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**Comments to Proposed Biomass Crop Assistance Program Regulations  
(published in the Federal Register/Vol.75, No. 25, Feb. 8, 2010, at p. 6264 *et seq.*)**

To whom it may concern:

The Biotechnology Industry Organization (BIO) appreciates the opportunity to provide comments on the proposed regulations to implement the Biomass Crop Assistance Program (BCAP) enacted by the Food, Conservation, and Energy Act of 2008 (Farm Bill) and administered by the Farm Service Agency of the United States Department of Agriculture (USDA) on behalf of USDA's Commodity Credit Corporation (CCC).

**Background**

BIO is the world's largest biotechnology organization, providing advocacy, business development, and communications services for more than 1,200 members worldwide. BIO members are involved in the research and development of innovative healthcare, agricultural, industrial, and environmental biotechnologies. Corporate members range from entrepreneurial companies developing their first product to Fortune 100 multinationals. We also represent state and regional biotechnology associations, service providers to the industry, and academic centers. BIO members are actively involved in the development, testing, and deployment of both traditional and biotech-derived crops for energy production. Biotechnology today helps provide the food, fiber, feed, and biomass needs and will continue to play important role as these needs increase. Several BIO members are developing multi-use crops, with the potential to provide food, wood, fiber, feed, and biomass, while other members are developing dedicated biomass crops for bioenergy production.

BIO appreciates the time and effort that the CCC has dedicated to structuring and drafting these regulations for the BCAP program, and the speed with which these proposed final regulations were developed. We also acknowledge the challenges of implementing a novel program like BCAP, given its ambitious mandate – fostering the development and deployment of biomass crops and bioenergy technologies that can produce highly efficient bioenergy or biofuels. Accomplishing these goals in a cost-efficient manner, with prudent use of public funds, is a significant challenge. We applaud the agency for the work it has done to strike the proper balance and in helping our country realize its goal of energy independence. In that spirit, we offer the following comments to the proposed regulations.



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### **Conservation and stewardship requirements**

The draft regulations require that each participant in a BCAP project area must submit and comply with a “conservation plan, forest stewardship plan or equivalent plan.” BIO fully supports this requirement, particularly as many new crop varieties may be established in BCAP project areas, and that appropriate stewardship for these crops is good practice. BIO respectfully submits that these conservation and stewardship plans should not impose requirements or restrictions beyond those currently required by applicable federal, state or local law. Inasmuch as BCAP’s principal purpose is to foster development and deployment of crops for conversion to bioenergy, BIO urges CCC to ensure that applicable conservation and stewardship plans do not impose additional burdens or limitations on landowners beyond those currently imposed on their existing agricultural or forestry practices.

The current lack of a mature and robust bioenergy supply chain and market for biomass already poses considerable obstacles to the propagation of bioenergy crops – further limitations or compliance expenses imposed by conservation or stewardship plans would defeat the stated goals of BCAP. We appreciate CCC’s acknowledgement of these challenges in the draft regulations, as they articulate the need that conservation and stewardship plans should meet those standards needed to *cost-effectively* establish crops for a BCAP project. Accordingly, in response to CCC’s request for comment as to how additional conservation or stewardship measures could be encouraged in BCAP projects, BIO believes that these are best accomplished by providing additional incentives for inclusion – rather than mandating their adoption – given the myriad other challenges, costs and uncertainties that these projects already face. Moreover, given the nascent stage of the bioenergy market, BIO urges CCC to help expedite the review and approval of conservation and stewardship plans for the first set of BCAP project submissions that will be made over the remaining two years of the current Farm Bill cycle. We encourage CCC to act with an appropriate balance between supporting industry development and securing good stewardship. The first BCAP projects and novel technologies already have been awaiting the programmatic environmental impact analysis and completion of these draft final regulations, and BIO is certain that CCC appreciates the need for timely review and evaluation of proposed BCAP projects.

### **Matching payments**

The draft regulations pose a number of options for structuring matching payments under BCAP, and request public comment on these options. BIO suggests that three key principles should drive the matching payment structure.

First, matching payments should not be made for historical baseline biomass consumption activities, which are by definition already economical or desirable without BCAP funds.

Second, if CCC adopts a tiered approach to BCAP payments, there should be no reduction in matching payments for eligible materials that are novel feedstocks, or that are converted using novel technologies.

Finally, with regards to CCC’s request regarding comments for payment tied to greenhouse gas (GHG) emission reductions, BIO submits that the complexity and uncertainties inherent in such

calculations would be impractical, unwieldy, and would impose undue burdens on BCAP participants.

### **Establishment costs and annual payments**

BIO urges USDA to provide ample funding for the establishment payments component of BCAP. We also seek clarification with respect to what practices are eligible for reimbursement as establishment costs for new bioenergy crops and will be accounted for in the calculation of annual payments. This establishment period is an exceptionally risky period of time for the producer and a time when BCAP can be most productive in influencing the desired conversion. While minimum input is the goal for an established crop, the establishment period may have more issues than the planting of the standard row crops of today. The draft regulations provide simply that “[e]ligible practices are those practices specified in the conservation or forestry plan that meet all standards needed to cost-effectively establish” the bioenergy crop (p. 6286). BIO requests CCC’s perspective as to whether soil preparation (weed removal, fertilization, and the like), installation of irrigation systems or other site improvements required for propagation and production of bioenergy crops in a BCAP project area will qualify as establishment costs.

