

For: State and County Offices

Qualifying Biomass Conversion Facilities (BCF's)

Approved by: Acting Deputy Administrator, Farm Programs



1 Overview

A Background

The Biomass Crop Assistance Program (BCAP) was authorized by Section 9011 of the Farm Security and Rural Investment Act of 2002, as amended by the Food, Conservation, and Energy of 2008. A final rule was published in FR and became effective on October 27, 2010. The final rule is available on FSA's BCAP web site at www.fsa.usda.gov/bcap.

Note: Matching payments replace the Collection, Harvest, Storage, and Transportation (CHST) payments authorized by a Notice of Funds Availability (NOFA) and Notice BCAP-2. Generally, new funding obligations under NOFA were terminated on February 3, 2010.

Notice BCAP-17 provided an overview of BCAP implementation under the final rule for matching payments through interim and long-term policies and procedures.

Matching payments provide an eligible material owner (EMO) a payment for eligible material delivered to a qualified Biomass Conversion Facility (QBCF). The payment rate for matching payments is \$1 for each \$1 per dry ton paid by QBCF to EMO, not to exceed \$45 per dry ton. EMO's may not receive matching payments beyond a 2 year period.

B Purpose

This notice provides:

- an overview of the matching payments business process
- guidance about entering into a QBCF Agreement with BCF.

Disposal Date	Distribution
March 1, 2011	State Offices; State Offices relay to County Offices, State Forestry Agencies, State NRCS Offices, and State RD Renewable Energy Coordinators

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1 Overview (Continued)

C Definitions

See Exhibit 1 for definitions applicable to matching payments.

D Matching Payments Business Process

Key steps to qualification for matching payments include the following.

- BCF and FSA sign a QBCF Agreement to qualify the facility to participate in BCAP.
- EMO will enter into a binding agreement with BCF to deliver eligible material and initiate a matching payment agreement with FSA for matching payments on expected deliveries to the qualified BCF.
- A conservation, forest stewardship, or equivalent plan covering the area from which the eligible material will originate is provided to FSA. FSA will approve the matching payment agreement.
- EMO will begin delivering eligible material to qualified BCF that monitors and tracks deliveries and, after deliveries are complete and EMO receives payment from qualified BCF, EMO will request payment from FSA.
- FSA will make payments.

E Other Information

Additional guidance will be issued to provide policy, procedure, and guidance about the following:

- submission of project proposals
- matching payments business process steps not covered by this notice
- funds control
- software.

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2 Qualifying BCF's

A Overview

To be eligible to receive a matching payment, EMO must deliver eligible material to a “qualified” BCF.

To become qualified, BCF must complete and sign a QBCF Agreement which provides for submitting related information in subparagraph B to the State Office in the State where the facility is physically located.

All BCF's seeking to provide eligibility for matching payments for their EMO suppliers must complete and sign a new QBCF Agreement under the terms outlined in this notice.

Notes: A template of the QBCF Agreement, BCAP-1, and AD-1047 that BCF must sign to become “qualified” are available at www.fsa.usda.gov/bcap.

The QBCF Agreements previously signed by BCF's to become “qualified” under the terms of NOFA do **not** apply to matching payments authorized by the BCAP final rule.

BCF QBCF Agreements approved under the terms of NOFA will remain in effect **only** for those limited circumstances where additional deliveries may be approved because of appeals or relief requests related to AD-245's approved under NOFA.

B BCF Eligibility Process

BCF must complete and sign the QBCF Agreement and submit to the State Offices.

Note: SED must sign the QBCF Agreement on behalf of CCC; however, the QBCF Agreement is **not** effective until CEPD reviews the QBCF Agreement and supporting documentation for completeness, approves, and assigns a unique facility identification number.

