

APPENDIX TO FORM BCAP-24 BIOMASS CROP ASSISTANCE PROGRAM (BCAP) APPLICATION (Establishment and Annual Payments)

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1. DEFINITIONS

The following definitions are applicable to the BCAP-24, the “BIOMASS CROP ASSISTANCE PROGRAM (BCAP) Application (Establishment and Annual Payments)” and to this appendix to that form:

- A. BCAP-24** means the program documents identified by that number and unless the context indicates otherwise, a reference to BCAP-24 also including the applicable appendix, conservation plan and the terms of any required easement, including, if applicable, regarding the subject BCAP enrollment setting forth the terms and conditions for the enrollment and for payments related to the enrollment.
- 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 the BCAP application 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

The applicant understands that by signing this application the applicant will be contractually bound to the all of the terms and requirements set out in the program regulations and the application (the BCAP-24 form itself) and its attachments including this appendix to the application, the conservation plan and any required easement. By signing the BCAP application the participant, except in the case of persons qualifying solely as a tenant, certifies that such participant will control the land subject to the application for the enrollment 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. PROMISE OF THE PARTICIPANT AND CCC PAYMENTS

A. The participant agrees:

- (1) That the applicable BCAP-23 and BCAP-24 and its addenda shall be considered an offer to enter into the Biomass Crop Assistance Program on the terms specified on Form BCAP-24 and its addenda. The request for participation, 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 up to 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 enrollment (the date of the approval of the application by CCC);
- (3) To comply with the terms and conditions of the Conservation Plan, Forest Stewardship Plan or acceptable equivalent plan (the Plan);
- (4) To establish, maintain, and replace, as specified in the BCAP enrollment documents including this appendix, the practices agreed to in the Plan;

- (5) Not to undertake any action on land under the participant's control which tends to defeat the purposes of this enrollment, as determined by CCC;
- (6) To annually certify crop and land use for the farm with the CCC on the FSA-578 or 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 to the extent such offsets are permitted or required by law.

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 Plan as described herein, except that, in no case may the share of CCC exceed an amount equal to 50 percent or up to \$500/acre or up to \$750/acre for Socially Disadvantaged farmers and ranchers, of the actual or average cost of the price at which the land placed in the BCAP could be sold for use as farmland or forestland at the time at which the application 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 in this enrollment.
- (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-24 for a period of years not in excess of the enrollment period;
- (3) To pay to the participant, to the extent required by CCC regulations, an interest penalty on establishment 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 enrollment period.

4. CONSERVATION PLAN, FOREST STEWARDSHIP PLAN, OR EQUIVALENT PLAN

- A.** Subject to the approval of CCC, the Conservation Plan, Forest Stewardship Plan or the acceptable equivalent plan (the 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 acreage;
 - (2) A tree planting or forest stewardship plan, developed in cooperation with the State Forester or Plan provider, if woody perennial crops are to be established as the vegetative cover on the BCAP acreage;
 - (3) A schedule of completion dates for establishment of the temporary cover on the BCAP acreage;
 - (4) Any other practices required for the establishment or maintenance of the cover on the BCAP acreage including such maintenance as necessary to avoid an adverse impact on surrounding land as determined appropriate by CCC.
 - (5) Management activities authorized by paragraph 5.
- B.** By signing the Plan, the participant agrees to implement the practices specified in such Plan on the BCAP acreage even if such practices differ from those listed on Form BCAP-24.

5. MANAGEMENT ACTIVITIES

Subject to the approval of CCC, the Plan will include harvesting of the cover on the BCAP acreage, 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.

6. ESTABLISHMENT PAYMENTS

- A. Establishment payments may be made available upon a determination by CCC that an eligible practice, or an identifiable unit thereof, has been established in compliance with the Plan and with appropriate standards and specifications.
- B. CCC will not make establishment payments in excess of 50 percent or up to \$500/acre or up to \$750/acre for Socially Disadvantaged farmers and ranchers of the actual or average cost of establishing the eligible practice specified in the Plan as determined by CCC.
- C. Except as otherwise provided for in program regulations, establishment assistance may be made available under the BCAP only for the establishment or installation of an eligible practice. In order to receive establishment assistance, the participant, upon completion of the practice, must file Form AD-245, FSA-848s or similar form approved by CCC, for approval by CCC.

