

**THE U.S. DEPARTMENT OF AGRICULTURE,
COMMODITY CREDIT CORPORATION,
AND FARM SERVICE AGENCY (COLLECTIVELY, “USDA”)
APPLICATION AND AGREEMENT OF THE APPLICANT
FACILITY
FOR APPROVAL AS A QUALIFIED BIOMASS CROP
CONVERSION FACILITY IN THE BIOMASS CROP
ASSISTANCE PROGRAM**

I. PURPOSE

This document is an Application by and Agreement of the Applicant Facility in connection with the Biomass Crop Assistance Program (BCAP) administered by USDA. The above-identified Applicant Facility, ⁽¹⁾ _____, seeks to be approved by USDA to participate in BCAP as a Qualified Biomass Crop Conversion Facility (QBCF) for its facility located in ⁽²⁾ _____ County, ⁽³⁾ _____, State.

BCAP matching payments are generally authorized for the collection, harvest, storage, and transportation of eligible material to a QBCF, as defined below. The purpose of BCAP matching payments is to incentivize the delivery of certain biomass to QBCFs to support the development of a market for advanced biofuels.

Approval of the Applicant Facility allows the facility to be designated as a QBCF under BCAP. Such designation enables certain payments made by the QBCF to eligible material owners to be “matched” by USDA, as described below in Section VI. C.

The participation of the Applicant Facility is designed to facilitate matching payments from USDA to eligible material owners. The Applicant Facility will not receive payments from USDA or any other party pursuant to submission or approval of this Application and Agreement, but may benefit from an increase in the volume or consistency of deliveries of eligible material by eligible material owners that confers a business advantage. This Application and Agreement does not obligate any funds of USDA or the United States, nor is it an instrument for the procurement of goods or services by USDA.

II. GENERAL PROVISIONS

This Application and Agreement will not be approved unless the Applicant Facility submits with this Application and Agreement a complete and duly executed:

- BCAP-1 Biomass Conversion Facility Overview and attachments, which BCAP-1 and attachments shall constitute Attachment 1 to this Application and Agreement; and

- AD-1047 Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions form with Attachment 1. The AD-1047 requires the owner(s) of an applying Biomass Conversion Facility to certify that the applying facility and its principals are in compliance with 2 CFR Part 601 and are not suspended or debarred.

III. AUTHORITY

BCAP is authorized by Title IX of the Farm Security and Rural Investment Act of 2002, 7 U.S.C. 8111, as amended by section 9010 of the Agricultural Act of 2014, Pub. L. 113-79 (Feb. 7, 2014). The BCAP Final Rule explains how funds authorized by the Agricultural Act of 2014 will be used, and how the BCAP regulations will apply in fiscal years 2015 through 2018. *See* 80 Fed. Reg. 10569-10575 (Feb. 27, 2015); 7 CFR Part 1450. Other authorities may also apply.

IV. DEFINITIONS

For purposes of this document:

- A. BCAP Purchase List means a spreadsheet, in the format provided on the FSA web page at www.fsa.usda.gov/bcap that contains the following elements:
- (1) QBCF identification number and name;
 - (2) The name(s) of the QBCF authorized representative(s) who purchased and received the eligible materials;
 - (3) Date of the actual delivery of the eligible material;
 - (4) Eligible material recorded and characterized by common use name such as corn stover or switch grass;
 - (5) Net weight of eligible material purchased, recorded in total tons (2,000 lb. ton basis) and the dry-ton (2,000 lb. ton basis) equivalent. Woody material dry ton weight is determined in accordance with applicable ASTM (American Society for Testing and Materials) standards.
 - (6) Payment total or price paid for each purchase;
 - (7) Price per dry-ton paid;
 - (8) The name of the person or entity that delivered the eligible material; and
 - (9) The name of the eligible material owner(s) at the time of delivery.
- B. Biomass Conversion Facility means a facility that converts or proposes to convert renewable biomass into heat, power, bio-based products, or advanced bio-fuels or for bioenergy research.
- C. Eligible Material means, as determined by USDA, renewable biomass harvested directly from the land and delivered as such rather than as a part of some other commodity. Eligible

material does not include: (1) material that is whole grain from any crop that is eligible to receive payments under title I of the Agricultural Act of 2014 or an amendment made by that title, including barley, corn, grain sorghum, oats, rice, and wheat; honey; mohair; oilseeds including canola, crambe, flaxseed, mustard seed, rapeseed, safflower seed, soybeans, sesame seed, and sunflower seeds; peanuts; pulses; chickpeas, lentils, and dry peas; dairy products; sugar; and wool and cotton boll fiber; (2) animal waste and byproducts including fats, oils, greases, and manure; (3) food waste and yard waste; (4) algae; (5) woody eligible material that is removed outside contract acreage and is not a byproduct of a preventative treatment to reduce hazardous fuel or to reduce or contain disease or insect infestation; (6) any woody eligible material collected or harvested outside contract acreage that would otherwise be used for existing market products; and (7) bagasse.

