

**THE U.S. DEPARTMENT OF AGRICULTURE,
COMMODITY CREDIT CORPORATION,
AND FARM SERVICE AGENCY
APPLICATION AND AGREEMENT OF**

**FOR APPROVAL AS A QUALIFIED BIOMASS CROP
CONVERSION FACILITY IN THE BIOMASS CROP
ASSISTANCE PROGRAM**

I. PURPOSE

This document has been generated in connection with the Biomass Crop Assistance Program operated by the U.S. Department of Agriculture (USDA), through the Commodity Credit Corporation (CCC) and Farm Service Agency (FSA) of the Department. The above-identified applicant, _____, seeks to be accepted within BCAP as a Qualified Biomass Crop Conversion Facility for its facility located in _____ County, _____, State.

Under BCAP:

- Matching payments are generally authorized for the collection, harvest, storage, and transportation of eligible material to a Qualified Biomass Conversion Facility (QBCF);
- Establishment and annual payments are generally authorized to support the establishment and production of eligible crops in selected BCAP project areas.

The participation of the facility is designed to facilitate the matching payments component of BCAP.

II. GENERAL PROVISIONS

Approval of conversion facilities to serve as QBCF's is to allow, where deemed desirable by the USDA, CCC, and FSA and certain biomass conversion facilities, for such a facility to be designated as a Qualified Biomass Conversion Facility under the BCAP. Such designation will enable certain payments to certain persons or entities made by the Qualified Biomass Conversion Facility to be "matched" by CCC as described below in Section VI. D.

A Qualified Biomass Conversion Facility is a "Biomass Conversion Facility" that has met and continues to meet the terms of this Application and Agreement by the facility.

FSA will assign a facility identification number to the biomass conversion facility after the application has been approved. This application may not be approved unless the facility has completed and attached a BCAP-1 "Biomass Conversion Facility Overview".

Approval of the application shall become effective following the assignment of a facility identification number by FSA.

The signed application shall act as a letter of commitment by the Qualified Biomass Conversion Facility to:

- Convert or propose to convert eligible material into heat, power, bio-based products, or advanced biofuels; and
- Provide certain information to FSA to facilitate its making matching payments.

The goals for the BCAP matching payments are to:

- Provide matching payments for delivery of eligible material to a Qualified Biomass Conversion Facility to persons or entities; and
- Establish guidelines for Qualified Biomass Conversion Facilities that receive eligible material to provide certain information to FSA.

This document is not intended to supersede any rules or regulations that have been or may be promulgated by USDA, CCC, or FSA or any rules or regulations that may govern biomass conversion facilities. In the event of a conflict between the terms of this Agreement and the applicable rules or regulations, the regulations shall prevail provided that no payments will be made unless such payments are permitted by all the relevant documentation including the regulations and this application. The regulations for this program govern all payments under this program, apply to this application, and set terms and conditions for the program that may be in addition to those set out in this application. The regulations will be codified in 7 CFR Part 1450 and were the subject of a final rule that was published in the Federal Register on October 27, 2010.

III. AUTHORITY

BCAP is authorized by Title IX of the Farm Security and Rural Investment Act of 2002, 7 U.S.C. 8101 *et seq.*, as amended. Other authorities may also apply.

IV. DEFINITIONS

For purposes of this document:

- A. BCAP Purchase List or List means a spreadsheet, in the format provided on the FSA web page at www.fsa.usda.gov that contains the following elements:
- (1) Qualified Biomass Conversion Facility identification number and name, which will be provided by CCC upon execution of this Agreement;
 - (2) The name(s) of the Qualified Biomass Conversion Facility 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;
- (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 eligible material owner's(s) name 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.
- C. Eligible Material means, as determined by CCC, Renewable Biomass delivered as such rather than as a part of some other commodity except for: (1) whole grain derived from a crop of barley, corn, grain sorghum, oats, rice, and wheat, and oilseeds such as canola, crambe, flaxseed, mustard seed, rapeseed, safflower seed, soybeans, sesame seed, and sunflower seeds; peanuts, pulse crops such as small chickpeas, lentils, and dry peas; and 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; or (4) algae. The eligible materials for a matching payment are described in the list of eligible materials posted at: www.fsa.usda.gov and the applicable local and state FSA office. The facility is responsible for identifying what is or is not eligible material and for insuring that the FSA is, in connection with each invoice, advised of all relevant considerations to determine the eligible of the transaction for a matching payment.

