, 2009, the window would start on October 1, even though I may have applied in Montana in December 1, 2010. So the window starts as soon as I make my first application.

**21. We have been told that FSA is not accepting applications for 2010 allocations. Is that true?**

*KL:* This question is a bit ambiguous, and I think what the question really is: are we accepting Eligible Material Owners' applications for 2010 for approval of deliveries? The answer to that question is we will not be approving any delivery allocations until funds have been received and allocations have been made to states.

With that said, at this point, a supplier of a qualified facility could go into a county office and could file all of the paperwork that's required. They could leave the paperwork with the county office, and the county office, when funds are available, will go through the process of approval at that time. With that said, we are definitely not approving allocations because we do not have

funds at this time.

**22. I understand there are approximately 115 qualified BCF's with another 115 applications pending; do you have a feel or estimate on what the total number of qualified facilities will be by the end of FY2010?**

*ML:* As Kelly updated, the new number is 125. It seems like right now we're getting between 5 and 10 applications a day for biomass conversion facilities. My gut feeling is I think we could be close to 400 or 500 by the end of FY 2010. We see substantial interest throughout the whole country for this program.

**23. Currently scale tickets showing the delivered tonnage AND the bone dry equivalent tonnage are required to be signed by the BCF and submitted by the EMO for payment. Since it is impractical for the BCF to sign every ticket at delivery, and the bone dry test data is not available immediately at the time of delivery, will signed load listings with appropriate data submitted at time of the payment request suffice?**

*KN:* First of all, there's a bit of a clarification that needs to be made at the beginning of that question about scale tickets. There's an assumption here in this question that the delivered tonnage and the bone-dry equivalent is required on the scale ticket. That is incorrect. The only thing that is required on the scale ticket is a signature, which is allowable to be electronic and a green ton weight. We do not require the bone-dry ton to be recorded on the scale ticket.

We are aware that in three different sections of the NOFA there was conflicting information about that. So in a further BCAP notice that we delivered, we clarified that the bone-dry ton was not required to be on the scale ticket.

As far as the signature is concerned, we still do require, under the NOFA, that the electronic signature or a handwritten signature is made on the scale ticket. Something like a settlement sheet would not suffice for scale tickets. Scale tickets need to be individual.

We do realize and have received a lot of feedback on these two issues that are required under the NOFA. We do hope that you will continue to make your comments about this. And I do believe that the proposed rule will reflect many of your comments on the scale ticket issue.

**24. Will the BCF receive any feedback regarding payments to EMOs approved using its BCF number?**

*ML:* On every agreement that a qualified BCF signs, we have a privacy provision that significantly limits the amount of information that USDA will be able to provide to the general public. Basically, all USDA will provide will be information as far as the name, location, what type of material the facility is going to be purchasing, and the phone number and e-mail address.

The BCFs would not receive any information as far as how many Eligible Material Owners were approved and delivered material to their facility. Because of the confidentiality agreement that we've signed between the facility and us, we would not release that information. There could be information that basically USDA is required to tell the names, addresses and payments that producers receive under our program so that you could tell that Mike and Kelly both received a payment, but you would not be able to get information who Mike and Kelly delivered their biomass to.

**25. How do we handle satellite chip mills that feed fuel to P&P BCF's? Do the chipmills need to be approved as BCF's or are they considered part of the same BCF as the P&P mill?**

*KN:* To answer that question I'll just state that the chip mills are not eligible to become Biomass Conversion Facilities under this program. If the chip mill were physically located at the physical address of the facility that has applied for a Biomass Conversion Facility qualification, they would be considered a part of that facility. If they're at a remote location, as a satellite, they would not be a part of that facility.

**26. A producer may purchase standing timber from several small adjacent landowners in a rural area. It is very difficult if not impossible to keep material separated by ownership. Is the producer required to keep the material from each and every landowner separate?**

*ML:* The Eligible Material Owner must show that they have control of the product that's being delivered to the facility. If the producer can document that he has control from the several landowners, and it gets comingled, he would not have to identify on each individual piece of material that was emanating from each of the landowners. So the producers may not be required to keep the materials separate from each landowner.

If the producer is only delivering the product, then that material would have to be separate because the landowner would still retain a control of that eligible material until it's delivered to the qualifying Biomass Conversion Facility.

Effectively, if the aggregator has control and ownership of the product, he is not going to be required to document where the material originated and the amount of material from each of the landowners.

**27. If a facility's BCF application is accepted are we then committed to carrying out the BCAP program or can decide not to participate in the program at that time?**

*KN:* If your application is approved, you are then in agreement that you will be participating in the program and meet all the obligations that are listed in your agreement that you've signed with the Commodity Credit Corporation Farm Service Agency. If you were to decide to terminate your agreement, that would be done through the proper channels, and termination of the agreement would be done.

