

Biofuels Innovation Program
A Proposal for the 2007 Farm Bill Energy Title

Sec 1. Purposes The purposes of the Biofuels Innovation Program established in this chapter are to promote the sustainable production of biofuels and biomass by:

- A. Encouraging production of dedicated perennial energy crop feedstocks in a sustainable manner that protects our Nation's soil, air, water and wildlife.
- B. Providing financial and technical assistance for owners and operators to produce dedicated bioenergy perennial crops and crop mixes of suitable quality and in sufficient quantities to support and/or induce development and expansion of the use of the crop for:
 1. biofuels
 2. Power or heat generation to supplement or replace non-bio-based energy sources; and
 3. bio-based products to supplement or replace non bio-based products.

Sec. 2. Name This program shall be called the Biofuels Innovation Program (BIP).

Sec 3. Definitions

- A. **Beginning Farmers and Ranchers** – The term “beginning farmer or rancher” has the meaning given to the term under section 343(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)).
- B. **Eligible Crop** – The term “eligible crop” means any perennial woody or non-woody plant or mix of plants native to the United States, that can be used in production of fuel, heat, electricity or bio-based products. The term “eligible crop” does not include the following:
 1. Any crop that is eligible for payments under Title I of the 2002 Farm Bill (FSRIA) or subsequent amendments; or
 2. Any plant that the Secretary deems to be invasive or noxious or have the potential to become invasive or noxious, as determined by the U.S. Fish and Wildlife Service, USDA, or the relevant State conservation agency.
- C. **Managed Pasture** – For purposes of this chapter, the term “managed pasture” is land that is currently vegetated with less than 25 percent native plant cover, has been broken within the last 30 years prior to enactment of the BIP, and has been actively managed for intensive livestock grazing.
- D. **Owners and Operators** – The term “owners and operators” means those individuals who enter into a contract with the Secretary under this program to produce eligible crops.
- E. **Bioenergy Project** – The term “bioenergy project” means a proposal submitted by eligible participants for approval by the Secretary, involving multiple owners and/or operators who meet the eligibility criteria.
- F. **Reserve Acreage** – The term “reserve acreage” means the acreage, shifting in location from year to year, the owner and operator shall retain unharvested at the end of a growing season, but which may be harvested during years in which the county has been included in a federal disaster declaration.
- G. **Secretary** – the term “Secretary” means the Secretary of the U.S. Department of Agriculture.

- H. **Socially Disadvantaged Farmers and Ranchers** – The term “socially disadvantaged farmer or rancher” means a farmer or rancher who is a member of a socially disadvantaged group (as that term is defined in section 355(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2003(e))), a farmer or rancher who has limited resources, or a farmer or rancher who is a member of a federally recognized Indian tribe.
- I. **State Wildlife Conservation Plan** – The term “State Wildlife Conservation Plan” means the Comprehensive Wildlife Conservation Strategy or Wildlife Action Plan developed by each state and U.S. territory as required by Congress, under the State Wildlife Grant Program.

Sec. 4. Establishment The Secretary shall establish a “Biofuels Innovation Program” within 180 days of enactment of any law containing this program.

Sec. 5. Maximum Enrollment The Secretary shall enroll up to five million acres of eligible land, as defined in Sec. 6.

Sec 6. Eligible Lands Eligible lands include:

