

APPENDIX TO FORM BCAP-3, BIOMASS CROP ASSISTANCE PROGRAM CONTRACT

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0560-XXXX. The time required to complete this information collection is estimated to average 4 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. **RETURN THIS COMPLETED FORM TO YOUR COUNTY FSA OFFICE.**

1. DEFINITIONS

The following definitions are applicable to the Biomass Crop Assistance Program (BCAP) Contract:

- A. **BCAP contract or BCAP-3** means the program documents including form BCAP-3, the applicable contract appendix, conservation plan and the terms of any required easement, if applicable, entered into between CCC and the participant. Such contract shall set forth the terms and conditions for participation in the BCAP and receipt of BCAP payments.
- B. **Current agricultural market value** for offer evaluation purposes means the amount in dollars per acre as determined by CCC to be the adjusted price at which the land placed in the BCAP could be rented based on the average cash rental rate, or equivalent, per acre, and which is paid for dryland cropland at the time at which this contract is signed by the participant.
- C. **Vegetative cover** means perennial or permanent grasses, legumes, forbs, and shrubs with a life span of 5 years or more, or trees.
- D. All other words and phrases, unless the context of subject matter otherwise requires, shall have the meanings assigned to them in the regulations governing the Biomass Crop Assistance Program which are found at 7 CFR Part 1450.

2. ELIGIBILITY REQUIREMENTS FOR BIOMASS CROP ASSISTANCE PROGRAM

By signing the BCAP contract, the participant, except in the case of persons qualifying solely as a tenant, certifies that such participant will control the land subject to the contract for the contract period and, if applicable, any easement period and shall, upon demand, provide evidence to CCC demonstrating that such participant will control the land for that period.

3. RESTRICTIONS ON PAYMENTS TO FOREIGN PERSONS

- A. Any person who enters into this BCAP contract or participates in such contract at any time who is not a citizen of the United States or an alien lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101 et. seq.) shall be ineligible to receive annual rental payments under this contract unless such person meets the requirements of 7 CFR Part 1400 which shall be applicable to this contract.
- B. Persons succeeding to a BCAP contract subject to a reduction in payment under this paragraph 3 for any preceding party shall not be eligible for payments during the contract period greater than those that could have been received by such preceding party.

4. AGREEMENT

- A. The participant agrees:
 - (1) That the applicable BCAP-2 and BCAP-3 and its addenda shall be considered an offer to enter into the Biomass Crop Assistance Program on the terms specified on Form BCAP-3 and its addenda. The offer, until revoked, may be accepted by CCC provided further, that liquidated damages may apply in the case of a revocation as specified elsewhere in this Appendix;
 - (2) To place eligible land into the BCAP for a period of 5 years for annual crops and non-woody perennial crops, or as agreed to by CCC for a longer period not to exceed 15 years for woody perennial crops, from the effective date of the BCAP contract executed by CCC;

- (3) To comply with the terms and conditions of the Conservation Plan;
- (4) To establish, maintain, and replace, as specified in the BCAP contract, the practices agreed to in the Conservation Plan;
- (5) Not to undertake any action on land under the participant's control which tends to defeat the purposes of this contract, as determined by CCC;
- (6) To annually certify crop and land use for the farm with the CCC on the appropriate form, accurately listing all land enrolled in BCAP on the farm, not later than the final reporting date determined and announced by the Farm Service Agency, or successor agency;
- (7) That it is understood any payment or portion thereof due any participant will be made by CCC without regard to any question of title under State law, and without regard to any claim or lien which may be asserted by a creditor, except agencies of the U. S. Government. Offsets for debts owed to agencies of the U. S. Government shall be made prior to making any payments to participants or their assignees.

