



United States Department of Agriculture
Office of Inspector General





United States Department of Agriculture
Office of Inspector General
Washington, D.C. 20250



DATE: May 30, 2012

AUDIT
NUMBER: 03601-0028-KC

TO: Bruce E. Nelson
Administrator
Farm Service Agency

ATTN: Philip Sharp
Director
Operations Review and Analysis Staff

FROM: Gil H. Harden
Assistant Inspector General for Audit

SUBJECT: Biomass Crop Assistance Program: Collection, Harvest, Storage and
Transportation Matching Payments Program

This report presents the results of the subject audit. Your written response to the official draft report, dated April 25, 2012, is included in its entirety at the end of the report. Excerpts from your response and the Office of Inspector General's position are incorporated into the relevant sections of the report.

We accept management decisions for Recommendations 1 through 15, 18, 19, 20, 22, 25, and 26. However, we are unable to accept management decision on Recommendations 16, 17, 21, 23, and 24. Documentation and/or action needed to reach management decision for these recommendations are described in the relevant OIG Position sections of the report.

In accordance with Departmental Regulation 1720-1, please furnish a reply within 60 days describing the corrective actions taken or planned, and timeframes for implementing the recommendation for which management decision has not been reached. Please note that the regulation requires management decision to be reached on all recommendations within 6 months from report issuance, and final action to be taken within 1 year of each management decision to prevent being listed in the Department's annual Performance and Accountability Report. Please follow your internal agency procedures for providing final action correspondence for these recommendations to the Office of the Chief Financial Officer.

We appreciate the cooperation and courtesies extended to us by your staff during the audit.

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Biomass Conversion Assistance Program: Collection, Harvest, Storage, and Transportation Matching Payments Program

Executive Summary

In the 2008 Farm Bill, Congress established the Biomass Crop Assistance Program (BCAP), a program that, in part, provided matching payments to the owners of renewable biomass¹ to encourage them to collect, harvest, store, and transport such material to a biomass conversion facility,² where it would be used to produce heat, power, bio-based products, or advanced biofuels. Ultimately, these matching payments provided an incentive for producers to collect biomass, such as crop residue and wood waste, for energy production. In 2009, as part of an initiative to decrease the nation's dependency on foreign oil, the Department of Agriculture (USDA) took steps to expedite BCAP's implementation and began issuing matching payments for the cost of collecting, harvesting, storing, and transporting (CHST) biomass. USDA assigned responsibility for the expedited implementation of the program to the Farm Service Agency (FSA). At FSA's request, the Office of Inspector General (OIG) initiated this audit to evaluate the adequacy of the agency's management controls to ensure that the program was implemented and administered timely and effectively, and that funds were properly expended for eligible purposes.

Based on our review of \$30 million of the \$243 million in CHST matching payments issued as of October 2010, we found that, while USDA implemented CHST in accordance with statutory requirements and in compliance with the directed timeframe, the program was launched without sufficient management control structures needed to provide clear program direction and ensure program accountability. Specifically, FSA did not develop program performance goals, outcome-based performance measures, a program-dedicated data management system, a handbook of administrative operating procedures, or an internal review process to monitor and evaluate program implementation. Without an effective management control structure, the efforts of agency personnel to administer the program were less effective than they could have been, and field-level agency employees often processed program applications inconsistently. Additionally, while FSA can identify the amount of payments it issued, the agency cannot meaningfully report on the effectiveness of those payments in achieving any particular program goal.

¹ P.L. 110-246, Section 9001 (12) defines the term "renewable biomass" as materials, pre-commercial thinnings, or invasive species from National Forest System land and public lands that are byproducts of treatments to reduce hazardous fuels, control insect infestations, and restore ecosystem health; would not otherwise be used for higher value products; and are harvested in accordance with an appropriate land management plan. Renewable biomass also includes any organic material that is available on a recurring basis from non-Federal lands or lands held in trust by the United States, including feed grains, other agricultural commodities, other plants and trees, algae, crop residue, other vegetative waste material (including wood waste and wood residues), animal waste and byproducts, food waste, and yard waste.

² P.L. 110-246, Section 9001 (6) defines the term "biomass conversion facility" as a facility that converts or proposes to convert renewable biomass into heat, power, biobased products, or advanced biofuels.

Indeed, neither Congress nor USDA articulated a clearly established program goal so that CHST matching payments would contribute to decreasing the nation's dependence on foreign oil, or other related purposes. Instead, the program purpose was simply stated as being to assist agricultural and forest land owners and operators with collection, harvest, storage, and transportation of eligible material³ for use in a biomass conversion facility. In examining this stated purpose, questions arise as to the intent of Congress and USDA. For example, if the intent was to put money into the hands of eligible material owners, then FSA did disburse \$243 million in matching payments to eligible owners. However, if the intent of providing assistance was to develop new types, sources, or uses for biomass, then program accomplishments become less apparent. Only 2 of the 27 biomass conversion facilities we visited were involved with new conversion processes that were attracting new types and sources of biomass materials; representatives for the other 25 facilities confirmed that few new suppliers were secured in connection with CHST. The results of our review indicate that the matching payments authorized by Congress and disbursed by USDA did little to stimulate the collection, harvest, storage, or transportation of new types or sources of biomass materials.

As one might expect for a program launched without the sufficient management control structures needed to provide clear program direction and ensure program accountability, USDA employees committed many errors and inconsistencies as they accepted applications from both the owners of biomass and biomass conversion facilities, approved applicants, and calculated payments for biomass delivered to the facilities. These errors included approving biomass facilities for CHST without reviewing their financial information (not required by statute or procedure), using different inconsistent methods to calculate the eligible quantity of biomass material that owners delivered to facilities, and failing to spot check deliveries consistently. Many of these errors resulted from USDA not being thoroughly familiar with the biomass conversion industry; other errors were problems that USDA should have anticipated based on its experience with other programs. Some errors were influenced by the expedited timeframe within which USDA was required to implement the program, and a corresponding insufficiency of program structure in accordance with established norms for Federal management. In total, OIG questioned over \$400,000 in payments issued to biomass material owners due to these various errors.

OIG concluded that, if BCAP and CHST are to accomplish their intended purpose, USDA needs to take immediate steps to establish the program with an adequate management control structure providing clear program direction and ensuring program accountability. USDA must also act to resolve the errors and inconsistencies we observed at the field-level.

³ P.L. 110-246, Section 9011 (6) (A) defines "eligible material" as renewable biomass, with the exclusion of any crop that is eligible to receive payment under title I of the Food, Conservation, and Energy Act of 2008 or an amendment made by that title, animal waste and byproducts, food waste, yard waste, or algae.

Recommendation Summary

Establish an adequate management control structure that will provide clear program direction and ensure program accountability, including performance goals; outcome-based performance measures; a program handbook setting forth policies and procedures governing program administration; forms specifically tailored to facilitate day-to-day administration and capture of relevant program data; and a data system with applied edit checks and a structure designed to facilitate data validation, management reporting, and data analysis.

Correct the errors and inconsistencies that occurred as part of FSA issuing \$243 million in CHST payments since 2009, including the recovery of more than \$367,000 in overpayments and the disbursement of over \$22,000 in underpayments.⁴ (Exhibit A presents a summary of questioned monetary amounts.)

Agency Response

In FSA's April 25, 2012, response to the official draft report, the agency agreed with all findings and recommendations in the report. FSA's response to the official draft report is included in its entirety at the end of this report.

OIG Position

We accept FSA's management decisions for Recommendations 1 through 15, 18, 19, 20, 22, 25, and 26. However, FSA did not provide sufficient detail regarding its planned corrective actions for Recommendations 16, 17, 21, 23, and 24. We have provided our comments and what actions are needed to reach management decision for these recommendations in the OIG position section of the report.

⁴ OIG questioned an additional amount of nearly \$12,000 in matching payments that was not recommended for recovery.

Background and Objectives

Background

In the 2008 Farm Bill, Congress established the Biomass Crop Assistance Program (BCAP), which was intended to support the establishment and production of eligible crops of renewable biomass.⁵ BCAP provided funding for the establishment of project areas⁶ (not yet implemented at the time of the audit), and also provided funding for matching payments to assist agricultural and forest landowners and operators with the cost of collection, harvest, storage, and transportation (CHST) of eligible material⁷ for use in a qualified biomass conversion facility.⁸ These matching payments provided an incentive for producers to collect biomass, such as crop residue and wood waste, for energy production.

On May 5, 2009, a Presidential document was issued calling for a decrease in the nation's dependency on foreign oil through increased investment in and production of biofuels.⁹ As part of this effort, the document called for the CHST matching payment portion of BCAP to be implemented within 30 days. Accordingly, on June 11, 2009, USDA published a notice of funds availability (NOFA) in the *Federal Register* for the collection, harvest, storage, and transportation of eligible biomass materials to qualified biomass conversion facilities. Within USDA, the Commodity Credit Corporation (CCC) and the Farm Service Agency (FSA) were delegated primary responsibilities for implementing CHST.