- A. Non-federal land, that in its native state was not covered by forest, if the land is planted with non-woody, eligible crops and for at least three out of the last five years preceding enactment of the BIP the land has been:
 - 1. in crop production:
 - 2. in managed pasture: or,
 - 3. enrolled in CRP and is no longer covered by a CRP contract.
- B. Non-federal land that in its native state was vegetated with forest if the land is planted with either woody or nonwoody eligible crops and the land has been:
 - 1. Largely forested but subsequently clearcut within the two years prior to enactment of this statute, or
 - 2. Converted from forest more than five years ago and has been in crops, managed pasture, or enrolled in CRP for three out of the last five years preceding enactment of this program and is no longer enrolled in a CRP contract.
- C. Non-federal land that in its native state was vegetated with forest if the land is currently forested and managed under a plan approved by the Forest Stewardship Council or similar third-party certification program, consistent with sustainability and maintenance of biodiversity, and biomass is produced incidental to timber harvest and timber stand improvement.
- D. Land used for tobacco production during the last fifteen years prior to enactment of BIP.
- E. The following types of land are ineligible for enrollment in the BIP:
 - 1. Land currently enrolled in the Conservation Reserve Program, Grassland Reserve Program or Wetlands Reserve Program.
 - 2. Land with greater than 50 percent cover of native non-woody vegetation or mixed forest at the time of enactment of this program (except certified forest as provided in Sec. 6 D).
 - 3. Land that historically was not vegetated with native forest if planted to woody crops; or,
 - 4. Land owned by the federal government.

Sec. 7. Eligible Participants

- A. Eligible Participants must develop a Bioenergy Project proposal that demonstrates a strong likelihood that the proposed project will generate sufficient material from eligible crops to either supply an existing facility or to attract a new facility to the area to meet the purposes of the program as described in Sec. 1.
- B. Eligible Participants must collectively submit a written proposal for support of an eligible Bioenergy Project to the Secretary that includes, at a minimum, the following items:
 - 1. Names and location of participating owners and operators;
 - 2. All eligible crops or crop mixes to be grown and in what relative proportions and what types of land uses they would displace;
 - 3. If available, name, type, location and description of facility or proposed facility to utilize the biofuel crops to be grown as part of this program; and
 - 4. Information on the anticipated local economic impacts of the proposed Biofuel Project.
 - 5. All additional information needed to determine eligibility and ranking of the proposal as described in Section 8.
- C. Eligible Participants include:
 - 1. Collective groups of owners and operators producing or proposing to produce eligible crops;
 - 2. Energy or agriculture companies or refineries;
 - 3. Resource Conservation and Development Councils; or,
 - 4. Any other entity that submits an acceptable proposal for production and utilization of eligible bioenergy energy crops according to the terms of this program.
- D. Individual owners and operators may not submit individual proposals to participate in the BIP.

Sec. 8. Duration of Contract Contracts created under the BIP shall last for a period of 10 years, subject to termination by the Secretary as follows:

- A. The Secretary, at his or her discretion, determines, after at least five years subsequent to entering the contract, that no appropriate use is likely to develop in the short term for the eligible crop produced under the BIP; or
- B. A material breach of the contract by a participant; or
- C. At the election of the participant, after the death of the controlling owner or operator; or
- D. If the Secretary determines that continuation of the contract shall cause undue economic hardship.

Sec. 9. Eligibility Criteria (Ranking System)

- A. In determining criteria for ranking and approval of proposed Bioenergy Projects the Secretary shall consider the following factors for each proposal:
 - 1. Number of owners and operators participating, including beginning farmers and ranchers and socially-disadvantaged farmers and ranchers;
 - 2. Number of acres proposed for enrollment in the program;
 - 3. Probability that the bioenergy crops proposed to be grown under this program will be utilized for the purposes of the program as described in Section 1.
 - 4. Type and diversity of eligible crops to be grown.

5. Potential for positive economic impact on the local community.

B. Priorities.

1. The Secretary shall establish a ranking system consistent with the criteria establish in this section.

2. In developing a ranking system, the Secretary shall give priority for approval of proposed Bioenergy Projects to those eligible projects that meet the following criteria:

- a. Produce eligible crops that are grown in polycultures of at least two species, with higher ranking given to those with the most vegetative diversity.
- b. Bioenergy projects that have the greatest potential to improve soil, water and wildlife over current land covers.
- c. Incorporate planting and/or harvesting practices on enrolled acreage that maximize structural and biological diversity
- d. Eligible crop will be utilized by farmer-owned facilities;
- e. High participation rates of beginning and socially-disadvantaged farmers and ranchers.
- f. To the extent practicable, eligible Bioenergy Projects in regions of the country with few Bioenergy Projects
- g. Projects previously supported through the Conservation Reserve Program biofuels pilot program.