B. CCC agrees:

- (1) To share the cost with owners and operators of establishing an eligible practice, or an identified unit thereof, agreed to in the Conservation Plan as described herein, except that, in no case may the share of CCC exceed an amount equal to 75 percent of the actual or average cost of the price at which the land placed in the BCAP could be sold for use as farmland at the time at which this contract is signed by the participant, unless the CCC otherwise approves such amount, provided further, that such approval must specifically reference the particular land placed in the BCAP under this contract;
- (2) To pay the agreed-upon annual rental payment, including any incentive payment, based upon the shares to which the parties have agreed as set forth on Form BCAP-3 for a period of years not in excess of the contract period;
- (3) To pay to the participant, to the extent required by CCC regulations, an interest penalty on cost- share payments, incentive payments, and all annual rental payments not made by the date, as determined by CCC, that the payment is due;
- (4) To make annual rental payments on the anniversary of each year of the contract period.

5. CONSERVATION PLAN

A. Subject to the approval of CCC, the Conservation Plan will include some or all of the following information and requirements:

- (1) The annual or non-woody perennial crop to be established on the BCAP land;
- (2) A tree planting or forest stewardship plan, developed in cooperation with the Forest Service, if woody perennial crops are to be established as the vegetative cover on the BCAP land;
- (3) A schedule of completion dates for establishment of the cover on the BCAP land;
- (4) Any other practices required for the establishment or maintenance of the cover on the BCAP land including such maintenance as necessary to avoid an adverse impact on surrounding land as determined appropriate by CCC.
- (5) The agronomical silviculture requirement for the biomass crop.
- (6) Management activities authorized by paragraph 6.

B. By signing the Conservation Plan, the participant agrees to implement the practices specified in such Conservation Plan on the BCAP land even if such practices differ from those listed on Form BCAP-3.

6. MANAGEMENT ACTIVITIES

Subject to the approval of CCC, the Conservation Plan will include harvesting of the cover on the BCAP land, including biomass, as necessary to avoid an adverse impact on surrounding land, as determined appropriate by CCC, taking into consideration the needs of the vegetative cover and other factors.

7. COST-SHARE PAYMENTS

- (3) Cost-share payments shall be made available upon a determination by CCC that an eligible practice, or an identifiable unit thereof, has been established in compliance with the conservation plan and with appropriate standards and specifications.
- (4) CCC will not make cost-share payments in excess of 75 percent of the actual or average cost of establishing the eligible practice specified in the Conservation Plan as determined by CCC.
- (5) Except as otherwise provided for in program regulations, cost-share assistance may be made available under the BCAP only for the establishment or installation of an eligible practice. In order to receive cost-share assistance, the participant, upon completion of the practice, must file Form AD-245 or similar form approved by CCC, for approval by CCC.

8. PROVISIONS RELATING TO TENANTS AND LANDLORDS

A. Payments shall not be paid under this BCAP contract if CCC determines that:

- (1) The landlord or operator has:
 - (a) when the acreage offered is not enrolled in the BCAP at the time of signup:
 - (i) not provided tenants who have an interest in the acreage being offered at the time of signup an opportunity to participate in the benefits of the program;
 - (ii) reduced the number of tenants on the farm as a result of or in anticipation of enrollment in the BCAP.
 - (b) when the acreage offered is enrolled in the BCAP at the time of signup, not provided tenants with an interest in the BCAP contract acreage an opportunity to participate in the benefits of the program if:
 - (i) the tenants are otherwise involved in farming other acreage, as determined by CCC, on the farm at the time of signup; or
 - (ii) the tenants have an interest in the acreage being offered on the effective date of the new BCAP-1.
- (2) The landlord or operator has deprived any tenant of any benefits to which such tenant would otherwise be entitled.
- (3) If any such conditions as identified in (1) and (2) occur or are discovered after payments have been made, all or any part of the payments, as determined by CCC, must be refunded with interest and no further payments shall be made.