Additional material may be periodically added or deleted from consideration as eligible by the CCC but only in writing and only in a writing executed at the national level.

- D. Delivery unless the context suggests otherwise, means the transfer from the Eligible Material Owner to the QBCF at the QBCF's place of business of the relevant material, as determined by the CCC.
- 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 an eligible facility and who has directly or by agent delivered or intends to deliver the eligible material to a qualified biomass conversion facility, 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 US 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 a copy of the permit or contract authorizing such collection to CCC.

- F. Qualified Biomass Conversion Facility means a Biomass Conversion Facility that has executed the proper application and agreement and has been approved by CCC.
- G. Renewable Biomass means, as determined by CCC: (1) Materials, pre-commercial thinnings, or invasive species from National Forest System and Bureau of Land Management that: (a) are byproducts of preventive treatments that are removed to reduce hazardous fuels, to reduce or contain disease or insect infestation, or to restore ecosystem health; (b) would not otherwise be used for higher-value products; and (c) are harvested in accordance with applicable law and land management plans and the requirements for old growth maintenance, restoration, and management direction of subsections 102 (e)(2), (3), and (4) of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512) and large-tree retention provisions of subsection (f) of section 102; or (2) any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian Tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including: Renewable plant material (including feed grains, other agricultural commodities, other plants and trees, and algae), and waste material (including crop residue, other vegetative waste material (including wood waste and wood residues), animal waste and byproducts (including fats, oils, greases, and manure), food waste, and yard waste. It is understood that a delivery of renewable biomass is only considered a delivery of the biomass if the biomass is delivered in a condition where it has been collected separate from other commodities and other products and not merely separated for purposes of generating a payment – that is, for example, if bark is an eligible material, a delivery of a tree with bark is not considered an eligible delivery of the bark. Rather, the bark must have been separated at the material owner’s place of business, collected separately, and delivered in a condition where it is separated from the tree and that separation cannot have been undertaken merely to generate a payment if the normal method of delivery would be with the bark intact.

V. QUALIFIED BIOMASS CONVERSION FACILITY ELEMENTS

_____ agrees to:

- A. Develop and maintain a List, as defined above, for renewable biomass purchases and make available upon request this List for examination by USDA representatives, with the understanding that submission of the List by the Biomass Conversion Facility is offered to CCC as a true and correct copy.
- B. Retain records which 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 renewable biomass purchases.
- C. 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.

- D. Permit upon request by USDA, CCC, or FSA an inspection of biomass deliveries.
- E. Maintain and submit evidence of compliance with all applicable Federal, State, tribal, and local environmental laws and regulations.
- F. Purchase eligible material at a fair market price that is consistent for similar products regardless of whether the seller participates in BCAP or if the seller and purchaser are related entities.
- G. Allow USDA, CCC, or FSA to make public general information about the Biomass Conversion Facility and its renewable biomass needs.
- H. Ensure that the elements of the List, as described above, appear on the receipt issued at time of delivery or invoice issued at time of payment.
- I. Receive no payments or reimbursements from USDA or CCC by virtue of signing this Agreement; this Agreement will serve neither as a fiscal or funds obligating document, nor as an instrument for the procurement of goods or services by USDA or CCC.
- J. Maintain compliance with all applicable Federal, State, tribal, and local environmental, health, and safety laws, regulations, and ordinances.
- K. Complete and adhere to the Qualified Biomass Conversion Facility overview as provided in Attachment 1, which provides CCC and FSA with information to facilitate the program.
- L. Complete an AD-1047 Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions form with Attachment 1. The AD-1047 will require the owners of applying Biomass Conversion Facilities to certify that the applying facility and its principals are in compliance with 7 CFR Part 3017 and not subject to debarment or suspension.
- M. Notify the FSA contact in paragraph E of Section VII of any 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.
- N. Allow USDA, CCC or FSA to release to the general public the following information only: 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 facility may process; and when eligible material is received. The release of any additional information by CCC or FSA shall only be in accordance with the provisions of Section VI. E, below.
- O. Issue no settlement sheets for the purchase of eligible material that is commingled with ineligible materials.
- P. Receive no payments or reimbursements from eligible material owners that are related to the eligible material matching payment, including any requirement that the eligible material owner re-pay a portion of the BCAP matching payment as a kickback, value-share, or similar payment, or charge the eligible material owner any administrative or similar fee.