However, there is a stipulation in the agreement that requires you to retain your records for up to three years. And records would be anything such as a spreadsheet that would have contained your purchase list of eligible materials as well as receipts, scale tickets, etc., related to that.

**28. Currently every supplier has a two year time frame to participate in the BCAP program after they are accepted in the program. They have to submit a contract as part of their application process. Can they submit a contract initially that is for a time period of four months and then submit contracts to the FSA office that they apply for the program through on a quarterly basis to remain eligible for the program? If not, is a two year contract with them required on the front end to cover the time fame that they are eligible for BCAP funds?**

*ML:* Yes. They can submit an application for funding for a four-month time period or three-month or whatever timeframe they would work with. Generally, the timeframe would be less than a year that we would submit. So producers that would come in at that point in time would likely, at most, be eligible for funding till September 30th of 2010.

Our preference would be for the four-month window, if it's a significant workload for the Eligible Material Owner. The reason why, it gives us better control of our funds. We can actually monitor funds. And we would rather have a truer picture of what the market price would be by having a shorter timeframe than trying to over obligate money to one supplier. We're at a rate that, you know, where we may have some unused funds at the end of the year. So we may have some unused funds at the end of the year.

**29. Is there any standardization regarding the State Forester interpretations of "another practice plan approved by the State Forester"?**

*KN:* Each state has different laws and regulations, and their state forestry divisions work very differently. What is happening at this point under the NOFA is that each of the state FSA offices are working with the state division of forestry to put together what would be an acceptable equivalent of the forest stewardship plan. Forest stewardship plans, as you know, should be done at no cost to CCC, and they are required for just the non-industrial private forestlands.

So at this time if you would like to know what is considered to be the equivalent forest stewardship plan that's acceptable for your state, you'll work with your state conservation specialists to find out what the state forester has approved to be the equivalent.

**30. Many producers of urban wood waste operate concentration yards where woody biomass is sorted and processed. This includes woody biomass from tree service and landscape companies, land clearing contractors and hurricane/storm salvage efforts. Is this considered eligible material and if not, why?**

*ML:* Urban wood waste is not eligible material for the program, the reason why is because of the statutory requirements. Under the statute there's an exclusion for eligible material and one of the exclusions is the term eligible material does not include food waste and yard waste. And under that requirement is what we're saying is yard waste would include some of the landscaping material and stuff like that. And that would make it ineligible matching payments.

**31. To what extent will USDA seek to disallow CHST payments for biomass chips that could have been sorted for roundwood pulpwood from Non-federal lands?**

*KN:* I believe according to the eligible material list for the nonfederal lands, we do say that the pulpwood, of course, is an ineligible material [*sic*]. And I don't think there's any question about that. I think though what you might be referring to is the section in the eligible material list that talks about federal lands and that the material may not be used for a higher product value.

And with that said, of course, for the higher product value on a federal lands material, coming from either the National Forest Service or BLM, the market would dictate what that higher product value would be. And in addition to that, the Forest Service, we've had discussions with them, and they do assure us that timber sale contracts are sufficient for due diligence when a determination of a higher product value is made.

**32. If there is a service charge for handling a BCAP supplier's EM is the reimbursement on the full contract price or the contract price less and handling fees?**

*KN:* This question I'm not really sure I'm interpreting it correctly, but I'll say this. It sounds as if the Eligible Material Owner has a contract with a facility and there is some type of agreement that the Eligible Material Owner would reimburse the facility. That would not be an arms-length transaction acceptable under the NOFA. No reimbursements or monetary security interests in with the Biomass Conversion Facility will be allowed in this program.

It would be considered somewhat of-- for terms, a kickback. Meaning that the Eligible Material Owner has made an agreement to refund the Biomass Conversion Facility. So if there is a contract that includes for a reimbursement to the facility for any handling fees priced less than, that would be interpreted as a kickback and not allowable. It would bar the Eligible Material Owner from collecting on deliveries matching payment.

**33. Authorized representative's written signature is required on scale tickets. Can this be stamped on the scale ticket or must it be an original?**

*KN:* We did make clarification, as I stated earlier, about the scale tickets. We do realize that a handwritten signature by a representative from the Biomass Conversion Facility is very impractical in today's world and that an electronic signature would be allowable on the scale ticket. So the answer to that question is, yes, a stamped signature that is not an original would be allowed and usable at the county office on the scale ticket.