Sec. 10. Reserve Acreage For each year of participation in BIP, a minimum of 20 percent of the total acreage enrolled in this program, shifting in location from year to year, shall remain unharvested on an annual basis. The 20 percent minimum reserve acreage shall not apply:

- A. To land used to meet BIP requirement of diverse vegetated buffers, and
- B. In years in which the Secretary issues a federal disaster declaration in the county in which the enrolled land is located.

Sec. 11. Duties of Participants

- A. Participants must submit collectively a written Bioenergy Project proposal to the Secretary.
- B. Upon approval of a Bioenergy Project, each participant must enter a contract with the Secretary, consistent with the terms and requirements of this program. At the Secretary's discretion, additional participants may be added after approval of the Bioenergy Project.
- C. Participants must agree to the following conservation provisions on all enrolled land in order to ensure the sustainability of the operation and the protection of soil, air, water and wildlife:
 1. Harvesting of eligible crops must not occur during the primary nesting or brood rearing seasons of bird species nesting in the area
 2. Stubble remnants for non-woody crops shall be of sufficient height to provide for wildlife cover and soil protection, with minimum stubble remnants to be no less than 10 inches in height.
 3. Soil conservation plans, designed and approved by the Natural Resources Conservation Service, must be implemented by owners or operators for preventing erosion on areas planted and harvested for eligible crops.

4. Diverse vegetated buffers, the width, characteristics and management of which shall be determined by NRCS, shall be established and maintained at all times surrounding all water resources on enrolled lands.
 5. Chemical inputs shall be minimized and applied properly to ensure protection of soil, air, water and wildlife resources.
- D. Participants may use eligible crops grown on enrolled lands only for the purposes set out in Section 1 of this program, except that owners and operators may use the crops for the purposes of their own operation consistent with the requirements in subsection 11(c) during the period prior to commercial viability of the Bioenergy Project.
- E. For the full duration of the contract, participants must:
1. abide by all provisions of the contract created under this program;
 2. comply with sodbuster and swampbuster and,
 3. plant an eligible crop within two years of entering into a contract with the Secretary and maintain an eligible crop on the enrolled acreage throughout the contract period.

Sec. 12. Duties of Secretary

- A. The Secretary shall establish a Biofuels Innovation Program.
- B. The Secretary shall authorize Bioenergy Projects for the purpose of the program as articulated in Section 1.
- C. Agreements. The Secretary shall enter into a written agreement with each owner or operator participating in an approved Bioenergy Project, as described in Section 11.
- D. The Secretary shall not enter into a contract under the program created in this section with an individual owner or operator unless the landowner or producer participates in an approved Bioenergy Project under this program.
- E. The Secretary shall provide all payments directly to the owner or operator.

Sec. 13. Relationship to Conservation Security Program Owners and operators participating in an approved BIP Bioenergy Project shall be designated as eligible for participation in the Conservation Security Program.

Sec. 14. Contracts Contracts between the Secretary and Participants shall include, at a minimum, terms covering:

- A. Requirements of participants, including all requirements of Sec 9 and 10
- B. A maintenance agreement to maintain the benefits of the contract after the payment period;
- C. Termination provisions;
- D. Payment terms and amounts to be provided on an annual basis;
- E. Provisions covering the sales or transfers of enrolled lands;
- F. Modifications of contracts;
- G. Penalties in cases of breach or other situations; and
- H. Any additional terms the Secretary deems necessary.