7. 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 enrollment and the regulations applicable to this enrollment, adopted any scheme or device which tends to defeat the purposes of this enrollment, or made any fraudulent representation with respect to this enrollment will not be entitled to receive or retain payments or any other benefits in connection with this enrollment and the participant must refund to CCC all payments received by such participant, plus interest and liquidated damages thereon, with respect to the enrollment. Such liquidated damages will be determined in accordance with paragraph 8 of this Appendix.
- B. Unless CCC regulations provide otherwise, refunds determined to be due and owing to CCC in accordance with this BCAP enrollment 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 7A 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.

8. LIQUIDATED DAMAGES

It is mutually agreed that in the event a condition of the BCAP enrollment or BCAP payment 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, prescribed in this application, 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-24 by, (2) the number of acres that are the subject of the BCAP enrollment. 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.

9. NOTIFICATION OF CHANGES TO TERMS AND CONDITIONS OF THE ENROLLMENT

CCC agrees that, if any changes of any terms and conditions of this BCAP enrollment, including changes necessary to reconcile the practices listed on the BCAP-24 to those specified in the conservation plan, become necessary prior to the date that this enrollment is approved on behalf of CCC, CCC will notify the persons signing the BCAP-24 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 application. The participant agrees to notify the CCC of an intention to withdraw from the application 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.

10. CORRECTIONS

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

11. TERMINATION OF ENROLLMENT; JOINT LIABILITY

If a participant fails to carry out the terms and conditions of the enrollment, but CCC determines that such failure does not warrant termination of the enrollment, CCC may require such participant to refund, with interest, payments received with

respect to the BCAP acreage, 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-24 with zero percent interest in the annual rental payment shall not be held responsible for application compliance.

12. MODIFICATIONS OF THE TERMS OF THE ENROLLMENT

A. CCC may modify the term of the enrollment to add, or substitute certain practices when:

- (1) The installed practice failed to achieve an 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 or State Forester or Plan provider and the conservation district may be obtained by CCC when modifications to the enrollment involve a technical aspect of a participant's Plan.

13. EFFECTIVE DATE AND CHANGES TO CONDITIONS OF ENROLLMENT REQUIRED BY CHANGE OF LAW

A. The BCAP enrollment is effective and begins when, as determined by CCC, the application has been signed by the participants and approved by an authorized representative of CCC. Except as otherwise determined by CCC, as permitted by regulations or other law, the BCAP enrollment may not be revoked or revised unless agreed to by CCC. If, after the effective date of this enrollment, CCC determines that the offered acreage was erroneously enrolled or otherwise ineligible for enrollment, CCC may terminate the enrollment. 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 application must be signed by all required participants.

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

14. TRANSFER OF BCAP ACREAGE

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

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

C. If the new owner or operator becomes a successor to a BCAP enrollment 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 enrollment or receive payments under the enrollment if a previous participant in the enrollment 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 enrollment, a new owner or operator will not be eligible to succeed to the BCAP enrollment, 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 enrollment.

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 enrollment under the provisions of this paragraph. The existence or

acquisition of such an interest by another person shall be considered a breach of the promises made by the participant for which the CCC may terminate the enrollment and enforce the remedies provided in this Appendix or otherwise provided for in law.

- F.** If a participant transfers all or part of the right and interest in, or right to occupancy of, the BCAP acreage and the new owner or operator does not become a successor to the enrollment within 60 days, or such other time as determined appropriate by CCC, of such transfer, such enrollment will be terminated with respect to the affected portion of such land and the program participants 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 enrollment plus interest thereon, as determined by CCC; and
- (3) Pay liquidated damages to CCC as specified in paragraph 10 of this Appendix.

15. 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.

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