**34. Can a scaler qualify as an authorized representative?**

*KN:* If the scaler is authorized by the Biomass Conversion Facility to sign for the scale ticket on the scale ticket then that is acceptable. If it's an electronic signature and it's from a remote location that's acceptable as well. We do understand that quite often it's just a computer entry that makes the signature on the scale ticket. So that would be acceptable.

**35. Our BCF will be purchasing BCAP eligible material from suppliers. We will issue a purchase order, scale tickets and a weekly settlement statement for this BCAP material. At times, we could also purchase Non-BCAP eligible material from the same supplier. This purchase will be on a Non-BCAP purchase order. Our records will always allow us to keep our purchases separate for BCAP eligible material and non-eligible material. But our check that is issued to the supplier could have both BCAP and Non-BCAP material payments on the same check. We will issue a separate Settlement Statement for the BCAP eligible material that will list all required information and will be signed by the authorized manager. Do we need to change our purchase system to allow for the issue of separate checks for the eligible and non-eligible material?**

*KN:* Yes, because on the receipt we will need to know what the common name and the eligible material is. We will need to know what the dry ton weight is. We will need to know what the green ton weight is. We will need to know what the price per dry ton is for that eligible material. And we'll need to know the date of delivery. So those wouldn't need to be separated on there.

And the final part of that question asks, "Do we need to change our purchase system to allow for the issue of separate checks for the eligible and non-eligible material?"

You may cut your checks together. You may combine them. But we need to see the receipt at the county office separated. No receipts will be accepted if a dry ton weight is on there and the price per dry ton is recorded on the receipt.

*PN:* We want to get to oral questions shortly, but first let me just ask a couple things that perhaps weren't touched on, even at the risk of being repetitive. One of the concerns raised has been the notion being that pulpwood could be taken and chipped up and used by utilities or manufactured into wood pellets.

And just to be clear on that, Kelly and Mike, would those be eligible for a matching payment?

*ML:* It depends on the source of where the pulpwood came from. There is a requirement if the pulpwood would emanate from Forest Service or BLM land, that the requirement that it's not used for a higher-value product. We're not using the pulpwood that's coming from Forest Service land, and there would be a higher value use for it. So there is an issue as far as on Forest Service and BLM land, issue as far as the highest value for that use of that timber that comes from the Forest Service lands.

On private land there is not that similar requirement. And so on private land, that pulpwood could be chipped up and used by a public power company.

*PN:* I just note that even your most recent eligible materials list doesn't list pulpwood as ineligible if from federal lands.

*ML:* Okay.

*PN:* That's one you might want to think about. And as I mentioned earlier, many of our members are very concerned about the severe disadvantage for pulpwood purchasing in the marketplace that could be caused by that. And there were a lot of questions along those lines. The question is, have you thought about that? And has USDA considered perhaps a more tailored program that wouldn't seriously disadvantage the mills in this way? For example, focusing more on things for which there isn't a market, such as the forest slash and other materials.

*ML:* To be honest with you, Paul, we have looked at that issue. There's been a lot of discussion, a lot of review and analysis. What we have to do, we have to work within the conditions and terms of the statute. And so we're trying to balance everything. We understand the needs and where your industry is coming from. We also have statutory requirements. And we're trying to balance the regulations that are coming out. So I would recommend that your industry look at the regulations and see what are the impacts associated with the industry and get back to us as we go through rulemaking.

*PN:* Yes. And Mike, this issue, and also the issue of the statute and the range of discretion for the Department, that's addressed in the letter that we sent to Administrator of OMB's Office of Information and Regulatory Affairs, and that was sent to the FSA Administrator as well. So it may be worth taking a closer look at that.

## Oral Q&A:

With that, I think we're about ready to go to oral Q&A. And the way this works, I think, is the moderator can let folks in, and we'll just take the ones that we have time for. One of our CEOs, Mr. Landegger I believe, is on the line.

*George Landegger (GL):* I have to make a slight statement and then my question. It follows on what Paul was saying. There seems to be a disconnect between the views of the policymakers regarding the infinite nature of the forest reserve and the actual forests themselves.

Speaking for the Southeast, only about one-third of the forests in the Southeast are grown to produce pulpwood. They are being grown to produce saw timber in a way that's a higher value added, which was discussed. And that saw timber is not going to be burned by power companies, nor turned into pellets.

All of the pulpwood and chips in the Southeast, or 99% of them, are being used by the pulp industry now. And there are areas where the growth is less than the drain at this time. Essentially, the incentive is being given to others, say the electrical power companies among others, to be able to outbid the companies that are currently using this resource fully. And I'm not sure what the rationale was for removing black liquor as an eligible material or pulp as a bioproduct. But what would happen, I would think, is that over time the wood subsidy will be charged to the government anyway, by those who would, with the subsidy, buy the wood we now use to make pulp.