Sec 15. Payments The Secretary shall provide the following payments directly to owners and operators:

- A. Cost-share Payments. Owners and Operators shall receive 50 percent of the costs of converting lands to eligible crops, except that:
1. Beginning farmers and ranchers and socially-disadvantaged producers shall receive 75 percent of the costs of converting lands to eligible crops.
 2. Any owner and operator who plants a polyculture crop mix of at least three species of eligible crops shall be eligible to receive 90 percent of the costs.
 3. Existing forest lands eligible for the BIP program under Sec. 6 C., shall not be eligible for cost share payments.
- B. Eligible Cost-share Payments.
Owners and operators shall receive payments to cover the costs (at a rate described in subsection A) for the following activities, including but not limited to:
1. Cost of seeds and stock; and
 2. Cost of planting field buffer strips unless the owner and operator is eligible for payments for these practices under the continuous Conservation Reserve Program.
- C. Incentive Payments.
1. Owners and operators enrolling land currently eligible for payments under Title I of FSRIA or subsequent amendments shall be eligible for annual incentive payments, determined by the Secretary, equivalent to *average loan deficiency payment for the county for the yield and acreage that the owner and operator had in the year prior to switching to the eligible crop* under Title I of FSRIA or subsequent amendments. (*The alternative is: equivalent to the loan deficiency payment for the land enrolled in BIP based on an average of the five years prior to enrollment*).
 2. Owners and operators enrolling land not eligible for payments under Title I of FSRIA or subsequent amendments shall be eligible for an annual incentive payment, determined by the Secretary, to cover 50 percent (*is this enough?*) of the economic loss from producing an eligible crop in lieu of the current crop, based on average market conditions for the past five years of production.
 3. Owners and operators not renewing a CRP contract shall be eligible for payments under section 1 or 2, as determined by the Secretary.
 4. Owners and Operators shall receive incentive payments for a period of no more than five years after entering the contract with the Secretary, except that the owner and operator shall continue to receive the incentive payment for land maintained as reserve acreage, except in years that a the crop is used pursuant to a federal disaster declaration; and
- D. The Secretary shall provide bonus payments to owners and operators whose production maximizes wildlife diversity on a landscape and/or whose operation is modified to address the needs of wildlife species identified in state wildlife management plans.
- E. Timing of Payments:
1. Cost-share payments: The Secretary shall provide owners and operators cost-share payments upon completion of the purchase or implementation of the required practices.
 2. Incentive and Bonus payments. The Secretary shall provide owners and operators incentive and bonus payments on an annual basis.

Sec. 16. Technical Assistance Owner and operators who participate in an approved BIP Bioenergy Project are eligible for conservation technical assistance for conservation planning and implementation through the Natural Resources Conservation Service or a qualified and approved non-federal entity.

Sec. 17. Business Planning and Assistance Grants

- A. At the Secretary's discretion, NRCS shall provide grants to BIP Biofuel Project applicants:
 - 1. in an amount to not exceed \$50,000 per project
 - 2. for the purpose of developing BIP applications, including for outside consultants, technical experts, or other relevant experts.
- B. At the Secretary's discretion, the Secretary may provide grants as part of approved BIP Biofuel Projects:
 - 1. in an amount not to exceed \$50,000 per project
 - 2. for the purpose of providing expert guidance to BIP participants.
- C. The total expenditures under this section shall not exceed \$ 5 million

Sec. 18. Research The Secretary shall create research programs, through Agriculture Research Service and the Cooperative Extension Service, under this program to research production of biomass crops and native oil seed crops for energy, specifically the program should examine following:

- A. Input and maintenance needs of native biofuel crops, including mixes and both woody and non-woody crops,
- B. Energy balance, btu and chemical content rates of various dry biomass crops and crop mixes for direct combustion, grown under various scenarios; and,
- C. Wildlife and biodiversity implications of various eligible crops, crop mixes and management scenarios.

Sec. 19. Training The Secretary shall establish training programs for Cooperative Extension Service staff and other interested entities and individuals on how to develop viable proposals for participation in this program, including business plan development, recruitment and organization of landowners and operators, and status and trends of the industry.

Sec. 20. Governing Agency The BIP shall be managed and contracts shall be enforced by the Natural Resources Conservation Service of the U.S. Department of Agriculture.

Sec 21. Funding For each of the years 2007 through 2011, the Secretary shall use the funds, facilities, and authorities of the Commodity Credit Corporation to carry out and provide technical assistance for the Biofuels Innovation Program.