The 2008 Farm Bill authorized USDA to use CCC funds, in such sums as are necessary, to fund BCAP for fiscal years (FY) 2008 through 2012. For FY 2009, the Office of Management and Budget (OMB) apportioned \$25 million for CHST funding. In November 2009, OMB apportioned an additional \$517 million for FY 2010, of which \$243 million was expended. In July 2010, Congress limited total BCAP funding to \$552 million for FY 2010 and \$432 million for FY 2011; in April 2011, Congress further limited BCAP funding for FY 2011 down to \$112 million. In November 2011, Congress capped total BCAP funding for FY 2012 at \$17 million.

⁵ P.L. 110-246, Section 9001 (12) defines the term “renewable biomass” as materials, pre-commercial thinnings, or invasive species from National Forest System land and public lands that are byproducts of treatments to reduce hazardous fuels, control insect infestations, and restore ecosystem health; would not otherwise be used for higher value products; and are harvested in accordance with an appropriate land management plan. Renewable biomass also includes any organic material that is available on a recurring basis from non-Federal lands or lands held in trust by the United States, including feed grains, other agricultural commodities, other plants and trees, algae, crop residue, other vegetative waste material (including wood waste and wood residues), animal waste and byproducts, food waste, and yard waste.

⁶ A geographic area with specified boundaries submitted by a project sponsor and approved by the Commodity Credit Corporation under the establishment and annual payment component of BCAP.

⁷ P.L. 110-246, Section 9011 (6) (A) defines “eligible material” as renewable biomass, with the exclusion of any crop that is eligible to receive payment under title I of the Food, Conservation, and Energy Act of 2008 or an amendment made by that title, animal waste and byproducts, food waste, yard waste, or algae.

⁸ P.L. 110-246, Section 9001 (6) defines the term “biomass conversion facility” as a facility that converts or proposes to convert renewable biomass into heat, power, biobased products, or advanced biofuels.

⁹ Memorandum for the Secretary of Agriculture, the Secretary of Energy, and the Administrator of the Environmental Protection Agency, *Federal Register*, Vol. 74, No. 87, May 7, 2009.

In accordance with statute,¹⁰ the NOFA provided for matching payments to eligible material owners for deliveries of biomass material to qualified biomass conversion facilities. Matching payments were authorized at a rate of \$1 for each \$1 per dry ton paid by the facility, not to exceed \$45 per dry ton. The program was intended to provide matching payments to owners for a period of 2 years.

The NOFA was terminated after the proposed rule for the full implementation of BCAP was issued on February 3, 2010, at which point FSA halted approvals of any new CHST contracts with eligible material owners.¹¹ Deliveries by owners with existing contracts were allowed to continue through the established March 31, 2010, delivery deadline, with FSA county office committees able to grant 30-day extensions through April 30, 2010. Over \$243 million in matching payments were issued under CHST for FYs 2009 and 2010.

In the fall of 2009, officials representing FSA and OIG met to discuss a request for audit. Based on concerns expressed by FSA officials at that meeting, OIG agreed to initiate an audit of the CHST Matching Payment program.

Objectives

The objective of this audit was to evaluate the adequacy of CHST management controls to ensure timely and effective implementation and administration of the program and to ensure that FSA funds were properly expended for eligible purposes. As requested by the agency, we also evaluated the business processes of the program.

¹⁰ P.L. 110-246, Sections 9011 (d) (1) (B) and (d) (2) (B).

¹¹ The proposed rule also included authorization for establishment and annual payments associated with BCAP project areas.

Section 1: Implementation of CHST

Finding 1: USDA Unable To Assess the Impact of \$243 Million Expended on CHST

While USDA implemented the CHST in accordance with statutory requirements and in compliance with the directed timeframe, the Department did not develop the management control structures needed to provide clear program direction and ensure program accountability. Specifically, USDA did not develop program performance goals, outcome-based performance measures, a program-dedicated data management system, a handbook of administrative operating procedures, or an internal review process to monitor and evaluate program implementation. USDA did not develop and implement these important management controls because the Department focused on implementing CHST within the 30-day timeframe for an expedited program launch. Without an effective management control structure, the efforts of agency personnel to administer the program were less effective than they could have been, and field-level agency employees often processed program applications inconsistently. In addition, USDA did not establish and report any measureable program accomplishments associated with the disbursement of \$243 million in CHST matching payments during the 7-month span of program operation in FYs 2009 and 2010.

The Government Performance and Results Act (GPRA) requires agencies to develop strategic plans, set performance goals, and report annually on actual performance compared to goals.¹² The Office of Management and Budget's (OMB) Circular A-123 provides guidance to Federal managers on the establishment of internal controls designed to ensure the effectiveness and efficiency of operations, as well as compliance with applicable laws and regulations. The circular specifies that, as agencies implement new programs, they should design management control structures that help ensure accountability for results. The circular further provides that programs must operate consistently with the agency mission and with minimal potential for waste, fraud, and mismanagement.¹³

Due to the expedited timeframe for implementing CHST, USDA did not develop the management control structures needed to provide clear program direction and ensure program accountability, including the establishment of program performance goals, outcome-based performance measures, a program-dedicated data management system, a handbook of administrative operating procedures, and an internal review process to monitor and evaluate program implementation.

¹² OMB Circular A-123, *Management's Responsibility for Internal Control*, Section III, December 21, 2004.

¹³ OMB Circular A-123, *Management's Responsibility for Internal Control*, Sections I, II, and III, December 21, 2004.

USDA Needs To Establish Performance Goals for CHST

USDA did not establish performance goals to serve as the basis for program accountability for CHST.¹⁴ Consistent with the 2008 Farm Bill, the NOFA articulated the statutory purpose of CHST as providing assistance to owners and operators with the collection, harvest, storage, and transportation of eligible material for use in biomass conversion facilities. As enacted and articulated, the purpose for CHST was too vague to define the accomplishments the Department hoped to achieve. As a result, USDA did not have a focus for establishing meaningful performance goals to evaluate the program's effectiveness.

For example, if the purpose of providing CHST matching funds is to put money into the hands of eligible material owners, then the Department can be credited with disbursing \$243 million in matching payments. However, if the purpose of providing assistance is to develop new types, sources, or uses for biomass, or to increase the production of heat, power, bio-based products, or advanced biofuels, then the Department's accomplishments become less apparent or cannot be determined. Only 2 of the 27 biomass conversion facilities we visited were involved with new conversion processes that were attracting new types and sources of biomass materials. Interviews with representatives for the other 25 facilities stated that few new suppliers were secured in connection with CHST. In order to evaluate increased production of heat, power, bio-based products, or advanced biofuels, USDA would need baseline data from individual biomass conversion facilities as well as outputs applicable to the types and quantities of biomass materials received and processed. USDA did not collect these data. The results of our review indicate that the matching payments authorized by Congress and disbursed by USDA did little to stimulate the collection, harvest, storage, or transportation of new types or sources of biomass materials or to increase the production of heat, power, bio-based products, or advanced biofuels.

USDA Needs To Establish Performance Measures for CHST

Since GPRA, Federal agencies have been required to establish performance measures that address not just how much they spend or how many projects they funded, but how effectively their actions have contributed to the planned goal. In this way, Federal agencies should focus their reporting on how effectively the program performed in achieving established objectives.¹⁵

As we have already noted, without a well articulated performance goal, USDA could not establish outcome-based performance measures to assess the accomplishments or impact of CHST. USDA did capture and report data related to the total dollar amount of

¹⁴ A "performance goal" is the target level of performance expressed as a tangible, measureable objective against which actual achievement shall be compared, including a goal expressed as a quantitative standard, value, or rate. Government Performance and Results Act of 1993, Section 1115 (f) (4).

¹⁵ Performance measurement is the ongoing monitoring and reporting of program accomplishments, particularly progress toward pre-established goals. *Performance Evaluation and Measurement, Definitions and Relationships*, Government Accountability Office, May 2011.

matching payment funds expended, as well as the quantities of various biomass materials for which matching payments were disbursed. These measurements, however, only represent the volume of work performed rather than outcomes reflecting the effectiveness of how the program performed. In other words, they measure output rather than outcome.

Although FSA program officials considered the dry ton quantities of delivered biomass materials an appropriate performance measure, OIG does not agree that this is an appropriate outcome-based performance measure. This measure represents a quantity or volume of material subject to conversion, but does not provide a direct measure of conversion process outcomes, such as heat, power, bio-based products, or advanced biofuels produced from the material. Industry groups and facilities can provide conversion equivalents for various types of biomass materials, but such information was not gathered under CHST and biomass conversion facilities were not required to provide baselines against which any changes in outcomes could be measured.