Additional material may be periodically added or deleted from consideration as eligible by USDA.

- D. Delivery means the transfer of the eligible material from the eligible material owner to the QBCF at the QBCF's place of business, unless the context indicates otherwise as determined by USDA. Delivery of material is only considered a delivery if the eligible material is delivered in a condition where it has been collected separately from other commodities and other products and not merely separated for purposes of generating a payment. For example, if bark is an eligible material, a delivery of a tree with bark is not considered an eligible delivery of the bark.
- E. Eligible Material Owner, for purposes of the matching payment, means a person or entity having the right to collect or harvest eligible material, who has the risk of loss in the material that is delivered to a QBCF, and who has directly or by agent delivered or intends to deliver the eligible material to a QBCF, including:
- (1) For eligible material harvested or collected from private lands, including cropland, the owner of the land, the operator or producer conducting farming operations on the land, or any other person designated by the owner of the land; and
 - (2) For eligible material harvested or collected from public lands, a person having the right to harvest or collect eligible material pursuant to a contract or permit with the U.S. Forest Service or other appropriate Federal agency, such as a timber sale contract, stewardship contract or agreement, service contract or permit, or related applicable Federal land permit or contract, and who has submitted to USDA a copy of the permit or contract authorizing such collection.
- F. Qualified Biomass Conversion Facility means a Biomass Conversion Facility that has executed the proper Application and Agreement and which has been approved by USDA for participation in BCAP.

V. BIOMASS CONVERSION FACILITY ELEMENTS

Issuance by USDA of a facility identification number to the Applicant Facility will constitute approval of this Application and Agreement. After a facility identification number has been assigned, USDA intends within 15 business days to notify its offices and the public that the Applicant Facility has been designated a QBCF.

Upon approval by USDA for participation in BCAP, the Applicant Facility as a QBCF agrees to:

- A. Adhere to the terms of the QBCF overview as provided in BCAP-1 and attachments (collectively, Attachment 1 to this Application and Agreement).
- B. Develop and maintain a BCAP Purchase List, as defined above, for eligible material purchases and make it available upon request for examination by USDA representatives.
- C. Retain records that include, but are not limited to, the spreadsheet, books, papers, records, contracts, scale tickets, settlement sheets, invoices, written price quotations, or other documents related to BCAP. Records will be maintained and retained for no less than three years from the date of payment for eligible material purchases.
- D. To the extent not otherwise specifically required under this Application and Agreement, provide to USDA such information as USDA determines appropriate to facilitate USDA making matching payments to eligible material owners delivering eligible material to the Applicant Facility. The facility is responsible for ensuring that USDA, in connection with each invoice, is advised of all relevant considerations to determine the eligibility of the transaction for a matching payment.
- E. Provide or maintain access to and use of commercial weight scales that are certified for accuracy by applicable State or local authorities and accurate moisture measurement equipment to facilitate the determination of the dry-ton weight equivalent of actual tonnage delivered. Woody material dry ton weight is determined in accordance with applicable ASTM (American Society for Testing and Materials) standards.
- F. Permit an inspection of biomass deliveries upon request by USDA.
- G. Maintain and submit evidence of compliance with all applicable Federal, State, tribal, and local environmental, health, and safety laws, regulations and ordinances.
- H. Purchase eligible material at a fair market price that is consistent for similar products regardless of whether the seller participates in BCAP or the seller and purchaser are related entities.
- I. Ensure that all of the elements of the BCAP Purchase List, as defined above, appear on each receipt issued at time of delivery or invoice issued at time of payment. Settlement sheet and payment to the eligible material owner must be within a reasonable period following delivery of the eligible materials or in accordance with any Noticed timeframes concerning application of matching payment.

- J. Promptly notify the FSA contact in paragraph C of Section VII of any material changes in operations that could impact its operation, which include, for example, a change in biomass utilization, or any other operational changes that may affect input and/or output capacity.
- K. Issue no settlement sheets for the purchase of eligible material that is commingled with ineligible materials.
- L. Receive no payments or reimbursements from eligible material owners that are related to the eligible material matching payment, nor impose any requirement that the eligible material owner pay a portion of the BCAP matching payment as a kickback, value-share, or similar payment, nor charge the eligible material owner any administrative or similar fee.
- M. Receive no payments or reimbursements from USDA in connection with this Application and Agreement, nor in connection with any of the activities contemplated hereunder.
- N. Allow USDA to release to the general public, including eligible material owners, the following information: name of the facility; location of the facility (physical address); email address and phone number of the facility; types and quantities of eligible material the Applicant Facility may process; and when eligible material is received. The information collected on this Application and Agreement may also be disclosed to other Federal, State, Local government agencies, Tribal agencies, and nongovernmental entities that have been authorized access to the information by statute or regulation and/or as described in applicable Routine Uses identified in the System of Records Notice for USDA/FSA-2, Farm Records File (Automated) without written permission. The release of any additional information by USDA shall only be with the written permission of the Applicant Facility.