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2 Qualifying BCF's (Continued)

B BCF Eligibility Requirements to Become Qualified (Continued)

By signing the QBCF Agreement, BCF agrees to perform the following:

- develop and maintain a list of all renewable biomass purchases and include purchases from both EMO's and sellers not participating in BCAP

Notes: This list shall:

- contain the following:
 - date of purchase
 - seller name
 - delivery location
 - number of tons delivered
 - price per ton
 - total price paid
 - dockage
 - whether seller is approved EMO
- be provided to USDA representatives upon request.
- retain records of all biomass purchases for at least 3 years from date of payment

Note: Acceptable records include spreadsheets, books, papers, records, contracts, scale tickets, settlement sheets, invoices, written price quotations, or other documents.

- use commercial weight scales certified for accuracy by applicable State or local authorities, and accurate moisture measurement equipment to determine the dry-ton weight equivalent of actual delivered tonnage

Note: Moisture measurement must be carried out according to American Society for Testing and Materials (ASTM) or other industry standards as appropriate and may include a variety of sampling techniques.

- allow inspection by USDA, CCC, or FSA of biomass deliveries
- provide evidence of compliance with all applicable Federal, State, tribal, and local environmental laws and regulations
- purchase all biomass at fair market value from all sellers with no price differences between eligible material purchased from EMO's and biomass purchased from nonparticipants in BCAP

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2 Qualifying BCF's (Continued)

B BCF Eligibility Requirements to Become Qualified (Continued)

- ensure that the elements of the purchase list, as previously described, appear on the receipt issued at time of delivery or invoice issued at time of payment
- maintain compliance with all applicable Federal, State, tribal, and local environmental, health, and safety laws, regulations, and ordinances
- release the following information to the general public:
 - name of the facility
 - location of the facility (physical address)
 - e-mail address and phone number of the facility
 - types and quantities of eligible material the facility may process
 - when eligible material is received
- issue no settlement sheets for the purchase of eligible material that is commingled with ineligible materials
- not assess any charge, receive no payment or reimbursement from an eligible material owner that is any part of the matching payment including, for example, a requirement that EMO must pay a portion of the BCAP matching payment as a kickback, value-share, or similar scheme or to charge the eligible material owner any BCAP administrative fees or other fees unless such fees apply to all sellers
- certify that the eligible material for which matching payments are issued will be converted to heat, power, bio-based products, or advanced bio-fuels

Note: FSA will determine the eligibility of bio-based products consistent with standards set by the Bio-Preferred Procurement Program which include requirements that the product:

- meets the minimum bio-based content threshold established for the applicable product type
 - **not** be converted to motor vehicle fuel (bio-fuels) or electricity (heat and power)
 - **not** have significant national market penetration as of 1972.
- enter into a separate QBCF Agreement for each location.

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2 Qualifying BCF's (Continued)

C Required Forms for BCF Qualification

To become qualified, BCF **must** provide all of the following completed items to the State Office:

- QBCF Agreement (2 copies with original signatures)
- BCAP-1 (2 copies with original signatures)
- AD-1047 (1 copy with original signatures)
- copies of all environmental, health, safety, and business permits and licenses, required by local governments, Tribal governments, State governments and the U.S. Federal Government.

Notes: A template of the QBCF Agreement, BCAP-1, and AD-1047 are available at www.fsa.usda.gov/bcap.

No changes are authorized to the preprinted text on the QBCF Agreement, BCAP-1, or AD-1047.

For lengthy permits, the State Office may authorize submission of only key permit pages, if the key page submission includes permit title, number, expiration date, name of permit holder, agency issuing permit, and agency authorized signature.

3 Managing Qualifying Biomass Conversion Facilities

A Facility Outreach

The National Office will maintain a web-based list of QBCF's for general public access and distribution that may include general information about QBCF's and their eligible material needs.

State and County Offices in the region of QBCF's shall routinely announce their locations and eligible material needs.

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3 Managing Qualifying Biomass Conversion Facilities (Continued)

B Signing QBCF Agreements

SED's, or designee, are delegated authority to sign QBCF Agreements only after all of the following have occurred:

- State Office reviews submission for qualification according to this notice
- BCF submits all necessary documents to the State Office and meets all the requirements for qualification.