B. After this BCAP contract is approved, the operator or tenant may, with the approval of CCC, be replaced for purposes of the BCAP contract and for payments to be made under the contract if such tenant or operator, as determined by CCC:

- (1) terminates their tenancy voluntarily or for some reason other than being forced to terminate their tenancy by the landowner or operator in anticipation as, or because of, participation in the program;
- (2) fails to maintain tenancy, as determined by CCC, throughout the BCAP contract period;
- (3) files for bankruptcy and the trustee or debtor in possession fails to affirm this BCAP contract;
- (4) dies during the term of this BCAP contract and the administrator of the operator or tenant's estate (or a similar

person with authority to administer the affairs of the operator or tenant) fails to succeed to this contract within the time required by CCC; or

(5) was removed for cause, as determined by CCC.

- C. The removal of an operator or tenant from the agreement shall not release the operator or tenant from liabilities for actions arising before such removal.

9. ERRONEOUS REPRESENTATION AND SCHEME AND DEVICE

- A. A participant who is determined to have erroneously represented any fact affecting a determination with respect to this BCAP contract and the regulations applicable to this BCAP contract, adopted any scheme or device which tends to defeat the purposes of this BCAP contract, or made any fraudulent representation with respect to this contract will not be entitled to payments or any other benefits made in accordance with this BCAP contract and the participant must refund to CCC all payments received by such participant, plus interest and liquidated damages thereon, with respect to the BCAP contract. Such liquidated damages will be determined in accordance with paragraph 10 of this Appendix.
- B. Unless CCC regulations provide otherwise, refunds determined to be due and owing to CCC in accordance with this BCAP contract will bear interest at the rate which CCC was required to pay for its borrowings from the United States Treasury on the date of the disbursement by CCC of the monies to be refunded. Interest will accrue from the date of such disbursement by CCC.
- C. The remedies provided under paragraph 9A of this Appendix shall be applicable in addition to any remedies under criminal and civil fraud statutes, including 18 U.S.C. 268, 287, 371, 641, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729, or any other remedy available under law.

10. LIQUIDATED DAMAGES

It is mutually agreed that in the event the BCAP contract is breached by the participant, the CCC will suffer substantial damages which may not be possible to quantify with certainty. Therefore, in addition to the refund of payments received plus interest due, for breach of contract prescribed in this contract, the participant agrees to pay an amount equal to the product obtained by multiplying: (1) 25 percent of the rental payment rate per acre on Form BCAP-3 by, (2) the number of acres that are the subject of the BCAP contract. Such amount shall be due as liquidated damages in addition to such other damages or amounts as may be due, and not as a penalty.

11. NOTIFICATION OF CHANGES TO TERMS AND CONDITIONS OF THE CONTRACT

CCC agrees that, if any changes of any terms and conditions of this BCAP contract, including changes necessary to reconcile the practices listed on the BCAP-3 to those specified in the conservation plan, become necessary prior to the date that this contract is approved on behalf of CCC, CCC will notify the persons signing the BCAP-3 of such change and such person will be given 10 calendar days from the date of notification in which to agree to the revised terms and conditions or to withdraw from the offer. The participant agrees to notify the CCC of an intention to withdraw from the offer within 10 calendar days from the date of the issuance of such notice and further agrees that failure to notify the CCC will constitute agreement to the revised terms and conditions.

12. CORRECTIONS

CCC reserves the right to correct all errors arising from entering data or computations in the contract.

13. TERMINATION OF CONTRACT; JOINT LIABILITY

If a participant fails to carry out the terms and conditions of this BCAP contract but CCC determines that such failure does not warrant termination of this BCAP contract, CCC may require such participant to refund, with interest, payments received under this BCAP contract, or require the participant to accept such adjustments in the subsequent payment as are determined to be appropriate by CCC. Participants that sign the BCAP-3 with zero percent interest in the annual rental payment shall not be held responsible for contract compliance.

14. CONTRACT MODIFICATIONS

- A. CCC may modify this contract to add, or substitute certain practices when:

- (1) The installed practice failed to achieve a agronomically/silviculturally acceptable biomass crop;
- (2) The installed measure has deteriorated because of conditions beyond the control of the participants; or
- (3) Another practice will achieve at least the same level biomass production.