Moreover, BIO believes that certain proposed reductions in annual payments specified in the draft regulations, including where eligible crops are delivered to a bioconversion facility, or matching payments are received, are likely to reduce participation and interest from growers to enroll their acreage in BCAP projects. This will further limit deployment of novel crops and novel technologies – particularly those that present the greatest promise for commercial scale deployment of bioenergy or biofuels. These projects and crops will be competing with agricultural and forestry residues, which generate revenues that adequately compensate the landowner without regard to BCAP.

Accordingly, there are few assurances that the payments received from the delivery of such crops will compensate for the reduction in annual payments at the levels proposed in the draft regulations. BIO therefore recommends a more modest reduction, in the range of 5-10 percent, in annual payments received for land that generates eligible crops that are delivered to a bioconversion facility, or that receive matching payments for delivered biomass.

### **Disclosure of competitively sensitive information**

The proposed regulations specify that BCAP participants are required to “[m]ake available to CCC or to an institution of higher education or other entity designated by CCC, such information as CCC determines to be appropriate to promote the production of eligible crops and the development of biomass conversion technology.” (Fed. Register, p. 6286). BIO requests clarification of this requirement, particularly with respect to potential disclosure of competitively sensitive information. BIO respectfully suggests that the regulation be clarified to permit participants to designate as confidential certain competitive, nonpublic information, such as trade secrets and other intellectual property, internal performance and comparison testing and results, and proprietary practices.

### **Invasiveness determination and review**

The draft regulations provide that CCC will develop lists of invasive and noxious species by consulting with “the State Technical Committees for recommendations concerning the invasive

and noxious status for otherwise eligible crops for the purposes of BCAP” (Fed. Register, p. 6282). With respect to noxious species, BIO respectfully submits that USDA/APHIS/PPQ maintains a noxious weed list, and that this list be used, rather than undertaking a separate evaluation. And with respect to invasive species, we note that there is no uniform, scientifically-accepted methodology currently applied in developing lists of invasive species. BIO urges CCC to adopt sound, science-based methods and criteria in making these determinations, based upon field-tested observations, and evaluated on a species-by-species basis.

### **Consistency with existing FSA programs**

BIO is concerned that the structure of other FSA programs imposes significant hurdles to farmers’ participation in BCAP. The FSA rules regarding the Direct and Counter-Cyclical Program (DCP) require that if qualifying agricultural crops are produced on base acres, the producers must share in the risk of production of those crops to be eligible to receive payments, and all persons that share in the risk will share in the payment (FSA Handbook para. 351C). Farmers have expressed concerns to certain BIO members that their participation in a BCAP project will render them ineligible for future DCP payments, or that their BCAP payments will not compensate for loss of DCP revenue, thus reducing their interest in participating. Other farmers have expressed a desire to deploy land currently in the Conservation Reserve Program, and have inquired as to whether they would be penalized for the BCAP Administrator’s approval of this land in a BCAP project area. BIO respectfully requests clarification on both these issues in the final regulations. Farmers are being asked to make major changes in the way they manage their land and furthermore, this is a long term commitment. The purpose of the BCAP program is to reduce their exposure to that risk and this would not be served by increasing risk in other acres that are under their management.

### **Corporations and Publicly Traded Company Participation**

BIO does not see any advantage or policy reason to bar corporations and publicly traded companies from participation in BCAP. Since many of family farms in the US are incorporated they would be banned from participation under this proposal. In the U.S. the trend toward commercial management of large tracts of land is on the rise. Thirty million acres of forestland have changed hands since 1996. Financial institutions dominate the buyers: timberland investment management organizations (TIMOs), real estate investment trusts (REITs), limited liability and master limited partnerships. Another five million acres belong to various other financial institutions.

To exclude any type of publicly traded or incorporated land owner from BCAP restricts the most efficient producers from converting additional lands to biomass or from pursuing other forms of management that might produce biomass more efficiently. BIO believes that BCAP’s goals of providing incentives to grow more trees and plants for biomass to be converted to bioenergy will be more successful if the largest and most efficient growers are able to participate, and more likely to achieve this country’s aggressive renewable energy goals.

### **Eligible Materials**

The blanket inclusion of pulpwood (roundwood or chips) as an eligible material would allow exporting chip and pellet producers to participate in BCAP while exporting these products for subsidized electricity production in European countries. BIO urges CCC to adopt BCAP

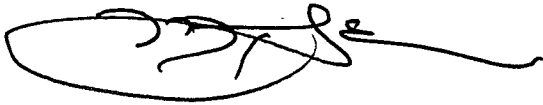
regulations in a manner that ensures U.S. competitiveness and protects existing industries, while promoting the development of new green industries at home. Any incentive that would place a premium on exporting wood chips and pellets for electricity generation in European countries would frustrate these goals. The U.S. has already seen a sharp rise in U.S. wood pellet exports to Europe, from 7,700 metric tons in 2007 to 175,000 metric tons in 2009, now doubling to more than 496,000 metric tons in 2009.

### **Algae**

CCC should clearly define algae as including macro- and microalgae, including blue-green algae (cyanobacteria). While algae are ineligible for BCAP matching payments, they qualify for establishment and annual payments. CCC should also clarify that capital and operating expenses associated with algae production are fully covered under BCAP, as these costs are proportionally higher than those for terrestrial crops, and exceed what CCC has estimated and presented in Table 1.

BIO greatly appreciates the opportunity to provide the perspective of its members on these important issues. If you have any questions related to these comments, please contact me at 202-962-9214 or [mcarr@bio.org](mailto:mcarr@bio.org).

Sincerely,



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