SED's, or designee, shall perform the following:

- review submissions for qualification according to this notice
- contact BCF if there is missing, incomplete, or inaccurate data

Notes: Only QBCF Agreements that are complete and accurate may be approved by SED and submitted to the National Office for assignment of facility number.

Incomplete QBCF Agreements to CEPD will be returned to SED. Corrected QBCF Agreements may be resubmitted.

- sign complete QBCF Agreements that meet all submission requirements according to this notice

Note: The QBCF Agreement will **not** become effective until a facility ID number is assigned by CEPD.

- send the completed BCAP-1 fillable form in an e-mail to cepdmil@wdc.usda.gov with the subject line "BCAP Application"

Note: BCAP-1 forms that are not e-mailed as completed fillable pdf documents will be returned for completion.

- maintain official copies of all approved and disapproved QBCF Agreements according to Notice BCAP-12
- notify BCF, in writing, of approval or rejection.

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3 Managing Qualifying Biomass Conversion Facilities (Continued)

C Disqualifying QBCF

FSA will suspend, terminate, or take other actions as appropriate when QBCF fails to comply with the QBCF Agreement.

If QBCF fails to comply in full with all of the terms and conditions of the QBCF Agreement, some or all of the following may apply:

- QBCF will reimburse CCC with interest for **all** matching payments to all persons or legal entities that received payments for any eligible material during the period the facility was **not** in compliance with the QBCF Agreement
- subsequent deliveries made to the disqualified QBCF will **not** be eligible for matching payment.

D Handling QBCF Ownership and/or Operational Changes

A QBCF must **immediately** notify the State Office of any changes in operations that could impact its operation including, for example, a change in biomass usage, or any other operational changes that may affect input and/or output capacity. Failure to immediately notify FSA of the change may result in suspension or termination of the QBCF Agreement. Typical changes include, for example:

- biomass type needs change and new types were not listed in the QBCF Agreement forms
- location changes
- name changes
- operation/management changes
- ownership changes.

County Offices **must** notify all EMO's, who have applied for matching payments, of any ownership or operational changes in QBCF's for whom they have applied for matching payment. Copies of new or amended sales contracts, etc. may be needed by EMO's for some QBCF changes.

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3 Managing Qualifying Biomass Conversion Facilities (Continued)

E Fraud, Waste, and Abuse and Scheme and Device

A QBCF may not require an EMO to pay kickbacks, value-shares, paperwork handling fees, BCAP administrative fees, or similar payments. In such cases or in similar situations, COC must review to determine whether a scheme and device has occurred and, if necessary, notify OIG.

Examples of fraud, waste, or abuse used by QBCF's to defeat BCAP's purpose may include, but are **not** limited to the following:

- requiring an EMO to pay any type of fee associated with participation in BCAP, such as an administrative fee
- requiring an EMO to return any portion of its matching payment to QBCF for any reason, also known as kick-backs or value-shares
- colluding with an EMO to purchase material for prices above or below the fair market price whether or not the real prices are fully documented
- colluding with an EMO to purchase ineligible material
- requiring an EMO to assign a matching payment to wholly or partially owned subsidiaries of QBCF, such as subsidiaries that harvest or transport material
- requiring or allowing an EMO to do anything for QBCF other than delivering eligible material as outlined in the sales agreement or binding Letter of Intent.

4 Action

A CEPD Action on Approved Agreements, Agreement Effective Date, and Outreach

CEPD will issue a unique facility ID number and effective date of the QBCF Agreement for complete submissions according to subparagraph 3 B.

The QBCF Agreement will **only** become effective upon CEPD assigning a facility ID number.

State Offices shall periodically inform the public that matching payments may be available for deliveries of eligible material to QBCF's in that State.

Note: CEPD will maintain a publicly available web-based list of QBCF's for public access and distribution which may include general information about QBCF's and their eligible material needs.