USDA Needs a Data Management System Dedicated to CHST

USDA did not develop a data management system to facilitate the collection, analysis, and reporting of accomplishment data specifically for CHST. Instead, USDA requested and received OMB approval to use the existing Conservation Reporting and Evaluating System (CRES) and the corresponding Form AD-245 (Request for Cost Shares/Practice Approval and Payment Application) to collect data and report accomplishments associated with the initial program implementation. Since CRES and Form AD-245 were developed to facilitate the administration and management of conservation cost-sharing programs, the system and form did not always correlate with program aspects of CHST, nor did the system and form include program-specific data fields or edit checks. While FSA did develop component codes for biomass material categories, we found that FSA made only one modification to the Form AD-245 for CHST—the inclusion of a program-specific certification within the remarks section on page 1. All other sections of the form remained unchanged, with terminology related to USDA-administered conservation programs.

For example, CRES did not include a data field to capture the delivery date for biomass material reported on the proof of delivery presented by the material owner when applying for CHST matching payments. This date is important as biomass material delivered prior to USDA approval of the owner application to participate in the program is not eligible for matching payment. Because CRES did not capture delivery dates, no automated data check was available to verify the eligibility of biomass material based on delivery date. Thus, field-level personnel were required to perform manual verifications of material eligibility based on comparisons of application approval and material delivery dates. The availability of an automated data check could have prevented the issuance of about \$280,000 in improper payments identified during our review, attributed to early deliveries of biomass material. These improper payments are described in Finding 2.

National office program officials stated that due to time constraints, there was insufficient time and resources to develop a new program-dedicated data management system or to create and receive approval for new forms.

USDA Needs To Develop Detailed Program Guidance for CHST

While a NOFA establishes authority for available program funding and sets forth general eligibility criteria for program participation, it does not provide detailed policies and procedures to facilitate day-to-day program administration. Such policies and procedures are usually developed and presented within a program handbook. CHST, however, was implemented without such a handbook. Challenged with an accelerated timeframe for implementing the program, USDA instead relied on a series of program notices, as well as question and answer sheets summarizing teleconference discussions with State office program specialists, to provide guidance and direction for day-to-day program administration.

Program notices usually provide supplemental explanation and clarification of policies and procedures presented within a program handbook. While the question and answer sheets attempted to address situations encountered by field-level personnel, we noted that some of the questions were not fully addressed during teleconferences and, thus, the question and answer sheets did not provide clear and complete guidance to field personnel. The informal nature of the question and answer sheets also caused some field-level personnel to question whether the provided guidance rose to the level of official policy. Without adequately prescribed program guidance, USDA lacked the management control structure needed to implement and administer the program. The lack of sufficient policies and procedures resulted in inconsistent program administration across States and counties, improper payments, and instances of possible waste, fraud, and abuse by participants.

In Finding 2, we discuss many of the inconsistencies that occurred because FSA employees did not have a handbook to rely on. For example, program guidance required that employees perform a compliance spot check before they issue a matching payment exceeding \$50,000. This spot check served as an important control for confirming the appropriateness of high-dollar value matching payments. While program guidance identified two areas of verification to be addressed, the guidance did not specify how field-level personnel were to carry out the identified verifications or document the results of such compliance spot checks. One county office did not maintain sufficient documentation to support 42 required spot checks prior to issuing matching payments totaling more than \$3 million.

National office program officials advised that they were developing a BCAP handbook when they were directed to implement CHST in 30 days. Once the deadline was in place, agency personnel set aside development of the handbook and began writing program notices for immediate implementation of CHST.

USDA Needs an Internal Review Process for CHST

USDA did not initiate an effective internal review process to monitor and evaluate implementation of CHST, despite the fact that it was a new program involving an economic sector, industrial processes, materials, and program participants about which FSA had limited knowledge. Referred to as a pilot program, CHST should have been subject to monitoring and evaluation during its 7-month operating span to facilitate and improve any future re-implementation of the program. By not initiating an effective internal review process, USDA was unable to proactively and systematically identify weaknesses and make improvements in program implementation and administration.

FSA did take steps to address problem areas when they were identified. However, these efforts relied on questions and complaints by eligible material owners and biomass conversion facilities to draw attention to potential problem areas. For example, through one owner's complaint, FSA became aware of a facility sales agreement provision that required a "kick back" of CHST matching payment funds to the facility. In response, national office program officials worked with the facility to eliminate the provision. As a result of this case, FSA issued program guidance specifying that no payments or direct benefits should be paid to qualified biomass conversion facilities, except in certain circumstances.¹⁶ The guidance also provided examples of fraud, waste, or abuse that could be used to defeat the program's intended purpose.

While FSA took constructive steps to address the potential solicitation of "kick backs," the agency was uncertain whether other facilities had questionable provisions in their sales agreements. This uncertainty, in part, prompted FSA in the first half of FY 2010 to request an OIG audit of CHST.

FSA has an established internal review process, the County Office Reviewer Program (CORP), for all of its programs. While this process was available to monitor and evaluate CHST, only one of the four States we visited had requested and received CORP reviews while CHST was operational. These CORP reviews were performed in accordance with developed coverage that included examinations and verifications of program documents associated with all phases of program administration. The CORP reviews identified 16 errors related to completion of the Form AD-245; two improper payments were also identified and corrected. State office officials who requested the CORP reviews stated they did so due to the large volume and dollar amounts of matching payments disbursed through CHST.

In States where CORP reviews were not performed, officials said that they assumed CORP reviews would be performed in the future. Regardless of future intent, we believe that CORP reviews should be conducted early within the life of a new program, in order to provide the agency with important feedback regarding program implementation and administration. Our review of the CORP review documentation completed for CHST

¹⁶ Notice BCAP-8, *Questionable Activities Under the Biomass Crop Assistance Program*, dated January 6, 2010, granted an exception when a facility owner held ownership right to eligible material that was delivered to another biomass conversion facility through an arms-length transaction.

indicated that such reviews were effective in identifying inconsistent application of program guidance, as well as the issuance of improper payments.

As directed, USDA expedited CHST to assist producers in collecting, harvesting, storing, and transporting eligible material to biomass conversion facilities. However, the program was implemented without the accompanying development of management control structures needed to provide the program with proper direction or to account for program accomplishments. As such, USDA was not positioned to evaluate the relative success or failure of the program.

For any future implementation of CHST, or similar program initiative designed to assist with the delivery and conversion of biomass materials into energy, product, or fuels, we recommend that FSA take the following steps to better establish the program prior to implementation:

Recommendation 1

Establish performance goals for BCAP with a defined and measurable relationship to the types or areas of accomplishment USDA hopes to achieve.

Agency Response

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013. In subsequent correspondence dated May 2, 2012, FSA agreed to incorporate the recommendation by September 30, 2013.

OIG Position

We accept management decision for this recommendation.

Recommendation 2

Establish outcome-based performance measures that enable the Department to assess and report on program accomplishments and impact in relation to the established performance goals.

Agency Response

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013. In subsequent correspondence dated May 2, 2012, FSA agreed to incorporate the recommendation by September 30, 2013.

OIG Position

We accept management decision for this recommendation.

Recommendation 3

Based on the establishment of performance goals and corresponding outcome-based performance measures, evaluate the need for and initiate action to establish additional data gathering and reporting requirements on the part of qualified biomass conversion facilities.

Agency Response

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013. In subsequent correspondence dated May 2, 2012, FSA agreed to incorporate the recommendation by September 30, 2013.

OIG Position

We accept management decision for this recommendation.

Recommendation 4

Develop a program handbook setting forth policies and procedures governing program administration, forms specifically tailored to facilitate day-to-day administration and capture of relevant program data, and a data system with applied edit checks and a designed structure to facilitate data validation, management reporting, and data analysis.¹⁷

Agency Response

In its December 16, 2010, response to OIG's fast report, FSA advised us that a BCAP handbook, new forms, and a new data collection and reporting system would be developed by January 2011. FSA has developed new web based automated forms (BCAP-10 and BCAP-11) to replace the AD-245, page 1 and page 2. In addition, these new forms include recording the location by tract and field number for the collection or harvest. The 1-BCAP handbook was released and provides guidance on using these forms.

OIG Position

We accept management decision for this recommendation.

¹⁷ First issued in Fast Report 03601-28-KC (1), *Recommendations for Improving Basic CHST Program Administration: Biomass Crop Assistance Program Controls Over Collection, Harvest, Storage, and Transportation Matching Payments Program*, December 9, 2010.

Recommendation 5

Develop a strategy for requiring the performance of CORP reviews in States implementing BCAP and use the results of such reviews to monitor and evaluate overall program implementation and administration.

Agency Response

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013. In subsequent correspondence dated May 2, 2012, FSA agreed to incorporate the recommendation by September 30, 2013.

OIG Position

We accept management decision for this recommendation.

Finding 2: FSA Needs To Strengthen BCAP

FSA committed a number of errors that compromised how effective CHST payments would be in meeting program objectives. Many of these errors resulted from FSA not being thoroughly familiar with the biomass conversion industry; other errors were problems that FSA should have anticipated based on its experience with other programs, but overlooked. Some errors were influenced by the accelerated rate with which FSA started the program, and by the agency's failure to structure the program according to established norms for Federal management, as discussed in Finding 1. Due to these issues, OIG found that FSA issued a total of \$401,283 in improper payments to biomass material owners.