VI. FEDERAL ACTIONS

The Applicant Facility acknowledges and agrees USDA will:

- A. Develop and maintain a list of all participating QBCFs.
- B. Conduct periodic compliance reviews of the participating QBCFs.
- C. Subject to the availability of funds, provide payments to eligible material owners that deliver eligible material to a QBCF at a rate of up to \$1 for each \$1 per dry-ton equivalent provided by the biomass conversion facility but not to exceed \$20 per dry ton. Eligible material owners are eligible to receive matching payments for a period of no more than two years from the date of receipt of their first matching payment under the authority provided by the Agricultural Act of 2014. The terms and conditions of receipt of matching payments are subject to change in accordance with BCAP regulations. In no event shall payments exceed that which is permitted by law, the terms of this document and the BCAP regulations. The more restrictive provision will apply.

VII. OTHER PROVISIONS

- A. USDA may terminate this Agreement and a facility's QBCF status at any time.
- B. The Applicant Facility may terminate this Application and Agreement upon 20 calendar days written notice to USDA but such termination shall be of no effect with respect to transactions and actions that precede the effective date of such termination.
- C. The USDA contact for the participation of the Applicant Facility is the following FSA State office contact, [insert State office contact name, address, phone, email]; ⁽⁴⁾

- D. The ⁽⁵⁾ _____ Applicant Facility contact for its participation is [insert authorized representative, name(s), address, phone, email]: ⁽⁶⁾

- E. Any data collected by the Applicant Facility and USDA shall be handled in full compliance with the privacy and security requirements of Section 1619 of Public Law 110-246 (see Attachment 2), Section 2004 of Public Law 107-171, the Privacy Act, the Freedom of Information Act, and other related and relevant Federal legislation, as well as with any specific directives and policies promulgated by USDA. The following statement is made in accordance with the Privacy Act of 1974 (5 USC 552a - as amended). The authority for requesting the information identified on this Application and Agreement is 7 CFR Part 1450, the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.), the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171), and the Agricultural Act of 2014 (Pub. L. 113-79). The information will be used to process the applicant's request for acceptance in BCAP as a QBCF. Providing the requested information is voluntary. However, failure to furnish the requested information will result in an inability to process the Application and Agreement.

- F. USDA prohibits discrimination in all of its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, political beliefs, genetic information, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Assistant Secretary for Civil Rights, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Stop 9410, Washington, DC 20250-9410, or call toll-free at (866) 632-9992 (English) or (800) 877-8339

(TDD) or (866) 377-8642 (English Federal-relay) or (800) 845-6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.

- G. By signing this Application and Agreement, the Applicant Facility agrees to all of the program requirements, and, in addition, all of the following: USDA may make the payments described in Section VI. C of this Application and Agreement in reliance upon this Application and Agreement. By signing this Application and Agreement, the Applicant Facility is asserting now and on an ongoing basis that, until actual written notice to the contrary is given to USDA, there is full and continuing compliance by the Applicant Facility with all of the terms and conditions applicable to the participation of the Applicant Facility in BCAP as set out elsewhere, in program regulations or as Noticed. Should the Applicant Facility fail to comply in full, it agrees that some or all of the following will apply, as determined by USDA: the Applicant Facility will, on demand of USDA, reimburse, with interest, USDA for all matching payments to all individuals or entities who received such payments with respect to any eligible material not in compliance with the requirements of this Application and Agreement, the program regulations, or as set forth in pursuant Notices with interest to run from the time of the relevant USDA disbursement at a rate that shall be the highest collected or allowed USDA on other claims in other programs. Further, the Applicant Facility understands that this liability may be in addition to any other liability that may run against the Applicant Facility under the law, including sanctions, civil and criminal, for false representations or fraudulent claims, including, but not limited to, provisions that appear in 18 U.S.C. 1001 and 15 U.S.C. 714m. It is understood that the failure of the Applicant Facility to advise USDA in a timely way of a breach of its obligations with respect to participation in BCAP will be considered, in light of the ongoing assertion of compliance imposed by this Application and Agreement, to be a false representation of compliance.

So agreed:

For the:

(7) Name of authorized representative

(8) Date

(9) Title

(10) Name of Biomass Conversion Facility

Approval:

Approved on behalf of the USDA:

(11) Name of State Executive Director (SED)

(12) Signature of State Executive Director (SED)

(13) Date

(14) State FSA Office

VIII. FOR FSA NATIONAL OFFICE USE ONLY	
15. Date Received (MM-DD-YYYY)	16. Facility Number
17. Date Assigned (MM-DD-YYYY)	18. Initials