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4 Action (Continued)

B State Office Action

State Offices shall follow the provisions in the notice

C County Office Action

County Offices shall read and follow the provisions in the notice.

BCAP Definitions

The following definitions are applicable to matching payments.

Advanced biofuel is fuel derived from renewable biomass other than corn kernel starch, including biofuels derived from cellulose, hemicellulose, or lignin; biofuels derived from sugar and starch, other than ethanol derived from corn kernel starch; biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste; diesel-equivalent fuel derived from renewable biomass including vegetable oil and animal fat; biogas, including landfill gas and sewage waste treatment gas, produced through the conversion of organic matter from renewable biomass; and butanol or other alcohols produced through the conversion of organic matter from renewable biomass; and other fuel derived from cellulosic biomass.

Biobased product is a product determined by CCC to be a commercial or industrial product, other than food or feed, that is either:

- composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials
- an intermediate ingredient or feedstock

Bioenergy is renewable energy produced from organic matter. Organic matter may be used directly as a fuel, be processed into liquids and gases, or be a residual of processing and conversion.

Biofuel is a fuel derived from renewable biomass.

A biomass conversion facility is a facility that converts or proposes to convert renewable biomass into heat, power, biobased products, or advanced biofuels.

A dry ton is one U.S. ton measuring 2,000 pounds. One dry ton is the amount of renewable biomass that would weigh one U.S. ton at zero percent moisture content.

Eligible material is renewable biomass excluding:

- material that is whole grain from any crop that is eligible to receive payments according to 8-LP, paragraph 126 and 7-CN
- animal waste and by-products of animal waste including fats, oils, greases, and manure
- food waste and yard waste
- algae.

BCAP Definitions (Continued)

An eligible material owner, for purposes of the matching payment, is a person or legal 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:

- 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
- for eligible material harvested or collected from **public** lands, a person having the right to harvest or collect eligible material according to a contract or permit with the 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.

Higher-value product means an existing market product that is comprised principally of an eligible material or materials and, in some distinct local regions, as determined by CCC, has an existing market as of October 27, 2010. Higher-value products may include, but are not limited to, products such as mulch, fiberboard, nursery media, lumber, or paper.

Indian tribe has the same meaning as in 25 U.S.C. 450b (Section 4 of the Indian Self-Determination and Education Assistance Act).

Intermediate ingredient or feedstock is an ingredient or compound made in whole or in significant part from biological products, including renewable agricultural material, including plant, animal, and marine material, or forestry material that is subsequently used to make a more complex compound or product.

Legal entity means an entity created under Federal or State law that owns land or an agricultural commodity, product, or livestock according to 4-PL.

A qualified biomass conversion facility is a biomass conversion facility that meets all the requirements for BCAP qualification, and whose facility representatives enter into a QBCF Agreement with CCC.

BCAP Definitions (Continued)Renewable biomass is:

- appropriate materials, pre-commercial thinnings, or invasive species from National Forest System land and DOI, BLM land that:
 - are by-products of preventive treatments that are removed to reduce hazardous fuels, to reduce or contain disease or insect infestation, or to restore ecosystem health
 - would not otherwise be used for higher-value products
 - are harvested according to applicable law, land management plans, and the requirements for old-growth maintenance, restoration, and management direction of 16 U.S.C. 6512 (specifically, Sections 102(e)(2), (3), and (4) of the Healthy Forests Restoration Act of 2003 and large-tree retention provisions of Subsection (f))
- 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 U.S or subject to a restriction against alienation imposed by U.S., including:
 - renewable plant material, including:
 - feed grains
 - other agricultural commodities
 - other plants and trees
 - algae
 - 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.

Tribal government is any Indian tribe, band, nation, or other organized group, or community, including pueblos, rancherias, colonies, and any Alaska Native Village, or regional or village corporation as defined in or established pursuant to 43 U.S.C. 1601-1629h, the Alaska Native Claims Settlement Act, that is recognized as eligible for the special programs and services provided by U.S. to Indians because of their status as Indians.