OMB Circular A-123 provides guidance to Federal managers on establishing internal controls designed to ensure the effectiveness and efficiency of operations, as well as compliance with applicable laws and regulations. As agencies implement new programs, they should design management control structures that help ensure accountability for results. Programs must operate consistently with the agency mission and with minimal potential for waste, fraud, and mismanagement.¹⁸

We found, however, that FSA, in its attempt to promptly begin issuing payments, implemented the program with a number of control weaknesses. The following weaknesses were caused by FSA officials not having a full understanding of the biomass conversion industry.

FSA Needs To Improve How It Determines if Biomass Conversion Facilities are Qualified for the Program

FSA employees reviewed and approved biomass conversion facilities' CHST program applications without the financial and performance information necessary to properly evaluate the facilities, since the facilities were not required to submit this information (i.e. not required by statute or FSA procedure). As a result, FSA employees risked approving facilities that were not financially or operationally capable of required program performance, such as honoring sales agreements entered into with eligible material owners.

Although FSA did require biomass conversion facilities to submit copies of all applicable environmental, health, and safety permits, State office personnel were not always aware of the types of permits individual facilities were required to acquire and maintain.¹⁹ State office personnel also did not document their actions to follow up and verify that all the required permits were in place. Several facilities were approved even though they had submitted copies of expired permits with their applications.

¹⁸ OMB Circular A-123, *Management's Responsibility for Internal Control*, Sections I, II, and III, December 21, 2004.

¹⁹ Notice of Funds Availability, *Federal Register*, Vol. 74, No. 111, p. 27770, June 11, 2009.

FSA Needs To Clarify if the Contracts Biomass Conversion Facilities and Eligible Material Owners Enter into are Binding

During the period reviewed by our audit, we found that one State office required eligible material owners to provide binding sales contracts,²⁰ while three other State offices allowed eligible material owners to submit non-binding letters of intent.²¹ While program guidance allowed for the submission of both binding and non-binding biomass conversion facility sale agreements,²² inconsistency and potential inequity could occur if owners in one State must sign binding contracts to enter the program, while others are not required to do so.

When FSA published its final rule for CHST, the agency required eligible material owners to submit applications based on information obtained from contracts, agreements, or “binding letters of intent.”²³ OIG considers this language clearer, but maintains that FSA should specify to what extent these letters are binding and what recourse owners would have if facilities are unable to perform as stated in the letter.

FSA Needs To Ensure that CHST Payments are Based on Fair Market Value

While the purpose of CHST was to assist owners and operators with the collection, harvest, storage, and transportation of eligible material for use in biomass conversion facilities, the availability of Federal matching payments resulted in a number of qualified facilities lowering the payment rates offered to owners for deliveries of biomass materials, from a few dollars per ton to as much as 50 percent. Some facilities only lowered the payment rates for owners participating in the program, but other facilities lowered the prices paid to all owners—which resulted in the owners either feeling pressure to participate in the program or to accept material proceeds that were significantly less than those previously earned. When facilities lowered their prices based on the availability of Federal matching payments, they essentially reaped improper benefits from the program; benefits that were intended for biomass material owners. OIG maintains that, for future programs of this sort, FSA should be cognizant of how such matching payments can affect the market and ensure that qualified facilities are paying fair market value based on the processes facilities have historically used to determine the rates paid for delivered material, without consideration as to the availability of Federal matching payments.

²⁰ In which a seller agrees to sell and a buyer agrees to buy under terms and conditions spelled out in writing in the document and signed by both parties.

²¹ An interim agreement summarizing the main points of a proposed deal. This does not normally constitute a definitive contract but signifies a genuine interest in reaching a final agreement.

²² Notice BCAP-2, *Implementing the Biomass Crop Assistance Program’s Collection, Harvest, Storage, and Transportation Matching Payment Program*, July 12, 2009.

²³ 7 *Code of Federal Register* (CFR) Part 1450.104 (c) (1), October 27, 2010.

FSA Needs To Apply Rules to Aggregators and Landowners Consistently

Like landowners, aggregators—material suppliers that had secured ownership rights to biomass materials but were not land owners or tenants—sold biomass to conversion facilities, but FSA subjected aggregators to less restrictive program requirements since they were not mentioned in the 2008 Farm Bill. FSA officials allowed aggregators to forego providing a conservation or forest stewardship plan, which landowners were required to provide, and also simplified how they contacted FSA. OIG maintains that, by exempting aggregators from these rules, FSA held landowners and tenants to a higher standard for participating in the program. FSA needs to better define aggregators' role in the program, and establish consistent guidelines for both types of program participants.

FSA Needs To Clarify How County Offices Will Establish Contracts for Owners Delivering Multiple Types of Biomass

We found that county offices responded inconsistently when owners participated in the program and delivered multiple types of biomass to conversion facilities. While some county offices established a single contract encompassing multiple material types, other county offices created separate contracts for each type of biomass to be delivered.²⁴ Since establishing a single contract offered owners greater flexibility (if they did not deliver enough of one type of biomass, they could compensate with another), the owners forced to use multiple contracts were at a disadvantage and might not be able to maximize their matching payment. For future CHST payments, OIG maintains that FSA needs to clearly define how county offices should establish contracts involving multiple types and sources of biomass material to be delivered to a single biomass conversion facility.

FSA Needs To Establish a Consistent Methodology for Determining the Quantity of Deliverable Biomass

When county offices determined the eligible quantity of deliverable biomass material, upon which matching payment obligations were based, they used three different methodologies, each of which yields very different results: (1) they simply credited the entire quantity of biomass material reflected on the sales agreement; (2) they applied formulas to adjust the quantities of material reflected on the sales agreement for delivery by March 31, 2010;²⁵ or (3) the owner provided an estimate of the quantity of material to be delivered by March 31, 2010.

County offices began using these differing methodologies when FSA issued guidance advising that matching payment obligations for FY 2010 should only reflect the amount

²⁴ Notice BCAP-2, *Implementing the Biomass Crop Assistance Program's Collection, Harvest, Storage, and Transportation Matching Payment Program*, Paragraph 5C, July 12, 2009, allowed a single owner contract to cover multiple material types and origination points, though separate contracts were required for each different qualified facility with which an owner held a sales agreement.

²⁵ Variations in applied formulas were noted involving the month in which an owner was approved to participate in the program and the number of remaining months within the calendar year, fiscal year, or designated delivery period.

of deliverable material expected to be completed by March 31, 2010.²⁶ Since many sale agreements covered deliveries for longer periods of time, FSA county employees adjusted the delivered quantities, but did so inconsistently. OIG maintains that FSA needs to ensure that these quantities are determined consistently because they directly affect the matching payments owners receive.

FSA Needs To Require Biomass Conversion Facilities to Test the Moisture Content of Delivered Biomass Consistently

CHST required that differing moisture levels be accounted for when FSA calculated matching payments. When owners deliver biomass to conversion facilities, the facilities are required to test and determine the moisture content so that they can determine the dry weight tonnage that is actually being delivered. Measuring by dry weight serves to equalize payments for different materials, which naturally have different moisture rates.

Based on visits to 27 qualified biomass conversion facilities, we found that conversion facilities were not performing these tests consistently, and were in fact using five different methods. FSA's program guidance allowed these different approaches since it did not specify any minimum or required frequency of material sampling and moisture testing to be performed by qualified conversion facilities.²⁷ Unless FSA requires a specific method, the agency cannot ensure that owners and facilities are being treated fairly. We found that one FSA county office (Johnson County, Missouri) disbursed approximately \$4,100 in improper payments for delivered quantities of biomass material that were only adjusted to reflect a 12-percent moisture content, in spite of program guidance that called for adjustments to reflect zero percent moisture.^{28, 29}

We also noted that in lieu of establishing a standard dry ton payment rate, facilities calculated an effective dry ton payment rate for each load of delivered material based on the total payment amount for wet ton quantity of delivered material and the calculated dry ton equivalent. Analysis of this methodology evidenced that higher levels of moisture content resulted in the establishment of higher dry ton payment rates and subsequently higher dollar matching payment rates. In this context, program participants were effectively rewarded for delivering eligible material with the highest moisture content

²⁶ Notice BCAP-6, *Policy for FY 2010 Biomass Crop Assistance Program Collection, Harvest, Storage, and Transportation Obligations and Allocations*, Paragraph 2A, November 19, 2009, limited the period of performance for FY 2010 to a reasonable period of time necessary to complete delivery, not to exceed March 31, 2010.

²⁷ Notice BCAP-2, *Implementing the Biomass Crop Assistance Program's Collection, Harvest, Storage, and Transportation Matching Payment Program*, Paragraph 2B, July 12, 2009, only provided that the gross weight of delivered material be converted to a dry weight tonnage equivalent, reflective of the occurring percentage of moisture.

²⁸ Approximately \$750 of these improper matching payments corresponds to material that was delivered prior to FSA approval of the underlying application; thus the entire quantities of these delivered materials were ineligible for matching payments.