B. Concurrence of NRCS and the conservation district may be obtained by CCC when modifications to this contract involve a technical aspect of a participant's Conservation Plan.

15. EFFECTIVE DATE AND CHANGES TO CONTRACT

A. The BCAP contract is effective when, as determined by CCC, it has been signed by the participants and an authorized representative of CCC. Except as otherwise determined by CCC, as permitted by regulations or other law, the BCAP contract may not be revoked or revised unless by mutual agreement between the parties. If, after the effective date of this contract, CCC determines that the offered acreage was erroneously enrolled or otherwise ineligible for enrollment, CCC may terminate the contract. Such termination shall not effect payments already made to the participants as of the time of termination. Within the dates established by CCC, the BCAP contract must be signed by all required participants.

B. In the event that a statute is enacted during the period of this BCAP contract which would materially change the terms and conditions of this BCAP contract, the CCC may require the participants to elect between acceptance of modifications in this BCAP contract consistent with the provisions of such statute or termination of this BCAP contract.

16. TRANSFER OF LAND

A. If a new owner or operator purchases or obtains the right and interest in, or right to occupancy of, the land subject to this contract, such new owner or operator, upon the approval of CCC, may become a participant to a new BCAP contract under the same terms and conditions with CCC covering such transferred land;

B. With respect to the transferred land, if the new owner or operator becomes a successor to the existing BCAP contract, the new owner or operator shall assume all obligations under such contract of the previous participant;

C. If the new owner or operator becomes a successor to a BCAP contract with CCC:

(1) Cost-share payments shall be made to the participant who established the practice; and

(2) Annual rental payments to be paid during the fiscal year when the land was transferred shall be divided in an equitable manner, as determined by CCC.

D. A new owner or operator will not be eligible to succeed to the BCAP contract or receive payments under the contract if a previous participant in the contract maintains or acquires any interest of any kind in the property including, but not limited to, present, future, or conditional interests, or reversionary interests, or any option with respect to the property. In addition, unless otherwise approved in writing by CCC for the particular contract, a new owner or operator will not be eligible to succeed to the BCAP contract, if a lender has or will obtain an option to purchase the property, any other right of occupancy, or share in the equity in the property which is not conditional on a foreclosure or other remedy for nonpayment of debt or on a voluntary transfer by the person seeking to succeed to the BCAP contract.

E. The participant certifies that no person has, or will, obtain an interest in the property that would render the new owner or operator to be ineligible to succeed to the BCAP contract under the provisions of this paragraph. The existence or acquisition of such an interest by another person shall be considered a breach of the contract for which the CCC may terminate the contract and enforce the remedies provided in this Appendix.

F. If a participant transfers all or part of the right and interest in, or right to occupancy of, the BCAP land and the new owner or operator does not become a successor to such contract within 60 days, or such other time as determined appropriate by CCC, of such transfer, such contract will be terminated with respect to the affected portion of such land and the original participant must:

(1) Forfeit all rights to any future payments with respect to such acreage;

(2) Refund all or part of the payments made with respect to such contract plus interest thereon, as

determined by CCC; and

(3) Pay liquidated damages to CCC as specified in paragraph 10 of this Appendix.

17. REGULATIONS TO PREVAIL

The regulations in 7 CFR Part 1450 for the BCAP are incorporated herein. In the event of a conflict between these regulations and the terms of this Appendix, the provisions of the regulations will prevail.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all 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, genetic information, political beliefs, 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, Director, Office of Adjudication and Compliance, 1400 Independence Avenue, SW., Washington, DC 20250-9410, or call toll-free at (866) 632-9992 (English) or (800) 845-6136 (Spanish) or (800) 877-8339 (TDD) or (866) 377-8642 (Federal-relay). USDA is an equal opportunity provider and employer.