The name pulpwood is very well worded. European studies have shown that when you use wood to make a value-added product, it is, in this case, pulp and paper, it's 10 to 13 times better for the GDP than just burning the wood. So I guess my basic question is has anybody done any forest studies – and we would be happy to provide some – that show that there is any there there? And that the forest acreage that is being used for the available pulpwood is, as I say, about a third of the trees that are growing and are thinning.

So I guess I would ask, what is the rationale of seeking to remove pulp and black liquor? And the highest value-added concept seems to apply in federal lands is not applying in private lands. There's only so much wood out there. How is this supposed to work if we were, to some extent or to some great extent, not able to compete with the electrical companies who, in addition, are cost-plus entities, and we don't have any cost-plus customers?

*ML:* We understand your concerns, and we understand the impact it could have on your industry. I think what happened is when we operate under NOFA, we operated under basically the statutory guidance that was provided. I think we have the opportunity under the regulation to make adjustments and changes as we go through the regulatory process. And I believe the program could substantially change as we go through rulemaking. I believe we really need to give that input during rulemaking to help USDA craft a program that will be able to sustain sustainable forest resources and not significantly impact your industry and also be able to deliver biomass and try to jumpstart the biomass industry in this country.

So we've got some difficult challenges in front of us. And I understand where you're coming from, and we really need your input as we go through rulemaking.

*GL:* Thank you. We will provide it. I think the forestry will be sustainable. It's the industry that won't be.

*ML:* And we want to keep the industry. USDA's position is that it's a very important industry that creates over a million jobs in the US. And we are concerned, and we want to make sure rural America has good jobs out there.

*GL:* Well, if you want to incentivize something that isn't being done because the burning of the sawdust in sawmills, and all of those things are being done just as we do, I think it would be, what Paul suggested, to incentivize the use of what has been historically left in the forest, forest debris sometimes known as slash, which consists of the tops and the branches. Everything else is already being used.

*Dave McEntee (DM):* A question about the BCF facility also not being able to be a material owner. I think that's how I heard you, Kelly. We have operations where a sawmill has a boiler. It may use 40% of its incoming wood for fuel in its own boiler, but it generates additional wood in the form of mill residuals that can be sold. So if our credit for the 40% we use is given to the log supplier, only for the amount that we use in our BCF, why can't that same mill sell the other residuals that haven't been issued a credit to the supplier and use those sales to generate eligible material receipts under the program?

*KN:* I can speak to that. We do have one small caveat that came out in a BCAP-2 notice that clarified the NOFA. And this, again, I want to state is for the NOFA. It does say on there that if the material is unsuitable and has not received a duplicative payment and the resale is arms-length transaction, all those things would be able to be documented, then the resale of the unsuitable material is acceptable.

However, I do want to state here because we've had this question quite often, surplus material is not considered unsuitable. So, for instance, if you normally would use maybe that bark in a boiler and you just have too much of it that you have on hand, that is not considered unsuitable. That would be considered surplus, but it is usable at your facility. So that is the only caveat that allows for a resale.

*DM:* Okay. So just a quick follow-up then. If we can document that we only used, you know, 50 tons a week but we generate 100 tons a week, you don't expect us to pile up 100 tons a week and let it rot on the ground, I presume. I presume if we can show we only use 50 but we generate 100, the other 50, so long as there wasn't a credit already given for it, could be eligible.

*KN:* Again, if you would typically use that material in your facility to convert to heat, power, bio-based product or advance bio fuel, it is not considered unsuitable.

*DM:* Okay. So we wouldn't use-- we can't physically push 100 tons through, is my example. So to let it sit on the ground and let it rot, it would eventually become unsuitable. So that's the dynamic I think that we're-- that I'm trying to clarify here is that it clearly isn't capable of taking that much material. And if there wasn't a duplicative payment, it seems like it should be available.

*KN:* I appreciate your comments on that, but unfortunately that is the way that the NOFA is structured. That would be something that if you wanted to give further comment you're welcome to give further comment on.

With that said, the NOFA is still accepting comments. So you're at liberty to give a comment on the NOFA at any time in written form.

*Jeanne Connelly:* I have a question about the statutory basis for excluding wood that can be used for higher-value products that comes from federal land. Because it doesn't specify that same exclusion for private land, are you assuming that you have no authority in your regs to do something like that?

*ML:* In the NOFA what we assumed is that we want to try stay as close the statutory guidelines that were out there. And so under the NOFA what we assumed is that there was no require-- there was no congressional intent or specific congressional intent to say that that same provision would apply to private land.

Under rulemaking we do have there is some discretionary authority, and so we could make it as we go through rulemaking. And so those type of comments could be added when the rules comes out.

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