²⁹ Discussion of this issue was included in OIG in Fast Report 03601-28-KC (1), *Recommendations for Improving Basic CHST Program Administration: Biomass Crop Assistance Program Controls Over Collection, Harvest, Storage, and Transportation Matching Payments Program*, December 2010.

that facilities were able to accept—and thus FSA paid higher matching payment rates for the delivery of material with higher moisture content.

FSA Needs To Require Consistent Delivery Documentation from Eligible Material Owners

Although the NOFA required owners to submit copies of original scale tickets along with copies of checks or invoices for their load deliveries as part of their request for matching payments, FSA allowed owners to use delivery settlement sheets in lieu of scale tickets.³⁰ Some county offices allowed owners to submit settlement sheets in lieu of scale tickets, but other county offices continued to require the submission of scale tickets. In cases with large dollar amounts of matching payment obligations and large numbers of delivered loads, county offices were delayed by the necessity of examining large numbers of individual scale tickets.

OIG noted that the BCAP final rule states that in order for eligible material owners to receive a matching payment, they must submit specific data—such as the actual tonnage delivered and total payment received—rather than a specific type of document.³¹ The final rule emphasizes the substance of delivery information over the form in which the information is presented, and we consider this issue addressed.

Additionally, we visited one county office (Shannon County, Missouri) that did not require owners to submit any delivery documentation in support of issued matching payments; instead, the county office entered into arrangements with two facilities to receive owner delivery documentation via electronic mail or data transmission. While these arrangements allowed the county office to receive delivery documentation directly from the facilities, we identified six owners who did not receive matching payments to which they were entitled. Five owners did not receive over \$18,500 in matching payments as county office personnel overlooked an e-mail containing delivery documentation forwarded by the biomass facility. A sixth owner did not receive over \$3,400 in matching payments as the facility was not aware the supplier was a participant in the program, and thus did not forward applicable delivery documentation.

FSA Needs To More Consistently Determine When Owners Fulfilled CHST Matching Payment Contracts

When it came time for county office program personnel to determine if owners had fulfilled CHST matching payment contracts (i.e., reached the eligibility limit to earn additional matching payments), we found that they used three different methods. They counted the contract as fulfilled if the owner (1) had completed the delivery of approved tons of biomass material; (2) earned the full obligated dollar amounts; or (3) reached the first limiting factor (tons or dollars). Without a policy to specifically designate the point at which contract obligations should be considered fulfilled, county office personnel

³⁰ “BCAP Questions and Answers,” January 12, 2010.

³¹ 7 CFR Part 1450, October 27, 2010.

applied different limits, which meant that owners were subject to inequitable treatment resulting in potential overpayments or underpayments of CHST matching funds.³²

While many of these problems occurred because FSA launched CHST without a detailed understanding of the biomass industry, other problems occurred in areas that FSA should have been more alert to, based on its prior program experience.

FSA County Office Employees Did Not Always Ensure that Owners Applying for the Program Filled out Forms Correctly

Because county employees did not receive adequate program guidance or subsequent oversight (such as a second-party review), they did not always ensure that owners applying to CHST completed their forms correctly. We found that one county office approved a blank form, which provided no information about how much biomass the owner intended to supply. Additionally, we identified six application forms at three county offices that were missing an approval signature or date—this date is critical to establishing the point at which deliveries of biomass material become eligible for matching payments. While the absence of an approving signature or date may not invalidate the legitimacy of a matching payment contract, accurate and complete forms are essential for properly enforcing program provisions and documenting decisions made during the course of operations.

FSA Needs To Avoid Potential Conflicts of Interest for its Approving Officials³³

In one State office, we found that FSA approved a county executive director to serve as a delegated approving official for CHST despite the fact that the director held an investment interest in the only qualified biomass conversion facility in the county. He was also participating in CHST as an eligible material owner.

As there existed only one approved biomass facility in the county, the director stood in a position to potentially influence the facility's business operations. In addition, county office program personnel stated that unused CHST obligations were redistributed daily to new program applicants or to approved applicants who were seeking increases in their approved obligations through unused funding. The director would have had knowledge as to the timing and availability of unclaimed matching payment obligations, and in fact received an increase in matching payment obligation that was not subject to State office approval.

³² The BCAP final rule does not require sales agreements to set a fixed payment rate. As such, the final rule allows the continued possibility for prices to fluctuate, which in turn may result in an owner reaching one of the limiting factors before the other.

³³ FSA Handbook 22-PM, *County Office Personnel Management*, Section 402 B, August 8, 1984, defines the appearance of a conflict of interest as a situation in which it could be concluded that an employee's or committee member's private interest is possibly in conflict with his or her ASCS (agency designation prior to FSA) duties and responsibilities, even though there may not actually be a conflict. Section 402 C 3 also provides that county office employees may not engage directly or indirectly in any business transaction that might interfere with the proper and impartial performance of their duties.

The director appropriately disclosed the circumstances of his investment in the biomass conversion facility to State office program officials, who determined that the circumstances were no different from other types of program participation by county executive directors and that no conflict of interest existed. OIG maintains that, by allowing the director to serve as an approving official for the program, FSA created the risk of a perceived conflict of interest.

FSA Needs To Ensure that Owners Do Not Receive Payment for Biomass Delivered Before the Beginning of Their CHST Contracts

Owners were not authorized to receive CHST matching payments for any delivery made before the initial application for CHST was received and approved by the FSA county office; however, we found that 7 of the 12 county offices we visited issued improper payments for deliveries of biomass material completed prior to approval. County office program officials either did not identify the dates of early deliveries or exclude such deliveries when computing matching payments. As a result, FSA issued improper payments totaling about \$280,000.

FSA Needs To Ensure that its County Office Personnel Perform Spot Checks Consistently

Although FSA required county offices to spot check biomass deliveries valued at more than \$50,000, we found that county employees followed this requirement inconsistently. They were unsure how the \$50,000 threshold should be applied and questioned if this requirement could reasonably be met. When they did perform spot checks, they used inconsistent methods in performing and documenting the checks. While establishing a required spot check for matching payments exceeding \$50,000 constituted a reasonable compliance measure, OIG maintains that FSA needs to provide its employees better guidance concerning how the spot checks should be performed. Doing so is particularly important as the spot checks were the only compliance measure specifically developed for evaluating CHST.

FSA Needs To Take Adequate Steps to Prevent Unscrupulous Owners and Facilities from Scheming to Defraud CHST

Program guidance sets forth the penalties for program participants who are found to perpetrate a “scheme or device,” essentially actions involving coercion, fraud, misrepresentation, depriving any other person or legal entity of any payments, or obtaining a payment that otherwise would not be payable. FSA advised county office personnel to be aware of these situations, but did not provide guidance concerning what program areas might be vulnerable to potential schemes or devices or establish techniques to test for and identify schemes or devices perpetrated by unscrupulous owners or facilities.

OIG identified three cases of potential scheme or device that FSA employees did not identify because they were either not aware of the existing situations or were unaware that such situations constituted potential scheme or device situations. OIG found that the

arrangements and transactions carried out in these three cases appear to have been created with the aim of circumventing the intent of CHST's agreement terms and guidelines. We questioned payments for the three cases totaling about \$95,000.³⁴

OIG acknowledges that FSA faced significant challenges in implementing BCAP within the required 30-day timeframe, and that the program's history has involved dramatic changes in its funding levels—changes that no doubt affect the priority the agency accords the program. We maintain, however, that FSA needs to take the following steps to establish an effective control structure for any future CHST payments so that those payments are accurately calculated and consistently applied.

Recommendation 6

Expand Form BCAP-1, Facility Overview Form, and any accompanying instructions, to require the submission of detailed financial assurance and surety information, facility operations information, and biomass conversion process information.

Agency Response

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013. In subsequent correspondence dated May 2, 2012, FSA agreed to incorporate the recommendation by September 30, 2013.

OIG Position

We accept management decision for this recommendation.

Recommendation 7

Develop guidance for State office reviews of facility applications for CHST, including how offices should evaluate financial and operating status and conduct site examinations and visits.

Agency Response

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in

³⁴ All three cases were referred to OIG Investigations for presentation to the applicable U.S. Attorney's Offices; all three cases were declined for criminal or civil prosecution. Details of these three cases were reported to FSA through the issuance of OIG Fast Report 03601-28-KC (2), *Recommendations for Preventing or Detecting Schemes or Devices: Biomass Crop Assistance Program Controls over Collection, Harvest, Storage, and Transportation Matching Payments Program*, February 3, 2011.

fiscal year 2013. In subsequent correspondence dated May 2, 2012, FSA agreed to incorporate the recommendation by September 30, 2013.

OIG Position

We accept management decision for this recommendation.

Recommendation 8

Develop guidance for validating facility disclosures of compliance with State and local laws related to required permits and licenses, including methods to document followup actions on any expired permits and licenses.

Agency Response

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013. In subsequent correspondence dated May 2, 2012, FSA agreed to incorporate the recommendation by September 30, 2013.

OIG Position

We accept management decision for this recommendation.