VI. FEDERAL ACTIONS

These promises of the facility are in furtherance of the goals of the program and the facility understands in that regard that USDA, CCC, and FSA intends to operate the program in a manner in which USDA, CCC, and FSA will:

- A. Develop and maintain a list of all participating Qualified Biomass Conversion Facilities.
- B. Conduct periodic compliance reviews of the participating Qualified Biomass Conversion Facilities.
- C. Provide information to eligible material owners regarding matching payments.
- D. Subject to the availability of funds, provide payments to eligible material owners that deliver eligible material to a Qualified Biomass Conversion Facility at a rate of \$1 for each \$1 per dry-ton equivalent provided by the biomass conversion facility in an amount not to exceed \$45 per ton. Eligible persons and entities are eligible to receive these matching payments for a period of no more than two years from the date of receipt of their first matching payment under the reinstated BCAP minus whatever of period of time that person or entity received payments under the previous iteration of the program. The terms and conditions of receipt of matching payments are subject to change in accordance with the BCAP regulations. In no event shall payments exceed that which are permitted by the terms of this document or the BCAP regulations. That is the more restrictive provision will apply.
- E. Not release any additional information of the Qualified Biomass Conversion Facility beyond that information listed in Section V. N, above, unless it first obtains from the Qualified Biomass Conversion Facility express written permission to release such additional information.

VII. OTHER PROVISIONS

- A. This terms of participation of the facility may be amended at any time only by mutual written agreement of the parties.
- B. The facility is solely responsible for its own acts in connection with the operation of this program.
- C. Approval of this application will be in effect on the date FSA assigns a facility identification number to the biomass conversion facility and will continue for not more than the later of three years thereafter or for as long as USDA, CCC, and FSA are authorized to carry out the BCAP. USDA, CCC, and FSA may, however, withdraw approval of this application at any time.

After a facility identification number has been assigned by FSA, USDA, CCC and FSA intend within 15 business days to notify its offices and the public that _____

Biomass Conversion Facility has been designated a qualified Biomass Conversion Facility.

- D. The facility may withdraw its application with 20 calendar days written notice but such withdrawal shall be of no effect with respect to transactions and actions that have already occurred.
- E. The USDA, CCC, FSA contact for the participation of the facility in this matter is the following FSA State office contact, [insert State office contact name, address, phone, email];

- F. The _____ Qualified Biomass Conservation Facility contact for its participation in this matter is [insert authorized representative, name(s), address, phone, email]:

- G. Any data collected by the facility and the USDA, FSA, and CCC 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, CCC, or FSA. 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 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 Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246). The information will be used to process the applicant's request for acceptance within the Biomass Crop Assistance Program as a Qualified Biomass Crop Conversion Facility. The information collected on this application may 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). Providing the requested information is voluntary. However, failure to furnish the requested information will result in an inability to process the applicant's request for acceptance within the Biomass Crop Assistance Program as a Qualified Biomass Crop Conversion Facility.

- H. The U.S. Department of Agriculture (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.
- I. By signing this Application _____ acknowledges and agrees to all of the program requirements, all of the provisions and promises of this document, and, in addition, all of the following: CCC may make the payments described in Section VI. D of this Agreement in reliance upon this application, and in signing this application the facility is asserting now and on an ongoing basis that, until actual written notice to the contrary is given to CCC, there is full and continuing compliance by the facility with all of the terms and conditions and promises applicable to the participation of the facility in this matter as set out in this application and as set out elsewhere, including in the program regulations. Should the facility fail to comply in full with all of the terms and conditions of participation in this program, it agrees that some or all of the following will apply, as determined by CCC: the facility will, on demand of CCC, reimburse, with interest, CCC for all matching payments to all individuals or entities who received such payments with respect to any eligible material with respect to which the facility is not in compliance with this promises or requirements of this application or the program regulations with such interest to run from the time of the relevant CCC disbursement at a rate that shall be the highest collected or allowed CCC on other claims in other programs. Further, the facility understands that this liability may be in addition to any other liability that may run against the 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 facility to advise CCC in a timely way of a breach of its obligations with respect to participation in this matter will be considered, in light of the ongoing assertion of compliance imposed by this application, to be a false representation of compliance.

So agreed:

For the:

[Name of authorized representative]
[Title]
[Name of Biomass Conversion Facility]

Date

Approval:

Approved on behalf of the USDA, CCC, and FSA:

[Name of SED]
State Executive Director
[State] State FSA Office

Date

VIII. FOR FSA NATIONAL OFFICE USE ONLY

3. Date Received (MM-DD-YYYY)	4. Facility Number
5. Date Assigned (MM-DD-YYYY)	6. Initials