Recommendation 9

Provide clarification regarding the extent to which various types of facility sale agreements and the provisions included in such agreements are considered binding or non-binding with respect to administration of CHST, including the impact of owner or facility noncompliance with sale agreement provisions.

Agency Response

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013. In subsequent correspondence dated May 2, 2012, FSA agreed to incorporate the recommendation by September 30, 2013.

OIG Position

We accept management decision for this recommendation.

Recommendation 10

Incorporate reporting requirements into the facility application process to establish and evaluate the methodologies used by biomass conversion facilities for determining the fair market value of delivered biomass materials.

Agency Response

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013. In subsequent correspondence dated May 2, 2012, FSA agreed to incorporate the recommendation by September 30, 2013.

OIG Position

We accept management decision for this recommendation.

Recommendation 11

Establish price comparison requirements to ensure that payment rates for biomass material are reasonable reflections of market values based on type, volume, and use of material.

Agency Response

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013. In subsequent correspondence dated May 2, 2012, FSA agreed to incorporate the recommendation by September 30, 2013.

OIG Position

We accept management decision for this recommendation.

Recommendation 12

Confirm the agency's intent regarding whether aggregators are eligible to participate in CHST. Establish consistent and equitable program requirements applicable to all types of material suppliers eligible to participate in CHST.

Agency Response

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013. In subsequent correspondence dated May 2, 2012, FSA agreed to incorporate the recommendation by September 30, 2013.

OIG Position

We accept management decision for this recommendation.

Recommendation 13

Provide clearly defined guidance regarding the manner in which owner contracts should be established when working with multiple types and sources of biomass material to be delivered to a single biomass conversion facility.

Agency Response

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013. In subsequent correspondence dated May 2, 2012, FSA agreed to incorporate the recommendation by September 30, 2013.

OIG Position

We accept management decision for this recommendation.

Recommendation 14

Provide clearly defined guidance to field-level personnel designating the proper method by which eligible quantities of deliverable material should be established.

Agency Response

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013. In subsequent correspondence dated May 2, 2012, FSA agreed to incorporate the recommendation by September 30, 2013.

OIG Position

We accept management decision for this recommendation.

Recommendation 15

Establish a consistent policy and methodology for material sampling and moisture testing applicable to all conversion facilities seeking qualification for CHST. Incorporate such policy into the memorandum of understanding facilities enter into with the FSA Deputy Administrator for Farm Programs.

Agency Response

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013. In subsequent correspondence dated May 2, 2012, FSA agreed to incorporate the recommendation by September 30, 2013.

OIG Position

We accept management decision for this recommendation.

Recommendation 16

Require the field office in Johnson County, Missouri, to (1) review all delivery documents submitted by participating owners in support of disbursed matching payments; (2) identify all improperly established dry weight ton equivalents of biomass material eligible for matching payments (i.e., all those not reduced to zero percent moisture); and (3) recover all associated improper payments.

Agency Response

FSA agrees with this recommendation and will work with the Johnson County office, Missouri to review and recover improper payments found to meet the recommendation impropriety. The FSA State office of Missouri has the individualized list of the affected contracts and is in the process of reviewing these contracts with the county. In subsequent correspondence dated May 2, 2012, FSA agreed to complete final review and recovery of any improper payments by September 30, 2012.

OIG Position

We are unable to accept FSA's proposed management decision. In order to reach management decision, FSA needs to provide us the decisions made on each cited participant and a copy of the

demand letter for collection for amounts owed to the Government and evidence that these amounts have been entered as a receivable on the agency's accounting records or collected.

Recommendation 17

Direct the field office in Shannon County, Missouri, to issue the underpaid amounts of matching payments for owners who were participating in the program but for which conversion facility delivery documents were not provided or were overlooked.

Agency Response

FSA agrees with this recommendation and will work with the Shannon County, Missouri office to review and correct underpaid amounts found to meet the recommendation impropriety. The FSA State office of Missouri has the individualized list of the affected contracts and is in the process of reviewing these contracts with the county. In subsequent correspondence dated May 2, 2012, FSA agreed to complete final review and disbursement of any underpayments by September 30, 2012.

OIG Position

We are unable to accept FSA's proposed management decision. In order to reach management decision, FSA needs to provide us the decisions made on each cited participant and documentation to support the payment of any underpaid amounts due to producers.

Recommendation 18

Develop a handbook procedure that clearly designates or sets the factor (tons or dollars) upon which a CHST contract is considered fulfilled and an owner is no longer eligible for matching payments.

Agency Response

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013. In subsequent correspondence dated May 2, 2012, FSA agreed to incorporate the recommendation by September 30, 2013.

OIG Position

We accept management decision for this recommendation.

Recommendation 19

Incorporate a second party review to verify the establishment of matching payment obligations and appropriate approval signatures and dates on owner applications to participate in CHST.

Agency Response

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013. In subsequent correspondence dated May 2, 2012, FSA agreed to incorporate the recommendation by September 30, 2013.

OIG Position

We accept management decision for this recommendation.

Recommendation 20

Determine whether the circumstances in question constitute a potential conflict of interest which should have prevented the county executive director from serving as an approving official for CHST.

Agency Response

FSA will work with the State FSA offices to review CED oversight and possible conflict of interest for circumstances in question. The 1-BCAP handbook provided limitations of COC delegation including a prohibition on delegating actions and determinations involving lands owned by STC, COC, CED's, or other County Office employees. In subsequent correspondence dated May 2, 2012, FSA agreed to incorporate the recommendation by September 30, 2012.

OIG Position

We accept management decision for this recommendation.

Recommendation 21

Require, through direction to the appropriate State offices, that county offices recover the improperly issued matching payments associated with deliveries of biomass material completed prior to approval of the owners' CHST applications.

Agency Response

FSA agrees with this recommendation and will work with the appropriate State offices and county offices to recover improper payments made for biomass material deliveries completed

before the eligible material had acquired an approved CHST application. The individualized list of affected contracts has been sent to the State FSA offices in Missouri, Kansas, California, Maine, and Alabama. In subsequent correspondence dated May 2, 2012, FSA agreed to incorporate the recommendation by September 30, 2012.

OIG Position

We are unable to accept FSA's proposed management decision. In order to reach management decision, FSA needs to provide us the decisions made on each cited participant and a copy of the demand letter for collection for amounts owed to the Government and evidence that these amounts have been entered as a receivable on the agency's accounting records or collected.

Recommendation 22

Develop a handbook procedure that provides clear and specific guidance as to the areas of coverage to be included and addressed during the performance of \$50,000 spot checks, including the frequency and timing of required onsite visits to facilities, examination and verification steps to be performed, and a form or format to document the performance and results of performed spot checks.

Agency Response

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013. In subsequent correspondence dated May 2, 2012, FSA agreed to incorporate the recommendation by September 30, 2013.

OIG Position

We accept management decision for this recommendation.

Recommendation 23

Evaluate the circumstances of each case and determine whether the actions entered into or carried out by the owners and facilities constitute a scheme or device.³⁵

Agency Response

In its February 22, 2011, response to OIG's fast report, FSA advised that the applicable State offices are involved in examining the case circumstances to determine if the actions by owners

³⁵ First issued in Fast Report 03601-28-KC (2), *Recommendations for Preventing or Detecting Schemes or Devices: Biomass Crop Assistance Program Controls over Collection, Harvest, Storage, and Transportation Matching Payments Program*, February 3, 2011.

and facilities constitute a scheme or device. FSA further advised that notices of declined case openings were received from OIG Investigations for two of the three cases cited; consultation on the third case will take place prior to initiating any corrective action.

OIG Position

We are unable to accept FSA's proposed management decision. In order to reach management decision, FSA needs to provide us with the date the determinations will be completed for each cited case.

Recommendation 24

Based on the determinations reached regarding scheme or device, initiate appropriate administrative actions including the termination of any violated facility agreements and the recovery of any improperly disbursed matching payments plus interest. Coordinate with OIG Investigations prior to initiating any administrative actions.

Agency Response

FSA will work with State and county offices to recover any improper payments associated with schemes or devices noted in OIG finding, and that all facility agreements were terminated as of March 2010. In subsequent correspondence dated May 2, 2012, FSA agreed to incorporate the recommendation by September 30, 2012.

OIG Position

We are unable to accept FSA's proposed management decision. In order to reach management decision, FSA needs to provide us the decisions made on each cited participant and a copy of the demand letter for collection for amounts owed to the Government and evidence that these amounts have been entered as a receivable on the agency's accounting records or collected.

Recommendation 25

Create new terms of agreement and guidance that address scheme or device more comprehensively, and specifically prohibit schemes or devices of this nature. As part of issuing a program handbook, include guidance that details procedures for investigation, enforcement, penalties, and appeal rights related to scheme or device determinations.³⁶

³⁶ First issued in Fast Report 03601-28-KC (2), *Recommendations for Preventing or Detecting Schemes or Devices: Biomass Crop Assistance Program Controls over Collection, Harvest, Storage, and Transportation Matching Payments Program*, February 3, 2011.

Agency Response

In its February 22, 2011, response to OIG's fast report, FSA responded that the BCAP final rule explicitly prohibits a number of practices associated with these cases and identified as potential schemes or devices. The final rule specifically defines such practices as program violations. FSA further responded that corresponding changes are incorporated into the facility agreement terms and will be further detailed in program policy documents. Officials stated that new facility agreement terms address facility requirements related to the payment of fair market price, the issuance of settlement sheets for commingled materials (eligible and ineligible), and the receipt of payments or reimbursements from owners related to CHST matching payments including any required repayment in the form of a kickback, value share, or administrative fee. FSA advised that by month's end (February 2011) the agency will issue a program handbook to provide program guidance consistent with the BCAP final rule and include more comprehensive policy on investigations, enforcement actions, penalties, and appeals related to scheme and device determinations.

OIG Position

We accept management decision for this recommendation.

Recommendation 26

Create controls and compliance review procedures at the county office level designed to detect and identify potential schemes or devices.³⁷

Agency Response

In response to the fast report, FSA advised that 1-BCAP handbook will include enhanced guidance for compliance reviews of qualified facilities and owners. BCAP policy will also incorporate additional controls to ensure that fair market pricing is being paid, including enhanced data collection from facilities by FSA as part of the funding allocation process. FSA further advised that it is developing a number of automated controls in BCAP matching payment software to ensure the county offices have proper documentation from owners before approving applications and payment requests. In subsequent correspondence dated May 2, 2012, FSA agreed to incorporate the recommendation by September 30, 2012.

OIG Position

We accept management decision for this recommendation.

³⁷ First issued in Fast Report 03601-28-KC (2), *Recommendations for Preventing or Detecting Schemes or Devices: Biomass Crop Assistance Program Controls over Collection, Harvest, Storage, and Transportation Matching Payments Program*, February 3, 2011.

Scope and Methodology

Between February 2010 and October 2011, we performed our audit at FSA Headquarters in Washington, D.C.; the FSA State offices in Alabama, California, Maine, and Missouri; and 12 FSA county offices (Barbour, Monroe, and Tuscaloosa Counties in Alabama; Butte, Fresno, and Shasta Counties in California; Franklin, Penobscot, and Somerset Counties in Maine; and Howell, Johnson, and Shannon Counties in Missouri). We also visited 27 qualified biomass conversion facilities and 45 eligible material owners.

We initially visited Missouri as it was the first State to approve a qualified biomass conversion facility and issue a CHST matching payment. In addition, the location of the OIG Regional Office in Kansas City, Missouri, allowed staff easy access to the facility so that they could gain knowledge of program operations and test potential audit coverage. We subsequently conducted reviews in Alabama, California, and Maine as these States represented diverse geographical locations involving various types of conversion processes and biomass materials. FSA national officials encouraged us to review a range of different materials and processes. In addition, these three States were responsible for issuing the highest dollar amounts of CHST matching payments for FYs 2009 and 2010. As of October 19, 2010, the States we visited had disbursed over \$89 million (Alabama, \$24.5 million; California, \$29.5 million; Maine, \$34.8 million; Missouri, less than \$1 million) of the \$243 million in CHST matching payments for FYs 2009 and 2010.

Within each State, we evaluated CHST program administration at three judgmentally selected county offices, which we selected generally based on the highest dollar amounts of issued matching payments. We visited a judgmentally selected sample of biomass conversion facilities primarily based on the quantity of delivered biomass material for which matching payments were disbursed, as well as the number of sampled owners responsible for such deliveries. Secondary considerations included the types of biomass materials received, conversion processes operated, facility location, and corporate ownership. We also visited a judgmentally selected sample of owners based on the dollar amount of matching payments received, as well as the ability of the audit team to coordinate location and timing of owner and facility visits.

At FSA national, State, and county office levels, we interviewed personnel responsible for the administration and management of CHST program operations; we identified and evaluated the effectiveness of established management control structures. We also identified and assessed the adequacy of published statutes, regulations, program notices, and associated policies and procedures used to approve qualified facilities and owners and to ensure proper issuance of matching payments. At the national office level, we requested and received periodic access to CRES data, which we queried and evaluated for reasonableness in terms of matching payment rates and amounts. At the State office level, we examined a judgmentally selected sample of applications filed by qualified biomass conversion facilities, as well as the agreements entered into with USDA. At the county office level, we reviewed the contents of CHST payment files for a judgmentally selected sample of 105 owners who had received over \$30 million in matching payments at the time of our visits.³⁸ Judgmental sample selection was primarily based

³⁸ For the 12 FSA county offices that we visited, a total of 173 eligible material owners received matching payments totaling in excess of \$40 million as of December 2010.

on the dollar value of matching payments received. We examined owner sales agreements with qualified conversion facilities to ensure the proper establishment of matching payment obligations. We also examined delivery documentation submitted by owners to verify whether the information was appropriately reviewed and used by FSA county office personnel in the processing of CHST matching payments.

Our visits to qualified conversion facilities included interviews with facility representatives focusing on the facility qualification process and the impact CHST generated on the biomass industry as a whole, as well as their individual customer base and facility business processes. We also compared samples of delivery documentation submitted by owners to the FSA county offices with delivery documentation maintained by the facilities. Where permitted, we completed tours of the facilities and observed the conversion process operations. Our visits with owners included discussions of the CHST participant application process and the impact of available matching payments on their business operations.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Abbreviations

BCAP	Biomass Crop Assistance Program
CCC.....	Commodity Credit Corporation
CFR.....	Code of Federal Regulations
CHST	Collection, Harvest, Storage, and Transportation
CORP	County Office Reviewer Program
CRES.....	Conservation, Reporting, and Evaluation System
FSA	Farm Service Agency
FY	Fiscal Year
GPRA	Government Performance and Results Act
NOFA.....	Notice of Funds Availability
OIG	Office of Inspector General
OMB	Office of Management and Budget
USDA.....	United States Department of Agriculture

Exhibit A: Summary of Monetary Results

Section	Finding	Recommendation	Description	Amount	Category
1	2	16	Overpayments associated with facility allowance for up to 12 percent moisture when computing dry ton weight equivalents.	\$3,352 ³⁹	Questioned Costs Recovery Recommended
1	2	17	Underpayments based on FSA oversight of facility transmitted delivery documents.	\$18,656	Underpayments and Over Collections
1	2	17	Underpayments due to facility's lack of knowledge of owner participation in CHST.	\$3,458	Underpayments and Over Collections
1	2	21	Overpayments associated with deliveries of biomass material completed prior to approval of Form AD-245.	\$280,142	Questioned Costs Recovery Recommended
1	2	24	Improper payments associated with owner schemes or devices to circumvent CHST provisions.	\$83,883 ⁴⁰	Questioned Costs Recovery Recommended
1	2	24	Facility alleged overpayments based on owner non-disclosure of participation in CHST.	\$11,792 ⁴¹	Questioned Costs No Recovery Recommended
Total				\$401,283	

³⁹ Finding 2 references improper payments totaling approximately \$4,100. The difference of \$748 is captured within the \$280,142 of overpayments associated with deliveries of biomass material completed prior to approval of form AD-245.

⁴⁰ Questioned costs include improper payments of \$5,062 and \$78,821 associated with two separate cases of potential scheme or device.

⁴¹ Questioned costs associated with a third case of potential scheme or device. No recommended recovery as, at the time audit fieldwork was performed, the facility had not initiated a recovery of alleged overpayments to the material owner; the event needed to trigger the improper payment of CHST matching payments. Questioned costs associated with the three identified cases of potential scheme or device total about \$95,000.

**USDA'S
FARM SERVICE AGENCY
RESPONSE TO AUDIT REPORT**



United States
Department of
Agriculture

Farm and Foreign
Agricultural
Services

Farm Service
Agency

Operations Review
and Analysis Staff

1400 Independence
Ave, SW
Stop 0540
Washington, DC
20250-0540

DATE: April 25, 2012

TO: Director, Farm and Foreign Agriculture Division
Office of Inspector General

FROM: Philip Sharp, Director 
Operations Review and Analysis Staff

SUBJECT: Response to Official Draft Report, Review of Biomass Crop Assistance
Program: Collection, Harvest, Storage, and Transportation Matching
Payments Program, Audit 03601-28-KC

The Deputy Administrator for Farm Programs has provided the information below which responds to the subject's audit recommendations.

Recommendation 1

Establish performance goals for BCAP with a defined and measureable relationship to the types or areas of accomplishment USDA hopes to achieve.

Agency Response:

The agency agrees with this recommendation. FSA has established a number of performance goals related to project area establishment and annual payments crop production. FSA has worked to develop a cooperator agreement with project sponsors and a producer reporting process that will enable a measurement of crop production against conversion outputs.

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013.

Recommendation 2

Establish outcome-based performance measures that enable the Department to assess and report on program accomplishments and impact in relation to the established performance goals.

Agency Response:

The agency agrees with this recommendation. FSA is proposing to consider the establishment of outcome-based performance measures for project area eligible crop production, such as the number of project areas, acres in production, annual yields, crop types, and payments.

Director, Farm and Foreign Agriculture Division

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Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013.

Recommendation 3

Based on the establishment of performance goals and corresponding outcome-based performance measures, evaluate the need for and initiate action to establish additional data gathering and reporting requirements on the part of qualified biomass conversion facilities.

Agency Response:

The agency agrees with this recommendation. For project areas, FSA has evaluated the need for data collection and has determined that the development of a cooperator agreement with project sponsors and a producer reporting process that will enable a measurement of crop production against conversion outputs. Project sponsors are typically a group of producers or the biomass conversion facility.

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013.

Recommendation 4

Develop a program handbook setting forth policies and procedures governing program administration, forms specifically tailored to facilitate day-to-day administration and capture of relevant program data, and a data system with applied edit checks and a designed structure to facilitate data validation, management reporting, and data analysis.

Agency Response:

In response to our fast report, FSA advised that a BCAP handbook, new forms, and a new data collection and reporting system would be developed by January 2011. FSA has developed new web based automated forms (BCAP-10 and BCAP-11) to replace the AD-245, page 1 and page 2. In addition, these new forms include recording the location by tract and field number for the collection or harvest. The 1-BCAP Handbook was released and provides guidance on using these forms.

Recommendation 5

Develop a strategy for requiring the performance of CORP reviews in States implementing BCAP and use the results of such reviews to monitor and evaluate overall program implementation and administration.

Agency Response:

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013.

Recommendation 6

Expand Form BCAP-1, Facility Overview Form, and any accompanying instructions, to require the submission of detailed financial assurance and surety information, facility operations information, and biomass conversion process information.

Agency Response:

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013.

Recommendation 7

Develop guidance for State office reviews of facility applications for CHST, including how offices should evaluate financial and operating status and conduct site examinations and visits.

Agency Response:

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013.

Recommendation 8

Develop guidance for validating facility disclosures of compliance with State and local laws related to required permits and licenses, including methods to document followup actions on any expired permits and licenses.

Agency Response:

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013.

Recommendation 9

Provide clarification regarding the extent to which various types of facility sale agreements and the provisions included in such agreements are considered binding or non-binding with respect to administration of CHST, including the impact of owner or facility noncompliance with sale agreement provisions.

Agency Response:

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013.

Recommendation 10

Incorporate reporting requirements into the facility application process to establish and evaluate the methodologies used by biomass conversion facilities for determining the fair market value of delivered biomass materials.

Agency Response:

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013.

Recommendation 11

Establish price comparison requirements to ensure that payment rates for biomass material are reasonable reflections of market values based on type, volume, and use of material.

Agency Response:

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013.

Recommendation 12

Confirm the agency's intent regarding whether aggregators are eligible to participate in CHST. Establish consistent and equitable program requirements applicable to all types of material suppliers eligible to participate in CHST.

Agency Response:

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013.

Recommendation 13

Provide clearly defined guidance regarding the manner in which owner contracts should be established when working with multiple types and sources of biomass material to be delivered to a single biomass conversion facility.

Agency Response:

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013.

Recommendation 14

Provide clearly defined guidance to field-level personnel designating the proper method by which eligible quantities of deliverable material should be established.

Agency Response:

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013.

Recommendation 15

Establish a consistent policy and methodology for material sampling and moisture testing applicable to all conversion facilities seeking qualification for CHST. Incorporate such policy into the memorandum of understanding facilities enter into with the FSA Deputy Administrator for Farm Programs.

Agency Response:

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013.

Recommendation 16

Require the field office in Johnson County, Missouri, to (1) review all delivery documents submitted by participating owners in support of disbursed matching payments; (2) identify all improperly established dry weight ton equivalents of biomass material eligible for matching payments (i.e., all those not reduced to zero percent moisture); and (3) recover all associated improper payments.

Agency Response:

FSA agrees with this recommendation and will work with the Johnson County office, Missouri to review and recover improper payments found to meet the recommendation impropriety. The FSA State office of Missouri has the individualized list of the affected contracts and is in the process of reviewing these contracts with the county.

Recommendation 17

Direct the field office in Shannon County, Missouri, to issue the underpaid amounts of matching payments for owners who were participating in the program but for which conversion facility delivery documents were not provided or were overlooked.

Agency Response:

FSA agrees with this recommendation and will work with the Shannon County, Missouri office to review and correct underpaid amounts found to meet the recommendation impropriety. The FSA State office of Missouri has the individualized list of the affected contracts and is in the process of reviewing these contracts with the county.

Recommendation 18

Develop a handbook procedure that clearly designates or sets the factor (tons or dollars) upon which a CHST contract is considered fulfilled and an owner is no longer eligible for matching payments.

Agency Response:

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013.

Recommendation 19

Incorporate a second party review to verify the establishment of matching payment obligations and appropriate approval signatures and dates on owner applications to participate in CHST.

Agency Response:

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013.

Recommendation 20

Determine whether the circumstances in question constitute a potential conflict of interest which should have prevented the county executive director from serving as an approving official for CHST.

Agency Response:

FSA will work with the State FSA offices to review CED oversight and possible conflict of interest for circumstances in question. The 1-BCAP Handbook provided limitations of COC delegation including a prohibition on delegating actions and determinations involving lands owned by STC, COC, CED's, or other County Office employees.

In addition, due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments.

Recommendation 21

Require, through direction to the appropriate State offices, that county offices recover the improperly issued matching payments associated with deliveries of biomass material completed prior to approval of the owners' CHST applications.

Agency Response:

FSA agrees with this recommendation and will work with the appropriate State offices and county offices to recover improper payments made for biomass material deliveries completed before the eligible material had acquired an approved CHST application. The individualized list of affected contracts has been sent to the State FSA offices in Missouri, Kansas, California, Maine & Alabama.

Recommendation 22

Develop a handbook procedure that provides clear and specific guidance as to the areas of coverage to be included and addressed during the performance of \$50,000 spot checks, including the frequency and timing of required onsite visits to facilities, examination and verification steps to be performed, and a form or format to document the performance and results of performed spot checks.

Agency Response:

Due to the current situation with limited funds and the recent release of the BCAP interim rule on September 15, 2011, which prioritizes BCAP crop establishment and production payments, FSA will incorporate the recommendation in the 1-BCAP handbook if funds are appropriated in fiscal year 2013.

Recommendation 23

Evaluate the circumstances of each case and determine whether the actions entered into or carried out by the owners and facilities constitute a scheme or device.

Agency Response:

In response to the fast report, FSA advised that the applicable State offices are involved in examining the case circumstances to determine if the actions by owners and facilities constitute a scheme or device.

FSA further advised that notices of declined case openings were received from OIG Investigations for two of the three cases cited; consultation on the third case will take place prior to initiating any corrective action.

Recommendation 24

Based on the determinations reached regarding scheme or device, initiate appropriate administrative actions including the termination of any violated facility agreements and the recovery of any improperly disbursed matching payments plus interest. Coordinate with OIG Investigations prior to initiating any administrative actions.

Agency Response:

FSA will work with State and county offices to recover any improper payments associated with schemes or devices noted in OIG finding, and that all facility agreements were terminated as of March 2010.

Recommendation 25

Create new terms of agreement and guidance that address scheme or device more comprehensively, and specifically prohibit schemes or devices of this nature. As part of issuing a program handbook, include guidance that details procedures for investigation, enforcement, penalties, and appeal rights related to scheme or device determinations.

Agency Response:

In response to the fast report, FSA responded that the BCAP final rule explicitly prohibits a number of practices associated with these cases and identified as potential schemes or devices. The final rule specifically defines such practices as program violations. FSA further responded that corresponding changes are incorporated into the facility agreement terms and will be further detailed in program policy documents. Officials stated that new facility agreement terms address facility requirements related to the payment of fair market price, the issuance of settlement sheets for commingled materials (eligible and ineligible), and the receipt of payments or reimbursements from owners related to CHST matching payments including any required repayment in the form of a kickback, value share, or administrative fee. FSA advised that by month's end (February 2011) the agency will

Director, Farm and Foreign Agriculture Division

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issue a program handbook to provide program guidance consistent with the BCAP final rule and include more comprehensive policy on investigations, enforcement actions, penalties, and appeals related to scheme and device determinations.

Recommendation 26

Create controls and compliance review procedures at the county office level designed to detect and identify potential schemes or devices.

Agency Response:

In response to the fast report, FSA advised that Handbook 1-BCAP will include enhanced guidance for compliance reviews of qualified facilities and owners. BCAP policy will also incorporate additional controls to ensure that fair market pricing is being paid, including enhanced data collection from facilities by FSA as part of the funding allocation process. FSA further advised that it is developing a number of automated controls in BCAP matching payment software to ensure the county offices have proper documentation from owners before approving applications and payment requests.

Informational copies of this report have been distributed to:

Administrator, Farm Service Agency (2)

Attn: Director, Operations Review and Analysis Staff

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